New NY Broadband Program:
Phase 3 Request for Proposal Guidelines

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New NY Broadband Program: Phase 3 Request for Proposal Guidelines

I. BACKGROUND

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

Access to broadband is essential for the continued economic development of New York State and is imperative to allow each New Yorker the opportunity to fulfill their individual potential. Recent national studies indicate that approximately 80% of job seekers use online job search resources.[1] Nearly all students today use the Internet in school, and one-third of students are required to use the Internet to complete homework assignments on a daily basis.[2] This puts any New York State child without Internet access in their home at a profound disadvantage. Additionally, more than 85% of college applications are received online,[3] and millions of workers are now telecommuting, receiving vital information and news, and taking educational courses online via broadband networks. Access to broadband is a primary driver of economic development, and by providing ubiquitous broadband infrastructure, New York is positioned to attract and retain businesses of all sizes to all regions of the State.

Despite their urgent need for broadband, prior to the launch of this Program, approximately 2.5 million Housing Units[4] (HU's) in New York State had either limited, or no access to high-speed Internet. It was for this reason that Governor Andrew M. Cuomo, with legislative support, established the $500 million New NY Broadband Program (the Program); the largest and most ambitious State investment in broadband in the nation.

Specifically, the Program calls for applications for funding to provide access to broadband at speeds of at least 100 megabits per second (Mbps) (download) in most places, and 25 Mbps

[1] Searching for Work in the Digital Era, Pew Research Center, November 19, 2015

[2] Taking the Pulse of the High School Student Experience in America, Hispanic Heritage Foundation, myCollegeOptions and the Family Online Safety Institute, April 28, 2015

[3] 2011 State of College Admission, National Association for College Admission Counseling, October 19, 2011

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

(download) in the most remote Unserved[5] parts of the State, with priority given to applications that will provide broadband to Unserved communities, libraries, and Educational Opportunity Centers (EOC's). The Program will achieve its goals through public-private sector partnerships, and will require a private sector co-investment. The Program will be implemented by the end of 2018, subject to the terms and conditions described further herein.

The New NY Broadband Program is administered by the New York State Broadband Program Office (the BPO), a division of the New York State Urban Development Corporation, d/b/a Empire State Development (ESD). The funding will support Last-Mile[6] solutions, including Middle-Mile[7] and other connectivity required to deliver Last-Mile services, to expand broadband connectivity in Unserved and Underserved[8] areas of New York State.

The BPO issued a Request for Information (RFI) on September 24, 2015 to solicit feedback from stakeholders and interested parties in order to inform the structure of the Program. The Governor formally launched the Program on January 8, 2016. ESD accepted applications for the Program's first funding round ("Phase 1") from March 1 – April 15, 2016 through the New York State Consolidated Funding Application Portal. On August 3, 2016, ESD announced Phase 1 awards, which addressed Unserved and Underserved areas across the State. ESD subsequently accepted applications for the Program's second funding round ("Phase 2") from October 17 – November 30, 2016. The RFI Responses and the results of Phases 1 and 2 have been considered in the development of these Guidelines. The full results of Phases 1 and 2 are available on the BPO's website.[9]

As required by the Program's appropriation, priority was given to Phase 1 and Phase 2 applicants who provided service to Unserved areas, libraries, and EOC's. Indeed, approximately 80% of Phase 1 and Phase 2 funding was dedicated to Unserved communities, providing service to 43 libraries and 270 community anchor institutions. HU's in these Unserved areas will be connected to high-speed Internet for the first time, and with the support of the Program, grant recipients will provide state-of-the-art systems across their service footprints.

Phase 1 represented an important first step for the Program, allocating Program funding to support projects that could be quickly initiated in the most readily-identifiable Unserved and Underserved areas of the State. Phase 2 addressed a substantially larger universe of Units. Phase 3 will target all remaining Unserved and Underserved areas, including Census Blocks

[5] An "Unserved" area is defined as an area where the fastest available advertised Internet download speed offered by a wireline-based provider is less than **25 Mbps**.

[6] *See Appendix A – General Definitions*

[7] *See Appendix A – General Definitions*

[8] An "Underserved" area is defined as an area where broadband service is only available from a wireline-based provider at advertised Internet download speeds between **25 Mbps and 99 Mbps**.

[9] http://nysbroadband.ny.gov/

eligible for support through the Federal Communications Commission's (FCC) Connect America Fund (CAF) program.

II. BRIEF DESCRIPTION OF PHASE 3

Consistent with the Program's enabling legislation, Phase 3 will award grant funding to applicants to provide Last-Mile services to Unserved and Underserved areas of the State. In order to facilitate Phase 3, based on its analysis of the FCC's June 2016 Form 477 Data as well as other broadband-availability data provided to the BPO, the BPO has designated the status of each U.S. Census Block (CB) within the State of New York as Unserved, Underserved, or Served.[10] These designations follow the FCC's methodology, which is based on the fastest Internet speed available in a CB.[11] Furthermore, applications may also include areas of New York State eligible for funding through the FCC's Connect America Fund program, and Unserved and Underserved areas within the Time Warner Cable-Charter Communications (collectively, "Charter") NYS Franchise Area; except where Charter has committed to addressing such Units pursuant to its agreement with the NYS Public Service Commission (PSC).[12]

Lists of CBs containing areas eligible for Phase 3 (the Phase 3 Lists of Eligible CBs) are available on the BPO's website,[13] and instructions for using the lists are provided herein.

Applications for Phase 3 funding will be evaluated through a reverse-auction process (the Phase 3 Reverse-Auction or Reverse-Auction), which selects those projects providing broadband access that require the lowest State Investment (*as discussed in Section X*, *below*) on a dollars-per-Unit[14]-served basis; based on the cost[15] to pass a Unit.

There will be two separate Phase 3 Reverse-Auction processes, which will be conducted in the manner described herein:

1. New York State Auction

The New York State Auction will evaluate applications addressing the following:

- **Proposals to address Eligible Unserved Census Blocks** – CBs designated by the BPO as "Unserved"

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

[11] Notwithstanding these speed designations, however, for reasons discussed herein, the BPO has set aside certain CBs from Phase 3 (*See Section V.A.6*).

[12] In May 2015, Charter Communications (Charter) announced a proposed acquisition of Time Warner Cable (TWC). The PSC, pursuant to its authority under the Public Service Law, has issued an order approving the merger subject to agreed terms that include Charter's commitment to extend service to 150,000 or more currently unpassed HU's and businesses within the existing TWC and Charter NYS Franchise Areas. This merger was subsequently approved by the FCC, and Charter is moving forward with implementing the terms of the PSC's order.

[13] As described in Section V.A, with instructions on using the lists

[14] *See Appendix A – General Definitions*

[15] A discussion of Eligible Project Costs is included within these Guidelines (*see Appendix C*).

- **Proposals to address Eligible Underserved Census Blocks** – CBs designated by the BPO as "Underserved"

- **Proposed Additional Service Areas** - Recognizing the limitations of the FCC's one-served/all-served methodology, the BPO encourages applicants to seek Phase 3 funding to address identified Unserved or Underserved Units within any Served CB on the BPO's list of eligible CBs where an applicant can demonstrate - to the satisfaction of the BPO - that such Units are, in fact, Unserved or Underserved.

2. New York CAF Auction

The New York CAF Auction will evaluate applications addressing the following:

- **Proposals to address CAF-eligible Census Blocks** – CBs eligible for federal funding through the FCC's Connect America Fund program, which have been deemed unserved by the FCC[16]

As noted above and described further herein, the New York State Auction will evaluate, within each NYS Economic Development Region (REDC Region): (1) applications to address Eligible Unserved CBs; (2) applications to address Eligible Underserved CBs; and (3) applications addressing Additional Service Areas. The New York CAF Auction will evaluate applications to address CAF-eligible CBs through a separate auction independent of the New York State Auction described above. Unlike the New York State Auction, the New York CAF Auction will accept statewide applications for CAF-eligible CBs only, due to the need to align New NY Broadband Program awards with available FCC CAF funding, as discussed herein.[17]

The BPO reserves the right to award any amount of Program funding in Phase 3, depending on the quality and quantity of Phase 3 applications received, and subject to the availability of Program funds. New York State grants awarded through Phase 3 will be eligible to be disbursed no less frequently than on a quarterly reimbursement basis, for eligible costs incurred by grant recipients in the course of completing the selected projects. As discussed below, federal CAF funds available in the New York CAF Auction for the CAF-eligible CBs will be disbursed on a monthly basis over a ten-year term.

