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**GLENN HEGAR  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

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**AMENDED Notice of Funds Availability**

**Request for Applications (RFA No. BDO-NOFA-001)  
for**

**BRINGING ONLINE OPPORTUNITIES TO TEXAS (BOOT)  
PROGRAM**

**for the**

**Texas Broadband Development Office (BDO)**

Application Open Period: 3/6/2013 – 5/5/2023

Available Funding: \$120,000,000.00

## **1.0 BRINGING ONLINE OPPORTUNITIES TO TEXAS (BOOT) PROGRAM GRANT**

The Texas Legislature created the Broadband Development Office (“BDO”) as an office within the Texas Comptroller of Public Accounts (“CPA”) to award grant funds for the purpose of expanding access to and the adoption of broadband services in designated areas throughout the State of Texas that the office has determined are eligible to receive funding under the broadband development program. Through the BDO, the State of Texas has been allocated \$363.8 Million through the American Rescue Plan Act (“ARPA”) Capital Projects Fund (“CPF”). This program is administered by the U.S. Department of the Treasury (“U.S. Treasury” or “Treasury”) to carry out critical Capital Projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19). The funds allocated to Texas shall be distributed by the BDO through a multi-round competitive grant process. This NOFA covers the release of the first round of funds totaling \$120,000,000.00.

BDO has established the Bringing Online Opportunities to Texas Program (“BOOT” or “BOOT program”). The BOOT program is a competitive grant program to build last-mile broadband connections that increase high-speed broadband service to Texans. Funding awarded under BOOT program using federal funds allocated under CPF is intended to fund eligible projects that directly enable work, education, and health monitoring, including remote options, in Unserved and Underserved areas throughout the state to address critical needs exacerbated by the COVID-19 pandemic.

The purpose of this Notice of Funding Availability (NOFA) is to solicit applications for broadband infrastructure projects located in eligible areas that are designed to deliver, upon completion, service that reliably meets or exceeds symmetrical speeds of 100Mbps to directly enable work, education, and health monitoring, including remote options.

## **2.0 Available Funding**

Funding for BOOT grants is provided by Treasury through the American Rescue Plan Act’s Capital Projects Fund established by Section 604 of the Social Security Act as added by Section 9901 of the American Rescue Plan Act of 2021. Section 604 authorizes Capital Projects Fund Recipients to use Capital Projects Fund grant funds for critical capital projects that directly enable work, education, and health monitoring in response to the COVID-19 public health emergency.

Funding made available for the first round of the BOOT program covered by this NOFA is approximately **\$120,000,000.00**. Actual funds awarded may be lower than the amount available depending on the volume of applications received, the level of need of the proposed projects for grant support, and the requirements of the U.S. Treasury. BDO reserves the right to cancel or modify the amount available in this NOFA.

The total amount of funding allocated to the State by the U.S. Treasury for this purpose is \$363.8 million. The remaining funds will be made available at the discretion of BDO at a later date.

## **3.0 Eligible Applicants**

BDO encourages all eligible participants to apply for funding of eligible broadband infrastructure projects. Eligible Participants include: political subdivisions of the State; commercial broadband service providers; non-commercial broadband service providers; and partnerships between political subdivisions, commercial broadband service providers, noncommercial broadband service providers or any combination thereof that are also not otherwise considered disqualified from participation in the program.

### **3.1 Participant Disqualifications**

An applicant is not eligible to participate in the program if any of the following apply:

#### **3.1.1 General Disqualifications**

Applicant is a person or entity who:

- Is not registered to do business with the State of Texas (if applicable);
- Is on the [Comptroller of Public Accounts Debarred Vendors List](#);
- Is on any of the [Comptroller of Public Accounts Divestment Statute Lists](#);
- Owes a debt to the State or is under warrant or vendor hold;
- Has not complied with statutory reporting requirements [Transparency reporting requirements](#);
- Has a grade below C with the Texas Smart Buy [Vendor Performance Tracking System](#); or
- Is “Excluded” on the [System of Award Management](#) website.

### **3.1.2** *FCC Reporting Compliance*

Applicant is an entity that has failed to comply with the Federal Communications Commission’s (FCC) rules and regulations, including timely filing of FCC Form 477 and Broadband Deployment Accuracy and Technological Availability (DATA) Act submissions, as required during the most recent reporting period, is not eligible to participate in the program.

### **3.1.3** *BDO Reporting Compliance*

Applicant is an entity that has not provided information requested by the office under Government Code, §490I.0105, is not eligible to participate in the program.

### **3.1.4** *BDO Board of Advisors*

In accordance with Texas Government Code §490I.0110, applicant is a person or entity who is professionally affiliated with a person serving as a member of the BDO Board of Advisors.<sup>1</sup> By submitting its application, an Applicant attests that they are not professionally affiliated with a sitting member of the BDO Board of Advisors.

## **4.0** *Application Information*

### **4.1** *Application Process*

Applicants must access the BDO’s Grant Portal to register and apply for funding. Applicants should be prepared to submit fully developed and detailed project proposals and grant budgets at the time of application. For more information regarding the application process, please see BDO’s public website for instructions and additional guidance as it becomes available.

### **4.2** *Confidentiality*

All information received by CPA or BDO related to grant program applications and/or grant compliance and monitoring becomes the property of the State of Texas and, as such, is subject to public disclosure under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552.

Section 552.1101, Government Code, provides an exception to disclosure for information submitted by a potential vendor in response to a request for bid, proposal, or qualification. Applicants who submit information they believe to be confidential or proprietary must clearly identify the information or documents they believe is protected under the Public Information Act. If BDO receives a request for information that is clearly marked as protected we will refer the request to the Office of the Attorney General for a decision. Applicants who submit protected information should be prepared to argue against release to the Attorney General.

Applicants with concerns regarding the release of information under Chapter 552 should seek the advice of legal counsel.

### **4.3** *Disposition of Applications/Public Records*

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<sup>1</sup> For list of current members of BDO Board of Advisors: <https://comptroller.texas.gov/programs/broadband/about/who/board.php>

All Applications and the contents associated therewith shall become the property of CPA. CPA is subject to provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under the statute. Applicants or other persons or parties submitting information to CPA are encouraged to familiarize themselves with these provisions before submitting Applications or other information to CPA.

## 5.0 Schedule of Events

BDO reserves the right, in its sole discretion, to modify this schedule of events.

3/6/2023	NOFA Issued
3/6/2023	First day to submit questions regarding NOFA/Application
3/17/2023	Deadline for submitting questions regarding NOFA/Application
3/31/2023	Publication of clarification responses
4/3/2023	First day to register/submit applications
5/5/2023	Last day to submit applications
5/10/2023*	Start of Application Challenge Period BDO to provide notice to applicants with overlapping project areas
5/24/2023*	Deadline for applicants with overlapping project areas to inform BDO of intent to resolve overlapping areas**
6/9/2023*	End of Application Challenge Period Deadline for submission of proposed overlap resolutions/amended applications**
7/9/2023*	Anticipated date for BDO decision on application challenges
8/9/2023*	Deadline for receiving amended application from applicants affected by BDO decision on application challenge
Late Summer/Early Fall 2023	Anticipated issuance of notice of awards

\* Dates subject to change based on date BDO publishes information regarding applications received.

\*\* Limited to applicants who provided timely notice to office of intent to resolve overlapping areas.

## 6.0 NOFA Administration

### 6.1 *Amendments and Program Modifications*

CPA reserves the right to amend this NOFA through written amendment(s). Applicants are advised to check the *Texas.gov eGrants, TXSmartBuy* and the BDO public websites for possible amendments to this NOFA. In the event this NOFA is amended after the closing of the application window, BDO will contact each Applicant's primary contact, as designated in each respective Application.

### 6.2 *Requests for Clarification*

Applicants may submit written questions regarding this NOFA via e-mail to [bdo.nofa@cpa.texas.gov](mailto:bdo.nofa@cpa.texas.gov) no later than 2:00 p.m. by the deadline set forth in the Schedule of Events. On or about the date set forth in the Schedule of Events, the BDO expects to electronically post answers to the written questions on its public website. BDO will not

respond to inquiries regarding the evaluation status of an application submission or the pendency of grant awards beyond publicly disclosed information.

### **6.3 Capitalized Terms**

Capitalized terms in this NOFA have the meanings defined under the Definitions section of this NOFA, the Rules or applicable Federal Rules and Regulations.

### **6.4 Open Competition**

The issuance of this NOFA in no way constitutes a commitment by CPA or BDO to issue any grant award or enter into a Grant Agreement with any Applicant or other interested person or party.

## **7.0 Grant Period**

The expected grant term shall run from the effective date of the grant to the completion date of the proposed project. Proposed projects must be completed no later than 12/31/2026.

## **8.0 Funding Levels**

Minimum: \$200,000

Maximum: \$4,999,999

Match Requirement: None. However, preferential consideration will be given to applications based on contributions from other sources of funding, including in-kind contributions, as a percent of the total project costs.

Matching funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are made consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200. In-kind contributions, which may include third-party in-kind contributions, are non-cash donations of property, goods or services, which benefit a federally assisted project. In-kind contributions must be allowable and allocable project expenses.

While in-kind contributions are not required under CPF funding, Federal guidance encourages applicants to thoroughly consider potential sources of in-kind contributions that, depending on the particular property or service and the applicable federal cost principles, could include:

- Employee or volunteer services
- Equipment
- Supplies
- Indirect costs
- Computer hardware and software
- Use of facilities

In the broadband context this could include, consistent with federal cost principles:

- Access to rights of way
- Pole attachments
- Conduits
- Easements
- Access to other types of infrastructure

Applicants who include in-kind contributions as part of matching funds, are responsible for demonstrating that the proposed in-kind contributions are consistent with the federal cost principles set forth at 2 C.F.R. Part 200.

## **9.0 Standards**

Applicants and grant recipients will be required to comply with all applicable state and federal rules and laws, including, but not limited to:

**9.1 *Applicable State Statute and Rules***

Applicants and grant recipients are expected to comply with all any applicable requirements of state law including Government Code, Chapter 490I, and the rules adopted by the Comptroller located at 34 TAC § 16.30 et seq.

**9.2 *U.S. Treasury Coronavirus Capital Projects Fund***

The BOOT program employs funds made available through the CPF program administered by the U.S. Treasury. Grant recipients who are awarded funds through this NOFA are expected to comply with all requirements set by the U.S. Treasury for CPF. Details and published information on the CPF program, including allowable expenditures, are available on the U.S. Treasury website. The U.S. Treasury may provide further guidance after the publication of this NOFA.<sup>2</sup>

**9.3 *Uniform Guidance***

Grantees shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as set forth at 2 CFR part 200 (Uniform Guidance).

**9.4 *Other Applicable Federal Laws and Regulations***

Grantees must comply with the following all applicable federal laws and regulations, including, but not limited to: The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq); The Coastal Zone Management Act (CZMA) and implementing regulations 15 C.F.R. Part 930; The Endangered Species Act (ESA); The Magnuson-Stevens Fishery Conservation and Management Act (MSA); The Marine Mammal Protection Act (MMPA); The Clean Water Act (CWA); The Clean Air Act (CAA), 42 U.S.C §§ 7409, 7410, 7502-7514, 7571-7574; The National Historic Preservation Act (NHPA); The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 et seq); The Rivers and Harbors Act of 1899; The Resource Conservation and Recovery Act (RCRA); The Comprehensive Environmental Response; Compensation, and Liability Act (CERCLA or Superfund); The Wild and Scenic Rivers Act; The Safe Drinking Water Act (SDWA); and The Farmland Protection Policy Act (FPPA). Grant recipients will also be expected to comply with the 2019 National Defense Authorization Act (NDAA), and specifically NDAA requirements contained within 2 C.F.R. Part 200 - 2 C.F.R. 200.216 and 2 C.F.R. 200.471, as well as the FCC's rules and regulations, including timely filing of FCC Form 477 and Broadband DATA Act submissions as required during the most recent reporting period.

**10. Project Eligibility**

**10.1 *Proposed Projects***

Projects eligible for funding under this Notice of Funds Availability are limited to broadband infrastructure projects that are designed to deliver, upon completion, service that reliably meets or exceeds symmetrical speeds of 100Mbps to directly enable work, education, and health monitoring, including remote options. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

**10.2 *Project Area Eligibility***

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<sup>2</sup> Coronavirus Capital Projects Fund webpage on the U.S. Treasury website <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>

Applicants may determine the boundaries of their proposed project area. However, a proposed project area must consist of the entirety of one or more contiguous designated areas that are eligible to receive funding as of the date this Notice of Funds Availability is issued as determined by the Texas Broadband Development Map. Applicants will be required to provide broadband service to all Unserved and Underserved locations within the selected designated areas. A proposed project may not contain a designated area that is ineligible to receive funding. Applications for proposed projects that bring connectivity to one or more locations within an ineligible area will be disqualified from eligibility.

In accordance with Texas Government Code §490I.0106(b)(2), the BDO will prioritize applications that will expand access to, and adoption of, broadband service in Eligible Areas in which the lowest percentage of addresses have access to broadband service.

### **10.3 Existing Federal Commitments**

A Designated Area is considered “Ineligible” if at any point the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses within the Designated Area. Designated Areas that have received or have been designated to receive federal funding for the purposes stated above are considered Ineligible.

For the purposes of this notice of funds availability, the following federal programs as are considered a federal funding awarded under a competitive process: USDA ReConnect, Alternative Connect America Cost Model (ACAM), Connect America Fund (CAF) Phase II, CAF Broadband Loop Support (BLS), FCC Rural Broadband Experiments (RBE), and Rural Digital Opportunity Fund (RDOF).

### **10.4 Project Timeline and Service Delivery**

Proposed projects must have a feasible start date for construction in order to reach substantial completion within three (3) years of the effective date of the Grant Agreement. Notwithstanding anything to the contrary, all proposed projects must be completed no later than December 31, 2026. As outlined by U.S. Treasury guidance regarding CPF funds, all grant recipients will be required to commit that the infrastructure funded by the grant will provide services or activities that directly enable work, education, and health monitoring for at least five years from the completion of the project.

### **10.5 Last Mile Connectivity**

Proposed projects must be designed to provide last-mile broadband service to end users. If a proposed project includes middle-mile components, BDO has sole discretion to determine whether a proposed project includes sufficient last-mile connectivity and/or the middle-mile components are necessary for the implementation of the proposed last-mile connections to justify an award under the program.

### **10.6 Minimum Network Requirements**

All broadband serviceable locations identified for the proposed project must, as of the date of issuance of this notice of funds availability, lack access to broadband service with speeds at or greater than 100 megabits per second (Mbps) download and 20 Mbps upload (100/20 Mbps) and should not be scheduled to receive broadband service prior to the start of the proposed project.

The proposed project must be designed to deliver minimum network requirements capable of providing broadband service speeds of at least 100 Mbps for downloads and 100 Mbps for uploads (100/100 Mbps) to all broadband serviceable locations within the proposed project area that lack access to broadband service at speeds at or greater than 100/20 Mbps.

### **10.7 Exemption from Standard Minimum Network Requirements**

If the proposed project cannot practically deliver service speeds of at least 100/100 Mbps, the applicant must submit a signed engineering certification on letterhead requesting an exemption from minimum network requirements. Applicant must submit the request with the application form and will not be permitted to request an exemption

under any circumstances after notice of award. Failure to provide a certification with sufficient justification to support divergence from the 100/100 standard will result in immediate ineligibility for funding.

