

April 4, 2023

<<Authorized Rep Name>>
<<Grantee Name>>
<<Address>>

<<County Rep>>
<<County Name>>
<<Address>>

Re: Grant Agreement for Application #<<ApplicationID#>> (Grant Agreement #
<<Grant#>>)

Your Signature and Reply is Requested
Project Title: <<Project Title>>
Unique Entity Identifier in SAM.gov:

Dear <Salutation> <Names>:

Thank you again for your participation in the GREAT American Rescue Plan Act Round and congratulations on your award. Attached for your review and signature is the contract document required to establish the agreement for the GREAT award with the North Carolina Department of Information Technology. NCDIT funding will be provided on a reimbursement basis. NCDIT's portion of this project is funded with a federal award from the U.S. Department of the Treasury to the State of North Carolina dated March 3, 2021 (Assistance Listing Number 21.027, Coronavirus State and Local Fiscal Recovery Funds).

Below is a description of the documents enclosed along with an explanation of the signatures required for each document. The authorized representative from your company and county should execute this agreement via AdobeSign no later than May 4, 2023.

Document:	Document Description:	Signed By:
Agreement	Contract: Outlines the terms of the Agreement between NCDIT and the Grantee.	Authorized Representative for the Grantee
Exhibit A	NCDIT <u>and County</u> disclosures required by 2 C.F.R. 200.211(b) .332 and 09 NCAC 03M.	No Signature Required
Exhibit B	Scope of Services: Outlines the scope of the construction project, including the Project Budget	No Signature Required

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Exhibit C	Project Milestones: Outlines the schedule and contents of reports that are due from the Grantee to NCDIT.	No Signature Required
Exhibit D	Reporting Schedule for Progress Reports	No Signature Required
Exhibit E	Progress Report Template: Provides a template document for the Grantee to submit progress reports, including spending to date	No Signature Required
Exhibit F	Payment <u>Schedule Process</u> : Outlines the process for the Grantee to request reimbursements from NCDIT.	No Signature Required
Exhibit G	Byrd Anti-Lobbying Certification	Authorized Representative for the Grantee
Exhibit H	Key Personnel of the Grantee	No Signature Required
Exhibit I: Mapping Files	Electronic files to use with GIS software that identifies eligible project areas for this contract. Data file (cvs) and map that identifies eligible locations for the grant project.	No Signature Required
Exhibit J: County Match (Financial)	Process for payment of County matching funds	Signed by Authorized Representative for County and Grantee
Exhibit K: County Match (Infrastructure)	Description of County’s contribution of infrastructure	Signed by Authorized Representative for County and Grantee

If you have any questions regarding the enclosed documents, please contact me at (919) 817-0541 or greatgrant@nc.gov.

Sincerely,

George T. Collier, Deputy Director
 Broadband Infrastructure Office
 NC Department of Information Technology

Enclosures

**Growing Rural Economies with Access to Technology Agreement
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Article 1. Overview.

Section 1.1. Parties. The North Carolina Department of Information Technology (“NCDIT”), an agency of the State of North Carolina (“State”) and <<COUNTY NAME>> County (the “County”) (NCDIT and the County are hereinafter collectively referred to as “Grantors”) enter into this Growing Rural Economies with Access to Technology (“GREAT”) Program Agreement (“Agreement” or “Contract”) with the <<GRANTEE NAME>>(the “Grantee”). Together, Grantors and Grantee are hereinafter collectively referred to as the “Parties” or each individually as a “Party”.

Section 1.2. Roles. For the purposes of this Agreement, NCDIT is a recipient and a pass-through entity for the U.S. Department of the Treasury, and the Grantee is a subrecipient, as defined by 2 C.F.R. 200.1. If the County is using federal funds for the project described herein, then pursuant to 2 C.F.R. 200.1 it is also a recipient and a pass-through entity for the purposes of this Agreement, unless those funds are categorized as revenue replacement funds, in which case the County is a recipient.

Section 1.3. Purpose. The purpose of this Agreement is to establish the terms and conditions for the use funds that Grantors have awarded to the Grantee to carry out the State’s GREAT Program. Grantors awarded this funding: (1) based on the application filed by the Grantee and any subsequent materials supporting the application; (2) based on GREAT Program guidelines and other requirements and guidelines; and (3) for the deployment of broadband infrastructure to provide the locations identified in this Agreement with at least 100 megabits per second download and 100 megabits per second upload speeds by December 31, 2026, as described in the application (the “Project”).

Section 1.4. Source of Funding. The State received State Fiscal Recovery Funds (“SFRF”) pursuant to Section 602 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as amended (“ARPA”). Broadband infrastructure projects are an eligible use of SFRF funds (87 Fed. Reg., 4339 Jan. 27, 2022), and NCDIT intends to pay for the cost of this Project using a portion of the \$350,000,000 in SFRF funds appropriated to NCDIT by the North Carolina General Assembly for the GREAT grant program (Federal Award Identification Number SLFRP0129, Assistance Listing Number 21.027). In accordance with N.C. Gen. Stat., § 143B-1373(g)(1) (as amended by S.L. 2021-180, Section 38.4(a)(8)), the County will contribute matching funds for the cost of this Project in the form of a financial match using either ARPA funds or the County’s unrestricted general funds, or it will contribute existing infrastructure that has been installed for its enterprise, non-consumer broadband purposes, or any other property, buildings, or structures owned by the County.

Section 1.5. Compliance. The Parties to this Agreement are subject to state and federal statutes, rules, and regulations applicable to this Agreement, including but not limited to: Section 602 of the Social Security Act; the Uniform Guidance of the Office of Management and Budget (2 C.F.R.

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Part 200); the SFRF and ARPA rules and regulations issued by the U.S. Department of the Treasury, (including the SFRF Final Rule at 87 Fed. Reg. 4338, Jan. 27, 2022, to be codified at 31 C.F.R. Part 35); N.C.G.S. §143B-1373 and any relevant amendments, including but not limited to S.L. 2021-180, Section 38.4 and its subsequent amendments and technical changes (the “**GREAT statutes**”); the Uniform Administration of State Awards of Financial Assistance (09 NCAC 03M); and the award agreement between the State of North Carolina and the U.S. Department of the Treasury. Neither NCDIT nor the County shall make any distributions of funds absent the Grantee’s agreement and adherence to each term and condition contained herein. To the extent that the North Carolina General Assembly, after the Effective Date of this Agreement, enacts legislation that retroactively impacts the Project, the Parties shall have the right to amend this Agreement in accordance with those laws. Grantee also agrees to abide by additional guidance from the U.S. Department of the Treasury regarding the applicability of certain provisions of 2.C.F.R. Part 200. Nothing in this Agreement waives, excuses, or amends requirements imposed by State or Federal law for the administration of these funds.

Section 1.6. Disclosures. Federal regulations, specifically 2 C.F.R. 332 require Grantors to provide the Grantee with specific information about this award. All required information, along with state disclosures required by 09 N.C.A.C. 03M, is listed in Exhibit A, “NCDIT Disclosures”.

Section 1.7. Term of Agreement. The effective period of this Agreement shall commence on **X**, 2023 (“**Effective Date**”) and shall terminate on **X, 2028**, unless terminated on an earlier date by any of the Parties in accordance with the terms of this Agreement (either one of which dates shall constitute the “**Termination Date**”).

Section 1.8. Construction Period. The Construction Period is the time from the execution of this Agreement to the time that service is available to locations identified in Exhibit B “Scope of Services” and shall not extend beyond two years, subject to the provisions of Section 2.4.

Section 1.9. Maintenance Period. The Maintenance Period begins on the expiration date of the Construction Period and shall continue until the Termination Date. Broadband service at or above the minimum speeds must be continually made available to the locations specified in Exhibit B through the Maintenance Period until the Termination Date of this Agreement.

Article 2. Scope of Funded Activities.

Section 2.1. Scope of Project. The scope of the Project covered by this Agreement is set out in the Scope of Services, attached hereto as Exhibit B, which includes the project budget (“**Project Budget**”). The Grantee shall perform all services described in Exhibit B (“**Covered Services**”).

~~The following information and documents are incorporated by reference into this Agreement:~~

- a. **Reliance by NCDIT.** The Application filed by the Grantee and any subsequent materials submitted to NCDIT supporting the Application, which have been relied upon by NCDIT in awarding this funding, are incorporated by reference into this Agreement.

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- b. **GREAT Program Guidelines.** NCDIT policy related to the performance of this Project is set out in the GREAT Program guidelines, which may be amended, modified, or supplemented and applied accordingly to this Agreement by NCDIT in its sole discretion. Guidelines and other documentation are available at <https://www.ncbroadband.gov/funding-programs/great-grant-federal/great-grant-2021-2022/great-grant-management-documents-federal>

Section 2.2. NCDIT Funding and Administrative Expenses.

