

**STATE OF NEW MEXICO
DEPARTMENT OF INFORMATION TECHNOLOGY
OFFICE OF BROADBAND ACCESS AND EXPANSION**

Agreement #: GWEP-24-006

GRANT WRITING, ENGINEERING, AND PLANNING GRANT AGREEMENT

This grant agreement (hereinafter “**Agreement**”) constitutes a state sub-award entered into by the State of New Mexico, acting through its Office of Broadband Access and Expansion (“**Office of Broadband**”), and Luna County (“**Grantee**”), collectively hereinafter referred to as the “**Parties.**”

RECITALS

WHEREAS, on behalf of the State, the Office of Broadband administers the Connect New Mexico Fund to provide Award funds to subrecipients to foster the deployment of broadband access across Unserved and Underserved areas in New Mexico through sustainable, scalable networks and financially viable business plans and serve the comprehensive community with high-quality, reasonably priced solutions; and

WHEREAS, the New Mexico legislature appropriated \$5,000,000 from the Connect New Mexico Fund to the Department to support the procurement of grant writing, engineering, and planning services to facilitate the process of obtaining funding from various sources that are dedicated to broadband projects; and

WHEREAS, the Office of Broadband issued a Notice regarding the Grant Writing, Engineering, and Planning (“GWEP”) grant on or about October 17, 2023, by which it sought applications from interested parties for the purpose of making subawards to subrecipients for eligible activities, pursuant to the requirements found in §1.12.21 NMAC; and

WHEREAS, Grantee submitted an application (“**Grantee’s Application**”) to GWEP on or about November 29, 2023,, by which it sought Award funding for the GWEP project as described in Grantee’s Application; and

WHEREAS, based upon its review of GWEP applications, the Office of Broadband notified Grantee on or about June 28, 2024, that it intended to make a subaward to Grantee for \$99,000 subject to the execution of a binding legal agreement to be executed between the State of New Mexico and Grantee in accordance with NMSA §6-5-1 *et. seq.*, NMSA §13-1-1 *et. seq.*, §1.4 NMAC, and §2.20 NMAC regarding procurement and the expenditure of public monies ; and

WHEREAS, Grantee has registered with the New Mexico Taxation and Registration Department, in its name as stated herein and has been issued the following BTIN 1505540000, and

WHEREAS, this Agreement is intended to be the sole and exclusive agreement between the State of New Mexico and Grantee regarding the subaward of Award funds by the State of New Mexico to Grantee, and contains the entire understanding and agreement between the Parties;

NOW, THEREFORE, it is mutually agreed by the Parties as follows:

TERMS AND CONDITIONS

ARTICLE 1 – DEFINITIONS

“Award” is state award dated June 28, 2024, from the State of New Mexico to the Office of Broadband Access and Expansion as described in the Recitals herein.

“Budget Period” has the meaning set forth in Article 5(C) of this Agreement.

“Business Days” means Monday through Friday, except for Federal and State holidays.

“Contract Documents” has the meaning set forth in Article 2(A) of this Agreement.

“Effective Date” has the meaning set forth in Article 5(A) of this Agreement.

“Grant” or “Grant Amount” has the meaning set forth in Article 3(A) of this Agreement.

“Performance Period” has the meaning set forth in Article 5(B) of this Agreement.

“Project” has the meaning set forth in Article 3(A) of this Agreement.

“Scope of Work” has the meaning set forth in Article 6 of this Agreement.

“Third-Party Obligation” means allowable expenditures made by Grantee pursuant to the execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project;

ARTICLE 2 – CONTRACT DOCUMENTS

A. Contract Documents. The “**Contract Documents**” consist of this Agreement, any amendments to this Agreement executed in writing by the Parties, and the following exhibits, each of which is incorporated into this Agreement as though fully set forth herein:

1. Scope of Work as described in Article 6 of this Agreement (**Exhibit A**)
2. Request for Reimbursement (**Exhibit B**)

B. Precedence. In the case of dispute or ambiguity arising between any of the Contract Documents, the terms and conditions set forth in the main body of this Agreement and its amendments shall take precedence.

