

# MASSACHUSETTS TECHNOLOGY COLLABORATIVE

## Federally Funded Grant Agreement

### Between Massachusetts Technology Collaborative and

[NAME OF SUBGRANTEE]

This Federally Funded Grant Agreement and any Attachments and Exhibits hereunder (collectively, the “Agreement”) is made and entered into by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative, an independent public instrumentality of the Commonwealth of Massachusetts, with a principal office and place of business at 75 North Drive, Westborough, Massachusetts, 01581 (“MassTech”), and [NAME OF SUBGRANTEE], with a principal place of business at [ADDRESS OF SUBGRANTEE] (“Subgrantee” or “\_\_\_\_\_”), together, the “Parties.” This Agreement shall govern certain activities and responsibilities to be carried out by Subgrantee on behalf of MassTech, a subrecipient of the Commonwealth of Massachusetts.

**WHEREAS**, the Commonwealth of Massachusetts received an award from the U.S. Department of Commerce pursuant to the provisions of the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (“Infrastructure Act” or “Act”) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, et seq.; and

**WHEREAS**, MassTech has been awarded a grant for the BEAD Deployment Program (the “Program”) from the Commonwealth of Massachusetts Executive Office of Economic Development (“EOED”), funded from the U.S. Department of Commerce’s Broadband Equity, Access, and Deployment (“BEAD”) program established under the Infrastructure Act, Catalog of Domestic Federal Assistance (“CDFA”) Number 11.035, Funding Opportunity Number NTIA-BEAD-2022 (the “MassTech subaward”); and

**WHEREAS**, MassTech and Subgrantee desire to enter into a subaward agreement, under which MassTech will fund Subgrantee’s activities consistent with the Program (the “Project”), as described in and in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, this Agreement is issued as a Fixed Amount Subaward per 2 C.F.R. § 200.201 where the major purpose of the subaward is a broadband infrastructure project and will be administered by MassTech pursuant to the National Telecommunications and Information Administration’s (“NTIA”) Uniform Guidance Policy Notice ([BEAD Policy Notice: Uniform Guidance Exceptions, Adjustments, Clarifications](#)).

**NOW, THEREFORE**, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. Compliance with Award and Subaward Terms

Subgrantee shall perform all activities funded by this Agreement in accordance with: (i) the Certification Regarding Lobbying attached hereto as Exhibit 1; (ii) the Federal Requirements attached hereto as Exhibit 2; (iii) the Statement of Work (“SOW”) attached hereto as Exhibit 3; (iii) the Approved Budget and Budget Spreadsheet, attached hereto as Exhibits 4 and 4A; and (iv) the Payment Requisition & Certification Form attached hereto as Exhibit 5. Subgrantee agrees that on request of MassTech, it will negotiate in good faith with MassTech to incorporate additional provisions to the Exhibits herein or to change terms of this Agreement and any amendments thereto. If any such amendment to this Agreement

causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this Agreement, an equitable adjustment shall be negotiated between the Parties.

## **2. Period of Performance, Work Stoppage and Termination**

- a) This Agreement shall take effect on the date of last signature (the “Effective Date”) and shall remain in effect not later than four (4) years after the Effective Date (the “Term” or “Period of Performance”). All Project costs must be incurred during the Term.
- b) This Agreement may be terminated by either MassTech or Subgrantee for a material breach of any term. The breaching party shall have thirty (30) days to cure such breach from the date of written notice, unless otherwise agreed to by the Parties in writing.
- c) This Agreement may be terminated by MassTech for convenience upon thirty (30) days written notice to Subgrantee. If the Agreement is terminated pursuant to this subsection, Subgrantee shall be reimbursed as specified in Exhibit 4 for all costs and non-cancellable commitments incurred in connection with the Agreement, up to the date of termination.
- d) MassTech may terminate this Agreement or any part thereof by written notice to the Subgrantee, should EOED or the Commonwealth terminate the Program or Project, or any part thereof, the loss of available funds for the purposes of work hereunder, or in the event of an unforeseen public emergency or other change of law mandating immediate action by MassTech inconsistent with performing its obligations under this Agreement.
- e) Agreement Closeout. Upon termination or expiration, Subgrantee shall deliver to MassTech all written and tangible work product, whether in draft or final form at the time of termination, identified as Deliverables, and all other property of MassTech, and all copies thereof in the direct or indirect possession or control of Subgrantee, up to and including the date of termination. Final payment requests under this Agreement must be received by MassTech no later than thirty (30) days from the earlier expiration date or termination date of this Agreement. No payment request will be accepted by MassTech after this date without authorization from MassTech. In consideration of the execution of this Agreement by MassTech, Subgrantee agrees that acceptance of final payment from MassTech will constitute an agreement by Subgrantee to release and forever discharge MassTech, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subgrantee has at the time of acceptance of final payment or may thereafter have arising out of or in any way relating to any and all injuries or damages of any kind as a result of, or in any way relating to, this Agreement. Subgrantee’s obligations to MassTech under the Agreement shall not terminate until all closeout requirements are completed to the satisfaction of MassTech. Such requirements shall include, without limitation, submitting final Project reports to MassTech and providing any closeout-related information requested by MassTech by the deadlines specified by MassTech.
- f) Stop Work. MassTech may, at any time, by written notice to Subgrantee, require Subgrantee to stop all, or any part, of the work called for under this Agreement. This written notice shall be referred to as a Stop Work Notice. Upon receipt of a Stop Work Notice, Subgrantee shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the Stop Work Notice during the period of work stoppage. Within ninety (90) days after issuance of the Stop Work Notice, or within any extension of time mutually agreed to, MassTech will either: (a) cancel the Stop Work Notice; or (b) terminate in whole or in part the work subject to the Stop Work Notice, which may also lead to termination

under Section 2(d). If the Stop Work Notice is cancelled, Subgrantee shall resume work under the Agreement subject to a mutually agreeable equitable adjustment in the project schedule(s) and/or budget(s) that result from the Stop Work Notice.