The Program will only support projects that were not part of an applicant's capital expenditure plans prior to the filing of their Phase 3 application, and would not be undertaken in the absence of Program funds. While applicants may seek Program funding to upgrade existing Internet service to meet the Program's requirements, where they can demonstrate to the BPO's satisfaction that such upgraded service would not be provided without Program funding,

[16] *See Section III*
[17] *See Section X* for more information on the Phase 3 Reverse-Auction process.

applicants cannot seek Program funding merely to maintain or support a broadband Internet service offering or pricing plan that they already offer, including in the proposed service area.

III. CONNECT AMERICA FUND TERRITORIES

In August 2015, a national telecommunications carrier declined $144 million in annual support, over six years, from the Connect America Fund, an FCC program that supports the deployment of broadband in unserved[18] areas at speeds of 10/1 Mbps (download/upload). Within New York State, the carrier declined $28.4 million in annual CAF support, representing a total of approximately $170 million, for 78,245 eligible locations.

In April 2016, ESD and the PSC filed a joint submission to the FCC, seeking the FCC's support for state-driven approaches to broadband deployment in the FCC's reallocation of unclaimed CAF funding. The FCC, citing the submission, invited public comment on how best to align the unclaimed CAF funding with state broadband programs and ensure that states in which CAF funding had been declined received sufficient federal funding for broadband. In October 2016, ESD submitted a formal petition to the FCC, seeking a waiver of the FCC's CAF Phase 2 competitive bidding rules in New York and requesting that the FCC allocate the declined CAF funding to New York carriers through the New NY Broadband Program, rather than in a separate, nationwide FCC auction. After inviting comment from other interested parties, the FCC granted the BPO's petition in a January 26, 2017 Order (FCC Waiver Order). This partnership between New York State and the FCC will give potential providers in CAF-eligible territories in New York State access to funding from both CAF and the New NY Broadband Program.

Therefore, in Phase 3 of the New NY Broadband Program, the Program will accept applications to address CAF-eligible territories in the New York CAF Auction. The BPO has published a list of CAF-eligible CBs on its website (List C of the Phase 3 Lists of Eligible CBs), which includes the declined CAF territories, as well as other ultra-high-cost areas within New York State that the FCC determined are eligible for inclusion in the BPO auction. Applications to address these CAF-eligible CBs must be submitted through one or more separate applications and cannot include any CBs outside of those identified by the BPO as CAF-eligible. Successful applicants in the New York CAF Auction for the CAF-eligible CBs will be eligible to receive monthly support from the Universal Service Administrative Company (USAC) through the CAF program in addition to New NY Broadband Program funding, subject to meeting the procedural requirements, reporting obligations and compliance measures that generally apply to CAF Phase 2 auction recipients.

As such, these Guidelines include, where appropriate, references to and a discussion of these FCC requirements. In the New York CAF Auction, applicants seeking to provide service in New

[18] As defined by the Federal Communications Commission

York CAF-eligible territories should closely review the FCC Waiver Order and the CAF Phase 2 auction regulations in great detail to ensure that they are familiar with the relevant requirements. The FCC Waiver Order can be accessed through the following link: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-2A1.pdf

The amounts of available CAF support for each CAF-eligible CB are available here:

- https://www.fcc.gov/document/wcb-announces-census-blocks-eligible-ny-broadband-and-caf-support
- https://apps.fcc.gov/edocs_public/attachmatch/DOC-343549A1.xlsx

Specific requirements imposed by the FCC Waiver Order include, but are not limited to, the following:

- CAF funding may only be used to fund projects in the CAF-eligible CBs;
- CAF funding provided to each successful applicant will not exceed the amount of New York State funding provided to the applicant;
- The monthly amount of CAF funding allocated in each CAF-eligible CB may not exceed the reserve price established for such CBs; and
- Monthly CAF support will be based on six years of support (*i.e.*, as calculated over 72 months), but paid out over a ten-year term.

Although New York CAF Auction applicants should assume that these Guidelines, and all rules stated herein, will govern the evaluation of applications to address CAF-eligible CBs, the BPO reserves the right to modify any term of these Guidelines relative to such applications, including, but not limited to, the requirements concerning applicant Co-Investments, to comport with the FCC Waiver Order and subsequent interpretations. These modifications, as well as any additional instructions for the submission of applications to address CAF-eligible CBs, will be published on the BPO's website. Additionally, the BPO encourages applicants seeking to address CAF-eligible CBs to review Appendix H to these RFP Guidelines, outlining rules specific to the CAF-eligible CBs.

IV. PHASE 3 ELIGIBILITY

Eligible types of applicants for the Phase 3 auctions may include, but need not be limited to:

A. Incorporated organizations

B. Native American tribes or tribal organizations

C. A local unit of government, or a group of multiple units of government

D. A cooperative, private corporation or Limited Liability Company, organized on a for-profit or not-for-profit[19] basis

E. A group of public and/or private sector partners[20]

Successful applicants in CAF-eligible CBs must obtain designation as an eligible telecommunications carrier (ETC) from the NYS PSC in those CBs before they can be authorized to receive CAF support. If the PSC does not have jurisdiction over the applicant, the applicant must obtain its ETC designation from the FCC.

V. PHASE 3 REQUIREMENTS

To participate in the Phase 3 auctions of the New NY Broadband Program, applicants must meet the following requirements (Phase 3 Requirements):

- Projects Must Only Address Eligible Areas
- Applicants Must Provide a Required Co-Investment
- Projects Must Provide Internet Speeds Consistent with the Program's Requirements
- Proposed Technology Solutions Must Conform to the Program's Requirements
- Project Completion Date
- Proposed Pricing Structures Must Include a Required Pricing Tier
- Applicants Must Demonstrate Suitable Fiscal and Management Capabilities
- Applicants Must Make a Commitment to Complete their Projects

The Phase 3 Requirements are discussed in greater detail below. Except where expressly stated otherwise in this RFP, these Requirements apply to applications in both the New York State Auction and the New York CAF Auction. **Any differences in these Requirements as they relate to applications in the New York State Auction and the New York CAF Auction are specifically noted**.[21] The Program will determine whether applications conform to the Phase 3

[19] *See also Appendix F* (regarding Not-for-Profit entities).

[20] To the extent an application submitted by more than one entity is selected as a Phase 3 grant recipient, each entity may be required to execute the project's Grant Disbursement Agreement (*form GDA attached as Appendix D)*. Each entity's obligations and liabilities under the GDA may vary based on the nature of the proposal and its contemplated roles in the project.

[21] The BPO has provided Appendix H as an additional resource to applicants in the New York CAF Auction, which broadly identifies those rules exclusively applicable to such proposals.

Requirements based on applicants' responses to questions presented in the NYS Consolidated Funding Application (CFA) Portal (the Portal), as well as their uploaded documentation, subject to the waiver provisions (*discussed in Section VI, below*).

Significant New Rules Applicable to Phase 3

In Phase 3 of the Program, the Program has adopted the following major modifications:

- **Acceptance of applications to address CAF-eligible territories through a separate New York CAF Auction, independent of the New York State Auction addressing applications to address non-CAF-eligible CBs** *(see Section X)*
- **Modifications exclusively applicable to proposals in the New York CAF Auction:**
  - **Acceptance of statewide applications for CAF-eligible CBs only** (*see Section V.A.3*)
  - **Minimum Service Area of 5,000 Units (*250 Units for applicants applying on the basis of prior Preliminary Statements-of-Interest) for New York CAF Auction only** (*see Section V.A.2*)
  - **Maximum New York State Funding of 70% of Eligible Project Costs for New York CAF Auction only** (*see Section V.B*)
  - **Bidding Credits for Speeds/Service for New York CAF Auction only** (*see Section X.C*)
- **Incorporation of CAF eligibility and reporting requirements for applications seeking to address CAF-eligible CBs** (*as summarized in Appendix H and discussed throughout these RFP Guidelines*)
- **Classification of applications in both the New York State Auction and the New York CAF Auction on the basis of Service Tiers** (*see Section X.C*)
  - Applications must propose projects capable of delivering Internet speeds (*download/upload*) and service characteristics consistent with the applicable tier;
  - These include a "Minimum Service Tier" for applications capable of delivering Internet at speeds of 25/3, with "high" latency, as defined by the FCC, and usage restrictions
- **Additional Incentives for addressing the Unserved** (*see Section X.D*)

These changes are discussed in greater detail below.

A. Projects Must Only Address Eligible Areas

Phase 3 will allocate funding to applicants to provide Last-Mile services: including Middle-Mile networks, equipment, or other investments required to deliver Last-Mile service to Unserved or Underserved areas of the State.[22] Applications may propose to serve any CBs on the lists provided by the BPO. However, applications in the New York CAF Auction may only propose to serve CAF-eligible CBs.