- a. **GREAT Award.** NCDIT awards to the Grantee an amount not to exceed <<Approved Award>> for infrastructure costs directly relating to the Project (“**GREAT Award**”). If NCDIT determines that the actual costs of the Project are less than the Project budget amount, NCDIT, ~~after consultation with the Grantee and an opportunity to respond, in its discretion,~~ may reduce the amount of the GREAT Award funding accordingly.
- b. **Total Funding.** The total GREAT Award funding for the Project, including the sources of the funds and the percentages of each source are set forth in Exhibit B.
- c. **Eligible Expenditures.** Pursuant to N.C.G.S. § 143B-1373(b), eligible expenditures for the Project are limited to infrastructure costs as defined in N.C.G.S. § 143B-1373(a)(9), which are costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including (“**Eligible Expenditures**”):
1. Installation;
 2. Acquiring or updating easements, ~~which are limited to the lesser of five percent (5%) of the GREAT Award or twenty-five thousand dollars (\$25,000.00);~~
 3. Equipment;
 4. Fiber;
 5. Construction;
 6. Backhaul infrastructure directed at broadband service to the end user;
 7. Testing costs, ~~which are limited to the lesser of one percent (1%) of the GREAT Award or five thousand dollars (\$5,000.00);~~
 8. Engineering costs; and
 9. Costs associated with securing a lease to locate or collocate infrastructure on public or private property or structures, but not including the actual monthly lease payment.
- d. **Expenditures Reimbursements.** Eligible Expenditures incurred since the date of the award in anticipation of this Project may be reimbursed, subject to the Grantee’s submission to NCDIT of documentation sufficient to support such request for reimbursement and NCDIT’s approval of such request.

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- e. **Materials Reimbursement.** Eligible Expenditures for materials incurred since March 3, 2021 in anticipation of this Project may be reimbursed, subject to the Grantee’s submission to NCDIT of documentation sufficient to support such request for reimbursement and NCDIT’s approval of such request.
- f. **Non-Eligible Expenditures.** Without limitation and as determined by NCDIT in its sole discretion, the following expenditures are not eligible for GREAT Award funding and should **not** be submitted to NCDIT for reimbursement or credited by the Grantee toward its Cash Match requirement under Section 2.4.e.1 below:
 - 1. Middle mile, backhaul, and other similar projects not directed at broadband service for end users;
 - 2. Overhead expenses;
 - 3. Administrative costs;
 - 4. Lease payments; or
 - 5. Expenditures related to areas where the Grantee has been designated to receive funds through other State or federally funded programs designed specifically for broadband deployment, if such funding is intended to result in construction of broadband in the area with eighteen (18) months or for the duration of the federal funding program for that area, or if the Grantee is otherwise in good standing with the funding agency’s regulations governing the funding program.

Section 2.3. County Partnership. The County has the authority to provide a grant to the Grantee for the purpose of this Project pursuant to N.C.G.S. § 153A-459. The County is also authorized to enter into a partnership the Grantee pursuant to N.C.G.S. §143B-1373(11a)(b) and §143B-1373(g)(1)(as amended by S.L. 2021-180, Section 38.4(a)(8)). The terms and conditions of the County’s partnership agreement with Provider are set out in this Agreement. The County contribution to the partnership shall be in the form of either a financial match or an infrastructure contribution as described in this Section (“County Partnership”). By signing this Agreement, the County and the Grantee each certify that a partnership exists between them for the purpose of the Project.

- a. **Financial Match.** The County will provide a matching financial contribution for the Project in an amount up to fifty percent of the amount contributed by the Grantee as set forth in Section 2.4.e.1 of this Agreement. Any county providing a financial match may use unrestricted general funds or federal ARPA funds allocated to it for the purpose of improving broadband infrastructure. If the County uses federal ARPA funds, it will comply with all relevant reporting requirements governing the use of ARPA funds. The County and the Grantee shall comply with the process and requirements set forth in Exhibit J, “Process for Payment of County matching funds”.
- b. **Infrastructure Contribution.** If the County provides a contribution in the form of

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infrastructure for the Project, it shall comply with the requirements set forth in Exhibit K, “Description of County’s contribution of infrastructure”. The Grantee shall be required to execute ~~the certification contained in~~ Exhibit K prior to the disbursement or use of any infrastructure.

2.4. Grantee Duties.

a. Broadband Access and Speeds.

1. The Grantee shall deploy infrastructure to the approved locations required by the Grant Agreement and, upon completion of construction, shall offer to those Locations the proposed advertised minimum download and upload speeds identified in the Grantee’s application as awarded Project and Application for the duration of the base speed multiplier. The base speed multiplier chosen by the Grantee is the minimum speed made available to all Locations in the grant project and must be scalable to 100 Mbps symmetrical by December 31, 2026. five-year Agreement.
2. The Grantee shall provide to NCDIT Grantors evidence consistent with the Federal Communications Commission attestation that the Grantee is providing access and making available the proposed speed, or a faster speed, to the targeted address points (“**Locations**”) as described in Exhibit B to this Agreement. For the purposes of this Agreement, broadband access is considered available if the Internet carrier can provide broadband service to a Location immediately or within ten (10) business days upon request and without cost to the customer other than standard connection fees.
3. If applicable, the Grantee shall disclose to NCDIT Grantors any changes to data caps for the Project that differ from the data caps listed in the Application. For the purposes of this Agreement, “data caps” are the limits imposed by broadband service providers on the total amount of data a user can download or upload during a specified period.

b. Records.

1. The Grantee shall maintain full, accurate, and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.
2. The Grantee shall retain all financial records, supporting documents, and all other

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pertinent records related to this Agreement and the Project for a period of five (5) years from the Termination Date, but in the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

c. Project Milestones and Progress Reports.

1. Project Milestones are set forth in Exhibit C, "Project Milestones", to this Agreement. The Grantee must submit Project progress reports as required in Section 2.4.d. and in Exhibit D, Reporting Schedule for Progress Reports, including any other requested documentation, demonstrating the achievement of the milestones set forth in Exhibit C.
2. If the Grantee does not complete the milestone as agreed upon within the period of time described in this section, NCDIT may impose additional monitoring and reporting requirements or terminate this Agreement pursuant to the termination provisions set forth herein. Failure to complete a milestone and meet reporting requirements may constitute a material breach of this Agreement, and Grantors may exercise the authority under N.C.G.S. § 143B-1373, 2 C.F.R. § 200.339, and this Agreement to seek termination of this Agreement and retrieval of funds expended.

d. Reporting Requirements. NCDIT will perform ~~all~~ monitoring of the Project, including on behalf of the County, as set forth in Section 5.1.a. NCDIT will require Project progress reports as set forth herein and in accordance with 2 C.F.R. § 200.329, and will provide copies of all reports to the County within 10 business days.

1. The Grantee agrees to generate reports regarding the Project as described herein and as may be requested by the State (including, without limitation, NCDIT) or by a relevant federal agency, ~~including after the Termination Date.~~ The Grantee further grants the State (including any of its agencies, commissions or departments such as NCDIT, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any relevant federal agency, and their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to this Agreement and the Project. In addition, the Grantee agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, NCDIT) or relevant federal agency for other financial and organizational materials needed to comply with their fiscal monitoring responsibilities or to evaluate the short- and long-range impact of their programs.
2. The Grantee shall furnish NCDIT detailed written progress reports using Exhibit E,

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“Progress Report Template” provided by NCDIT according to the time periods specified in Exhibit D or as otherwise requested by NCDIT. NCDIT shall conduct risk assessments of the Grantee as set out in Section 5.1. For Projects determined to be Low Risk or Medium Risk, progress reports will be required on a quarterly basis during the Construction Period. For Projects determined to be High Risk, progress reports will be required on a monthly basis during the Construction Period. Progress reports for projects at any risk level shall be required annually during the Maintenance Period. Progress reports should describe the progress made by the Grantee toward achieving the purpose(s) of the Project, including but not limited to:

- (a) A description of accomplishments achieved during the reporting period towards the relevant milestones;
 - (b) A description of any problems or delays encountered during the reporting period, including an explanation for why established goals were not met, if applicable;
 - (c) Expenditures during the reporting period and any other financial information requested, including an analysis of cost overruns if applicable;
 - (d) During the Maintenance Period, speed levels, data allowances, and pricing options for all services levels offered to end consumers;
 - (e) During the Maintenance Period, confirmation of participation in the Affordable Connectivity Program (“ACP”) or program that provides benefits to households commensurate with those provided under the ACP; and
 - (f) Any additional pertinent information.
3. Failure to submit a required report by the scheduled submission date may result in the withholding of any forthcoming payment until NCDIT is in receipt of the delinquent report and the report meets with NCDIT’s approval, in NCDIT’s sole discretion. Failure to submit required reports, upon request by NCDIT, may result in the Project being subject to the repayment provision in Section 3.4 and may negatively impact the Grantee’s eligibility for future funding.
4. Within sixty (60) days after the Termination Date, the Grantee shall submit a final report using the format designated by NCDIT describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Grantee shall include the following:
 - (a) A description of the Project and how it was implemented;
 - (b) To what degree the established objectives were met;
 - (c) The difficulties encountered;
 - (d) The number of Locations served and whether those Locations are

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- households or businesses;
- (e) Mapping data sufficient to identify all Locations served and infrastructure built;
- (f) Total final cost of the Project;
- (g) Cost per location served;
- (h) Speed levels, data allowances, and pricing options for all service levels offered to end consumers;
- (i) Certification of participation in the Affordable Connectivity Program or other affordability program for low-income consumers within the service area;
- (j) Evidence consistent with the Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds identified in the Application are available throughout the Project area to any end user connections; and
- (k) Any other information requested by NCDIT.

e. Funding.

