

**Agreement Between the
PUBLIC SERVICE COMMISSION OF WISCONSIN
and
[RECIPIENT]**

THIS AGREEMENT is made and entered into by and between the Public Service Commission of Wisconsin (the “Commission”), representing the State of Wisconsin (“State”), and RECIPIENT (“Grant Recipient”) (collectively “Parties”) as of DATE OF ORDER and shall continue through December 31, 2024 (the “Performance Period”).

WHEREAS, the state has received funds from the United States Department of the Treasury pursuant to Section 602 and 603 of the Social Security Act, which implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub.L. 117-2) to establish the Coronavirus State Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

WHEREAS, Governor Tony Evers allocated over \$100 million of Coronavirus State Recovery funds for funding broadband projects to be administered by the Commission to expand high-speed internet across the state.

WHEREAS, to be reimbursable, expenditures for broadband expansion must be eligible under the US Treasury Guidance *Interim Final Rule* Department of Treasury “Coronavirus State and Local Fiscal Recovery Funds.” 86 Fed. Reg. 26786, 267878. This will be replaced with the final rule.

WHEREAS, on behalf of the State, the Commission administers the ARPA Broadband Access Grant Program (“Program”) to provide funds for eligible activities; and

WHEREAS, it is the intention of the Parties to this Agreement that all activities described herein shall be for their mutual benefit; and

WHEREAS, pursuant to the Commission’s Order on ARPA Broadband Access Grants in docket 5-BF-2022, the Commission approved an award of up to \$XXX,XXX to the Grant Recipient for eligible activities; and

WHEREAS, the terms and conditions of this Agreement shall survive the Performance Period and shall continue in full force and effect until the Grant Recipient has completed and is in compliance with all the requirements of this Agreement; and

WHEREAS, this Agreement is exclusive of and is distinguished from all previous agreements between the Grant Recipient and the Commission and contains the entire understanding between the Parties;

NOW, THEREFORE, in consideration of the mutual promises and dependent authorizations, the Parties agree as follows:

The following documents are incorporated and made part of this Agreement:

- 1) The attached Terms and Conditions Applicable to Grant Awards (last updated 5/2021).
- 2) Attachment A – Project Scope.
- 3) Attachment B – Grant Award Budget.
- 4) Attachment C – Project Status Report sample.
- 5) Attachment D – Payment Request Form sample.

{Grant Recipient}

Public Service Commission of Wisconsin

By: _____

By: _____

{Name of signatory}

Kristy Nieto

Title

Title:

{Add title}

Administrator Division of Digital Access, Consumer and Environmental Affairs

Address:

Address:

North Tower, 6th Floor

Hill Farms State Office Building

4822 Madison Yards Way

Madison, WI 53705

(608) 261-9419

Date:

Date:

DUNS Number:

Dun & Bradstreet Unique Number 9-digit

PRELIMINARY DRAFT

TERMS AND CONDITIONS APPLICABLE TO GRANT AWARDS

- 1.0 **Definitions.** The following terms are given the stated meaning:
- 1.1 **American Rescue Plan Act.** ARPA means the American Rescue Plan Act of 2021 (ARPA) Pub. L. 117-2, March 11, 2021.
 - 1.2 **Coronavirus State and Local Fiscal Recovery Fund** means the Federal fund created by Congress under the American Rescue Plan Act to provide funding to State, territorial, local, and Tribal governments to make necessary investments in water, sewer or broadband infrastructure.
 - 1.3 **Commission.** Commission means the Public Service Commission of Wisconsin, including its agents who have been delegated authority by the Public Service Commission of Wisconsin.
 - 1.4 **Commission Order.** Commission Order means the Commission's Order on Award of ARPA Funds for FY2022 ARPA Broadband Grant Applications in docket 5-BF-2022.
 - 1.5 **Eligible Costs.** Eligible Costs means those costs which are not covered by any other federal or state funding; can be audited by the Commission; are directly attributable to activities identified in Attachment A-Project Scope and which result in completion of a project that is capable of providing broadband service on or before December 31, 2024; are identified in Attachment B-Project Budget, subject to any Amendments to this Agreement; and which are incurred between the date that the Commission issues an order approving awarding grant funds to the Recipient and December 31, 2024, except that expenditures for materials, community planning and pre-engineering that are for the project and may have been purchased before the date the Commission issues an order approving awarding grant funds but after March 3, 2021, so long as they are used exclusively for the project.
 - 1.6 **Grant Application.** Grant Application means the project-specific request submitted by the Grant Recipient in response to the Funding Notification.
 - 1.7 **Grant Award.** Grant Award means the Commission Order as it applies to the Grant Recipient, which identifies the funds awarded, including any specified other terms and conditions that apply to a specific approved Grant Application.
 - 1.7.1 The Grant Award supersedes any representations, commitments, conditions, or agreements made orally or in writing prior to the issuance of the Grant Award.
 - 1.7.2 The Grant Award may specify an award amount and other terms and conditions that are different from, or in addition to, those proposed in the Grant Application.
 - 1.8 **Project.** Project means the project or activities described in Attachment A-Project Scope.
 - 1.9 **Request for Payment.** Request for Payment means a complete request submitted, by no later than January 30, 2025, in the format specified by the Commission for payment of funds from a Grant Award.
 - 1.10 **Total Award.** Total Award means the total dollar amount approved for Grant Recipient in the Commission Order.
- 2.0 **Interpretation.** The Commission retains jurisdiction over the interpretation of the Commission Order and this Agreement, including these Terms and Conditions Applicable to Grant Awards. Regardless of which of the Parties is responsible for the drafting of the Agreement between the Parties, all terms will

be construed in favor of the Commission. By executing this Agreement, the signatories in no way bind the Commission other than for purposes of funding the Grant Awards as authorized by the Commission Order. In the case of conflict between any part of this Agreement and the Commission Order, the Commission Order will control.

- 3.0 **Source of Funds.** Funds being used for reimbursement of this sub-award are federal funds provided to the State of Wisconsin as part of the Coronavirus State and Local Fiscal Recovery Funds established by the ARPA. The Commission provides the following information regarding the source of federal funds:

Federal Award Identification Number: N/A

Federal Award Date: N/A

CFDA #:

Federal Awarding Agency: Department of the Treasury

Total Amount of the Federal Award:

Amount of Federal Funds Obligated by this Award: \$XX

Total Amount of Federal Funds Obligated to the Grant Recipient: \$XX

Research & Development: No

Indirect Cost Rate: N/A

- 4.0 **Reimbursement.** The following conditions apply to Requests for Payment.

- 4.1 No Grant Award funds will be issued without a Request for Payment.
- 4.2 The Grant Award is exclusive funding and will be used only for the Project. The Grant Recipient shall not apply funds authorized by the Commission Order to activities authorized under other grant awards or other grant proceedings unless authorized to do so by the Commission in Attachment A-Project Scope, or in an Amendment.
- 4.3 The Grant Recipient shall prepare and submit to the Commission one or more Requests for Payment using the Commission's Payment Request Form, a sample template of which is attached as Attachment E. Updated templates may be issued in the future. In the event that a new template is issued, Grant Recipients will be notified of the change.
- 4.4 Upon satisfaction by the Recipient of the requirements of the Order, and this contract, the Commission will disburse funds to the Recipient for eligible costs in a total amount not to exceed the award amount authorized by the Commission.
- 4.5 Only Eligible Costs may be reimbursed. A Grant Recipient may request from the Commission (1) an amendment to Attachment B-Project Budget to add to or revise the list of expenses eligible for reimbursement, or (2) an amendment to Attachment A-Project Scope. Amendments shall be requested pursuant to Section 11.0 of these Terms and Conditions.
- 4.6 Eligible costs may include, but are not limited to: construction labor and materials (e.g., fiber, conduit, photonics, electronics, etc.); new and rehabilitative construction contracts; architectural and engineering services and legal and professional services, costs related to affordability, internet access and digital literacy; validation of service expenses; equipment related to broadband infrastructure; and equipment installation. The following are ineligible and Grant funds will not be used to reimburse these expenses: research and development; indirect costs, political activities or lobbying; and costs covered by any other federal or state funding.
- 4.7 A limited category of eligible costs within the project scope subject to reimbursement by this Agreement may have been incurred prior to the execution of this Agreement but not earlier than March 1, 2021. These eligible costs are for materials, equipment, items in inventory and costs related to the purchase of spectrum. The items must be for the exclusive use in the project.