- g) Sections 5 through 26 of this Agreement shall survive termination.

### **3. Notices**

- a) All communications to MassTech regarding legal issues shall be emailed to MassTech General Counsel Jennifer Saubermann at [saubermann@masstech.org](mailto:saubermann@masstech.org).
- b) All communications regarding any other issues shall be emailed or delivered to the personnel specified in Section 2 of Exhibit 3 (the SOW), **Project Personnel**. Any notice hereunder shall be in writing and shall be effective (i) if dispatched by email and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting.

### **4. Timely Performance**

Subgrantee acknowledges that the timely completion of the Project and delivery of Deliverables as provided under this Agreement and the attached SOW is of the utmost importance to MassTech and the Program goals.

### **5. Subgrantee's Representations, Warranties and Certifications**

As of the Effective Date, Subgrantee hereby represents, warrants, and certifies as follows:

- a) Subgrantee is duly authorized to enter into this Agreement and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order, or other legal requirement by which Subgrantee or any of its assets is bound.
- b) Subgrantee and all Project Personnel of Subgrantee are fully capable and qualified to perform the described activities and Subgrantee's other obligations hereunder and have obtained all requisite licenses and permits to perform such obligations.
- c) Subgrantee and its Project Personnel are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provision of any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth or other local, state or federal government authorities applicable to or implicated by the subject matter hereunder without limitation.
- d) Subgrantee and its employees are not employees, partners, or joint venturers of MassTech. Subgrantee will be solely responsible for withholding and paying all applicable payroll taxes of any nature including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees, Subgrantee has filed and will continue to file all necessary state tax returns and reports, and had paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to Workers' Compensation, Mass. Gen. Laws ch. 152.
- e) Subgrantee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Subgrantee agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to Title VII

of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and Mass. Gen. Laws chapter 151B and chapter 272, §§ 92A, 98, 98A.

- f) Subgrantee represents and warrants that all personnel performing work hereunder are eligible to work in the United States at the time of execution of this Agreement and that Subgrantee has a continuing obligation to ensure such status during the term of this Agreement.
- g) Additional representations, warranties and certifications may be set forth in the SOW.

## **6. Ownership of Intellectual Property, Data Rights, and Property and Equipment Title**

Ownership of any intellectual property, data rights, and property and equipment title rights hereunder shall be determined in accordance with the SOW.

## **7. Insurance**

To the extent that Subgrantee does not participate in a self-insurance program, Subgrantee shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities hereunder including, but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance. At MassTech's request, Subgrantee will provide MassTech with copies of the certificates of insurance evidencing such coverage. Additional insurance requirements may be specified in the SOW.

## **8. Indemnification**

To the extent permitted under laws of the Commonwealth of Massachusetts, Subgrantee shall indemnify, defend and hold harmless MassTech and its successors and assigns, and all of its officers, directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees from an against any and all claims, suits, actions, judgments, demands, losses, costs, attorneys' fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of the intentional acts, errors, omissions, or allegations thereof, of Subgrantee, its employees, agents or representatives in the performance of the services under this Agreement.

## **9. Damages Waiver**

Excluding damages caused by negligence, intentional misconduct or breach of this Agreement, neither Party will be liable to the other or to any third party for loss of profits, or special, indirect incidental, consequential or exemplary damages, including costs, in connection with the performance of any obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

## **10. Warranty Disclaimer**

EACH PARTY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

## **11. Assignment and Subcontracting**

Subgrantee shall not assign or in any way transfer any interest in this Agreement without the prior written consent of MassTech, including subcontracting any service except as otherwise included in the SOW attached hereto.

## **12. Conflicts of Interest**

Subgrantee acknowledges that all MassTech employees are subject to the Massachusetts Conflict of Interest statute, located at Mass. Gen. Laws ch. 268A.

### **13. Record Keeping, Audit, and Inspection of Records**

Subgrantee's relevant financial records specific to this Agreement are subject to examination or audit by MassTech, EOED, or the Federal Government, for a period not to exceed three (3) years after payment of the final invoice. MassTech or the Federal Government shall have direct access to sufficient records and information of Subgrantee to ensure full accountability for all funding under this Agreement. Such audit, examination or access will be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

### **14. Publicity**

Concerning work hereunder, Subgrantee shall get written consent from MassTech prior to issuing press releases, announcing events, or posting any signs or media, and shall coordinate with MassTech to plan for any news conferences. In any media produced by Subgrantee, Subgrantee will not represent that positions taken or advanced by it represent the opinion or position of MassTech.

### **15. Public Records**

As a public entity, MassTech is subject to the Massachusetts Public Records Law (set forth at Mass. Gen. Laws ch. 66) and thus all documents and other materials made or received by MassTech and/or its employees and subject to public disclosure. Subgrantee should not submit any information to MassTech that it does not want publicly disclosed and should assume that all submissions are subject to public disclosure without any prior notice, even if marked confidential. If Subgrantee wishes to have MassTech treat certain information or documentation as confidential, before submission of such information, Subgrantee must submit a written request to MassTech's General Counsel specifying the type of information that the Subgrantee wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Law. MassTech's General Counsel is the sole authority within MassTech for making determinations on the applicability and/or assertion of an exemption to the Public Records Law.

### **16. Choice of Law**

This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts without regard to choice of law principles. Venue for all disputes arising from this Agreement, including, but not limited to, any mediation or arbitration commenced, shall be in Middlesex County, Massachusetts. Any judgment issued shall award the prevailing party its reasonable attorneys' fees and related costs.

