

**MONTANA DEPARTMENT OF ADMINISTRATION  
BEAD BROADBAND SERVICE GRANT  
AGREEMENT #CM61-BEAD-MT-XXXX**

This agreement is a federal subaward (“Agreement”) and is entered into by **Subgrantee’s Name** (“Subgrantee”), a **[registered business form – ex. LLC, C Corp, etc.]** existing under the laws of **[Enter State of Incorporation]**, and the State of Montana Department of Administration (“Department”), by the Broadband, Equity, Access, and Deployment Program (“BEAD”) for Application Project Name **[Unique Project ID/ORG Number]**.

**WITNESSETH**

WHEREAS, pursuant to the Infrastructure Investments and Jobs Act (“IIJA”), Public Law 117-58, the National Telecommunications and Information Administration (“NTIA”), U.S. Department of Commerce, issued a Notice of Funding Opportunity inviting applications for grants for its Broadband Equity, Access, and Deployment (“BEAD NOFO”) Program;

WHEREAS, pursuant to the BEAD NOFO, Department applied for and was awarded a grant for the BEAD Program;

WHEREAS, pursuant to the BEAD NOFO requirements, the Department submitted an Initial Proposal in two volumes and a Final Proposal, to the NTIA, which were subsequently approved;

WHEREAS, Department’s administration of the BEAD program is subject to additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information (“Assistant Secretary”) and NTIA may provide;

WHEREAS, pursuant to the Initial Proposal (Volume 1) and after following the challenge process described therein, the Department finalized and approved a list of unserved and underserved locations, and unserved community anchor institutions (CAIs) eligible for BEAD funding;

WHEREAS, pursuant to the BEAD Restructuring Policy Notice, the Department submitted and received approval of its Initial Proposal Correction Letter;

WHEREAS, pursuant to the approved Initial Proposal, the Department invited providers of broadband service to submit applications to outline plans to provide last mile services, equipment, or other investments required to deliver last-mile service to eligible locations across Montana;

WHEREAS, Subgrantee submitted a prequalification application;

WHEREAS, the Department invited broadband providers that had submitted qualifying prequalification applications to submit applications for BEAD subgrants;

WHEREAS, the Department performed a “Benefit of the Bargain Round” as required for subgrantee selection specified by the NTIA in the BEAD Restructuring Policy Notice dated June 6, 2025 (the “BEAD Restructuring Policy Notice”);

WHEREAS, the project as described in the BEAD application submitted by the Subgrantee (“Project”) was awarded, through a competitive application selection system, to qualify for funds awarded through the BEAD grant-making process based on the criteria specified in the NTIA-approved Initial Proposal and application guidance as modified by the BEAD Restructuring Policy Notice;

WHEREAS, the Department and Subgrantee agree that the purpose of this award is a broadband infrastructure project;

WHEREAS, the parties agree that the Project, as defined below, has a scope with measurable goals and objectives and that adequate cost, historical, or unit pricing data is available to establish that this is a fixed amount award based on a reasonable estimate of actual cost;

WHEREAS, it is the intent of the Parties that this Agreement in all other respects is a “subaward” as that term is defined in 2 CFR § 200.201 and that Subgrantee is a “subrecipient” as that term is defined in 2 CFR § 200.201 and as evaluated under 2 CFR § 200.331; and

Now THEREFORE, the above-mentioned parties hereto do mutually agree to the following conditions:

**1. PURPOSE**

The purpose of this Agreement is to provide funding to the Subgrantee as provided under the IIJA and to define the terms of the subaward.

**2. AUTHORITY**

- 2.1. This Agreement is issued under the authority of IIJA establishing the broadband infrastructure deployment program in accordance with the requirements set forth in the IIJA and as established by the NTIA (“BEAD Program” or “Program”).
- 2.2. This Agreement is also issued under the authority of the Connect Montana Act (Chapter 449, 2021 Laws of Montana) as codified MCA 90-1-601 et seq. In the event there is a conflict with State law and the IIJA or guidance from the NTIA, the IIJA and NTIA guidance prevail.

**3. NOTICE OF FEDERAL SUBAWARD**

- 3.1. On November 15, 2021, The IIJA was signed into law and Division F, Title I, Section 60102 et seq. established the BEAD Program. The State of Montana has been allocated federal BEAD funds by the U.S. Department of Commerce (“U.S. DOC”) under Catalog of Federal Domestic Assistance (“CFDA”) number 11.035.
- 3.2. This grant is considered a federal fixed amount subaward and federal financial assistance in relation to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 – 7507) (“Grant” or “Subaward”). As defined by 2 CFR § 200.1, fixed amount award means a type of grant under which the pass-through entity “provides a specific level of support without regard to actual costs incurred under the Federal Award.” See

Notice of Subaward outlining applicable terms and conditions of a federal subaward attached and incorporated herein as Exhibit A.

- 3.3. Subgrantee will comply with all requirements for use of BEAD funds and will provide documentation to satisfy all BEAD Program reporting requirements. In addition, Subgrantees are responsible for monitoring the U.S. DOC and National Telecommunications and Information Agency (NTIA) [websites](#) for all current compliance requirements to ensure Subgrantee's project performance and expenditures are in compliance with current grant requirements throughout the term of this Agreement. Compliance requirements outlined by the U.S. DOC include, but are not limited to: The State of Montana [Initial Proposal Volume II](#) approved by NTIA as of July 30, 2024, BEAD Notice of Funding Opportunity ("[BEAD NOFO](#)"), [BEAD Terms and Conditions](#), guidance material issued by U.S. DOC, program rules adopted and issued by NTIA (May 13, 2022), [BEAD Restructuring Policy Notice](#) (June 6, 2025), NTIA and U.S. DOC issued waivers (as modified during the Program such as [Build America, Buy America Act](#)), as well as 2 CFR Part 200 (other than those provisions from 2 CFR Part 200 that NTIA may determine are [inapplicable](#) to this Award and subject to such exceptions as may be otherwise provided by NTIA), [U.S. DOC Financial Assistance Standard Terms and Conditions \(September 2025\)](#), and the [BEAD Final Proposal](#), as approved by NTIA. The Department is responsible for meeting all deadlines and reporting requirements and otherwise ensuring all BEAD award funds are used in compliance with the BEAD program's funding requirements.

#### **4. ADDITIONAL RESOURCES**

This Agreement includes the following and incorporates by reference herein:

- 4.1. Subgrantee's Notice of Subaward, Requirements for Pass-Through Entities and Subgrantees, Exhibit A;
- 4.2. Subgrantee's Project Budget and Timeline, Exhibit B;
- 4.3. Program Milestone Schedule, Exhibit C;
- 4.4. Lower Tier Participation Certificate, Exhibit D;
- 4.5. BEAD Program Default Certificate, Exhibit E.

#### **5. PROGRAM REQUIREMENTS**

- 5.1. Subgrantee shall comply with the Department's Program grant administration policies and procedures as set forth on [www.connectmt.mt.gov](http://www.connectmt.mt.gov). Subgrantee is responsible for ensuring that all contracts, including those necessary for design and construction of facilities, are implemented in compliance with the BEAD Program Requirements and this Agreement.

- 5.2. The Subgrantee certifies the use of Program funds as outlined in Section 7 Project

Scope and Exhibit B, Project Budget and Timeline, (Exhibit B is eligible under Section 60102 of IIJA and all applicable U.S. DOC and State of Montana regulations, including applicable sections of 2 CFR Part 200 (Uniform Guidelines), U.S. DOC Financial Assistance Standard Terms and Conditions, and all relevant federal and state waivers and guidance. In the event of any conflict between the terms of this Agreement and BEAD Program Requirements, the BEAD Program Requirements control.