1. As a condition of receiving GREAT Award funds, the Grantee must contribute a cash match of <<Approved Match>> (~~“Cash Match”~~), pursuant to N.C.G.S. §143B-1373(j), as amended by S.L. 2021-180, Section 38.4(13). Up to 50% of the Cash Match may be comprised of third-party funding and other grant programs, to the extent applicable rules permit, including the County financial match as described in Section 2.3. Expenditures that NCDIT, in its sole discretion, determines are not eligible for funding may not be counted toward the Cash Match. All Cash Match funds shall be used for Eligible Expenditures pursuant to the Payment Schedule as specified in Exhibit F, “Payment Schedule”. At all times during the term of this Agreement, Grantee is required to deposit and maintain ~~the full amount its portion~~ of the Cash Match, minus any authorized expenditures for progress made on the Project, in a separate and distinct financial account that cannot be utilized for any other purposes, including other GREAT projects awarded to the Grantee. The Grantee must produce documentation verifying account and fund segregation within five (5) business days of request by NCDIT.
2. If the Grantee determines that the actual costs of the Project are less than the Project budget amount, it shall report this determination to ~~NCDIT Grantors~~ and shall return any surplus funds it has received.
3. The Grantee hereby represents and warrants that all GREAT Award funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Grantee shall not make or approve of any improper expenditure of funds.

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4. The Grantee shall not obligate GREAT Award Project funds subsequent to the Termination Date of this Agreement.

Section 2.5. Material Changes and Project Changes.

- a. **Material Changes.** A material change is any material alteration in, change to, or reduction of the Project, including without limitation, a change in technology type, reduction in the number of Locations to be served by the Project, reduction in the Project area, change in total Project cost by ~~10% or more than 10%~~ 10% or more, withdrawal of partnership agreements for which the Grantee qualified for partnership points, or the extension of the Construction Period (“**Material Change**”). An amendment to this Agreement is required for a Material Change, and such Material Change shall not take effect unless and until such amendment is executed pursuant to the terms of this Agreement. Prior to implementing a proposed Material Change, the Grantee shall submit the proposal to NCDIT for review and approval. ~~NCDIT Grantors~~ must review and approve in writing prior to the amendment taking effect. Amendments to this Agreement requested by the Grantee shall only take effect if agreed to in writing by all Parties to this Agreement.
- b. **Project Changes.** A project change is any non-material alteration in, change to, or reduction of the Project, including without limitation, change in Key Personnel, project milestones, a change in total Project cost by less than 10%, or transfer costs between Project expense line items detailed in Exhibit B and the EBS (“**Project Change**”). For a request to transfer costs between line items, all of following criteria must be met: (a) the Grantee provides justification to the satisfaction of NCDIT for the proposed revision; (b) the requested revision adhered to the eligible activities and cost limitations of this Agreement; (c) the GREAT Award funds, Project funding amount, match amount, and the total Project cost are not modified; and (d) the requested revision is less than 10% of the total Project cost.
 1. There shall be no Project Changes unless expressly approved by NCDIT. Prior to implementing a proposed Project Change, the Grantee shall submit the proposal to NCDIT for review and approval and provide such detail and documentation necessary for NCDIT to evaluate the proposed project change. Any NCDIT-approved Project Change shall be made in writing by an authorized representative of NCDIT.

NCDIT in its sole discretion may deny the requested Project Change, in which case the following alternatives would apply: (1) the Project may be completed without changes; (2) the GREAT Award Project funding may be rescinded by NCDIT if the Project cannot be completed; (3) the GREAT Award funding to the current Grantee may be rescinded by NCDIT and awarded to an alternate Grantee pursuant

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to the GREAT Statutes; or (4) the Grantee may withdraw from the Project and return any Project funds received to date, among other remedies as described herein.

If the Grantee implements any Project Change without requesting the approval for the Project Change in writing from NCDIT, it will be subject to the clawbacks and remedies set forth in Section 3.4, Article 7 (Termination and Remedies) and Section 8.4 of this Agreement, unless NCDIT (in its sole discretion) expressly waives this requirement of Project Change review in writing.

- c. **Reduction in Scope.** In the event the Grantee requests to reduce the scope of the Project, including without limitation, a reduction of the number of locations and reduction in the eligible project area, NCDIT may cancel this Agreement pursuant to Article 7 (Termination and Remedies) of this Agreement and N.C.G.S. § 143B-1373(l).
- d. **Changes that Affect Performance.** The Grantee shall immediately notify NCDIT of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Agreement or the Project. In its sole discretion, NCDIT may deem such a change in conditions, local law, or other event to constitute a Material Change or a Project Change.
- e. **Extensions of Time.** Any requests for extensions of time may either be deemed a Material Change or a Project Change in the sole discretion of NCDIT.
- f. **Budget Changes.** If a Project or Material Change to the Grantee's budget has been requested, all Reimbursement Requests may be delayed pending the approval of the Project or Material Change. If changes to the Grantee's budget have been made without the prior approval of NCDIT, no Reimbursement shall be made until the process outlined in Section 2.5 has been completed.
- g. **Cost Overrun or Underrun.** In the event of a cost overrun or an increase in the total Project cost, the amount of NCDIT's GREAT Award to the Grantee shall not change. The Grantee shall bear sole responsibility for any and all increased costs related to the Project. In the event of a change in the total Project Budget that is 10% or more than 10% or a cost underrun, the Grantee must notify NCDIT, in writing, and submit a revised budget and narrative explaining the Project Budget change or reduction of costs.

Article 3. Compensation.

Section 3.1. Payment of Funds by NCDIT. NCDIT shall reimburse the Grantee for approved GREAT Award funds in accordance with the Payment Schedule attached hereto as Exhibit F, after receipt of (a) written requests for payment from the Grantee utilizing NCDIT's request form and

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certification that the conditions for such payment under this Agreement have been met and that the Grantee is entitled to receive the amount requested, and (b) any other documentation that may be required by NCDIT.

Section 3.2. County Contribution. If the County is providing a financial match, the County shall provide the Grantee matching funds for approved Eligible Expenditures in accordance with Exhibit J, which shall be signed by the County and the Grantee. If the County is providing infrastructure, the County shall provide it in accordance with Exhibit K, which shall be signed by the County and the Grantee.

Section 3.3. Availability of Funds. The obligations of Grantors to pay any amounts under this Agreement to the Grantee are contingent upon: the availability and receipt of funds by Grantors, the continued appropriation of such funds for the purpose set forth in this Agreement, and the Grantee's continued eligibility to receive such funds. If the amount of funds that Grantors receive is reduced or funds for the Project become unavailable, the Grantee agrees that Grantors have the right to reduce the amount of GREAT Award funds awarded to the Grantee under this Agreement or to terminate this Agreement pursuant to Section 7.6 of this Agreement. Grantors may deny payment for the Grantee's Eligible Expenditures where invoices or other reports are not submitted by the deadlines specified in this Agreement or for failure of the Grantee to comply with the terms and conditions of this Agreement.

Section 3.4. Repayment Requirements and Remedies.

a. **Repayment or Clawbacks.** The Grantee acknowledges that the GREAT Award funding by Grantors is predicated upon the deployment of broadband infrastructure during the Construction Period and fulfilling the obligations of the Maintenance Period. The Grantee further agrees that during the Maintenance Period, if it fails to meet its obligations, then it is responsible for the following repayment or "clawback" payments:

1. If the Grantee fails to make service available to the number of Locations identified in Exhibit B after the completion of the Construction Period, then the Grantee shall repay to Grantors NCDIT, as directed, an amount equal to the product of (i) <<Approved Award divided by Total Locations>> (the amount of funds divided by the number of Locations) and (ii) the number of Locations, minus the number of Locations actually created. If the County contributed a financial match, a pro rata amount per location not served shall be repaid to the County. Interest will be added in accordance with Section 3.4.a.3.
2. Additionally, in the event that the Grantee fails to maintain its Locations as required under the Maintenance Period, it shall lose credit for any qualifying Location under this Agreement by the same number of Locations that is short. For example, if the Grantee fails to maintain service by three (3) Locations, the number of Locations shall be reduced by three (3). The amount the Grantee must repay shall then be

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calculated in accordance with Section 3.4.a.1.