ARTICLE 3 – GRANT AMOUNT AND USES; AVAILABILITY OF GRANT FUNDS

- A. Grant Amount. Subject to the terms of this Agreement, the Department hereby awards exclusively to Grantee a sum not to exceed \$99,000 (the “Grant” or “Grant Amount”) to be used for the purposes of funding the GWEP project described in the Scope of Work attached as **Exhibit A** to this Agreement (the “Project”). The Grant Amount is to be used only for approved eligible costs used to obtain professional services as specified in the Scope of Work. Grantee certifies that any Project costs funded by the Grant shall not subject to reimbursement by any other state or federal funding source.
- B. Eligible Expenses. Eligible expenses for the Project shall be determined in accordance with the accounting principles identified in §2.20.5 NMAC, and may only be used to cover expenses incurred during the period of performance and for allowable closeout costs incurred during the grant closeout process. The Grant shall not be used for research and development (R&D), or indirect costs. A non-exhaustive list of eligible expenses includes:
1. Direct costs related to grant-writing for broadband infrastructure projects;
 3. Architectural and engineering design for broadband infrastructure projects;
 4. Costs related to the planning of broadband-infrastructure projects; and
 5. Costs associated with obtaining professional services for grant-writing, engineering, or planning of a broadband-infrastructure project.
- C. Ineligible Expenses. The following non-exhaustive list of expenditures are not eligible uses of the Grant:
1. Equipment or supplies;
 2. Salaries or benefits for Luna County staff;
 3. Operations and maintenance costs;
 4. Payment of interest or principal on outstanding debt instruments, or other debt service costs;
 5. Fees or issuance costs associated with the issuance of new debt;
 6. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding;
 7. To support or oppose collective bargaining;
 8. Any expense for which Grantee receives other federal or state funding or reimbursement;
 9. Expenditures related to land buildings, structures, improvements, or equipment; and
 10. Expenditures for any deliverable acquired from a contractor or other third party operating on Grantee’s behalf to the extent such deliverable was not procured by Grantee in compliance with the procurement standards set forth in Article 3(E) of this Agreement.

- D. Availability of Grant Funds. Notwithstanding anything in this Agreement to the contrary, all obligations of the State of New Mexico hereunder, including, without limitation, the disbursement of Grant funds pursuant to this Agreement, are contingent upon continued appropriation of those funds by the New Mexico State Legislature, and in no event shall the State of New Mexico be liable for any payments or disbursements hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those Award funds, the State of New Mexico shall have the right to authorize the withholding of payment until such Award funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving Grantee written notice of such termination.
- E. Procurement. Grantee's procurement of all services under this Agreement must conform to the applicable procurement standards set forth in New Mexico Procurement Code, §§ 13-1-28 – 13-1-199. NMSA 1978, §1.4.1 NMAC, and § 1.12.21 NMAC.
- F. Overbudget. Grantee is responsible for performing to completion the entire Scope of Work even if the total actual expenditures exceed the amount of the grant, and Grantee solely assumes any financial risk the Project may come in over budget.

ARTICLE 4 – NOTICE OF STATE SUBAWARD

The Award from the State of New Mexico to the Office of Broadband Access and Expansion, dated June 28, 2024 was issued pursuant to the 2021 General Appropriation Act at Section 17(B)(2) of Chapter 140 of Laws 2021 to authorize payments to certain sub recipients from the Connect New Mexico Fund.