- 5.3. In any case where language among two or more authorities described in the BEAD Program Requirements appears inconsistent; the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, the Parties agree to prioritize following the language contained in these authorities in the following order (from highest to lowest priority): 47 U.S.C. § 1702; the award's Specific Award Conditions; the General Terms and Conditions for the BEAD Program; the BEAD Restructuring Policy Notice (June 2025); the BEAD NOFO; the Department of Commerce General Terms and Conditions (dated September 22, 2025); The Department's BEAD Final Proposal.
- 5.4. Subgrantee is registered and will maintain registration through the primary term with the U.S. System for Award Management (SAM) and Subgrantee confirms that the [Unique Entity Identifier \(UEI\)](#) listed in Notice of Subaward, Exhibit A, is the correct such number for the Subgrantee.
- 5.5. Subgrantee may use Program funds to cover Project costs or Pre-award costs. Project costs are those that are incurred during the Primary Term (as defined in Section 6) and identified specifically within the approved Project Budget and Timeline, Exhibit B, such as permitting, acquisition of real property, equipment, and materials for the Project. Allowable Pre-award costs are those incurred prior to the effective date of the federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award which are approved by the Department and NTIA.
- 5.6. The Subgrantee may not use Program funds as payment for broadband expenses that are reimbursed from any other source.
- 5.7. The Subgrantee agrees to repay to the Department any funds remitted under this Agreement that the Subgrantee, its subcontractors, agents, or assignees expends in noncompliance of the terms and conditions of this Agreement; the laws, rules, regulations, and guidance governing the Program; or any other applicable local, state, or federal requirements. This repayment obligation does not limit any other remedies the Department may have under this Agreement or law. Under no circumstances will payment by the Department be deemed to waive the Department's right to reclaim those costs that are not allowable and recover the funds from Subgrantee.
- 5.8. Subgrantee agrees to maintain an Irrevocable Standby Letter of Credit or a

Performance Bond in compliance with applicable Program rules, including but not limited to U.S. DOC Notice of Programmatic Waiver (October 2023).

- A. Pursuant to Program rules, Subgrantee has caused an eligible financial institution prior to the effective date of this Agreement to submit a qualifying Letter of Credit or Performance Bond.
  - B. The Subgrantee shall not reduce the Letter of Credit or Performance Bond without prior Department approval. The Department shall not approve a request that reduces the Line of Credit or Performance Bond to less than 10% of the subaward amount prior to the Department's approval of the Closeout Report.
  - C. Subgrantee shall direct the financial institution issuing the new or revised instrument to submit a copy to the Department within seven days of its issuance.
  - D. Subgrantee shall provide an opinion letter from legal counsel clearly stating that federal bankruptcy court would not treat the Letter of Credit or proceeds from the Letter of Credit as property of the Subgrantee's estate under Section 541 of the federal Bankruptcy Code.
- 5.9. Subgrantee confirms it has provided or will provide contemporaneous with this agreement execution, a Parent Guaranty Agreement that commits the Parent to completing all terms and conditions of the Subgrantee's BEAD award.
- 5.10. At all times, Subgrantee agrees to comply with the requirements of IIJA, including but not limited to regulations adopted by the U.S. DOC pursuant to Division F, Title I of IIJA and all applicable U.S. DOC and State of Montana guidance.
- 5.11. Subgrantee shall deploy—and shall ensure that any third-party network facility providers involved in the Project can attest to using—prudent cybersecurity risk management practices as part of the construction and operation of the Project. Subgrantee shall agree to maintain a cybersecurity risk management plan during the Primary Term that reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity, and the standards and controls set forth in Executive Order 14028. Subgrantee shall re-evaluate and update this plan on a periodic basis and certify at least annually to the Department that any required changes have been made. Subgrantee shall agree to provide a copy of the most recent version of the plan to the Department and/or the NTIA upon its request.
- 5.12. Subgrantee shall deploy—and shall ensure that any third-party network facility providers involved in the Project can attest to using—prudent supply chain risk management practices as part of the construction and operation of the Project. Subgrantee shall agree to maintain a supply chain risk management plan during the Primary Term that reflects the latest version of the NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related guidance from NIST including NIST 800-161. Subgrantee shall re-evaluate and update this supply chain risk management plan on a periodic basis and certify at least annually to the Department that any required changes have been made. Subgrantee shall agree to provide a copy of the most recent version of the plan to

the Department and/or the NTIA upon its request.

- 5.13. For the purpose of informing Subgrantee's employees, agents, contractors and subcontractors on how to report waste, fraud, or abuse in the BEAD Program, Subgrantee shall widely publicize the toll-free number and [website](#) for the Montana Legislative Audit Division. Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, key personnel of the Subgrantee may be directed to take a government-provided training on preventing waste, fraud, and abuse. The Subgrantee will be provided instructions on when and how to take such training(s).
- 5.14. If it is determined that the use of funds outlined in Section 7 (Project Scope) is ineligible under IIJA or the rules of the grant program as outlined in this Agreement, the Subgrantee understands and acknowledges that the Department may terminate this Agreement or amend the terms and conditions of this Agreement if feasible and allowed under applicable law.
- 5.15. The Subgrantee shall be responsible for project management, construction and operation in an efficient and economic manner, including obtaining and updating all necessary federal, state, and local permits as applicable for the Project, Subgrantees must retain professional engineering and management expertise during construction. Further, the Subgrantee will operate and maintain the Project for the Federal Interest Period, unless otherwise approved by the Department and U.S. DOC.
- 5.16. The Department reserves the right to adjust the award amount for a project proportionately to any non-BEAD funding that Subgrantee receives from a state or local grant for a project after BEAD funds have been awarded.
- 5.17. Subgrantee shall timely pay its employees and subcontractors for work performed related to this Agreement.
- 5.18. If Subgrantee's Project includes deployment of broadband to unserved service projects or underserved service projects on tribal lands, Subgrantee shall obtain, submit, and update to the Department, within six months of the approval of the Department's BEAD Final Proposal, a resolution of consent from each tribal government, from the tribal council or other governing body, upon whose tribal lands the infrastructure will be deployed. If tribal consent is not received, the project will be rescinded, and no construction can be done or disbursements made until tribal consent is approved.
- 5.19. Pursuant to 47 U.S.C. § 1702(h)(4)(G), once a Funded Network has been deployed, each Subgrantee shall provide public notice, online and through other means, of that fact to individuals residing in the locations to which broadband service has been provided and share the public notice with the Grantee that awarded the subgrant.
- 5.20. Service Obligation
  - A. The Subgrantee's "Service Obligation" means the Project will deliver "Reliable

- Broadband,” as defined in the BEAD NOFO and achieve the Speed and Latency as defined in the [Performance Measures for BEAD Last Mile Networks Policy Notice](#) (and any future amendments) and the Project Budget and Timeline, Exhibit B to the entire funded service area.
- B. Within 30 days of completion, Subgrantee will submit speed test documentation at project closeout for verification and submit all required certifications pursuant to 2 CFR 200.201(b)(3) as part of its Closeout Report defined in Section 12.
  - C. The Project will provide service to the BEAD eligible locations as defined by the NTIA Approved locations list as posted on the ConnectMT website. Service must be available to all the BSL Addresses defined by FCC IDs and CAI Addresses defined by latitude and longitude in the NTIA Approved locations list. Service must meet the level of broadband service described in the Department approved Project Budget and Timeline, Exhibit B, and this Agreement, as updated by the Department or U.S. DOC.
  - D. Subgrantee shall satisfy the Service Obligation for the Federal Interest Period as defined in Section 21.
  - E. Subgrantee acknowledges that given the significant amount of government contribution to the Project in the form of an allocation, the Service Obligation is a significant portion of the public benefit of the Award, and that failure to satisfy the Service Obligation shall be an event of default.
  - F. Subgrantee shall offer at least one "low-cost broadband service option" as outlined in the NTIA-approved Final Proposal. Pursuant to Section 1702(h)(5)(C), NTIA or the Grantee may take corrective action, including recoupment of funds from the Subgrantee, for noncompliance with the statutory low-cost plan requirement. To comply with the low-cost plan statutory requirement, all Subgrantees must propose a low-cost service option in their applications for project areas. The low-cost service option must offer speeds of at least 100/20 Mbps and latency performance of no more than 100 milliseconds. Applicants that already offer a low-cost plan that meets these service requirements may satisfy the low-cost service option requirement by proposing, in their application, to offer their existing low-cost plan to eligible subscribers.

## **6. TERM**

- 6.1. The effective date of this Agreement is the date of the last signature (Effective Date).
  - A. The primary term of this Agreement shall be from the Effective Date until the date the Department approves the Project Closeout Report up to a maximum of four years from the Effective Date (Primary Term).
  - B. All expenses for which Subgrantee seeks reimbursement must be Pre-award costs approved by the Department or project costs incurred by Subgrantee after the Effective Date of the award for meeting milestones as determined by the

Department. This allows the Department sufficient time to review and approve reimbursement requests and make the payment of the final reimbursement before [NTIA closeout report deadline]. Project costs incurred by Subgrantee after [Department deadline to be determined], will not be reimbursed by the Department and shall be the sole responsibility of the Subgrantee.