3. NCDIT shall notify the Grantee in writing of the amount to be repaid and direct the Grantee to repay such amount directly to NCDIT and/or the County according to each Grantors' contribution. All such amounts shall be due immediately upon demand by NCDIT. If not paid within thirty (30) days following demand, the unpaid amount due shall continue to bear interest at the rate set out by N.C.G.S. §24-1 for the period beginning upon the demand until paid. Upon default in such payment, Grantors may employ an attorney to enforce its rights and remedies, and the Grantee hereby agrees to pay the legal costs and reasonable attorneys' fees of Grantors plus all other reasonable expenses incurred by Grantors in exercising any of its rights and remedies upon such default.
- b. **Non-Exclusive Remedy.** The repayment requirements and remedies addressed in this Section are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay all funds received, and in 2 C.F.R. § 200.339. No remedy conferred or reserved by or to the State in this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- c. **Improper or Ineligible Payments.** Any item of expenditure by the Grantee under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of NCDIT, the County, the US Department of the Treasury, the NC Department of State Treasurer, or other federal or state instrumentality to be improper, ineligible, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of the Grantee, shall become the Grantee's liability, and shall be paid solely by the Grantee, immediately upon notification of such, from funds other than those provided by Grantors under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Article 4. Financial Accountability and Grant Administration.

Section 4.1. Financial Management. The Grantee shall adopt such financial management procedures as will permit the preparation of reports required by the Federal Funding Accountability and Transparency Act (<https://www.congress.gov/109/plaws/publ282/PLAW-109publ282.pdf>) and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the relevant statutes, regulations, and terms and conditions herein. The Grantee's financial management procedures shall allow it to comply with the requirements of 2 C.F.R. 200.302.

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Section 4.2. Limitations on Expenditures. Grantors shall only reimburse the Grantee for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary to carry out the scope of Covered Services described in Exhibit B; (ii) documented by contracts or other evidence of liability consistent with the established Parties' procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement. Grantors may not reimburse or otherwise compensate the Grantee for any expenditures incurred or services provided prior to the Effective Date except as provided in Section 2.2.e of this Agreement or following the earlier of the expiration or termination of this Agreement.

Section 4.3. Financial and Other Reports. The Grantee shall maintain detailed, itemized documentation and other necessary records of all expenses incurred pursuant to this Agreement. The Grantee shall submit to Grantors such reports and back-up data as may be required by the federal government or Grantors, including such reports which enable NCDIT and the County, respectively, to submit their own reports to the U.S. Department of the Treasury, in accordance with the schedule set forth in Exhibit F. This provision shall survive the expiration or termination of this Agreement with respect to any reports which the Grantee is required to submit to Grantors following the expiration or termination of this Agreement.

Section 4.4. Cost Principles. Pursuant to 09 N.C.A.C. 03M .0201, all expenditures by the Grantee of funds awarded under this Agreement shall be in accordance with the cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200, Subpart E (2 C.F.R. §§ 200.400-200.476). It is the Grantee's responsibility to ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR Part 200, Subpart E.

Section 4.5. Audits. The Grantee certifies compliance with the provisions of 2 CFR 200.501-200.521, if applicable, and continued compliance with these provisions during the Term of this Agreement. Pursuant to 09 N.C.A.C. 03M .0205, a Grantee that receives, holds, uses, or expends GREAT Award funds in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book. If the Grantee is not required to have a single audit as defined by 2 CFR 200.501, U.S. Department of the Treasury requirements, or the Single Audit Act, or a single audit as defined by 09 N.C.A.C. 03M .0102, then the Grantee shall have a financial audit performed at least annually by an independent Certified Public Accountant. The Grantee shall provide notice of the completion of any required audits and will provide access to such audits and other financial information related to this Agreement upon request. The Grantee certifies that it will provide Grantors with notice of any adverse findings which impact this Agreement. This obligation extends for one (1) year beyond the expiration or termination of this Agreement. The costs of audits shall not be allowable charges under this Agreement.

Section 4.6. Closeout. Grantors will close out this award when it determines that all applicable administrative actions and all required work has been completed by the Grantee. Grantors will

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implement close out processes in accordance with 2 CFR 200.344. The Grantee's obligations to Grantors under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of Grantors. Such requirements shall include submitting final reports to NCDIT pursuant to Section 2.4.d and providing any closeout-related information requested by NCDIT by the deadlines specified by NCDIT. This provision shall survive the expiration or termination of this Agreement. NCDIT shall provide all closeout documentation and reports to the County.

Section 4.7. Recovery of Award Funding. In accordance with 09 N.C.A.C. 03M .0802, NCDIT shall take appropriate administrative action to recover from the Grantee all GREAT Award funds disbursed in connection with this Agreement in the event that the Grantee: (1) is unable to fulfill the obligations of this Agreement; (2) is unable to accomplish the purposes of the award; (3) is noncompliant with the reporting requirements set forth in this Agreement and in 09 N.C.A.C. 03M; or (4) has inappropriately used GREAT Award funds disbursed in connection with this Agreement.

NCDIT must seek the assistance of the Attorney General in the recovery and return of GREAT Award funds disbursed in connection with this Agreement if legal action is required. NCDIT is required to report to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the Grantee's use of GREAT Award funds disbursed in connection with this Agreement.

The remedies set forth in this Section are in addition to the repayment requirements and other remedies set forth elsewhere in this Agreement.

Article 5. Cooperation in Monitoring and Evaluation.

Section 5.1. NCDIT's Responsibilities.

- a. **Project Monitoring.** NCDIT will have ~~sole~~ responsibility for the monitoring of this Project, both on behalf of itself and the County, either directly or through contractors. NCDIT will monitor this Project in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.332 and the provisions of 09 N.C.A.C. 03M .0401 to ensure that adequate progress is being made towards achieving the Project milestones described in Section 2.4.c, and that funds are expended (1) for eligible uses only consistent with the purpose for which the funds were awarded, (2) according to the approved Project Budget, (3) in compliance with all relevant laws, regulatory requirements, cost principles, and provisions of this Agreement. NCDIT will also monitor whether the Grantee has met all reporting requirements of this Agreement and the Grantee's compliance with all terms of this Agreement. Monitoring will include, at NCDIT's discretion, progress reports, site visits, financial reviews, and audits. Should the County desire to participate in site visits, it should notify NCDIT and NCDIT will notify the County of any site visits to be performed as part of its monitoring of the Project. The frequency and type of monitoring will depend on the Grantee's risk level as determined by the risk

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- assessment. NCDIT will provide all progress reports, financial reports, audits, technical reports, and reports from site visits to the County within 10 business days of their completion, including supporting documentation. NCDIT will provide its monitoring protocol to the County upon request. NCDIT does not assume any responsibility for the County's local, state, or federal reporting requirements.
- b. **Risk Assessment.** NCDIT shall conduct risk assessments in accordance with 2 C.F.R. § 200.332(b) to determine the appropriate monitoring needs of the Project. NCDIT may reassess this risk at any time during this Agreement in accordance with NCDIT's risk assessment process and federal regulations, including but not limited to 2 C.F.R. § 200.332, 2 C.F.R. § 200.206, and 2 C.F.R. § 200.208. Upon completion of the initial risk assessment or any reassessment during the performance period, NCDIT shall determine, at its sole discretion, whether a Project is Low Risk, Medium Risk, or High Risk and implement or change monitoring and reporting requirements accordingly. NCDIT will share the results of each risk assessment of the Grantee with the County within 10 business days of its completion, and, upon request by the County, any supporting documents related to the risk assessment. The County is not required to conduct a separate risk assessment of the Grantee or Project.
- c. **Compliance Audits.** In connection with disbursing funds to the Grantee, NCDIT will be subject to periodic audits by the Office of State Budget and Management, the Office of the State Auditor, or NCDIT's internal auditor to ensure compliance with the provisions of 09 N.C.A.C. 03M and may be required to provide documentation in connection with that audit. NCDIT shall develop a compliance supplement report that describes the standards of compliance and audit procedures to give direction to independent auditors, which NCDIT will provide to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.

Section 5.2. Grantee's Responsibilities.