ARTICLE 5 – EFFECTIVE DATE; PERIOD OF PERFORMANCE; BUDGET PERIOD

- A. Effective Date. This Agreement shall take effect upon execution by all parties (“**Effective Date**”).
- B. Subaward Period of Performance Start and End Date. The period of performance shall start on the Effective Date and the Project must be completed by June 30, 2025 (hereinafter “**Performance Period**”). The Office of Broadband may, request approval from New Mexico State Legislature to extend the Performance Period.
- C. Subaward Budget Period Start and End Date. The budget period shall start upon the Effective Date and shall end no later than June 30, 2025 (hereinafter “**Budget Period**”). The Department will provide reimbursement for all eligible expenses incurred after the Effective Date. Costs incurred by Grantee after June 30, 2025 will not be eligible for reimbursement, and Grantee must submit to the State of New Mexico, no later than 90 calendar days (or an earlier date as agreed upon in writing by Grantee and the State of New Mexico) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award.

- D. Notice to Proceed. Once this agreement is executed, this will trigger the creation of a Purchase Order reflecting the Grant Amount for the Grantee to receive funds against. Unless otherwise noted in Article 3(B) above, no funds shall be disbursed to the Grantee for services that precede the date on the Purchase Order, as set forth in the New Mexico Procurement Code, § 13-1-1 et seq. NMSA 1978, and accompanying regulations at § 1.4.1 NMAC

ARTICLE 6 – SCOPE OF WORK

Grantee’s Scope of Work, including all supporting documents (except for Grantee’s audited financial statements and *pro forma* financials) and any written modifications or reports resulting from the review by the Office of Broadband (collectively “**Scope of Work,**” attached hereto as **Exhibit A**), are incorporated into this Agreement by reference and the representations made therein are binding upon Grantee. Grantee shall engage in activities as set forth in the Scope of Work, and any changes to the Scope of Work must be approved in writing by the Office of Broadband based upon Grantee’s submission of the completed template to be published by the Office of Broadband for the purpose of requesting such changes to the Scope of Work. In considering a change request by Grantee, the Office of Broadband may consider mitigating factors not caused by Grantee and/or outside Grantee’s control. Any failure by Grantee to seek approval prior to making any change to the Scope of Work may be grounds for Project suspension or termination of this Agreement.

ARTICLE 7 – LEGAL COMPLIANCE

A. Project Requirements. Grantee shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, software, services, and/or any other act or thing required to perform and complete the Project in a full and diligent manner in accordance with the Scope of Work. Grantee’s project administration requirements shall include the following:

1. Make a determination that it has the institutional, managerial and financial capability to ensure proper planning, management and completion of the Project prior to Grantee’s expenditure any portion of the Grant Amount.
2. Make available to the Office of Broadband all project plans, documents, and data.
3. Research and comply with all local, state, or federal laws, codes, or regulations applicable to the Project.
4. Research and comply with all requirements of any local, state, or federal agency or jurisdiction that regulates or governs the Project.
5. To the extent identified in the Scope of Work and relied upon by Grantee in seeking the Grant, any partnerships with other Internet Service Provider (“ISP”), cooperatives or governmental entities, shall be identified in the Scope of Work and are made a part of and required by this Agreement.
6. Grantee affirms that it will consult with the New Mexico Department of Transportation, the Office of Broadband, and electric utilities as well as local water sewer utilities as to any possible efficiencies that can be achieved with a “Dig Once” approach.

- B. State Requirements. Grantee acknowledges and hereby certifies that the Project shall comply with the requirements of the Appropriation and all applicable state statutes, regulations, executive orders and any other guidance issued by the State of New Mexico regarding the funds. Grantee may only use the Grant Amount in compliance with the Appropriation and § 1.12.21 NMAC regarding grant programs implemented by the Office of Broadband. Grantee shall maintain records and financial documents sufficient to evidence compliance regarding its eligible uses of funds. Grantee also agrees to comply with all other applicable state statutes, regulation and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving state financial assistance and all applicable environmental laws and regulations.