### **17. Force Majeure**

Neither Party shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. This Agreement shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or this Agreement may be terminated for convenience.

### **18. Monitoring**

Subgrantee shall be subject to monitoring by MassTech and EOED to ensure compliance with all state and federal requirements that are flowed down under this Agreement, as well as any other provisions identified under the federal requirements or other state requirements. Subgrantee shall be responsible for monitoring any subcontract it enters into with this federal funding. Subgrantee understands and agrees that MassTech and EOED staff and authorized representatives may evaluate

Subgrantee's ability to complete the activities funded under this Agreement, through ongoing monitoring. As deemed appropriate by MassTech or EOED, their staff and authorized representatives may also conduct further reviews and site-visits during the Agreement Term, which may include fiscal reviews. MassTech and EOED staff shall use interviews, inspection of files, site visits and direct observation to identify program areas of concern so that Subgrantee can improve its productivity, efficiency, quality, and management capacity.

**19. Fraud, Waste and Abuse**

Subgrantee shall maintain and utilize systems and procedures to prevent, detect, and correct fraud, waste and abuse in activities funded under this Agreement.

**20. Diversity**

MassTech embraces a workplace where the values of diversity and inclusion support varying perspectives and backgrounds to produce a richer environment. MassTech expects Subgrantees as well as all MassTech's consultants, contractors and vendors, to demonstrate a similar commitment.

**21. Accounting System**

Subgrantee shall maintain an accounting system and supporting fiscal records that adequately identify the source and application of funds for federally funded activities that are subject to audit and verification that all costs meet federal and state requirements. Subgrantees shall also maintain an employee time tracking system that adequately tracks employees performing work under this Agreement

**22. Amendments and Waivers**

The terms of this Agreement and any attachments thereto can be amended only through a written documents executed by both Parties. Conditions, covenants, duties and obligations contained herein may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, nor in any way limit the remedies available to that Party.

**23. Severability**

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provisions of this Agreement.

**24. Headings**

The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

**25. Counterparts**

This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**26. Entire Agreement, Attachments, Exhibits, Amendment and Order of Precedence**

The Parties understand and agree that this Agreement and its Exhibits and Attachments supersede all other verbal and written agreements and negotiations by the Parties regarding the matters set forth herein, are fully incorporated by reference, and can only be amended by written agreement of the Parties. The following, including without limitation any schedules, milestone, deliverable, budgets, and other terms relative to the nature of the work to be performed are attached and incorporated into this Agreement, without precedence:

- Exhibit 1 – Certification Regarding Lobbying
- Exhibit 2 – Federal Requirements
- Exhibit 3 - Statement of Work
- Exhibit 4 – Approved Budget and Budget Spreadsheet
- Exhibit 5 – Payment Requisition and Certification Form and Grant Payment Workbook

In the event of any conflict, the order of precedence shall be the terms and conditions of this Agreement, then Exhibits 1-5.

**The Massachusetts Technology Park  
Corporation d/b/a Massachusetts Technology  
Collaborative**

**[NAME OF SUBGRANTEE]**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Exhibit 1**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The undersigned, on behalf of [NAME OF SUBGRANTEE], certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**[NAME OF SUBGRANTEE]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



## Exhibit 2

### Federal Requirements

#### A. Federal Grant Provisions

1. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts must include the equal opportunity clause provided under 41 CFR § 60-1.4(b) regarding federally assisted construction contracts. See also BEAD NOFO Sections V.H.2, and IV.C.1.g.
2. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and Subgrantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subgrantee must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
3. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency ("EPA").
4. Build America, Buy America Act.  
[Build America, Buy America Compliance and Documentation Requirements and Procedures](#) (NTIA)  
[BABA Compliance and Self Certification | BroadbandUSA](#) (NTIA)
5. Prohibition of Certain Telecommunications Equipment. Subgrantee and its contractors are prohibited from obligating or expending loan or grant funds to procure or obtain, extend/renew a contract, or enter into a contract to procure or obtain equipment, provide services or systems covered by either the Secured and Trusted Communications Networks Act of 2019 (47 USC § 1608) or 2 CFR § 200.216, including telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation. (Pub. Law 115-232. See 2 CFR 200.216).
6. Domestic Preference for Procurements. As appropriate, Subgrantee must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. 2 CFR § 200.322.
7. Debarment and Suspension (Executive Orders 12549 and 12689). An award (see 2 CFR §180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management ("SAM"), as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
8. Protection of Whistleblowers: Department of Commerce ("DOC") Financial Assistance Standard Terms and Conditions ("ST&Cs") are incorporated into every NTIA grant award, and this Agreement. Section F.05 of the DOC ST&Cs states each award is subject to the whistleblower protections afforded by 41 USC § 4712 (Enhancement of

contractor protection from reprisal for disclosure of certain information). Subgrantees and contractors must inform their employees in writing of the rights and remedies provided under 41 USC § 4712, in the predominant native language of the workforce.