### **10.8 Access to Other Providers**

BDO believes that non-discriminatory access to taxpayer funded broadband infrastructure will result in greater competition and lower broadband costs for the general public. At the same time, the BDO recognizes that some providers may view requiring open access to their middle-mile network facilities as a disincentive for participation in the program, which may result in lower expansion of critically needed broadband infrastructure.

To balance these concerns, applicants may elect, but are not required, to commit to offering non-discriminatory access to, and use of, its proposed middle-mile infrastructure to be funded with grant funds, on a wholesale basis, at just and reasonable wholesale rates for the useful life of the subsidized network assets, to other providers seeking to provide broadband service to end-user locations.

The applications of applicants who voluntarily commit to permitting other broadband service providers to interconnect to taxpayer-funded network facilities on a nondiscriminatory basis will receive an additional preference as outlined in Section 11.4.2, Evaluation Criteria & Weighting.

### **10.9 Affordable Connectivity Program (ACP) Participation**

Applicant receiving funds under this program must participate in the FCC's Affordable Connectivity Program (ACP) or its successor program(s) for as long as the BOOT program-funded broadband infrastructure is in use.

### **10.10 Low-Cost Option**

Applicant must propose and offer an unbundled, universally available, low-cost option with a minimum of 100/20 Mbps with no data caps for as long as the BOOT program-funded broadband infrastructure is in use.

## **11.0 Grant Application Review Procedures**

### **11.1 Preliminary Application Review**

BDO will screen all applications to ensure that they meet the requirements included in the Notice of Funds Availability and the application requirements. The preliminary review will include assessments for application completeness, elimination of applications that are not eligible due to participant eligibility and/or project eligibility requirements, and identification of applications with overlapping project areas. BDO will publish information regarding each accepted application on its public website.

### **11.2 Overlapping Area Review**

#### **11.2.1 Notification of Overlapping Areas**

If BDO identifies applications with proposed project areas that overlap with the project areas contained in one or more other applications, BDO shall inform the impacted applicants of the project area overlap to provide applicants with an opportunity to resolve the overlapping Unserved or Underserved area(s). BDO shall provide the required notice via electronic mail. Service of the required notice is complete on the date the notice is sent via electronic mail if sent before 5 p.m. or the day after the notice is sent if sent after 5 p.m.

#### **11.2.2 Overlap Resolution Notice Period**

Applicants whose proposed project areas overlap with proposed project areas contained in other applications may provide notice to the office of their intent to resolve the overlapping areas. Applicants choosing to do so must jointly notify BDO of such efforts no later than the 10<sup>th</sup> business day after the applicant received notice from the office of the overlapping area. Applicants who have timely submitted notice of their intent to resolve an overlapping area



may submit a proposed resolution for the overlapping area and an amended application no later than the last day of the application challenge period.

### **11.2.3 *Unresolved Overlapping Areas***

In the event an overlapping project area is not resolved by the applicants by the deadline for doing so, BDO will evaluate the applications sharing overlapping areas independently. BDO will score each impacted application. The application that receives the highest score will proceed to grant funding consideration with its project area boundary intact and BDO shall remove the overlapping area from lower scored application(s).

### **11.2.4 *Overlapping Area Removal and Notification***

BDO will provide notice to each applicant of the removal of overlapping areas from the application. If removal of the overlapping area results in retaining less than 50 percent of the original project area, BDO may, at its sole discretion, remove the application from grant funding consideration.

If BDO removes an overlapping project area from an application, an applicant may amend and resubmit an application without the overlapping area if:

(1) The remaining project area is greater than 50 percent of the original project area; or

(2) The remaining project area is less than 50 percent of the original project area and the office does not remove the application from grant funding consideration.

An amended application without the overlapping areas must be received by the office by the 10th business day after receiving notice that the overlapping area has been removed.

### **11.2.5 *Overlapping Areas of Commercial and Noncommercial Applicants***

In accordance with Government Code §490I.0106(d)(3) and 34 TAC §16.38, if a commercial and noncommercial applicant submit an eligible application to provide broadband service access to the same project area, or a portion thereof, the noncommercial provider shall be required to submit an amended application eliminating the areas of overlap for which the commercial provider proposes to provide expanded broadband service access. If the noncommercial provider does not submit an amended application to BDO within 30 days after receiving notice of the overlapping areas, BDO may remove the application from consideration.

## **11.3 *Application Challenges***

### **11.3.1 *Submission of Application Challenges***

During the application challenge period, BDO shall accept written challenges from any interested party relating to whether the applicant or project is eligible for an award or should not receive an award based on the application using criteria prescribed by BDO and described below. Challenges must be submitted electronically through BDO's website in the form specified by the BDO and must be accompanied by all requested supporting documentation. More detailed information on the application challenge process may be forthcoming and available on the BDO website.

For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the designated area subject to an application challenge and also includes a broadband service provider that is not located in the designated area but who proposes to provide broadband service in the designated area.

### **11.3.2 *Applicant Eligibility Challenge***

A protesting party may challenge a submitted application based on applicant eligibility if the protesting party believes the applicant is ineligible for award. For a challenge made on this basis, a protesting party must, at a

minimum, submit (i) a notarized statement verifying that the protest and attached information are true and submitted in good faith; and (ii) documentation demonstrating that the applicant is ineligible or otherwise disqualified from award based on the criteria prescribed by the office. A protesting party has the burden of proof to establish that an applicant is ineligible to receive an award.

### ***11.3.3 Area Eligibility Challenge***

A protesting party may challenge a submitted application based on area eligibility if the protesting party believes the project is ineligible because the project area contains areas that are ineligible for award. A protesting party must substantiate the challenge by demonstrating that one or more designated areas within the project area are not eligible to receive funding by reference to the state broadband map or, if the state broadband map is not available, using the FCC's national fabric map.

For a challenge made on this basis, a protesting party must, at a minimum, submit (i) a notarized statement verifying that the protest and attached information are true and submitted in good faith; (ii) data from the broadband development map; and (iii) a detailed map, using the project area map(s) submitted by the applicant, delineating the general challenged areas and indicating where the protested serviceable locations are within the proposed project area the following documentation to substantiate their challenge:

A protesting party bears the burden of proof to establish that a proposed area is ineligible for an award or should not receive an award based on the criteria prescribed by BDO.

### ***11.3.4 Upheld Challenges***

If BDO upholds a protest on the grounds that one or more designated areas in a proposed project area have access to broadband service or have been awarded federal funding for the purposes of broadband service provision, the impacted applicant may submit an amended application without the challenged locations no later than 30 days after the date that the BDO notifies the applicant of the upheld protest. An amended application may not include additional areas or locations not already included in the original application. An amended application that removes challenged locations is not subject to further protest.

## **11.4 Application Evaluation**

### ***11.4.1 Scoring***

At the conclusion of the application challenge period, BDO will score and rank applications based on the evaluation criteria. Each application will be will independently assessed by members of an Evaluation Committee using the evaluation criteria and weights published in Subsection 11.4.2. Scores awarded under each category will be added and the resulting sum shall constitute the total score for the applicant.

### ***11.4.2 Evaluation Criteria & Weighting***

Applications that meet all project eligibility requirements will be evaluated and scored based on the following criteria:

<b>Evaluation Category</b>	<b>Criteria</b>	<b>Weight</b>
Expansion of Broadband Service	<ul style="list-style-type: none"> <li>• Speed Improvements in the Proposed Area: <i>Extent to which the proposed project results in the greatest broadband speed improvements over existing service, or lack thereof, for the most locations</i></li> <li>• Priority of Eligible Designated Project Areas: <i>Extent to which the proposed expansion of broadband service benefits designated areas with the highest percentage of Unserved and Underserved addresses.</i></li> <li>• Number of Schools Served: <i>Scored based on the number of Unserved and Underserved public and/or private primary and/or secondary schools; and/or institutions of higher education to be provided improved broadband speed.</i></li> <li>• Understanding of the geographic area and customer segments to be served: <i>Comprehensiveness of applicant efforts to identify existing providers and geographic areas in greatest need of broadband service expansion</i></li> </ul>	25%
Project Plan Feasibility	<ul style="list-style-type: none"> <li>• Technical Approach, Design, and Feasibility: <i>Level of detail provided to validate the feasibility of deploying the selected technology, with appropriate consideration of topological factors, access constraints, or other technical challenges specific to the proposed project</i></li> <li>• Network Capacity and Scalability: <i>Capabilities of the proposed network capacity to support the services being proposed and future upgrades to the network. (Note: this subcriterion also applies to proposed projects that are seeking a justifiable exemption of 100/20 Mbps from minimum network requirements of 100/100 Mbps)</i></li> <li>• Project Timeline: <i>Shovel-readiness, efficiency of the project timeline and service delivery schedule relative to the scale and complexity of the proposed project; extent to which proposed milestones can be used as a basis for structuring the reimbursement schedule in a subgrant agreement</i></li> <li>• Project Budget: <i>Sufficient detail on key pricing assumptions, comprehensive itemization of costs, justifiable and reasonable overall project cost.</i></li> <li>• Project Sustainability and Resiliency: <i>Ability to provide service in a financially sustainable manner for at least the first five years post-completion, with proper consideration of financial, market, climate and environmental risks that may impact the proposed project in both the long and short term</i></li> </ul>	25%

<b>Evaluation Category</b>	<b>Criteria</b>	<b>Weight</b>
Project Plan Feasibility cont.	<ul style="list-style-type: none"> <li>• Cost Effectiveness and Overall Impact: <i>Extent to which the proposed project will utilize proven and/or innovative strategies to reduce build costs without impacting project quality; the project cost per prospective broadband service recipient, the total number of prospective broadband serviceable locations to be served by the proposed project, and the associated impact and/or improvement the proposed project will have on the percentage of locations that are Unserved within the project area.</i></li> <li>• Geographic location of the proposed project, including whether the proposed project will deliver broadband services to designated areas located in rural or other designated areas that are characterized by disproportionately high capital and operational costs, amongst other things.</li> <li>• Commitment of non-BOOT Funding Contributions: <i>Level of non-BOOT funds contributed to the proposed project</i></li> </ul>	
Applicant Qualifications	<ul style="list-style-type: none"> <li>• Organizational Capability: <i>Level of experience undertaking projects of comparable size and complexity; prior experience with broadband infrastructure projects funded by Federal or State grants</i></li> <li>• Managerial Capability: <i>Qualifications of key personnel assigned to the project, comprehensiveness of the proposed resourcing and staffing available to manage the project</i></li> <li>• Financial Capacity: <i>Robustness of the applicant's financial strength, assessed based on financial information submitted</i></li> </ul>	15%
Community Support & Involvement	<ul style="list-style-type: none"> <li>• Public Outreach and Support: <i>Extent to which community outreach has gathered input from a broad array of stakeholders, including historically underrepresented groups</i></li> <li>• Level of Coordination with Stakeholders: <i>Breadth of community involvement and political support for the proposed project, as evidenced by partnership agreements with impacted political subdivisions and/or local non-profit organizations, or letters of support from non-profit organizations, elected officials, local governments, and/or other entities; level of coordination with the local broadband planning committee (if applicable);</i></li> <li>• Integration of Community Feedback: <i>Extent to which stakeholder feedback has been integrated into the scope of the proposed project</i></li> </ul>	15%

<b>Evaluation Category</b>	<b>Criteria</b>	<b>Weight</b>
Community Impact	<ul style="list-style-type: none"> <li>• Level of Need: <i>Applicant’s demonstrated level of understanding of the broadband challenges faced by community members in the proposed service areas</i></li> <li>• Affordability of Service Provided and Pricing Transparency: <i>Extent to which applicant is committed to offering low-cost service options and engages in transparent pricing strategies</i></li> <li>• Digital Literacy: <i>Extent to which the applicant demonstrates it has digital literacy programs tailored to the specific needs of disadvantaged community members in the proposed service area</i></li> <li>• Local Workforce Development: <i>Level of community impact that the project is likely to have through its proposed hiring, training, and apprenticeship opportunities as well as the applicant’s utilization of small businesses and historically underutilized businesses; extent to which applicant identifies potential partnerships with Community Anchor Institutions located in or affiliated with the proposed service areas as part of its workforce development strategy</i></li> <li>• <u>Voluntary Open Access: Extent to which applicant commits to offering non-discriminatory access to, and use of, its proposed middle-mile infrastructure to be funded with grant funds, on a wholesale basis, at just and reasonable wholesale rates for the useful life of the subsidized network assets, to other providers seeking to provide broadband service to end-user locations.</u></li> </ul>	20%

### 11.4.3 Tie Breaker

BDO may consider how applicants utilize proven and/or innovative strategies to lower the build cost of proposed projects to break ties between applications with the same scores.

### 11.5 Award

All award decisions shall be made at the sole discretion of the office and are not appealable or subject to protest or challenge.

In accordance with Texas Government Code §490I.0106(b)(2), the BDO will prioritize applications that will expand access to, and adoption of, broadband service in Eligible Areas in which the lowest percentage of addresses have access to broadband service.

Projects may be selected for award based on rank-order of score, but BDO reserves the right to deviate from the list of ranked applications in making award decisions taking into account factors including, but not limited to, the total amount of funding available for award and whether BDO has received requests for funding that exceed the amount of funding available; the number of projects that can be successfully awarded funds; total project cost and the amount requested for a project; and, geographic distribution of available funding. BDO reserves the right to not make an award to an otherwise eligible application for any reason. BDO is not required to expend all BOOT program funds set aside for each funding award cycle and reserves the right to deny funding to otherwise eligible applications even if adequate funds remain for a given funding round.

## **11.6 Notice of Award**

Following the selection process, BDO will issue notices of award to selected applicants. Applicants who have been awarded funds under the BOOT program must finalize and execute the Grant Agreement within 30 days after the date of award. The office may extend the deadline to fully execute the grant agreement upon the written request of a grant recipient for good cause shown. If the Grant Agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award or the extended deadline date, the office may, but is not required to, rescind the award.

## **11.7 Letter of Credit**

Applicants selected for award will be required to provide an irrevocable, stand-by letter of credit from a qualified bank covering at least the first year of support for all winning bids before an award may be finalized. A successful applicant may request, and the BDO may grant at its sole discretion, a waiver of this requirement in appropriate circumstances.

## **12.0 GRANT AGREEMENT AND COMPLIANCE**

### **12.1 Grant Agreement**

Successful applicants will be required to enter into a Grant Agreement with CPA in a form that is substantially similar to the sample Grant Agreement as set forth in Appendix A. CPA reserves the right to amend the terms in the required Grant Agreement without amending this Notice of Funds Availability. By entering into a Grant Agreement, the Grantee agrees to complete the Project in compliance with all terms and conditions identified in the Grant Agreement, this NOFA (including subsequent amendments), and all applicable federal, state, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, including U.S. Treasury requirements.

### **12.2 Required Completion**

If project costs exceed the budget included with the application, grantees will be required to finish the original scope of the proposed project without an increase in the amount of the grant award.

### **12.3 Reduction in Project Scope**

Upon execution of the Grant Agreement, no reduction in Project scope resulting in the removal of addresses or a reduced service area will be allowed without a decrease in the amount of the grant award. Any such reduction requires approval of CPA and execution of a written amendment to the Agreement.

