**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**Federally Funded Grant Agreement**

**Between Massachusetts Technology Collaborative and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Participant” or “\_\_\_\_\_\_\_\_”), together, the “Parties.” This Agreement shall govern certain activities and responsibilities to be carried out by Participant 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 Treasury pursuant to the provisions of the American Rescue Plan Act (“ARPA”); and

 **WHEREAS**, MassTech has been awarded a grant for the Broadband Infrastructure Gap Networks Grant Program (the “Program”) from the Commonwealth of Massachusetts Executive Office of Economic Development (“EOED”), funded from the U.S. Department of Treasury’s Capital Projects Fund (“CPF”) established under ARPA, Catalog of Domestic Federal Assistance (“CDFA”) Number 21.029, Federal Award Identification Number (“FAIN”) CPFFN0168, with a period of performance of July 1, 2022 through December 31, 2026 (the “MassTech subaward”); and

 **WHEREAS**, MassTech and Participant desire to enter into a contract, under which Participant may perform certain activities in support of the Program (the “Project), in accordance with the terms and conditions of this Agreement;

 **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**

Participant shall perform all activities funded by this Agreement in accordance with: (i) the Certification Regarding Lobbying attached hereto as Exhibit 1; (ii) the Statement of Work (“SOW”) attached hereto as Exhibit 2; (iii) the Approved Budget and Budget Spreadsheet, attached hereto as Exhibits 3 and 3A; and (iv) the Payment Requisition & Certification Form attached hereto as Exhibit 4. Participant 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.

1. **Period of Performance and Termination**
2. This Agreement shall take effect \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) and shall remain in effect until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Term” or “Period of Performance”).
3. This Agreement may be terminated by either MassTech or Participant 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.
4. This Agreement may be terminated by MassTech for convenience upon thirty (30) days written notice to Participant. In the event of Termination not the fault of Participant, Participant shall be reimbursed as specified in Exhibit 3 for all costs and non-cancellable commitments incurred in connection with the Agreement, up to the date of termination.
5. MassTech may terminate this Agreement or any part thereof by written notice to the Participant, 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.
6. Agreement Closeout. Upon termination or expiration, Participant 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 Participant, 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, Participant agrees that acceptance of final payment from MassTech will constitute an agreement by Participant 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 Participant 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. Participant’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.
7. Sections 5 through 39 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.

b) All communications regarding any other issues shall be emailed or delivered to the personnel specified in Section 2 of Exhibit 2 (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**

Participant 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. Participant’s Representations, Warranties and Certifications**

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

a) Participant 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 Participant or any of its assets is bound.

b) Participant and all Project Personnel of Participant are fully capable and qualified to perform the described activities and Participant’s other obligations hereunder and have obtained all requisite licenses and permits to perform such obligations.

c) Participant 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) Participant and its employees are not employees, partners, or joint venturers of MassTech. Participant 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, Participant 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) Participant 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. Participant 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) Participant represents and warrants that all personnel performing work hereunder are eligible to work in the United Sates at the time of execution of this Agreement and that Participant 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 Participant does not participate in a self-insurance program, Participant 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, Participant 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, Participant 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 Participant, 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**

 Participant 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**

 Participant 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**

 Participant’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 Participant 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, Participant 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 Participant, Participant 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. Participant 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 Participant wishes to have MassTech treat certain information or documentation as confidential, before submission of such information, Participant must submit a written request to MassTech’s General Counsel specifying the type of information that the Participant 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. Disbarment and Suspension**

 Participant shall not contract with any parties listed on the government-wide exclusions in the System for Award Management (SAM).

**19. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)**

 A Participant that is awarded an amount exceeding $100,000 under this Agreement must certify 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. Each Participant must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. See Exhibit 1 to this Agreement.

**20. Monitoring**

 Participant 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. Participant shall be responsible for monitoring any subcontract it enters into with this federal funding. Participant understands and agrees that MassTech and EOED staff and authorized representatives may evaluate Participant’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 Participant can improve its productivity, efficiency, quality, and management capacity.

**21. American Made**

To the extent applicable, Participant and its subcontractor(s) shall procure all materials or products in accordance with applicable federal, state and local laws, including but not limited to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58, the Domestic Preferences requirements as set forth in 2 CFR 200.318 through 200.327 and 2 CFR Part 184 of the Uniform Guidance.

**22. Fraud, Waste and Abuse**

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

**23. Use of Funds**

 Pursuant to 200 C.F.R. § 202.303, Participant shall establish effective controls over, and accountability for, all funds, property, and other assets funded under his Agreement and assure that they are used solely for authorized purposes.