- a. **Compliance with 09 N.C.A.C. 03M.** The Grantee acknowledges and agrees that as a condition of receiving the award pursuant to this Agreement, the Grantee will comply with the provisions of 09 N.C.A.C. 03M.
- b. **Use of Funds.** In accordance with 09 N.C.A.C. 03M .0202, the Grantee will ensure that any funds received under this Agreement are utilized for their intended purpose and shall expend those funds in compliance with requirements established by 09 N.C.A.C. 03M and this Agreement.
- c. **Cooperation in Monitoring.** The Grantee hereby agrees to cooperate fully and in a timely fashion with NCDIT's monitoring of the Project and waives any objection to NCDIT's determination of the Project's risk level or monitoring needs.

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- d. **Reporting Compliance.** The Grantee further agrees that it will: (1) provide the information required by NCDIT for NCDIT to comply with the procedures for disbursement of funds; (2) maintain reports and accounting records that support the allowable expenditure of GREAT Award funds and make available all reports and records for inspection by NCDIT, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes; and (3) ensure that any subrecipients (a) comply with all reporting requirements established by 09 N.C.A.C. 03M and this Agreement and (b) report to NCDIT.

Section 5.3. N.C. Administrative Code Reporting and Audit Requirements. Per 09 N.C.A.C. 03M .0205, the following three reporting levels are established for Grantees who have received an award from NCDIT pursuant to this Agreement:

Level I – A Grantee that receives, holds, uses, or expends GREAT Award funds in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year.

Level II - A Grantee that receives, holds, uses, or expends GREAT Award funds in an amount of at least twenty-five thousand (\$25,000) or greater, but less than five hundred thousand dollars (\$500,000) within its fiscal year.

Level III – A Grantee that receives, holds, uses, or expends GREAT Award funds in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.

- a. **Required Reporting.** In addition to the Project progress reports set out in Section 2.3, the Grantee shall provide the following reporting on an annual basis during the term of this Agreement:
1. All Grantees shall provide:
 - (a) A certification that GREAT Award funds received or, held was used for the purposes for which it was awarded; and
 - (b) An accounting of all GREAT Award funds received, held, used, or expended.
 2. Grantees that fall into Levels II and III in Section 5.3 shall report on activities and accomplishments undertaken by the Grantee, including reporting on any performance measures established in this Agreement.
 3. As set out in Section 4.5, Grantees that fall into Level III in Section 5.3 shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow

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Book.

- b. **Filing of Reports.** Grantees shall file all reports with NCDIT in the format and method provided by NCDIT no later than three (3) months after the end of the Grantee's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to NCDIT no later than nine (9) months after the end of the Grantee's fiscal year.
- c. **Copies Acceptable.** Notwithstanding the foregoing provisions, a Grantee may satisfy the reporting requirements of Section 5.3.b. by submitting a copy of the report required under federal law with respect to the same funds.
- d. **Other Reports.** The Grantee shall provide NCDIT with any other reports as required by State or federal law.

Section 5.4. Interventions. If NCDIT determines the Grantee is not maintaining adequate progress towards Project milestones or is not engaging in the appropriate expenditure of funds, NCDIT may impose additional reporting requirements and/or award conditions. These additional requirements and/or conditions may include: withholding authority to proceed to the next phase until receipt of evidence of acceptable performance and/or progress within a given period; requiring additional, more detailed financial reports; requiring additional Project monitoring; requiring the Grantee to obtain technical or management assistance; and establishing prior approvals. NCDIT will notify the Grantee of these additional requirements and/or conditions in accordance with 2 C.F.R. § 200.208(d).

Section 5.5. Access to Persons and Records. Pursuant to N.C.G.S. § 147-64.7, Grantors, the Office of State Budget and Management, the State Auditor, the U.S. Department of the Treasury, the Treasury Office of Inspector General, the U.S. Government Accountability Office, the Comptroller General of the United States, and any other appropriate state or federal agency, or any authorized representatives of these entities, are authorized to examine all books, records, papers, and accounts of the Grantee insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to funds disbursed pursuant to this Agreement. The Grantee shall maintain and hereby agrees to retain all records, books, papers, and other documents covered by this Section through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement. The Grantee shall make all records, books, papers and other documents that relate to this Agreement available at all reasonable times for inspection, review and audit by the authorized representatives of **Grantors NCDIT**, the North Carolina State Auditor, the U.S. Department of the Treasury, the U.S. Government Accountability Office, and any other authorized state or federal oversight office. Additional audit or reporting requirements may be required by Grantors if such requirement is imposed by federal or state law or regulation.

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Section 5.6. Personnel. The Grantee represents that it has, or will secure at its own expense, all personnel required to monitor, carry out, and perform the scope of services of this Agreement. Such employees shall not be employees of NCDIT or the County. The Grantee shall identify all personnel who will be involved in performing the scope of services of this Agreement and otherwise administering this Agreement, including at least one project manager and one fiscal officer (“**Key Personnel**”). Such Key Personnel shall be fully qualified and shall be authorized under state and local law to perform such services. Changes to Key Personnel do not constitute a Material Change under Section 2.5.a of this Agreement; however, the Grantee shall notify NCDIT of any changes to Key Personnel within thirty (30) days of the change in accordance with Section 8.13.

Article 6. Compliance with Agreement and Applicable Laws.

Section 6.1. General Compliance. The Grantee shall perform all Covered Services funded by this Agreement in accordance with this Agreement, the award agreement between the State of North Carolina and the U.S. Department of the Treasury, the award agreement between the County and the U.S. Department of the Treasury, and all applicable federal, state and local requirements, including all applicable statutes, rules, regulations, executive orders, directives or other requirements. Such requirements may be different from the Grantee’s current policies and practices. While Grantors may assist the Grantee in complying with all applicable requirements, the Grantee remains responsible for ensuring its compliance with all applicable requirements.

Section 6.2. Expenditure Authority. This Agreement is subject to the laws, regulations, and guidance documents authorizing and implementing the GREAT grant, including, but not limited to, the following:

Authorizing Statute. Section 602 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

Implementing Regulations. Subpart A of 31 CFR Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (86 FR 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 FR 4338, applicable January 27, 2022 through the end of the ARPA/SFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. 803).

Guidance Documents. Applicable guidance documents issued from time-to-time by the U.S. Department of the Treasury, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.¹

¹ [SLFRF-Compliance-and-Reporting-Guidance.pdf \(treasury.gov\)](#)

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Other Regulations, Statutes and Rules. Applicable provisions of the Uniform Guidance (2 C.F.R. Part 200); the GREAT Statutes at N.C.G.S. 143B-1373, and as amended by S.L. 2021-180, Section 38.4, and any subsequent amendments and technical changes; 09 N.C. Admin. Code. 03M; and all applicable laws of the State of North Carolina.

Section 6.3. Federal Grant Administration Requirements. The Grantee shall comply with any applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (UG), as adopted by the U.S. Department of the Treasury at 2 CFR Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how the Grantee must administer the award and how NCDIT must oversee the Grantee.

Section 6.4. Property ~~Placeholder~~ Grantee shall retain ownership interests and rights in the network and in any property, materials, equipment, supplies, and facilities it constructs or purchases for the Project pursuant to this Agreement. Grantee agrees to abide by the property requirements set forth in 2 C.F.R. 200.311-316, as amended in applicable guidance or regulations issued by the U.S. Department of the Treasury or other federal agency after the Effective Date of this Agreement.

Section 6.5. Universal Identifier and System for Award Management (SAM). The Grantee shall provide and/or obtain and provide to NCDIT, a unique entity identifier assigned by the System for Award Management (SAM), which is accessible at www.sam.gov.

Section 6.6. Federal Funding Accountability and Transparency Act of 2006. The Grantee shall provide Grantors with all information requested by Grantors to enable Grantors to comply with the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

Section 6.7. Licenses, Certifications, Permits, Accreditation. The Grantee shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to Grantors proof of any licensure, certification, permit or accreditation upon request.

Section 6.8. Clean Air Act. The Grantee agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Grantee agrees to report each violation to NCDIT and understands and agrees that Grantors will, in turn, report each violation as required to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. The Grantee agrees to include these requirements in any subcontract exceeding \$150,000 funded, in whole or in part, with funds provided by Grantors pursuant to this Agreement.

Section 6.9. Federal Water Pollution Control Act. The Grantee agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution

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Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* The Grantee agrees to report each violation to Grantors and understands and agrees that Grantors will, in turn, report each violation as required to assure notification to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. The Grantee agrees to include these requirements in any subcontract exceeding \$150,000 funded, in whole or in part, with funds provided by Grantors pursuant to this Agreement.

Section 6.10. Debarment and Suspension. Due to its receipt of ARPA funds, Grantors are participants in a non-procurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Agreement is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if the amount of this Agreement is greater than or equal to \$25,000.