### **12.4 Allowable Expenditures**

BOOT Grant Program funds may only be used for Allowable Expenditures, as dictated by U.S. Treasury guidance and any further requirements made by CPA. Project costs are subject to the requirements of the cost principles provided in 2 C.F.R. 200 subpart E and any other restrictions imposed by this Agreement. Below is a non-exhaustive list of Allowable Expenditures:

- Costs associated with completing the Grant;
- Pre-project development costs and uses, including data-gathering, feasibility studies, community engagement and public feedback processes, digital equity assessments and planning, and needs assessments; permitting, planning, architectural design, engineering design, and work related to environmental, historical, and cultural reviews;
- Costs of repair, rehabilitation, construction, improvement, and acquisition of real property, equipment (e.g., devices and office equipment), and facilities (e.g., telecommunications equipment, including infrastructure

for backhaul, middle, and last mile networks);

- Cost of long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements and capital leases;
- Personnel costs including salaries and fringe benefits for staff and consultants required for carrying out the Project (such as project managers, program directors, subject matter experts, digital equity consultants, grant administrators, financial analysts, accountants, and attorneys);
- Ancillary costs necessary to operationalize and put the capital assets to full use, including costs to increase broadband adoption and improve digital literacy;
- Costs associated with monitoring of and reporting on Projects in compliance with Treasury requirements, including award closeout costs; and
- Costs associated with collecting and measuring performance data and conducting activities needed to establish and maintain a performance management and evaluation regime related to Projects funded by the Grant.

Federal guidelines applicable to BOOT funds state such costs are allowable only to the extent they would have been allowable if incurred after the date of the Capital Projects Fund award and only with the written approval of Treasury. BDO did not seek pre-award costs within its program plan submitted to the federal government.

An awardee through the BOOT Program is permitted use funds to cover costs associated with data-gathering, feasibility studies, community engagement and public feedback processes, digital equity assessments and planning, and needs assessments; permitting, planning, architectural design, engineering design, and work related to environmental, historical, and cultural reviews, as long as those costs were incurred *after* the Effective Date, unless otherwise specifically approved in writing.

## 12.5 Ineligible Expenses

Unless otherwise approved in writing by U.S. Treasury and CPA, grant funds may not be used for the following purposes:

- Acquisition of spectrum licenses;
- Operating expenses and overhead;
- Short-term operating leases;
- Payment of interest or principal on outstanding debt instruments, or other debt service costs incurred prior to March 15, 2021;
- Fees or issuance costs associated with the issuance of new debt;
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or
- To support or oppose collective bargaining. This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

## 12.6 Reimbursement Requests

Grantees will receive funds from CPA on a reimbursement basis. Reimbursement requests may be submitted monthly and must include sufficient documentation as required by CPA to demonstrate the allowable expenditures were supported and incurred consistent with the program requirements. Grantees will include associated budget categories within the reimbursement request. Payment date shall be dependent upon when BDO receives all required documentation related to the reimbursement request. Grantees will receive an 80% reimbursement for the allowable

expenditures submitted each month; the remaining 20% reimbursement will be available upon completion of the final inspection and Project Closeout Report.

## **12.7 Reporting Requirements**

### **12.7.1 Reporting Requirements Generally**

Grantees must submit timely Status Reports, and a Project Closeout Report to CPA on a quarterly, and one-time basis, respectively. CPA reserves the right to amend reporting intervals as deemed necessary by CPA. The Grantee shall submit reports containing all required information using forms provided by CPA. Further details of such reporting requirements are set forth in the Appendix A, “Sample Grant Agreement”, in the U.S. Treasury’s Capital Projects Fund user guides<sup>3</sup>, and in any subsequent documentation to be released by CPA.

### **12.7.2 Status Reports**

Quarterly Status Reports are to be submitted to BDO by the Grantee, and generally should include:

- A narrative update on the status of the project, including notification of any delays, project activities and accomplishments for the reporting period
- Key performance indicators including speeds and adoption rates
- Financial reporting including current expenditures and invoice documentation
- Any information requested by BDO related to the current status of the project

### **12.7.3 Project Closeout Report**

A Project Closeout Report is to be submitted to BDO by the Grantee within 60 days of project completion, and generally should include:

- Financial reports, including an expense and revenue summary of the project;
- Validation of broadband infrastructure project
- Number of locations served;
- Max available speed by location supported by industry standard speed test reports;
- Problems encountered in completing the project;
- Any completed studies, surveys, reports, or other work projects; and
- Any additional information and/or data deemed relevant by BDO.

## **12.8 Site Visits**

BDO staff and/or any third party acting on BDO behalf may conduct one or more site visits during project construction and/or after project completion. Grantees must provide site access to the BDO and/or a delegated third party in any such case.

## **13.0 Definitions**

As used in this Notice of Funds Availability the below terms have the following meaning:

“Applicant”—A person that has submitted an (eligible) application for an award under this subchapter.

“Application challenge period”—A period of at least thirty days beginning on the first day after an application is posted on the office’s website as required under 34 TAC §16.36(d).

“ARPA”—The American Rescue Plan Act of 2021.

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<sup>3</sup> CPF updates, further info, and guides are available at (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>) with further information to be provided in the near future.



“BDO” or “Office” —The Broadband Development Office created under Texas Government Code, §490I.0102.

“BDO Grants Portal” — The online portal to be used to apply to the BOOT program, report on any funds received, and/or sign documents as dictated by BDO.

“BOOT”, “BOOT program”, or “BOOT Grant Program” —The Bringing Online Opportunities to Texans Grant Program administered by the BDO.

“Broadband service” —Internet service that delivers transmission speeds capable of providing a minimum download or upload threshold speed that are the greater of:

- (a) a download speed of 25 Mbps or faster; and an upload speed of three Mbps or faster as established under Texas Government Code, §490I.0101; or
- (b) the upload or download threshold speeds for advanced telecommunications capability under 47 U.S.C. §1302 as adopted by the Federal Communications Commission and as published on the comptroller’s website under Texas Government Code, §490I.0101.

“Broadband development map”; or “Texas Broadband Development Map”—The Texas broadband map created under Texas Government Code, §490I.0105.

“Census block”—The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

“Census tract”—A cluster of census blocks consisting of small, relatively permanent statistical subdivisions of a county or statistically equivalent entity that can be updated by local participants prior to each decennial census as part of the U.S. Census Bureau's Participant Statistical Areas Program.

“Commercial broadband service provider”—A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

“CPA” – The Texas Comptroller of Public Accounts.

“CPF”—Capital Project Fund of the American Rescue Plan Act; Source of funds for the BOOT program.

“Designated area” —A census block that has been designated as an eligible or ineligible area on the Broadband Development Map.

“Grant funds” —Grants, low-interest loans, and other financial incentives awarded to applicants by the office for the purpose of expanding access to and adoption of broadband service in designated areas.

“Grantee” or “Grant recipient” —An applicant who has been awarded grant funds under this NOFA and has subsequently entered into a grant agreement with the office.

“Mbps” —Megabits per second.

“Middle mile broadband service”—Includes (A) the provision of excess fiber capacity on any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution; (B) the provision of excess fiber on—(i) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and (ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links; and (C) the provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an Internet service provider to provide broadband service.

“Minimum Network Requirements” – A broadband network designed to deliver minimum network requirements capable of providing broadband service speeds of at least 100 Mbps for downloads and 100 Mbps for uploads (100/100 Mbps) to all broadband serviceable locations within the proposed project area that lack access to broadband service at speeds at or greater than 100/20 Mbps.

“Non-commercial broadband service provider”—A broadband service provider that is not a commercial broadband service provider.

“Project area” —The area identified by an applicant in which the applicant proposes to deploy broadband service and consisting of the entirety of one or more contiguous designated areas that are eligible to receive funding as determined by the Texas Broadband Development Map.

“Rules” – The rules adopted by the Comptroller found at 34 TAC 16.

“Rural Area” - any area other than (1) a city or town that has a population of greater than 50,000 inhabitants, (2) any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants, and (3) in the case of a grant or direct loan, a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

“State” —The State of Texas.

“Unserved area” —A designated area ~~or location within a designated area~~ that does not have access to broadband service.

“Unserved address” – A broadband serviceable location that does not have access to broadband service.

“Underserved area” — A designated area ~~or location within a designated area~~ that has access to broadband service but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.

“Underserved address” – A broadband serviceable location that has access to broadband service but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.

**Appendix A: Sample Grant Agreement** (subject to change)

**Appendix B: Sample Application Questions** (subject to change)

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
GRANT AGREEMENT FOR THE  
BRINGING ONLINE OPPORTUNITIES TO TEXAS PROGRAM**

FY2023

Table of Contents

Grant Agreement for the Bringing Online Opportunities to Texas (BOOT) Program  
Attachment A – Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements  
Attachment B – Disclosure of Lobbying Activities  
Attachment C – Federal Funding Accountability and Transparency Act (FFATA) Form  
Attachment D – Application  
Attachment E – Project Budget  
Attachment F – Proposed Service Area Map  
Attachment G – Certification Regarding Exemption from Standard Minimum Network Requirements

STATE OF TEXAS

COMPTROLLER OF PUBLIC ACCOUNTS  
AGREEMENT

Award ID# \_\_\_\_\_

**GRANT AGREEMENT  
FOR THE  
BRINGING ONLINE OPPORTUNITIES TO TEXAS PROGRAM**

This grant agreement (“Agreement”) is entered into by and between the Texas Comptroller of Public Accounts (the “Comptroller” or “CPA”) and \_\_\_\_\_ (“Grantee”) located at \_\_\_\_\_.

**I. Recitals**

**Whereas**, on \_\_\_\_\_, 2023 Comptroller issued the Bringing Online Opportunities to Texas (BOOT) Notice of Funding Opportunity (“NOFA”) for internet service providers and their partners to connect unserved and underserved locations with reliable internet;

**Whereas**, Grantee submitted an application and the supporting documents on or before \_\_\_\_\_, 2023, in response to the Comptroller’s Notice;

**Whereas**, Grantee has requested funding to address the deficit of broadband resources available to serve Texas residents and businesses in the State;

**Whereas**, Grantee seeks financial assistance, in the form of grants, for necessary improvements to broadband access, and expenditures aimed at overcoming infrastructure barriers to the expansion and availability of broadband resources in unserved and underserved areas;

**Whereas**, the contemplated Project would not be undertaken absent the opportunity for funding provided by Government Code Chapter 490I and this Agreement;

**Whereas**, Grantee’s application was selected for award;

**Whereas**, the Parties desire to set forth their mutual expectations and obligations for participation in the Program;

**Whereas**, CPA has the powers necessary to carry out the duties of the office under this chapter, including the power to enter into contracts and other necessary instruments;

**Whereas**, under this Agreement, Grantee shall fully comply with all terms, conditions, requirements and other provisions of this Agreement, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

**Whereas**, in consideration of Grantee’s compliance with all requirements of this Agreement, the Comptroller awards this Agreement to the Grantee.

**Now, therefore**, in consideration of the promises and the mutual representations, covenants, and agreements herein contained, and in particular the promise by Grantee to undertake specific activities identified as the Project, the Parties do hereby represent, covenant, and agree as follows:

## II. Definitions

The following definitions add to or, in cases of conflict, supersede the definitions set forth in the NOFA, Section 13.0:

“**Applicable Laws**” means all applicable federal, state, foreign, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, including but not limited to those set forth in this Agreement and Section 1.2 of the NOFA, all of which may be updated, amended, modified, or added to from time to time and all of which are incorporated herein by reference as of the date of any such change in the law.

“**Application**” means the BOOT Grant Program Application, in the form and manner provided by CPA, completed by Grantee.

“**Default**” has the meaning set forth in Part XII.

“**Effective Date**” means the date that this Agreement has been executed by the Comptroller.

“**NOFA**” means the Notice of Funding Opportunity issued by CPA on \_\_\_\_\_, 2023

“**Program**” means the broadband development program authorized by Texas Government Code Section 490I.0106.

“**Project**” means work proposed in Grantee’s Application that has been approved by CPA.

“**Project Budget**” means the budget proposed in Grantee’s Application that has been approved by CPA.

“**Proposed Service Area**” means the approved eligible geographic area described in Attachment F (Proposed Service Area Map).

“**Scalable**” means capable of providing internet service at higher speeds or capabilities in the foreseeable future without substantial replacement of such infrastructure.

“**Treasury Guidance**” means the guidance promulgated and updated from time to time by the U.S. Department of the Treasury, hereby incorporated by reference, and available at the Coronavirus Capital Projects Fund webpage: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>.<sup>1</sup>

## III. Authority

This Agreement is entered into pursuant to the authority in Chapters 403 and 490I of the Texas Government Code. Funding for this program is provided by state funds appropriated by the State Legislature and allocated by the Coronavirus Capital Projects Fund (CPF), established by Section 604 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act (ARPA) of 2021 and administered by the United States Department of the Treasury (“Treasury”). The purpose of Treasury funding is to address the economic consequences of the COVID-19 pandemic by facilitating, among other things, necessary State investment in broadband infrastructure. The availability of these Treasury funds allows CPA to aid Grantee by providing financial investment. This Treasury funding is subject to any applicable rules, regulations, and guidance issued by Treasury related thereto (“the Regulations”).

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<sup>1</sup> Treasury Guidance documents includes: Capital Projects Fund Guidance for States, Territories, and Freely Associated States; Capital Projects Fund Guidance for Tribal Governments; Frequently Asked Questions (FAQ); and Capital Projects Fund Compliance and Reporting Guidance for States, Territories, and Freely Associated States

#### IV. Grant

- A. **Grant.** In consideration of the various obligations to be undertaken by Grantee, CPA awards Grantee the amount of \$ \_\_\_\_\_ (“the Grant”), to be disbursed to Grantee for the purposes of funding Project, subject to the following:
1. Grantee shall use the Grant only for the approved Project and only in the approved area as indicated on the Application.
  2. Grantee acknowledges that the Project must achieve Minimum Network Requirements. Where the Grantee has certified its need for exemption using the Certification (included as Attachment G to this Agreement), Minimum Network Requirements shall mean a minimum internet connectivity that reliably meets or exceeds 100 megabits per second (Mbps) download and at least 20 Mbps upload speeds and be Scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances.
  3. Grantee shall carry out the Project in accordance with:
    - a. this Agreement, including all Attachments;
    - b. the NOFA, hereby incorporated by reference;
    - c. the Treasury Guidance, hereby incorporated by reference; and
    - d. all Applicable Laws.
- B. **Order of Precedence.** In the case of conflicts between this Agreement (excluding Attachments) and any of the Attachments or documents incorporated by reference, the following shall control in the following order of priority:
1. The Treasury Guidance.
  2. This Agreement (excluding Attachments).
  3. The NOFA
  4. Attachment A - Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements
  5. Attachment B - Disclosure of Lobbying Activities
  6. Attachment C - Federal Funding Accountability and Transparency Act (FFATA) Form
  7. Attachment G - Certification Regarding Exemption from Standard Minimum Network Requirements
  8. Attachment E - Project Budget
  9. Attachment F – Proposed Service Area Map
  10. Attachment D - Application

#### V. Term

Unless sooner terminated pursuant to the terms of this Agreement or extended by an amendment to the Agreement, this Agreement shall be effective as of the Effective Date and shall remain in effect until completion of the Project, and for such time afterward as is necessary for CPA to reimburse Grantee for all Allowable Expenditures following Project completion in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary, the Project must be completed on or before December 31, 2026.