- 4.8 Each Request for Payment, the Grant Recipient must include a copy of an invoice (or receipt) for each Eligible Cost item for which reimbursement is requested.
- 4.8.1 The invoice will be used to document the actual purchase price of the Eligible Cost item. A Request for Payment must be accompanied by written support of Eligible Costs, including internal accounting records or contracts, as appropriate or when requested by the Commission. A Request for Payment must provide an independent and auditable basis for the actual purchase price of each Eligible Cost item.
 - 4.8.2 For Eligible Cost items that do not have a transaction invoice, such as employee labor expenses, the Grant Recipient shall provide documentation showing the total hours contributed by employee class (e.g. engineer, construction worker, instructor, IT support, or assistive technology expert) that worked on the project, the date(s) that the work was done, and the total labor expense reported. Labor expense is limited to actual payroll and fringe benefit costs. Upon the request of the Commission, the Grant Recipient shall also provide a list of actual hours worked and the specific wage for each employee that worked on a Project, and any payroll documentation or other similar evidence that the Commission might request.
 - 4.8.3 For Eligible Cost items that do not have a transaction invoice or record and do not fall under the labor expenses addressed in Section 3.8.2, above, the Grant Recipient shall, with prior authorization from the Commission, in lieu of an invoice, submit a narrative description of the Eligible Cost along with any relevant documentation.
 - 4.8.4 The Commission may delay reimbursement of a Request for Payment until sufficient documentation of costs and project status, as determined by the Commission, is provided by the Grant Recipient.
 - 4.8.5 The Grant Recipient shall submit a final Request for Payment to the Commission no later than January 30, 2025.
- 4.9 The reimbursement to the Grant Recipient will not exceed the amount of the Total Award unless expressly approved by the Commission in an Amendment, which can be requested pursuant to Section 11.0 of these Terms and Conditions.
- 4.9.1 The reimbursement to the Grant Recipient will not exceed 90% of the amount of the Total Award prior to the submittal of a satisfactory final Project Status Report indicating project completion.
- 4.10 The Grant Recipient is responsible for reimbursement to the Commission for any disbursed Grant Award funds that are determined by the Commission to have been not eligible, misused or misappropriated, or not incurred by the end of the performance period. If the Commission determines that any provision of the Grant Award, including the Grant Agreement, Commission Order, or relevant provision of the federal American Rescue Plan Act, has been breached by the Grant Recipient, the Commission may require and be entitled to reimbursement of any or all funds under the Grant Award. Any reimbursement of funds that is required by the Commission, with or without termination of this Agreement, will be due within forty-five (45) days after giving written notice to the Grant Recipient. The Commission also reserves the right to recover such funds by any other legal means including litigation. The Grant Recipient shall indemnify and hold harmless the Commission for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered.

5.0 **Audit Requirement.**

- 5.1 All governmental and non-profit Grant Recipients that are required to comply with the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and the State Single Audit Guidelines issued by the Department of Administration, shall ensure that funds awarded by the Commission Order are included in the audit report. A governmental or non-profit Grant Recipient shall submit audit reports to the Commission within 180 days of the close of the entity's fiscal year, unless waived by the Commission.
- 5.2 All other Grant Recipients shall submit an audit of the Grant Award in accordance with the Wisconsin State Single Audit Guideline requirements upon request from the Commission.
- 5.3 The Grant Recipient shall submit an agreed upon procedures audit upon request from the Commission. This audit will consist of procedures and questions requested by the Commission and will expand beyond the scope of that provided for under the Wisconsin State Single Audit Guideline requirements.