- C. The Subgrantee provided a Project Timeline in Exhibit B to the Department concurrent with the signing of this agreement that outlines the deadline by which the Project will be completed. If the Subgrantee determines an extension to the Project Timeline is required, Subgrantee must submit a request for the Department's approval of a revised schedule through the technology platform. Subgrantee must deploy the planned broadband network, regardless of the technology utilized, and be able to perform a standard installation for each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity. The RPN defines standard installation as the initiation by a provider of fixed broadband internet access service within 10 business days of a request with no charges or delays attributable to the extension of the network of the provider.

## **7. PROJECT SCOPE**

- 7.1. The scope of work for this project is described in the Project Budget and Timeline, Exhibit B, all supporting documents and any written modifications or reports resulting from the review of the application by the Department, the Communications Advisory Commission, and the Governor (collectively "Project"), herein incorporated into this Agreement. Subgrantee shall engage in the activities as set forth in the Project, unless specifically agreed otherwise by both Department and Subgrantee, in a Change Order or other instrument in writing, signed by all parties and attached and incorporated by reference to this Agreement. The Department reserves the right to claw-back funds if: (1) the Department can demonstrate that required subgrant activities were not carried out (such as network deployment or upgrades, connecting BSLs, delivering service at BEAD-qualifying speeds [considering the requirements of Priority and Non-Priority awards to BSLs, and the requirements for CAIs], and other requirement program activities) and (2) the Department can demonstrate that the costs upon which the fixed amount subgrant was based were not reasonable, due to errors, omissions, misrepresentations, or false statements.
- 7.2. Regardless of other obligations in this Agreement, including the Service Obligations, the Project is not complete and the Subgrantee has not fulfilled its obligations under this Agreement until the Department has approved the Subgrantee's documentation evidencing the BSLs which were served with BEAD funding, and the Department has approved the Subgrantee's Closeout Report. "Served" means broadband service can be provided within ten (10) business days, with no charges or delays attributable to extension of the service.

## **8. PROJECT MONITORING**

- 8.1. The Department or any of its authorized agents may monitor and may conduct desk reviews, site visits, and inspect all phases and aspects of the Subgrantee's performance under this Agreement to determine compliance with the Project conditions, including the proper use of funds, technical and administrative requirements, and the adequacy of the Subgrantee's records, accounts and reports. The Department at its discretion may advise the Subgrantee of any specific areas of concern and may impose corrective action on Subgrantee.
- 8.2. If the Department finds that there has been a failure by Subgrantee to make reasonable progress or that the purposes for which the funds were granted are not being fulfilled in a timely manner, the Department may take action to protect the interests of the Department, including refusing to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**9. BUDGET**

- 9.1. The total amount awarded to the Subgrantee under this Agreement shall not exceed **[\$AWARD AMOUNT]**. The Subgrantee provided a Project Budget concurrent with the signing of this Grant Agreement.
- 9.2. The Subgrantee must obtain the Department's written approval of changes to the Project Budget by submitting a proposed revised Project Budget with appropriate justification - through the Department's technology system. The Department will approve or deny any revisions in writing.
- 9.3. The Subgrantee is required to match funds. The Match Requirement is **[MATCH%]** of the total eligible project costs. The Subgrantee may meet its match requirement either with cash or the value of in-kind materials and will be identified in the Project Budget and Timeline, Exhibit B. The Department must approve the value attributed to any in-kind match. The Department will reimburse **[Award Amount %]** of the total eligible project cost up to the Award Amount of **[\$AWARD AMOUNT]**. If costs are later determined to be ineligible, the Department will claw back funds from Subgrantee. See Section 5.7.
- 9.4. The Department may assess penalties for a subgrantee's failure to comply with the provisions of the Subgrantee Award Agreement. All penalties are limited to 100% of the award amount to Subgrantee under the Subgrantee Award Agreement. Payments made for costs determined to be unallowable by either the Department or NTIA, must be refunded (including interest and penalties) by the Subgrantee to the Department. In addition to any other remedy allowed for breach under this Agreement, (such as discovery of false statements made by the Subgrantee), false statements or claims made in connection with this award constitutes a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- 9.5. The Department reserves the right to withdraw this Subaward and to terminate this

Agreement if Subgrantee fails to secure necessary match funding as required by Senate Bill 531, the IIJA, and this Agreement. If at any time the Subrecipient's matching source, approved by the Department during the financial review portion of the application, as described in Exhibit B, is no longer available to the Subgrantee, the Subgrantee must notify the Department immediately. A substitute source of matching funds must be secured by Subgrantee that is approved by the Department in order to prevent Subgrantee from being in breach of this Agreement and for the Department to terminate this Agreement.

- 9.6. This is a fixed amount award and cost overruns beyond the awarded amount will be Subgrantee's responsibility. Notwithstanding cost overruns, Subgrantee is obligated to complete the project as stated in the Project Budget and Timeline, Exhibit B. Under no circumstances will the Department provide additional BEAD funds over the total amount awarded to the Subgrantee, stated in Section 9.1.

## **10. DISBURSEMENTS**

- 10.1. This is a fixed amount award and subgrantees will receive disbursements upon completion of each milestone.
- 10.2. Subgrantee will provide the Department a Direct Deposit Authorization. The Department will process all disbursements payments to Subgrantees through the Montana Department of Administration Statewide Accounting, Budgeting, and Human Resources Systems.
- 10.3. The Subgrantee may not use Program funds provided through this Agreement as payment for broadband expenses that are reimbursed from any other federal, tribal, state or local award ("Enforceable Commitment"). Further, if the Subgrantee determines an additional Enforceable Commitment exists within the Project, the Subgrantee will notify the Department and parties will work to resolve the overlap.
- 10.4. Subgrantee shall submit a request for disbursement after achievement of the milestones outlined in the Disbursement Process Guide and reflected in Exhibit C, Program Milestone Schedule, through the Department's technology platform.
- 10.5. The Department will not consider a project complete until all milestones and closeout activities have been satisfied. The acceptance of individual milestones and disbursements does not constitute acceptance of the project in its entirety. The Department reserves the right to suspend or withhold payment for any milestone or to enforce clawback provisions for projects that do not meet all program requirements. Eligible expenses are those expenses which are outlined in IIJA, U.S. DOC BEAD guidance, BEAD Restructuring Policy Notice, and are actually incurred on this Project, as stated in the Project Budget and Timeline, Exhibit B.
- 10.6. Prior to the completion of any necessary environmental and historical preservation review, the Subgrantee disbursement requests shall be limited to permissible activities under NEPA, including the following activities:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award costs, subject to Department and NTIA-approval;
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).

Subgrantees that undertake unauthorized project activities prior to obtaining necessary environmental review do so at the risk that those unauthorized costs may not be reimbursed.

- 10.7. If additional documentation is requested by the Department or its authorized agents, the Subgrantee will have ten business days to submit the requested information. When the Department has received sufficient information and has validated to confirm the disbursement is in compliance with all requirements for disbursement of BEAD funds, the Department will have 30 business days to pay Subgrantee an amount equal to the verified costs, less the matching funds.
- 10.8. Final disbursement of funds, including release of the final closeout milestone, is contingent upon approval of the Subgrantee's Closeout Report.

## **11. AVAILABILITY OF FUNDS**

- 11.1. A Program award is conditional on U.S. DOC approving Montana's BEAD Final Proposal and releasing its remaining BEAD funding. The Department must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the Department's continuation of performance of this Agreement in a subsequent fiscal period. See § 18-4-313(4), MCA. If state or federal government funds are not appropriated or there is a termination of an award based on that it no longer effectuates the program goals or agency priorities, the Department shall terminate this Agreement as required by law. The Department shall provide the Subgrantee with the date on which the State's termination shall take effect.
- 11.2. The Department shall not be liable to the Subgrantee for any payment that would have been payable had the Agreement not been terminated under this section, Availability of Funds. The Department shall be liable to the Subgrantee only for the payment, or prorated portion of that payment, owed to the Subgrantee for work performed according to Project Budget and Timeline, Exhibit B, for eligible costs incurred by Subgrantee up to the date the Department's termination takes effect.

