

New NY Broadband Grant Program Request for Proposal Guidelines

I. BACKGROUND

In today's economy, broadband is no longer a luxury, it is a necessity. Like electricity and telephone service a century ago, broadband represents a critical foundation for economic growth, job creation and a better way of life. Across industries, broadband is redefining how we provide education and healthcare, manage energy, ensure public safety and how we store, access and share information.

Access to broadband is a necessity for the continued economic success of New York State. Recent studies indicate that approximately 80% of job seekers use online job search resources. Nearly all students today use the Internet in school, and one-third of students are required to use the Internet to complete homework assignments on a daily basis -- putting any New York State child without Internet access in their home at a profound disadvantage. More than 85% of college applications are received online. Millions of workers are now telecommuting, receiving vital information and news, and taking educational courses online via broadband networks.

Yet, despite their urgent need for broadband, approximately 2.5 million Housing Units¹ (HU's) in New York State have either limited or no access to high-speed Internet, creating a digital divide between those communities with the ability to participate in the global economy, and those communities without such access. It is for this reason that Governor Andrew M. Cuomo, with legislative support, established the \$500 million New NY Broadband Program (the Program), the largest and most ambitious State investment in broadband in the nation. These New NY Broadband Program Request for Proposal Guidelines represent the first Phase (Phase 1) of this transformative initiative.

Specifically, the Program calls for applications for funding to provide access to broadband at speeds of at least 100 megabits per second (Mbps) (download) in most places, and 25 Mbps (download) in the most remote Unserved² parts of the State, with priority given to applications that will provide broadband to Unserved communities, libraries, and Educational Opportunity

¹ As defined by the U.S. Census Bureau. Please note that a full list of definitions is included with these Guidelines (*Appendix A - General Definitions*)

² An *Unserved* area is defined as an area where broadband service is not available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than **25 Mbps download**.

Centers (EOC's).³ The Program will achieve its goals through public-private sector partnerships, and will require a private-sector co-investment. The Program will be implemented by 2018.

The New NY Broadband Program is administered by the New York State Broadband Program Office (the BPO), a division of the New York State Urban Development Corporation, d/b/a Empire State Development (ESD). The funding will support Last-Mile⁴ solutions, including Middle-Mile⁵ and other connectivity to deliver Last-Mile services, to expand broadband connectivity in Unserved and Underserved⁶ areas of New York State.

The BPO issued a Request for Information (RFI) on September 24, 2015 to solicit feedback from stakeholders and interested parties, in order to inform the structure of the Program. The RFI responses have been considered in the development of these Guidelines.

II. BRIEF DESCRIPTION OF PHASE 1

Consistent with the Program's enabling legislation, Phase 1 will award grant funding to applicants to provide Last-Mile services to Unserved and Underserved areas of the State. Applications for Phase 1 funding will be evaluated through a reverse-auction process (the Phase 1 Reverse-Auction or Reverse-Auction). The Reverse-Auction will select projects providing broadband access that require the lowest State Investment (*as discussed in Section X, below*), on a dollars-per-Unit⁷ served basis,⁸ based on the cost⁹ to pass a Unit. Separate auctions will evaluate applications to address the Unserved and Underserved, respectively, within each NYS Economic Development Region (REDC Region), as part of Phase 1 (*as discussed in Section VI, below*).

The BPO intends to award a portion of the Program's \$500 million appropriation to Phase 1 applicants, and to retain the balance of funding for future rounds. However, there is no specific maximum dollar amount attributable to Phase 1 and the BPO reserves the flexibility to award any amount, depending entirely on the quality and quantity of Phase 1 applications received. Grants awarded in this way are eligible to be disbursed no less frequently than on a quarterly reimbursement basis for eligible costs incurred by grant recipients in the course of completing the selected projects. The Program will only support projects that were not part of an

³ See Appendix A—General Definitions

⁴ See Appendix A—General Definitions

⁵ See Appendix A—General Definitions

⁶ An *Underserved* area is defined as an area where broadband service is not available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than **100 Mbps download**.

⁷ See Appendix A—General Definitions

⁸ *As discussed in Section X, below*

⁹ A discussion of Eligible Project Costs is included with these Guidelines (*see Appendix C*).

applicant's capital expenditure plans prior to the filing of their Phase 1 application, and would not be undertaken in the absence of Program funds.

In order to facilitate Phase 1, based on its analysis of the Federal Communications Commission's (FCC's) December 2014 Form 477 Data, the BPO has determined that there are 225,862 Unserved HU's and 2,259,902 Underserved HU's in the State of New York. Applying the Program's definitions of Unserved, Underserved, and Served,¹⁰ the BPO has designated the status of each U.S. Census Block (CB) within the State of New York according to the FCC's methodology, which is based on the fastest Internet speed available in a CB. Using the FCC's methodology, a CB is "Served" if it contains at least one HU served at Internet download speeds of at least 100 Mbps.

Please note that Phase 1 represents the first allocation of Program funding. It is anticipated that areas not addressed in Phase 1 will be the focus of additional rounds of funding, intended to be conducted in 2016, subsequent to the selection of Phase 1 grant recipients. These additional funding rounds will also address Unserved and Underserved Units within CB's designated as "Served" according to the FCC's 477 Data. The BPO will make announcements in the coming months concerning the timing and specific terms of those future funding rounds.

III. PHASE 1 ELIGIBILITY

Eligible types of applicants for Phase 1 may include, but need not be limited to:

- A. Incorporated organizations
- B. Native American tribes or tribal organizations
- C. A local unit of government, or a group of multiple units of government
- D. A cooperative, private corporation or Limited Liability Company, organized on a for-profit or not-for-profit¹¹ basis
- E. A group of public and/or private sector partners¹²

¹⁰ A *Served* area is defined as an area where broadband service is available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than **100 Mbps download**.

¹¹ See also *Appendix E* (regarding Not-for-Profit entities).

¹² To the extent an application submitted by more than one entity is selected as a Phase 1 grant recipient, each entity may be required to execute the project's Grant Disbursement Agreement (*form GDA attached as Appendix D*). Each entity's obligations and liabilities under the GDA may vary based on the nature of the proposal and their contemplated roles in the project.

IV. PHASE 1 REQUIREMENTS

To participate in Phase 1 of the New NY Broadband Program, applicants must meet the following requirements (Phase 1 Requirements):

- Projects Must Only Address Unserved or Underserved Areas
- Applicants Must Provide a Required Co-Investment
- Projects Must Provide Internet Speeds Consistent with the Governor's Goals
- Proposed Technology Solutions Must Conform to the Governor's Goals
- Projects Must Be Implemented by December 31, 2018
- Proposed Pricing Structures Must Include a Required Pricing Tier
- Applicants Must Demonstrate Suitable Fiscal and Management Capabilities
- Applicants Must Make a Commitment to Complete their Projects

The Phase 1 Requirements are discussed in greater detail below. The Program will determine whether applications conform to the Phase 1 Requirements based on applicants' responses to Questions¹³ presented in the NYS Consolidated Funding Application (CFA) Portal (the Portal), as well as their uploaded documentation, subject to the waiver provisions (*discussed in Section V, below*).

A. Projects Must Only Address Unserved or Underserved Areas

Phase 1 will allocate funding to applicants to provide Last-Mile services, including Middle Mile networks, equipment, or other investments required to deliver Last-Mile service, to Unserved or Underserved areas of the State.¹⁴ Applications may propose to serve any CB's designated as being eligible for Phase 1 by the BPO (Eligible CB's).

The BPO's website will provide all the data that an applicant will need to identify and map the area their project proposes to address (Service Area), at the CB level, including two filterable Excel files (.xls) of Eligible CB's, and the same lists in Shapefile (.shp) and Google Earth (.kmz) formats. Instructions on how to use the filterable Excel and Google Earth files are available on the BPO's website.

Please note that some Unserved and Underserved CB's, according to available data, may contain no HU's. Although these CB's may be unoccupied and not require service, the BPO has included both occupied and unoccupied CB's as Eligible CB's, in the event of

¹³ The full list of Phase 1 Application Questions will be posted on the BPO's website, located here - <https://www.nysbroadband.ny.gov/>. Applications may be submitted through the CFA Portal beginning March 1, 2016. Any revisions or modifications to these Guidelines or the Questions will be posted on the BPO's website prior to March 1, 2016.

¹⁴ Middle Mile infrastructure is only eligible for Phase 1 funding to the extent an applicant proposing Last-Mile access needs to include Middle Mile facilities as part of their overall structure.

new development, business presence, or other need. The list of Eligible CB's¹⁵ is divided as follows:

- List A – Unserved CB's that contain HU's
- List B – Unserved CB's containing zero HU's
- List C – Underserved CB's

To the extent an applicant wishes to include CB's on List B, or CB's on List C that do not contain any HU's, in their proposed Service Areas, the applicant must submit documentation demonstrating that the Units proposed to be addressed exist in such CBs. In addition, the BPO will consider proposals to address Unserved or Underserved Units outside of the Eligible CB's. (*For further discussion, see Section VIII - Adjoining Service Areas, below*).

1. Minimum Service Area

Proposed Service Areas may not divide CB's,¹⁶ and each application must serve a minimum of 2,500 Units. For purposes of these Guidelines, "Units" include HU's (as defined by the U.S. Census Bureau), commercial properties, governmental buildings, healthcare facilities, K-12 schools, libraries, EOC's, institutions of higher education, and other community institutions – *i.e.*, each such entity, with the exception of Libraries and EOC's,¹⁷ will count as one (1) Unit. Please note, however, that, where a proposed Service Area includes all Eligible Unserved CB's or all Eligible Underserved CB's within an REDC Region, it shall satisfy the 2,500 Unit minimum requirement, irrespective of the total number of Units to be served by the application.

2. Multiple Applications

While an individual applicant may propose to address Eligible Unserved or Underserved CB's in different areas of the State, a single Phase 1 application may only propose to serve either Eligible Underserved CB's or Eligible Unserved CB's, and may not propose a combination of both.¹⁸ If an applicant wishes to serve both Eligible Unserved CB's and

¹⁵ The list of Eligible Census Blocks is available on the BPO's website.

¹⁶ The requirement that Service Areas not divide CB's does not apply to Adjoining Service Areas.

¹⁷ To the extent applications address Unserved or Underserved Libraries and EOC's, such sites will be weighted for purposes of meeting this requirement (*as discussed in Section VII, below*).

¹⁸ In calculating State Investment per-Unit, the applicant must use the total number of Units in their application. However, to the extent an applicant includes any Adjoining Service Area, they must calculate an additional State Investment per-Unit for each such Adjoining Service Area – *i.e.*, if an Applicant submits an application containing one Adjoining Service Area, the application should contain two separate calculations of the State Investment per-Unit, one including the Adjoining Service Area, and one without the Adjoining Service Area.

Eligible Underserved CB's, the applicant must propose each as a separate Service Area through separate applications. Applications to serve Eligible Unserved CB's and Eligible Underserved CB's will be considered through separate auctions (*i.e.*, an application addressing the Unserved will not be ranked against one addressing the Underserved, or vice-versa), within the REDC Region in which the largest number of Units proposed to be served are located.

Additionally, an individual applicant must designate separate Service Areas through multiple applications where: (1) the applicant proposes to serve geographic areas that do not share physical continuity AND are wholly-located in different REDC Regions, OR (2) the applicant is proposing the use of different technology solutions for each area. For purposes of *Section VI (Phase 1 Regional Auctions, discussed below)*, where an individual application proposes to serve Units in more than one REDC Region, that application will be considered relative to the Region where the largest number of Units in its proposed Service Area are located.

To summarize the requirements in paragraphs 1 and 2 above:

- Proposals to serve Eligible Unserved CB's and Eligible Underserved CB's must be submitted through separate applications;
- Auctions to address the Unserved will be conducted separately from auctions to address the Underserved. Both auctions will be conducted within the REDC Region in which each application's proposed Service Area is located;
- Applications proposing Service Areas that span more than one REDC Region will be considered in the Region in which the largest number of Units to be served are located;
- Applications that propose use of more than one technology must be filed using separate applications for each technology solution
- In any event, each application must serve:
 - 1) Whole Eligible CB's (excluding Adjoining Service Areas); and
 - 2) A minimum of 2,500 Units (or every Eligible Unserved or Underserved CB within an REDC Region)

3. Modified Awards

Where applications propose to serve overlapping areas, preference shall be given to the proposals which serve their respective territories at the lowest requested amount of State Investment per Unit served (*as discussed in Section X, below*). In submitting their

Phase 1 application, each applicant may agree to accept an award for fewer than the total number of Units in their proposed Service Area (*i.e.*, an applicant may indicate a percentage of the total number of Units, if any, that they would agree to serve). The Program recommends that each applicant agree to accept a 20% reduction of their proposed Service Area. To the extent overlaps may be addressed by reducing the total number of Units in a higher-cost application up to the applicant's indicated percentage, the BPO may extract the overlapping Units from the higher-cost application and offer a modified award, calculated strictly on a pro rata basis (Modified Awards).¹⁹ To the extent any applicant agrees to accept a reduced Service Area, they will be required to accept a Modified Award that does not reduce the total number of Units to be served in excess of the reduction authorized by their application. Under no circumstances will the BPO approve a Modified Award reducing a proposed Service Area in excess of that percentage.

Example: Applicant A proposes an Unserved Service Area consisting of CBs 1, 2, 3, and 4, with 2,000 Units in each of the four CBs, a total of 8,000 Units, and requests a State Investment of \$100 dollars-per-Unit, a total award of \$800,000.

Applicant B proposes an Unserved Service Area consisting of CB's 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, with 2,000 Units in each of the 10 CBs, a total of 20,000 Units, requesting a State Investment of \$150 dollars-per-Unit, a total award of \$3 million. Applicant B agrees to accept a reduction of 20% of the total number of Units in Applicant B's proposed Service Area.

Assuming that both applications meet all Phase 1 Requirements, the applications would be ranked in the Reverse-Auction addressing the Unserved within that REDC Region. Because Applicant A requested the lesser amount of State Investment per-Units, their proposal would take priority and would receive Applicant A's total requested award. Should the auction also select Applicant B, which requested the higher amount of State Investment per-Unit, the BPO would extract CB 4, which will be served as part of Applicant A's project, from Applicant B's Service Area. The BPO would offer a Modified Award of \$2.7 million to Applicant B, reflecting a reduction of 2,000 Units (or 10%) of their proposed Service Area. The Modified Award does not exceed the

¹⁹ Reducing the award for the lower number of Units served by utilizing the average cost of the aggregate application and applying it to the number of Units extracted in this way.