- a. **Non-Exclusion Certification.** The Grantee hereby certifies as of the date hereof, that the Grantee, the Grantee's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both the Grantee and the Grantee's principals are not excluded individuals (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935), or otherwise determined ineligible to participate in federal assistance awards or contracts. If any of the foregoing persons are excluded or disqualified and the federal awarding agency has not granted an exception pursuant to 31 C.F.R. § 19.120(a), then: (1) this Agreement shall be void, (2) Grantors shall not make any payments of federal financial assistance to the Grantee, and (3) Grantors shall have no obligations to the Grantee under this Agreement.
- b. **Compliance with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19.** The Grantee must comply with the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 C.F.R. Part 180, Subpart C, and as adopted by the U.S. Department of the Treasury at 31 C.F.R. Part 19, and must include a requirement to comply with these regulations in any lower-Tier² covered transaction into which it enters. The Grantee hereby certifies that it will comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19. This certification is a material representation of fact relied upon by Grantors, and all liability arising from an erroneous representation shall be borne solely by the Grantee.
- c. **Remedies for Non-Compliance.** If it is later determined that the Grantee did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Grantors, the federal government may pursue available remedies, including but not limited to, suspension and/or debarment.
- d. **Subcontractor Certification.** The Grantee hereby certifies that none of the subcontractors it has proposed to perform work under this Agreement are listed under

² "Tier" shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.

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the State Debarred Vendors listing (<https://ncadmin.nc.gov/documents/nc-debarred-vendors>), or in the past five (5) years have been suspended or debarred from doing business with the federal or any state government. The Grantee agrees that it will notify Grantors immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov.

Section 6.11. Byrd Anti-Lobbying Amendment. The Grantee shall comply with the restrictions on lobbying in 31 CFR Part 21.

The Grantee certifies to Grantors, and the Grantee shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The Grantee shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to Grantors, which will, in turn, forward the certification(s) to the federal awarding agency. The Grantee shall cause the language of this Section to be included in all subcontracts. This certification is a material representation of fact upon which Grantors have relied when entering into this Agreement, and all liability arising from an erroneous representation shall be borne solely by the Grantee.

If this Agreement exceeds \$100,000, the Grantee also must file with Grantors the certification in Exhibit G, “Byrd Anti-Lobbying Certification”, which is attached hereto and incorporated herein. Any subcontractor with a subcontract (at any Tier) exceeding \$100,000 must also file with the Tier above it the certification in Exhibit G.

Section 6.12. Wages and Labor Standards for Projects over \$10 Million. Davis-Bacon Act. ~~For Projects with a total cost of over ten million dollars (\$10,000,000), in accordance with the Davis-Bacon Act as supplemented by the Department of Labor Regulations at 29 C.F.R. Part 5, the Grantee shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Grantee shall pay wages not less than once a week. By executing this Agreement, the Grantee understands and agrees that Grantors’ decision to award the GREAT Award to the Grantee is conditioned upon the Grantee’s acceptance of the wage determination. In its reporting guidance, the U.S. Department of Treasury has indicated that recipients will need to provide documentation of wages and labor standards for capital expenditure projects and infrastructure projects over \$10 million, and that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. In accordance with the SLFRF Reporting and Compliance Guidance, for Projects with a total cost of over ten million dollars (\$10,000,000) (based on expected total cost):~~

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- a. **Prevailing Wages Certification.** A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
- The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing. 19 Recipients must maintain sufficient records to substantiate this information upon request.
- b. **Project Labor Certification.** A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
- How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.

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- c. Local Hire Prioritization. Whether the project prioritizes local hires.
- d. Community Benefit Agreement. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

Section 6.13. Copeland Anti-Kickback Act. In accordance with the Copeland Anti-Kickback Act, as supplemented by the Department of Labor regulations at 29 CFR Part 3, the Grantee understands and agrees that it is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Grantors shall report any and all suspected or reported violations of this Section to the Federal awarding Agency.

Section 6.14. Contract Work Hours and Safety Standard Act. Contracts awarded by Grantors in excess of one-hundred thousand dollars (\$100,000.00) that involve the employment of mechanics or laborers are required to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor Regulations at 29 CFR Part 5. The Grantee understands and agrees that it will compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours, and that work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Grantee further understands and agrees that no mechanic or laborer is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

Section 6.15. Prohibition on Contracting for Covered Telecommunications Equipment or Services. Pursuant to 2 C.F.R. § 200.216, the Grantee agrees not to expend funds it receives pursuant to this Agreement to procure or obtain, or to enter into, extend, or renew a contract to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is defined in 2 C.F.R. § 200.216.

Section 6.16. Program Fraud and False or Fraudulent Statements or Related Acts. The Grantee acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this Agreement. 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 state or federal awards or contracts, and/or any other remedy available by law.

Section 6.17. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the Grantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing, to any of the list of persons in 41 U.S.C. § 4712(a)(2), information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross

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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. The Grantee is hereby notified that it is required to: (a) inform its employees that they are subject to the whistleblower rights and remedies of the program; (b) inform its employees in writing of employee whistleblower protections under 41 U.S.C §4712 in the predominant native language of the workforce; and (c) include such requirements in any agreement made with a subcontractor or subgrantee.

Section 6.18. Equal Opportunity & Other Requirements. The Grantee shall adopt and enact a nondiscrimination policy consistent with the requirements in this Section. The Grantee acknowledges that Grantors are bound by and agrees, to the extent applicable to the Grantee, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of ARPA funds:

- a. **Assurances of Compliance with Title VI of the Civil Rights Act of 1964.** The Grantee and any subcontractor, or the successor, transferee, or assignee of the Grantee or any subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.
- b. **Disability Protections.** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- c. **Age Discrimination.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- d. **Americans with Disabilities.** Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- e. **Fair Housing Laws.** The Grantee shall comply with the Fair Housing Act, Title VIII

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of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

Section 6.19. Affordable Connectivity Program. The Grantee must participate in the Federal Communications Commission Affordable Connectivity Program (“ACP”), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Section 6.20. Use of Name. Neither party to this Agreement shall use the other Party’s name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that Party. The Parties agree that each party may use factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for legitimate business purposes, to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other Party. In any such statement, the relationship of the Parties shall be accurately and appropriately described.

Section 6.21. Solicitation of Small Businesses and Historically Underutilized Businesses. If the Grantee intends to let any subcontracts, it shall encourage and promote the use of small businesses and historically underutilized businesses, such as (1) assuring that small and historically underutilized businesses are solicited whenever they are potential sources; (2) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and historically underutilized businesses; (3) establishing delivery schedules, where the requirement permits, which encourage participation by small and historically underutilized businesses; and (4) using the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

For the purposes of this Agreement, an entity shall qualify (1) as an “historically underutilized business” if it is currently certified as such under Chapter 143, Section 128.4 of the N.C. General Statutes, and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

Section 6.22. Conflicts of Interest; Gifts and Favors

- a. **Disclosure of Potential Conflicts.** The Grantee understands that (1) NCDIT will use ARPA funds to pay for the cost of this Contract; (2) the County may use ARPA funds to contribute to the payment of this Contract; and (3) the expenditure of ARPA funds is governed by the Conflict of Interest Policies of NCDIT, and if applicable, the County, the federal requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C.G.S. §§ 14-234(a)(1) and -234.3(a)). The Grantee must disclose in writing to Grantors any potential conflict of

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interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

- b. **Conflict Certification.** The Grantee certifies to Grantors that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Grantors involved in the selection, award, or administration of this Agreement (each a “**Covered Individual**”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including the Grantee) which employs or is about to employ a Covered Individual; has a financial or other interest in, or has received a tangible personal benefit from, the Grantee. Should the Grantee obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, it shall promptly disclose the same to Grantors in writing.
- c. **Value Certification.** The Grantee certifies to Grantors that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Grantors. Should the Grantee obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, it shall promptly disclose the same to Grantors in writing.
- d. **Conflict of Interest Policy.** – Pursuant to N.C. Gen. Stat. § 143C-6-23(b), every Grantee shall file with NCDIT a copy of Grantee's policy addressing conflicts of interest that may arise involving the Grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Grantee's employees or members of its board or other governing body, from the Grantee's disbursing of State funds, and shall include actions to be taken by the Grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed **before** the disbursing State agency may disburse the grant funds.

Section 6.23. Miscellaneous Provisions and Conditions.

- a. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Grantors encourage the Grantee to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- b. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Grantors encourage the Grantee to adopt and enforce policies that ban text messaging while driving.
- c. **Energy Efficiency.** All participants in the projects funded hereby shall recognize

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- mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- d. **Publications.** Any publications related to the Project must be paid for independently by the Grantee (i.e., not with GREAT Award funds) and must display the following language: “This project [is being][was] supported, in whole or in part, by funds awarded to the State of North Carolina by the U.S. Department of the Treasury.”
- e. **Federal Seals, Logos, and Flags.** The Grantee shall not use the seal(s), logos, crests, or reproductions of flags of the federal funding agency or likenesses of any federal agency officials without specific pre-approval of the relevant federal agency.
- ~~f. **Procurement of Recovered Materials.** In the performance of this Agreement, the Grantee shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with this Agreement performance schedule, (2) meet the Agreement performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website.³ The Grantee also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.~~

Article 7. Termination and Remedies.