6.0 **Recordkeeping, Examination of Records and Facilities.** The Commission will have access to and the right at any time during normal business hours to examine, audit, excerpt, transcribe, and copy on the Grant Recipient's premises any records and files of the Grant Recipient involving transactions relating to a Grant Award, including any agreements or MOUs with any partners related to the project or fiscal management of the award. The Commission or a contractor of the Commission will have access at any time to examine, audit, test and analyze any and all items purchased or constructed in whole or in part using funds provided by the Commission as part of a Grant Award, including inspection by a Professional Engineer.

- 6.1 If any of the above records and files are held in an automated format, the Grant Recipient shall provide copies of these records and files in the automated format or such computer file as may be requested by the Commission.
- 6.2 The Grant Recipient shall retain such records and files for at least five years following final payment of the Grant Award.
- 6.3 The Grant Recipient shall be responsible for any charges for copies provided by the Grant Recipient to the Commission of books, documents, papers, records, computer files or computer printouts.
- 6.4 The minimum acceptable financial records for a Grant Award consist of:
 - 6.4.1 Documentation of employee time and compensation;
 - 6.4.2 Documentation of all equipment, materials, contracted labor, supplies and travel expenses;
 - 6.4.3 Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope;
 - 6.4.4 Documentation and justification of methodology used in any in-kind contributions;
 - 6.4.5 Rationale supporting allocation of space charges;
 - 6.4.6 Rationale and documentation of any indirect costs
 - 6.4.7 Documentation of agreement services and materials; and
 - 6.4.8 Any other records that support charges to a Grant Award.

- 6.5 The Grant Recipient shall maintain reasonably prudent, as determined by the Commission, segregation of Project accounting records from accounting records relating to other projects or programs.

GENERAL TERMS AND CONDITIONS

- 7.0 **Compliance with Law.** The Grant Recipient and its agents and representatives shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that in any manner affect or apply to the project. The Grant Recipient shall be bound by all Commission orders that in any manner affect the Grant Award.
- 8.0 **Indemnification.** The Grant Recipient assumes all liability for any and all injuries, damages, or claims in any way associated with the Grant Award and/or the Project. The Grant Recipient shall indemnify and hold harmless the Commission and all of its officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from or in any way associated with the Grant Award and/or the Project.
- 9.0 **Suspension.** For cause, and upon notice to the Grant Recipient, the Commission may suspend reimbursements. Any costs directly attributable to activities incurred upon such notice will cease to be Eligible Costs unless otherwise authorized by the Commission.
- 10.0 **Termination and Cancellation.** The Grant Recipient understands and agrees that the Commission may at a later time determine that a Grant Recipient is not in compliance with the Commission Order or the terms of this Agreement. In such case, the Commission may terminate the Grant Award. Upon termination, the Grant Recipient must return all Grant Award funds previously disbursed. If the Grant Recipient wishes to cancel the Project, the Grant Recipient may submit a written request to the Commission requesting that the Commission approve the termination of the Grant Award. If the Commission grants the request, the Grant Recipient must return all Grant Award funds previously disbursed.
- 11.0 **Waiver.** Failure or delay on the part of the Commission to exercise any power under the Commission Order or this Agreement will not constitute a waiver thereof.
- 12.0 **Amendment.** This Agreement may be amended at any time by written mutual consent of the Parties. Amendments shall be documented in writing, dated, and signed by the Parties.
- 12.1 The Grant Recipient shall notify the Commission of any proposed significant changes in Attachment A – Project Scope or Attachment B – Project Budget as soon as practicable, and may only make such significant changes if the Commission signs an amendment authorizing and memorializing the significant change. Significant changes include:
- 12.2 Any change in the list of expenses, as described in Attachment B - Project Budget.
- 12.3 Any change in the Project or activities, as described in Attachment A - Project Scope.
- 12.4 Extensions of the performance period will not be granted.
- 13.0 **Governing Law and Venue.** This Agreement shall be governed by the Laws of the State of Wisconsin and the United States. Any legal action regarding this Agreement, as amended, or its provisions shall be subject to Wisconsin Statute Chapter 227. Any Chapter 227 proceeding shall be brought in a court of competent jurisdiction in Dane County, Wisconsin; the Parties consent to the jurisdiction of such court and waive any objections to such jurisdiction.