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

The Phase 3 Lists of Eligible CBs [23] are noted below:

- **List A – Eligible Unserved CBs**
- **List B – Eligible Underserved CBs**
- **List C – CAF-eligible CBs**
- **List D – Additional Service Area CBs (ASA CBs)**

Census Blocks will be identified as eligible in whole or in part. The Lists of Eligible CBs includes a Verified Unit Count for each Eligible CB based on available data sources. The BPO's Verified Unit Count for the New York CAF Auction is based on the number of CAF-eligible locations identified by the FCC within each CB.[24] Where an applicant seeks to address a CB that is only available in part, the applicant may be asked to provide a Unit Count for each partial CB, which must be less than the Verified Unit Count.

Additionally, please note that the above Lists are preliminary, and may be subject to modification prior to the opening of the Phase 3 application period. Internet service providers who already deliver broadband service within an eligible CB will be given the opportunity to formally request that ESD remove the CB(s) from Phase 3, pursuant to the Challenge process (*See Section VIII.A*). ESD may also modify or remove territories from the above Lists pursuant to Charter's commitment to address such areas, or from any List for purposes of ensuring accuracy. ESD anticipates posting the final versions of

[22] Middle-Mile infrastructure is only eligible for Phase 3 funding to the extent an applicant proposing Last-Mile access needs to include Middle-Mile facilities as part of their overall structure.

[23] The Phase 3 Lists of Eligible Census Blocks will be made available on the BPO's website - http://nysbroadband.ny.gov/.

[24] The BPO reserves the right to adjust or update this Verified Unit Count to account for the presence of Libraries and/or EOCs in an eligible CB.

the Lists as soon as practicable following the Challenge process, and encourages applicants to check the BPO's website for the final Lists.

As a resource to applicants in the New York CAF Auction, List C identifies the aggregate maximum CAF support available for each CAF-eligible CB. This support amount will be distributed to successful applicants for the CAF-eligible CBs, assuming compliance with all applicable FCC rules and processes, on a monthly basis equivalent to the total shown divided by 120 months. The support may not exceed, in aggregate, the amount of corresponding grant awarded by New York State on an aggregate project basis. Therefore, if the New York State grant is lower than the aggregate support available from the FCC for such CBs, the total will be reduced to equal the New York State grant amount and be payable over 120 months.

1. Coverage of Complete Census Blocks

In both the New York State Auction and the New York CAF Auction, proposed networks must offer qualifying Internet speeds and service to all locations[25] within CBs to be addressed by an application.[26] Proposed Service Areas may not divide CBs, except in the following circumstances:

- The List of Eligible CBs indicates that a CB is only available in part. In such instances, the applicant's proposals must address all eligible Units within the partial CB.

- The applicant is a cable or a telephone service provider under the jurisdiction of the PSC, seeking Phase 3 funding to offer broadband service within their existing franchise or local exchange area boundaries, and such boundaries do not encompass all eligible Units within a CB.

    - Such applicants must provide a comparison of the proposed Units in the partial CB (the "Bifurcated CB") to the boundary layer of the franchise/local exchange area.

    - Please note that such applicants will still be required to address all eligible Units within their existing franchise/local exchange area boundaries.

[25] For avoidance of doubt, all successful applicants – whether in the New York State Auction or the New York CAF Auction – will be required to address locations not reflected in the BPO's Verified Unit Count, including where the actual number of potential customer locations in an eligible CB exceeds the BPO's Verified Unit Count. Further, successful applicants in the New York CAF Auction will be required to address locations not designated by the FCC as eligible for CAF support.

[26] Notwithstanding this section, applicants will not be required to build to Units that have no electric service, or to recreational vehicles.

- In such cases, an award of partial CBs is discretionary for ESD, and ESD maintains a preference for coverage of whole CBs. Therefore, ESD reserves the right to remove any partial CB from an applicant's proposal (and to reduce the applicant's requested State assistance on a pro rata basis), and to award the CB to another qualifying applicant proposing to address the CB in its entirety, irrespective of the Reverse-Auction results.

- To the extent an applicant proposes addressing a CB identified on List D, as part of a proposed Additional Service Area (*see Section VIII*), the applicant must exclude "Served" Units within the CB. Please note, however, that such applicants must address all Unserved or Underserved Units within the CB.

- Applicant can demonstrate another compelling circumstance or hardship that would support inclusion of the partial CB in their Service Area. Such applicants must seek a waiver to include the partial CB in their proposal (*see Section VI*).

2. Minimum Service Areas

All applications must address a minimum number of Units (Minimum Service Area), as identified below. For purposes of these Guidelines, "Units" include HU's (as defined by the U.S. Census Bureau), commercial properties, governmental buildings, healthcare facilities, K-12 schools, libraries, EOC's, institutions of higher education, and other community institutions (*i.e.*, each such entity, with the exception of Libraries and EOC's, [27] will count as one (1) Unit).

Phase 3 Minimum Service Area	
New York State Auction	**250 Units***
New York CAF Auction	**5,000 Units****

**With respect to the New York State Auction, please note that where a proposed Service Area includes all Eligible Unserved CBs or all Eligible Underserved CBs within an REDC Region, it shall satisfy the Minimum Service Area requirement, irrespective of whether the application proposes to address fewer than 250 Units.*

***Applicants in the New York CAF Auction who previously submitted to the BPO a Preliminary Statement-of-Interest to address CAF-eligible Territories, pursuant to the Instructions published by the BPO on August 30, 2016, may submit an application based*

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

on such Statements-of-Interest. The Minimum Service Area requirement for such applications will be 250 Units.

In determining whether an applicant has met the Minimum Service Area requirement, the BPO will consider its Verified Unit Count for each CB. Where any applicant proposes to include a partial CB in their proposal, the applicant may be asked to provide a Unit count and to identify areas to be served within each partial CB.

For CAF-eligible CBs, the BPO's Verified Unit Count for each CB refers to the FCC's CAF-eligible location count. The FCC requires that CAF recipients offer service meeting the applicable service standards to a set number of locations. Only HU's as defined by the Census Bureau and businesses that are expected to demand consumer-grade broadband services (typically, small businesses) may be counted towards a CAF recipient's total locations for purposes of meeting the FCC's deployment obligations.

3. Multiple Applications

An individual applicant may submit more than one application proposing to address the same areas. Please note that each application will be evaluated independently. Further, under the circumstances described below, an applicant will be required to submit multiple applications.

i. No Co-Mingling of Different Eligible CB-types

While an individual applicant may propose to address CBs in different areas of the State, a single Phase 3 application cannot co-mingle CBs drawn from different Phase 3 Lists of Eligible CBs (*i.e.*, applications addressing Eligible Unserved CBs, Eligible Underserved CBs, ASA CBs, or CAF-eligible CBs cannot include CBs from non-corresponding Lists). If an applicant wishes to serve CBs on more than one of the Phase 3 Lists of Eligible CBs, they must submit separate applications. Please note that these applications will be considered separately (*as discussed in Section X*).[28]

ii. Applications in the New York CAF Auction

To encourage maximum utilization of FCC CAF funding and to facilitate efficient administration of that funding, applicants in the New York CAF Auction proposing to address CAF-eligible CBs may submit a single, statewide application.

[28] Applications to serve ASA CBs will be considered through the New York State Auction, in the relevant Region's Unserved or Underserved auction, consistent with the majority of Units in the application. *See Section VIII*.

iii. Applications in the New York State Auction

However, with respect to non-CAF eligible CBs (Eligible Unserved CBs, Eligible Underserved CBs, or ASA CBs), an individual applicant must designate separate Service Areas through multiple applications where the applicant proposes to serve geographic areas that do not share physical continuity[29] AND are wholly-located in different REDC Regions. To avoid doubt regarding whether areas in neighboring REDC Regions are continuous and, therefore, are eligible to be included in a single application, applicants are encouraged to submit areas in separate REDCs that each contain more than 250 Units as separate applications. To the extent that the cost of deploying services in both neighboring areas together would be less than deploying each area individually, applicants may utilize the provisions for "Dependent Applications" (*as described below*)

4. Dependent Applications

Applicants submitting multiple applications may request that an individual application be considered in combination with not more than one other of their applications by designating such an application as a "Dependent Application," provided that such a combination reduces the aggregate amount of requested State Investment to fund both applications. (The second application, with which the Dependent Application is joined in this manner, is referred to, hereafter, as the "Linked Application." In cases where two applications are mutually dependent on each other, then each application is both a Dependent Application and a Linked Application.)