20% Service Area reduction that Applicant B agreed to accept, and Applicant B will be required to accept the Modified Award.

4. Territories Excluded from Phase 1

Please note that the following areas, notwithstanding their status as Unserved or Underserved, are excluded from Phase 1:

i. Unpassed Time Warner Cable Franchise Homes

In May 2015, Charter Communications (Charter) announced a proposed acquisition of Time Warner Cable (TWC) (collectively, these companies will form “New Charter”). The NYS Public Service Commission (PSC), pursuant to its authority under the Public Service Law, has issued an order approving the merger subject to agreed terms that include New Charter’s commitment to extend service to 150,000 or more currently unpassed HU’s and businesses within the existing TWC and Charter NYS Franchise Areas. In light of that commitment, the BPO has decided to exclude all unpassed Units within the proposed New Charter NYS Franchise Area from Phase 1. However, following final approval of the merger, which is still subject to review by other federal and state regulating authorities, and confirmation of the Units to be served under the agreement, any remaining Units within the proposed New Charter NYS Franchise Area that do not meet the Governor’s speed goals will be eligible for future rounds of Program funding. Such future rounds will be conducted subsequent to the selection of Phase 1 grant recipients.

ii. Connect America Fund Service Territory

In August 2015, a national telecommunications carrier declined \$144 million in annual support from the Connect America Fund (CAF), an FCC program that supports the deployment of broadband in Unserved areas at speeds of 10/1 Mbps (download/upload). Within New York State, the carrier declined \$31 million in annual CAF support, for 78,245 eligible locations. The BPO understands that the FCC is now reviewing alternatives to re-auction this unclaimed funding to other broadband service providers seeking to serve those New York State CAF territories. The BPO is actively evaluating opportunities to leverage this federal funding, as a complement to Program funding, and, therefore, will exclude all Units within those eligible New York State CAF territories from Phase 1.

In parallel to its launch of Phase 1, the State of New York anticipates making a submission to the FCC that proposes the coordination of CAF and New NY Broadband Program funding to ensure that all available funding resources are used to deploy broadband to those New York communities where high-speed Internet is most needed.

This partnership will give potential providers in the New York State CAF territories access to funding from both CAF and the New NY Broadband Program.

iii. Qualifying Connect NY and REDC Projects

Through the Connect NY Broadband Grant Program and Regional Economic Development Councils (REDCs), the State of New York has funded approximately 12 pending projects to deliver last-mile broadband service at Internet download speeds of at least 25 Mbps to Units in their respective project Service Areas. Because these projects (Qualifying Connect NY and REDC Projects), when completed, will achieve the New NY Broadband Program's minimum speed goals, Unserved Units within such Service Areas will not be considered for Phase 1.

5. Regional Economic Development Council Priority Areas

Prior to February 15, 2016, each REDC will have the opportunity to identify priority areas within their respective Regions requiring broadband service. To the extent such areas correspond with any Eligible CB, they would be designated "REDC Priority Areas." In the event two Phase 1 applications are received, which qualify in all other respects and propose equal amounts of State Investment per Unit Served, the application serving an REDC Priority Area in its entirety shall have priority.

B. Applicants Must Provide a Required Co-Investment

Governor Cuomo has set a goal of soliciting private sector Matching Funds for 50% of the capital needed for the Program. Consistent with that goal, applicants are encouraged to provide Matching Funds such that private investment for projects will be as high as possible, and cost to the State as low as possible. The Governor's goal for private investment on funded projects is 50% of total Eligible Project Costs or greater.²⁰

A portion of the applicant's financial commitment – at least 10% of total Eligible Project Costs – must be equity capital injected into the project by the applicant. Equity capital is defined as cash invested into the project by the applicant or by investors, and should be auditable through the applicant's financial statements or accounts, if so requested by ESD. Equity capital may include funds raised through the sale of equity stakes in the applicant. Equity capital cannot be borrowed money secured by the assets in the project, or grants from a government source.

Any amount of the applicant's financial commitment above 10% of total Eligible Project Costs may consist of borrowed money or funding from other government sources.

²⁰ Please note that in no event shall the BPO consider applications proposing a private financial commitment of less than 20% of total Eligible Project Costs.

C. Projects Must Provide Internet Speeds Consistent with the Governor's Goals

The Program is designed to ensure that every New Yorker has access to high-speed broadband at Internet download speeds of at least 100 Mbps, except in the most remote areas of the State. Phase 1 has set download speed requirements consistent with that goal for applications addressing Unserved and Underserved areas, respectively. In each case, applicants will be required to demonstrate how their proposed technology solution will deliver the promised speeds in the proposed Service Area once operational and how capacity will be aggregated in the network design.

Additionally, the Program favors robust Internet upload speeds. All applications should offer upload speeds consistent with national trends.

1. Speed Requirements for Eligible Unserved CB's

Projects addressing Eligible Unserved CB's should offer Internet download speeds of at least 100 Mbps. Applications proposing download speeds below 100 Mbps will only be considered for funding where no commercially-reasonable²¹ bids at 100 Mbps are submitted to address the same proposed Service Area. In any event, applications must offer Internet download speeds of at least 25 Mbps to each Unit in the proposed Service Area.

2. Speed Requirements for Eligible Underserved CB's

Projects addressing Eligible Underserved CB's must offer Internet download speeds of at least 100 Mbps to each Unit in the proposed Service Area.

D. Proposed Technology Solutions Must Meet the Governor's Goals

Proposed technology solutions must be designed to meet the Program's goals, particularly the Governor's target download speed goal of at least 100 Mbps. Based on each technology's proven speed capacity and scalability, the following technologies are pre-approved for use in Phase 1:

1. Fiber-to-the-Home (FTTH);²²
2. Cable/Hybrid Fiber-Coaxial (HFC),²³ deploying DOCSIS 3.0 modems or higher

Additionally, while Phase 1 will accept applications offering the following technology solutions, in light of the greater performance variability of these technologies in

²¹ See Section X, below.

²² See Appendix A– General Definitions

²³ See Appendix A– General Definitions

different settings, proposals offering such technologies will only be considered where no commercially-reasonable applications using Fiber or Cable/HFC are submitted to address the same proposed Service Area. Applications offering such technologies must submit supporting documentation demonstrating, to the satisfaction of the Program, that such technology solutions can achieve the Program's speed goals in the proposed Service Area:

1. Digital Subscriber Line (DSL);²⁴
2. Fixed Wireless²⁵

Each application must use only one technology solution. To the extent an applicant wishes to utilize multiple solutions, each technology must be submitted through a separate application.

E. Projects Must Be Implemented by December 31, 2018

In accordance with the goals of the Program, Phase 1 applicants must demonstrate that their projects will be completed by December 31, 2018, and must detail major benchmarks and timing of anticipated achievement of each benchmark.

F. Proposed Pricing Structures Must Include a Required Pricing Tier

While the Program seeks to promote affordable access to high-speed broadband, including to households with low or fixed incomes, it also recognizes that Program participants need to achieve a reasonable return on their investments. Therefore, the Program is seeking to implement pricing structures that balance both considerations. To participate in Phase 1, applicants must agree that their broadband service offerings for consumers in the funded Service Areas, for a period of five (5) years from completion of the project, will include the following pricing tier (the Pricing Requirement) as a service option to residential users, excluding businesses and other institutional users: minimum Internet speeds of at least 25/4 Mbps (download/upload), at a monthly rate not to exceed \$60.

The rate quoted above should include any connection fees, equipment fees, and/or surcharges. Such service should not impose caps on the end-user's bandwidth usage (data caps). The rate is effective as of December 2015, and may be increased annually by the provider at a rate reflecting the rate of inflation as measured by the Consumer Price Index (CPI) or according to a rate published by the BPO, whichever such increase would be greater.

²⁴ See Appendix A– General Definitions

²⁵ See Appendix A– General Definitions

G. Applicants Must Demonstrate Suitable Fiscal Standing and Management Capabilities

To participate in Phase 1, applicants must demonstrate suitable fiscal standing and management capabilities. To allow the Program to determine whether applicants meet this criterion, applicants must submit the following documents and/or attest to each of the following:

1. Applicant must operate at least one wired or wireless network business with at least 500 customers;
 - a. To the extent Applicant is a partnership consisting of two or more entities, including municipalities and/or tribal entities, it is sufficient that any one entity among those filing the application meet the above requirement.
2. Audited Financial Statements for the past 3 years. If Applicant's most recent financials are over 180 days old, add the most recent interim statements;
3. Signed Federal, State, and Local Tax Returns for the past 2 years (FYs 2014 and 2013);
4. To the extent Applicant is a municipality and has a municipal bond rating on any of its debt instruments, it must demonstrate an investment grade bond rating, as determined by one of the following credit-rating agencies: Moody's Investors Service, Standard & Poor's, or Fitch Ratings;
5. Projects must be fully-financed,²⁶ through a combination of the total requested State Investment and committed funds from the Applicant;
6. Applicants must have cash-on-hand, defined as the Applicant's total amount of available cash, in an amount no less than the proposed committed funding, or a commitment letter for financing in that amount;
 - a. Applicants who cannot meet the total amount of their financial commitment at the time of submission of their Phase 1 application will only be allowed to participate upon issuance of a waiver by the President and Chief Executive Officer (CEO) of ESD (*as described in Section V, below*). Such Applicant may submit (1) documentation acceptable to ESD demonstrating that the Applicant is in the process of raising this capital,

²⁶ Applicants will be asked to submit a complete and balanced table detailing all sources and uses of funding related to their proposed project, as well as a complete breakdown of all Eligible Project Costs that the State Investment will be funding.

describing the sources and status of such financing, and providing a timeline for obtaining the financing; as well as (2) a letter attesting to the Applicant's confidence that it will obtain such financing within the timeline provided. Applicants will be notified in writing as to whether they have received a waiver. Applicants must inform the BPO when they have obtained the necessary financing.

- b. Subparagraph a. above does not supersede the requirement that applicants finance at least 10% of total Eligible Project Costs with equity capital (*as discussed in Section IV B – Required Co-Investments*). In submitting the documentation described above, applicants are still expected to demonstrate that at least 10% of their private financial commitment will be equity capital.
7. Applicants must be in good standing in performance of any and all existing New York State contracts, and compliance with all federal, State, and local laws; and agree that each of their principals, officers, and directors, as determined by the BPO, may be required to submit to a background check at the sole discretion of the BPO as a precondition to the award of Program funding
8. Applicants may submit additional documents and/or information supporting a determination that the Applicant has demonstrated sufficient financial and management capabilities to participate in Phase 1.

Where the applicant is a joint-venture or cooperative consisting of one or more public and/or private entities, unless otherwise indicated in the Portal, each entity among those filing the application must submit the documents requested above. Where an applicant is a newly-formed subsidiary, or other related entity, of a parent, the applicant should submit the above-listed documents/attestations for the parent/related entity.

H. Applicants Must Make a Commitment to Complete the Project

Applications to Phase 1 shall represent binding commitments by the applicants to carry out their proposals. If selected, an applicant shall be required to enter into a Grant Disbursement Agreement (GDA) (*form GDA attached as Appendix D*) prior to disbursement of any Program funds, and to carry out their project subject to the proposed terms of their application.

Applicants to Phase 1 shall be required to provide a deposit in the amount of \$100,000.00 (the Application Deposit), conforming to terms to be provided by ESD prior to March 1, 2016. Should an applicant selected for Phase 1 refuse to enter into a GDA with ESD for the Phase 1 application, their Application Deposit will be nonrefundable.

V. WAIVERS

Notwithstanding any of the above terms, the President and CEO of ESD reserves the right to waive one or more of the Phase 1 Requirements listed above. An applicant may request a waiver from such Phase 1 Requirement(s) by providing a written explanation of why it is unable to meet the Requirement(s).

VI. PHASE 1 REGIONAL AUCTIONS

To address broadband needs across the State, Phase 1 will conduct separate auctions within each REDC Region to rank proposals addressing the Unserved and Underserved (*i.e.*, within each Region, there will be separate auctions – one ranking applications to address the Region’s Unserved and another ranking applications to address the Region’s Underserved). Qualifying Applications that are confirmed as being commercially-reasonable²⁷ will be selected in each auction. Where a single application proposes to serve Units in more than one REDC Region, that application will be considered in the Region where the largest number of Units in its proposed Service Area are located. For avoidance of doubt, the commercially-reasonable funding threshold will be determined by ESD in its discretion (*as discussed in Section X, below*) and may or may not be set at the same level of required State Investment-per-Unit.

VII. LIBRARIES AND EDUCATIONAL OPPORTUNITY CENTERS

Consistent with its enabling legislation, the BPO encourages projects to offer broadband services to Unserved or Underserved Libraries and Educational Opportunity Centers (EOC’s). To the extent an application proposes to address such facilities, applicants must provide detailed information concerning the proposed service and identify the particular Libraries and/or EOC’s to be addressed.

Where an application proposes to address Unserved or Underserved Libraries and EOC’s, such facilities shall be weighted in determining whether the applicant has met their required minimum number of 2,500 Units (*as described above, Section IV A1*). In calculating the number of Units that an applicant has proposed to serve, the Program will count each Unserved or Underserved Library as five (5) Units, and each Unserved or Underserved EOC as five (5) Units.

For avoidance of doubt, this provision would only apply to the determination of whether an applicant has satisfied the requirement of addressing a minimum number of Units, and will not affect the calculation of an applicant’s grant.

²⁷ *As discussed in Section X, below.*

VIII. REQUESTS TO INCLUDE ADJOINING SERVICE AREAS

Where an applicant identifies Unserved or Underserved Units outside an Eligible CB, the applicant may, as part of their application, propose to include such Units (Adjoining Service Areas) in their project. Adjoining Service Areas must be adjacent to at least one Eligible CB that the applicant contemplates addressing in their proposed Service Area. Such requests must include the following information in their proposal:

1. A mappable shapefile of the Adjoining Service Area and list of CB's included therein;
2. Documentary evidence demonstrating that all Units proposed to be included in the Adjoining Service Area, despite their current Phase 1 eligibility designation, are, in fact, either Unserved or Underserved (*as defined within these Guidelines*) and
3. An affirmation by the Applicant that all such Units are either Unserved or Underserved.