Section 7.1. Termination by Grantors for Default. If the Grantee fails to fulfill in a timely and proper manner its obligations required under this Agreement or violates or fails to comply with any of the covenants or stipulations under this Agreement or any applicable laws, rules, and regulations, and such default is not cured within sixty (60) calendar days of the receipt of written notice of such default, then NCDIT and/or the County shall have the right to terminate this Agreement on any future date after giving the Grantee written notice of termination of this Agreement at least ten (10) calendar days in advance of the Termination Date. Any termination notice under this Section shall specify the Termination Date and this Agreement shall terminate automatically upon such Termination Date. Upon termination of this Agreement under this Section, (1) Grantors shall have no responsibility to make additional payments to the Grantee; and (2) the Grantee shall not expend any additional funds for which it will seek reimbursement without NCDIT’s prior and express written authorization and shall return all funds received to NCDIT upon demand. 2 C.F.R. § 200, app. II(B).

³ See Env’t Prot. Agency, [Comprehensive Procurement Guideline \(CPG\) Program](#), EPA.GOV (last updated Dec. 15, 2021).

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Section 7.2. Immediate Termination by Grantors. NCDIT and/or the County may terminate this Agreement immediately upon discovery of the Grantee's commission of fraud of GREAT Award funds.

Section 7.3. Termination by Mutual Consent. In accordance with 09 N.C.A.C. 3M.0703(11), this Agreement may be terminated at any time upon the mutual consent of the Parties upon sixty (60) days prior written notice to the other Parties.

Section 7.4. Termination Procedures. All notices of termination shall be given in accordance with the notice provisions in Section 8.13 of this Agreement. If this Agreement is terminated under this Article 7, the Grantee may not incur new obligations for the terminated portion of this Agreement after the Grantee has received the notification of termination. The Grantee must cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Grantee shall not be relieved of liability to Grantors because of any breach of Agreement by the Grantee. The Grantors may, to the extent authorized by law, withhold payments to the Grantee for the purpose of set-off until the exact amount of damages due NCDIT and/or the County from the Grantee is determined. Neither the County nor NCDIT shall commence termination procedures or legal action against the Grantee for violations related to the performance of this Agreement without providing notice to the other. ~~Termination of duties of performance do not terminate the Grantee's duties with respect to closeout reporting, record retention, access to records, and compliance with government audits.~~

Section 7.5. Sanctions for Noncompliance. As the entity responsible for handling all monitoring of the Project and this Agreement, NCDIT is required to ensure that the Grantee complies with the applicable provisions of 09 N.C.A.C. 03M. Pursuant to 09 N.C.A.C. 03M .0401, upon NCDIT's determination that the Grantee is noncompliant with 09 N.C.A.C. 03M and/or the terms of this Agreement, NCDIT shall take all appropriate action in accordance with 09 N.C.A.C. 03M .0800 as follows:

- a. **Grantee Noncompliance.** When the Grantee does not comply with the requirements of 09 N.C.A.C. 03M, NCDIT shall: (1) communicate the requirements to the Grantee; (2) require a response from the Grantee upon a determination of noncompliance; (3) suspend payments to the Grantee until the Grantee comes in compliance.
- b. **Misuse of Funds.** When NCDIT discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, NCDIT shall notify the Office of State Budget and Management and take the appropriate action or actions, including without limitation: (1) suspending payments until the matter has been fully investigated and corrective action has been taken; (2) terminating this Agreement and taking action to retrieve unexpended funds or unauthorized expenditures; and/or (3) reporting possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with N.C.G.S. § 143B-920.

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- c. **Notice Period.** Upon determination of noncompliance with requirements of this Agreement that are not indicative of management deficiencies or criminal activity, NCDIT shall give the Grantee sixty (60) days written notice to take corrective action. If the Grantee has not taken the appropriate corrective action after the 60-day period, NCDIT shall notify the Office of State Budget and Management and take the appropriate action or actions, including without limitation: (1) suspending payments pending negotiation of a plan of corrective action; (2) terminating the contract and taking action to retrieve unexpended funds or unauthorized expenditures; and/or (3) offsetting future payments with any amounts improperly spent.

Section 7.6. Termination due to Unavailability of Funds. If funds for the Project become unavailable for any reason, including without limitation, a change in the State or federal laws, NCDIT and/or the County shall have the right to terminate this Agreement after giving the Grantee written notice of termination of this Agreement at least twenty (20) calendar days in advance of the Termination Date. The notice of termination shall contain the effective Termination Date of this Agreement. Upon notice, the Grantee shall not expend any GREAT Award funds without NCDIT's express written authorization. Upon termination of this Agreement, neither NCDIT nor the County shall have any responsibility to make additional payments to the Grantee.

Article 8. General Conditions.

Section 8.1. Representations and Warranties. ~~The Grantee hereby represents and warrants that:~~

- a. ~~**The Parties' Representations and Warranties.** ~~The execution and delivery of this Agreement has been duly authorized by all necessary Grantee action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Grantee is a party or by which it is bound.~~~~
- b. The Parties acknowledge that each has been represented in negotiations for, and the preparation of, this Agreement by counsel of its own choosing (or has had the opportunity to retain counsel for those purposes), that each has read this Agreement or has had it read to them and explained by counsel, that each understands and is fully aware of its contents and of its legal effect, that each is knowingly and voluntarily entering into this Agreement. The execution and performance of this Agreement have been duly authorized by all necessary laws, resolutions and entity action, and this Agreement constitutes the valid and enforceable obligations of the Parties in accordance with its terms. Each Party and its respective signatory hereto avers that its signatory is authorized, empowered, and directed on behalf of the Party to execute this Agreement and thereby bind the Party and others as set forth in Section 8.5 of this Agreement.
- c. **Grantee's Representations and Warranties.** The Grantee hereby represents and warrants that:

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- i. There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Grantee, threatened against or affecting it that could or might adversely affect the Project or any of the transactions contemplated by this Agreement the validity or enforceability of this Agreement, or the abilities of the Grantee to discharge their obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, Grantors may require repayment from the Grantee based on Section 3.4, Article 7, and Section 8.4 of this Agreement and this Agreement may be terminated by Grantors effective upon notice.
- ii. No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the Grantee or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Grantee shall provide NCDIT with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- iii. The Grantee is solvent, is financially capable of performing the Project responsibilities, is a going concern, is duly authorized to do business under North Carolina law, and is not delinquent on any federal, state, or local taxes, licenses, or fees. If it is subsequently found that the Grantee was not solvent, was not financially capable of performing its Project responsibilities, was delinquent on its federal, state or local taxes, licenses or fees or, if applicable, was not a going concern or was not duly authorized to do business under North Carolina law, Grantors may require repayment from the Grantee based on Section 3.4, Article 7, and Section 8.4 of this Agreement.

Section 8.2. Indemnification. The Grantee hereby agrees to release, indemnify and hold harmless the State (including, without limitation, NCDIT) and the County, and their respective members, officers, directors, employees, agents and attorneys (together, the “**Indemnified Parties**”), from any claims of third parties arising out of any act or omission of the Grantee or any third party in connection with the performance of this Agreement or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Grantee hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys’ fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the

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Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Grantee or of any third party or of any of their agents, Grantees, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subgrantees, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

Section 8.3. Insurance. The Grantee must provide the equivalent insurance coverage for real property and equipment acquired or improved with this award as provided to property owned by the Grantee. In addition, the Grantee, must, at a minimum, provide and maintain during the term of this Agreement insurance coverage that meets the following coverage and limit requirements:

- a. **Small Purchases Requirements.** For Small Purchases as defined under 01 N.C.A.C. 05A .0112(35) and 05B .0301(1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
- b. **Requirements for Contracts Between Small Purchase and \$1,000,000.00.** For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:
 1. Worker's Compensation - The Grantee shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Grantee's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Grantee shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 2. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 3. Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired, and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
- c. **Requirements for Contracts in Excess of \$1,000,000.00.** For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:

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1. Worker's Compensation - The Grantee shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Grantee shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
2. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
3. Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

The Grantee's insurance coverage shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Grantee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement. If the Grantee fails at any time to maintain and keep in force the required insurance, and such default is not cured within ten (10) calendar days of the receipt of written notice of such default, then Grantors may cancel and terminate this Agreement on any future date after giving the Grantee written notice of termination of this Agreement. The limits of coverage under each insurance policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations or the indemnification requirements under this Agreement.