In such cases, applicants will be required to submit both: (1) a stand-alone budget for just the Dependent Application in question (*i.e.*, a budget that assumes the Linked Application is not funded); and (2) a budget for the Dependent Application that reflects a reduced cost to the State that would result if both the Dependent Application and the Linked Application were funded. The budget that assumes that the Linked Application is funded will be considered first for the purposes of the Reverse-Auction. Should the Linked Application not be accepted, or receive modification greater than its Modification Limit,[30] the stand-alone budget (*i.e.*, the budget for the Dependent Application without the Linked Application) will be used for the Reverse-Auction. In such cases, the applicant will still be obligated to proceed with the project on the basis of their stand-alone budget for the Dependent Application. Please note that an application may not designate a Linked Application that is itself dependent on a 3rd

[29] Physical continuity will be determined by the BPO, and may include, but need not be limited to, areas connected by an applicant's infrastructure and areas separated by water bodies and/or unpopulated areas. In general, if there are eligible areas between parcels that could have been addressed by your application, then the parcels proposed to be addressed through your application will not be deemed to share physical continuity.

[30] *See Appendix A– General Definitions*

application (*i.e.*, there can only be one layer of dependency). Applicants may also choose to make two applications mutually dependent.

Dependencies between applications in the New York State Auction and the New York CAF Auction are permitted. In the event that an applicant has created dependencies between applications in the two auctions, and one of the auctions does not commence or is otherwise delayed, the application in the auction that has commenced will be considered on a stand-alone basis and the Applicant will be obligated to proceed with the project on the basis of the stand-alone budget for the application.

> For example, an applicant In the New York State Auction may request that applications to address Eligible Unserved CBs or Eligible Underserved CBs be considered in combination with each other; or with an application proposing an Additional Service Area; or with an application in the New York CAF Auction proposing to address CAF-eligible CBs; or that an application using one type of technology be dependent on a separate application using a different technology.

The following example illustrates an instance where one application is designated as "dependent" on another application:

> Example: An applicant submits two applications, Application A and Application B. Application A proposes to serve Unserved CBs. Application B proposes to serve 250 Units in Underserved CBs at a requested per-Unit State Investment of $3,000, for a total State Investment of $750,000. However, the applicant hopes to use the network backbone of Application A to serve Application B, which would reduce Application B's per-Unit State Investment request to $2000. Therefore, the applicant designates Application B as dependent on Application A, and submits two budgets for Application B: (1) the stand-alone budget of $750,000 and (2) a "combined budget" that assumes Application A is funded, with a budget of $2,000 per-Unit for 250 Units, for a State Investment of $500,000.

The following example illustrates an instance where two applications are designated as "mutually-dependent":

> Example: An applicant submits two mutually-dependent applications. Application A proposes to serve 500 Unserved Units and Application B proposes to serve 500 Underserved Units. Each application proposes a Per-Unit State Investment of $1,500, with a total State Investment of $750,000 per application. However, funding both applications would reduce the total State Investment required for Application A to $500,000

and Application B to $400,000. The applicant, therefore, submits two budgets for Application A: (1) a stand-alone budget of $750,000; and (2) a combined budget of $500,000. Likewise, the applicant submits two budgets for Application B: (1) a stand-alone budget of $750,000; and (2) a combined budget of $400,000.

The following example illustrates an instance where two applications are each independently designated as "dependent" on a 3rd application.

> Example: An applicant submits three applications. Application A proposes to serve 1,000 Units in Unserved CBs. Application B proposes to serve 250 Units in Unserved CBs at a Per-Unit State Investment of $3,000, for a total State Investment of $750,000. Both A and B use Fiber-to-the-Home (FTTH).[31] Application C proposes to use fixed wireless to serve an additional 500 units in CAF-eligible CBs at a Per-Unit State Investment of $4,000, for a total State Investment of $2,000,000. The applicant hopes all three applications use the same network backbone, provided by Application A. Therefore, the applicant notes that Application B is dependent on Application A and that Application C is dependent on Application A. Application B is submitted with two budgets: (1) a stand-alone budget noted above of $750,000; and (2) a "combined budget" that assumes Application A is funded, with a budget of $2,000 per-Unit for 250 Units, for a state cost of $500,000. Application C is submitted with two budgets: (1) a stand-alone budget noted above of $2,000,000; and (2) a "combined budget" that assumes Application A is funded, with a budget of $3,000 per-Unit for 500 units, for a State Investment of $1,500,000.
>
> [*Note that the Program does not allow for a dependency to be established between B & C. In addition, because B & C each depend on A, the Program does not allow A to be dependent on B and/or C.*]

In each of these above examples, the applications will first be evaluated based on the combined budget (*i.e.*, the lower cost to the State), assuming the Linked Application is funded. Should the Linked Application be eliminated, the Dependent Application will revert to the stand-alone budget (*i.e.*, the higher cost to the State).

To summarize the above requirements:

[31] *See Appendix A – General Definitions*

- Proposals to serve (1) Eligible Unserved CBs, Eligible Underserved CBs and ASA CBs in the New York State Auction; and, (2) CAF-eligible CBs in the New York CAF Auction must be submitted through separate applications.

- Applicants in the New York CAF Auction proposing to serve CAF-eligible CBs may submit a single, statewide application, which cannot include any CBs other than CAF-eligible CBs.

- Applicants in the New York State Auction proposing to serve non-CAF-eligible CBs will be required to submit separate applications for each REDC Region, except where the application proposes continuous geographic areas which span multiple REDC Regions.

- In all cases, each application must serve:

    1) Whole Eligible CBs (except in the circumstances described above); and

    2) A Minimum Service Area of:

        a. 5,000 Units (applications in the New York CAF Auction addressing CAF-eligible CBs)

            *250 Units for applications based on Preliminary Statements-of-Interest submitted to the BPO

        b. 250 Units (applications in the New York State Auction addressing non-CAF-eligible CBs)

- An individual applicant may indicate that any application is "Dependent" on not more than one other application, including dependencies between applications in the New York State Auction and the New York CAF Auction.

5. Modified Awards

In submitting their Phase 3 applications, the Program requires that each applicant agree to accept a reduction of up to 20% of the total number of proposed Units to be addressed by their application, with a commensurate (*i.e.*, pro rata) reduction in the requested amount of State assistance. Each applicant may also, at their discretion, agree to accept a larger reduction in the total number of Units to be addressed in their proposed Service Area.

Where applications propose to serve overlapping areas, the Phase 3 Reverse-Auction shall prioritize qualifying proposals, which serve their respective territories at the lowest requested amount of State Investment per-Unit-served (*as discussed in Section X, below*). To the extent overlaps may be addressed by reducing the total number of Units

in a higher-cost application, the BPO may extract the overlapping Units from the higher-cost application and offer a modified award, calculated strictly on a pro rata basis (Modified Awards).[32] Applicants will be required to accept a Modified Award that reduces by up to 20% the total number of Units to be addressed by their application, or such larger percentage reduction as authorized by the applicant.

> Example: Applicant A proposes a Service Area consisting of CBs 1, 2, 3, and 4, with 2,000 Units in each of the four CBs - a total of 8,000 Units - and requests a State Investment of $100 dollars-per-Unit; a total award of $800,000.
>
> Applicant B proposes a Service Area consisting of CBs 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, with 2,000 Units in each of the 10 CBs - a total of 20,000 Units - requesting a State Investment of $150 dollars-per-Unit; a total award of $3 million.
>
> The Program rules require both Applicant A and Applicant B to accept a reduction of 20% of the total number of Units in their proposed Service Areas.
>
> Assuming that both applications meet all Phase 3 Requirements, the applications would be ranked in the Reverse-Auction. Because Applicant A requested the lesser amount of State Investment per-Units, its proposal would take priority and would receive Applicant A's total requested award. Should the auction also select Applicant B, which requested the higher amount of State Investment per-Unit, the BPO would extract CB 4 - which will be served as part of Applicant A's project - from Applicant B's Service Area. The BPO would offer a Modified Award of $2.7 million to Applicant B, reflecting a reduction of 2,000 Units (or 10%) of their proposed Service Area. The Modified Award does not exceed the required 20% Service Area reduction, and Applicant B will be required to accept the Modified Award.