Adjoining Service Areas may include partial CB's. The BPO may accept an application to serve an Adjoining Service Area where it determines that the submitted documentary evidence and affidavit are compelling.

Notwithstanding this Section, applications that include an Adjoining Service Area may not combine Unserved and Underserved Units into a single application (*i.e.*, an Adjoining Service Area containing Unserved Units may only be included in an application that addresses Eligible Unserved CB's).

IX. EVALUATION OF APPLICATIONS

In selecting applications for the Phase 1 Reverse-Auction, the BPO may consult with other divisions of ESD, other NYS agencies, and/or consultants to the BPO possessing relevant expertise for an evaluation of any application's compliance with the Phase 1 Requirements, including, but not limited to, a determination of the status of an Adjoining Service Area, whether or not proposed technology solutions meet the Program's goals, and the commercial-reasonableness of an application. In rendering such evaluations, these entities may consider any response by an applicant to questions in the Portal, as well as application materials uploaded by the applicant, including network design plans and technology specifications.

All applications that comply with the Phase 1 Requirements (or have obtained a waiver from certain of the Requirements, *as described in Section V, above*) (Qualifying Applications) will be advanced to the Phase 1 Reverse Auction Process (*as described in Section X below*).

X. PHASE 1 REVERSE-AUCTION PROCESS

Beginning on March 1, 2016, the Portal will open for applications. Applicants will be required to submit their applications online through the Portal. The Portal will ask applicants to answer questions and submit detailed information concerning their projects, proposed Service Areas, management and financial capabilities, total project cost, and importantly, the State Investment that applicants are seeking on a dollars-per-Unit-served basis. Applications must meet the Phase 1 Requirements to qualify for the Reverse-Auction (unless granted a waiver from certain Requirements).

The Portal will close at 4:30pm ET, on April 15, 2016 (the Application Deadline); the Program will not consider applications for Phase 1 submitted after the Application Deadline.

ESD may contact any applicant for the limited purpose of requesting additional information necessary to complete their application. Additionally, applicants will be required to pay a nonrefundable \$250.00 Application Fee and provide the Application Deposit.²⁸

After the Application Deadline, the Reverse-Auction will rank Qualifying Applications in order of requested State Investment per-Unit served, by REDC Region, prioritizing the lowest-cost applications (*as described in Section VI above*). Applications to serve Eligible Underserved CB's and Eligible Unserved CB's within each REDC Region will be considered separately. To provide a brief illustration of this process:

Two applicants submit Phase 1 proposals that address identical Service Areas. Applicant A's project will serve 500,000 Unserved Units, at a total project cost of \$1.2 million. Applicant A proposes to fund their project with a private financial commitment of \$700,000 and seeks a \$500,000 award from the Program. The amount of State Investment for Applicant A's project will, therefore, be \$1.00 per Unit served (\$500,000 award/500,000 Units). Applicant B's project will also serve 500,000 Unserved Units, at a total project cost of \$2 million. Applicant B proposes to fund their project with a private financial commitment of \$250,000 and seeks a \$1.75 million award. The amount of State Investment for Applicant B's project will be \$3.50 per Unit served (\$1.75 million award/500,000 Units). Assuming that both applications meet all Phase 1 Requirements, using the reverse-auction methodology, Applicant A's proposal – which sought the

²⁸ Terms and instructions for payment of both the Application Fee and Application Deposit will be articulated by ESD prior to March 1, 2016.

lowest amount of State Investment per Unit served – would be funded.

After review, successful applicants will be notified of their selection by letter from ESD. Awards will be subject to approval by the ESD Board of Directors, as well as public hearings in the locality of the proposed project and review by the Public Authorities Control Board. Selected applicants will then execute GDA's with ESD. Where awards exceed \$1,000,000.00, GDA's will be subject to review and approval by the NYS Office of the State Comptroller.

Unserved and Underserved areas not addressed in Phase 1 will be diverted to one or more subsequent allocations of Program funding, which is anticipated to occur in 2016.

XI. LEGAL TERMS AND CONDITIONS

By applying for Phase 1 Funding, Applicants are agreeing to adhere to the following terms and conditions:

A. Non-Collusion

To obtain funding under Phase 1, Applicants will be required to attest that their applications, including the costs presented and grant amounts requested therein, have been developed independently, without collusion, consultation, communication, or agreement for the purposes of restricting competition in ESD's selection of Phase 1 grant recipients; that, unless otherwise required by law, the costs presented and grant amounts requested in their Phase 1 application will not knowingly be disclosed by the Applicant to any other Applicant or to any competitor; and that no attempt has been made, or will be made, by the Applicant to submit or to not submit an application for the purposes of restricting competition in ESD's selection of Phase 1 grant recipients.

B. Compliance With Laws and Good Standing with NYS Contracts

To obtain funding under Phase 1, Applicants must attest to substantial compliance with all federal, State, and Local Laws, and consent to an investigation of their standing with all NYS contracts. Applicants must also assent to the completion of a background check. ESD may modify or cancel an award based on an Applicant's non-compliance with laws or a finding that the applicant is not in good standing with any NYS contract, either at the time of their application submission or thereafter.

C. Non-Discrimination Policy

It is the policy of the State of New York, including specifically ESD, to comply with all federal, State and Local Laws, policies, orders, rules and regulations that prohibit the unlawful

discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

D. M/WBE Goals

In accordance with the requirements of Article 15-A of the New York State Executive Law, projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which may set goals for participation by Minority and Women-Owned Business Enterprises where practical, feasible, and appropriate. Such goals shall typically be included in the incentive proposal.

Please note that ESD's agency-wide MWBE utilization goal is 30%. Each project will be assigned an individual contract-specific goal, based on local market conditions. Funding recipients shall be required to use good faith efforts to achieve the prescribed MWBE goals assigned to this project. Funding Recipients must maintain such records and take such actions necessary to demonstrate such compliance.

E. Service-Disabled Veterans-Owned Business Enterprise Goals

In 2014, Governor Andrew M. Cuomo signed the Service-Disabled Veteran-Owned Business Act into law, (Article 17-B of the New York State Executive Law), establishing a 6% goal for statewide participation in State contracts by businesses owned by service disabled veterans.

Each project will be assigned an individual contract-specific goal, which may be lower than 6%. Funding recipients shall be required to use good faith efforts to achieve the prescribed goal for participation by Service-Disabled Veteran-Owned businesses. Funding Recipients must maintain such records and take such actions necessary to demonstrate such compliance.

F. Applicability of New York State SEQR Requirements

In New York State, most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review (SEQR). SEQR may apply to Phase 1 Projects that involve construction or other activities that may affect the environment by changing the use, appearance or condition of a site or structure. If the project requires review under SEQR, Funding Recipients must maintain such records and take such actions necessary to demonstrate such compliance. Each project funded Under Phase 1 of the Program will be assessed by ESD to determine whether SEQR applies and, in cases where ESD determines that SEQR is applicable to a project, compliance with SEQR will be a precondition to an applicant receiving disbursements of awarded Program funded.

G. Applicability of Smart Growth Review Requirements

The State Smart Growth Public Infrastructure Policy Act of 2010 requires that public infrastructure projects approved, undertaken, supported or financed by a State Infrastructure Agency, which includes ESD, to the extent practicable, are consistent with relevant Smart Growth Criteria specified in the law. Phase 1 projects may be subject to review under this law. Accordingly, ESD may request that a Smart Growth Impact Statement be completed for the project.

H. UCC Security Interest

The BPO reserves the right, at its sole discretion, to require applicants to provide the BPO with an unsubordinated security interest in tangible assets funded by the Program.

I. Environmental Sustainability

ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.

J. Sharing of Tax Information

Applicants agree to allow the New York State Department of Taxation and Finance to share Company tax information with ESD.

K. Sharing of Labor Information

Applicants authorize the New York State Commissioner of Labor to disclose, to employees of both the NYS Department of Labor and ESD, all records filed by the Applicant in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the company and assistance described in this incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested.

XII. QUESTIONS

For Questions relating to the New NY Broadband Program, please contact:

Ana Rua
Director of Outreach, Broadband and Innovation
Broadband Program Office
Empire State Development
newnybroadband@esd.ny.gov
www.nysbroadband.ny.gov

APPENDIX A

GENERAL DEFINITIONS

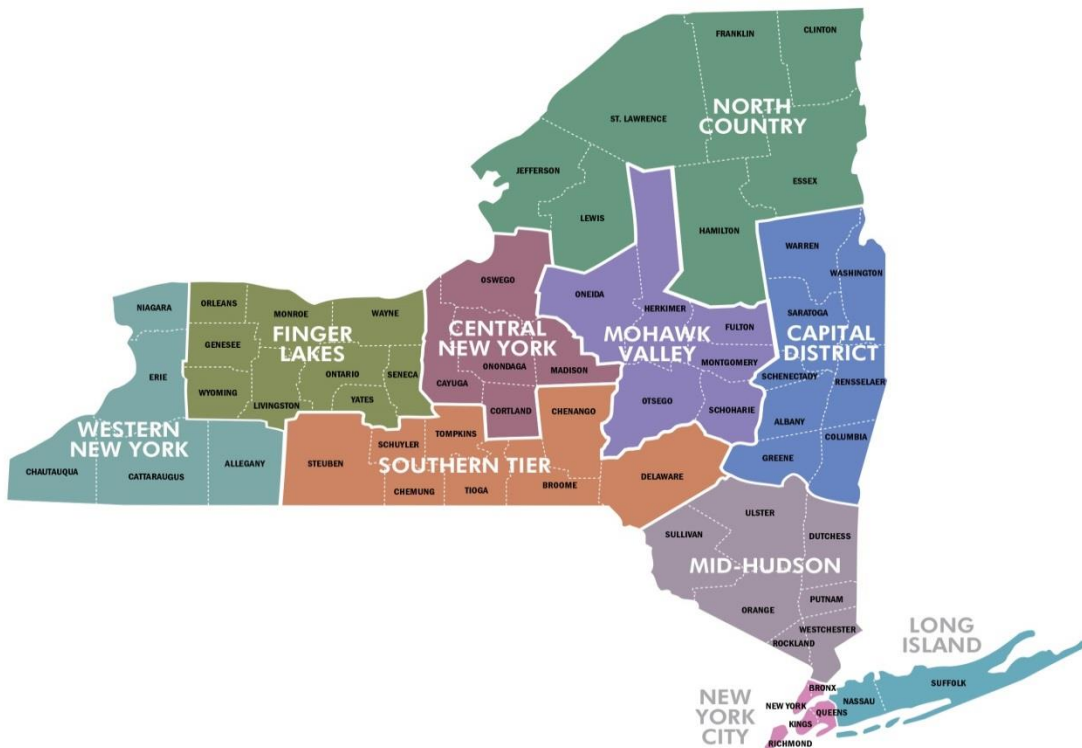
1. **Adjoining Service Area** – Refers to an Applicant’s proposed inclusion of Unserved or Underserved Units adjacent to Eligible CB’s that the Applicant proposes to serve (*as discussed further in Section VIII of these Guidelines*)
2. **Applicant** – Refers to any entity or group of entities submitting a proposal for Phase 1 of the New NY Broadband Grant Program
3. **Application Deposit** – To participate in Phase 1, applicants will be required to provide a deposit in the amount of \$100,000.00, pursuant to terms to be articulated by ESD prior to March 1, 2016
4. **Application Fee** – Applicants will be required to pay a non-refundable amount of \$250
5. **Census Block (CB)** – The smallest geographic unit used by the U.S. Census Bureau
6. **Co-Investment** – Refers to the applicant’s private financial commitment to the project (also referred to as “Matching Funds”)
7. **Connect NY Broadband Grant Program (Connect NY)** - The "Connect NY" Broadband Program provided grants to promote and expand high-speed Internet access in rural upstate and underserved urban areas of the State
8. **Connect America Fund (CAF)** – a Federal Communications Commission (FCC) program that supports the deployment of Internet access in Unserved areas at speeds of 10/1 Mbps (download/upload)
9. **Consumer Price Index (CPI)** – A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services
10. **Digital Subscriber Line (DSL)** - A technology for bringing high- bandwidth information to homes and small businesses over ordinary copper telephone lines
11. **Educational Opportunity Centers (EOC’s)** – Members of a statewide network of educational institutions that operate in affiliation with the State University of New York
12. **Eligible Census Blocks (Eligible CB’s)** – Census Blocks that may be included in a Phase 1 Application. For purposes of Phase 1, these CB’s are either wholly Unserved or Underserved (these Guidelines refer to *Eligible Unserved CB’s* or *Eligible Underserved CB’s*), based on the BPO’s analysis of the FCC’s December 2014 Form 477 Data. The Eligible CB’s exclude the areas discussed in Section IV A 4 of these Guidelines
13. **Eligible Project Costs** – Expenses eligible for reimbursement under the New NY Broadband Program RFP Grant Guidelines (*as discussed in Appendix C of these Guidelines*)

14. **Fiber-to-the-Home (FTTH)** – A network that delivers internet service over optical fiber directly to an end-user home, business, or other Unit
15. **Fixed Wireless** – Wireless devices or systems that are situated in fixed locations
16. **Housing Unit (HU)** – Defined by the U.S. Census Bureau as a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall
17. **Hybrid Fiber Coaxial (HFC)** - A broadband network combining optical fiber and coaxial cable
18. **Last-Mile** – Components of a network that provide broadband service to end-user premises or devices through an intermediate point of aggregation (*e.g.*, remote terminal, fiber node, wireless tower, or other equivalent access point)
19. **Middle Mile** – Network components that provide broadband service from one or more centralized facilities (*e.g.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facilities) to an Internet point of presence
20. **Minimum Service Area** – Phase 1 applications must address at least 2,500 Units or serve all Eligible CBs within an REDC Region
21. **Modified Award** – Refers to an allocation of funding an applicant may receive if their proposed Service Area overlaps with that of another applicant (*as discussed further in Section IV A 3 of these Guidelines*)
22. **New NY Broadband Program Phase 1 (Phase 1)** – Refers to this first allocation of New NY Broadband Program grant awards, *as discussed throughout these Guidelines*
23. **Phase 1 Broadband Map** – Map identifying Unserved and Underserved CB's in the State of New York, based on the BPO's analysis of the FCC's December 2014 Form 477 Data
24. **Phase 1 Requirements** – Criteria that applications must meet to be considered in the Phase 1 Reverse-Auction (*as discussed in Section IV of these Guidelines*)
25. **Project** – Applicant's Proposed Phase 1 Project.
26. **Pricing Requirement** – A broadband pricing tier for residential users offering service at minimum Internet speeds of 25/4 (download/upload) at a monthly rate not to exceed \$60 (including any connection fees, equipment fees, and/or surcharges). The service may not impose caps on the end-user's bandwidth usage (data caps)
27. **Qualifying Applications** – Applications that meet the Phase 1 Requirements (or are granted a waiver) and may be considered in the Phase 1 Reverse-Auction