- C. Civil Rights Compliance. Grantee is a public contractor required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of state funds found in the Human Rights Act, NMSA §28-1-1 *et. seq.* Those requirements include ensuring a governmental entity or public contractor do not, directly or indirectly, refuse, otherwise limit or put conditions on services, or otherwise discriminate, on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or spousal affiliation. Grantee agrees to, upon request, make available to the Office of Broadband such information and documentation necessary to demonstrate compliance with the Human Rights Act.

- D. Maintenance of and Access to Records. Grantee shall maintain records and financial documents sufficient to evidence compliance state laws, regulations, and related guidance, the Award, and this Agreement. The Department of Finance Administration (DFA), New Mexico Department of Justice, Office of Broadband, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Grantee in order to conduct audits or other investigations. Records shall be maintained by Grantee for a period of five (5) years after all funds have been expended or reverted to the State General Fund, whichever is later.

- E. Conflicts of Interest. Grantee understands and agrees it must maintain a conflict-of-interest policy consistent with the Governmental Conduct Act, NMSA §10-16-1 *et seq.*, and that such conflict-of-interest policy is applicable to each activity funded under this award. Grantee must disclose, in writing, to the Office of Broadband, any conflict of interest or potential conflict of interest affecting the awarded funds.

- F. False Statements. Grantee understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

- G. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by the State of New Mexico Office of Broadband Access and Expansion.

H. Debts Owed the State Government.

1. Any funds paid to Grantee (a) in excess of the amount to which Grantee is finally determined to be authorized to retain under the terms of the Award; (b) that are determined by the Department of Finance Administration (DFA), New Mexico Department of Justice, or Office of Broadband to have been misused; or (c) that are determined by Department of Finance Administration to be subject to a repayment obligation, and have not been repaid by Grantee, shall constitute a debt to the State of New Mexico.
2. Any debts determined to be owed the State of New Mexico must be paid promptly by Grantee. A debt is delinquent if it has not been paid by the date specified in State's initial written demand for payment, unless other satisfactory arrangements have been made, or if Grantee knowingly or improperly retains funds that are a debt as defined in the paragraph above. The State of New Mexico will take any actions available to it to collect such a debt.

I. Disclaimer.

1. Grantee acknowledges and accepts that the State of New Mexico expressly disclaims any and all responsibility or liability to Grantee or third persons for the actions of Grantee or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of the Award or any contract, or subcontract under the Award.
2. The acceptance of this Agreement by Grantee does not in any way establish an agency relationship among or between the United States, State of New Mexico, the Department, the Office of Broadband and Grantee.

J. Protections for Whistleblowers. In accordance with the Whistleblower Protection Act, NMSA §10-16C-1 *et seq*, Grantee may not take any retaliatory action against an employee in reprisal for:

1. Disclosing to the Office of Broadband, or any other third party, an action or a failure to act that the employee believes in good faith constitutes an unlawful or improper act;
2. Providing information to a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
3. Objecting to or refusing to participate in an activity, policy or practice that constitutes an unlawful or improper act,

Grantee shall inform its employees in writing of the rights and remedies provided under this subsection, in the predominant native language of the workforce.

K. Remedies. If the event of Grantee's noncompliance with the Appropriation, this Agreement, other applicable laws, regulations, executive orders, or any reporting or other program requirement, the State of New Mexico may take available remedies as set forth under the law

- L. Audit Requirements. Grantee understands that the Office of Broadband is subject to annual audit in accordance with the Audit Act, NMSA § 12-6-2 *et seq.*, and that financial records related to this Award may be subject to review. Grantee agrees to provide unrestricted access to, or produce copies of, any financial related to this award to the State Auditor, Department of Finance Administration, or designated contactor for purposes of completing the audit.