9. For Contracts Exceeding \$100,000:
  - Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
  - Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors must file the required certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. See also Exhibit 1.
10. For Contracts Exceeding the Simplified Acquisition Threshold (currently \$250,000):
  - Clean Air Act and Federal Water Pollution Act. Contracts must contain a provision that requires compliance with all applicable standards, orders or regulations. Any violation must be reported to the Environmental Protection Agency. See 42 USC §§ 7404-7671q, 33 USC §§1251-1387
  - Performance. Construction contracts or subcontracts require a determination that the federal interest is adequately protected. If such a determination has not been made, then the minimum requirements are: 1) a bid guarantee, 2) performance bond; c) payment bond. See 2 CFR § 200.326.
11. Inspection and Audit: Any subawards and subcontracts made by Subgrantee will be subject to 2 CFR § 200.501 and program-specific audit requirements. Subgrantee will maintain adequate financial systems and financial records, and the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Subgrantee or its subcontractors, including financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, with or without notice by EOED, the State Auditor, relevant State or federal agency or its contracted examiners, the Massachusetts Attorney General's Office and/or its Fraud Control Units, the state Legislative Auditor, the relevant federal agency, General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. State agents shall have access to documents, papers, or timely access to personnel pertinent to the award in accordance with 2 CFR § 200.337 and State Audit requirements. All subcontracts shall reflect the requirements of this Section. Subgrantee shall perform all necessary efforts to assist MassTech in verifying that Award Funds have been expended in a manner consistent with this Agreement beginning on the Effective Date.
12. Americans with Disabilities Act of 1990 (Public Law 101-136) 42 U.S.C. 12101-12213, as amended and regulations adopted thereunder including 28 C.F.R. Sections 35, and any relevant program-specific regulations.
13. Civil Rights Act of 1964 (Public Law 88-352), as amended. Consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), Subgrantee must abide by the non-discrimination requirements set forth in the legal authorities listed in the BEAD Notice of Funding Opportunity ("BEAD NOFO"),

to the extent applicable. Failure to do so may result in cancellation of any grant and/or recoupment of funds already disbursed. See also BEAD NOFO at Section IV.C.1.g.

14. The Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
15. Occupational Safety and Health Administration (“OSHA”), Code of Federal Regulations (CFR) Parts 1910 (General Industry) and 1926 (Construction Industry, et al.).
16. Pursuant to 200 C.F.R. § 202.303, Subgrantee shall establish effective controls over, and accountability for, all funds, property, and other assets funded under this Agreement and assure that they are used solely for authorized purposes.

## **B. BEAD NOFO / MBI Initial Proposal Compliance Requirements**

1. Performance Bond / Letter of Credit: Subgrantee shall furnish either a Performance Bond for 100% of the full amount of this Agreement or a Letter of Credit (“LOC”) to MassTech within thirty (30) days of the Effective Date of the Agreement. The expense of the Performance Bond or LOC shall be borne by Subgrantee. If, at any time, a surety that issued a Performance Bond required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the Commonwealth of Massachusetts, another Surety will be required, which Subgrantee shall furnish to MassTech within ten (10) days after receipt of notice from MassTech or after Subgrantee otherwise becomes aware of such conditions. The Performance Bond must be issued by a United States credit union that is insured by the National Credit Union Administration and that has a credit union safety rating issued by Weiss of B- or better. The form of Performance Bond shall be comport with the BEAD Surety Bond Information Kit published by the National Association of Surety Bond Producers (NASBP) and The Surety & Fidelity Association of America (SFAA), which is available at <https://nasbp.org/advocate/bead-program-kit>. If Subgrantee elects to furnish a Letter of Credit, Subgrantee shall furnish a Letter of Credit in accordance with the Grant requirements and BEAD NOFO, in the amount of at least twenty-five percent (25%) of the full amount of the Agreement Funds, unless otherwise agreed in writing by MassTech. The LOC must comply with the Model LOC issued by MassTech and must be issued by a financial institution meeting eligibility requirements set forth in 47 C.F.R. § 54.804(c)(2) If, at any time, a bank or credit union that issued a Letter of Credit required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the Commonwealth of Massachusetts, a Letter of Credit from another bank or credit union will be required, which Subgrantee furnish to MassTech within ten (10) days after receipt of notice from MassTech or after Subgrantee otherwise becomes aware of such conditions.
2. Labor Obligations: Subgrantee will comply with the requirements of the BEAD NOFO to promote subcontracts with small and minority businesses, women’s business enterprises, and labor surplus area firms, through initiating the following: (i) placing qualified small and minority businesses on solicitation lists; (ii) assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (iv) establishing delivery schedules, where the requirement permits, which

encourage participation by small and minority businesses, and women's business enterprises; and (v) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (vi) requiring subcontractors to take the affirmative steps listed above.

3. If Subgrantee fails to comply with any requirement under Section 60102 of the Infrastructure Act or the BEAD NOFO, it shall be required to return up to the entire amount of the subgrant to MassTech, at the discretion of MassTech or EOED.
4. If Subgrantee fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, MassTech and/or EOED may take corrective action, including recoupment of funds from Subgrantee.
5. MassTech may also enforce applicable BEAD rules, laws and regulations by imposing upon the Subgrantee penalties for nonperformance, failure to meet obligations under this Agreement, or wasteful, fraudulent, or abusive expenditure of grant funds. Such penalties include, but are not limited to, imposition of additional Agreement conditions consistent with the nature of Subgrantee's noncompliance, payment suspension, termination of this Agreement, and clawback of funds. In the event of a clawback of grant funds, Subgrantee shall return such funds within thirty (30) days of receipt of a written notification from MassTech. 6. Supply Chain Risk Management ("SCRM") requirements: Subgrantee must have a SCRM plan in place that is either: (a) operational, if Subgrantee is already providing service at the time of the grant; or (b) ready to be operationalized, if Subgrantee is not yet providing service at the time of grant award. The plan must be based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented. The plan will be reevaluated and updated on a periodic basis and as events warrant; and the plan will be submitted to MassTech prior to the allocation of funds. If Subgrantee makes any substantive changes to the plan, a new version will be submitted to MassTech within thirty (30) days. MassTech is required to provide a Subgrantee's plan to NTIA upon NTIA's request.
6. Cybersecurity Requirements: Subgrantee must have a cybersecurity risk management plan in place that is either: (a) operational, if Subgrantee is providing service prior to the award of the grant; or (b) ready to be operationalized upon providing service, if Subgrantee is not yet providing service prior to the grant award. The plan must reflect the latest version of the National Institute of Standards and Technology ("NIST") Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specify the security and privacy controls being implemented. The plan will be reevaluated and updated on a periodic basis and as events warrant and the plan will be submitted to MassTech prior to the allocation of funds. If Subgrantee makes any substantive changes to the plan, a new version will be submitted to MassTech within thirty (30) days.
7. Monitoring Requirements: MassTech will engage in the following monitoring activities for Subgrantee activities including, but not limited to: (i) coordination with Subgrantee through individual discussions, group or team meetings, events or trainings; (ii) reviewing financial and programmatic reports including invoices and progress and outcome reports in alignment with contractual obligations; (iii) conducting an annual Subgrantee Assessment, verifying that Subgrantee is audited as required by 2 CFR Part 200, Subpart F; (iv) conducting follow-up to ensure that Subgrantee takes timely and appropriate action