This is the Subgrantee's sole remedy. The Department shall not be liable to the Subgrantee for any other payments or damages arising from termination under this section, including general, special, or consequential damages such as lost profits or revenues.

## **12. REPORTS**

### **12.1. Performance and Financial Reports**

- A. Subgrantee must comply with post-award monitoring and reporting requirements to maintain continued eligibility for disbursement of grant funds.
- B. The Subgrantee shall submit performance and financial reports utilizing the Department's technology platform.
- C. The Subgrantee must provide the Department all necessary information for the Department to meet its requirements to the U.S. DOC under the BEAD Program. This information must be submitted to the Department within seven calendar days after the end of each quarter and annual reporting period.
- D. The Department may require additional performance and financial reports from the Subgrantees and unless otherwise agreed, Subgrantee's response to each additional performance request will be within seven additional calendar days.
- E. Subgrantee acknowledges that information and data contained in financial, performance, and other reports submitted by Subgrantee as required under the Program rules may be used by the U.S. DOC in conducting reviews and evaluations of its financial assistance programs and for statistical purposes.

### **12.2. Other Mandated Reporting**

- A. Subgrantees shall file broadband availability data with the Federal Communications Commission (FCC), as required in the Broadband Deployment Accuracy and Technology Availability (DATA) Act, 47 USC §§ 641-646) and the FCC's rules.
- B. Subgrantee shall submit additional reports in compliance with Subgrantee's obligations, and as necessary for the Department to satisfy its obligations, under the Access Broadband Act, 47 USC §1307 and the IJA.

### **12.3. Closeout Report**

- A. Before the time when Subgrantee's Closeout Report is due, the Department will finalize the criteria required by Subgrantee in the Closeout Report, to ensure the Report satisfies current state and federal requirements.
- B. The Subgrantee shall deliver a Closeout Report to the Department no later than 15 calendar days after the completion of Project or termination of the Award or expenditure of all awarded Program funds, whichever event occurs first.
- C. The Closeout Report may include, at a minimum, the requirements imposed on the State according to NOFO VII.E.1. The Subgrantee shall also comply with

any U.S. DOC or additional Department reporting requirements, which may include.

- i. A comparison of actual accomplishments to the objectives set forth in the Project Budget and Timeline, Exhibit B.
- ii. A description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods as well as how the parties resolved the problem to the Department and NTIA's satisfaction.
- iii. An explanation of how funds were actually spent in comparison to the original budget set forth in the Project Budget and Timeline, Exhibit B.
- iv. A final NTIA approved location list in the format requested by the Department which confirms that the Project has been completed as proposed in the application.
- v. Evidence of Maximum download and upload speeds at each location (defined by FCC location ID), and/or the state's community anchor institution identifiers as stated in Project Budget and Timeline, Exhibit B. Evidence must comply with the most current performance monitoring guidance and include speed tests conducted in a manner consistent with industry best practices to account for the actual speeds delivered during peak use times in the given area.
- vi. Certification from Subgrantee in writing to the Department, pursuant to 2 CFR 200.201(b)(3), that the Project was completed in compliance with this Agreement and placed into service, as defined in 47 USC 1702(h)(4)(C), for last-mile broadband deployment.
- vii. Summary of evidence that the Subgrantee is marketing the Project, and it is operational as well as providing other attachments or documents required by the NTIA in the closeout process.

### **13. RECORDS AND AUDITS**

- 13.1. Subgrantee shall provide the Department, the Legislative Audit Division, the Legislative Fiscal Division, NTIA, NIST, the U.S. DOC Office of Inspector General, General Accountability Office (GAO), other authorized Federal agencies, or their representatives, access to any records (electronic or otherwise) necessary to determine Agreement compliance, to conduct audits, or other investigations. The Department may terminate this Agreement, without incurring liability, for Subgrantee's refusal to allow access as required by this section.
- 13.2. Subgrantee shall create and retain all records, including all receipts, disbursements, and other transactions, supporting this Agreement for a period of 7 years from the date the Department notifies the Subgrantee that the final required BEAD Report has been submitted.
- 13.3. Subgrantee must cooperate with any field audits that any entities listed in Section 13.1, the Department and authorized representatives perform to verify completeness

and quality of work of the Project.

- 13.4. The Subgrantee is financially responsible for any audit exception or other financial loss to the State of Montana which occurs due to the negligence, intentional acts, or failure by the Subgrantee and/or its agents, employees, subcontractors, or representatives to comply with the terms of this Agreement.
- 13.5. To the extent that the U.S. DOC or the Inspector General of the Commerce Department determines that Subgrantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, applicable provisions of 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, the U.S. DOC and/or State of Montana shall, if appropriate, recover the amount of funds that were so expended.
- 13.6. In each year Subgrantee expends (as defined by 2 CFR §200.1) \$1,000,000 or more in U.S. DOC funds during the fiscal year, where Subgrantee is a commercial enterprise and not subject to audit requirements contained in Subpart F of 2 CFR §200, Subgrantee will provide to the Department annually either: i) a financial related audit of the Project in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) if a project-specific audit guide is available, a project specific audit in accordance with the requirements contained in 2 CFR §200.507. Subgrantee will provide the Department a copy of the audit within 30 calendar days after receipt of the audit report or nine months after the end of the audit period.
- 13.7. In each year, regardless of the amount expended, the Subgrantee shall provide the Department a financial statement audit performed under Generally Accepted Auditing Standards (GAAS) for the Subgrantee within 30 calendar days after receipt of the audit report or nine months after the end of the audit period. The scope of the audit must be for the Subgrantee; the Department will only accept a Parent financial statement audit if the parent has executed a Parent guaranty.

**14. CONTACTS**

Contacts listed below are the current individuals with whom each party should communicate about the Program, this award, or other issues arising under this Agreement. Written notices, reports and other information required to be exchanged between the parties must be directed to the appropriate contact. A party may change its contact information listed in this section by providing notice to the other party’s contact.

For the Department

Maria Jackson  
Grants Contracts Coordinator  
Montana Department of Administration  
125 N Roberts St.  
P.O. Box 200101  
Helena, MT 59620-0101

For the Subgrantee



406-444-4099  
ConnectMT@mt.gov

**15. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

- 15.1. The Subgrantee may not assign this Agreement or otherwise subcontract or transfer any right of duty arising under this Agreement without the Department's prior written approval. Any such assignment, subcontracting, or transfer is void.
- 15.2. Any assignment, transfer, or subcontracting of Subgrantee's rights or duties under this Agreement does not relieve Subgrantee from compliance with its duties in this Agreement. Subgrantee is fully responsible for the acts and omissions of any assignee or subcontractor as it is for its own acts or omissions.

**16. BREACH**

- 16.1. The occurrence of any of the following events is a Subgrantee breach under this Agreement:
  - A. Subgrantee, its contractors, or subcontractors, fails to comply with the accounting and reporting requirements in this Agreement and/or as required by law; or fail to provide the Project Summary, Technology Type and Network Design, Service Area and Addresses, Speed, Matching Requirements, Project Budget, Project Schedule, Environmental, Historical, Cultural, Archeological Requirements.
  - B. The Subgrantee made a untrue statement in its original Application, this Agreement, or in the Project Budget and Timeline, Exhibit B, or in any other written form, or caused another agent to submit an untrue statement to the Department, related to Subgrantee's financial status or related to its ability to build broadband infrastructure, which caused Subgrantee to be awarded or disbursed these BEAD funds. This includes statements relating to financial, operational, managerial, or technical capability of Subgrantee.
  - C. Subgrantee expends Program funds on costs which are ineligible for reimbursement under this Agreement.
  - D. Subgrantee fails to keep adequate records, including the failure to document Program fund expenditures for eligible purposes.
  - E. Subgrantee fails to timely pay its employees or subcontractors for work performed related to this Agreement or when requested by the Department, Subgrantee fails to provide proof of financial capacity to demonstrate Subgrantee's ability to continue with the Project.
  - F. Subgrantee fails to meet or exceed milestones or deadlines established in the Project Budget and Timeline, Exhibit B, without prior written approval for extensions from the Department.
  - G. Subgrantee forfeits or otherwise is deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry out any essential portion of its business or the Subgrantee files for or an event occurs