SPECIAL TERMS AND CONDITIONS

- 1.1 **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- 1.2 **Lobbying:** Program funds may not be used to influence federal contracting or financial transactions. It is understood and agreed between the Parties that no portion of the Grant funds paid under this Agreement may be used for the purpose of obtaining additional Federal or state funds under any other law of the United States, except if authorized under that law
- 1.3 **Debarment & Suspension.** In executing this Agreement, Grantee affirms that it is not debarred nor suspended from receiving federally funded contracts. Grantee is subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs and activities.
- 1.4 **Non-Discrimination and Affirmative Action Requirements.** Grantee may not discriminate against and hereby certifies that it prohibits discrimination against and will not discriminate against any person on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age in any aspect of its operations. This includes, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including but not limited to: a. Titles VI and VII of the Civil Rights Act of 1964, as amended; b. The Americans with Disabilities Act of 1990, as amended. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 which includes regulations for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity or national origin, employed or seeking employment the Government contractors or with contractors performing under federally assisted construction contracts.
- Except with respect to sexual orientation, the Grantee shall take affirmative action to ensure equal employment opportunities. The Grantee shall post in conspicuous places, available for employees and applicants for employment, notices required by law.
- Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Grant Recipient. An exemption occurs from this requirement if the Grant Recipient has a workforce of less than fifty (50). Within fifteen (15) working days after this Agreement is executed, the Grantee shall submit the Affirmative Action Plan/exemption statement to the Public Service Commission unless compliance eligibility is current. No extensions of this deadline shall be granted
- 1.5 **Federal Funding Accountability and Transparency Act (FFATA).** This Grant requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable requirements of FFATA are met and that the Grantee provides information to the State as required.
- 1.6 **The Grantee will obtain a Data Universal Numbering System (DUNS) number** upon signing this grant agreement and maintain its DUNS number for the term of this Grant. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

- 1.7 **The Grantee's failure to comply with the requirements in the special terms and conditions** is a material breach of this Grant for which the State may terminate this Grant Contract for cause or withhold the funds. The State will not be obligated to pay any outstanding invoice received from the Grantee unless and until the Grantee is in full compliance with the above requirements.

REPORTING REQUIREMENTS

- 2.0 **Project Status Reports.** The Grant Recipient shall submit a Project Status Reports to the Commission as provided below.
- 2.1 **Format.** A sample form template for submitting a Project Status Report is attached to this Agreement as Attachment C. Updated templates may be issued in the future. In the event that a new template is issued, Grant Recipients will be notified of the change, and the new sample form template will be made available to Grant Recipients. The Grant Recipient shall provide a response to each question that is applicable to the type of report being filed and the Project.
- 2.2 **Schedule.** Project Status Reports are due as follows:
- 2.2.1 An interim Project Status Report shall be prepared and submitted every six months on a schedule determined by the Commission
- 2.2.2 A final Project Status Report is due at the same time that a Grant Recipient submits a final Request for Payment, The final request for payment and the Final Project Status report is due no later than January 30, 2025.
- 2.3 **Filing Procedure.** All Project Status Reports shall be submitted to the Commission in the manner specified by the Commission.
- 3.0 **Information of Workforce plans and practices:**
- 3.1 In order to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers the Treasury Department will request workforce plans and information regarding workforce practices. A grant recipient is required to submit information to the Commission upon request to satisfy any requirement on the Fiscal Recovery Funds by the Treasury Department in a complete and timely manner.

ATTACHMENT A – PROJECT SCOPE
ATTACHMENT B – GRANT AWARD BUDGET
ATTACHMENT C PROJECT STATUS REPORTS SAMPLE

https://psc.wi.gov/Documents/broadband/Interim_Project%20Status%20Report%20FY2020.docx

<https://psc.wi.gov/Documents/broadband/Project%20Status%20Report%20-%20Final.pdf>

ATTACHMENT D: SAMPLE PAYMENT REQUEST FORM

PRELIMINARY DRAFT