on all deficiencies pertaining to the federal award through audits, on-site reviews, and other means; and (v) issuing management decisions for audit findings pertaining to the federal award that have not been sufficiently addressed in a timely or acceptable manner and consider imposing specific subaward conditions upon Subgrantee, if appropriate, based on risk failure to comply as described in 2 CFR 200 Parts 339 to 343.

8. Subgrantee must offer a low-cost broadband service option consistent with BEAD NOFO requirements (see Section IV.C.2.c.i) and the MBI Initial Proposal.
9. Non-union Workforce Specifications: Upon request, Subgrantee must provide a clear breakdown of job roles and full-time equivalent (“FTE”) positions required for the Project. This also includes roles within any contractor or subcontractor employed by Subgrantee. If Subgrantee’s workforce is not unionized, Subgrantee must provide with respect to the nonunion workforce a project workforce continuity plan and the steps taken and to be taken to ensure a safe and healthy workplace. Subgrantee must specify whether they have a robust in-house training program. If so, Subgrantee must provide details on how the program is linked to specific certifications and job titles. Subgrantee must list the professional certifications held within its workforce and describe any internal training initiatives that augment quality standards and expertise in broadband deployment. Details of in-house training programs designed to enhance quality and deployment standards should also be provided. This could include specific courses on emerging broadband technologies or quality assurance processes.
10. Recipients of financial assistance originating from the DOC, including NTIA, shall timely disclose, in writing, to the Office of Inspector General and the awarding agency, whenever, in connection with the award, performance, or closeout of this grant or sub-award thereunder, the recipient has credible evidence that a principal, employee, agent, or sub-recipient has committed:
  - a. A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
  - b. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
12. Subgrantee shall submit from each contractor or subcontractor performing work under this Agreement a plan for how the company will monitor and ensure compliance with all applicable labor and employment laws. Subgrantee shall submit such plan(s) to MassTech within ten (10) business day of contracting with a contractor or subcontractor.
13. NEPA Requirements. Subgrantee will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in the BEAD NOFO. Subgrantee must timely prepare any required NEPA documents and obtain any required permits and must adhere to any applicable statutory deadlines as described in 42 U.S.C. § 4336a(g). Subgrantee must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet those timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments or Environmental Impact Statements.

## Exhibit 3

### Statement of Work

[NAME of MUNICIPALITY]

Pursuant to the terms and conditions of the Agreement and this SOW, MassTech and Subgrantee agree as follows:

#### 1. Performance of Work, Deliverables, and Schedule

Subgrantee shall perform the agreed upon work in accordance with the specifications and Budget set forth below.

##### Scope:

[insert Subgrantee's proposed Project description]

##### Schedule:

[insert Subgrantee's proposed Project schedule]

##### Deliverables:

Financial Reviews: Subgrantee must engage in a financial review with MassTech and EOED on either a three-month, six-month, or annual basis at MassTech's or EOED's discretion. MassTech or EOED reserves the right to increase the frequency of financial reviews if any issues or concerns are identified.

Quarterly Reports: Quarterly reports must be submitted for the duration of the subgrant. MassTech reserves the right to increase the frequency of reporting and conduct an on-site review if any issues or concerns are identified. At a minimum, these reports must:

- Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. sec. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
- Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
- Identify whether each address or location is residential, commercial, or a community anchor institution;
- Describe the types of facilities that have been constructed and installed;
- Describe the peak and off-peak actual speeds of the broadband service being offered;
- Describe the maximum advertised speed of the broadband service being offered;
- Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
- List all interconnection agreements that were requested, and their status;
- Report the number of contracts and subcontracts awarded by Subgrantee disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;

- Include any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
- Include an SF-425, Federal Financial Report and meet the requirements described in the Department of Commerce (“DOC”) Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports;
- For projects over \$5,000,000 (based on expected total cost):
  - Subgrantee may provide a certification that, for the relevant Project, all laborers and mechanics employed by contractors and subcontractors in the performance of such Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, Subgrantee must provide a project employment and local impact report detailing:
    - The number of contractors and sub-contractors working on the Project;
    - The number of workers on the Project hired directly and hired through a third party;
    - The wages and benefits of workers on the Project by classification; and
    - Whether those wages are at rates less than those prevailing.
  - If Subgrantee has not provided a certification that a Project either will use a unionized project workforce or includes a project labor agreement, meaning a prehire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then Subgrantee must provide a project workforce continuity plan, detailing:
    - Steps taken and to be taken to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor- management partnership training programs, and partnerships with entities like unions, community colleges, or community based groups;
    - Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;
    - Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
    - The name of any subcontracted entity performing work on the Project, and the total number of workers employed by each such entity, disaggregated by job title; and
    - Steps taken and to be taken to ensure that workers on the Project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market. •

- Comply with any other reasonable reporting requirements determined by MBI or EOED to meet the reporting requirements established by NTIA;
- Certify that the information in the report is accurate.

