

**MEMORANDUM OF UNDERSTANDING
REGARDING
FUNDING FOR NEIGHBORHOOD CONNECT BROADBAND FUNDING PROGRAM**

This Memorandum of Understanding Regarding Funding for Neighborhood Connect Broadband Funding Program (“**Agreement**”) is made by and between the Department of Housing and Community Development (“**DHCD**”), a principal department of the State of Maryland (“**State**”) and _____ (the “**Local Jurisdiction**”). **DHCD** and the **Local Jurisdiction** are each a “**Party**,” and may be collectively referred to as the “**Parties**.”

WHEREAS, there is a deficit of broadband resources serving many residents and businesses in the State;

WHEREAS, DHCD, through the Office of Statewide Broadband (the “**Office**”), supports the mission of the State to deliver broadband internet to communities in Maryland experiencing such a deficit;

WHEREAS, it is the goal of the Office to aid local governments experiencing such a deficit by supporting them in implementing solutions to the problem of delivering broadband to unserved residents and businesses;

WHEREAS, the Local Jurisdiction seeks funding support for development of a project to extend existing broadband service into an Unserved Area (“**Project**”);

WHEREAS, the State has received funding from the United States Department of the Treasury, pursuant to Section 9901 of the American Rescue Plan Act of 2021 (Public Law 117-2), and any applicable rules and regulations related thereto;

WHEREAS, the purpose of this funding is to address the economic consequences of the COVID-19 pandemic by facilitating, among other things, increased public investment in broadband infrastructure; and

WHEREAS, the State has allocated a portion of this funding to DHCD for the purpose of supporting broadband infrastructure and deployment.

NOW, THEREFORE, in consideration of the mutual commitments made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals

The Recitals set forth above are hereby incorporated and made a part of this Agreement.

2. Term

The term of this Agreement shall begin after all appropriate Party approvals have been obtained and the Agreement has been executed by all Parties, and will terminate on December 31, 2023, unless earlier terminated pursuant to Section 5 hereof.

3. Definitions

3.1 “Local Match” means the funds committed to the Project by the Local Jurisdiction and, if applicable, the ISP Partner, to match the funding committed by the Department to the Project under this Agreement.

3.2 “ISP” means the internet service provider partnering with the Local Jurisdiction for the Project, _____ [*insert name of service provider*].

3.3 “Minimum Network Requirements” means a minimum internet connectivity of 100 Mbps down and 100 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers’ location unless the ISP submits a Certification as to circumstances preventing the ISP from achieving such speeds. Where the ISP has certified to its need for exemption and said Certification is an Exhibit to this Agreement, Minimum Network Requirements shall mean a minimum internet connectivity that reliably meets or exceeds 100 Mbps download and at least 20

Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances, with a maximum latency of 50 milliseconds measured at the served subscribers' location.

3.4 “Project” means the Local Jurisdiction’s project to extend broadband services in to an Unserved Area, as described in detail in the Local Jurisdiction’s response to the RFA, attached hereto as Exhibit B.

3.5 “Project Area” means the geographic area to be served with internet connectivity as a result of the Project, as identified preliminarily in Exhibit B and more specifically in the Award Letter, attached hereto as Exhibit C. The Project Area must be located within an Unserved Area.

3.6 “RFA” means the Office of Statewide Broadband’s *Neighborhood Connect - FY22 Maryland Broadband Grant Program Request for Applications* published on _____.

3.7 “Unserved Area” means a geographic area lacking terrestrial, fixed internet service at speeds above 25 Megabits per second (Mbps) download and/or 3 Mbps upload and/or with latency above 50 milliseconds.

4. Obligations of Parties

4.1 DHCD

4.1.1 Funding. To support the Project, DHCD commits to providing funding to the Local Jurisdiction, on a reimbursement basis, in an amount not to exceed _____ Thousand Dollars (\$____,000.00) (“**Funding**”). The following conditions apply:

4.1.1.1 Funding shall only be provided for actual, eligible Project costs;

4.1.1.2 Funding shall not exceed _____ percent (___%) of the actual Project cost;

4.1.1.3 Funding shall only be provided to the extent that the Local Jurisdiction Match is provided, as described in Section 4.2.2.1.3 below.

4.1.1.4 Eligible Project costs are costs relating to the capital assets required to provide service, meeting Minimum Network Requirements, to end user subscribers within the Project Area.

4.1.2 Invoicing and reimbursement.

4.1.2.1 The Local Jurisdiction shall submit invoices for reimbursement of eligible Project costs, with supporting documentation, to the Office no later than thirty (30) days after Local Jurisdiction payment of Project costs. Invoices must include the following information:

4.1.2.1.1 Date of invoice;

4.1.2.1.2 Specific Project for which reimbursement is being sought;

4.1.2.1.3 Date and description of expense or service for which reimbursement is requested;

4.1.2.1.4 Cumulative Project cost to-date;

4.1.2.1.5 Cumulative DHCD reimbursements to-date;

4.1.2.1.6 Percentage of overall Project cost paid by DHCD to-date.

4.1.2.2 In conjunction with each reimbursement request submitted to DHCD, the Local Jurisdiction shall provide a report to the Office setting forth the number of unserved homes passed, the number of initial subscribers since the expansion (if any), and the number of fiber miles placed.