#### VI. Project Commencement and Completion

- A. **Project Commencement.** Unless otherwise agreed to in writing by CPA, Grantee shall commence the Project in accordance with its Project Plan on or prior to 30 calendar days after the Effective Date ("Commencement Date"). Prior to commencement, Grantee shall obtain all necessary approvals, including all applicable permits and licenses.
- B. **Project Changes.** CPA must approve, in writing, any changes to the Application, Proposed Service Area Map, Project Budget, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the Proposed Service Area, and modifications

## ATTACHMENT A – Draft Grant Agreement

to the Completion Date. Such changes will not require a formal amendment to this Agreement, so long as they are approved in writing by CPA and the total amount of the Grant does not change.

- C. **Performance.** Grantee must fully complete its Project(s) by the date set forth in this Agreement in accordance with and consistent with any deadlines established in the NOFA. Grantee's Project(s) must be deployed and implemented in a manner that complies with all applicable terms, conditions, requirements, and limitations set forth in this Agreement, the NOFA, and as proposed/represented in the Application. On or before the Completion Date, Grantee must obtain all certifications, licenses, permits, and approvals necessary to operate the Project, and shall otherwise satisfy all requirements necessary to operate the Project.

### D. **Proof of Project Completion.**

1. Obligation to Provide Proof. In order to certify project completion and receive final disbursement of funds, Grantee must provide the CPA with approved documentation, or proof, that is substantively accurate and complete as set forth in section Part VI., Section D.2. (Acceptable Substance of Proof) and in an acceptable data format as set forth in Part VI., Section D.2. (Acceptable Format of Proof). Notwithstanding the foregoing, CPA reserves the right to determine, in its sole discretion, the completeness and sufficiency of proof provided to the CPA by Grantee pursuant to this section. Grantee acknowledges that its failure to satisfy its obligation to provide proof as required in this section may delay or prohibit certification of project completion and disbursement of funds.
2. Acceptable Substance of Proof. In order to be considered substantively complete, proof of project completion submitted to the CPA must at a minimum demonstrate with specificity where Broadband installation has occurred consistent with Grantee's Application. Such proof must include:
  - a. Any and all information required to be provided to the federal government and CPA;
  - b. Information sufficient to enable the CPA to determine which specific Broadband Units (homes, schools, businesses) within each Proposed Service Area(s) forming the basis of the Project have access Broadband, as applicable, as a result of the Project;
  - c. As-built infrastructure drawings or schematics for which Grant funds have been utilized, regardless of whether such installation actually serves any Broadband Units in the Proposed Service Area(s) forming the basis of the Project at the time such proof is supplied to the CPA; and/or,
  - d. Tower locations and propagation map(s) or model(s); and/or,
  - e. Address or locations of service locations.
3. Acceptable Format of Proof. Grantee shall provide proof of project completion to the CPA in any one of the following acceptable data formats, in no particular order:
  - a. Computer Aided Design or "CAD" file which should at a minimum show the project area, including road or landmarks in order to identify project area, and infrastructure buildout design (fiber, OSP, and/or other infrastructure needed to serve customers); or,
  - b. Proposed Service Area Map in PDF format which should at a minimum show clearly legible streets or other landmarks, show a project area that is clearly delineated, and locations that are now served or can be provided service within 10 business days; or,
  - c. Spreadsheet of Service Locations, which should at a minimum provide locations as longitude (x) and latitude (y) that are serviceable by the new infrastructure or addresses that are served or can be served.
  - d. An ESRI shape file; or,
  - e. A Google Earth KML or KMZ; or,
  - f. Upon the express prior approval of the CPA, any other format deemed acceptable by the CPA.

### E. **Reports.**

1. Quarterly Status Reports. On January 1, April 1, July 1, and October 1 of each year during the term of this Agreement, Grantee shall provide CPA with interim Project and Expenditure (the "P&E") Reports in a manner and form to be determined by CPA. The interim progress reports shall contain such information as CPA requests, including, but not limited to, narrative updates on the status of



## ATTACHMENT A – Draft Grant Agreement

the project, including notification of any delays, project activities and accomplishments for the reporting period, key performance indicators including speeds and adoption rates, financial reporting including current expenditures and invoice documentation, any information requested by CPA related to the current status of the project. Grantee shall ensure that each P&E report is received by CPA no later than ten (10) working days after the end of each reporting period. Each P&E report should cover the most recent 3-month reporting period. Reporting periods are represented as:

- Quarter 1: January 1 – March 31
  - Quarter 2: April 1 – June 30
  - Quarter 3: July 1 – September 30
  - Quarter 4: October 1 – December 31
2. **Final Report.** Unless otherwise agreed to in writing by CPA, within sixty (60) calendar days after Grantee completes the Project, Grantee shall submit to CPA a final report (the "Final Report") in a manner and form to be determined by CPA that describes the completed Project, the success of the Project, any problems encountered in completing the Project, and such other information as CPA requires. The Final Report shall also contain all financial, performance, and other reports as CPA requests, including, but not limited to, expense and revenue summary of the Project including the information required under Part VI., Section D.2. (Acceptable Substance of Proof) and in an acceptable data format as set forth in Part VI., Section D.2. (Acceptable Format of Proof), any problems encountered in completing the Project, and other information. In addition, any completed studies, surveys, reports, or other work products, if applicable, shall be attached to the Final Report. The Grant will not be considered fully closed out until the Final Report has been submitted to, and accepted by, CPA.
  3. **Final Report Certifications.** The Final Report shall also contain:
    - a. An expense and revenue summary of the Project, certified by the highest fiscal officer of Grantee, that lists all expenditures relating to the Grant; and
    - b. A Certification to CPA that the Project was completed as proposed/represented in the Application, including but not limited to a certification representing that the Project fully complies with and satisfies any and all terms and conditions identified in this Agreement, the NOFA, and all Applicable Laws.
  4. In addition to the requirements set forth above, Grantee shall provide CPA with such additional records, reports, and other documentation as may be required by CPA or the U.S. Department of the Treasury.
- F. **Inspections.** During the term of this Agreement and for a period of up to Five (5) years following the Completion Date, Grantee shall permit CPA to monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement and Grantee shall make the Grantee's administrative offices, its personnel, whether full time, part time, consultants or volunteers, available to CPA for inspection upon request. Grantee shall permit CPA to perform program monitoring, evaluation and audit activities as determined to be necessary, at the discretion of CPA provided such activities are limited to Project monitoring, establishing completion of the Project, ensuring proper expenditure of grant funds, and Grantee is provided fifteen (15) calendar days written notice by CPA.
- G. **Performance Testing.** CPA may, in its sole discretion, conduct performance tests for purposes of verifying compliance with the terms of this Agreement, the NOFA, and Applicable Laws, on one or multiple occasions during the term of this agreement and for up to five (5) years after Project is certified as complete pursuant to Part VI., Section E.3. (Final Report Certifications). CPA may exercise this right both before (with the exception of authorized prepayments) and after reimbursing a Grantee for any claimed, Allowable Expenditures; provided that if CPA elects to do so before reimbursing a Grantee for any claimed Allowable Expenditures, it will do so within a reasonable time, not-to-exceed one (1) year after Project is certified as complete pursuant to Part VI., Section E.3. (Final Report Certifications). Such performance tests may include but are not limited to:
1. Speed tests anywhere between a Grantee's central office and the demarcation at any customer's location in a Census Block in which the Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service;

## ATTACHMENT A – Draft Grant Agreement

2. In the case of wireless installations, from any location in a Census Block in which the Infrastructure Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service; and/or,
  3. In the event Grantee does not have a customer in a Census Block being served by the installation, a certification obtained by the Grantee and supplied to the CPA from an independent, third-party, properly licensed engineer that the installation Facilitates Broadband service at speeds that meet or exceed 100/100 Mbps or 100/20 Mbps, as applicable, in the Census Block(s) identified in the Core Application. The costs of such certification shall be borne by the Grantee.
- H. **Project Completion.** For purposes of this Agreement, a Project shall be considered “complete” as of the later of the date CPA:
1. Accepts the certifications and proof of project completion provided by Grantee as required by Part VI., Sections D (Proof of Project Completion) and E.3. (Final Report Certifications), respectively; and,
  2. Verifies that a Project certified as complete complies with the requirements of this Agreement, the NOFA, and Applicable Laws, including pursuant to and in accordance with the Performance Testing obligations of Part VI., Section G (Performance Testing), or
  3. Otherwise affirmatively elects to verify that the project is complete without exercising its rights to Performance Tests or conduct any other monitoring, review, or audit rights available to CPA under this Agreement.
- I. **Consequences of Non-Performance.** Failure to fully satisfy the criteria set forth in Part VI., Section A. (Performance), and Part VI., Section E.3. (Final Report Certifications), all Applicable Laws, as may be verified pursuant to Part VI., Section G. (Performance Testing), or failure to otherwise complete the Project as represented in the Grantee’s Application, may result in the CPA’s denial of a request for reimbursement for any expenditures related to the Project and the return of previously reimbursed funds, and Grantee shall not otherwise be entitled to reimbursement for such expenditures.

## VII. Expenditure of Grant Funds.

- A. **Allowable Expenditures.** Grantee shall only be entitled to payment for Allowable Expenditures as enumerated in the NOFA and subject to the requirements of the cost principles provided in 2 C.F.R. 200 subpart E, the Treasury Guidance, and any other restrictions imposed by this Agreement. CPA may order the return of any funds previously disbursed or deny a request for reimbursement for any expenditures that do not constitute Allowable Expenditures, and Grantee shall not otherwise be entitled to payment or reimbursement for any expenditures that do not constitute Allowable Expenditures.
- B. **Non-Reimbursable Expenses.** Grantee may not expend the Grant for purposes contrary to this Agreement, or for any purpose described under “Ineligible Expenses” in the NOFA. With the exception of Allowable Expenditures or other reimbursable expenses or costs expressly contemplated herein, there shall be no other reimbursable expenses associated with this Agreement. Except for expenditures that constitute Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, Grantee shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Grantee.
- C. **Pre-Award Expenses.** Grantee may only use funds to cover costs incurred after the Effective Date, unless otherwise specifically approved in writing. All unapproved costs incurred by Grantee before the Effective Date and before approval by CPA of the release of Grant funds are incurred voluntarily, at Grantee’s own credit and expense.
- D. **Project Budget.** Grantee may not expend more than the amount allocated for any category in the Project Budget without the prior written consent of CPA. Unless otherwise agreed to in writing by CPA, Grantee shall expend at least fifty percent (50%) of the Project Budget by the second (2nd) anniversary of the Effective Date.
- E. **Other Federal Funds.** Grantee may not use any competitively awarded federal funds, other than those funds awarded under this Agreement, to support the deployment of broadband service to addresses in the

ATTACHMENT A – Draft Grant Agreement  
Proposed Service Area.

- F. **Return of Unexpended Funds.** If, upon completion of the Project, there are cost savings that result in unexpended Grant funds, Grantee shall return such Grant funds to CPA. CPA shall have the rights and remedies with respect to unexpended funds upon termination as provided by Part XII.
- G. **Duty to Report Misuse of Funds.** Grantee must promptly refer to CPA any credible evidence that a principal, employee, agent, subcontractor, subgrantee or subrecipient, subcontractor, or other person has either: 1) submitted a false claim for grant funds as that term is use under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any subcontractor for the Project.

### VIII. Payment

- A. **Disbursement of Grant Funding.** After the Effective Date, CPA will disburse Grant funds to Grantee on reimbursement basis, subject to 20% Retainage.
- B. **Reimbursement.**
1. **Request for Reimbursement.** Grantee may request reimbursement for Allowable Expenditures monthly. A request for reimbursement shall identify in detail all Allowable Expenditures for which reimbursement is being sought on the forms and in the manner prescribed by CPA and attest that such Allowable Expenditures are true, accurate, and in fact constitute Allowable Expenditures, actually incurred by Grantee. CPA may request, in its sole discretion, and Grantee may be required to supply, additional records to verify any Allowable Expenditures claimed by Grantee, including, but not limited to, invoices, original itemized receipts, copies of checks, check registers, or bank statements indicating credit card invoices were paid. CPA shall review any request for reimbursement and related supporting documentation for compliance with this Agreement, the NOFA, and Applicable Laws. Notwithstanding anything herein to the contrary, CPA shall have the right to dispute any request for reimbursement, invoice, or other supporting documentation and withhold payment of any disputed amount if CPA believes the documentation is inaccurate, incomplete, insufficient, or incorrect in any way.
  2. **Time for Reimbursement.** Requests for reimbursement should be made allowing at minimum thirty (30) calendar days to receive the Grant funds; however, no payment of grant funds will be disbursed until CPA has reviewed and approved the eligible expenses incurred by Grantee. If CPA requires additional supporting documentation for a request for reimbursement, a hold will be placed such request for reimbursement until claimed Allowable Expenditures are verified.
  3. **Payments Conditional.** Reimbursements are conditioned on work being performed in compliance with this Agreement, the NOFA, and Applicable Laws. No payment, including final payment, shall be construed as or constitute: (1) acceptance of any Project(s) as satisfying the terms, conditions, or requirements of this Agreement, the NOFA, or Applicable Laws; or (2) a waiver by CPA's of any rights or remedies it may have to enforce the terms of this Agreement, and Grantee shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. By making any payments under this Agreement, CPA does not waive its ability to challenge any payment or reimbursement for either failing to comply with this Agreement, the NOFA, or any Applicable Laws. Grantee agrees that its acceptance of the last payment from CPA under this Agreement shall operate as a release of any and all claims related to this Agreement that Grantee may have or be capable of asserting against CPA or the State of Texas.
  4. **Retainage.** Reimbursements made by CPA to Grantee are subject to a 20% retainage. Upon Project Completion, as defined in Part VI., Section H (Project Completion), the accumulated retainage amount will become payable to Grantee.
- C. **Right to Withhold Reimbursement.** CPA reserves the right not to disburse any Grant funds if, in CPA's determination:
1. Grantee has failed to supply appropriate supporting documentation or withheld a material fact in a request for reimbursement;
  2. Grantee's request for reimbursement, when combined with all prior reimbursement requests,

ATTACHMENT A – Draft Grant Agreement

exceeds the total amount of the Grant;

3. Grantee has used any portion of the Grant for uses or activities other than the Project, or in a manner inconsistent with the terms and conditions of this Agreement, Government Code Section 490I.0106, the Regulations, Applicable Laws, and/or the NOFA;
  4. Grantee is not performing or completing the Project in a manner satisfactory to CPA; or
  5. Grantee is in default under any other term or condition contained in this Agreement.
- D. **Return of Funds.** In the event that any previously reimbursed funds are determined to have been expended in violation of the laws applicable to the expenditure of such funds; or any payment was comprised of claimed expenditures that did not constitute Allowable Expenditures; was not otherwise reimbursable hereunder; was improperly or incorrectly allocated; was unreasonable; was not supported by sufficient and appropriate documentation; or was otherwise made in a manner inconsistent with or in violation of the terms, conditions, or requirements of this Agreement, the NOFA, or any Applicable Laws, Grantee shall be liable to the CPA for the full amount of any claim disallowed and for all related penalties incurred and Grantee shall immediately return to the CPA funds subject to this Repayment Obligation. This remedy is in addition to and not to the exclusion of any other remedies available to the CPA under this Agreement, at law, in equity, or otherwise.
- E. **Erroneous Payments and Credits.** Grantee shall promptly pay or refund to CPA the full amount of any overpayment, erroneous payment, or unallowable expense within ten (10) business days after either discovery by the Grantee or notification by CPA of the overpayment, erroneous payment, or unallowable expense. CPA may, in its sole discretion, elect to have Grantee apply any amounts due to CPA under this Section (Erroneous Payments and Credits) against any amounts payable by CPA under this Agreement.
- F. **Compensation Generally.** Notwithstanding anything in this Agreement to the contrary, in no event shall CPA be obligated to pay Grantee any fees, costs, compensation or other amounts in excess of the amount expressly set forth herein in accordance with the terms, conditions, limitations, and requirements of this Agreement, unless CPA otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by CPA.