- which can reasonably be expected to result in its dissolution or termination.
- H. A state or federal court enters a judgment against the Subgrantee which the Department deems to cause insolvency of Subgrantee that substantially threatens the Subgrantee's ability to provide the matching funds going forward, or creates a financial risk according to accounting principles and 2 CFR Part 200 which warrants the Department refusing to disburse any funds to Subgrantee; or the judgment against the Subgrantee is based on claims related to this Project and in an amount of more than ten thousand dollars and which remains unsatisfied by Subgrantee for more than thirty (30) days.
  - I. Subgrantee files a voluntary case in state or federal court seeking any remedy under any applicable bankruptcy, insolvency or other similar law, or consents to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or makes any general assignment for the benefit of creditors or other entities.
  - J. Subgrantee files a voluntary case in federal bankruptcy court seeking to discharge or reorganize obligations owed to any creditors, or the bankruptcy court enters a decree or order for relief with respect to the Subgrantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs.
  - K. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Subgrantee, or the filing of such by the Subgrantee.
  - L. Subgrantee fails to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days.
  - M. Any other Subgrantee breach/default expressly specified in another section of this Agreement.
  - N. If the Department determines that the Subgrantee failed to satisfactorily carry out its responsibilities under this Agreement or has breached the terms of this Agreement, the Department shall exercise remedies by this Agreement and as available at law.

## **17. NOTICE AND OPPORTUNITY TO CURE**

- 17.1. The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Agreement, including a claim of breach.
- 17.2. Upon the occurrence of a dispute, claim or breach the Department shall issue a written notice of breach, identifying the nature of the breach, and provide 14 calendar days (or a lesser or additional time as may be agreed to by the parties) in which the Subgrantee shall have an opportunity to cure the breach.

- 17.3. Time allowed to cure does not diminish or eliminate Subgrantee's liability for damages.
- 17.4. If the Department, in its sole discretion, determines that a public safety issue exists, the grant funding is terminated, or an immediate public crisis exists, the Department may immediately terminate this Agreement in whole or in part.

**18. REMEDIES AFTER DEFAULT**

- 18.1. If the Subgrantee fails to cure a breach within the period specified in the written notice, Subgrantee is in default of its obligations, and the Department may pursue all rights and remedies available to the Department that are contemplated by the Agreement in the manner, upon the conditions, under state or federal law, and with the effect provided in the Agreement, including but not limited to the following:
  - A. Require repayment of Program funds.
  - B. Withdraw a commitment of any Program funds if a Subgrantee fails to comply with the agreed upon time frame in Project Budget and Timeline, Exhibit B.
  - C. Terminate the Agreement or applicable portions that are the subject of the breach in the Agreement if the State finds there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made or the purposes for which Program funds were granted have not been or will not be fulfilled.
  - D. Suspend Subgrantee's performance.
  - E. Withhold applicable future payment(s) until the breach is remedied.
  - F. In addition to the remedies described above, the Department may pursue such other remedies available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages.
  - G. Each right, power and remedy of the Department shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.
- 18.2. If termination occurs under this section, any costs incurred will be the Subgrantee's responsibility. However, at its sole discretion, the Department may approve requests by the Subgrantee for reimbursement of eligible expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subgrantee to comply with services, duties, terms, or conditions of this Agreement, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Subgrantee's control.

**19. PENALTIES**

As provided in § 90-1-607(6), MCA 2023, the Department may assess penalties for

Subgrantee's failure to comply with the provisions of this Agreement without reasonable cause. All penalties are limited to 100% of the allocation to Subgrantee under this Agreement.

**20. DEBTS OWED TO THE STATE OF MONTANA**

- 20.1. Subgrantee acknowledges and agrees that the following constitutes a debt to the State of Montana: (1) Any funds paid to Subgrantee in excess of the amount to which Subgrantee is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Department, State of Montana Office of Budget Program Planning and/or the U.S. DOC of Inspector General to have been misused; or (3) that are determined by the U.S. DOC to be subject to a repayment obligation pursuant to Sections of the Act and have not been repaid by Subgrantee.
- 20.2. Subgrantee acknowledges and agrees that any debts determined to be owed to the State of Montana must be paid promptly by Subgrantee. A debt is delinquent if it has not been paid by the date specified in the State of Montana's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subgrantee knowingly or improperly retains funds that are a debt as defined in paragraph 20.1.
- 20.3. The Department will take any actions available to it to collect such a debt.

**21. COMPLIANCE WITH APPLICABLE LAWS**

- 21.1. The Subgrantee agrees to comply with the requirements of IIJA and any guidance and regulations adopted by the U.S. DOC regarding BEAD funds, including but not limited to BEAD Terms and Conditions.
- 21.2. Subgrantee shall not use Program funds to purchase or support any materials and products, including covered communications equipment, for the Project for the entire Primary Term of the award as described in:
  - A. 2 CFR § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
  - B. Section 60102(g)(1)(D)(ii) of the Infrastructure Investment and Jobs Act prohibition on using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China
  - C. Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608) (see the regularly updated "List of Equipment and Services Covered By Section 2 of The Secure Networks Act," FCC, <https://www.fcc.gov/supplychain/coveredlist>)
- 21.3. Subgrantee shall provide a preference for the procurement or use of goods, products, or materials produced in the United States, as described in:

- A. Section 2 CFR § 200.322 (Domestic Preferences for procurements)
- B. Sections 70901-70927 of the Infrastructure Investment and Jobs Act (Build America, Buy America Act) and 2 CFR Part 184, including any updates and waivers adopted by U.S. DOC. See also <https://www.commerce.gov/oam/build-america-buy-america>
- C. Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).

**21.4. Project Property and Equipment and Federal Interest Period for BEAD-Funded Broadband Infrastructure Projects.**

Subgrantee agrees to comply with applicable federal rules for ownership, title, use, management and disposition of property acquired or improved using Program funds (The term "Program funds" or "Project Property" shall be inclusive of both Federal funds and non-Federal funds), as those [guidelines](#) are applied by the U.S. DOC to this Program, for the duration of the Federal Interest Period that will last on December 31<sup>st</sup> of the 10<sup>th</sup> year after the acceptance of the Closeout Report by the Department and NTIA in accordance with CFR 200.344. For example, if the Closeout Report is accepted in 2029, regardless of the month, the Federal Interest Period will last until December 31, 2039, as described in Program guidance issued by the U.S. DOC and NTIA, including but not limited to,

- A. Title to real property or equipment acquired or improved using Program funds vests in the Subgrantee upon acquisition, on the condition that Subgrantee follows its existing commercial practices for managing equipment including inventory control.
- B. Subgrantee must follow their existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. Subgrantees that do not have existing commercial practices for managing equipment in the normal course of business must comply with 2 CFR 200.313(d).
- C. Subgrantee shall comply with 2 CFR §200.316 and shall hold Project Property in trust for the beneficiaries of the BEAD Program for the Federal Interest Period.
- D. Subgrantee shall comply with the use and equipment disposition requirements of 2 CFR §200.313(c)(4) and 313(e) as follows:
  - i. Subgrantee acquiring replacement equipment under 2 C.F.R. § 200.313(c)(4) may treat the equipment to be replaced as "trade-in" even if the subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, the subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports to the U.S. DOC to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. The subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.