**24. Davis-Bacon Act Requirements**

To the extent applicable, a Participant that is awarded an amount of $5,000,000 or more under this Agreement must provide a certification that all laborers and mechanics employed by it and/or its contractors and/or subcontractors in performance of the award 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. In lieu of a certification, Participant may provide a project employment and local impact report detailing the number of contractors and subcontractors working on the Project, the number of employees 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.

**25. Diversity**

MassTech embraces a workplace where the values of diversity and inclusion support varying perspectives and backgrounds to produce a richer environment. MassTech expects Participants as well as all MassTech’s consultants, contractors and vendors, to demonstrate a similar commitment and, pursuant to 2 C.F.R. § 200.321(a), take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus firms are used when possible. If Participant will be subcontracting, affirmative steps must include at least the following six steps: 1) placing qualified small and minority businesses and women’s business enterprises on solicitation lists; 2) assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources; 3) 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; 4) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises; 5) 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 6) requiring subcontractors to take the same affirmative steps in numbers 1 through 5.

**26. Accounting System**

 Participant 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.

**27. Prohibited Telecommunications Equipment or Services**

 Participant shall use its best efforts to ensure that it will not knowingly use contract funds to purchase, or enter into contracts to purchase, any equipment, services, or systems that use prohibited telecommunications equipment or services as a substantial or essential component of a system subject to 2 C.F.R § 200.216.

**28. Federally Assisted Construction Contracts Equal Opportunity Clause**

 During the performance of this Agreement, Participant agrees as follows:

(a) Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Participant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Participant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Participant will, in all solicitations or advertisements for employees placed by or on behalf of Participant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) Participant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Participant's legal duty to furnish information.

(d) Participant will send to each labor union or representative of workers with which Participant has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of Participant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Participant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) Participant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Participant’s books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of Participant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Participant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Participant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

**29.** Participant and its Subcontractors shall be subject to the Contract Work Hours and Safety Standards Act 40 U.S.C. 3701-3708 (on contracts in excess of $100,000 that involve the employment of mechanics or laborers). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**30. Environmental Protection**

(a) For Agreements for funding in excess of $150,000.00, Participant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) 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”).

(b) Participant agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**31. False Statements**

Participant 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.

**32. Protections for Whistleblowers**

(a) In accordance with 41 U.S.C. § 4712, Participant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(b) The list of persons and entities referenced in the paragraph above includes the following:

(i) A member of Congress or a representative of a committee of Congress;

(ii) An Inspector General;

(iii) The Government Accountability Office;

(iv) A Treasury employee responsible for contract or grant oversight or management;

(v) An authorized official of the Department of Justice or other law enforcement agency;

(vi) A court or grand jury; or

(vii) A management official or other employee of Participant or its subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) Participant shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

**33. Increasing Seat Belt Use in the United States**

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Participant should encourage its employees and contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

**34. Reducing Text Messaging While Driving.**

 Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Participant should encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving, and Participant should establish workplace safety policies to decrease accidents caused by distracted drivers.

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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 – Statement of Work
* Exhibit 3 – Approved Budget and Budget Spreadsheet
* Exhibit 4 – Payment Requisition & Certification Form

In the event of any conflict, the order of precedence shall be the terms and conditions of this Agreement, then Exhibits 1-4.

|  |  |
| --- | --- |
| **The Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit 1**

**Certification Regarding Lobbying[[1]](#footnote-2)**

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

 The undersigned, on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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 PARTICIPANT]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit 2**

**Statement of Work**

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

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

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

**Scope:**

[insert Participant’s proposed Project description]

**Schedule:**

[insert Participant’s proposed Project schedule]

Participant shall achieve substantial completion within 12 months of receipt of all make ready / pole attachment licenses subject to excusable delay justifications for force majeure events. Substantial completion is when the Project can fulfill the primary operations that it was designed to perform and deliver service to end users. At substantial completion, service and management systems infrastructure must be operational.