## IX. Records

- A. Grantee shall maintain accurate financial, management, programmatic and other records, including those pertaining to subawards and subcontracts, of the Grantee, of all transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively, “Records”) in compliance with the records retention requirements of 2 CFR § 200.334. The Records shall be in a commercially reasonable form acceptable to CPA. Grantee shall retain the Records for Five (5) years following the date CPA approves the Final Report described in Part VI., Section E.2 (Final Report).
- B. Grantee shall give Treasury, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, CPA, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by Grantee pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Grantee. Grantee shall cooperate with auditors and other authorized representatives of CPA and the State of Texas and shall provide them with prompt access to all such property as requested by CPA or the State of Texas. By example and not as exclusion to other breaches or failures, the Grantee’s failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize CPA to immediately terminate this Agreement. Grantee agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

## X. Right to Audit

CPA may require, at Grantee’s sole cost and expense, independent audits by a qualified certified public accounting firm of Grantee’s books and records or the State’s property. The independent auditor shall provide CPA with a copy of such audit at the same time it is provided to Grantee. CPA retains the right to issue a

## ATTACHMENT A – Draft Grant Agreement

request for applications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of Grantee or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Grantee or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Grantee or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. Grantee shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors or subcontractors through the Grantee and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Grantee relating to this Agreement.

### XI. Monitoring

- A. **Monitoring and Review.** In addition to any other terms and conditions hereunder of or related to auditing, verifying, or ensuring Grantee's compliance with the terms, conditions, requirements, or limitations of this Agreement, CPA shall monitor and review Grantee's performance under this Agreement to ensure compliance with this Agreement, the NOFA, and Applicable Laws. Such review and monitoring shall include CPA's assessment of any claims or invoices and any reports furnished by Grantee pursuant to this Agreement. CPA reserves the right to monitor Grantee performance through site visits, reports, or other means deemed necessary by CPA. The Grantee agrees that CPA may conduct during regular business hours site visits to review contract compliance, assess management controls, and assess relevant services and activities. Grantee agrees to ensure the cooperation of Grantee Personnel in such efforts and to provide to CPA all information requested in the manner determined by CPA; including allowing CPA to inspect Grantee or subcontractor's facilities and books and records in order to monitor and evaluate performance of this Agreement.
- B. **Corrective Action.** Following each site visit or review of requested information, CPA may submit a written report to the Grantee which identifies the CPA's findings. A corrective action plan with a timetable to address any deficiencies or problems noted in the report may be requested. The corrective action plan shall be submitted to CPA for approval within the timelines outlined in the written report. The Grantee shall implement the plan after it is approved by CPA. Failure to do so may result in suspension or termination of the Agreement, without penalty or liability to CPA or the State of Texas. Grantee shall not impose any charge or fee in connection with any review or monitoring conducted by CPA hereunder.
- C. The requirements of this Section shall apply to Grantee, Grantee contractors and subcontractors, and any subgrantees or subrecipients, and Grantee shall require and cause any subcontractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.
- D. Any and all of the rights granted to CPA by this Section or otherwise referred to in this Section, or duties or obligations of Grantee under this Section or otherwise referred to in this Section, may be exercised or invoked by CPA or any other entity designated by the CPA, including contractors hired by the CPA for such purpose or the United States government.

### XII. Default; Remedies; Termination

- A. **Default.** A default shall consist of one or more of the following:
- the breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement;

#### ATTACHMENT A – Draft Grant Agreement

- the expenditure of Grant funds for any use other than as provided in the Project Budget or in the approved scope of work for the Project;
  - the use of competitively awarded federal funds, other than those funds awarded under this Agreement, to support the deployment of broadband service to addresses in the Proposed Service Area;
  - the failure to commence or complete the Project by the dates set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in CPA's sole determination;
  - Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets; and/or
  - a change in Grantee's staffing capacity that adversely affects Grantee's ability to carry out the Project, in the Department's sole discretion.
- B. **Right to Cure.** If a default occurs, CPA shall give Grantee written notice of default, and Grantee shall have thirty (30) calendar days from the date of such notice to cure the default. If Grantee has not cured the default to the satisfaction of CPA by the conclusion of the 30-day period, this Agreement shall terminate at the end of the 30-day period and CPA may demand immediate repayment of the Grant. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets, CPA's right to terminate this Agreement shall be immediate, without a notice and cure period. Notwithstanding the foregoing notice and cure period set forth above, in the event that the Treasury requires the repayment of any Grant funds, Grantee shall immediately return the Grant funds to CPA.
- C. **Termination for Cause.** Termination of the Agreement for cause due to uncured default may result in the following remedies:
1. Forfeiture Grantee's right, title, or interest in or to any of the undisbursed Grant funds;
  2. Repayment Grantee of any portion of the Grant proceeds that CPA, in its sole discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by CPA in recovery proceedings; and,
  3. Repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by CPA in recovery proceedings.
  4. Disqualification of Grantee for future grant awards offered by or through the State;
- D. **Termination for Convenience.** CPA may terminate this Agreement, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Grantee. Termination for convenience may be for any reason or no reason at all.
- E. **Termination for Cause by Grantee.** Grantee may only terminate this Agreement upon written notice of the breach by CPA of any material term, condition, or provision of this Agreement, if such breach is not cured within sixty (60) days of the CPA's receipt of Grantee's written notice of breach.
- F. **Return of Unspent Funds Upon Termination.** Grantee agrees to return any remaining proceeds of the Grant to CPA upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.
- G. **Rescission.** If after making an award CPA determines that at the time of making the award a project was not eligible to receive funding for any reason, CPA may rescind the award and the grantee shall be required and agrees to return any grant funds that were awarded. CPA shall reduce the amount required to be returned under this subsection if CPA determines, in its sole discretion, that the grant funds or any portion thereof were expended in good faith.
- H. **Remedies Not Exclusive.** In addition to exercising any or all of the rights and remedies contained in this Agreement, CPA at any time may proceed to protect and enforce all rights available to CPA by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.

#### XIII. Liability.

Grantee releases CPA and the State of Texas from, and agrees that CPA and the State of Texas, shall not have any liability for, any and all suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against CPA and the State of

Texas, as a result of or in connection with the Project, except for the gross negligence or willful misconduct of CPA. This Section shall survive the term of this Agreement.

#### XIV. Indemnification

**TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAW OF THE STATE OF TEXAS, GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CPA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT, INCLUDING ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### XV. Insurance

A. **Coverages Required.** Grantee shall obtain and maintain throughout the Agreement the insurance coverages listed below:

1. **Worker's Compensation Insurance.** Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.
2. **Employer's Liability Insurance.** Coverage in the following minimum amounts:
  - Bodily Injury, \$500,000 per accident;
  - Disease, \$500,000 per employee;
  - Aggregate policy limit of \$1,000,000.
3. **Commercial Automobile Liability Insurance.** Coverage in the following minimum amounts for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Agreement:
  - \$500,000 per person;
  - \$500,000 per occurrence for bodily injury; and
  - \$1,000,000 per occurrence for property damage; or
  - \$1,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
4. **Commercial General Liability Insurance.** Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the Agreement. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Grantee's, and Contractual Liability in the minimum amounts of:
  - \$1,000,000 per occurrence for bodily injury; and
  - \$1,000,000 per occurrence for property damage; or
  - \$2,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
5. **Commercial General Liability Additional Coverage for Explosion, Collapse and Underground Hazards.** In the same amounts as the Commercial General Liability Insurance listed above.

ATTACHMENT A – Draft Grant Agreement

6. **Excess Liability Insurance (Umbrella).** Additional coverage for all liability policies required for this Agreement (excluding Worker’s Compensation and Employer’s Liability Insurance, which are not liability insurance) in an amount not less than \$1,000,000 in the aggregate.
  7. **Requirements for Subcontractors.** All requirements listed in items i.-iv. will also apply to subcontractors, subgrantees and/or subrecipients.
- B. **Minimum Insurance Rating.** The Grantee will obtain all required policies from insurers licensed, eligible or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company.
  - C. **Notices of Change.** The Grantee’s insurance policies must require the insurer or the insurer’s authorized agent to notify CPA of any cancellation, or material change, other than for non-payment, at least 30 days in advance. The Grantee’s insurance policy must require the insurer or the insurer’s authorized agent to notify CPA of any cancellation or material change due to non-payment at least 10 days in advance. These notices of changes must reference CPA contract number and be made in writing by certified mail to CPA contact at the address shown in this Agreement.
  - D. **Insurance Certificate.** No later than five (5) business days following execution of this Agreements, and on an annual basis thereafter so long as this Agreement is in force, Grantee shall furnish proof to CPA of such coverage in the form of a Certificate of Insurance from Grantee’s insurance carrier(s) indicating the required coverages. The certificate shall be addressed to CPA as the certificate holder. Grantee shall submit proof of required insurance coverage via email, referencing the purchase order number, to the following address: [contract.administration@cpa.texas.gov](mailto:contract.administration@cpa.texas.gov). Certificates must bear the contract number of this Agreement. If Grantee changes insurers, Grantee shall give CPA a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.
  - E. **Required Additional Provisions.** All policies of insurance shall include the following provisions:
    1. CPA and its officers and employees are named additional insureds to the Commercial General Liability Insurance, Excess Liability Insurance (Umbrella), and Excess Liability Insurance (Other than Umbrella);
    2. Waiver of subrogation in favor of CPA, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Agreement, except for the Professional Liability Insurance; and
    3. The Grantee’s insurance is primary insurance with respect to CPA and its officers and employees.
  - F. **Self Insurance.** Grantee must disclose on its insurance certificate if any of the coverage required under the Agreement is being satisfied with a Self-Insured Retention (SIR) and list the amount of the SIR. If Grantee is a Local Government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Comptroller.

**XVI. Notices.**

All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid, addressed as follows:

- A. Communications to CPA shall be mailed to:

Texas Comptroller of Public Accounts  
Attn: Broadband Development Office  
P.O. Box 13528  
Austin, Texas 78711-3528

With an electronic courtesy copy to: [broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov)

- B. Communications to Grantee shall be mailed to:



## **XVII. Federal Terms and Conditions**

- A. **Flowdown Requirements.** The requirements of this Part shall apply to Grantee and subcontractors. Grantee shall require and cause any subcontractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.
- B. **ARPA Requirements.** ARPA requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of Grantee. The Treasury Guidance and related Frequently Asked Questions clarify and provide guidance as to the applicable C.F.R. provisions relating to internal controls, subrecipient monitoring and management, and audit requirements that apply to CPA and thereby sub awardees or contractors receiving such funds through this Agreement. These requirements are therefore considered legally binding and enforceable under this Agreement. CPA reserves the right to pursue any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds, or recoupment as may be necessary to ensure compliance with ARPA requirements. Grantee’s obligations in regard to ARPA requirements include but are not necessarily limited to:
1. The ARPA;
  2. The Treasury Guidance, including any updates or changes thereto;
  3. Applicable provisions of Federal Uniform Guidance (2 C.F.R. part 200), including but not limited to:
    - a. 2 C.F.R. § 200.216 (prohibition on certain telecomm. and video surveillance services and equipment);
    - b. 2 C.F.R. § 200.303 (regarding internal controls);
    - c. 2 C.F.R. § 200.322 (domestic preferences for procurements);
    - d. 2 C.F.R. § 200.323 (procurement of recovered materials);
    - e. 2 C.F.R. §§ 200.330 through 200.332 (regarding subrecipient monitoring and management);
    - f. 2 C.F.R. § 200.471 (telecommunication costs and video surveillance costs); and,
    - g. 2 C.F.R. part 200, Subpart F (regarding audit requirements)
  4. Any other specific grant award requirements set forth in any grant agreement or other similar document between the State of Texas and federal government governing the use of ARPA funds or applicable to Projects receiving ARPA funds.
- C. **Necessary and Allowable Expenditures.** Grantee represents and warrants that the funds from this grant shall only be used for Allowable Expenditures as defined in this Agreement.
- D. **Internal Controls and Single Audit Act, SubPart F.** Funds allocated in connection with the Agreement are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332. To the extent required to comply with 2 C.F.R. 200, Subpart F - Audit Requirements, Grantee shall complete an audit at the end of the Grantee’s fiscal year ending after December 30 each year, if required.
1. ARPA funds distributed hereunder count toward the \$750,000 or more threshold applicable to federal awards spent during the fiscal year, which triggers 2 C.F.R. part 200, subpart F regarding audit requirements for nonprofits or governmental entities. Nonprofit and local government subrecipients that expend \$750,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200. A copy of the final audit report shall be submitted to CPA if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by CPA. The audit report, if required, shall include a schedule of the prior year’s questioned costs (to the extent applicable), along with a response to the current status of the prior year’s questioned costs. Copies of all management letters written as a result of the audit shall also be forwarded to CPA within one (1) month of the time of receipt by the Grantee accompanied by an action plan, if applicable, for each. Grantee shall provide

## ATTACHMENT A – Draft Grant Agreement

CPA with a copy of any written audit findings or reports, whether in draft or final form, required to be submitted to CPA per the criteria above within two (2) Business Days following receipt by the Grantee. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to CPA that the required audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by CPA. See the OMNI Circular, Section 200.330, Subrecipient and Contractor Determinations for a discussion of subrecipient versus contractor (vendor) relationships.