- ii. Subgrantee may sell, lease, or transfer Project Property only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (b) obtaining consent to the sale or transfer from NTIA.
  - iii. Subgrantee must notify the Department and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to the subgrantee or any affiliate that would impact the subgrantee's ability to perform in accordance with its subaward.
- E. Subgrantee shall prepare and properly record a Covenant of Purpose, Use and Ownership and an [UCC-1 Filing](#) with the Secretary of State in a form acceptable to the Department in advance of any sale or lease and not later than closeout of the subgrant. In addition, within 15 calendar days following the required UCC filing(s), the Subgrantee shall provide the Department with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with BEAD funding including all subgrants, along with a certification from legal counsel, licensed by the State of Montana that the UCC filing was properly executed and filed in accordance with applicable state law.
- F. Subgrantee may encumber Project Property only after providing notice to NTIA and the Department and structuring the transaction so that U.S. DOC receives either a first priority security interest or a shared first priority security interest in the Project Property.
- G. Subgrantees shall comply with 2 CFR §200.310 and 2 CFR §200.312.
- 21.5. The Subgrantee agrees to comply with applicable state and federal rules and regulations, including the following:
- A. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (dated October 1, 2024), other than such provisions as the U.S. DOC may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by the U.S. DOC, including but not limited to U.S. DOC Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program (December 26, 2023) discussing provisions that exempt Subgrantees with fixed amount subawards from complying with the procurement standards contained in 2 CFR §§200.318-320, 200.324-326 and property standards 2 CFR §§200.314-315.
  - B. Universal Identifier and System for Award Management (SAM), 2 CFR Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR Part 25 is hereby incorporated by reference.
  - C. Reporting Subaward and Executive Compensation Information, 2 CFR Part 170, pursuant to applicable Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282) and the award term set forth in Appendix A to 2 CFR Part 170 is hereby incorporated by reference.
  - D. OMB Guidelines to Agencies on Government-wide Debarment and Suspension

- (not procurement), 2 CFR Part 180, 1200, and 1326, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and certification that participant is not proposed for debarment under 48 CFR Part 9, Subpart 9.4 or debarred, suspended, ineligible or voluntarily excluded from the covered transaction.
- E. Government-wide Requirements for Drug-Free Workplace Act of 1988 (41 USC §8102), 2 CFR Part 1329.
  - F. Byrd Anti-Lobbying Amendment (31 USC §1352), New Restrictions on Lobbying, 15 CFR Part 28 and 2 CFR §200.450.
  - G. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - H. Procurement of Recovered Materials (2 CFR §200.323), requiring compliance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the requirement to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
  - I. Generally applicable federal environmental and historic preservation laws and regulations, including but not limited to the National Environmental Policy Act (42 USC §4321 et seq.), Clean Air Act (42 U.S.C. §§ 7401–7671q.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251–1387), as amended, The National Historic Preservation Act, (15 U.S.C. § 54), the Section 7 of the Endangered Species Act (16 U.S.C. 1521, et seq.), Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq) and with all applicable standards, orders or regulations issued pursuant to these laws. Violations must be reported to the Department, U.S. DOC, and the Regional Office of the Environmental Protection Agency (EPA) or the State Historic Preservation Office, as applicable, plus additional laws as described by U.S. DOC Financial Assistance Standard Terms and Conditions G.04.
  - J. All applicable federal, laws, rules, regulations, and executive orders including but not limited to: [the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); the Civil Rights Act of 1964 (42 U.S.C. § 2000 et seq., 7 CFR pt. 15); the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.; 45 CFR pt. 90); the Americans with Disabilities Act of 1990 (42 U.S.C § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.; 7 CFR pt. 15b); the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.); the Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970; Title IX of the Education Amendments of 1972; Executive Order 13798, Promoting Free Speech and Religious Liberty; the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq., 43 CFR Part 10.4); (ix)

- the Communications Act of 1934, as amended, (47 U.S.C. § 151 et seq.); the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996)); and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 et seq).
- K. All applicable state or local laws, rules, regulations and executive orders including but not limited to: Montana environment and land use laws and rules; and the Montana Human Rights Act (Title 49, MCA).
  - L. The Subgrantee and its contractors, subcontractors and Subgrantees are the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].
  - M. In accordance with § 49-3-207, MCA, and Executive Order No. 04-2016, Subgrantee agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by any persons performing this Agreement.
  - N. The Subgrantee shall not, without the prior written consent of the Department, use any Program funds to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.
  - O. The Subgrantee shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Subgrantee nor its employees are employees of the Department or the State of Montana. This insurance/exemption must be valid for the entire term of the Agreement. Proof of compliance and renewal documents must be sent to the Department within 30 days of Agreement execution.
  - P. Subgrantee shall register with the Secretary of State and obtain a certificate of authority to demonstrate good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website <http://sos.mt.gov>.
  - Q. In accordance with 41 U.S.C. § 4712, Subgrantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal

contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. Subgrantee shall inform its employees in writing of the rights and remedies provided under this section, in the predominate language of the workforce. The Department may request from Subgrantee copies of the information it provides its employees.

- R. The Subgrantee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the Department pursuant to an allocation, any related contract, loan, insurance or guarantee, or undertaken pursuant to any the Department program involving such allocation, contract, loan, insurance or guarantee, and the Equal Employment Opportunity Requirements. Equal Employment Opportunity Contract Provisions also bind the Subgrantee. The Subgrantee further agrees that it shall be bound by such Equal Employment Opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government. The Subgrantee agrees that it shall cooperate actively with the Department in obtaining the compliance of contractors and subcontractors with the Equal Employment Opportunity clause and the rules. In addition, the Subgrantee agrees that if it fails or refuses to comply with these undertakings the Department may terminate or suspend in whole or in part this Agreement, may withhold payment, or may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of Subgrantee's future compliance.

21.6 Subgrantee shall comply with the requirements of all applicable Federal, State, and local environmental laws, regulations, and standards.

- A. The Subgrantee shall not commence Grant Funded Implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) until the following activities have been completed and the Department and NTIA have approved any necessary decision documentation These required activities include:
- i. The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), and issuance by NTIA and the Department, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) ("decision documents") that meets the requirements of NEPA;
  - ii. The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, *et seq.*) (NHPA), including any consultations required by federal law, to include consultations with the State Historic Preservation Office (SHPO), and federally recognized Native American tribes;

- iii. The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.), as applicable; and
  - iv. Demonstration of compliance with all other applicable Federal, State, and local environmental laws and regulations.
- B. Aligned with the BEAD NOFO and NTIA guidance, the Department will allow the following limited permissible pre-implementation activities under NEPA to proceed using award funds prior to the completion of the EHP review process, noting that Subgrantees that undertake unauthorized project activities in contravention of these activities proceed at their own risk and may face de-obligation of funding:
- i. Pre-construction planning, including collecting information necessary to complete environmental reviews
  - ii. Applications for environmental permits
  - iii. Studies, including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses
  - iv. Administrative and pre-award application costs
  - v. Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
  - vi. Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements)
- C. The Subgrantee must timely prepare any required NEPA documents and obtain any required permits and must adhere to any applicable statutory deadlines as described in 42 U.S.C. 4336a(g).
- D. The Subgrantee must provide a milestone schedule identifying specific deadlines and describing how the subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments or Environmental Impact Statements.
- E. The Subgrantee must immediately inform the Department if, during construction, it inadvertently encounters culturally and historically sensitive sites or artifacts such as burial sites and stop all project construction until the Subgrantee and the Department can determine potential impacts and mitigations. Additional Special Awards Conditions may be added if Environmental Assessments or Environmental Impact Statements are determined to be required, and specific mitigation activities are deemed to be required.

21.7 Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native

American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantees must notify the Department of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees will cooperate with the Department’s archaeologist who may monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, the Subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify the Department, NTIA, and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the Department and NTIA.

**21.8 Net Neutrality**

The Grantee, and any agency, instrumentality, or subdivision thereof, agrees not to enforce any law, regulation, executive order, contracting requirement, or other enforceable obligation that directly or indirectly regulates in any way the rates, terms, and conditions of broadband internet service, whether on a retail, wholesale, or network basis, or imposes net neutrality rules, open access, or other utility style rules on broadband internet service, against the Subgrantee or its affiliates anywhere it provides service within the Grantee’s jurisdiction, while that Subgrantee has any subgrant that is still within its period of performance, extended period of performance, or federal interest period. For purposes of this provision, a “net neutrality rule” is any law, order, contracting requirement, or other enforceable obligation by the Grantee that prohibits internet service providers from, among other things, blocking content, throttling speeds, imposing data caps, or engaging in paid prioritization, or that imposes a general conduct or similar standard upon internet service providers.

**22. ACCOUNTING, COST PRINCIPLES**

- 22.1. The Subgrantee shall maintain for the purposes of this Agreement an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (“GAAP”).
  - A. As defined by 2 CFR Part 200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”
  - B. "Accounting Requirements" means compliance with GAAP acceptable to the Department and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (“Uniform Guidance”).