**Final Close-out Report:** Upon achieving final completion of construction of the project, Subgrantee shall submit a final project report with appropriate supporting documentation for MBI's review and approval. The final project close-out report shall include a certification signed by a senior executive of Subgrantee and a list of all addresses passed by the broadband infrastructure constructed by Subgrantee.

MassTech reserves the right to request additional information necessary to support data required for reporting by MassTech, EOED or the federal program.

**2. Project Personnel**

Both MassTech and Subgrantee have designated the following persons to serve as Project Manager to support effective communication between MassTech and Subgrantee to report on the work's progress. Each Party will endeavor to maintain the continuity of its respective Project personnel.

For MassTech: Karen Jenkins ([jenkins@masstech.org](mailto:jenkins@masstech.org)) (508.870.0312 X287)  
 For MassTech invoicing: Julie Parenteau ([parenteau@masstech.org](mailto:parenteau@masstech.org)) (508.870.0312 X242)

For Subgrantee: [insert Subgrantee Project personnel contact info]

Written notice shall be provided to personnel at the email addresses set forth in this Section 2 in the event of any change in Project Personnel.

**3. Payments**

(a) Payment Schedule

- (i) Subgrantee shall address payment requests and Project status reports to the MassTech Project Manager.
- (ii) In consideration of Subgrantee's performance of Grant Activities and delivery of reports in the form of Deliverables in compliance with the Agreement, MassTech shall pay Subgrantee up to \_\_\_\_\_ ("BEAD Award Funds") for eligible project costs as further set forth in Exhibit 4 (Approved Budget). Said amount shall be the sole and complete payment to Subgrantee under this SOW.
- (iii) MassTech shall pay funds to Subgrantee within forty-five (45) days of a complete request for payment (or within fifteen (15) days of MassTech's receipt of payment from EOED, if later), with appropriate supporting documentation, describing and certifying to completion of the relevant Grant Milestone, which is subject to MassTech's review and approval. MassTech shall provide reasonably prompt written notice of any disputed payment request.
- (iv) MassTech shall make reimbursement payments to Subgrantee for eligible project costs, upon satisfaction of each milestone specified below.

Grant Milestone	Disbursement Requirement	Documentation Required
Payment #1	Site surveys, field work, and completion of preliminary design and engineering  Execution of cable television license agreement (if applicable)	Cable Television License Agreement executed by Subgrantee and municipality, if applicable



		<p>Narrative project update describing the activities undertaken by the subgrantee to implement the project and complete the milestone.</p> <p>Certification of Completion of Milestone and submission of appropriate supporting documentation</p>
<p>Payment #2</p>	<ul style="list-style-type: none"> <li>• Filing make-ready applications for pole and conduit licenses and payment of associated fees</li> <li>• Payment of make-ready estimates to utilities</li> <li>• Receipt of all make ready licenses needed to complete the Project</li> <li>• Receipt of municipal grants of location to public rights of way (if applicable)</li> </ul>	<p>Evidence of payment of make ready application fees to pole owners (e.g., reports, invoices, screenshots or other documents that list all make ready applications submitted by name and amounts paid)</p> <p>Evidence of payment of make ready estimates by Subgrantee to pole owners (e.g., reports, invoices, receipts, screenshots or other documents that list names and amounts paid for each make ready estimate)</p> <p>Narrative project update describing the activities undertaken by the subgrantee to implement the project and complete the milestone.</p> <p>Certification of completion of milestone and submission of appropriate supporting documentation</p>
<p>Payment #3</p>	<p>Completion of 50% of construction buildout (measured by premises passed and completion of customer installations). The requirement for customer installations may be satisfied by either of (1) completion of the customer installation with the necessary infrastructure needed to receive service; or (2) evidence that the owner of the premise passed did not provide the Subgrantee with the necessary permission to enter the property to perform the customer installation.</p>	<p>Listing of all premises to be served with an indication of the status of each premise with at least 50% showing as passed with customer installation completed.*</p> <p>Narrative project update describing the activities undertaken by the subgrantee to implement the project and complete the milestone.</p> <p>Certification of Completion of Milestone and submission of appropriate supporting documentation</p>

Payment #4 <sup>1</sup>	Final Completion (measured by 100% of premises passed and completion of initial customer installations). The requirement for customer installations may be satisfied by either of (1) completion of the customer installation with the necessary infrastructure needed to receive service; or (2) evidence that the owner of the premise passed did not provide the Subgrantee with the necessary permission to enter the property to perform the customer installation.)	<p>Listing of all premises to be served with an indication of the status of each premise with 100% showing as passed and with customer installation completed.*</p> <p>Final Report including:</p> <ul style="list-style-type: none"> <li>• Final project maps</li> <li>• Project shapefiles or KMZs</li> <li>• Financial reconciliation</li> <li>• Customer services portfolio</li> </ul> <p>Certification of Completion of Milestone, including certification that broadband infrastructure was placed into service, and submission of appropriate supporting documentation.</p>
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\* MassTech reserves the right to conduct field inspections or request additional documentation, including speed test results, to satisfactorily evidence completion of any construction/installation milestone. Subgrantee shall cooperate with MassTech to support field inspections, including having technical personnel attend field inspections, upon not less than five (5) business days' written notice by MassTech of the date, time and location(s) of field inspections.

- (v) Subgrantee shall utilize the Grant Payment Requisition and the associated Grant Payment Workbook in Exhibit 5 to submit a request for reimbursement of eligible project expenses incurred as of the date of completion of a project milestone as described in the milestone table above. Subgrantee shall also submit supporting documentation as specified in the Grant Payment Requisition and the milestone table above. The match amount in each payment request shall be at least twenty-five percent (25%) of the milestone payment requested and shall be applied to each cost category line item in Grant Payment Workbook.
- (vi) The sum of the first three milestone payments shall not exceed 90% of the total approved budget.
- (vii) A full reconciliation and review of all project documentation submitted will be made before final payment.
- (viii) MassTech may, in its sole discretion, accept accounting system generated detailed general ledger transactions reports in lieu of the required detailed documentation for all or some costs incurred. Accounting system-generated detailed general ledger transaction reports showing income and expenses to provide evidence of costs incurred including vendor name, description of costs, date of cost, and amount, which tie back to budget categories, and line items for this project. Acceptance of the system generated reports are subject to MassTech's approval of form and format. (x) .MassTech reserves its right to request additional information as it deems necessary to satisfactorily document the cost incurred for the project and ensure the allowable use of funds in accordance with federal and state guidelines as set forth in this agreement.

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<sup>1</sup> At least ten percent (10%) of the grant funds are to be paid out upon final completion.

- (b) The Parties agree that they have a shared interest in pursuing options that would expedite the construction and completion of the Project in order to accelerate residents' and businesses' access to broadband services. In furtherance of this shared interest the Parties shall cooperate to identify appropriate mechanisms to accelerate the Project. The Parties will execute and amend to this Agreement to memorialize any modifications to the payment schedule above and any other related changes to the terms and conditions resulting from any effort to accelerate the schedule.
- (c) All payments shall be considered provisional and subject to adjustment within the total not to exceed anticipated Award Funds, in the event such adjustment is necessary as a result of a future audit finding. This subsection shall survive termination of the Agreement.
- (d) MassTech shall have the right to recover from any payment previously made amounts on preceding or pending invoices found by MassTech or any State or Federal Agency with authority for this funding not to be properly supported as payable or not allowable in accordance with the Cost Principles contained in 2 CFR Part 200, Subpart E or other regulations specified in this agreement. Payments shall also be subject to reduction or setoff for overpayments made by MassTech to Subgrantee. This subsection shall survive termination of the Agreement.
- (e) Notwithstanding any other provision of this Agreement, MassTech shall be obligated to make payments to Subgrantee only to the extent that MassTech is legally entitled to recover the items for which payment is made as allowable costs under MassTech's agreement with EOED. This clause in no way obligates MassTech to provide payment for services not performed in accordance with the applicable SOW. Subgrantee's total invoiced amount shall not exceed the Agreement's obligated amount indicated herein.
- (f) No Duplication of Federal Funding: No federal funds may be used to duplicate costs, services, connections, facilities, or equipment that have been authorized through another federal program. To the extent that the Project is later deemed to include duplicate funding from another federal program, MassTech reserves the right to disallow the costs associated with the duplication of federal funds or service and/or to reallocate the funds to allowable activities within the Project.
- (g) Eligible and Ineligible Project Costs. Costs must be reasonable, allowable, necessary to the Project, and comply with the funding requirements in accordance with the federal Uniform Guidance (2 CFR Part 200).
- (h) Categories of eligible project costs include:
- Make ready
  - Design and engineering
  - Permitting and regulatory compliance, including environmental, historical, and cultural reviews, building, and electrical
  - network equipment, fiber/cabling, facilities and materials
  - Construction and installation
  - Qualifying Long Drop, Non-Standard Customer Installation costs
  - Incidental Overbuild costs
  - Qualifying Multiple Dwelling Unit costs
  - Leases for terms longer than one year of facilities including IRU agreements and capital leases

- Personnel costs required for carrying out the project
- Costs associated with monitoring and reporting requirements

(i) Ineligible costs include, but are not limited to:

- Acquisition of spectrum licenses
- Operating expenses (including salaries of staff operating the capital project once completed)
- Short-term operation leases
- Payment of interest or principal on outstanding debt instruments
- Fees associated with the issuance of new debt
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding
- Support or opposition of collective bargaining
- Program grant application preparation costs
- Expenses incurred prior to the execution of this Agreement
- Prohibited equipment or services
- Incremental profits and fees

(j) Matching Funds. Unless waived in whole or in part in writing by MassTech, Subgrantee must contribute a mandatory Funding Match of at least twenty-five percent (25%) of the total proposed project costs. "Funding Match" shall mean the portion of the Project costs not covered by BEAD Award Funds. Up to fifteen percent (15%) of the Funding Match may be provided in the form of in-kind contributions, consistent with the Uniform Guidance (2 CFR Part 200). In-kind contributions, which may include third-party in-kind contributions, are non-cash donations of property, goods, or services, which benefit a federally assisted project, and which may count toward satisfying the non-federal matching requirement of a project's total budgeted costs. The Program allows for in-kind matches from non-federal sources, such as private entities, and state, local, and tribal governments, that can be used to cover the costs of construction of broadband infrastructure.

In-kind match can include:

- Employee or volunteer services;
- Equipment;
- Supplies;
- Indirect costs;
- Computer hardware and software; items that were purchased no later than one (1) year prior to the execution of the Funding Agreement; and
- Use of facilities.

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

- Access to rights of way;
- Pole attachments;
- Conduits;

- Easements; or
- Access to other types of infrastructure.

Subgrantee's funding match for the Project is \_\_\_\_\_; of which \_\_\_\_\_ is in-kind match.

- (k) Return of Unused Award Funds: If Subgrantee fails to spend or fails to document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within the specified timeframe, Subgrantee agrees to immediately return to MassTech any Award Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to MassTech, upon request, within ten (10) business days.

#### 4. Access and Use

Subgrantee agrees that MassTech shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the Project and provided to MassTech as Deliverables, and to use the information therein contained to produce summaries, case studies or similar resources.

#### 5. Additional Requirements.

A credit line and the MBI logo must appear in all published materials and announcements regarding the funded activity as follows: "This Project was funded by the Massachusetts Broadband Institute at the MassTech Collaborative under the BEAD Deployment Program. Funding was provided by Massachusetts Infrastructure Act BEAD Fund."