2. These audit requirements do not generally apply to for-profit business; however, CPA remains responsible for ensuring compliance with the Agreement and ARPA requirements through the implementation of audit and monitoring controls pursuant to 2 C.F.R. 200.501(h). These requirements are addressed in the Project certification, monitoring, review, status, and recoupment provisions in Parts VI. (Project Commencement and Completion), VIII. (Payment), IX. (Records), and X. (Right to Audit).
- E. **Cost Principles.** To the extent applicable, in addition to any other terms, conditions, restrictions, or limitations applicable to Allowable Expenditures or reimbursable expenses or costs under the Agreement, the costs or expenses charged, paid, or reimbursed under the Agreement shall be determined as allowable under the cost principles detailed in 2 CFR 200 Subpart E – Cost Principles. To the extent that indirect costs qualify as Allowable Expenditures under the Agreement and Grantee does not have an indirect cost rate, the de minimis rate shall apply.
- F. **Restriction on Leveraging Funding.** No portion of the funds received under the Agreement may be used for the purpose of obtaining additional federal funds under any other law of the United States, except if authorized under that law.
- G. **Federal Award Management System.** Unique entity identifier and System for Award Management (SAM)—Required. Grantees must normally (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Proof of SAM registration and corresponding account information must be provided by Grantee before any payments will be made under the Agreement.
- H. **Recovery of Funds.** If a State or federal audit takes exception to the Project(s) provided under the Agreement for which federal funds have been paid or reimbursed, or if federal funds are deferred and/or disallowed as a result of any audits (or expended in violation of the laws applicable to the expenditure of such funds, including ARPA Requirements), Grantee will be liable to CPA and the State or Texas (or any other applicable governmental entity, including the United States Department of Treasury) for the full amount of any such payment, reimbursement, or any claim disallowed (or the amount of funds expended in violation of Applicable Laws or requirements) and for all related penalties incurred. If CPA or any federal governmental entity concludes that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable under the Agreement, Grantee will be liable to CPA and the State of Texas (or any other applicable governmental entity, including the United States Department of Treasury) for such cost. Grantee shall pay to CPA or State of Texas (or any other applicable governmental entity, including the United States Department of Treasury) all amounts for which the Grantee is liable under this section within ten (10) business days of receiving a written demand or written notice. CPA may withhold any payment under the Agreement if Grantee fails to timely make any payment required by this Section. The requirements of this Section shall apply to Grantee and subcontractors. Grantee shall require and cause any subcontractor or subgrantee or subrecipient used by Grantee in connection with the Agreement to agree to and be subject to and bound by such terms and provisions.
- I. **Required Certifications.** Each of the following required certifications set forth below is a material representation of fact upon which reliance is placed by CPA prior to distributing federal funds. In addition to any criminal penalties authorized by the Texas Penal Code that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, a Grantee that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect shall be obligated to repay CPA the entire amount

## ATTACHMENT A – Draft Grant Agreement

of any grant funds previously distributed by CPA to Grantee under the Agreement. By signing the Agreement, Grantee's authorized representative who must be expressly authorized to make the below certifications on behalf of Grantee, under penalty of perjury and pursuant to the laws of the State of Texas, certifies and attests to Grantee's compliance with the following. The following certifications shall apply to Grantee and subcontractors. Grantee shall require and cause any subcontractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications. Grantee may be required to provide any information identified or required in connection with the below certifications as a precondition to receiving funds under the Agreement.

1. *Lobbying, Suspension and Debarment Drug Free Workplace.* Grantee must complete the form provided as Attachment A, containing certifications regarding lobbying (required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. § 1352), suspension and debarment (required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. part 19) and drug free workplace (required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 [Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.]).
2. *Certification Regarding Environmental Tobacco Smoke.* This certification is required by Public Law 103-227, also known as the Pro-Children Act of 1994 ("**Pro-Children Act**"). The Pro-Children Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The Pro-Children Act also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The Pro-Children Act does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. In accordance with these Applicable Laws, Grantee certifies and agrees to the following with respect to it and its principles, as applicable. Grantee certifies that it will comply with the requirements of the Pro-Children Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act.
3. *Assurance of Compliance Nondiscrimination in Federally Assisted Programs & Equal Opportunity.* This certification requires Grantee to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." To the extent required by these Applicable Laws, Grantee certifies during the performance of this Agreement that:
  - a. The Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation;

ATTACHMENT A – Draft Grant Agreement

- and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c. The Grantee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Grantee's legal duty to furnish information.
  - d. The Grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - e. The Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - f. The Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - g. In the event of the Grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Grantee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - h. The Grantee will include the portion of the sentence immediately preceding paragraph 9.5.1 and the provisions of paragraphs 9.5.1 through 9.5.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.
  - i. The Grantee further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the Grantee so participating is a State or local government, the above equal opportunity clause is not applicable to any agency,

ATTACHMENT A – Draft Grant Agreement

- instrumentality or subdivision of such government which does not participate in work on or under the contract.
- j. The Grantee agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Grantees and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
  - k. The Grantee further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
4. *Americans with Disabilities Act*. Grantee certifies that it shall comply with Subtitle A, title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Department of Justice implementing regulation, 28 C.F.R. part 35.
  5. *Equal Treatment for Faith Based Organizations*. Grantee shall comply with any applicable requirements of 28 C.F.R. part 38, governing “Equal Treatment for Faith Based Organizations.” The Equal Treatment Regulation provides in part that grant awards may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Grant recipients, including contractors may still engage in inherently religious activities, but such activities must be separate in time or place from the grant funded program, and participation in such activities by individuals receiving services from the Grantee or a subgrantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs funded through grant funding are not permitted to discriminate in the provision of services on the basis of a beneficiary’s religion. Notwithstanding the foregoing, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See [http://www.ojp.gov/about/ocr/equal\\_fbo.htm](http://www.ojp.gov/about/ocr/equal_fbo.htm).
  6. *Immigration and Naturalization Service*. Grantee certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Grantee Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.
  7. *Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708)*. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). To the extent applicable, Grantee must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. 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 requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

ATTACHMENT A – Draft Grant Agreement

8. *Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Grantee agrees to comply with these Applicable Laws, violations of which must be reported to CPA and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
9. *Federal Funding Accountability and Transparency Compliance.* This certification is required by the Federal Funding Accountability and Transparency Act (“**FFATA**”). FFATA requires recipients of individual federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. In accordance with 2 C.F.R. part 170 (Reporting Subaward and Executive Compensation Information), Successful respondent must complete and submit to CPA the FFATA Form included with this Agreement as Attachment C.
10. *Davis-Bacon Act/Copeland Act.* When required by Federal program legislation,<sup>2</sup> all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors/grantees must be required to 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, contractors/grantees must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract/grant or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts/grants must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor/grantee or subrecipient must be 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
11. *Compliance with Applicable Environmental Laws.* Grantee certifies that it completed Treasury’s Coronavirus Capital Projects Fund Environmental Checklist as part of its Application and, as applicable, further represents, warrants, and covenants that it will at all times comply with the following:
  - a. The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.);
  - b. Section 307 of the Coastal Zone Management Act (CZMA) of 1972, as amended (16 U.S.C. 1451 et seq.) and 15 C.F.R. Part 930;
  - c. Section 7 of the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 et seq.);
  - d. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) of 1976 (16 U.S.C. 1801 et seq.);
  - e. The Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 31 §§ 1361–1362, 1371-1389, 1401-1407, 1411-1418, 1421-1421h, 1423-1423h);

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<sup>2</sup> Pursuant to guidance issued as late as September 2021, the U.S. Treasury has conveyed that the Davis-Bacon Act does not directly apply to projects funded solely by CPF funds. See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions § 6.17 (available at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> ).

ATTACHMENT A – Draft Grant Agreement

- f. Federal Water Pollution Control Act (the “Clean Water Act” or CWA) of 1948, as amended (33 U.S.C 1251 et seq.);
- g. The Clean Air Act (CAA) of 1967, as amended (42 U.S.C §§ 7409, 7410, 7502-7514, 7571-7574);
- h. The National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 3001 et seq.);
- i. The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 et seq.);
- j. Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. 401 et seq.);
- k. The Resource Conservation and Recovery Act (RCRA) of 1976 (42 U.S.C. 6901 et seq.);
- l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1982, as amended (42 U.S.C. 9601 et seq.);
- m. The Wild and Scenic Rivers Act (WSRA) of 1968, as amended (16 U.S.C. 1271 et seq.);
- n. The Safe Drinking Water Act (SDWA) of 1974, as amended (42 U.S.C. §300f et seq.);
- o. The Farmland Protection Policy Act (FPPA) of 1981 (7 U.S.C 4201 et seq.);
- p. E.O. 11988, as amended by E.O. 13690 – Floodplain Management;
- q. E.O. 11990 – Wetland Protection;
- r. E.O. 12898 – Environmental Justice;
- s. E.O. 13089 – Coral Reef Protection;
- t. E.O. 13112 – Invasive Species; and
- u. E.O. 13186 – Responsibilities of Federal Agencies to Protect Migratory Birds.

**XVIII. Certifications, Representations, and Warranties.**

Each of the following required certifications, representation, and warranties set forth below is a material representation of fact upon which reliance is placed by CPA prior to distributing federal funds. In addition to any criminal penalties authorized by the Texas Penal Code that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, a Grantee that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect shall be obligated to repay CPA the entire amount of any grant funds previously distributed by CPA to Grantee under the Agreement. By signing the Agreement, Grantee’s authorized representative who must be expressly authorized to make the below certifications on behalf of Grantee, under penalty of perjury and pursuant to the laws of the State of Texas, certifies and attests to Grantee’s compliance with the following. The following certifications shall apply to Grantee and its subcontractors or subgrantees or subrecipients. Grantee shall require and cause any subcontractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications. Grantee may be required to provide any information identified or required in connection with the below certifications as a precondition to receiving funds under the Agreement.

- A. Grantee certifies that the acceptance of the Grant and the entering into of the Agreement have been duly authorized, executed, and delivered by Grantee, and are the valid and legally binding acts and agreements of Grantee.
- B. Grantee certifies that it is duly organized and validly existing under the laws of the jurisdiction of which Grantee is a part and has all the requisite power and authority to enter into and carry out the transactions contemplated by this Agreement, including, but not limited to, legal capacity and authority to own and operate the Project, to enter into contracts, and to otherwise comply with applicable statutes and regulations.
- C. Grantee represents and warrants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, and intended outcomes of any Project(s) to be delivered hereunder, and that any such Project(s) shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.
- D. Grantee represents, warrants, and covenants that the Project(s) will at all times meet, conform to and comply with: (1) this Agreement; (2) any and all representations or assurance made, directly or implicitly, in the Application; and (3) Applicable Laws.



ATTACHMENT A – Draft Grant Agreement

- E. Grantee represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State or any department, agency, office, or any other governmental entity, unit, or subdivision thereof, including but not limited to the payment of taxes and employee benefits. Grantee represents that its accounting system is adequate to comply with this Agreement.
- F. Grantee certifies that prior to commencement of the Project, Grantee has obtained or will obtain all federal, state, and local government approvals, permits, and licenses that may be required to accomplish the Project and the scope of work.
- G. Grantee represents, warrants, and covenants that all Projects(s) be performed or provided under this Agreement shall be performed or provided in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of this Agreement and the highest standards of performance applicable to service providers in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as CPA notifies Grantee of any aspects of any Project(s) performed in violation of this standard, Grantee shall re-perform the relevant aspects of the Project(s) at no additional cost to CPA or impacted consumers, such that the Project(s) are rendered in the above-specified manner, or if the Grantee is unable to perform the Project(s) as warranted, Grantee shall reimburse the CPA any fees or compensation paid to Grantee for the unsatisfactory performance.
- H. Grantee certifies that it is aware it will not be eligible to submit a future application under this Program for another project within the awarded Proposed Service Area until the construction related to this Grant is complete and the Grant is fully closed out, or two years, whichever is later.
- I. Grantee certifies the Proposed Service Area is in an eligible geographic area that meets the definition of Government Code Section 490I.0105(a)(1) at the Effective Date.
- J. Grantee certifies that it has not been designated to receive federal or state funding to initiate activity related to construction of broadband infrastructure in the Proposed Service Area within 24 months of the publication of the Notice.
- K. Grantee certifies that it shall comply with all applicable laws, regulations, terms, and conditions established by Treasury, CPA and the State with respect to the use of Grant funds.
- L. Grantee represents and warrants that it will include the following clause in the award documents for every subaward and subcontract and will require subrecipients and contractors to certify accordingly: “Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.”
- M. Grantee represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Grantee represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Grantee, the more restrictive requirement applies.
- N. Grantee represents and warrants that it will maintain oversight to ensure that subcontractors/subrecipients perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- O. If Grantee has access to any state computer system or database, Grantee shall complete cybersecurity training and verify completion of the training program to CPA pursuant to and in accordance with Section 2054.5192 of the Government Code.
- P. Grantee acknowledges it has been advised that the dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.
- Q. Grantee certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.



## ATTACHMENT A – Draft Grant Agreement

- R. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Grantee certifies that it is not (1) the executive head of CPA, (2) a person who at any time during the four years before the date of the Agreement or grant was the executive head of CPA, or (3) a person who employs a current or former executive head of CPA.
- S. Grantee represents and warrants that it will comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- T. Grantee represents and warrants that payments to Grantee and Grantee's receipt of appropriated or other funds under the contract or grant are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code which restrict lobbying expenditures.
- U. If the Grantee is a governmental entity, Grantee represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special or called meetings of a governmental body to be open to the public, except as otherwise provided by law.
- V. Grantee represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity which performs political polling.
- W. Grantee represents and warrants that it will submit timely, complete, and accurate reports in accordance with the grant and maintain appropriate backup documentation to support the reports.
- X. Grantee represents and warrant that it will monitor the activities of any subrecipient as necessary to ensure that subawards are used for authorized purposes, in compliance with applicable statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.
- Y. The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects.
- Z. Pursuant to Section 2271.002 of the Texas Government Code, Grantee certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Respondent shall state any facts that make it exempt from the boycott certification in its Offer.
- AA. Pursuant to Section 2274.0102 of the Texas Government Code, Grantee certifies that neither it nor its parent company, nor any affiliate of Grantee or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
- BB. If Grantee is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Grantee verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Grantee does not make that verification, Grantee must so indicate in its Application and state why the verification is not required.
- CC. If Grantee is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Grantee verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Grantee does not make that verification, Grantee must so indicate in its Application and state why the verification is not required.
- DD. All representations, warranties, and covenants made by Grantee in this Agreement, whether or not this Agreement specifically denominates Grantee's promise as a warranty or whether the warranty is created only by Grantee's affirmation or promise, or is created by a description of the Project(s) or related outcomes to be provided or that will result, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand those warranties. Grantee's warranties provided in this Section XVIII are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to CPA, the State of Texas, and any and all consumers intended to benefit from such warranties, this Agreement, or the Project(s) resulting herefrom.

## **XIX. General Terms and Conditions**

ATTACHMENT A – Draft Grant Agreement

- A. **Time Limits.** Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.
- B. **No Waiver.** This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CPA or otherwise available to CPA or Grantee. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to CPA or Grantee under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. CPA or Grantee do not waive any privileges, rights, defenses, or immunities available to them by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. The modification of any privileges, rights, defenses, remedies, or immunities available to CPA or Grantee must be in writing, must reference this Section, and must be signed by CPA and Grantee to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to CPA shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.
- C. **No Liability upon Termination.** If this Agreement is terminated for any reason, CPA and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.
- D. **Independent Contractor Status.** Grantee, subcontractors, and Grantee Personnel are independent contractors and shall not be construed as, nor hold themselves out as, an employee or agent of the CPA or the State of Texas. Grantee or subcontractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Grantee Personnel to perform and complete the Project(s). Grantee shall be responsible for paying any taxes (including sales taxes, excise taxes, use taxes, income taxes or property taxes) incurred by Grantee in the performance of this Agreement.
- E. **Third Party Beneficiaries.** Except as otherwise expressly stated herein, there are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit CPA, the State of Texas, CPA's respective successors and permitted assigns, the federal government, and Grantee.
- F. **Obligations of Joint Entities.** If Grantee is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- G. **Limitation on Authority; No Other Obligations.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. Grantee shall have no authority to act for or on behalf of CPA or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Grantee may not incur any debts, obligations, expenses or liabilities of any kind on behalf of CPA.
- H. **No Other Benefits.** Grantee shall have no exclusive rights or benefits other than those set forth herein.
- I. **Force Majeure.** Except as otherwise provided, neither Grantee nor CPA shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, pandemic, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.
- J. **Public Information Act.** Notwithstanding any provisions of this Agreement to the contrary, Grantee understands that CPA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code), as interpreted by judicial opinions and opinions of CPA and of the Texas Attorney General. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of

ATTACHMENT A – Draft Grant Agreement

the Texas Government Code, Grantee is required to make any information created or exchanged with the State of Texas pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific formats acceptable to CPA include Word, Excel, and pdf. All Applications become the property of CPA and may be subject to release to any requester under the provisions of the Texas Public Information Act. After the award and execution of this Agreement, Applications submitted shall be presumed to be public information and subject to disclosure unless a such information is conspicuously marked as confidential and specific exception to disclosure under the Texas Public Information Act applies. CPA advises each Grantee to consult with its legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or other proprietary information. CPA assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Grantee.