6. Territories Excluded from Phase 3

Please note that the following areas, notwithstanding their status as Unserved or Underserved, are excluded from Phase 3:

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

i. Phase 1 and Phase 2 Projects

Phases 1 and 2 of the Program funded more than 75 projects that will provide broadband access at the Program's goals to Unserved and Underserved areas across the State. The Service Areas that will be addressed by these Phase 1 and Phase 2 projects are not eligible for Phase 3 funding.

ii. Qualifying Connect NY and REDC Projects

Additionally, through the Connect NY Broadband Grant Program and Regional Economic Development Councils (REDCs), the State of New York has funded approximately 12 pending projects to deliver Last-Mile broadband service at Internet download speeds of at least 25 Mbps to Units in their respective project Service Areas. Because these projects (Qualifying Connect NY and REDC Projects), when completed, will achieve the New NY Broadband Program's minimum Internet speed goals, Unserved Units within such Service Areas will not be considered for Phase 3.

iii. Other Qualifying Commitments

The BPO has removed CBs from the Phase 3 Lists of Eligible CBs where it has determined that either service meeting the Program's Internet speed goals, or a commitment to provide such service, is currently in place.

B. Applicants Must Provide a Required Co-Investment

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

1. Maximum New York State Funding

i. New York State Auction Applications

With respect to applications addressing Non-CAF-eligible CBs - Eligible Unserved CBs, Eligible Underserved CBs, and/or Additional Service Areas, in no event will the BPO consider an application seeking New York State grant funding in an amount exceeding 80% of total Eligible Project Costs.

ii. New York CAF Applications

With respect to applications addressing CAF-eligible CBs, in no event will the BPO consider an application seeking New York State grant funding, exclusive of federal CAF

funding, in an amount exceeding 70% of total Eligible Project Costs. Such applicants are strongly encouraged to pursue federal CAF funding as a complement to their New York State grant requests.[33] Applicants seeking to address CAF-eligible CBs may refer to the FCC's list of eligible CBs and corresponding reserve prices for monthly CAF support in developing their project budgets, available here:

- https://www.fcc.gov/document/wcb-announces-census-blocks-eligible-ny-broadband-and-caf-support
- https://apps.fcc.gov/edocs_public/attachmatch/DOC-343549A1.xlsx

Additionally, the amount of available monthly CAF support for each CAF-eligible CB is noted on List C of the Phase 3 Lists of Eligible CBs.

Please note that ESD does not guarantee that successful applicants to the New York CAF Auction will receive these amounts of CAF funding. Actual amounts of CAF support may vary based on the auction results, the amount of New York State funding awarded to address CAF-eligible CBs, and the applicant's compliance with FCC procedural and reporting requirements, as described throughout these Guidelines.

2. Equity Requirement

While applicants are required to provide a Co-Investment consistent with the paragraphs above, a portion of the applicant's total financial commitment must be equity capital injected into the project by the applicant. The equity portion of an applicant's total Co-Investment must be at least 10% of total Eligible Project Costs. Equity capital is defined as cash invested into the project by the applicant or by investors, and should be auditable through the applicant's financial statements or accounts, if so requested by ESD. Equity capital may include funds raised through the sale of equity stakes in the applicant. Equity capital cannot be borrowed money secured by the assets in the project, or grants from a government source, including federal CAF funding.

3. Non-Equity Financing

Any amount of the applicant's Co-Investment above 10% of total Eligible Project Costs may consist of funding from sources not identified above as "Equity," including other governmental grants, provided that such funds will be available for use in the project.

[33] Applicants that do not seek CAF funding will still be evaluated through the New York CAF Auction, subject to the same rules and limitations applicable to the New York CAF Auction, and will still be ranked against competing applicants that do seek CAF funding.

However, non-equity financing cannot include in-kind contributions of goods or services, or other non-monetary contributions by the applicant to the project.

C. Projects Must Provide Internet Speeds Consistent with the Program's Requirements

The Program is designed to ensure that every New Yorker has access to high-speed broadband at Internet download speeds of at least 100 Mbps, except in the most remote areas of the State. Phase 3 has set download speed requirements consistent with that goal for applications addressing Unserved and Underserved areas, respectively. In each case, applicants will be required to demonstrate how their proposed technology solution will deliver the promised speeds in the proposed Service Area once operational, and how capacity will be aggregated in the network design.

Additionally, the Program favors robust Internet upload speeds. All applications should offer upload speeds consistent with national trends, and, at a minimum, must be capable of delivering minimum upload speeds consistent with the relevant Phase 3 Reverse-Auction service tier, as well as associated usage and latency characteristics (*see Section X*).

1. Speed Requirements for Unserved Units

Projects addressing Unserved Units, including all applications addressing Eligible Unserved CBs, ASA applications addressing identified Unserved Units, and applications in the New York CAF Auction, should plan to offer Internet download speeds of at least 100 Mbps to each Unit in the proposed Service Area. Applications must, in all cases, offer Internet download speeds of at least 25 Mbps to each Unit in the proposed Service Area.

2. Speed Requirements for Underserved Units

Projects addressing Underserved Units, including all applications to address Eligible Underserved CBs and ASA applications addressing identified Underserved Units, must offer Internet download speeds of at least 100 Mbps to each Unit in the proposed Service Area.

D. Proposed Technology Solutions Must Meet the Program's Requirements

Proposed technology solutions must be designed to meet the Program's goals, particularly the Governor's target download speed goal of at least 100 Mbps.

The following technologies may be utilized in Phase 3:[34]

[34] *See Appendix A– General Definitions*

1. Fiber-to-the-Home (FTTH)
2. Cable/Hybrid Fiber-Coaxial (HFC), deploying DOCSIS 3.0 modems or higher
3. Digital Subscriber Line (DSL)
4. Fixed Wireless or Satellite Broadband Service

While Phase 3 will accept applications offering DSL, Fixed Wireless, or Satellite Broadband Service, in light of the greater performance variability of these technologies in different settings, such applications must include supporting documentation demonstrating - to the satisfaction of the Program - that such technology solutions can achieve the Program's speed goals throughout the proposed Service Area.

Applications may propose a combination of FTTH and HFC, without restriction. Applications may propose DSL, Fixed Wireless, or Satellite in combination with FTTH or HFC. However, applications offering such hybrid solutions must clearly indicate which CBs within their proposed Service Area are to be addressed by each technology, as well as provide the additional supporting documentation described above. Furthermore, all proposals to utilize such solutions must adhere to all other requirements of these Guidelines, including the Required Pricing Tier (*see Section V. F*).

E. Project Completion Date

In accordance with the goals of the Program, Phase 3 applicants must demonstrate that their projects will be completed by December 31, 2018 (the Phase 3 Project Completion Date), and must detail major benchmarks and timing of anticipated achievement of each benchmark. However, in connection with projects funded through Phase 3, the BPO will permit requests for an up-to one year extension of the Phase 3 Project Completion Date for good-cause shown. Such an extension will not require the issuance of a waiver (*as discussed in Section VI*). Applicants should submit such requests for extension of the Phase 3 Project Completion Date with their applications.

In addition, please note that while projects must be completed by the Phase 3 Project Completion Date, applicants may submit a proposal that assumes reimbursement of costs associated with customer installations[35] for a period up-to 24-months beyond the Phase 3 Project Completion Date, including for any projects that receive an extended

[35] Where State and local regulations have set requirements for the price of line extensions charged to consumers, the BPO intends to use these requirements to inform its judgment regarding requests for grant amounts that may be excessive. The BPO does not intend to provide grant funding to awardees who hold cable franchises in areas that they propose to serve under the program that would be in excess of the customer Contributions in Aid of Construction (CIAC) that would be allowed under their franchise for line extensions in the areas bid. For such applicants, bids for grant funds should not exceed the CIAC amount which the applicant would be allowed under the cable company's franchise if constructing customer-requested line extensions.

Phase 3 Project Completion Date. For the purposes of preparing an application, applicants may make conservative assumptions about the number of Units passed which will take service. However, New York State grant awards will be issued on a reimbursement basis, and successful applicants will only be able to seek reimbursement of actual costs associated with customer installations required prior to the expiration of the above-referenced 24-month period.

1. Additional Requirements for New York CAF Auction

If funded, applications to address CAF-eligible CBs will be subject to the Phase 3 Project Completion Date, including the extension option described above, as well as the FCC general CAF build-out requirements, which require deployment of facilities funded by CAF support to be completed within six years of funding authorization. The FCC regulations also require recipients of CAF support to complete construction and commercially offer service to 40% of the requisite number of CAF-eligible locations in the State by the end of the third year of funding authorization, and an additional 20% in each of the subsequent years, with 100% by the end of the sixth year. Compliance with the Phase 3 Project Completion Date, subject to extensions granted by the BPO, will satisfy these FCC build-out requirements.