28. **Qualifying Connect NY and REDC Projects** – Connect NY and REDC Broadband Projects that will deliver broadband at Internet download speeds of at least 25 Mbps. Because they meet the New NY Broadband Program’s speed goals, service areas for these projects will not be considered in Phase 1
29. **Regional Economic Development Councils (REDC’s)** – Established in 2010 by Governor Cuomo, these 10 public-private partnerships are made up of local experts and stakeholders and work to develop long-term strategic plans for economic growth for their respective regions of the State
30. **REDC Priority Areas** – Prior to February 15, 2016, each REDC will have the opportunity to identify priority areas within their Region requiring Broadband service. To the extent such areas correspond with Eligible CB’s, they would be designated “REDC Priority Areas.” In the event two Phase 1 applications are received, which qualify in all other respects and are substantially similar in amounts of State Investment per Unit Served, applications serving REDC Priority Areas shall be given priority
31. **Reverse-Auction** – A type of auction in which the roles of buyer and seller are reversed. In an ordinary auction (also known as a forward auction), buyers compete to obtain a good or service by offering increasingly higher prices. In a reverse auction, the sellers compete to obtain bids from the buyer and prices will typically decrease as the sellers outbid each other
32. **Served** – An area where broadband service is available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than 100 Mbps (download)
33. **Service Area** – Refers to the geographic territory in which an applicant has proposed to provide service
34. **Underserved** – An area where broadband service is not available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than 100 Mbps (download)
35. **Units** – “Units” include Housing Units, commercial properties, governmental buildings, healthcare facilities, K-12 schools, libraries, educational opportunity centers, institutions of higher education, and other community institutions – *i.e.*, each such entity, with the exception of Libraries and EOC’s, will count as one (1) Unit for purposes of Phase 1
36. **Unserved** – An area where broadband service is not available from a wireline or wireless facilities-based provider at advertised speeds equal to or higher than 25 Mbps (download)

APPENDIX B

MAP OF NYS ECONOMIC DEVELOPMENT REGIONS



APPENDIX C

PHASE 1 ELIGIBLE AND INELIGIBLE EXPENSES

New NY Broadband Program Phase 1 funds may be used:

- To fund the construction or improvement of all facilities required to pass all Units located within the Applicant's Service Area with a network capable of providing the specified broadband service.
 - o "Construction or improvement" should also include the cost of all network infrastructure and electronics required to connect Units to the network in order to provide service to end-users located within the Service Area that are expected to subscribe to service upon completion of the project (*i.e.*, the cost to "run drops" to anticipated customers), where such connections are within standard drop lengths,²⁹ require standard electronics, and do not require the placement poles on the end-user's premises (Special Construction). Such costs, exclusive of Special Construction and equipment sold or leased to end-user customers, are eligible expenses within these Guidelines.
 - o "Construction and improvement" also includes costs associated with end-users located within the Service Area that are not expected to subscribe to service upon project completion. Applicants must provide service, in a reasonable timeframe and at no additional cost (outside the standard monthly recurring cost for service), to the locations of these potential customers where such connections are within standard drop lengths, require standard electronics, and do not require Special Construction. Such costs, exclusive of Special Construction and equipment sold or leased to end-user customers, are eligible expenses within these Guidelines.
 - o Systems shall be designed and constructed so that customers not within a standard drop length only require installation of a longer drop, and, only in very extreme instances, additional amplification for that customer.
- For the upfront investment associated with installing and/or upgrading existing broadband facilities on a one-time, capital improvement basis, in order to expand broadband access and increase capacity.
- Where proposed construction or equipment or other items (leases, expenses, indirect costs) may serve both the proposed areas and other areas (dual use), the applicant shall calculate the percentage of passings in the proposed area or areas relative to the total

²⁹ 16 NYCRR section 895.5(b)(3) defines standard drop lengths as 150 feet.

number of passings, and only that percentage of the cost of dual use construction or equipment shall be eligible.

- To fund the cost of long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service.
- To fund reasonable make-ready expenses incurred as a result of providing broadband service.
- To fund reasonable indirect costs associated with the implementation of the grant efforts and consistent with the principles outlined in the New NY Broadband RFP Grant Guidelines, excluding maintenance and operating expenses, customer operations, general and administrative costs, efforts associated with bidding on and obtaining the grants, and any efforts not associated with the actual deployment of the network.
 - o An applicant may not seek indirect costs in an amount constituting more than 15% of the applicant's total eligible expenses.
 - o Such costs must be identified as line-items in the application to be eligible for reimbursement. Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed. When seeking reimbursement, applicants must submit such indirect costs as line-items and provide justification for the expense.

Eligible Capital Expense Categories (for new plant required for broadband service delivery):

- Network & Access Equipment Costs: Includes optical equipment, digital line concentrators, digital subscriber line access multiplexers, radio equipment, transport multiplexers, routers and Ethernet switches, distribution frames and panels, power equipment, and associated software costs chargeable to capital.
- Outside Plant Costs: Includes cable (aerial, buried, underground, and submarine), fiber, conduit systems, poles, cross-connect cabinets and splitters, fiber service terminals and enclosures, pedestals, standard drops, network interface devices, optical network terminals and reasonable make-ready costs.
- Tower Costs: Includes the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers.
- Building and Land Costs: Includes the cost of constructing new buildings and renovating existing buildings, as well as any site preparation costs directly related to providing broadband service to the funded Service Area.
- Customer Premises Equipment: Funding only covers up to the network demarcation point (*e.g.*, NID or ONT).
- Professional Services: Includes site engineering, project management, and consultant services costs involved in designing and constructing the proposed project.

- Testing: Includes items such as testing network and IT systems, user devices, servers, lab furnishing and test generators.
- Other Upfront Costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material.

Ineligible Expenses:

- Only Standard Drop Lengths will be eligible for funding. Drops requiring Special Construction will be the responsibility of the consumer.
- Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point.
- Operating expenses of the applicant will not be funded.
- Expenses incurred prior to the date of the grant award announcement will not be eligible for funding.

APPENDIX D

PHASE 1 GRANT DISBURSEMENT AGREEMENT

Please note: This Grant Disbursement Agreement (GDA) is a template to be used for New NY Broadband Program Phase 1 awards. Notwithstanding this form, specific terms and conditions of each executed GDA may vary, based on the terms of each application. Additionally, Empire State Development (ESD) reserves the right to modify and/or update this template.

NEW NY BROADBAND PROGRAM

This **GRANT DISBURSEMENT AGREEMENT** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

**NEW YORK STATE
URBAN DEVELOPMENT
CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
("ESD" or "GRANTOR"):**

633 Third Avenue
New York, NY 10017
Contact: «Project_Manager»
Phone: «Project_Mgr_Phone»
E-mail: «Project_Mgr_email»

THE GRANTEE:

<<Original_Name_Client>>
<<Street_Address_Client>>
Contact:
Phone:
E-mail:
Federal Taxpayer ID#:

PROJECT NAME:

<<Project_Name>>

PROJECT LOCATION:

<<Project_Town>>, <<Project_Zip_codes>>

PROJECT NUMBER:

<<Project_Number>>

GRANT AMOUNT:

<<Grant_Amt>>

FUNDING SOURCE:

New NY Broadband 15-16 Capital

ESD APPROVAL DATE:

<<Approval_Date>>

PACB APPROVAL DATE:

<<PACB_Approval_Date>>

EXPIRATION DATE:

TERMS AND CONDITIONS

1. The Project

The Grantee shall:

- (a) Complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the “Project”).
- (b) Comply with the minimum Grantee service level requirements and reporting requirements.
- (c) Comply with Good Faith Marketing Efforts as set for in paragraph 23.

2. Project Reporting

- (a) **Key Project Indicators.** Exhibit J lists the Key Project Indicators (“Indicators”) for your broadband project which will be achieved by the end of the term of this agreement. The Grantee represents and warrants that it will complete all Indicators. If Grantee fails to deliver broadband services as indicated in Exhibit J, it shall repay to ESD a portion, or the entire Grant disbursed as set forth in Exhibit E. ESD reserves the right, but is under no obligation, to waive this requirement.
- (b) **Reporting to ESD.** (i) Indicators are required to be reported quarterly from award inception to the end of this agreement. The Grantee shall submit electronically to nysbroadband@esd.ny.gov a Key Project Indicator Reporting Form (“Report”), attached as Exhibit K, to the ESD on a quarterly basis, within ninety (90) days of execution of this agreement and every ninety (90) days thereafter until the end of this agreement. (ii) Grantee also agrees to provide the ESD with verbal or written status updates, (“Updates”) including but not limited to progress regarding the Grant Project and any known impediments or delays, upon ESD’s reasonable request, but not more frequently than on a monthly basis. ESD is entitled to rely on the Reports and Updates to determine performance of the Grant Project. Failure to submit Reports and Updates when due may result in deferred distribution of the grant funds as set forth in Exhibit E.
- (c) **Third Party Reporting and Compliance.** (i) Broadband Mapping (“Mapping”). Grantee is required to provide the ESD or designated agent, broadband data as follows and as indicated in Exhibit L. Bolded terms below are defined in Exhibit L.
 - (i) **Addresses** where new broadband service is provided or upgraded within the project footprint (“Footprint”), attached as Exhibit M, must be reported quarterly, if new or upgraded broadband service is delivered to customers,

at the completion of this agreement, and within 30 days of ESD's request, but not more frequently than on a monthly basis;

(ii) **Census blocks** and/or **street segments** for areas that receive broadband service within the recipient's entire New York State service area, attached as Exhibit N and as it may be expanded, must be reported semi-annually, and within 30 days of ESD's request, but not more frequently than on a quarterly basis;

(iii) Compliance with National Electrical Safety Code ("NESC"). All pole attachments shall comply with the NESC requirements. Grantee shall ensure that the attachment of fiber and equipment is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the NESC and all applicable and current electrical and safety requirements of any State or local governmental entity. Grantee shall certify such compliance with each semi-annual Census block report noted above.

(d) ESD relies on the Reports, Updates, and Mapping to determine performance of the Project. Failure to submit Reports, Updates, and Mapping; and to be in compliance with NESC requirements may result in deferred distribution of the Grant Funds or a default.

3. Conditions Precedent to Disbursement of the Grant

(a) **Project Milestones.** Exhibit O, Project Milestones ("Milestones"), lists Grantee's major network build-out phases per quarter and demonstrates the entire project will be substantially complete by the end of the term of this agreement. Grant Funds will be disbursed as frequently as quarterly to Grantee provided Milestones are met.

(b) No grant funds shall be disbursed unless the Grantee is in compliance with the Terms and Conditions of this Agreement, including, but not limited to, Exhibit E (Disbursement Terms), and the following conditions have been satisfied:

(i) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.

(ii) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.

(iii) ESD has received out-of-pocket expenses incurred by ESD in the making of the Grant, if any, as set forth in Exhibit E.

(iv) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.

(v) ESD receives and approves Reports, Updates, and Mapping; and Grantee is in compliance with NESC requirements as set forth in Section 2.

4. Disbursement and Recapture Terms

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

(a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E of this Agreement. Disbursements will be made upon submittal to ESD and approval by ESD of

(i) A Report

(ii) Updates

(iii) Mapping

(iv) A Milestone Report

(v) Grantee is in compliance with NESC requirements

(vi) A Payment Requisition Form and any supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit I.

(b) In the event Grantee does not provide the Reports, Updates and Mapping, or is not in compliance with NESC requirements, ESD reserves the right to declare a default.

(c) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.

(d) In no event shall ESD's receipt of any Report be construed as acceptance of the work of the Grant Project.

(e) The Grant disbursement, or a portion thereof, may be delayed or subject to recapture by ESD as provided in Exhibit E.

5. Non Discrimination and Contractor & Supplier Diversity

The Grantee will comply with ESD's Non-Discrimination and Contractor & Supplier Diversity policies set forth in Exhibit G of this Agreement.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the

Project and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the “Indemnities”) from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnities.

7. Responsibility Provisions

- (a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.
- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee’s expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own

its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.

- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations for the broadband network and all related equipment necessary to provide broadband services within the Footprint for the term of this Agreement.

- (j) The Grant shall be used solely for project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee will use ESD grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESD's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9(a)(iii) of the GDA to provide information upon request to ESD.
- (m) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

9. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:
 - (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, to the reasonable satisfaction of ESD and within the time frames established under this Agreement, including without limitation, Failure to complete Indicators and Milestones by the end of the term of this Agreement.
 - (ii) Failure to submit Reports, Updates, Mapping, and Milestone Reports, and to be in compliance with NESC requirements for over 60 days. ESD reserves the right to waive this requirement.

- (iii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.
 - (iv) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.
 - (v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.
 - (vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business at the Project Location. This includes, without limitation, the announced or actual cessation of business activities at the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.
 - (vii) Failure by the Grantee, for any period of time, to comply with the terms and procedures of Section 7 of this Agreement.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) 9(a)(ii) or 9(a)(iii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default is pursuant to paragraph 9(a)(i), 9(a)(ii) or 9(a)(iii), cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraphs 9(a)(iv), 9(a)(v), 9(a)(vi) and 9(a)(vii) are not subject to the cure provisions provided herein.
- (c) Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit E of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD

shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance, including, but not limited to, the insurance described hereafter, in such amounts and covering such risks as Grantor may require from time to time naming Grantor as an additional insured on a primary and non-contributory basis, with full waiver of subrogation.