- K. **Debts or Delinquencies to State.** Grantee acknowledges and agrees that, to the extent Grantee owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Grantee is otherwise owed under or related to this Agreement may be applied by CPA of Public Accounts toward any debt or delinquent taxes Grantee owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Grantee owes any such debt or delinquency. Grantee shall comply with rules adopted by CPA under Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas. Furthermore, Grantee acknowledges and agrees that any obligation to refund or return grant funds based on termination or breach of this Agreement entered into by Grantee and CPA creates “a debt to the state” for purposes of Section 403.055 of the Texas Government Code. Grantee further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the Grantee and CPA. CPA agrees that it shall provide Grantee the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by CPA. Applicant’s failure to return any amount owed upon conclusion of CPA’s administrative review process shall allow CPA to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing Grantee’s compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by Grantee under the terms of this Agreement.
- L. **Local Government Waiver of Sovereign Immunity.** If Grantee is a “local government entity” as defined under Section 271.151 of the Texas Local Government Code, Grantee acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to Grantee, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.
- M. **Actual or Potential Conflicts of Interest Prohibited.** Grantee hereby represents and warrants that it and its personnel, including the Grantee’s subcontractors, have no actual or potential conflicts of interest in performing this Agreement and related activities throughout the term of this Agreement and the performance of this Agreement would not create any appearance of impropriety. This representation, warranty, and certification includes all past (defined as within the two (2) calendar years prior to the deadline for submission of applications) and present contractual, business, financial, or personal relationships between Grantee and its subcontractors, if any, and between the Grantee and CPA. For purposes of this provision, “personal relationship” is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections. “Family relationship” is defined as a relationship within the third degree of consanguinity or second degree of affinity as set forth in Chapter 573 of the Texas Government Code. The connections are relevant if a reasonable person could expect the connection to diminish the Grantee’s independence of judgment or effectiveness in the performance of this Agreement. The Grantee shall at all times comply with the conflict-of-interest provisions under Chapter 171 of the Local Government Code and Chapter 573 of the Texas Government Code.
- N. **Report of Fraud, Waste and Abuse.** Grantee represents and warrants that it has read and understood and shall comply with CPA’s Anti-Fraud Policy located on CPA’s website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Agreement. If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by

## ATTACHMENT A – Draft Grant Agreement

the Grantee or by a client or contractor of the Grantee may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Grantee, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Grantee. See <http://sao.fraud.state.tx.us/>.

- O. **Media Releases.** Grantee shall not use CPA's name, logo or other likeness in any press release, marketing material or other announcement without CPA's prior written approval. CPA does not endorse any vendor, commodity or service. Grantee is not authorized to make or participate in any media releases or public announcements pertaining to this Agreement or the Grant without CPA's prior written consent, and then only in accordance with explicit written instructions from CPA.
- P. **CPA and BDO Signs.** If requested by CPA, Grantee agrees to display one or more signs identifying the Project as a recipient of financial assistance under the Program if CPA furnishes such sign(s). Grantee shall be responsible for the installation of the signs. In the event that a license, permit, or other permission is required from a local jurisdiction in order to display said signs, Grantee agrees to pay all requisite license or permit fees.
- Q. **Amendment.** Other than as set forth in the Agreement, this Agreement may not be amended except by a written instrument executed by CPA and Grantee.
- R. **Execution.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- S. **Assignment.** This Agreement may not be assigned without the prior written approval of CPA and the Department.
- T. **Governing Law and Venue.** This agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this agreement is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute that directly names or otherwise identifies its applicability to the contracting state agency.
- U. **Further Assurances and Corrective Instruments.** Grantee agrees that it will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.
- V. **Technical Assistance.** If the Project is not being completed or performed in a manner satisfactory to CPA, Grantee has violated a provision of this Agreement, prior to CPA declaring a default, CPA may request that Grantee accept technical assistance CPA feels is necessary for the Project to proceed in a manner acceptable to CPA.
- W. **Survival of Terms.** Termination of the Agreement for any reason shall not release Grantee from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding ongoing Project conformance with specifications, confidentiality, indemnification, records, audit, property rights, dispute resolution, and reimbursement verification.
- X. **Entire Agreement.** This Agreement, and its accompanying attachments, contain the entire agreement between the parties relating to the rights granted and the obligations assumed in it and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

## XX. Signatories

ATTACHMENT A – Draft Grant Agreement

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**Texas Comptroller of Public Accounts**

**Grantee**

By: \_\_\_\_\_

By: \_\_\_\_\_

Lisa Craven  
Deputy Comptroller

Name  
Title

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

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

**ATTACHMENT A**  
**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER**  
**RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, “New Restrictions on Lobbying,” and 34 CFR Part 85, “Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).” The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering

into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period receding this application/proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application/proposal.

### 3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

#### ***ALTERNATE 1 (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)***

(1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The Sub-recipient's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place

not later than five calendar days after such conviction;

- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
  - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Check if there are workplaces on file that are not identified here.

**ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)**

- (1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

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**4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT**

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

*Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.*

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As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended [“Simpson-Craig Amendment,” see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)



\_\_\_\_\_  
*As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.*

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Pre/Award Number and/or Project Name

\_\_\_\_\_  
Printed Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT B  
DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action: _____</p> <p>a. contract</p> <p>b. grant</p> <p>c. cooperative agreement</p> <p>d. loan</p> <p>e. loan guarantee</p> <p>f. loan insurance</p>	<p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application</p> <p>b. initial award</p> <p>c. post award</p>	<p>3. Report Type: _____</p> <p>a. initial filing</p> <p>b. material change</p> <p>For Material Change Only:</p> <p>year _____ quarter _____</p> <p>date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Name _____</p> <p>Address _____</p> <p>_____ Prime _____ Subawardee</p> <p>Tier, if known: _____</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____</p>
<p>6. Federal Department/Agency: _____</p>	<p>7. Federal Program Name/Description CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, If known: _____</p>	<p>9. Award Amount, if known: _____</p>	
<p>10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>	<p>10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI): _____</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ _____ actual</p> <p>_____ Planned</p>	<p>12. Form of Payment (check all that apply):</p> <p>a. cash _____</p> <p>b. in-kind; specify: nature _____</p> <p>value _____</p>	
<p>13. Type of Payment (check all that apply):</p> <p>_____ a. retainer _____ c. commission _____ e. deferred</p> <p>_____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: _____</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure</p>	<p>Authorized Representative: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Telephone: _____ Date: _____</p>	

**ATTACHMENT C  
Federal Funding Accountability and Transparency Act (FFATA) Form**

<b>Federal Funding Accountability and Transparency Act</b>
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This form is required to be completed by the subrecipient for contracts funded wholly or partially with federal funds by the Texas Comptroller of Public Accounts (CPA). In accordance with 2 Code of Federal Regulation (CFR) Part 170 and the Federal Funding Accountability and Transparency Act, as amended, CPA must collect subrecipient information for transactions \$30,000 or greater.

**Information completed by CPA Program Area:**

CPA Contract No.	
------------------	--

**Information completed by Subrecipient:**

Legal Name of Entity	
Unique Entity Identifier (UEI)	

Exemption from reporting compensation information	
* <input type="checkbox"/> Please check box for exemption from reporting if in the preceding fiscal year either of the following bulleted items applied:	
<ul style="list-style-type: none"> <li>• Recipient received less than 80% of its annual gross revenues in Federal awards [federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements]; and the recipient received less than \$25,000,000 in annual gross revenues from Federal awards. OR</li> <li>• the public has access to information about compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.</li> </ul>	

Total Compensation and Names of Top Five Executives (if applicable)	
<b>Name</b>	<b>Compensation Amount</b>

Subrecipient Responsible Party		
Title	Print Name	Signature/Date

## Federal Funding Accountability and Transparency Act

This form is required to be completed by the subrecipient for contracts funded wholly or partially with federal funds by the Texas Comptroller of Public Accounts (CPA). In accordance with 2 Code of Federal Regulation (CFR) Part 170 and the Federal Funding Accountability and Transparency Act, as amended, CPA must collect subrecipient information for transactions \$30,000 or greater.

### **FFATA Form Instructions**

#### **Information completed by CPA Program Area:**

This field should be completed by CPA area.

- **CPA Contract No.** – Enter the Contract Number

#### **Information completed by Subrecipient:**

Each field requires a response by the subrecipient.

- **Legal Name of Entity** – Enter name of the subrecipient organization that corresponds with subrecipient's Unique Entity Identifier (UEI) as it appears in the System for Award Management (SAM) profile, [www.sam.gov](http://www.sam.gov).
- **UEI** – Enter subrecipient's organization's 12-digit UEI as it appears in its SAM Profile. Effective April 4, 2023, the UEI replaced the DUNS Number for the purpose of completing this form. To find your UEI or request a UEI, visit SAM.gov.
- **Total Compensation and Names of Top Five Executives (if applicable)** – As defined in 2 CFR 170.110, you must report Executive Compensation from your preceding fiscal year unless any of the exemption criteria apply.
- **Subrecipient Responsible Party** – The person completing the form should provide title, printed name, signature, and date the form was signed.

**Return completed and signed form to CPA Contract Manager.**

**ATTACHMENT D  
APPLICATION**

Grantee's Application dated [insert date], is incorporated by reference for all purposes into this Agreement as Attachment D of this Agreement.

**ATTACHMENT E  
PROJECT BUDGET**

Grantee's Project Budget dated [insert date], is incorporated by reference for all purposes into this Agreement as Attachment E of this Agreement.

**ATTACHMENT F**  
**PROPOSED SERVICE AREA MAP**

Grantee's Proposed Service Area map dated [insert date], is incorporated by reference for all purposes into this Agreement as Attachment F of this Agreement.

**ATTACHMENT G  
CERTIFICATION REGARDING EXEMPTION FROM STANDARD MINIMUM NETWORK  
REQUIREMENTS**

**Template for Grantee's Certification**

*Note: The Grantee shall submit the following certification on company letterhead. Failure to provide a certification with sufficient justification to support divergence from the U.S. Treasury's symmetrical 100 up/down standard will result in the Grantee being required to comply with the 100 up/down standard in order to be eligible for any reimbursement funding.*

Project Title: [Insert title]

Partner(s): [Insert name]

This is to certify, to the best of undersigned's knowledge, professional experience, and belief, that the above-referenced broadband investment project cannot practically deliver service speeds of 100 Mbps down and 100 Mbps up, by reason of the following (select at least one):

- Geography
- Topography
- Excessive Costs

Rationale (this section must be completed; additional pages may be attached if needed):

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Grantee understands that if granted an exemption from the 100 Mbps download speeds and 100 Mbps upload speeds standard, this project will nonetheless be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances.

Grantee further acknowledges that this certification is a material representation of fact upon which reliance was placed by the State of Texas in approving either its or the above-referenced Local Jurisdiction Partner's application for funding regarding this project.

\_\_\_\_\_  
Authorized Signature for Grantee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title



## [BOOT APPLICATION QUESTIONS](#)

The BOOT application is divided into eight sections as outlined below. Applicants should review the below to identify the information and narrative responses that should be included in their application. In addition to providing answers and narrative responses to application questions, applicants may be required to upload additional information using templates provided by the office. Applicants can find the templates on our website at:

<https://comptroller.texas.gov/programs/broadband/apply/boot/>

Applicants are responsible for providing complete and comprehensive answers to each question or request for narrative responses. While BDO may request additional information if needed, applicants should aim to provide detailed information that will allow the office to evaluate the application and make an award decision without the need to request additional information from an applicant.

Application responses will be incorporated into any resulting award agreement and applicants will be expected to adhere to commitments made in their applications.

***Applicants should note that application questions are subject to change before the online Grant Portal opens for applications.***

The online grant portal is expected to be available on the first day grant applications may be accepted. Applicants will need to register for an account and submit their applications electronically.

### **SECTION 1 – APPLICANT INFORMATION**

- Project Name
- Project Overview: provide a brief, high-level, introductory overview of the project. The narrative should briefly answer “who wants to do what” and “how”? (2,000 character limit)
- Applicant Contact Information
  - Organization Legal Name
  - DBA
  - Mailing Address
  - Website URL
  - Organization Type
- Identification Numbers
  - UEI Number (12 characters)
  - Federal Employer ID Number (FEIN) (9 digits)
  - D-U-N-S (9 digits)
  - Texas Taxpayer ID (11 digits)
  - Centralized Master Bidder List (CMBL) Vendor ID (14 digits)

## ATTACHMENT B - Draft Application Questions

- Primary and Secondary Contact Information
  - First and last name
  - Phone
  - Email
  - Title
- Project Administration Contact
  - First and last name
  - Phone
  - Email
  - Title
- Reporting Contact
  - First and last name
  - Phone
  - Email
  - Title
- Partnerships (only for applications that include partnerships)
  - If the application proposes partnerships, list the following for each partner's company or organization:
    - Organization Type
    - Name
    - Address
    - FEIN
    - Amount
- Upload documentation verifying the existence of the partnership.