F. Proposed Pricing Structures Must Include a Required Pricing Tier

1. Service Description

While the Program seeks to promote affordable access to high-speed broadband, including to households with low or fixed incomes, it also recognizes that Program participants need to achieve a reasonable return on their investments. Therefore, the Program is seeking to implement pricing structures that balance both considerations. To participate in Phase 3, applicants must agree that their broadband service offerings for all subscribers in the funded Service Areas, for a period of five (5) years from completion of the project, will include the following pricing tier (the Required Pricing Tier) as a service option to all residential users, excluding businesses and other institutional users: minimum Internet speeds of at least 25/4 Mbps (download/upload), at a monthly rate not to exceed $60.

This $60 rate should include connection fees, standard modem equipment, and/or surcharges that exist at the time of the application; however, it may exclude a one-time installation fee. The installation fee may not exceed $49 (regardless of whether the fee is paid in one or over several installments), except where providing service to a customer would require the applicant to make a connection in excess of 300-feet, measured as the offset from the road to the typical termination point on the customer's premises. In such cases, the applicant will be permitted to charge a custom installation fee in excess of $49.

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

i. Minimum Service Tier

Notwithstanding the section above, applications in the Minimum Service Tier (*as defined below, in Section X.A*) will satisfy the Required Pricing Tier by offering Internet speeds of 25/3 Mbps (download/upload), at a monthly rate not to exceed $60, and usage limitations consistent with the Minimum Service Tier. All other terms of the Section above will continue to apply to such applicants.

2. Exclusions Based on Existing Service and National Pricing Policies

To the extent an applicant already provides broadband service meeting the Program's speed goals to any Phase 3 - eligible Units and/or CBs without New York State funding, and wishes to include such Units and/or CBs in a Phase 3 application, the BPO will not require the applicant to offer the Required Pricing Tier to such Units/CBs. Please note, however, that such applicants will be required to clearly delineate such Units/CBs with existing service from those to be offered new or upgraded service using New NY Broadband Program funding, and must offer the Required Pricing Tier to all Units to be addressed using Program funding. The BPO reserves the right to require additional information from such applicants, as necessary to validate the applicants' claims.

Furthermore, any applicant may seek an exemption from the Required Pricing Tier where adherence to the requirement would represent a deviation from the applicant's national pricing policies. The BPO reserves the right to request any information necessary to evaluate the request. Such an exemption will not require the issuance of a waiver (*as discussed in Section VI*), but will be resolved after the selection of Phase 3 grant recipients. Exemptions will be granted only when (1) other qualifying, commercially-reasonable, and compliant proposals have not been received to address the proposed Service Area, and (2) where the BPO determines that such an exemption is in the best-interest of the Program.

3. Future Modification

Please note that the BPO may modify the Required Pricing Tier for future rounds of the Program. To the extent that such modified pricing terms are more favorable to grant recipients than those outlined in this section, the BPO will make such modified pricing terms available to existing grantees selected through prior rounds. Such terms will replace and supersede the requirements of this Section. Please note, however, that this Section excludes any exemptions granted based on National Pricing Policies.

4. Additional Requirement for New York CAF Auction

Successful applicants in the New York CAF Auction will be required to offer subscribers at least one service plan that meets minimum Internet upload speed and monthly usage allowances based on the FCC's CAF Phase 2 Auction Performance Tiers, in addition to offering the Required Pricing Tier. Recipients of CAF funding offering download speeds of 100 Mbps must offer upload speeds of at least 20 Mbps and a minimum usage allowance of at least 2 TB per month. CAF funding recipients offering download speeds between 25-99 Mbps must offer upload speeds of at least 3 Mbps and a minimum usage allowance of at least 150 GB per month, or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.

Additionally, recipients of CAF support will be required to offer a stand-alone voice service in CAF-eligible CBs.

Finally, recipients of CAF support will also be required to offer voice and broadband service at latency levels that are suitable for real-time applications, including Voice over Internet Protocol.

Recipients of CAF support will also be required to certify to the FCC annually that they offer voice and broadband service at reasonably comparable rates. A CAF recipient will be considered in compliance with the FCC regulations if it offers at least one stand-alone voice service plan and one service plan that provides broadband that meets the FCC's public-interest obligations and reasonable comparability requirements, as announced by the FCC.

G. Applicants Must Demonstrate Suitable Fiscal Standing and Management Capabilities

To participate in Phase 3, applicants must demonstrate suitable fiscal standing and management capabilities. ESD reserves the right to disqualify an application on the basis of insufficient fiscal standing and management capabilities including, but not limited to, a substantial doubt that the applicant remains a going concern. Examples of conditions that may contribute to a substantial doubt include, but are not limited to, tax liens, loan defaults, lawsuits, denial of credit by suppliers, a weak credit report score, and/or low levels of liquidity. To allow the Program to determine whether applicants demonstrate suitable fiscal standing and management capabilities, applicants must submit the following documents and/or attest to each of the following:

1. Applicant must operate at least one wired or wireless network business with at least 500 customers;

a. To the extent applicant is a partnership consisting of two or more entities, including municipalities and/or tribal entities, it is sufficient that any one entity among those filing the application meet the above requirement.

2. Applicant must provide three years of their most recent audited financial statements. If applicant's most recent financials are over 180-days old, add the most recent interim statements.

    a. Should the applicant not have audited financial statements, applicant should provide an explanation as to why it does not have such audits and submit three years of the most recent set of audited financial statements of its parent company, together with an explanation of corporate organization that clearly demonstrates the relationship between the applicant and its parent.

    b. Should neither the applicant, nor its parent, have audited financial statements, the applicant should: (1) submit a statement as to why such audited financial statements do not exist; (2) acknowledge that participation in the New NY Broadband Program will require the submission of audited financial statements; and (3) provide unaudited financial statements sufficient, in the determination of the BPO, to allow the BPO to review the applicant's financial condition, including three years of the applicant's most recent income statements, balance sheets, and cash-flow statements.

    c. Where the BPO determines that unaudited financial statements are sufficient for a Phase 3 application and meet the requirements of these Guidelines, an applicant, if selected for an award under the New NY Broadband Program, will be required to submit audited financial statements for the period beginning with their participation in the Program. Please note, however, that the BPO reserves the right to request any additional documentation required to support the unaudited financial statements based on its internal review as well as the recommendations of its advisors, including audits of prior-year financial statements.

    d. **Additional Requirement for New York CAF Auction:** Where New York CAF Auction applicants do not submit audited financial statements, the FCC will require CAF funding recipients to submit audited financial statements from the prior fiscal year no later than 180 days after New York State publicly announces them as a winning applicant and before the FCC will authorize the disbursement of CAF support. Entities that do

not ultimately provide audited financial statements will be subject to a base forfeiture from the FCC of $50,000.

3. Signed Federal, State, and Local Tax Returns for the past two years (FYs 2016 and 2015). If FY 2016 Tax Returns are not available, submit (1) FY 2015 and FY 2014 Tax Returns; and (2) an explanation of why FY 2016 Tax Returns are not available.

4. To the extent Applicant is a municipality and has a municipal bond rating on any of its debt instruments, it must demonstrate an investment grade bond rating, as determined by one of the following credit-rating agencies: Moody's Investors Service, Standard & Poor's, or Fitch Ratings.

5. It is preferred that Projects be fully-financed[36] through a combination of the total requested State Investment and committed funds from the Applicant.

    a. To be considered "fully-financed," an applicant must show cash-on-hand, defined as the applicant's total amount of available cash, or a commitment letter, for the full amount of the applicant's proposed Co-Investment (*as described in Section V.B*).

    b. To the extent any portion of an applicant's Co-Investment consists of Non-Equity sources (*as described in Section V.B.2*), *e.g.*, grants from other government entities, the applicant will be required to demonstrate that such funds will be available for use in the project to be considered fully-financed.

    c. Applicants who propose to finance the project in part with funding committed from investors and/or commercial lenders must submit documentation acceptable to ESD demonstrating that the Applicant has raised this capital, which should: (1) identify all investors and/or commercial lenders; (2) include signed commitment letters in amounts sufficient to realize the project from these investors and/or commercial lenders; and (3) provide a timeline for completing the financing.

    d. Where an application is not fully-financed at the time of its submission, the application - provided it meets all other requirements of the Program - will be considered where no other qualifying, commercially-reasonable, and fully-financed application is submitted to address the same proposed Service Area. In any event, such applicants will be required to achieve

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

full-financing, as described in this Section, within 60-days of the submission of their application.