4.1.2.3 DHCD may require the submission of additional supporting documentation.

4.1.2.4 Reimbursements may be made on paid or unpaid invoices.

4.1.2.5 DHCD will make reimbursements within sixty (60) days after approval of an invoice submitted pursuant to 4.1.2.1.

4.1.3 Discretion. DHCD, in its sole discretion, may approve or deny reimbursement requests made pursuant to Section 4.1.1.

4.2 The Local Jurisdiction

4.2.1 Eligibility for Funding.

4.2.1.1 The Local Jurisdiction is a grantee of funds from DHCD and this agreement constitutes a grant agreement.

4.2.1.2 The Local Jurisdiction must fully execute the Project for funding to be awarded. In the event that the Local Jurisdiction defaults on this obligation, funding may be recalled by DHCD as to any uncompleted Project.

4.2.2 Project

4.2.2.1 The Project must meet the following criteria for funding to be provided pursuant Section 4.1.

4.2.2.1.1 The Project must serve an Unserved Area.

4.2.2.1.2 The Project must meet Minimum Network Requirements.

4.2.2.1.3 A Local Match in the amount of _____

(\$_____) for every One Dollar (\$1.00) of funding provided by DHCD is required.

4.2.2.1.4 The Project will conform in all material respects with the Local Jurisdiction's response to the RFA, attached hereto as Exhibit B, as limited in scope by the Award Letter, attached hereto as Exhibit C. The scope of the Project may be further modified with the written approval of the Office.

4.2.2.2 The Project will be owned by the Local Jurisdiction or the ISP. The Local Jurisdiction is responsible for overall funding and implementation of the Project.

4.2.2.3 The Local Jurisdiction will seek the assistance and advice of the Office in executing the Project. The Local Jurisdiction will accept the Office's advice and suggestions in good faith.

5. Early Termination

5.1. If a Party fails to fulfill any or all of its obligations under this Agreement properly and on time, or otherwise violates any provision of this Agreement, the non-defaulting Party may terminate this Agreement by giving thirty (30) days prior written notice of such default to each other Party. The non-defaulting Party shall allow thirty (30) days for the defaulting Party to cure said default. If the default is not cured within the thirty (30) day cure period, the non-defaulting Party may terminate this Agreement without further notice. If the Local Jurisdiction is a signatory to multiple agreements with DHCD that fund projects expanding broadband, the Local Jurisdiction acknowledges that, in DHCD's sole discretion, a default under the terms of this Agreement which is not cured within the thirty (30) day cure period shall be grounds for DHCD to terminate all such memoranda of understanding between DHCD and the Local Jurisdiction. The thirty (30) day notice of default shall specify the acts or omissions which, uncured, will be relied upon for termination.

5.2 DHCD may terminate this Agreement for convenience upon sixty (60) days' notice to the Local Jurisdiction. In the event of an early termination under this Section, the Local Jurisdiction will be reimbursed all reasonable costs incurred prior to the date of notice of termination, pursuant to Section 4.1.1.

5.3 Funding under this Agreement is subject to budget constraints and legislative approvals. If funds are not appropriated or made available to DHCD for the amounts identified in this Agreement, this Agreement shall be automatically terminated, without any action required.

6. Notices

All notices required under this Agreement shall be made in writing, delivered by first-class mail (with a courtesy copy by e-mail), and deemed received three (3) days after mailing.

All notices shall be directed as follows:

If for DHCD, to:

Kenrick Gordon
Director, Office of Statewide Broadband
Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706
With courtesy e-mail to: kenrick.gordon@maryland.gov

If for the Local Jurisdiction, to:

[NAME]
[ADDRESS]

With courtesy e-mail to: [EMAIL]

7. Liability

7.1 Each Party assumes sole responsibility for the obligations to be performed by it under this Agreement.

7.2 To the extent permitted by law, the Local Jurisdiction shall defend, indemnify, and hold harmless DHCD and the State from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the Local Jurisdiction, its officials, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification. The Local Jurisdiction's obligation to defend, indemnify, and hold harmless DHCD and the State shall survive the termination of this Agreement.

7.3 In any agreement for execution of the Project with the ISP, the Local Jurisdiction shall require the ISP to defend, indemnify, and hold harmless DHCD and the State from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the ISP, its officers, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification.

7.4 Nothing provided in this Agreement shall be construed as a waiver of the Tort Claims Acts and related funding provisions or the defense of governmental immunity by the Parties as to any third party.