- (a) The Grantee shall keep all broadband infrastructure ("Infrastructure") which includes assets such as building, fiber infrastructure, cable, towers, poles, outside plant equipment, network and access equipment, fixed and mobile wireless connections, customer premise equipment, and operating equipment at the Project Location and insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended. The insurance required in this paragraph (a) shall provide coverage for an amount not less than the full replacement value of the Infrastructure at the Project Location, or such other amount as the Grantor may reasonably require, provided that (i) the amount of insurance coverage shall be in an amount sufficient to satisfy, at all times, any co-insurance requirements, and (ii) the amount of any flood hazard insurance shall

not exceed the maximum amount of coverage available under the National Flood Insurance Act.

- (b) When and to the extent required by the Grantor, the Grantee shall maintain in full force and effect insurance against risk as is customary in the industry of the Grantee. The insurance required in this paragraph (b) shall provide coverage in an amount satisfactory to Grantor.

For Project Location in New York City, Long Island or Westchester

- (c) The Grantee shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate and Five Million Dollars (\$5,000,000) umbrella. ESD and each of its directors, officers, employees, agents and representatives shall be additional insureds and certificate holders, on a primary and non-participatory basis, with full waive of subrogation (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85) or equivalent acceptable to ESD. In addition, if the grant or loan contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

For Project Location OUTSIDE of New York City, Long Island or Westchester:

- (d) The Grantee shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. ESD and each of its directors, officers, employees, agents and representatives shall be additional insureds and certificate holders, on a primary and non-participatory basis, with full waive of subrogation (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85) or equivalent acceptable to ESD. In addition, if the grant or loan contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

- (d) All insurance required in this Section shall be issued by companies authorized to do business in the State of New York, satisfactory to Grantor pursuant to policies satisfactory to Grantor in form and substance. Without limiting the generality of the

foregoing, the policies of insurance required hereby shall provide for ten (10) days' prior written notice of cancellation and shall be payable to the Grantor pursuant to a New York standard Grantor endorsement.

- (e) The Grantee shall give prompt written notice to the Grantor in the event of substantial damage to the Project Location by reason of fire or other hazard or casualty.
- (f) Notwithstanding the provisions of Subdivision 4 of Section 254 of the Real Property Law, the Grantor shall be entitled to retain and apply the proceeds of any insurance required hereby to the payment of any obligations or, in the sole discretion of the Grantor, apply any or all such proceeds to the cost of restoration of the Project Location, in which case the Grantee shall proceed with reasonable diligence to repair, replace or rebuild the Project Location to substantially their condition prior to such damage in full compliance with all legal requirements.
- (g) The Grantee shall provide the Grantor with copies of all policies of insurance (or certificates thereof) for the required insurance coverages in form and substance satisfactory to the Grantor. In addition, the Grantee shall provide the Grantor with copies of renewal policies (or certificates thereof) or temporary binders in the event renewal policies have not been issued, in a timely manner. The Grantee must, in any event, provide Grantor with satisfactory confirmation of renewal coverage by the renewal date.
- (h) In the event that the Grantee fails to maintain the insurance required hereby, the Grantor may obtain such insurance and pay the premiums therefor and the Grantee shall, on demand, reimburse the Grantor for any insurance premiums paid, together with interest thereon computed at the highest rate per annum allowable under New York State law.
- (i) The Grantee will not take any action, or permit any condition to exist, with respect to the Project Location which may, in any manner, partially or wholly invalidate the insurance on the Project Location required hereby.

13. Survival of Provisions

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established

under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

14. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (v) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: «Project_Manager»
Title: Project Manager
Address: 633 Third Avenue, New York, NY 10017
Telephone Number: «Project_Mgr_Phone»
E-Mail Address: «Project_Mgr_email»

With a copy to:

Title: General Counsel
Address: 633 Third Avenue, 37th Floor, New York, NY 10017
Telephone Number: (212) 803-3750
Facsimile Number: (212) 803-3975

<<Orgn Name Client>>

Name: <<Contact_Name_Client>>
Title: <<Contact_Title_Client>>
Address: <<Street_Address_Client>>, <<CitySTZip_Client>>
Telephone Number: <<Phone_Client>>
E-Mail Address: <<Email_Client>>

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein, or in the case of facsimile transmission or email, upon receipt of a record, by the sender, that such a transmission has been completed.

- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

16. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

17. Integration/Modification

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict

between the Directors' materials attached hereto as Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

19. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to legal process.

20. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

21. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESD's costs including, without limitation, ESD's attorneys' fees. The Grantee shall also pay any and all of ESD's collection costs including, without limitation, its attorneys' fees.

22. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESD under the terms of this Agreement.

23. Good Faith Marketing Efforts

The Grantee has the responsibility to market and promote broadband networks to obtain new subscribers. Additionally, Grantee has the responsibility to develop a contingency plan to increase adoption rates if initial marketing efforts do not bring in sufficient subscribers. Grantee must document its good faith efforts toward obtaining new subscribers of broadband services offered by providing the following to ESD:

- (1) Copies of its marketing plans and marketing materials
- (2) Copies of any advertisements
- (3) Specific reasons for low adoption rates
- (4) Contingency plan to increase adoption rates

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT

(Signature) Edwin Lee, Vice President, Loans and Grants

(date)

<<Orgn_Name_Client>>

(Signature)

(Printed name and title)

(date)

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports & D&C Requirements
EXHIBIT C	Employment Goals
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement & Recapture Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Documentation of Project Costs
EXHIBIT F-3	Equity Expenditure and Project Cost Affidavit
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT G-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT G-2	Staffing Plan
EXHIBIT G-3	Workforce Employment Utilization Report
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT I	Special Provisions

EXHIBITS, Cont.

EXHIBIT J	Key Project Indicators
EXHIBIT K	Key Project Indicator Report
EXHIBIT L	Broadband Mapping Data Specifications
EXHIBIT M	Project Footprint
EXHIBIT N	New York State Service Area
EXHIBIT O	Project Milestones
EXHIBIT P	Project Milestones Report

EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

Intentionally Deleted

EXHIBIT C: EMPLOYMENT GOALS

Intentionally Deleted

EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
633 Third Avenue
New York, NY 10017

Attn: «Project_Manager»

Re: <<Project_Name>>, Project <<Project_Number>>

Ladies and Gentlemen:

We have acted as special counsel to <<Orgn_Name_Client>>, a business corporation [limited liability company; select one] (the “Grantee”), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the “Agreement”) between New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and the Grantee.

This opinion letter is being furnished to you at our client’s request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and

other representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.

2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESD) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

EXHIBIT E: DISBURSEMENT TERMS

Disbursement

Subject to the terms and conditions of this Agreement and receipt of the fees as set forth below, ESD shall disburse the Grant in quarterly disbursements upon submission of the documentation set forth below:

Fees due:

Commitment Fee:	\$_____	(One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses	\$_____	(To be determined)
TOTAL due:	\$_____	

I. Grant Disbursements

Funds will be disbursed for reimbursement of eligible expenses during the course of design and/or construction no more frequently than quarterly, in proportion to ESD funding share of XX% of the total project costs, provided Milestones are achieved. Funds will only be disbursed if the Grantee is in compliance with the terms and conditions of this Agreement. Grantees must submit to ESD, the Report; Updates; Mapping; a Milestones Report; evidence supporting completion of Milestones and Indicators; invoices; and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments; and Grantee is in compliance with NESC requirements. Failure to submit any of the referenced supporting documents when due may result in deferred distribution of the Grant Funds. Payment will be made upon acceptance by ESD of submitted expenses and documentation. Expenses must be incurred on or after AWARD DATE to be considered eligible project costs. ESD reserves the right to waive the requirement related to the completion of meeting Milestones or Indicators.

II. Final Disbursement

The final 10% of the grant will be disbursed as reimbursement for eligible expenses upon project completion, and completion of Indicators and Milestones. Grantees must submit to ESD, a final Report; a final Milestones Report; evidence supporting completion of Indicators and Milestones; invoices; Updates; Mapping; and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments; and be in compliance with NESC requirements. Payment will be made upon acceptance by ESD of submitted expenses and documentation. Expenses must be incurred on or after AWARD DATE to be considered eligible project costs.

Grantee must submit all documentation for the final disbursement of the Grant by no later than December 31, 2018.

All disbursements are subject to deferral and recapture as set forth below. ESD has the right to waive the recapture for good cause shown in its absolute discretion. ESD reserves the right to require additional documentation to support payment requisitions.

Wire Transfer Information:

Please provide:

-A letter from a financial officer of the company certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

Deferral Terms

In the event Reports, Updates, Mapping, and Milestone reports are not received in the form and time periods as indicated in Section 2, ESD shall not be obligated to make any further Grant disbursements.

In the event such Reports, Updates, Mapping, and Milestone reports as indicated in Section 2 are not received within 60 days in the form and time periods as indicated in Section 2, Grantee will be in default. However, no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD,

Recapture Terms

ESD will be entitled to recoup all or part of ESD's grant if the Grantee fails to reach or complete Indicators and Milestones as required by the terms of this agreement. Grantees who fail to complete Indicators and Milestones shall repay ESD amounts that have been disbursed to the applicant as set forth below. Grant funds will also be subject to pro rata recapture if the property at the Project Location is sold within five years of disbursement of funds.

Recapture Amount

The Recapture Amount, if the property is sold within 5 years of disbursement or if Grantee fails to complete Indicators or Milestones, is based on the time that has lapsed between when the Grant funds were disbursed and when the transfer occurred; and/or failure to complete Indicators or Milestones.

- (a) The Recapture Amount, if the property is sold within 5 years of disbursement, shall be

calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the transfer occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
 - (ii) 80% of the disbursed amount if the transfer occurred in the second full calendar year after the disbursement was made;
 - (iii) 60% of the disbursed amount if the transfer occurred in the third full calendar year after the disbursement was made;
 - (iv) 40% of the disbursed amount if the transfer occurred in the fourth full calendar year after the disbursement was made;
 - (v) 20% of the disbursed amount if the transfer occurred in the fifth full calendar year after the disbursement was made.
- (b) The Recapture Amount, if the failure to complete Indicators or Milestones occurs, shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:
- (i) 100% of the disbursed amount if 0% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
 - (ii) 90% of the disbursed amount if 1% to 10% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
 - (iii) 80% of the disbursed amount if 11% to 20% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
 - (iv) 70% of the disbursed amount if 21% to 30% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
 - (v) 60% of the disbursed amount if 31% to 40% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
 - (vi) 50% of the disbursed amount if 41% to 50% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
 - (vii) 40% of the disbursed amount if 51% to 60% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
 - (viii) 30% of the disbursed amount if 61% to 70% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
 - (ix) 20% of the disbursed amount if 71% to 80% of the Milestones or Indicators are completed by the time of the submitting final reporting requirements;
 - (x) 10% of the disbursed amount if 81% to 90% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
 - (xi) 5% of the disbursed amount if 90% to 99% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;

ESD has the right to waive the recapture for good cause shown in its absolute discretion.

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

Note to Grantee: **Do not re-type this form.** Fill in only the version included in the executed GDA.

«Project_Manager»,
 Empire State Development
 633 Third Avenue
 New York, NY 10017

RE: <<Project_Name>>, Project <<Project Number>>

Dear «Project_Manager»:

Enclosed please find our request for payment/reimbursement, in the amount of \$ _____.

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Invoice #: _____

Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
Installation and upgrade of existing broadband networks					
Retainage (10% of grant amount)					
TOTAL					

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which <<Orgn_Name_Client>> is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and <<Orgn_Name_Client>>, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD's Internal Audit Department.
- 2) I have the authority to submit this invoice on behalf of <<Orgn_Name_Client>>. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition:

- ___ Exhibit F-1: Financial Condition Documentation
- ___ Exhibit F-2: Documentation of Project Costs
- ___ Exhibit F-3: Equity Expenditure Documentation [note that this should generally be submitted each time there is a new expenditure level required for disbursement]
- ___ Exhibit G-2: Staffing Plan
- ___ Exhibit G-3: Workforce Employment Utilization Report
- ___ Exhibit G-4: M/WBE Utilization Plan
- ___ Exhibit G-5: Waiver Request Form
- ___ Exhibit G-6: M/WBE Contractor Compliance and Payment Report
- ___ Exhibit K: Key Project Indicator Report
- ___ Exhibit P: Project Milestones Report

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM, Cont.

___ A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement

- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.
- 5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.
- 6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

Signature: _____ Date: _____

Print Name: _____

Title: _____

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Edwin Lee, VP – Loans and Grants, 633 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.

Thank you.

EXHIBIT F-1: FINANCIAL CONDITION DOCUMENTATION

[Letterhead of CPA]

(Date)

«Project_Manager»
Broadband Project Manager
NYS Department of Economic Development
633 Third Avenue
New York, NY 10017

Re: <<Project_Name>>, Project <<Project Number>>
Bankruptcy Filing or Default on Debt Obligations

Dear _____:

In preparation for closing on the above-referenced project, [name of CPA firm] has performed the procedures enumerated below, which were agreed to by <<Orgn_Name_Client>> (the "Company") and Empire State Development ("ESD") (collectively the "specified parties"). The Company is responsible for its books and records and for notifying ESD of any materially adverse changes in its financial condition. These procedures are being performed solely to assist ESD in determining whether there has been a bankruptcy filing of the Company or whether the Company has experienced a default on any of its debt obligations subsequent to the date of the ESD Directors' approval of the project on <<Approval_Date>>.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

1. Obtain from the Company, their most recent historical financial statements that have been prepared subsequent to the project's approval date. Read the financial statements for the purpose of noting whether there is any indication that the company has filed bankruptcy or whether the entity has experienced a default on any of its debt obligations. Report as a finding any indication that the Company may have filed for bankruptcy or has experienced a default subsequent to the Project's approval date.
2. Request all minutes of the board of directors and other committee meetings since the date of the project's approval. If minutes are not available, obtain any abstracts or notes from such meetings. Read the minutes or abstracts and report as a finding any

indication that the Company has filed for bankruptcy or whether the entity has experienced a default on any of its debt obligations subsequent to the project's approval date.

3. Obtain a description and evaluation of any pending litigation, claims, or assessments and examine supporting documents, including legal correspondence. Report as a finding any indication that the Company may have filed bankruptcy filing or whether the entity has experienced a default on any of its debt obligations subsequent to the project's approval date.
4. Obtain or prepare an analysis of notes payable, long-term debt, capitalized lease obligations, and other financing transactions or arrangements, such as lines of credit that existed as of the project's approval date. Compare balances in the company's liability accounts to debt amortization schedules and, if applicable, to the terms of new debt agreements. Report any findings of default.

[Findings should be listed here. If there were no findings, the CPA should state "We found no exceptions or matters to report as a result of our procedures"]

We were not engaged to and did not conduct an audit or an examination, the objective of which would be the expression of an opinion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

_____, CPA

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d\b\ a EMPIRE STATE DEVELOPMENT
<<Project_Name>>, Project Number <<Project Number>>

EXHIBIT F-2: DOCUMENTATION OF PROJECT COSTS

[CPA Letterhead]

Report of Independent Accountants

Date

Contact: <<Contact_Name_Client>>,
<<Contact_Title_Client>>
<<Orgn_Name_Client>>
<<Street_Address_Client>>
<<CitySTZip_Client>>

Re: <<Project_Name>>, Project <<Project Number>>
Verification of Project Costs

We have performed the procedures enumerated below, which were agreed to by <<Orgn_Name_Client>> (the "Company") and Empire State Development ("ESD") (collectively the "specified parties"), solely to assist ESD in determining whether cost expenditures were incurred in a manner established by the project documents as follows:

Management is responsible for <<Orgn_Name_Client>>'s compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

1. Obtained the attached "Statement of Actual Costs" for the Project (<<Project_Name, <<Project_Number>>) prepared by the Company.
2. Agreed the total per the Statement of Actual Costs to the Company's financial accounting records – the fixed asset subledger (...or name appropriate financial record report)
3. For costs and expenses appearing on the Statement of Actual Costs, selected a sample for detailed testing of underlying transactions. [CPA will indicate method of selection, dollar value and percentage of items sampled.]

4. For each asset or expense item selected, obtained the supporting documentation, such as purchase orders, receiving reports, invoices and cancelled checks as deemed appropriate [CPA will indicate which documentation was used].
5. Examined the supporting documentation for sampled items, noting the invoice date, invoice number and invoice amount. Agreed the dollar amount on the invoice to the Company's financial accounting records (fixed asset subledger – or appropriate report name) and the statement of actual costs.
6. For each invoice examined, obtained the related wire transfer documentation noting the wire transfer date, number, and amount. Then, agreed the wire transfer amount to the vendor invoice amount.
7. For each asset or expense item selected, determined that such sampled item is a capital expense in accordance with applicable state and federal law.

[Summarize any exceptions, if applicable]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

(CPA)

Attachment: Statement of Actual Costs, (<<Project_Name>>, <<Project_Number>>)

Specified Party Contact Information:

Empire State Development
633 Third Avenue
New York, NY 10017
(«Project_Manager»)

EXHIBIT F-3: EQUITY EXPENDITURES* AND PROJECT COST AFFIDAVIT**

***Equity Amount** refers to the Grantee’s share of the project cost, **not** the total project cost, and should not include financing from sources other than the Grantee.

****Project Cost** should correspond to the total stated in Exhibit F-2

STATE OF NEW YORK)
) ss.:
COUNTY OF)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of _____ (the “Company”), a corporation [limited liability company; limited partnership select one] that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the “Agreement”) executed by and between New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and the Company dated the _____ day of _____, 20____.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Company’s behalf, that the **equity* expenditures** by the Company were incurred in the manner set forth in the Agreement and such expenditures to date were equal to or greater than _____ Dollars (\$_____).

I further certify, on the Company’s behalf, that the costs for the project were incurred in the manner set forth in the Agreement, that all such costs are capital expenses in accordance with applicable state and federal law, and the **total cost of the project**** to date was equal to or greater than _____ Dollars (\$_____).

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:
Name:
Title:

Subscribed and sworn to before me
this ____ day of _____, 20

Notary Public

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the “Recipient” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Recipient’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of ___% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, ___% for Minority-Owned Business Enterprises (“MBE”) participation and ___% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
1. Recipient and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
 3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
 4. The Recipient’s EEO policy statement shall include the following language:
 - a. The Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.

- d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. EXHIBIT G-2: Staffing Plan

To ensure compliance with this Section, the Recipient shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Grantees shall complete the Staffing plan form and submit it as part of the executed Contract.

D. EXHIBIT G-3: Work Force Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
 3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT G-4) either prior to, or at the time of, the execution of the Contract.
- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A. For Waiver Requests Recipient should use the Waiver Request Form (EXHIBIT G-5).
- B. If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance and Payment Report (EXHIBIT G-6) to the ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages/Recapture - MWBE Participation

- A. Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds ("Recapture").

- B. Such liquidated damages or Recapture shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Recipient achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- C. In the event a determination has been made which requires the payment of liquidated damages (and such identified sums have not been withheld by the ESD) or Recapture, Recipient shall pay such liquidated damages or Recapture to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Recipient has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages or Recapture shall be payable if Director renders a decision in favor of the ESD.



EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (CONTRACTOR REPRESENTATIVE), the
_____ (AWARDEE/CONTRACTOR) agree to adopt the following policies with respect
to the project being developed or services rendered at
_____.

M/WBE PARTICIPATION (M/WBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.



EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.
- (d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this _____ day of _____, 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

Minority Business Enterprise Liaison

_____ (Name of Designated Liaison) is designated as the Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____% Minority and Women’s Business Enterprise Participation

_____% Women’s Business Enterprise Participation

(Authorized Representative)

Print Name: _____

Title: _____

Date: _____



**EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
STAFFING PLAN**

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's Name:
Offeror's Name:		
Offeror's Address:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran				
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

PREPARED BY (Signature): _____	NAME: TITLE: DATE:	TELEPHONE NO.: ALTERNATE TEL: EMAIL ADDRESS:
--	---	---

EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY STAFFING PLAN

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Submit the above completed form to:

Empire State Development
Office of Contractor and Supplier Diversity
633 Third Avenue, 33rd Floor
New York, NY 10017

General Instructions: The work force utilization (M/WBE **102**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

Instructions for completing:

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY WORKFORCE EMPLOYMENT UTILIZATION REPORT

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN):

Offeror's Name:

Region/Location of Work:

Offeror's Address:

Solicitation No.:

City, State, Zip Code:

Project No.:

Telephone No.:

M/WBE Goals in the Contract: MBE - % WBE - %

1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			



EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A WAIVER REQUEST FORM (FORM E4).

PREPARED BY (Signature): _____ **DATE:** _____

Preparer's Name (Print or Type): _____

Preparer's Title: _____

Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

TELEPHONE NO.: _____

EMAIL ADDRESS: _____

**** FOR OCSD-M/WBE USE ONLY ****

REVIEWED BY: _____

DATE: _____

UTILIZATION PLAN APPROVED?

YES NO **Date:** _____

Contract No.: _____

Project No. (if applicable): _____

Contract Award Date: _____

Estimated Date of Completion: _____

Amount Obligated Under the Contract: _____

Description of Work: _____

NOTICE OF DEFICIENCY ISSUED?

YES NO **Date of Issue:** _____

NOTICE OF ACCEPTANCE ISSUED?

YES NO **Date of Issue:** _____



EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN

Waiver Applicant		
Offeror / Contractor Name:	Fed ID No.:	
Address:	Solicitation/Contract No.:	
City, State, Zip Code:	M/WBE Goals: MBE: ____% WBE: ____%	
<p align="center"><u>By submitting this form and the required information, the offeror / contractor certifies that every "Good Faith Effort" has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on page 2 of this form for the precise definition of "Good Faith Effort".</u></p>		
<p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development). Date of such filing with Empire State Development Corporation: _____</p>		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p>		
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
Submit with the bid or proposal or if submitting after award submit to: Empire State Development	***** FOR M/WBE USE ONLY *****	
	REVIEWED BY:	DATE:

EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN

<p>Office of Contractor and Supplier Diversity 633 Third Avenue, 33rd Floor New York, New York 10017</p>	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>* <u>Comments:</u></p>
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EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN

5 NYCRR §142.8 - Contractor's Good Faith Efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
 - (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
 - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
 - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.
- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
 - (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions



EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT

PROJECT SPONSOR/DEVELOPER
(or "REPORTING COMPANY"):

FEDERAL EIN #:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

Attach M/WBE executed contracts, final lien waivers, cancelled checks, etc., or other documentation describing the "Good Faith Efforts" taken to achieve M/WBE program. This report should be completed and signed by an officer of the Reporting Company.

PRIME CONTRACTOR (Federal EIN #, Firm's Name, Address, Contact Person, Title and Phone # with area code)	CONTRACT AMOUNT	M/WBE SUBCONTRACTOR (Federal EIN #, Subcontractor Name, Address, Contact Person, Title and Phone # with area code)	SCOPE OF SERVICES	M/WBE CONTRACT AMOUNT	M/WBE PAYMENTS PREVIOUSLY REPORTED	M/WBE PAYMENTS ON CURRENT REPORT	TOTAL M/WBE PAYMENTS TO DATE

CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: _____

DATE: _____

*Send to: Portfolio Management; Empire State Development; 633 Third Avenue; New York, NY 10017

EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT

SUBMIT REPORT TO: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
EMPIRE STATE DEVELOPMENT
633 THIRD AVENUE, 33rd FLOOR
NEW YORK, NY 10017

Completed Exhibits may also be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include the name and contact information of the individual or firm submitting the information.

QUESTIONS? Please contact the OCSD's Project Managers or email the division at ocsd@esd.ny.gov.

Denise Ross
Project Manager, OCSD
(212) 803-3226
dross@esd.ny.gov

Capital District
North Country
Mohawk Valley
Mid-Hudson Region
New York City

Geraldine Ford
Project Manager, OCSC
(716) 846-8205
geraldine.ford@esd.ny.gov

Western New York
Finger Lakes
Southern Tier
Central New York
Long Island

EXHIBIT H: REPORT OF EMPLOYMENT

Intentionally Deleted

EXHIBIT I: SPECIAL PROVISIONS

In the event of any conflict between Exhibit A of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.

- A. The following sections of the Terms and Conditions of this Agreement are waived: the reference to “Exhibit B”, Reports & D&C Requirements; reference to “Exhibit C”, Employment Goals; and reference to “Exhibit H”, Employment Reporting Form (With Company’s NYS Form 45 Attached).

If the company is not a corporation but a limited liability company (LLC):

In 8(c), reference to “corporation” shall mean limited liability company, reference to “incorporation” shall mean organization, and reference to “corporate” shall mean organizational.

If there is more than one location, either where the project takes place OR where jobs will be reported:

All references to “Project Location” shall mean “Project Locations.”

If ESD’s grant is to a public agency (e.g., an urban renewal agency), and being passed through to a Beneficiary, so the Grantee is not the one operating the business, add:

Paragraph 8(i) shall mean that Grantee and/or Beneficiary shall maintain or cause to be maintained business operations at the Project Location for the term of this Agreement.

If more than one entity is implementing project, the following language will be added:

Paragraph 24 is added to Terms and Conditions, as follows:

24. Joint and Several Liabilities

- (a) As used herein, the term Grantee shall include all signatories hereto, if more than one, other than ESD. In such event the obligations, representations and warranties of Grantee hereunder shall be joint and several.

As used herein, the term Beneficiary shall include all signatories hereto, if more than one, other than ESD. In such event the obligations, representations and warranties of Beneficiary hereunder shall be joint and several.

EXHIBIT J: KEY PROJECT INDICATORS

<<Orgn_Name_Client>>, Project <<Project Number>>

To be determined

EXHIBIT L: BROADBAND MAPPING DATA SPECIFICATIONS

<<Orgn_Name_Client>>, Project <<Project_Number>>



New York State Broadband Mapping Data Specifications

This document provides data specifications and delivery options for the New York State Broadband Mapping.

Overview

A. Wireline and Wireless Providers

Provider types will be represented in three categories:

1. **Broadband Provider:**

An entity is a provider of broadband service connections to end user locations if any of the following conditions are met:

- it owns the portion of the physical facility that terminates at the end user location;
- it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them at speeds over 768 Kilobytes per second (Kbps) downstream and 200 Kbps upstream, and can provide this service within 7-10 days without an extraordinary commitment of resources.
- Or, it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum.

2. **Reseller:** Providers do not own the facilities that connect to the household; however, they meet the other requirements of a "Broadband Provider."

3. **Other:** This could include providers that own the facilities connecting to the household; however, does not provide internet service to consumers.

Definitions

For the purposes of this project, ESD recognizes the following definitions:

Address. A collection of information used to describe the location of a home, businesses organization. This shall include complete street address; city, town or village; and zip code.

Available. Broadband service is "available" to an end user at an address if a broadband service provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet with advertised speeds of at least 6

megabits per second (Mbps) downstream and at least 1.5 Mbps upstream to the end user at the address.

Broadband. Data transmission technology that provides two-way data transmission to and from the Internet with advertised speeds of at least 6 megabits per second (Mbps) downstream and at least 1.5 Mbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users within the project area. NYS Still requires data submissions at all speed tier below 6 Mbps download and 1.5 Mbps upload.

Census Block. A Census Block Group is a geographical unit used by the United States Census Bureau which is between the Census Tract and the Census Block. It is the smallest geographical unit for which the bureau publishes sample data. Typically, Block Groups have a population of 600 to 3,000 people.

Every Census Block Group has a unique 12-digit FIPS code. The Block Group's unique identifier is the 12th digit of the FIPS Code. This number determines the first digit of all the census blocks contained within a block group. For instance, census Block Group 2 includes any block numbered 2000 to 2999.

End User. A residential or business party, institution or state or local government entity, including a Community Anchor Institution, that may use broadband service for its own purposes and that does not resell such service to other entities or incorporate such service into retail Internet-access services. Internet Service Providers (ISPs) are not "end users" for this purpose.

Street Segment. A shorter section of a street, usually between intersections and having a defined address range.