**23. COPYRIGHT – GOVERNMENT RIGHT TO USE**

Any graphic, photographic, or other material developed under this Agreement may be copyrighted with the proviso that the State of Montana will have a royalty-free, non-exclusive,

and irrevocable right to produce, publish or otherwise use, and authorize others to use the work for State government purposes.

**24. CONFLICT OF INTEREST**

Department and Subgrantee understand and agree they must maintain a conflict-of-interest policy consistent with 2 CFR § 200.112 and that such policy is applicable to each activity funded under this Award. Subgrantee must disclose in writing to the Department, as appropriate, any potential conflict of interest affecting the awarded funds.

**25. REMEDIAL ACTIONS**

Payments made for costs determined to be unallowable by either the Department or the U.S. Department of Commerce, must be refunded (including interest and penalties) by the Subgrantee to the Department in accordance with instructions from the Department that determined the costs are unallowable unless federal statute or regulation directs otherwise.

**26. HATCH ACT**

Subgrantee agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

**27. FALSE STATEMENTS**

In addition to any other remedy allowed under this Agreement for breach, (such as discovery of false statements made by Subgrantee), Subgrantee understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

**28. INSURANCE**

28.1. Subgrantee shall maintain throughout this Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Subgrantee, its officers, employees, agents, or subcontractors. If Subgrantee's policy does not cover its subcontractors, Subgrantee shall require and verify that all subcontractors maintain insurance meeting the requirements in this section.

Subgrantee must, at a minimum, provide the equivalent insurance coverage for Project Property as provided to property owned by the Subgrantee that is not part of this Program. If Subgrantee maintains broader coverage and/or higher limits than the minimums shown herein, the State of Montana requires and shall be entitled to the broader coverage and/or higher limits maintained by Subgrantee. Any available

insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State of Montana.

For any claims related to this project, Subgrantee's insurance is primary and non-contributory insurance with respect to the State of Montana, its officials, employees, agents, and volunteers and, if applicable, shall apply separately to each project or location. Any insurance or self-insurance maintained by the State of Montana is in excess of Subgrantee's insurance and shall not contribute to it.

- 28.2. Any self-insured retention must be declared to and approved by the Department. At the request of the Department, the Subgrantee must purchase coverage with a lower retention with respect to the State of Montana or provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention.
- 28.3. The State of Montana, the Department, its officials, employees, agents, and volunteers are to be covered and listed as additional insureds for liability arising out of the work or operations performed by or on behalf of Subgrantee, including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Subgrantee.
- 28.4. Subgrantee shall purchase and maintain coverage at least as broad as Insurance Services Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, bodily injury, personal injury, and property damage of two million per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 28.5. Subgrantee shall purchase and maintain liability coverage on ISO Form CA 00 01 (or its equivalent) covering any auto (Code 1), with a limit of no less than \$1,000,000 per accident for bodily injury and property damage (limits may be lower or higher depending on the risk).
- 28.6. Subgrantee shall furnish the Department with original certificates and amendatory endorsements or applicable copies of policy language indicating compliance with the required coverages in this section. The certificates must name the State of Montana as certificate holder. Subgrantee shall notify the Department promptly of any change in insurance coverage, such as changes in limits, coverages, or status of policy, etc.; and within 30 days of the cancellation of any insurance coverage. The Department may request a copy of the policy declarations and endorsement page of Subgrantee's insurance policies.

## **29. INDEMNITY AND LIABILITY**

- 29.1. The Subgrantee must maintain insurance and assure that its contractors and subcontractors maintain for the duration of the Agreement, at their own cost and expense, primary liability insurance against claims for injuries (including death) to persons or damages to property, including contractual liability, that may arise from or

in connection with the performance of the duties and obligations in the Agreement by Subgrantee, its agents, employees, assigns, contractors, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission.

- 29.2. Subgrantee shall protect, defend, indemnify, and save harmless the State of Montana, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Subgrantee, its employees, agents, or third parties for property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Agreement, any act or omission of Subgrantee, or any act or omission of Subgrantee's officers, agents, or employees.

### **30. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES**

- 30.1. The Subgrantee represents and warrants, that as of the date of this Agreement, all information, reports, and other documents and data submitted to the Department in connection with the Application were, at the time the same were furnished, complete, and correct in all respects.
- 30.2. Subgrantee represents and warrants that as of the date of this Agreement, the Project Budget and Timeline, Exhibit B, is complete, and correct in all respects.
- 30.3. Subgrantee represents and warrants that Subgrantee has the institutional, managerial, and financial capability to meet its commitments under this Agreement and the BEAD Program, including that it has sufficient financial resources to cover its eligible costs for the Project until such time as the Department authorizes disbursements pursuant to this Agreement.
- 30.4. It has the technical and operational capability to provide the services promised in this Agreement in the manner contemplated herein and that the Project workforce employed by Subgrantee will be an appropriately skilled and credentialed workforce pursuant to BEAD Program Requirements.
- 30.5. It can conduct all activities funded by this Agreement in a competent manner in compliance with all applicable state, federal, tribal, and local laws.
- 30.6. No principal, partner, shareholder, director, officer, member, manager or other employee of the Subgrantee with managerial control or responsibility over said entity or any significant aspect of its operations in Montana were employed (i) by the awarding agency and involved in the evaluation and scoring of applications received for consideration of award during a period of one (1) year prior to the date of the announcement of project awards, or (ii) by the State of Montana during a period of

two (2) years prior to the date of the execution of this Agreement.

### **31. AFFIRMATIVE COVENANTS**

31.1. The Subgrantee shall furnish to the Department the following miscellaneous notices:

- A. Promptly after becoming aware thereof, the Subgrantee will provide notice to the Department if there is an occurrence impacting the project (even if Subgrantee thinks it is not negatively impactful to the Subgrantee overall) including labor disputes, workplace safety incidents, or other disputes that would jeopardize the timeliness and cost-effectiveness of the Project.
- B. Notice of the occurrence of any default under the Agreement or the receipt of any notice given pursuant to the Agreement with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under any other part of the Agreement.
- C. Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Subgrantee or any Affiliate which, if adversely determined, could have an adverse effect on Subgrantee's performance of the obligations under this Agreement.
- D. Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have an adverse effect on Subgrantee's performance of the obligations under this Agreement.
- E. Promptly after becoming aware thereof, notice of any matter which has resulted or may result in an adverse effect on Subgrantee's performance of the obligations under this Agreement.
- F. Such other information regarding the condition, financial or otherwise, or operations of the Subgrantee as the Department may, from time to time, reasonably request, including the Subgrantee providing the Department notice of impending bankruptcy or dissolution.
- G. The Subgrantee is held to comply with its Project Budget and Project Timeline, contained within Subgrantee's submitted proposal, upon which Allocation was awarded for the Eligible Project. The Subgrantee must provide notice to the Department and shall obtain the Department's written approval of changes to the Project Budget in Exhibit B, by submitting a proposed revised Project Budget with appropriate justification - through the Department's technology system, in compliance with Section 9.2. In the unforeseen occurrence that the Subgrantee seeks an extension to the established timeline for completion of the approved project, the Subgrantee must provide notice to the Department and shall obtain the Department's written approval of the requested extension, through the Department's technology platform, in compliance with Section 6.

31.2. Subgrantee shall timely disclose in writing to the Department and U.S. DOC, Office of Inspector General any credible evidence that a principal, employee, agent ,or subcontractor has committed a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 USC §§3729-3733).

**32. PRESERVATION OF EXISTENCE AND RIGHTS**

The Subgrantee shall take or cause to be taken all such actions as are necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be issued or conferred upon it, with respect to the Project, the loss of which would have an adverse effect on Subgrantee’s performance of the obligations under this Agreement.

**33. PURCHASES REIMBURSED WITH AWARD FUNDS**

Except as specifically authorized in writing in advance by the Department, all facilities, materials, equipment, supplies, replacements, and all other items reimbursed with Program funds shall not be subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

**34. DEBARMENT**

The Subgrantee certifies and agrees to comply with 2 CFR Parts 180, 1200, and 1326 and to ensure during the term of this Agreement that neither it nor its principals, contractors, subcontractors, or Subgrantee entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency. Subgrantee further certifies and agrees to the statements included in Exhibit D – Lower Tier Participant Certification. If Subgrantee is unable to make these certifications, it shall provide an explanation to the Department.