6. Applicants must be in good standing in performance of any and all existing New York State contracts, and in compliance with all Federal, State, and local laws, and agree that each of their principals, officers, and directors - as determined by the BPO - may be required to submit to a background check, at the sole discretion of the BPO, as a precondition to the award of Program funding.

7. Applicants may submit additional documents and/or information supporting a determination that the Applicant possesses suitable fiscal and management capabilities to participate in Phase 3.

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

H. Applicants Must Make a Commitment to Complete the Project

1. New York State Requirements

Applications to Phase 3 shall represent binding commitments by the applicants to carry out their proposals. If selected, an applicant shall be required to enter into a Grant Disbursement Agreement (GDA) and a Security Agreement (*form GDA and Security Agreement attached as Appendix D)* prior to disbursement of any Program funds, and to carry out their project subject to the proposed terms of their application.

Applicants to Phase 3 shall be required to provide a deposit in the amount of $100,000.00 (the Application Deposit), in the form of a Letter of Credit, pursuant to the terms provided in Appendix E. Should an applicant selected for Phase 3 refuse to enter into a GDA and Security Agreement with ESD for the Phase 3 application, their Application Deposit will be nonrefundable.

Please note that ESD reserves the right to conform any grantee's GDA as required by law, or to implement an existing agreement between the grantee and New York State.

Furthermore, to the extent the Security Agreement conflicts with an applicant's existing contractual obligations or presents a barrier to obtaining financing for its planned Phase 3 project, applicants may request modifications to the Agreement, including its subordination. Such modifications will not require the issuance of a waiver (*as*

discussed in Section VI), but will be considered after the selection of Phase 3 grant recipients.

2. Additional Requirements for New York CAF Auction

For Applicants in the New York CAF Auction, the FCC will not be a party to the GDA. Under the conditions set forth in the FCC Waiver Order, successful applicants must submit an irrevocable stand-by letter of credit (*separate and apart from the Application Deposit discussed above*) and a letter of credit opinion letter to the FCC that meets the requirements in its regulations before the FCC will authorize the disbursement of CAF support, and not later than the deadline set by the FCC. The FCC letter of credit must be for an amount at least equal to the first year of authorized CAF support and must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix B of the FCC's *Phase 2 Auction Order* by a bank that meets the FCC's bank eligibility requirements.[37] Before the successful applicant can receive its next year's CAF support, it must modify, renew, or obtain a new FCC letter of credit to ensure it is valued, at a minimum, at the total amount of CAF support that has already been disbursed plus the amount of CAF support that is going to be provided in the next year. The successful applicant will be required to maintain an open and renewed letter of credit for the FCC CAF support until it has certified that its build-out is complete, and the Universal Service Administrative Company (USAC) has verified the build-out.[38]

To the extent they do not meet their build-out deadline, CAF support recipients will be subject to the potential support reductions and recovery actions set forth in the FCC's regulations. In the event a funding recipient is unable to repay the FCC for any compliance gap by the required period of time after the build-out deadline, the FCC will initiate a draw on the letter of credit as described in its CAF regulations.

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[37] The FCC's *Phase 2 Auction Order* is available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1_Rcd.pdf.

[38] Under the FCC's rules, CAF funding recipients must deploy facilities to at least 95% of the CAF-eligible funded locations in each state where they are receiving support. Notwithstanding such FCC rules, a successful applicant in the New York CAF Auction must offer Internet speeds and service consistent with their application to 100% of locations in CBs to be addressed by their application, irrespective of whether such locations are designated by the FCC as eligible for CAF funding, as required by the New NY Broadband Program and the Program's Grant Disbursement Agreement (*Section 8(n)*), except in the circumstances expressly set forth in these RFP Guidelines that contemplate coverage of partial CBs. At the end of the CAF support term, recipients that have deployed to at least 95%, but less than 100%, of the number of funded locations will be required by the FCC to refund CAF support based on the number of CAF-eligible locations left unserved in New York. The amount refunded will not be based on average support, but on one-half the average support for the top five percent of the highest-cost funded locations nationwide. However, this refund provision only relates to the CAF recipient's compliance with FCC rules for purposes of CAF funding, and will not waive or otherwise modify their obligation to New York State to offer approved speeds and service to 100% of locations, including locations not eligible for CAF funding.

Applicants seeking to address CAF-eligible CBs cannot offer their Application Deposit in lieu of the FCC's required irrevocable stand-by letter of credit. The BPO requires such applicants to obtain a bank commitment, from a bank meeting the FCC's requirements, for the prompt issuance of the required letter of credit should the applicant be selected for an award, and to include such a commitment letter with their application.

Please note that applicants seeking to address CAF-eligible CBs cannot condition their willingness to proceed with proposals on the basis of their ability to obtain CAF funding. As described in these Guidelines, actual amounts of CAF support may vary. Further, it will be the responsibility of grant recipients awarded CAF-eligible CBs, not the BPO or ESD, to comply with all relevant FCC requirements for CAF support. An applicant's inability or failure to comply with such requirements cannot be invoked to excuse their failure to proceed with the project. ESD reserves the right to draw upon the Application Deposit and/or enforce any applicable remedies in such cases.

VI. WAIVERS

Notwithstanding any of the above terms, the President and CEO of ESD reserves the right to waive one or more of the Phase 3 Requirements listed above. An applicant may request a waiver from such Phase 3 Requirement(s) by providing a written explanation of why it is unable to meet the Requirement(s). ESD will not consider a waiver request in advance of the submission of an application. Additionally, ESD will not consider requests that seek waiver of core provisions of these Phase 3 Guidelines.

Any waiver granted by ESD will not constitute a waiver of the FCC's CAF-specific rules.

VII. LIBRARIES AND EDUCATIONAL OPPORTUNITY CENTERS

Consistent with its enabling legislation, the BPO encourages projects to offer broadband services to Unserved or Underserved Libraries and New York State Educational Opportunity Centers (EOC's) and prioritizes projects as discussed below. To the extent an application proposes to address such facilities, applicants must provide detailed information concerning the proposed service, and identify the particular Libraries and/or EOC's to be addressed. The BPO will calculate the number of Libraries and EOC's in an application based on the number of such premises in the Verified Unit Counts published along with the List of Eligible CBs.[39]

Where an application proposes to address Unserved or Underserved Libraries and EOC's, such facilities shall be weighted in determining whether the applicant has met their required Minimum Service Area (*as described above, Section V.A.2)*. Furthermore, when ranking

[39] The BPO reserves the right to adjust or update such Verified Unit Counts to account for the presence of Libraries and EOCs.

qualifying applications in the New York State Auction or the New York CAF Auction, the Program will consider the amount of Per-Unit State Investment requested on a modified basis, to provide a bonus for each Library and EOC addressed by the application. In calculating the number of Units that an applicant has proposed to serve, and ranking applications in the New York State Auction or the New York CAF Auction, the Program will count each Unserved or Underserved Library as five (5) Units, and each Unserved or Underserved EOC as five (5) Units.

For avoidance of doubt, this provision would apply to the determination of whether an applicant has satisfied the requirement of addressing a minimum number of Units, and to the ranking of qualifying applications in the New York State Auction or the New York CAF Auction. However, it will not affect the calculation of an applicant's grant (*i.e.*, if selected, the applicant's final grant award will be based on the number of actual Libraries and EOC's to be addressed by their project, without any modifiers).

1. Additional Note for New York CAF Auction

As explained above, Libraries and EOC's are not included in a CAF recipient's location total for purposes of the FCC's deployment obligations. For purposes of the FCC deployment obligation, CAF recipients may only count HU's as defined by the Census Bureau and businesses that are expected to demand consumer-grade broadband services (typically, small businesses).

VIII. ADDITIONAL SERVICE AREAS

Recognizing the limitations of the FCC's Form 477 data, which the BPO has used to classify Census Blocks as Unserved, Underserved, and Served, it is possible that additional Unserved or Underserved Units are located in CBs currently classified as "Served." Therefore, in Phase 3, the BPO encourages applications that propose to serve Unserved and/or Underserved Units within those Served CBs. These CBs are identified on List D of the BPO's List of Eligible CBs. Additionally, the BPO is seeking proposals to address Unserved and/or Underserved Units within the Charter NYS Franchise Area, except where Charter has committed to address such Units. Therefore, List D also includes certain CBs within the Charter Franchise Area.

Finally, although not identified on List D, ESD will also consider applications that propose to address identified Unserved and/or Underserved Units within Served CBs in the New York City and Long Island REDCs, as well as the Counties of Westchester and Rockland, provided that such applications meet the other requirements of this Section and demonstrate that facilities that can provide Internet service at download speeds of 100 Mbps are passing neither on the street, nor within 500-feet, of the proposed Units.