7.5 It is hereby stipulated and agreed between the Parties that with respect to any tort claim or action arising out of any services performed under or pursuant to this Agreement, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions or omissions of its own agents, officers and employees. In any action or claim arising out of any services performed under or pursuant to this Agreement, each Party shall assume the defense of itself, its own officers, agents or employees in accordance with the Maryland Tort Claims Act, Md. Code Ann., State Gov't Art., §12-101, *et seq.* and the Maryland Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, *et seq.*, as the case may be.

7.6 Each Party shall immediately notify the other of any claim or suit made or filed against them or their subcontractors regarding any matter resulting from or relating to their obligations under this Agreement and will cooperate, assist, and consult with the other Party in the defense or investigation of any claim, suit, or action made or filed against any of the Parties relating to the obligations of such Party under this Agreement.

8. Records

The Local Jurisdiction will maintain accurate records of all documents relating to this Agreement, all expenses incurred under this Agreement, and all services provided to the Local Jurisdiction for which reimbursement is made under Section 4.1.1. The Local Jurisdiction shall make the records and its administrative offices, personnel, consultants, or volunteers who are involved in the implementation of this Agreement available to representatives of the U.S. Treasury or DHCD upon request. All such records shall be maintained for a period of five (5) years after funding is provided by DHCD, or for any applicable period of limitations under federal law, whichever is longer. In cases where unresolved audit questions may require

retention of some or all of said records for a longer period, the Local Jurisdiction will turn over all records that may be required to be retained beyond the five (5) year period identified herein to DHCD.

9. Compliance with Laws

Each Party to this Agreement hereby represents and warrants that it shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.

10. Certifications

10.1 The Parties agree to not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, familial status, marital status, national origin, ancestry, or physical or mental disability or any other characteristic forbidden as a basis for discrimination by applicable laws. The Parties agree to comply with other non-discrimination provisions of federal and State law.

10.2 The signatory for the Local Jurisdiction in this Agreement is an official of the Local Jurisdiction authorized to act in connection with the matters described in this Agreement. This Agreement has been duly authorized, executed, and delivered in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Local Jurisdiction, subject to the approval of _____ [*the appropriate governing body: i.e. The City Council or Board of County Commissioners, e.g.*].

10.3 The Parties warrant that they shall comply with the State's policy concerning drug and alcohol free workplaces as set forth in COMAR 01.01.1989.18 and 21.11.08, and shall remain in compliance throughout the Term of this Agreement.

11. Entire Agreement

This Agreement, together with any exhibits attached hereto and incorporated by reference, represents the complete, total and final understanding of the Parties and no other understanding or representations oral or written, regarding the subject matter of this Agreement shall be deemed to exist or bind the Parties at the time of the execution.

12. No Waiver

The failure to insist in any one or more instances upon a Party's strict performance of any of its obligations under this Agreement shall be limited to that particular instance, and shall not be deemed or construed as a waiver or relinquishment of the right to require and enforce the future performance of such obligations.

13. Severability

If any term, covenant, or condition of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this Agreement shall be construed without such provision, and shall, nevertheless, remain in full force and effect as long as the essential terms of this Agreement remain valid, legal, reasonable, and enforceable.

14. Amendments

This Agreement may not be changed, altered, or modified except by written agreement executed by the Parties. Except for any specific provision of this Agreement which is amended in accordance with this Section, this Agreement remains in full force and effect after any such amendment.

15. Miscellaneous

15.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland.

15.2 This Agreement shall not be assignable or transferable without the prior written consent of the Parties.

15.3 Section headings and subheadings in this Agreement are used for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

15.4 This Agreement is for the exclusive benefit of the DHCD and the Local Jurisdiction. No other person or entity shall have rights under or be deemed a beneficiary of this Agreement.

15.5 This Agreement may be executed in counterparts; all such executed counterparts shall be deemed one agreement. Signatures of the Parties, transmitted by facsimile or by electronic mail printable in tangible form to the other Party, shall be as effective as an original signature delivered by the signing Party.

16. Exhibits

The following Exhibits attached hereto are an integral part of this Agreement and are incorporated herein by reference:

Exhibit A: Federal Funding Acknowledgements and Lobbying Certification

Exhibit B: Response to RFA (*In lieu of the full Response, the Application Form with an affirmative statement that all original supporting documents are incorporated therein by reference may be utilized as Exhibit B*)

Exhibit C: Award Letter

Exhibit D: Certification of Exemption From Standard Minimum Network Requirements (*if applicable*)

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the dates identified below.

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

Date

BY: Kenneth C. Holt
Secretary

Approved as to form and legal sufficiency
this _____ day of _____, 2021:

Assistant Attorney General, DHCD

[Name of Local Jurisdiction]

Date

BY:
ITS:

