

AGREEMENT

Between the

PUBLIC SERVICE COMMISSION OF WISCONSIN

and

GRANT 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 Grant Recipient ("Grant Recipient") (collectively "Parties") as of _____, 2020 and shall continue through ___, 2022 (the "Performance Period").

WHEREAS, on behalf of the State, the Commission administers the [Broadband Expansion] 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 Order dated _____, 2020, in docket 5-BF-2020 awarding grants for the Fiscal Year 2020 grant cycle (PSC REF#: _____) (the "Commission Order"), the Commission approved an award to the Grant Recipient in the amount of \$_____.00 (the "Total Award") for eligible activities related to _____ the broadband project described in Attachment A-Project Scope; 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.
- 2) Attachment A – Project Scope.
- 3) Attachment B – Project Budget.
- 4) Attachment C – Project Status Report.
- 5) Attachment D – Commission Order.
- 6) Attachment E – Payment Request Form spreadsheet.
- 7) Attachment F –Confidentiality Request Form.

ORGANIZATION

**PUBLIC SERVICE COMMISSION
OF WISCONSIN**

BY:

BY:

name

Kristy Nieto

TITLE:

title

TITLE:

**Administrator,
Division of Digital Access, Consumer and
Environmental Affairs**

DATE:

DATE:

TERMS AND CONDITIONS APPLICABLE TO GRANT AWARDS

- 1.0 **Definitions.** The following terms are given the stated meaning:
- 1.1 **Commission.** Commission means the Public Service Commission of Wisconsin, including its agents who have been delegated authority by the Public Service Commission of Wisconsin.
 - 1.2 **Commission Order.** Commission Order means the Order attached as Attachment D to this Agreement.
 - 1.3 **Eligible Costs.** Eligible Costs means those costs which can be audited by the Commission and which are directly attributable to activities identified in Attachment A-Project Scope and are identified in Attachment B-Project Budget, subject to any Amendments to this Agreement.
 - 1.4 **Grant Application.** Grant Application means the project-specific request submitted by the Grant Recipient pursuant to the application instructions issued by the Commission in the docket underlying the Commission Order.
 - 1.5 **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.
 - 1.5.1 The Grant Award supersedes any representations, commitments, conditions, or agreements made orally or in writing prior to the issuance of the Grant Award.
 - 1.5.2 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.
 - 1.6 **Project.** Project means the project or activities described in Attachment A-Project Scope.
 - 1.7 **Request for Payment.** Request for Payment means documents drafted by a Grant Recipient and submitted to the Commission for payment of funds from a Grant Award.
 - 1.8 **Total Award.** Total Award means the total dollar amount approved for Grant Recipient in the Commission Order.
 - 1.9 **Total Project Cost.** Total Project Cost means the Total Award plus any committed match as identified in Attachment B-Project Budget.
- 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 **Reimbursement.** The following conditions apply to Requests for Payment.
- 3.1 No Grant Award funds will be issued without a Request for Payment.
 - 3.2 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.
 - 3.3 The Grant Recipient shall prepare and submit to the Commission a Request for Payment using the Commission's Payment Request Form, Attachment E.
 - 3.4 No otherwise Eligible Cost item shall be eligible for reimbursement if it is incurred prior to the date of the Commission Order approving the Grant Award, unless the reimbursement of that Eligible Cost item is expressly authorized in a written Amendment pursuant to Section 12.0 of these Terms and Conditions.
 - 3.5 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 to transfer funds between cost categories, or (2) an amendment to Attachment A-Project Scope. Amendments shall be requested pursuant to Section 12.0 of these Terms and Conditions.

- 3.6 Each Request for Payment must include a copy of an invoice (or receipt) for each Eligible Cost item for which reimbursement is requested.
- 3.6.1 The invoice will be used to document the actual purchase price of the Eligible Cost item. Invoices must be accompanied by written support of Eligible Costs, as appropriate. This includes receipts, invoices, and internal accounting records. A Request for Payment must provide an independent and auditable basis for the actual purchase price of each Eligible Cost item.
- 3.6.2 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. 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.
- 3.6.3 For Eligible Cost items that do not have a transaction invoice or record and do not fall under the labor expenses addressed in section 3.6.2, 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.
- 3.6.4 The Commission may delay reimbursement of a Request for Payment until sufficient documentation of costs, as determined by the Commission, is provided by the Grant Recipient.
- 3.6.5 The Grant Recipient shall submit a final Request for Payment to the Commission no later than **30 days after the end of the Performance Period**, unless authorized by the Commission.
- 3.7 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 12.0 of these Terms and Conditions.
- 3.7.1 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 unless expressly approved by the Commission in an Amendment, which can be requested pursuant to Section 12.0 of these Terms and Conditions.
- 3.8 Each Request for Payment must include a statement of any cash or in-kind match contributed by the Grant Recipient and other project partners (“Contributed Match”). The reimbursement due to the Grant Recipient for each Request for Payment is the amount of actual purchase price of each Eligible Cost item times the ratio of the Grant Award amount divided by the Total Project Cost. In no event shall the total reimbursement exceed the amount of the Total Award.
- 3.8.1 The Grant Recipient agrees that any Contributed Match that will be used for activities described in Attachment A-Project Scope has not and will not be used for cash or in-kind match for any other grant programs. The Affidavit, illustrating that agreement, is attached as Attachment E.
- 3.9 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 misused or misappropriated. If the Commission determines that any provision of the Grant Award 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. Any funds due after the forty-five (45) days will accrue interest at a rate of ten percent per annum. 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.

4.0 **Audit Requirement.**

- 4.1 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.

- 4.2 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.
- 4.3 The Grant Recipient shall perform an agreed upon procedures audit on request from the Commission. This audit will consist of procedures and questions agreed upon by the Commission and the auditor and will expand beyond the scope of that provided for under the Wisconsin State Single Audit Guideline requirements.

5.0 **Examination of Records.** 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. The Commission will have access at any time to examine, audit, test and analyze any and all physical items purchased or constructed in whole or in part using funds provided by the Commission as part of a Grant Award.

- 5.1 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.
- 5.2 The Grant Recipient shall retain such records and files for at least three years following final payment of the Grant Award.
- 5.3 The Grant Recipient shall cover any charges for copies provided by the Grant Recipient to the Commission of books, documents, papers, records, computer files or computer printouts.
- 5.4 The minimum acceptable financial records for a Grant Award consist of:
 - 5.4.1 Documentation of employee time;
 - 5.4.2 Documentation of all equipment, materials, contracted labor, supplies and travel expenses;
 - 5.4.3 Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope;
 - 5.4.4 Documentation and justification of methodology used in any in-kind contributions;
 - 5.4.5 Rationale supporting allocation of space charges;
 - 5.4.6 Rationale and documentation of any indirect costs (submitted with initial invoice);
 - 5.4.7 Documentation of agreement services and materials; and
 - 5.4.8 Any other records that support charges to a Grant Award.
- 5.5 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

6.0 **Compliance with Law.** By submitting a Request for Payment, 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.

7.0 **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.

8.0 **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.

- 9.0 **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, Grant Award funds will be limited to the Eligible Costs already incurred carrying out the Project as of the date of termination. If the Grant Recipient wishes to cancel the Project, the Grant Recipient may submit a request to the Commission requesting that the Commission approve the termination of the Grant Award. If the Commission grants the request, Grant Award funds will be limited to the Eligible Costs already incurred carrying out the Project as of the date of termination.
- 10.0 **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.
- 11.0 **Amendment.** This Agreement may be amended at any time by prior written mutual consent of the Parties. Amendments shall be documented in writing, dated, and signed by the Parties.
- 11.1 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:
- 11.1.1 Any transfer of funds among cost categories, direct or indirect, that exceed or are expected to exceed ten percent of the approved total Project cost in Attachment B-Project Budget. An amendment must be executed by both Grant Recipient and the Commission prior to reimbursement for costs that exceed the ten percent threshold.
- 11.1.2 Any change in the list of expenses, as described in Attachment B-Project Budget. The amendment must be executed by both Grant Recipient and the Commission prior to incurring expenses not specified in the Project Budget.
- 11.1.3 Any change in the Project or activities, as described in Attachment A-Project Scope. The amendment must be executed by both the Grant Recipient and the Commission prior to change.
- 11.1.4 Any change to the in-kind or cash match specified in Attachment B-Project Budget. Changes that bring the match below the required percentage of the total project cost shall, at the Commission’s discretion, result in a reduction of the Grant Award.
- 11.1.5 Any change to the total Project cost that is expected to increase or decrease the total Project cost approved in Attachment B-Project Budget by ten percent or more. The amendment must be executed by both Grant Recipient and the Commission prior to the change.
- 12.0 **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.

REPORTING REQUIREMENTS

- 13.0 **Performance Reports.** The Grant Recipient shall submit a Project Status Report to the Commission as provided below.
- 13.1 **Format.** The form template for submitting a Project Status Report is attached to this Agreement as Attachment C. The Grant Recipient shall provide a response to each question that is applicable to the type of report being filed and the Project.
- 13.2 **Schedule.** Project Status Reports are due as follows:
- 13.2.1 An Interim Project Status Report shall be prepared and submitted by the first day of the months of June and December until the project is complete until the Grant Recipient submits a final Request for Payment.

13.2.2 A Final Project Status Report is due at the same time that a Grant Recipient submits a final Request for Payment under Section 3.0 of this Agreement.

13.3 **Filing Procedure.** All Project Status Reports shall be emailed to PSCBroadbandGrantReimbursement@wisconsin.gov. A Grant Recipient may request confidential status of the Project Status Report if the report contains information that qualifies for confidential treatment. To do so, the Grant Recipient should flag their email as confidential and include a completed Attachment F–Confidentiality Request Form. No Project Status Report will receive confidential treatment without a completed form.

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ATTACHMENT A-PROJECT SCOPE

The scope of the Project is that set forth in the Application of [Company name] for the _____ Project (), which is herein incorporated into this Agreement as Attachment A-Project Scope. The discussion below summarizes and emphasizes specific elements of the Project Scope.

Summary:

[FTTP: This project will build a Fiber-To-The-Premises (FTTP) service past ___ businesses and ___ residences in (project area location).]

[DSL: This project will build ___ miles of new fiber to ___ service nodes/DSLAMs in a project area (location). The project will upgrade the DSL service for ___ businesses and ___ residences.]

[Cable: This project will build facilities for a cable internet service provided by Charter Communications in (location). The project will build past ___ businesses and ___ residences.]

[FW: This project will build ___ wireless tower(s) in in (location) in _____ County. The fixed wireless service will reach ___ businesses and ___ homes within the footprint of the antennas.]

Specific Deliverables:

1. The Grant Recipient shall build the broadband communications facility described in the grant application and summary above.
2. The Grant Recipient shall submit timely Project Status Reports describing progress on the grant Project.
3. The Grant Recipient shall comply with applicable federal, state, and municipal laws, codes, and regulations for the work performed under this award.

Funding:

A Grant Award in the amount of \$_____.00 is allocated from the broadband expansion grant account, Wis. Stat. § 20.155(3)(r), to reimburse the grant portion of the Project expenses identified in the Project budget set forth in Attachment B.

The Grant Recipient agrees to provide matching funds in the amount of \$_____.00, to reimburse the match portion of the Project expenses identified in the Project budget set forth in Attachment B.

Performance Period:

This Agreement becomes effective as specified on page 1 and shall expire on the date specified, without notice or further process. After expiration, any unused balance in the Grant Award will be returned to the broadband expansion grant account.

ATTACHMENT B-PROJECT BUDGET

The project budget for the grant project described in the Application of [Company name] for the _____ project () is set forth below. In the event that there is any variance between the budget submitted in the Application and the budget below, the Project Budget set forth below shall take precedent and govern reimbursement from the grant award.

Project Budget:

[INSERT BUDGET FROM APPLICATION SPREADSHEET]

Project Funding Sources:

[INSERT FUNDING STATEMENT FROM APPLICATION SPREADSHEET]

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**ATTACHMENT C
PROJECT STATUS REPORT**

Grant Recipient:	
Project name:	
Date:	

1. On what date did construction of the Project commence?
2. (Interim report only) What is the estimated percentage of completion?
3. (Interim report only) If the Project is experiencing a delay and will not meet the schedule milestones stated in the Grant Application, please state in narrative form the reason for the delay (e.g. acquisition of land for tower site is delayed, permits for construction or use of rights-of-way are awaiting approval, bad weather, etc.).
4. (Interim report only) What is the estimated completion date for the Project?
5. (Final report only) On what date did construction of this Project finish?
6. (Final report only) Did the total project cost exceed the budget that was proposed in the Application, and if so, what is the total cost of the project to date?
7. (Final report only) How many customers are served by the Project? (For each question, separately identify the number of business locations and residential locations passed and served, and at what speeds).
 - a. How many locations (addresses) were passed by a fiber route, have access to improved DSL service, or are within range of a fixed wireless antenna? Please include only those for which service would be immediately available upon customer request.
 - i. Business
 1. Broken down by speed
 - ii. Residential
 1. Broken down by speed
 - b. Of the customer locations passed, upgraded or within range, how many actually ordered broadband service as a result of this Project?
 - i. Business
 1. Broken down by speed
 - ii. Residential
 1. Broken down by speed
 - c. Provide a depiction of the coverage area in spatial format at the address-level, preferably within geodatabase or shapefile format. If this is not feasible, a list of addresses served by the installed facilities is acceptable.
8. (Final report only) (For fiber-to-the-premises and cable projects) How many miles of fiber, cable fiber and/or coaxial cable were installed as part of the Project.

(For DSL projects) What central office improvements were made? How many DSL remoted devices were installed or upgraded? Did the Project increase the capacity of the DSL service, or address an issue of limited DSL facilities?

(For fixed wireless projects) How many towers were built? How many antennas were installed on existing structures? What type of existing structures were used?
9. (Final report only) How many customers have been or will be served by the Project facilities in addition to those identified in the Grant Application? How will this Project support growth in the future, if known?

10. (Final report only) Spare facilities and transmission capacity.

(For fiber-to-the-premises, fiber backbone routes, and DSL projects) How many spare fibers were installed in the cable route (in other words fiber installed as part of the grant Project, but not used to connect to the current customers in the Project area)? Are there plans to use this spare transmission capacity for future broadband projects?

(For fiber-to-the-premises and DSL projects) Within the Project area, how many business and residential customers were passed by the Project facilities but chose not to take the broadband service offer?

(For fixed wireless, mobile wireless and WiFi projects) Describe the total capacity or number of connections enabled by the equipment that was installed as part of the grant Project, but not used to connect to the current customers in the Project area. Are there plans to use this spare transmission capacity for future broadband projects?

Instructions:

Email completed forms to PSCBroadbandGrantReimbursement@wisconsin.gov. To designate portions of this form as confidential, flag your email as confidential and complete and include Attachment F – *Confidentiality Request Form* in your email. Project status reports are due as specified in the Agreement.

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**ATTACHMENT D
COMMISSION ORDER**

The Order will be attached to the Agreement

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**ATTACHMENT E
PAYMENT REQUEST FORM SPREADSHEET**

Spreadsheet form will be inserted into PDF

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**ATTACHMENT F
CONFIDENTIALITY REQUEST FORM**

The form will be attached to the grant agreement

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