### **SECTION 2 - ELIGIBILITY**

- BOOT Program Funding Request (\$)
- Total Project Cost (\$)
- Expected Date to Begin Construction
- Expected Date of Completion
- Expected Date of Service Delivery
- Five Year Service Commitment: For awarded projects, applicants will be required to commit to offering broadband service to proposed addresses for a minimum five-year period after project completion. Does applicant understand and agree with this requirement? (Yes or No)
- Existing Service: All addresses included in a proposed project must not have access to broadband service with speeds at or greater than 100 megabits per second (Mbps) download and 20 Mbps upload (100/20 Mbps) on or before the proposed start date of the proposed project. Does applicant certify it will not expend any project funds for any address that does not meet this requirement? (Yes or No)
- Designated Area: All addresses included in a proposed project must be located in one or more contiguous designated areas that the Comptroller has identified are eligible to receive funding under the program. Does the applicant certify that all addresses included in the proposed project are located within eligible areas? (Yes or No)

## ATTACHMENT B - Draft Application Questions

- Last Mile Connectivity: Will all the addresses identified for this proposed project be delivered last-mile connectivity by the conclusion of this proposed project? (Yes or No)
- Previous Federal Funding: Does the applicant certify that, to the best of applicant's knowledge, the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area(s) selected for this project? (Yes or No).
- Complete and upload Treasury's Coronavirus Capital Projects Fund Environmental Checklist: This is a reference document that lists environmental laws that may apply to any eligible project. If awarded, the applicant will be responsible for any next steps to comply with any applicable law related to the proposed project. The checklist can be found on Treasury's Capital Projects Fund website or it can be provided by requesting it directly from the Texas Broadband Development Office ([broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov)).
- Texas Tax and Reporting Compliance: Does applicant certify that applicant and all materially participating partners are current on all tax and reporting requirements with the Texas Comptroller of Public Accounts? (Yes or No)
- Board of Advisors: In accordance with Texas Government Code §490I.0110(i), a person who is professionally affiliated with a person serving as a member of the board of advisors is not eligible for funding from the BDO. Does the applicant attest that neither applicant nor any employee of applicant significantly participating in the award process is professionally affiliated with a member of the BDO Board of Advisors? (Yes or No)
- Access to Other Providers: For awarded projects, applicants will be required to commit to offering non-discriminatory access to and use of its proposed network on a wholesale basis to other internet service providers seeking to provide broadband service to end-user locations at just and reasonable wholesale rates for the useful life of the subsidized network assets. Does applicant understand and agree with this requirement? (Yes or No)
- SWIC Approval: If the proposed project uses radio communications equipment such as Citizens Broadband Radio Service (CBRS), which are private LTE radios [NITRO], or in-building Distributed Antenna Systems (DAS) to provide radio and wireless coverage, has the applicant received written approval from the Statewide Interoperability Coordinator (SWIC) Office? (Yes or No))
- NDAA Compliance: Does the applicant certify that the proposed project will be carried out in ways that comply with applicable federal laws, including the 2019 National Defense Authorization Act (NDAA), and specifically NDAA requirements contained within 2 C.F.R. Part 200 - 2 C.F.R. 200.216 and 2 C.F.R. 200.471, among other requirements? (Yes or No)
- FCC Reporting Compliance: Has the applicant complied with the Federal Communications Commission's (FCC) rules and regulations, including timely filing of FCC Form 477 and Broadband Deployment Accuracy and Technological Availability (DATA) Act submissions, as required during the most recent reporting period? (Yes or No)
- BDO Reporting Compliance: If the applicant is a broadband provider or in a partnership that includes a broadband provider, has the applicant reported mapping data information to BDO as requested by the office under Government Code Section 490I.0105? (Yes or No)
- Minimum Service Speed: Does the proposed project ensure delivery of at least 100/100 Mbps to all addresses to be serviced by the project? (Yes or No)
  - Exemption from Standard Minimum Network Requirements (if applicable): If the proposed project cannot practically deliver service speeds of at least 100 Mbps down

## ATTACHMENT B - Draft Application Questions

and 100 Mbps up (100/100), the applicant must submit a signed engineering certification on company letterhead requesting an exemption from minimum network requirements. The applicant must submit the request with this application form and will not be permitted to request an exemption under any circumstances after notice of award. Failure to provide a certification with sufficient justification to support divergence from the 100/100 standard will result in immediate ineligibility for funding.

- ACP Participation: For awarded projects, applicant will be required to participate in the FCC's Affordable Connectivity Program (ACP) or any successor for as long as the BOOT-funded broadband infrastructure is in use. Does applicant understand and agree with this requirement? (Yes or No).
- Low-Cost Option: Will the applicant offer an unbundled, universally available, low-cost option with a minimum of 100/20 Mbps with no data caps for as long as the BOOT-funded broadband infrastructure is in use? (Yes or No)

### **SECTION 3 – EXPANSION OF BROADBAND SERVICE**

- Overview of Proposed Geographic Area to be Served: Briefly describe the geographic area to be covered by the project and include boundaries, i.e. 'The project will be located in the northwest corner of Hayes County off US-290 mostly in Henley'. (250 character limit)
- Map: Provide a map of the project area, including all project area boundaries.
- Address List: Provide a list of addresses to be served by the project using the template generated. This list will be open to a 30-day public challenge. Applicants can email BDO ([bdo.map@cpa.texas.gov](mailto:bdo.map@cpa.texas.gov)) to get access to the applicant map for downloading address lists.
- Existing Providers: List any known existing providers in the proposed project area and the speeds offered by other providers. Describe your outreach efforts and sources used to identify existing providers. (1,200 character limit)
- Speed Improvements (template provided by BDO)
- Provide the total number of unserved broadband serviceable locations within every eligible designated area that the proposed project area includes.
- Provide the total number of all broadband serviceable locations within every eligible designated area that the proposed project area includes.

### **SECTION 4 – PROJECT PLAN FEASIBILITY**

- Access Network Type:
  - Wireless – LTE ,5G, Microwave
  - Wireline fiber – GPON etc.
  - Wireline copper DSL or Coaxial
  - Satellite
  - Other
- For projects using fiber optic cable, provide the number of miles of fiber to be deployed (required for Federal reporting purposes).
- Capital Asset Ownership Type
  - Private
  - Municipal or Township Government

## ATTACHMENT B - Draft Application Questions

- County Government
- Tribal Government
- Co-operative
- Other
- Network Architecture Diagram upload: composed of two sets of PDF diagrams.
  - The logical diagram should contain network devices, including:
    - core routers
    - backbone network routers and switches
    - amplifiers (if used)
    - wireless devices
  - The detailed physical network diagrams should include:
    - All physical network cables installed or leased as a part of the proposed project. The maps will delineate the sections of the cable that are buried and the sections of the cable that are aerial (depict in separate colors)
    - Locations of all network devices and any structures that contain the network devices
    - The polygons that provide the service boundaries of each of the major network nodes, as well as the overall service boundaries for the entire network proposed
    - The network provider will provide a set of both logical and physical as-built diagrams once the construction is completed.
- Detailed Engineering Design Plan (template provided by BDO)
- Network Support Requirements Report (template provided by BDO)
- Wired Infrastructure Report, if applicable. (template provided by BDO)
  - Includes a detailed diagram of the backbone infrastructure.
- Fixed Wireless Infrastructure Report, if applicable. (template provided by BDO)
- Other Options Considered, if applicable: If implementation options other than what is proposed in this application have been considered, describe all other options and why they were not chosen. (3,000 character limit)
- Current Network Capacity, if applicable: (1,250 character limit)
  - Describe the total network capacity today
  - Describe the how this capacity effectively supports the service speeds being offered in the near term
- Future proofing: (1,250 character limit)
  - Describe the scalability of the proposed network and technology solution, by addressing the:
    - Maximum speeds that can be marketed in five years
    - Process and required investment for upgrading capacity in the future
    - Useful life of the assets
- Climate Resiliency: (1,500 character limit)
  - Describe how your project addresses and mitigates the potential impact of extreme weather events, which are anticipated to grow in frequency and severity in future years. This may include the incorporation of specific design features, the choice of a technology platform suitable to the climate conditions of the proposed service area, the

## ATTACHMENT B - Draft Application Questions

- retrofitting or hardening of existing assets critical to the performance of your project, and/or the development of plans or processes to restore service in case of an outage.
- Project Plan and Milestones Report (template provided by BDO)
  - The report should provide relevant details to each stage of the proposed project, including milestones for each phase of the project, and should cover the entire project period and align to the proposed project budget details.
  - Each project milestone should be identified with a corresponding start date and duration period. The plan should include at a minimum, each of the categories listed on the report template. Additional milestones can be added as needed
- Project Budget Schedule Template (template provided by BDO)
- Voluntary Grantee Contribution, if applicable:
  - Does the financing/funding for this project include any funds from sources other than the requested BOOT funds? (Yes or No)
    - If yes, provide a letter signed by an authorized representative of each matching fund provider (chief financial officer, treasurer or equivalent) describing:
      - Amount and source of funds; and
      - Status of funding commitment and any steps required to secure final approval of the use of such funds for the proposed project.
      - Letter should be addressed to the Broadband Development Office
- Project Cost Effectiveness: (1,250 character limit)
  - Describe strategies to lower costs of build such as dig-once, use of right-of-way, and use of existing assets. Include any private and/or public entities that have been contacted/coordinated with for these strategies.
- Average cost per premises.
- Project Risks and Mitigation Strategies: (1,250 character limit)
  - Summarize any implementation challenges or financial risks to the project (e.g. cost or schedule overruns, lower-than-expected take rates) and describe proposed mitigation strategies to address those challenges and risks.

### **SECTION 5 – APPLICANT QUESTIONS**

- Applicant Qualifications Overview: (750 character limit)
  - Describe your organization’s qualifications to manage the proposed project through the initial deployment phase and the subsequent five years of operation, as required by the program, including:
    - Readiness to manage a broadband services network;
    - Experience undertaking projects of similar size and scope;
    - Recent and upcoming organizational changes, including mergers and acquisitions.
- Proposed Personnel (template provided by BDO)
  - Identify all key personnel who are to be part of the proposed team and detail their experience. Applicant must include the resumes of all management, supervisory, and key personnel that will be involved in performing the services and competing the proposed project. Applicant should use the provided template for each proposed personnel and merge all into one single file to be submitted.

## ATTACHMENT B - Draft Application Questions

- Federal or State Funded Projects (1,200 character limit)
  - List all federal- or state-funded broadband infrastructure projects the applicant has either completed within the past five years or is currently underway. Include the following information for each (1,000 character limit)
    - Federal or State funding source and award amount;
    - Nature and impact of the project;
    - Role of the applicant;
    - Total cost of the project; and,
    - Project start date and project end date (expected end date, if applicable).
- Number of Completed Internet Service Infrastructure Projects
  - Number of completed internet service infrastructure projects funded, in part, through federal or state grant programs, in the past five years and prior to the date of application.
    - Number of network infrastructure projects in Texas
    - Number of network infrastructure projects outside Texas
- Number of Addresses Served in the Past Five Years
  - To how many addresses has the applicant provided broadband internet access of at least 25/3 Mbps in the past five years within and outside of Texas?
    - Number of addresses in Texas
    - Years providing broadband services in Texas
    - Years providing broadband services outside Texas.
- Years in Business
  - How many years has the applicant been in business providing broadband service, including expansion and retail?
- Financial Capacity:
  - The applicant shall provide:
    - Three years of audited financial statements.
      - If applicant has been in operation for less than 3 years, provide statements for the years in business and relevant supporting documentation on financial capacity.
    - A completed financial capacity report (template provided by BDO) to reflect the audited financial statements
- History of Bankruptcy
  - Has the applicant (subsidiary, affiliate, holding company, etc.) or any of its funding partners ever filed a voluntary or involuntary petition for bankruptcy? (Yes or No)
    - If yes-
      - Has the bankruptcy been closed or discharged?
      - What date was the bankruptcy closed or discharged?
      - Provide a copy of the final order indicating that the bankruptcy has been closed or discharged.
- Litigation and Penalties History
  - Has the entity that the applicant represents ever been a defendant in any federal or state criminal or civil litigation, or been subject to financial or other penalties, related to

## ATTACHMENT B - Draft Application Questions

federal or state grant programs of any nature, prior to the date of the application? (Yes or No)

- If yes, what is the number of times the applicant (subsidiary, affiliate, holding company, etc.) has been penalized subject to penalties, and what was the total amount paid?
- If yes, provide a list and the status of all pending litigation against the applicant.

### **SECTION 6 – COMMUNITY SUPPORT & INVOLVEMENT**

- Outreach Activities (2,500 character limit)
  - Provide a narrative describing the outreach activities conducted with citizens, local government, businesses and/or institutions in the communities to be served for the purpose of creating awareness and support of this proposed project. Include examples, if any, of how the feedback collected through outreach activities resulted in a modified project scope.
  - Upload evidence of community outreach by the applicant, if applicable.
- Letters of Support:
  - Upload any letters of support or other supporting correspondence from citizens, local government officials, businesses and/or institutions in the communities to be served.
- Local Broadband Planning Committee (Yes or No)
  - Does the community or region have one or more active broadband planning committees?
- Is there a community or regional broadband plan? (Yes or No)
  - If yes, summarize how the project is consistent with, and will address the goals and objectives of, the plan. Do not copy and paste directly from the plan. If desired, applicant can upload key excerpts of the plan and highlight the plan goals or objectives that the proposed project addresses. (1,250 character limit)
  - Upload key excerpts of the community or regional plan relevant to the proposed project, if applicable.

### **SECTION 7 – COMMUNITY NEED & IMPACT**

- Statement of Need (2,500 character limit)
  - Provide a statement documenting the broadband-related problems and challenges facing the targeted communities, specifically focused on the critical employment, education and health monitoring needs of the community that were exacerbated by the COVID-19 public health emergency.
  - Explain what challenges the project addresses and the anticipated benefits that will be realized for the targeted communities. Include a discussion of any relevant socioeconomic indicators specific to the targeted communities that support the statement of need.
- Schools to be Served:



## ATTACHMENT B - Draft Application Questions

- Does the project plan include new and/or improved broadband service to any public and/or private primary and/or secondary schools; and/or institutions of higher education? (Yes or No)
    - If yes, provide a summary of what school(s) the project will connect and what the speed improvements will be, as applicable. (1,250 character limit)
- Service Packages (template provided by BDO)
  - Upload a table detailing every standard service package tier to be offered, including a universally available low-cost option. Monthly costs should reflect non-promotional pricing.
  - The upload must include, at a minimum, the following for each service package tier:
    - Bitrate (download and upload);
    - Usage limits or data caps (if any);
    - Total upfront cost;
    - Itemized list of all upfront costs (e.g., one-time fees, installation costs, fiber drop to the premise, customer premise equipment costs, etc.);
    - Total monthly cost to the customer; and
    - Itemized list of all monthly costs (e.g., recurring service cost, fees, customer premise equipment leases or installments, etc.).
- Pricing Strategy (2,500 character limit)
  - Describe the pricing strategy for the universally available low-cost option to be offered. How did the applicant determine that price?
  - Describe additional affordability options the applicant and/or its partners will offer the community, if any. Examples include free public access offered at community centers, discounted rates for small businesses and community anchor institutions, discounted devices, etc.
- Cost Coverage of ACP
  - Based upon initial cost estimates, will the \$30 ACP monthly subsidy cover the monthly full cost of the applicant's intended universally available low-cost option for qualifying households with at least 100/20 Mbps? (Yes or No)
- Digital Opportunity Plan (Yes or No)
  - Does the proposed project include a plan to implement digital literacy, awareness, and/or adoption programs for residents?
  - If yes, upload the applicant's most recent digital opportunity plan or an overview on a company letterhead of the applicant's plans to implement digital literacy, awareness, and/or adoption programs for residents. The upload should clearly include:
    - A description of how the applicant will identify and address challenges and barriers residents are experiencing related to affordability, access and use of broadband service.
    - A description of programs the applicant will pursue for the purposes of closing the digital divide.
    - A description of goals and strategies that will determine success.
    - Anything else the applicant determines useful for demonstrating the digital opportunity plan.
- Workforce Development Program (Yes or No)

## ATTACHMENT B - Draft Application Questions

- Does the proposed project include a workforce development plan that prioritizes the hiring of local residents?
- If yes, upload the applicant's most recent workforce development plan or an overview on a company letterhead of the applicant's workforce development efforts that will impact this project. The upload should clearly include:
  - A description of how the applicant will support the development and use of a highly skilled workforce capable of carrying out work in a manner that is safe and effective.
  - A description of how the applicant will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, worker organizations, and/or community-based organizations that provide relevant training, including small businesses and/or Historically Underutilized Businesses (HUB).
  - A description of how the applicant will plan to create equitable on-ramps into broadband-related jobs.
  - A description of how the applicant will ensure that the job opportunities created by the Texas Broadband Development Program and other broadband funding programs are available to a diverse pool of workers within the project area, region and/or state.
  - Anything else the applicant determines useful for demonstrating the workforce development plan.

### **SECTION 8 - SIGNATURE**