Participant and MBI shall agree to a project schedule that incorporates timeframes for achieving the milestones including but not limited to:

* Site surveys, field work and completion of preliminary design and engineering
* Negotiation and execution of cable television license agreement (if applicable)
* Filing make-ready applications with utilities for pole and conduit licenses and payment of associated fees
* Payment of make ready estimates to utilities
* Receipt of all make ready / licenses needed to complete the project
* Municipal grants of location for access to public rights of way (if applicable)
* Completion of 50% of the construction buildout (measured by premises passed)
* 100% final completion of premises passed and completion of initial customer installations

**Deliverables:**

Participant shall submit quarterly status reports to MBI, as well as a baseline report to be provided to MBI at the time of contracting, in a template to be provided by MBI. See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund/recipient-compliance-and-reporting-responsibilities>. Quarterly project reports, the baseline report, and expenditure reports must include, but not be limited to:

* Project description
* Project location(s)
* Project start and end date
* Project status
* Project expenditures
* Number and location of households, businesses, and anchor institutions served
* Location of communities to be served
* Description of how equity and community engagement activities informed project selection and design.
* Whether the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds
* Technology type
* Project ownership (e.g., private, public private partnership, municipal government, tribal government, non-profit, cooperative)
* Miles of fiber installed and purchased
* Number of fiber reels and strand count and length for each reel
* Whether each location served is residential, commercial, or a community anchor institution
* Pricing offered (speed tiers to be offered, including the speed/pricing of its affordability offering).
* Percentage of each milestone completed during the reporting period
* Any other factors or challenge that might have impact on the progress of project

Annual Performance Reports must be submitted by grantees to MBI and must include, but not be limited to:

* Executive summary including high-level overview of grantee’s actual uses of funding and progress made
* Short narrative describing intended and actual uses of funds
* Efforts and outcomes to promote equity and address critical needs
* Description of workforce practices
* Community engagement activities
* Civil rights compliance

Upon achieving final completion of construction of the project, Participant shall submit a final project report with appropriate supporting documentation for MBI’s review and approval. The final project report shall include a certification signed by a senior executive of Participant and a list of all addresses passed by the broadband infrastructure constructed by Participant (see additional final report requirements below).

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

For MassTech: [insert MassTech Project personnel contact info]

For Participant: [insert Participant 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) Reporting and Payment Schedule

(i) Participant shall address payment requests and Project status reports to the MassTech Project Manager.

(ii) In consideration of Participant’s performance of Grant Activities and delivery of reports in the form of Deliverables in compliance with the Agreement, MassTech shall pay Participant up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for allowable cost reimbursements, as further set forth in Exhibit 3 (Approved Budget). Said amount shall be the sole and complete payment to the Participant under this SOW. This is a cost reimbursement agreement and all costs incurred must be in line with the budget set forth in the Approved Budget.

(iii) MassTech shall pay funds to Participant 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 disburse the Grant Milestone payments to Participant as reimbursement of eligible Project costs, upon satisfaction of the disbursement requirements specified below. Participant will be reimbursed based upon the grant funded percent of the project costs on a budget category line item basis for costs incurred.

|  |  |  |  |
| --- | --- | --- | --- |
| **Grant Milestone** | **Approximate Expected Duration** | **Disbursement Requirement** | **Documentation Required** |
| Payment #1 | 1-3 months from award | Submission of make ready applications and cable franchise agreement, if needed | Cable Television License Agreement executed by Participant and municipality, if applicableEvidence 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)Certification of completion of milestone  |
| Payment #2 | 3-6 months from award | Payment of all make ready estimates  | Evidence of payment of make ready estimates by Participant to pole owners (e.g., reports, invoices, receipts, screenshots or other documents that list names and amounts paid for each make ready estimate)Certification of completion of milestone |
| Payment #3 | Not more than 6 months after all make ready / pole attachment licenses are received  | 50% of passings  | Listing of all premises to be served with an indication of the status of each premise with at least 50% showing as passed\*Certification of Completion of Milestone |
| Payment #4[[2]](#footnote-3) | Not more than 12 months after all make ready / pole attachment licenses received | 100% of passings | Listing of all premises to be served with an indication of the status of each premise with 100% showing as passed\*Final Report including:* Final project maps
* Project shapefiles or KMZs
* Financial reconciliation
* Customer services portfolio

Certification of Completion of Milestone |

\* 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. Participant 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) Invoices shall include the billing period, the milestone achieved, the total cost incurred, match amount, and the grant funded amount being sought for reimbursement. Match will be applied ratably to each budget line item in each grant payment invoice and shall be at least twenty percent (20%) of the incurred costs. Payment requests shall include supporting documentation to support costs for both grant funded costs and match as follows:

i. Participant Labor: job title, hourly rate, number of hours billed, work performed, and total costs for each position;

ii. Subcontractors/Consultants: copies of invoices, for such subcontractors/consultants which describe the work performed under this project and have been reviewed and approved by Participant prior to submission to MassTech;

iii. Direct Costs/Travel: all direct costs and travel expenses shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as required by MassTech;

iv. Participant shall provide a budget-to-actual cost tracker with each requisition and reconciliation that will be in the level of detail included in the Approved Budget. MassTech shall provide the format for this tracker and/or access to the tool into which this information shall be entered, uploaded, and extracted for inclusion with reconciliation supporting documentation;

v. 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.

vi. 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.