Data Submission Options for Wireline and Wireless Providers

A. Wireline Broadband Providers (cable modem, copper/DSL and fiber)

New York State's availability data is reported to the NYS Broadband Map at the Census Block level. In cases where a Census Block is greater than 2 square miles in area, data will be reported at the Street Segment level.

Wireline providers are asked to provide the following data:

1. Availability Data: *(one of the following three methods)*

- Street Address level, use Table 1, OR
- Street Segment level, use Table 3, OR
- Census Block and Street Segment level, use Tables 2 and 3

Street Address or Street Segment level data will be converted to Census Blocks and Street Segments for submission for any service areas outside of the Connect NY grant project footprint

2. Address Level Data, must be submitted for all project areas funded by the Connect NY grant. Address-level broadband data should indicate the location

of new broadband service being provided or upgraded within the service territory supported by the Grant.

3. **Subscriber Weighted Nominal Speeds**, use Table 5
4. **Middle Mile and Backbone Interconnection Points data**, use Table 6
5. **Provider Footprint**, use Table 7

B. Wireless Broadband Providers

Wireless providers are asked to provide the following data:

1. **Availability** data must be reported in a GIS-compatible format (e.g. ESRI, MapInfo). An accompanying metadata document is required
2. **Spectrum and Speeds**, use Table 4
3. **Subscriber Weighted Nominal Speeds**, use Table 5
4. **Middle Mile and Backbone Interconnection Points data**, use Table 6

Note: Wireline and Wireless templates are provided at www.dhSES.ny.gov/ocs/broadband/.

C. Re-Submission

For all providers that submitted data in the previous rounds, we would like to make the resubmission process as easy as possible. Please contact us if you need alternate options:

- **No Change:** Upon notification from the provider, the previous round's data will be resubmitted.
- **Updated Data Options:**
 - Full Submission- resend all availability data, OR
 - Changes Only- send additions or deletions for availability data

Methods for Submitting Data to NYS

- **Secure FTP (File Transfer Protocol) website**

- 1) Submit an FTP Site Access Request Form www.dhSES.ny.gov/ocs/broadband/.
- 2) You will be provided a User ID and password that will allow access to the OCS ftp site.

Any previously established accounts need to be reactivated for the current round.

- **CD or DVD** - use password-protected secure.zip for data protection
- **Encrypted USB flash** - NYS will provide a flash drive
- **Hand delivery or OCS pick-up** - if your office is close to Albany, NY
- **Email (attach non-confidential files)** - (please note file size limit of 10 MB)
nysbroadbandmapping@dhSES.ny.gov
- **UPS/FedEx/ Priority Mail**
Contact us if you would like to use OCS's UPS account for shipping.

If you would like additional information about these options, please contact us at nysbroadbandmapping@dhSES.ny.gov or by calling (518) 242-5035.

Preparing Your Company's Data

The following Record Format tables describe the minimum required fields to be included with each data submission. Providers may add fields as needed to describe availability and service characteristics, or to uniquely identify each record.

Submit data in a spreadsheet, delimited text document, database, or GIS compatible format. Use an identifiable file naming convention. Example --
NY_ProviderSpecificFRN_availability.xxx

For GIS files, all polygons must be closed and non-overlapping with a single, unique identifier. Any variation in the values in any of the required fields necessitates the creation of a separate closed, non-overlapping polygon. GIS files must be accompanied by metadata or a plain text "readme" file that contains the coordinate system information.

Table 1: Address Availability and Service Characteristics

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	“Doing-business-as” name	Text	Superfone, Inc.
FRN	Provider’s FCC Registration Number (https://fjallfoss.fcc.gov/coresWeb/publicHome.do)	Text	0048402202
Provider Type	1 = Broadband Provider; 2 = Reseller; 3 = Other	Text	1
Address	Complete street address including Zip Code. <i>Addresses can be reported as one text string as the example to the right illustrates or in separate fields by address component (see example fields below).</i>	Text	2340 W Herrick Rd N Pine Bush NY 12566
Add Number	House or Building number	Text	2340
Street Name	Full street name including pre and post direction (street components may also be parsed into separate fields).	Text	W Herrick Rd N
City		Text	Pine Bush
State		Text	NY
Zip Code		Text	12566
Technology of Transmission	Technology of Transmission available for the provision of service at the address *	Text	50
Maximum Advertised Downstream Speed	Speed Tier Code for the maximum advertised downstream speeds available at the address *	Text	8
Maximum Advertised Upstream Speed	Speed Tier Code for the maximum advertised upstream speed available at the address *	Text	5
Typical Downstream Speed	Speed Tier Code for the downstream data transfer throughput rate that most subscribers to service at the maximum advertised downstream speed (above) can achieve consistently during expected periods of heavy network usage *	Text	8
Typical Upstream Speed	Speed Tier Code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed (above) can achieve consistently during expected periods of heavy network usage *	Text	5

*See Appendix for Technology and Speed Code Tables

Table 2: Census Block Availability and Service Characteristics

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	“Doing-business-as” name	Text	Superfone, Inc.
FRN	Provider’s FCC Registration Number (https://fjallfoss.fcc.gov/coresWeb/publicHome.do)	Text	0048402202
Provider Type	1 = Broadband Provider; 2 = Reseller; 3 = Other	Text	1
Census Block ID	Census Blocks 2010 15-digit numeric identifier for the US Census Block being reported.	Text	360010001001000
Technology of Transmission	Technology of Transmission available for the provision of service at the address *	Text	50
Maximum Advertised Downstream Speed	Speed Tier Code for the maximum advertised downstream speeds available within each census block *	Text	8
Maximum Advertised Upstream Speed	Speed Tier Code for the maximum advertised upstream speed available within each census block *.	Text	5
Typical Downstream Speed	Speed Tier Code for the downstream data transfer throughput rate that most subscribers to service at the maximum advertised downstream speed can achieve consistently during expected periods of heavy network usage *	Text	8
Typical Upstream Speed	Speed Tier Code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed) can achieve consistently during expected periods of heavy network usage *	Text	5

**See Appendix for Technology and Speed Code Tables*

- New York State’s Census Blocks are available at, www.dhSES.ny.gov/ocs/broadband/
- If your company offers service via more than one technology within a single Census Block, please provide a separate record for each technology offered.

Table 3: Street Segment Availability and Service Characteristics

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	“Doing-business-as” name	Text	Superfone, Inc.
FRN	Provider’s FCC Registration Number (https://fjallfoss.fcc.gov/coresWeb/publicHome.do)	Text	0048402202
Provider Type	1 = Broadband Provider; 2 = Reseller; 3 = Other	Text	1
Census Block ID	Census Blocks 2010 15-digit numeric identifier for the US Census Block being reported	Text	360010001001000
Street Name	Complete street name. (Separating the street name into component parts is also acceptable.)	Text	W Herrick Road N
Street Segment ID	Unique identifier: US Census Bureau 2010 TIGER/Line Files (9-digits). <i>If you wish to use a street line file other than 2010 TIGER lines, please contact OCS to review options.</i>	Text	<i>TIGER: 221835907</i>
Technology of Transmission	Technology of Transmission available for the provision of service at the address *	Text	50
Maximum Advertised Downstream Speed	Speed Tier Code for the maximum advertised downstream speeds available within each street segment *	Text	8
Maximum Advertised Upstream Speed	Speed Tier Code for the maximum advertised upstream speed available within each street segment *	Text	5
Typical Downstream Speed	Speed Tier Code for the downstream data transfer throughput rate that most <i>typical</i> subscribers to service at the maximum advertised downstream speed can achieve consistently during expected periods of heavy network usage *	Text	8
Typical Upstream Speed	Speed Tier Code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed can achieve consistently during expected periods of heavy network usage *	Text	5

**See Appendix for Technology and Speed Code Tables*

Table 4: Wireless Availability and Service Characteristics

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	"Doing-business-as" name	Text	Superfone, Inc.
FRN	Provider's FCC Registration Number (https://fjallfoss.fcc.gov/coresWeb/publicHome.do)	Text	0048402202
Technology of Transmission	Technology of Transmission for the provision of service at the address (see Appendix for codes).	Text	71
Spectrum 1	Cellular Spectrum (824-849 MHz; 869-894 MHz)	Text	Y
Spectrum 2	700 MHz Spectrum (698-758 MHz; 775-788 MHz)	Text	Y
Spectrum 3	Broadband Personal Communications Services Spectrum (1850-1915 MHz; 1930-1995 MHz)	Text	Y
Spectrum 4	Is Advanced Wireless Services Spectrum (1710-1755 MHz; 2110-2155 MHz)	Text	N
Spectrum 5	Broadband Radio Service/Educational Broadband Service Spectrum (2496-2690 MHz)	Text	N
Spectrum 6	Unlicensed (including broadcast television "white spaces")	Text	N
Spectrum 7	Specialized Mobile Radio (SMR) Service (817-824 MHz; 862-869 MHz; 896-901 MHz; 935-940 MHz)	Text	SMR
Spectrum 8	Wireless Communications Service (WCS) spectrum (2305-2320 MHz; 2345-2360 MHz, 3650-3700 MHz)	Text	N
Spectrum 9	Satellite (L-band, big LEO, Little LEO, 2 GHz)	Text	N
Spectrum 10	Other	Text	N
Maximum Advertised Downstream Speed	Speed Tier Code for the maximum advertised downstream speeds available within each polygon within a service area or local franchise area *	Text	6
Maximum Advertised Upstream Speed	Speed Tier Code for the maximum advertised upstream speeds within each polygon within a service area or local franchise area *	Text	4
Typical Downstream Speed	Speed Tier Code for the downstream data transfer throughput rate that most subscribers to service at the maximum advertised downstream speed (above) can achieve consistently during expected periods of heavy network usage *	Text	6
Typical Upstream Speed	Speed Tier Code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed (above) can achieve consistently during expected periods of heavy network usage *.	Text	4

*See Appendix for Speed Code Tables

Middle-mile and Backbone Interconnection Points (Table 6; all providers)

Middle-mile and Backbone Interconnection Points typically enable relatively fast data rates, and are built to handle substantial capacities. Examples might include points of interconnection enabling communications between:

- An ILEC's Central Office and the Internet
- A cable aggregation point (headend) and the Internet
- A wireless base station and the provider's core network elements that connect to other networks including the Internet.

A Digital Subscriber Line Access Multiplexer (DSLAM) is also an example of a Middle Mile interconnection point. Middle-mile and Backbone Interconnection Point information should focus on the connectivity at a point. That is, if a point at which network elements or segments are joined would not reasonably offer the possibility of connectivity with the network[s], it should not be reported.

Providers must submit a list of Interconnection Points of facilities that provide connectivity between:

- a) A service provider's network elements (or segments) or
- b) A service provider's network and another provider's network, including the Internet backbone.

Collectively, (a) and (b) are "middle-mile and backbone interconnection points."

Table 6: Middle-mile and Backbone Interconnection Points

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	"Doing-business-as" name	Text	Superfone, Inc.
FRN	Provider's FCC Registration Number (https://fjallfoss.fcc.gov/coresWeb/publicHome.do)	Text	0048402202
Provider Type	1 = Broadband Provider; 2 = Reseller; 3 = Other	Text	1
Ownership	Is the facility owned (0) or leased (1)?	Text	0
Serving Facility Capacity	Serving Facility Code (see below)	Text	1
Serving Facility Type	Type of transport facility (1=Fiber, 2=Copper, 3=Hybrid Fiber Coax {HFC}, 4=Wireless)	Text	1
Latitude	Latitude in decimal degrees (a minimum of 4 digits to the right of the decimal is required)	Double	42.65260
Longitude	Longitude in decimal degrees (a minimum of 4 digits to the right of the decimal is required)	Double	-73.75733
Street Address (if unable to provide coordinate data)	Complete street address including Postal Address City and Zip Code. <i>Street Addresses can be reported in separate fields by address components or as one text string (as the example to the right illustrates).</i>	Text	2340 W Herrick Road Pine Bush NY 12566

Elevation *	Elevation <u>relative to grade</u> to the nearest foot. (Positive integers indicate above-grade, negative indicate below-grade. See details below.)	Double	-10
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***Elevation relative to grade** pertains to whether interconnection points are in vaults below grade (i.e., manhole accessible), in interconnection hotels (above grade), or as part of aerial plant (well above grade). Report the elevation of the point of **connectivity**, which will usually be zero for towers constructed on the ground. Use reasonable efforts to submit accurate elevation relative to grade data. In cases where this is not possible, estimates may be made.

Data may be submitted as a tabular list or as a GIS compatible file. If geographic coordinates of the points are not known, NYS can determine them from a location description, such as street address or distance from street intersections or other mapped landmarks.

Serving Facility Codes

Express the serving facility's capacity as currently configured:

Data Rate Code	Interconnection Point Data Rate
1	Multiple T1s and less than 40 mbps
2	Greater than 40 mbps and less than 150 mbps
3	Greater than 150 mbps and less than 600 mbps
4	Greater than or equal to 600 mbps and less than 2.4 gbps
5	Greater than or equal to 2.4 gbps and less than 10 gbps
6	Greater than or equal to 10 gbps

Provider Footprint

NYS requests that wireline service providers supply a service footprint. Provider footprints will be highly beneficial for data verification and other relevant uses.

Submit a GIS compatible file that identifies your company or organization's entire service area. Provider footprints can also be conveyed to NYS via hardcopy maps. If requested, the Broadband Mapping team will send you a hardcopy map of your general service area that can be marked up and returned. Please contact us if you would like a map sent for this purpose.

Cable providers may alternatively supply a list of towns or municipalities for which your company has franchise agreements to offer service.

Table 7: Provider Footprint

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	"Doing-business-as" name	Text	Superfone, Inc.
FRN	Provider's FCC Registration Number	Text	0048402202

	https://fjallfoss.fcc.gov/coresWeb/publicHome.do		
Provider Type	1 = Broadband Provider; 2 = Reseller; 3 = Other	Text	1

Appendix

Technology of Transmission Codes: Report the technology used by the portion of the connection that terminates at the end-user location. If different technologies are used for downstream and upstream information transfer, report the connection in the technology category for the **downstream** direction.

Technology Code	Description	Download Speed Tier	Upload Speed Tier
10	ADSL Asymmetric xDSL	3 - 10	2 - 9
20	SDSL Symmetric xDSL	3 - 9	2 - 9
30	Other Copper Wireline All copper-wire based technologies other than xDSL (e.g., Ethernet over copper or T-1)	3 - 11	2 - 11
40	Cable Modem – DOCSIS 3.0	9 - 10	2 - 7
41	Cable Modem – Other	3 - 7	2 - 7
50	Optical Carrier/Fiber to the End User Fiber to the home or business (does not include “fiber to the curb”)	3 - 11	2 - 11
60	Satellite	3 - 5	2 - 4
70	Terrestrial Fixed Wireless – Unlicensed	3 - 7	2 - 7
71	Terrestrial Fixed Wireless – Licensed	3 - 7	2 - 7
80	Terrestrial Mobile Wireless	3 - 7	2 - 6
90	Electric Power Line	3 - 5	2 - 5
0	All Other Any specific technology not listed above	n/a	n/a

Speed Tier Codes: Please enter upload and download codes as “text” fields (rather than integers):

Upload Speed Tier	Download Speed Tier	Description
1	--	Less than or equal to 200 kbps
2	--	Greater than 200 kbps and less than 768 kbps
3	3	Greater than or equal to 768 kbps and less than 1.5 mbps
4	4	Greater than or equal to 1.5 mbps and less than 3 mbps
5	5	Greater than or equal to 3 mbps and less than 6 mbps
6	6	Greater than or equal to 6 mbps and less than 10 mbps
7	7	Greater than or equal to 10 mbps and less than 25 mbps
8	8	Greater than or equal to 25 mbps and less than 50 mbps

9	9	Greater than or equal to 50 mbps and less than 100 mbps
10	10	Greater than or equal to 100 mbps and less than 1 gbps
11	11	Greater than or equal to 1 gbps

EXHIBIT M: PROJECT FOOTPRINT
<<Orgn_Name_Client>>, Project <<Project Number>>

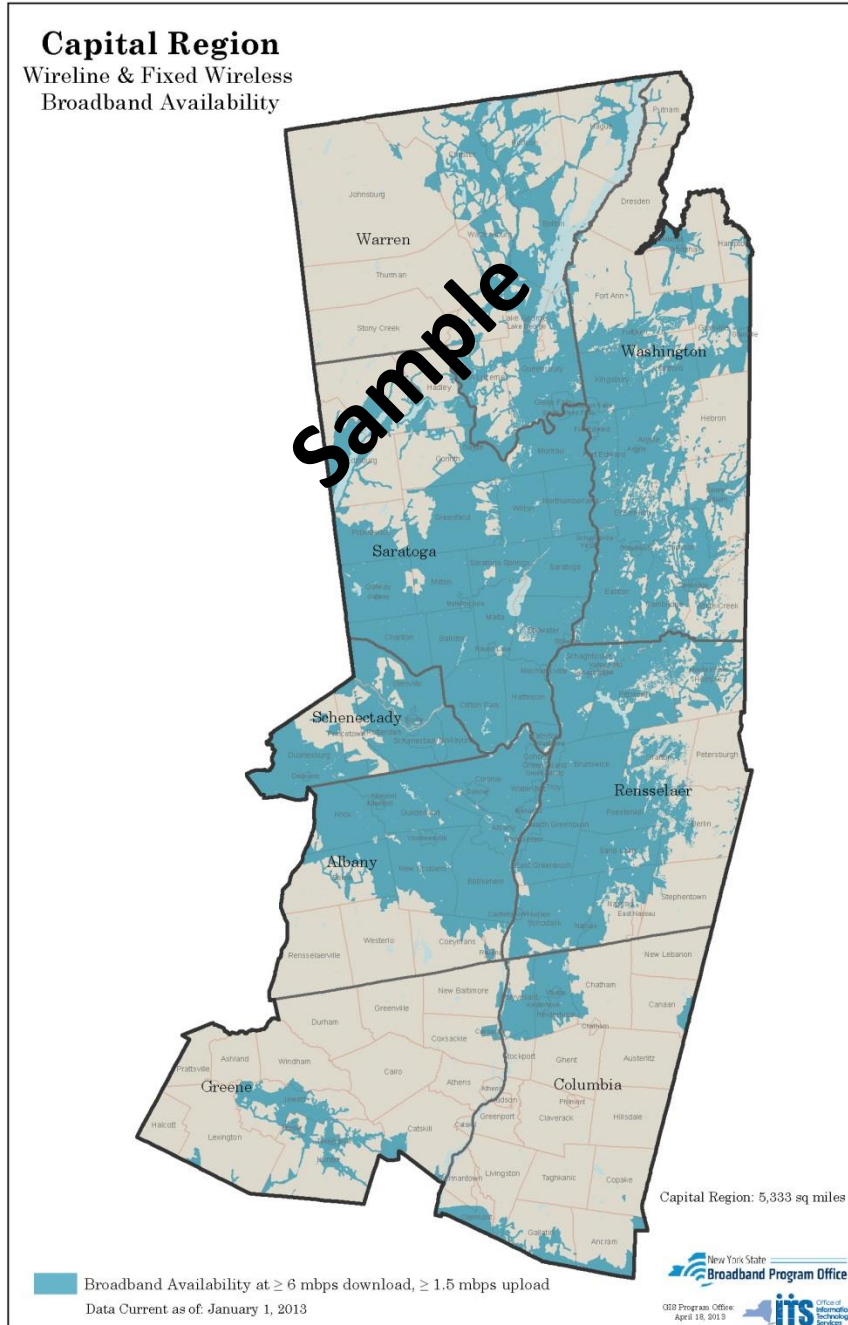


EXHIBIT N: NEW YORK STATE SERVICE AREA
 <<Orgn_Name_Client>>, Project <<Project_Number>>

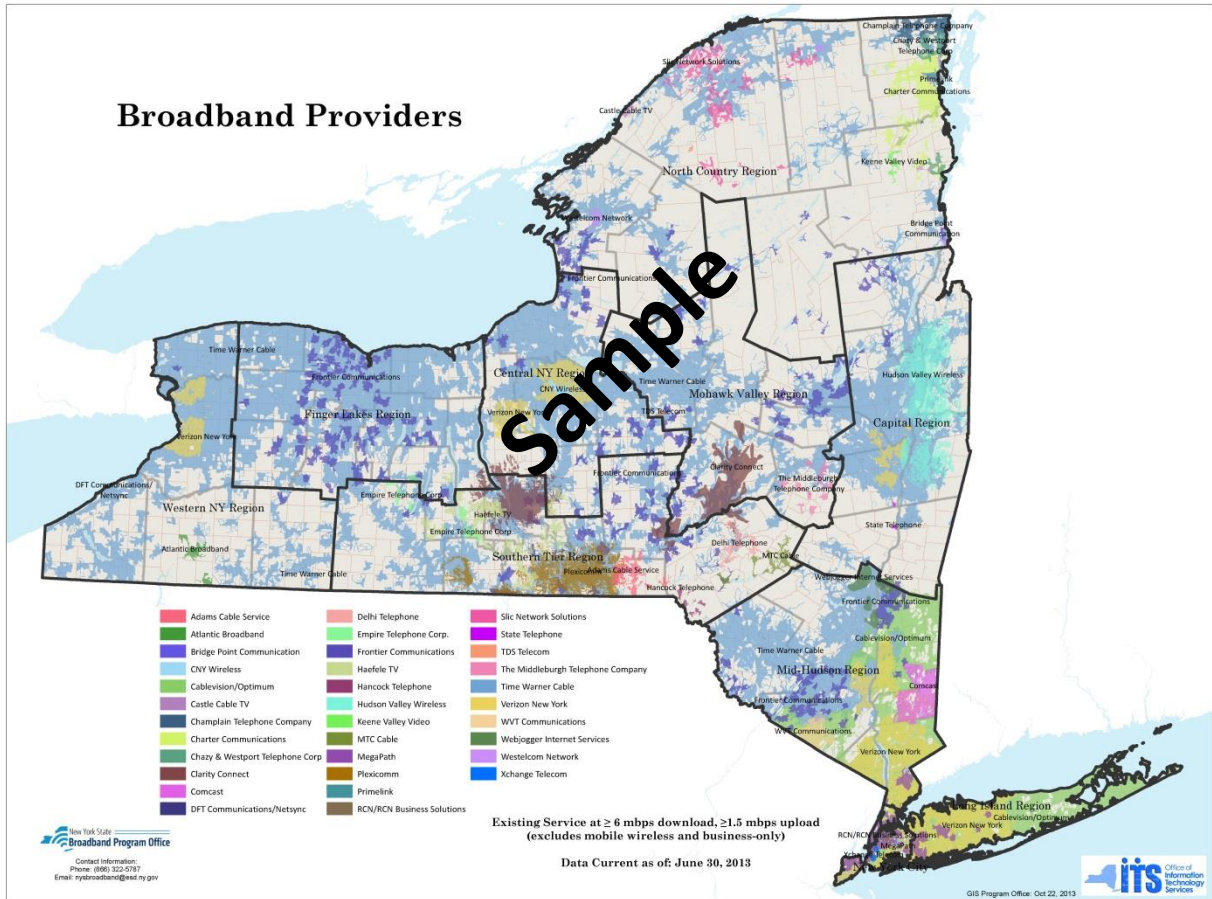


EXHIBIT O: PROJECT MILESTONES

<<Orgn_Name_Client>>, Project <<Project_Number>>

In consideration for the making of the Grant, Grantee has agreed to achieve the Milestones set forth in below.

Time Period	Quarter	Milestones
Year 1	Qtr. 1	<ul style="list-style-type: none"> • Order construction material. • Provide approvals to the Utility Companies to complete make-ready work. • Finalize network design and order construction material • Phase-3: Engage with Economic Development partners to survey residents in the proposed service areas to determine those with most interest in broadband services. • Hold discussions with Municipal Officials to determine priority builds dependent upon survey responses.
	Qtr. 2	<ul style="list-style-type: none"> • Phase-2: Commence construction and activation. Roll-out marketing campaign and educational programs in concert with our Economic Development partners. Connect subscribers #25-50. • Phase-3: Begin network design for final project route as determined by survey and municipal guidance. Submit pole attachment applications to utility companies for attachment licenses along the pole routes. Submit initial construction material order. • Evaluate marketing and adoption efforts milestones
	Qtr. 3	<ul style="list-style-type: none"> • Phase-1: Segment completion: Connect subscribers # 50-55. • Phase-2: Complete construction and activation. Connect subscriber's # 55-150. • Phase-3: Continue Field Engineering and Commence Pole Attachment Application Process.
	Qtr. 4	<ul style="list-style-type: none"> • Phase-2: Marketing Completion: Connect subscribers #150-250. • Phase-3: Complete Field Engineering and Pole Attachment Applications. Complete Network Design.

EXHIBIT P: PROJECT MILESTONE REPORT
 <<Orgn_Name_Client>>, Project <<Project_Number>>

Grantee shall submit, during the terms of this Agreement, the Milestone Report quarterly until the end of this agreement. Additionally, one final Milestone Report shall be submitted at the end of the term of this agreement that can demonstrate the milestones are substantially complete.

Time Period	Quarter	Milestones	Milestone Status Reporting Date: _____ to _____
Year 1	Qtr. 1	<ul style="list-style-type: none"> Order construction material. Provide approvals to the Utility Companies to complete make-ready work. Finalize network design and order construction material Phase-3: Engage with Economic Development partners to survey residents in the proposed service areas to determine those with most interest in broadband services. Hold discussions with Municipal Officials to determine priority builds dependent upon survey responses. 	
	Qtr. 2	<ul style="list-style-type: none"> Phase-2: Commence construction and activation. Roll-out marketing campaign and educational programs in concert with our Economic Development partners. Connect subscribers #25-50. Evaluate marketing and adoption efforts milestones 	
	Qtr. 3	<ul style="list-style-type: none"> Phase-1: Segment completion. Connect subscribers # 50-55. 	
	Qtr. 4	<ul style="list-style-type: none"> Phase-2: Segment completion. Connect subscribers #150-250. 	

APPENDIX E

ADDITIONAL REQUIREMENTS FOR NOT-FOR-PROFITS

Any **not-for-profit** (“NFP”) organization receiving a grant to be administered by ESD must be registered and up-to-date with its filing with the following three (3) systems: **Office of Attorney General’s Charities Bureau** (“OAG”), certified in the **Office of the State Comptrollers’ VendRep System** (“OSC”) and prequalified with **New York State Grants Gateway** prior to ESD Directors approval and the execution of a Grant Disbursement Agreement or Loan Agreement.

1) New York State Grants Gateway

As part of Governor Cuomo’s initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013 to improve the way grants are administered by the State of New York. Grants Gateway also offers not-for-profit organizations a portal to search for available and anticipated grant opportunities, download grant opportunities, and register to receive email notifications when specific types of grant opportunities are posted.

Grants Gateway Prequalification Process

a. Register with the Grants Gateway

- The Registration Form is available for download at www.grantsreform.ny.gov. The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled “Click HERE to access the Portal or browse for more information below”.
- Include your State Financial System (“SFS”) Vendor ID on the Registration Form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute Form W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
- All Registration Forms must include an Organization Chart in order to be processed.
- Mail the completed Registration Form and Organization Chart that shows the Head of your Organization, and Substitute Form W-9 (if new vendor) to:

NYS Grants Reform

99 Washington Avenue

Room 1530

Albany, NY 12210-2814

When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.

- b. Associate your organization with a State agency (ESD)** by clicking on Organization(s) and then selecting Organization Information; complete all required fields.

If you have questions about the Prequalification application, please contact ESD's program representative, Greta Carter-Williams, at gwilliams@esd.ny.gov or the Grants Reform Team by emailing GrantsReform@Budget.ny.gov with "Prequalification" in the subject line.

2) Attorney General's Charities Bureau

Information on registration is below:

OSC

E-mail: ciohelpdesk@osc.state.ny.us

Phone: Toll free: (866) 370-4672

Locally within the Albany NY area: (518) 408-4672

http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm

3) State Comptroller's VendRep System

OAG

E-mail: charities.bureau@ag.ny.gov

Phone: (212) 416-8401

<http://www.charitiesnys.com/home.jsp>