ARTICLE 8 – DISBURSEMENT

- A. Conditions of Disbursement. The following conditions apply to the disbursement of the Grant to Grantee:
1. Grantee’s expenditures shall be made during the Budget Period and prior to the termination of this Agreement (*i.e.*, the services have been delivered and accepted and/or the services have been rendered for the Grantee);
 2. The total amount received by Grantee shall not exceed the Grant Amount;
 3. Grantee is in compliance with the terms and conditions of this Agreement to the satisfaction of the Office of Broadband; and
 4. Grantee has submitted a request for reimbursement consisting of all documentation required under this Article.
- B. Request for Reimbursement Procedures and Deadlines. Grantee shall request payment for incurred grant expenditures by submitting a request for reimbursement in the form attached hereto as **Exhibit B** (hereinafter “**Request for Reimbursement**”). Reimbursement requests are subject to the following procedures and deadlines:
1. Grantee must submit a Request for Reimbursement that includes the Sub-Grant Agreement Number;
 2. Each Request for Reimbursement must contain proof of payment by Grantee or liabilities incurred by Grantee showing that the expenditures are valid or are liabilities incurred by Grantee in the form of actual invoices received by Grantee for Third-Party Obligations; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
 3. In cases where Grantee is submitting a Request for Reimbursement to the Department based upon invoices received, but not yet paid, by Grantee for a Third-Party Obligation, if the invoices comply with the provisions of this Agreement and are a valid liability of Grantee, Grantee shall make payment in-full on those Third-Party Obligations within five (5) Business Days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. Grantee is required to certify to the Department proof of payment of the Third-Party Obligations within ten (10) Business Days from the date of receiving reimbursement from the Department.
 4. Requests for Reimbursements on a Third-Party Obligation shall be submitted by Grantee to the Department within 30 days from the date the Third-Party Obligation

was incurred as evidenced by an unpaid invoice received by the Grantee from a third-party contractor or vendor.

- 5. Grantee’s failure to abide by the requirements herein will result in the denial of its Request for Reimbursement or will delay the processing of its Request for Reimbursement. The Department has the right to reject a reimbursement request for the Project unless and until it is satisfied that the expenditures in the Request for Reimbursement are for permissible purposes within the meaning of this Agreement. Further, the Department's right to reject any Request for Reimbursement is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE 9 – REPORTING REQUIREMENTS

- A. Quarterly Progress Reports. No later than thirty (30) calendar days after the end of each calendar year quarter commencing on the Effective Date and ending upon Project closeout, Grantee must submit to the Office of Broadband a quarterly progress report in such form as the Office of Broadband may require. The specific data points required will be designated by the Office of Broadband in guidance to be published on the OBAE website.
- B. Close-Out Report. Grantee shall deliver a close out report to the Office of Broadband no later than ninety (90) calendar days after termination of the Agreement or expenditure of all Grant funds, whichever event occurs last. The specific data points required will be designated by the Office of Broadband in guidance to be published online.
- C. Reporting. Grantee shall comply with all applicable State of New Mexico reporting requirements necessary to comply with the Connect New Mexico Fund.

ARTICLE 10 – LIASONS

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department’s liaison. Grantee shall designate a liaison that will provide the single point of contact for management and coordination of Grantee’s work.

The liaisons for this Agreement are:

For the Department:
 Drew Lovelace
 Acting Director of Broadband, OBAE
 715 Alta Vista St.
 Santa Fe, NM 87505
 (505) 476-3622
 drew.lovelace@connect.nm.gov

For Grantee:
 Chris Brice
 County Manager
 700 S Silver Ave
 Deming, NM 88030
 575-546-2454
 chris_brice@lunacountynm.us

ARTICLE 11 – PROJECT MONITORING

The Office of Broadband or any of its authorized agents may monitor and inspect all phases and aspects of Grantee's performance to determine compliance with the Scope of Work, the proper use of funds, and other technical and administrative requirements of this Agreement, including the adequacy of Grantee's records and accounts. This section shall survive termination of this Contract.

ARTICLE 12 – NOTICE

All notices or communications required or permitted to be given by a Party under the provisions of this Agreement must be in writing and delivered to the other Party's liaison identified herein in accordance with § 1.12.21.8(D) NMAC.

ARTICLE 13 – ASSIGNMENT OF AGREEMENT; TRANSFER OF PROJECT ASSETS

Grantee may not assign or transfer any portion of this Agreement without prior written consent by the Office of Broadband, in its sole discretion. In the event that any assets acquired, in whole or in part, with Grant funds are to be sold, leased, licensed to or operated by a private entity other than Grantee during the useful life of the assets, the sale, lease, license, or operating agreement must be approved before it may become effective by the applicable oversight entity (if any) in accordance with state and federal law or, if no oversight entity is required to approve the transaction, it must be approved before it may become effective by the Office of Broadband based on a determination whether the transaction complies with applicable state and federal law and this Agreement.

ARTICLE 14 –DEFAULT, CURE, TERMINATION AND REMEDIES

- A. Default. The Department may unilaterally terminate this Agreement for default by Grantee (“**Event of Default**”) as authorized by, and subject to the requirements of, § 1.12.21.14 NMAC.
- B. Remedies. Upon the occurrence of any Event of Default and Grantee's failure to cure said Event of Default within the applicable cure period as provided by § 1.12.21.14 NMAC, or in the event of termination by the Office of Broadband, the Office of Broadband may, in its sole discretion, exercise any right, or pursue any remedy, authorized by state or federal law, or the terms of this agreement. Such rights and remedies may include, but are not limited to, the following actions:
 - 1. Withhold any or all payments or disbursements of the Grant to be made under this Agreement, in which event Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
 - 2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 - 3. Treat the Agreement as breached and pursue any remedies at law or in equity, or both; or

4. Demand repayment of all or a portion of the Grant funds disbursed to Grantee, plus all costs and reasonable attorney's fees incurred by the Department in recovery proceedings.

ARTICLE 15 – CONFLICT OF INTEREST

Grantee warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with Grantee's performance under this Agreement. Grantee certifies that it has followed the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18, regarding contracting with a public officer, state employee or former state employee.

ARTICLE 16 – OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by Grantee or any of its contractors, subcontractors, or subrecipients in furtherance of this Agreement are the property of Grantee and the Office of Broadband. Both Grantee and the Office of Broadband have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others to use, and to otherwise use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of both the Office of Broadband and Grantee.

ARTICLE 17 – INSURANCE REQUIREMENTS

- A. Professional Liability Insurance. Grantee shall provide, or require any licensed agent or contractor who provides professional engineering services within the scope of his or her license to Grantee in connection with the Project to procure and maintain professional liability (errors & omissions) coverage with a limit of \$2,000,000 per claim. If this insurance is written on a "claims made" basis, then the policy shall provide "tail coverage" for claims asserted within three (3) years after the earlier of the date of Substantial Completion or the date of termination of this Agreement.
- B. General Insurance Requirements. Insurance coverages shall be provided by a company with an A.M. Best rating of A- or better. All certificates and endorsements must be received by the Office of Broadband prior to beginning any activity provided for under this Agreement. Grantee must notify the Office of Broadband immediately of any material change in insurance coverage, such as changes in limits, coverage, or change in status of policy. The Office of Broadband reserves the right to request complete copies of Grantee's insurance policy, including endorsements, at any time.

ARTICLE 18 – DEFENSE AND INDEMNIFICATION

Grantee will defend, indemnify and hold harmless the Office of Broadband, and the State of New Mexico, and their officers, employees and agents free from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of Grantee's performance of this Agreement, which is caused, or

alleged to be caused, by an act or omission of Grantee or of any agent of Grantee in the performance of this Agreement. In the event that any action, suit or proceeding related to the performance of this Agreement is brought against Grantee and/or any agent of Grantee, Grantee shall, within two (2) Business Days after Grantee receives notice thereof, notify the Department's liaison in writing.