The insurer must provide NCDIT with a Certificate of Insurance reflecting the coverages required in this Section. All Certificates of Insurance shall reflect thirty (30) days written notice by the insurer in the event of cancellation, reduction, or other modification of coverage. In addition to this notice requirement, the Grantee must provide NCDIT prompt written notice of cancellation, reduction, or material modification of coverage of insurance. If the Grantee fails to provide such notice, the Grantee assumes sole responsibility for all losses incurred by Grantors for which insurance would have provided coverage.

Section 8.4. Cessation, Bankruptcy, Dissolution, or Insolvency.

- a. **Merger, Consolidation, or Sale.** The Grantee agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or

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- substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Grantee contained in this Agreement, subject to the prior written consent of Grantors if such action constitutes an assignment of the Grantee's obligations under this Agreement. If the Grantee so merges, consolidates, or sells its assets without such an undertaking being provided, it agrees under Section 3.4, Article 7, and this Section of this Agreement to make that payment due under this Agreement to Grantors, upon request and as directed. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under this Agreement, and Grantors may terminate this Agreement upon written notice to the Grantee and hold the Grantee liable for any such payment provided for under Section 3.4, Article 7, and this Section of this Agreement.
- b. **Notice of Cessation, Bankruptcy, Dissolution, or Insolvency.** Other than as provided for in this Section, if the Grantee ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Grantee shall give Grantors immediate notice of the event, and shall pay the amount provided under Section 3.4, Article 7, and this Section of this Agreement to Grantors, upon request, as directed and without regard to whether the effective period in Section 3.1 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.
- c. **Remedies on Failure to Provide Notice.** If the Grantee fails to provide Grantors notice of ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material breach under this Agreement. If there is such a cessation or such a proceeding, Grantors may terminate this Agreement upon written notice to the Grantee pursuant to Section 7.1. Upon such termination, the Grantee shall pay the applicable clawback amount to Grantors upon request, as directed and without regard to whether the effective period in Section 3.1 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law and, if the matter is under the jurisdiction of a Bankruptcy Court, with approval of the Bankruptcy Court.

Section 8.5. Binding Effect. The Terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executives, representatives, agents, attorneys, partners, successors, predecessors-in-interest, members, managers, member-managers, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties. The Grantee must disclose this Agreement to any such person or entity described in this Section.

Section 8.6. Entire Agreement. This Agreement contains the entire agreement between the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes all prior agreements between or among the Parties with regard to the Project and expresses the Parties' entire understanding with respect to the transactions contemplated herein, and shall not be

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amended, modified or altered except pursuant to the provisions set forth in Section 2.5.

Section 8.7. Titles and Headings. Titles and Headings in this Contract are used for convenience only and do not define, limit, or proscribe the language of terms identified by such Titles and Headings.

Section 8.8. Severability. Each provision of this Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein and the remainder of this Agreement shall remain in full force and effect to the extent permitted by law.

Section 8.9. Independent Status of the State, the County, the Grantee, and Any Third Parties.

- a. **Independent Entities.** The State (including, without limitation, NCDIT), the County, and the Grantee are independent entities from one another and from any third party. This Agreement, the Project, and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State, the County and the Grantee or between or among either of them or any third party. Nor shall this Agreement or the Project be construed to make any employees, agents or members of the Grantee or any third party into employees, agents, members or officials of the State or the County or to make employees, agents, members or officials of the Grantee into employees, agents, members or officials of the State or the County. Neither the Grantee nor any third party shall have the ability to bind the State or the County to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Grantee have the ability to bind the State or the County to any agreement for payment of goods or services or represent to any person that it has such ability.
- b. **Grantees Responsibility for Expense and Insurance.** The Grantee and any third party shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Grantee and any third parties shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this Project. All expenses incurred by the Grantee, or any third party are their sole responsibilities, and neither the State (including, without limitation, NCDIT) nor the County shall be liable for the payment of any obligations incurred in the performance of the Project.

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Section 8.10. Non-Assignability. The Grantee shall not assign or transfer any interest in this Agreement without the prior written consent of Grantors. Claims for money due to the Grantee from Grantors under this Agreement may be assigned to any commercial bank or other financial institution with Grantors' prior written approval. To the extent that Grantors provide written approval to the Grantee to assign or transfer any interest in this Agreement, the Grantee is not relieved of any of the duties and responsibilities of this Agreement and shall obtain agreement from the assignee to abide by the standards contained in 09 N.C.A.C. 03M. Unless Grantors otherwise agree in writing, the Grantee and all assigns are subject to all Grantors' defenses and are liable for all the Grantee's duties that arise from this Agreement and all Grantors' claims that arise from this Agreement.

Section 8.11. Subcontracting. The Grantee shall provide, upon request by Grantors, copies of any agreements made by and between the Grantee and any subcontractors for the purpose of performing services to fulfill the Grantee's obligations under this Agreement. The Grantee remains responsible for and is not relieved of any of the duties and responsibilities of this Agreement. The Grantee remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Grantee, including those in 09 N.C.A.C. 03M, and shall provide information in their possession that is needed by the Grantee to comply with these standards. NCDIT is indemnified by the Grantee for any claim presented by a subcontractor, and any ~~Any~~ contracts made by the Grantee with a subcontractor after the Effective Date of this Agreement for performance of work under this Agreement shall include an affirmative statement that the State and the County are intended third-party beneficiaries of the contract; that the subcontractor has no agreement with the State or the County; and that the State and the County shall be indemnified by the Grantee for any claim presented by the subcontractor. Notwithstanding any other term herein, the Grantee shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

Section 8.12. No Waiver by the State or the County. Failure of the State (including, without limitation, NCDIT) and/or the County at any time to require performance of any term or provision of this Agreement shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State or the County of any condition or the breach of any term, provision or representation contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation. No action or failure to act by the State or the County constitutes a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as specifically agreed in writing.

Section 8.13. Notices. All notices required or permitted by this Agreement shall be in writing

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from the individual identified in this Agreement, the Grantee must provide written notice of such change to Grantors pursuant to this Section within ten (10) calendar days of any such change.

Section 8.14. Public Records Act Compliance and Confidentiality. The Grantee may designate appropriate portions of documents or information provided to NCDIT as confidential, consistent with and only to the extent permitted under N.C. Gen. Stat. § 132-1, et seq. or other applicable law, by marking the top and bottom of each page containing confidential information with the following legend in boldface type: “CONFIDENTIAL”. By so marking any page, the Grantee warrants that it has formed a good faith belief that the portions marked “CONFIDENTIAL” meet the requirements of the applicable law. NCDIT may serve as custodian of Grantee’s confidential information and not as arbiter of claims against its assertion of confidentiality. In the event that NCDIT is served with a subpoena, discovery request, or public record request for information that has been designated by the Grantee as confidential information, NCDIT shall forward written notification thereof to the Grantee, along with the subpoena or other request. NCDIT shall not, pursuant to the subpoena or other request, produce documents or information designated by the Grantee as confidential information without Grantee’s written consent or unless ordered to do so by a court of competent jurisdiction.

Section 8.15. Dispute Resolution. The Parties agree that it is in their mutual interest to resolve disputes informally. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties after a reasonable period, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

Section 8.16. Waiver of Objections to Timeliness of Legal Action. The Grantee knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, NCDIT) and/or the County to enforce its rights under this Agreement. This waiver includes any objections the Grantee may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

Section 8.17. Force Majeure. Except as provided for herein, no Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, flood, earthquake, hurricane, tornado, epidemic, pandemic, or other catastrophic natural event or act of God.

Section 8.18. Construction, Jurisdiction and Venue. This Agreement shall be construed and governed by the laws of the State of North Carolina. The Parties agree and submit, solely for

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matters concerning this Agreement, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.

Section 8.19. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.

Section 8.20. Acceptance. If the Grantee and the County agree to the conditions as stated, please ~~execute this Agreement via AdobeSign. return the executed Agreement and any other documentation requested by NCDIT to NCDIT, who will, in turn, provide the executed Agreement and other documentation to the County.~~ This Agreement may be withdrawn if NCDIT has not received ~~such documents~~ the executed Agreement within ~~fifteen (15)~~ thirty (30) days from the date of the cover letter from NCDIT to the Grantee and the County accompanying this Agreement and ~~it's the~~ Grantee Exhibits.

IN WITNESSETH WHEREOF, the Parties, intending to be legally bound hereby, have read, signed, and caused this Agreement to be executed.

<<Grantee Name>>

Signature:

Printed Name:

Title:

Date:

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<<County Name>> County

Signature: _____

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Information Technology

Signature: _____

Printed Name: _____ Nathaniel Denny

Title: _____ Deputy Secretary for the Division of Broadband and Digital Equity
NC Department of Information Technology

Date: _____