(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 amendment 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 amount, 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 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 Participant. This subsection shall survive termination of the Agreement.

(e) Notwithstanding any other provision of this Agreement, MassTech shall be obligated to make payments to Participant 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. Participant’s total invoiced amount shall not exceed the Agreement’s obligated amount indicated herein.

(f) Eligible and Ineligible Project Costs

(i) 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
* Qualifying Overbuild 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
* Administrative costs[[3]](#footnote-4)

(ii) 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

(g) Matching Funds. Unless waived, Participant must contribute a mandatory Funding Match of at least 20% of the total proposed project costs. “Funding Match” shall mean the portion of the Project costs not covered by CPF funds. As indicated on Participant’s Funding Match Verification, Participant’s funding match for the Project is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**4. Access and Use**

 Participant 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 Broadband Infrastructure Gap Networks Program. Funding was provided by Massachusetts ARPA Capital Projects 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. Participant shall ensure that Deliverables do not contain any Custom Work Product or Participant Property.

Participant Property: The term “Participant 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 Participant or provided by Participant and any trade secrets, know-how, methodologies and processes related to Participant’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 Participant 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. Participant shall retain ownership in all Participant Property as defined above. Participant understands that all Participant 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 Participant, the federal government maintains a federal interest in property associated with a broadband infrastructure Project funded with CPF funds and substantially completed by December 31, 2026. The Federal Interest Period runs through December 31, 2034. Reference is made to the U.S. Treasury SLFRF and CPF Supplementary Broadband Guidance (May 17, 2023), found at [SLFRF and CPF Supplementary Broadband Guidance (treasury.gov)](https://home.treasury.gov/system/files/136/SLFRF-and-CPF-Supplementary-Broadband-Guidance.pdf), for specific conditions imposed by the federal government on real property and equipment during the Federal Interest Period, as well as the treatment of program income, cost principles and procurement practices related to broadband infrastructure Projects.

For the duration of the Federal Interest Period, Participant and any successors or transferees:

(1) must use the Project Property for the authorized purposes of the Project in the same manner as they use comparable real property and equipment within their networks in the ordinary course of their business, subject to the rights to disposition provided below;

(2) must continue to provide internet service to the service areas and at the standard initially agreed upon by MassTech and Participant;

(3) must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services;

(4) must comply with the requirements of 2 CFR section 200.310 (Insurance), which may be satisfied by adequate self-insurance;

(5) must comply with the use and management requirements for equipment in 2 CFR sections 200.313(c)(4) and 313(d), which may be satisfied by applying Participant’s commercial practices for meeting such requirements in the normal course of business (e.g., commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest,

(6) must maintain records of real property that include an indication of the applicable federal interest;

(7) may dispose of Project Property in the ordinary course of business when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements as other Project Property;

(8) may otherwise sell or transfer Project Property only after provision of notice to MassTech and Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the federal property interest; and

(9) must notify MassTech and the U.S. Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to Participant or its affiliates.

**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 Participant and MassTech.

**Exhibit 3**

**Approved Budget**

**Budget Period Start and End Date:**

**Exhibit 3A**

**Budget Spreadsheet**

**Exhibit 4**

**Payment Requisition & Certification Form**

**Name of Participant:**

**Requisition Number**:

**Requisition Date**:

**Statement of Work Number**:

**Period of Performance of this Requisition**:

Please attach the documentation for the requisition period.

[insert summary table of activities for which payment is requested]

[insert number of miles of fiber purchased with the underlying invoices]

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

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

(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 Participant 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, Participant's subcontractors are complying with all terms of this Agreement that are required to be flowed down through Participant’s subcontractor agreements and are carrying out the Project scope in accordance with the terms of their agreements with Participant.

**Certified by:**

Organization

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Authorized Signing Authority |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name and Title of Authorized Singing Authority |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Contact email and Telephone Number |

1. As required by 40 CFR § 34 for contracts exceeding $100,000. [↑](#footnote-ref-2)
2. At least ten percent (10%) of the grant funds are to be paid out upon final completion. [↑](#footnote-ref-3)
3. “Administrative Expenses” or “Administrative Costs” mean the costs incurred by a Participant related to the administration of its CPF award, the provision of technical assistance to potential subcontractors, and compliance with grant administration and audit requirements. [↑](#footnote-ref-4)