#### 6. Ownership of Intellectual Property, Real Property and Equipment

##### (a) Definitions

Deliverables: The term "Deliverables" shall mean deliverables as set forth in Section 1 of this SOW. Subgrantee shall ensure that Deliverables do not contain any Custom Work Product or Subgrantee Property.

Subgrantee Property: The term "Subgrantee Property" shall mean all pre-existing material and material created as part of the Project that are not Deliverables or with funds received under the Agreement, including, but not limited to, any intellectual, tangible, and intangible property, data, products, software, materials and methodologies proprietary to Subgrantee or provided by Subgrantee and any trade secrets, know-how, methodologies and processes related to Subgrantee's products or services.

Custom Work Product: The term "Custom Work Product", for purposes of the Copyright Act of 1976, 17 U.S.C. §§ 101-1332, shall mean all work items newly created on a "work made for hire" basis by Subgrantee expressly on behalf of MassTech under this SOW. There will be no Custom Work Product created under this SOW.

##### b) Ownership and Licensing of Intellectual Property

MassTech shall own all right, title and interest in the Deliverables in their entirety, provided under this SOW. Subgrantee shall retain ownership in all Subgrantee Property as defined above. Subgrantee understands that all Subgrantee Property provided under this Agreement is subject to disclosure as set forth above in Section 15 of this Agreement, Public Records.

##### c) Ownership of Real Property and Equipment

While title to real property or equipment associated with a broadband infrastructure Project ("Project Property") awarded under the Program vests in the Subgrantee, the federal government maintains a federal interest in property associated with a broadband infrastructure Project funded with BEAD funds. The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue

for 10 years after the year in which the subgrant for a Project has been closed out in accordance with 2 CFR § 200.344. Close-out means the process by which the Federal agency or pass through agency determines that all applicable administrative actions and all work of the Federal award have been completed and takes the actions as described in 2 CFR § 200.344.

For the duration of the Federal Interest Period:

- (1) Subgrantee is not required to comply with the Procurement Standards set forth in 2 CFR 200.318-320 and 200.324-326. All other Procurement Standards, i.e., 2 CFR 200.317, 200.321-200.323, and 200.327, remain as requirements.
- (2) Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 CFR 200.313(d), pursuant to an exception from OMB. If Subgrantee does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 CFR 200.313(d).
- (3) Subgrantee must comply with the use and equipment disposition requirements of 2 CFR § 200.313(c)(4) and 313(e) as follows:
  - (a) If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subgrantee may treat the equipment to be replaced as “trade-in” even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC ST&Cs § A.01) to the DOC to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.
  - (b) Subgrantee may sell, lease, or transfer Project Property only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (b) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving Project Property in subsequent guidance.
  - (c) Subgrantee must notify the Office and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee’s ability to perform in accordance with its subgrant.
- (4) Subgrantees must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. Specific requirements are set forth in Attachment 10.a to this Agreement.
- (5) Subgrantee may encumber Project Property only after provision of notice to NTIA and to the Federal Grant Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC’s percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a pari-passu basis, 50% of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

- (6) Pursuant to exceptions approved by the United States Office of Management and Budget as described in the UGPN, the property standards set forth in 2 CFR 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.
- (7) Subgrantee must comply with 2 CFR 200.316. Pursuant to this section and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, for the duration of the Federal Interest Period, Subgrantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
- (8) Subgrantee must comply with the insurance requirements of 2 CFR 200.310.
- (9) Subgrantee must comply with 2 CFR 200.312 to the extent any Federally owned real property or equipment is used by Subgrantee.

**7. Amendments, Exhibits and Attachments**

All conditions, covenants, duties and obligations contained in this SOW and its exhibits and attachments may be amended only through a written amendment signed by Subgrantee and MassTech.

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**Exhibit 4**

**Approved Budget**

**Budget Period Start and End Date:**

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**Exhibit 4A**

**Budget Spreadsheet**

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**Exhibit 5**

**Payment Requisition & Certification Form**

**Name of Subgrantee:**

**Requisition Number:**

**Requisition Date:**

**Statement of Work Number:**

**Period of Performance of this Requisition:**

Milestone for Which Payment is Requested: \_\_\_\_\_

Please attach the supporting documentation: (1) for the grant funds requested; and (2) demonstrating completion of the milestone for which payment is requested.

Please attach the completed Grant Payment Workbook for the milestone for which payment is requested.

Subgrantee requests payment in the amount of \$ \_\_\_\_\_ as a reimbursement of eligible Project costs incurred during the requisition period.

**Certification:** the undersigned hereby certifies that Subgrantee

- (1) has incurred eligible Project costs in performing the work required under the Agreement in an amount equal to, or in excess of, the sum of the Payment Requisition Amount and all previously submitted Payment Requisitions;
- (2) is in compliance with the Project Schedule, as may be amended from time to time;
- (3) shall maintain detailed financial records to document and support the expenditure by Subgrantee of the costs reported on this Payment Requisition and all prior Payment Requisitions submitted to the Massachusetts Technology Collaborative;
- (4) all of the information contained in this Payment Requisition and the attached project status report is complete, true and accurate; and
- (5) To the best of my knowledge, Subgrantee's subcontractors are complying with all terms of this Agreement that are required to be flowed down through Subgrantee's subcontractor agreements and are carrying out the Project scope in accordance with the terms of their agreements with Subgrantee.
- (6) has completed the Disbursement Requirements indicated for this milestone.

**Certified by:** \_\_\_\_\_  
Organization

\_\_\_\_\_  
Signature of Authorized Signing Authority

\_\_\_\_\_  
Name and Title of Authorized Signing Authority

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact email and Telephone Number

**Exhibit 5A**

**Grant Payment Workbook**

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