**35. FORCE MAJEURE**

Neither party will be liable for any failure or delay in performing its duties in this Agreement due to Force Majeure Events. “Force Majeure Event” means an event or circumstance beyond a party’s reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. Force Majeure Events do not include labor unrest, price increases, or changes in general economic conditions. If a Force Majeure Event continues for 30 days, the other party may terminate this agreement or suspend payments while the event continues.

**36. SEVERABILITY**

A declaration by any court, or any other binding legal forum, that any provision of the Agreement is illegal, and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually dependent. If the provisions are mutually dependent, the parties shall attempt to negotiate changes to the Agreement consistent with the legal ruling and applicable law including but not limited to IIJA and its implementing regulations. If negotiations are unsuccessful, then either party may terminate this Agreement, and the Department shall determine how to proceed based on IIJA, its

regulations, and other applicable law.

### **37. DISPUTE RESOLUTION**

- 37.1. A Claim is a demand or assertion by the Subgrantee seeking, as a matter of right, adjustment or interpretation of terms, payment of money, extensions of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes, controversies, and matters in question between the Subgrantee and the Department or its agents arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest solely with the party making the Claim.
- 37.2. Claims must be initiated by written notice to the Department within 30 days after the occurrence of the event giving rise to such claim. If the claim is late, it is deemed waived by the claiming party and void in its entirety. The written notice must be a separate and distinct correspondence provided in hardcopy to the Department delineating the specific event and outlining the causes and reasons for the claim whether cost or time have been fully determined. All Claims must contain sufficient justification and substantiation with the written notice, or they may be rejected without consideration by the Department, with no additional impact or consequence to the reimbursements or project in question in the Claim.
- 37.3. Pending final resolution of a Claim, except as otherwise agreed in writing, the Subgrantee shall proceed diligently with performance of the Agreement and the Department shall continue to make disbursements as set out in Section 10 (Disbursements), and in accordance with the Project Budget and Timeline, Exhibit B, on the portion of the Project not involved in the Claim. Failure of Subgrantee to proceed diligently with non-disputed responsibilities under the Project Budget and Timeline, Exhibit B, will be deemed a breach of this Agreement.
- 37.4. The Department will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the Subgrantee. The approval or rejection of a Claim by the Department shall be final and binding on the parties, but subject to mediation and arbitration.
- 37.5. A request for mediation or demand for arbitration of a Claim covered by such decision or action must be made within 30 business days after the submission of a Claim without decision or 30 business days from the rejection of a Claim by the Department. Failure to request mediation or demand arbitration within said 30 business day period shall result in the Department's decision becoming final and binding upon the Subgrantee.
- 37.6. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. The parties shall mutually agree upon a mediator who shall be listed as an approved mediator with any Montana district courts, the Montana Supreme Court or the American Arbitration Association. The parties shall equally share the mediator's fee and any filing fees. The mediation shall be held in

Helena, Montana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 37.7. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect and/or those rules specified in the Agreement Documents or separately agreed upon between the parties. Construction Industry Arbitration Rule R-3 (filing with AAA) is void. After a demand for arbitration is made the parties shall mutually agree upon an arbitrator or arbitrators who shall then take the place of AAA in the Construction Industry Arbitration Rules. The parties must mutually agree to use AAA and no filing of a demand for arbitration shall be made to AAA by either party until such mutual agreement has been made. The demand for arbitration shall be filed in writing with the other party to the Agreement and a copy shall be filed with the Department. The parties shall equally share the arbitrator's fee and any filing fees. The arbitration shall be held in Helena, Montana unless another location is mutually agreed upon.
- 37.8. A Claim must be made by the timeline specified in Subparagraphs 37.2 and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- 37.9. Pending final resolution of a Claim including arbitration, unless otherwise mutually agreed in writing, Subgrantee shall proceed diligently with performance of the Agreement and the Department shall continue to make payments in accordance with the Agreement on amounts not in dispute.

### **38. JURISDICTION AND VENUE**

This Agreement will be governed and interpreted according to Montana law. Any litigation concerning this Agreement will be brought only in the Montana First Judicial District, Lewis and Clark County. Each party shall pay its own costs and attorney fees, except as otherwise stated in this Agreement. See §18-1-401, MCA.

### **39. WAIVER OF BREACH**

Either party's failure to enforce any Agreement provision in a specific situation is not a waiver in a future similar situation or of any other obligation or responsibility under this Agreement. Neither party may assert the defense of waiver.

### **40. SURVIVABILITY**

The following provisions will survive the termination of the Agreement:

- Section 5, Program Requirements
- Section 9, Budget

- Section 12.1, Performance and Financial Reports
- Section 12.2, Other Mandated Reporting
- Section 13, Records and Audits
- Section 15, Assignment, Transfer, and Subcontracting
- Section 16.1, Breach
- Section 19, Penalties
- Section 21, Compliance with Applicable Laws
- Section 23, Copyright – Government Right to Use
- Section 25, Remedial Actions
- Section 27, False Statements
- Section 28, Insurance
- Section 29, Indemnity and Liability
- Section 32, Preservation of Existence and Rights
- Section 36, Severability

#### **41. GENERAL TERMS AND CONDITIONS**

- 41.1. **Incorporations.** All attachments and documents listed in this Agreement are incorporated into this Agreement. Subgrantee acknowledges receipt of all documents incorporated into this Agreement.
- 41.2. **Entire Agreement.** Subgrantee acknowledges it has read and understands these terms and conditions and agrees to be bound by them. Subgrantee further acknowledges this Agreement, including the attachments and other incorporated documents, is the complete and exclusive statement of the Agreement between the parties. It supersedes all previous proposals, oral or written, and all other communications between the parties relating to this Agreement’s subject matter.
- 41.3. **Binding Agreement.** Each part of the Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Subgrantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally.
- 41.4. **Modifications of Agreement.** Additions, deletions, amendments, or changes are collectively called “modifications.” This Agreement can be modified in writing and

must contain an explicit statement that it constitutes an amendment to this Agreement and be signed and dated by the Subgrantee and one of the Department's authorized personnel.

- 41.5. **Cooperation.** The Department and Subgrantee will reasonably cooperate with one another to fulfill their respective obligations under this Agreement. Both parties will make reasonable efforts to maintain professional working relationships among all members of the Project team.
- 41.6. **Solicitation of Agreement.** Subgrantee has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for the Subgrantee, to solicit or secure this Agreement, and the Subgrantee has not paid or agreed to pay any person, partnership, or corporation, other than a bona fide employee or agent working for the Subgrantee, any fee or any other consideration, contingent upon the making of this Agreement.
- 41.7. **No Third-Party Beneficiaries.** The parties to this Agreement do not intend to confer, and this Agreement will not be construed to confer, any rights, claims, or benefits on any person or entity not a party to this Agreement.
- 41.8. **Headings.** Headings are for convenience only and do not affect the interpretation of this Agreement.
- 41.9. **Agreement Construction.** Each party has consulted with an attorney in reviewing and executing this Agreement or has knowingly and voluntarily waived its right to do so. The language in this Agreement will be interpreted according to its fair meaning and not strictly for or against any party.

**42. BEAD Program Default Certification**

By signing this Agreement, Subrecipient certifies and assures that it has read the contents of Exhibit E and agrees to comply with all requirements of the BEAD Program Default Certification as specified in the BEAD Terms and Conditions, incorporated herein by this reference. See Exhibit E. NTIA may choose to publicly publish these signed certifications.

**43. BEAD CERTIFICATION**

By signing this Agreement, Subgrantee agrees and certifies to the BEAD Terms and Conditions, incorporated herein by this reference.

**44. LOWER TIER PARTICIPATION CERTIFICATION**

By signing this Agreement, Subgrantee agrees and certifies to the terms and conditions, BEAD Terms and Conditions, incorporated herein by this reference. The parties' authorized representatives have signed this Agreement.

**STATE OF MONTANA**

**SUBGRANTEE**

**DEPARTMENT OF ADMINISTRATION**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Russ Katherman, Administrator [Enter Name], [Enter Title]  
Department of Administration [Business Legal Name]

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Approved as to Legal Content**

By: \_\_\_\_\_  
Julia Swingley, Chief Legal  
Counsel  
Department of Administration

Date: \_\_\_\_\_