ARTICLE 19 – REPRESENTATIONS AND WARRANTIES

Recognizing that the Department is relying hereon, Grantee represents and warrants, as of the Effective Date of this Agreement, as follows:

- A. Organization; Power, Etc. Grantee: (1) is duly organized and validly existing under the laws of the State of New Mexico; (2) is duly qualified to do business and is in good standing in the State of New Mexico; (3) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under this Agreement; (4) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable laws; and (5) is eligible to obtain the financial assistance from the Department contemplated by this Agreement.
- B. Authority. The execution, delivery and performance by Grantee of this Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of Grantee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which Grantee is a party or by which it may be bound. Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- C. Consents. No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of this Agreement, except such as have been obtained and are in full force and effect.
- D. Binding Agreement. Each part of this Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.
- E. Compliance with Applicable Laws. Grantee will comply with all federal, state, and local laws, rules, regulations, ordinances, codes and orders materially applicable to the performance and administration of this Agreement.
- F. Litigation. There is no pending or threatened legal, arbitration or governmental actions or proceedings to which Grantee is a party or to which any of its property is subject which, if

adversely determined, could have a material adverse effect on its ability to perform its obligations hereunder.

- G. Information Submitted with Application. All information, reports, and other documents and data submitted to the Office of Broadband in connection with Grantee's Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted in connection with Grantee's Application present fairly, in all material respects, the financial position of Grantee and the results of its operations in conformity with standard accounting practices. Since the date thereof, there has been no material adverse change in the financial condition or operations of Grantee.

ARTICLE 20 – DEBARMENT

Grantee certifies and agrees to ensure during the term of this Agreement that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency.

ARTICLE 21 – FORCE MAJEURE

Neither Party will be liable for damages or have any right to terminate this Agreement for any delay or Default in performing hereunder in the event such delay or Default is caused by conditions beyond the Party's control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), war, insurrection and/or any other cause beyond the reasonable control of the Party whose performance is affected thereby.

ARTICLE 22 – GENERAL PROVISIONS

- A. Applicable Law. This Agreement will be governed and interpreted according to New Mexico law and applicable federal law. Any judicial proceeding concerning this Agreement shall be brought only in the New Mexico First or Second Judicial District Court. By executing this Agreement, Grantee acknowledges and will submit to the jurisdiction of the court as stated herein over any and all such proceedings arising hereunder.
- B. Workers' Compensation. Grantee will comply with state laws and rules applicable to workers compensation benefits for its employees.
- C. Waiver. A Party's failure to require strict performance of any provision of this Agreement will not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights hereunder will be effective unless made in writing, and no effective waiver by a Party of any of its rights will be effective to waive any of its other rights, duties or obligations hereunder.

- D. Severability. The provisions of this Agreement are severable, and in the event for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court, agency or commission having jurisdiction over the subject matter hereof, such invalidity will not affect the other provisions of this Agreement, which will be given effect absent the invalid provision.
- E. Headings. Any and all headings within this Agreement are inserted for convenience and ease of reference and will not be considered in the construction or interpretation of any article, section or provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
- F. Dispute Resolution. In the event dispute arises between the Parties, either Party may send a letter to the other Party requesting the other Party to enter into a dispute resolution process, such as mediation or arbitration, in accordance with NMSA 1978, §§ 12-8A-1 through 12-8A-3.
- G. Entire Agreement. The Contract Documents comprise the entirety of the binding agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment must be in a written agreement signed by the Parties.

WHEREFORE, the Parties' authorized representatives sign this Agreement as follows.

GRANTEE

By:  8/6/2024
Signed by:
0405099CD0704E3...
 Chris Brice Date
 County Manager

DEPARTMENT OF INFORMATION TECHNOLOGY/OFFICE OF BROADBAND ACCESS AND EXPANSION

By:  8/6/2024
DocuSigned by:
3F27FC46E7C4438...
 Drew Lovelace, OBAE Acting Director

Approved for financial sufficiency:

By: 
7618DA20271446A...

Eve Banner, Chief Financial Officer

Date: 8/6/2024

Approved for legal sufficiency:

By: 
C0140201B6F94E1...

Cassandra Brulotte, OBAE Acting General Counsel

Date: 8/6/2024

Exhibit A
Scope of Work
Grant Writing, Engineering and Planning (GWEP) Assistance Grant

Luna County

1. Project Title:

“Grant Writing, Engineering, and Planning – Luna County”

2. Purpose(s) of Grant Award:

Grant Writing

Engineering

Planning (e.g. network design)

3. Award Amount: \$99,000

4. Description of Proposed Broadband Project:

Description of Proposed Broadband Project

The funding secured from OBAE’s GWEP program will leverage preliminary broadband engineering for underserved and unserved and gap analysis already funded by Luna County and assist the County Manager’s office with the following:

Technical Assistance (\$63,800):

- Engineering support to track ISP grant broadband implementation. Sync construction schedules with public/private infrastructure projects to accelerate broadband deployment and create synergy for combined efforts.
- Ensure obligations are met and unserved citizens receive the service promised in the announced grant awards. Resources will assist the County if award modifications occur within the near future so that the County will be well-positioned to pivot to other available funding sources (e.g., BEAD, RUS, OBAE).
- Technical guidance for requests seeking County letters of support. Review funding requests to include proposed project technology, timeline, and budget. Provide expert counsel on choices with the greatest public good.
- Provide and explore technical strategies and management for the unserved of Luna County to include guidance, planning, possible design, and implementation. Detailed engineering and technical support for at least two distinct strategies to connect unserved remote populations in Western Luna County.

Breakdown of technical/engineering assistance:

- Data Analysis / Mapping = \$2,400
- Broadband Infrastructure Strategies = \$20,300
- GWEP Grant Administration & Compliance Documentation Support = \$3,700
- Project Management / Meetings with Stakeholders = \$11,200
- 2 Technical Site Visits = \$2,400
- Connect the Unserved = \$23,800

Grant Writing (\$35,200): Luna County has 2,044 households that will remain unserved and will not be covered by the 3 grant awards currently announced to Valley Telcom, Western New Mexico Communications, and Resound Networks. These remaining households are the most difficult to connect and include those people living in dispersed Colonia who desperately need access to broadband service (and other basic utilities). This request includes resources for grant writing assistance for the County (along with potential partners) to pursue the goal of Internet for All through at least two rounds of future broadband grants.

The GWEP request includes technical resources for the County to submit future broadband deployment grants to reach unserved populations excluded in current ISP plans. Resources dedicated to this endeavor will provide the County with superior applications for OBAE's consideration.

5. Timeline

Project(s) are required to be completed by 6/30/2025 from the period of performance start date.

6. Reimbursements

The awardee may submit reimbursement requests monthly or quarterly until the awarded amount is exhausted. All reimbursement requests must be submitted no later than June 30, 2025.

STATE OF NEW MEXICO
Request for Payment Form
Exhibit B

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

- A. Payment Request No. _____
- B. Grant Amount: \$ 0.00
- C. AIPP Amount (If Applicable): \$ 0.00
- D. Funds Requested to Date: \$ 0.00
- E. Amount Requested this Payment: \$ 0.00
- F. Reversion Amount (If Applicable): \$ 0.00
- G. Grant Balance: \$ 0.00
- H. ARPA GF GOB STB
- I. Final Request for Payment (if Applicable)

III. Fiscal Year : 2024 (July 1, 2023 - June 30, 2024)
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Reporting Certification: I hereby certify to the best of my knowledge and belief, that required reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with [the Grant Agreement](#).

V. Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
 or **Fiscal Agent** (if applicable)

Grantee Representative

 Printed Name

 Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

 Division Fiscal Officer Date

 Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT B**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount: _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____ \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____