Applications proposing the projects described above will be considered "Additional Service Area" applications in Phase 3, and will be subject to the rules and process set forth in this Section. Any applicant proposing an Additional Service Area application will be required to demonstrate such proposed Units are, in fact, Unserved or Underserved Units. Please note that

while Additional Service Area applications may propose a combination of Unserved and Underserved Units - subject to the rules of these Guidelines - applications that include identified Underserved Units may be subject to additional scrutiny, and will only be awarded upon the submission of evidence, satisfactory to ESD, of the status and current service levels available to these Units.

A. Pre-Application Census Block Challenges

To the extent an Internet service provider currently offering broadband service in one or more eligible CB(s) wishes to request that ESD remove the CB(s) from Phase 3, they must submit a challenge ("Challenge") with the information required in this section, no later than 4:30pm on April 13, 2017 (the "Challenge Deadline"). Challenges must be submitted electronically to ESD at the following address: newnybroadband@esd.ny.gov, and marked with the subject line "Challenge." No Challenges in connection with Phase 3 will be accepted after the Challenge Deadline.

A Challenger must provide, as set forth in Appendix G:

1. A list of CBs to be included in their Challenge, identified by CB ID Number, in Microsoft Excel Format, noting the speed available by the provider in that CB, and the percentage of the Units in that CB that have access to that speed. For example:

Census Block ID	Max Speed Provided by Your Company	Percent of the Housing Units in this block that you provide this speed to	BPO List that this Block Appears On
36XXXXXXXXXXX	100 Mbps	100%	List A - Unserved

AND

2. An affidavit, in the form of Appendix G, certifying that the following statements are true:

    a. The Challenger, as of the date of the Challenge, provides broadband service within all of the CBs identified, AND

    b. The Challenger currently offers broadband service at download speeds of 100 Mbps, within a normal serving interval, and without special construction charges, to all addresses within the CB having access to electric utility service, and will continue to offer such service, without grant support from the State of New York, for a period of five (5) years from the date of the certification.

Successful Challengers will be required to enter into a binding agreement with ESD, stipulating the above certifications, within 14 days of the Challenge's resolution.

ESD may remove CB(s) from Phase 3 pending its final determination of a Challenge, and execution of an agreement with a successful Challenger. However, where a successful

Challenger refuses to enter into an agreement with ESD consistent with their Challenge, ESD reserves the right to reinstate such CB(s) to the Program in future funding rounds, and to bar the Challenger from submitting Challenges in such future rounds.

In evaluating Challenges, ESD will consider the most current FCC Form 477 Filing, as well as the Challenger's own submitted data, and reserves the right to request additional information from the Challenger, based on the scope of the Challenge in question. ESD also reserves the right to reject a Challenge where it cannot establish the existence of qualifying broadband service levels to its satisfaction based on the information provided.

B. Applications Proposing Additional Service Areas

Following resolution of Challenges, Applicants may seek to address Unserved and/or Underserved Units within CBs identified on List D as part of an "Additional Service Area." Applications proposing Additional Service Areas must demonstrate that the proposed Units to be addressed are, in fact, Unserved and/or Underserved. Additionally, applications proposing Additional Service Areas cannot include any Eligible Unserved CBs or Eligible Underserved CBs (as identified on Lists A and B).

Please note that while Additional Service Area applications must exclude "Served" Units within any CB in the application's proposed Service Area, they must commit to address all identified Unserved and/or Underserved Units within the Service Area (*i.e.*, an applicant cannot elect to address some Unserved and/or Underserved Units within a CB in their application, but ignore others). For the purposes of this Section, Units passed by Charter's cable network that are subject to its commitment to upgrade speeds will be considered "Served" regardless of whether or not the speeds currently offered by Charter equal or exceed 100 Mbps.

1. Identification of Unserved and Underserved Units

Applicants must undertake reasonable, good-faith efforts to distinguish Served Units from Unserved and/or Underserved Units within all CBs included in the Additional Service Area. To that end, the Applicant must provide:

- A Shapefile (.shp) of the Unserved and/or Underserved Units within the CB(s) that it proposes to serve
- A Network Diagram demonstrating that the proposed network addresses Unserved and/or Underserved Units within the CBs, or that those parts outside the Unserved and/or Underserved areas would be used to connect to the Unserved and/or Underserved areas; and
- An affidavit that the submitted map is based on the following data sources:

- A ride-out of the CB(s) performed within the last 12 months by qualified, technical personnel, to observe and record areas that are Served and Unserved by providers other than the Applicant; OR the results of qualifying consumer surveys performed within the last 12 months by the Applicant or a unit of local government. **This will be required where any provider other than the applicant offers broadband service in the CBs**.

- The Applicant's records of the extent of its own facilities. **Where only the applicant offers broadband service within a CB, an applicant need only include this information for that CB**.

ESD reserves the right to request supporting documents from any applicant proposing an Additional Service Area.

2. Information on Facilities Not Belonging to the Applicant

Where required, the ride-out may have been performed or commissioned by the Applicant, or by a unit of local government (*e.g.*, town, city, village, county) or local or regional economic development corporation.

For each application's ride-out, the applicant must submit a Shapefile (.shp) showing the end-of-line points of cable and fiber-to-the-premise facilities, not belonging to the applicant itself, observed during ride-outs. Areas in the CBs beyond these endpoints may be considered Unserved, except when the CB also contains a provider of DSL service offering download speeds of at least 25 Mbps.[40] In an Additional Service Area CB that contains a provider of DSL services (other than the applicant) offering download speeds at least 25 Mbps, the parts of the CB beyond the endpoints of cable or fiber-to-the-premise facilities shall be considered Underserved. In the alternative, the applicant may also submit a Shapefile (.shp) showing the observed location of any central offices or remote terminals for networks not belonging to the applicant itself, and a Shapefile (.shp) showing a one-mile buffer around such points. The buffer may be calculated either on aerial straight-line distance, or linearly, along roads or utility lines. Units outside the buffered area, or beyond the buffered lines, may be considered Unserved if they are also beyond the endpoint of cable or fiber-to-the-premise networks. If the applicant is itself the only provider of DSL service in the block with download speeds of at least 25 Mbps, it may rely on its own records regarding the areas in which this service is available.

Applicants may rely on the June 2016 release of the FCC's Form 477 data in determining whether a CB contains a DSL provider offering download speeds of at least 25 Mbps. The BPO is releasing a table of these CBs.

[40] The observed endpoints should be of customer-serving Last-Mile facilities. For the purposes of this analysis, the presence of Middle-Mile or transport fiber facilities that do not have any observed drops to serve end users do not make that part of a CB Served.

3. Qualifying Consumer Surveys

In lieu of a ride-out to identify the endpoints of cable and fiber-to-the-premise facilities, the applicant may submit the results of qualifying consumer surveys performed within the last 12-months by the applicant, or a unit of local government (town, city, village, county), or local or regional economic development corporation. The results shall be accompanied by a description of how the survey was administered and the survey questions asked. A qualified survey must name broadband providers offering service in the relevant area, and ask about recent attempts by the consumer to obtain service at or below the 100 Mbps download threshold, including the result of the inquiry. The survey must also collect address-level information about Unserved and/or Underserved areas from the respondents. If the survey was commissioned or performed by the applicant, the applicant must also submit a letter of support from a unit of local government indicating that it has reviewed the addresses and believes them to be Unserved and/or Underserved. The applicant may include the Unserved and/or Underserved addresses identified through the application. Survey results not meeting these requirements may be rejected. In addition, applicants are encouraged to perform ride-outs of any routes required to reach Unserved and/or Underserved addresses identified by survey as a means of identifying any additional Unserved and/or Underserved addresses that may not have responded to the survey.

4. Modification of Applications in CBs with Multiple Additional Service Area Applications

In the event that multiple qualified Additional Service Area applications propose to serve a CB, the entire CB will be removed from the proposal of the non-winning applicant using the methods described in Section V.A.5. ASA applications must contain all the areas containing Unserved and Underserved units in a CB that may be identified using the methods described herein. If, in ESD's judgment, information provided by another application demonstrates that there are likely additional Unserved or Underserved Units in additional areas within the CB that the successful applicant has not identified, ESD reserves the right to require the successful applicant in the CB to serve these additional areas within its proposed CBs.[41]

IX. EVALUATION OF APPLICATIONS

In selecting applications for the Phase 3 Reverse-Auction, the BPO may consult with other divisions of ESD, other NYS agencies, and/or consultants to the BPO possessing relevant expertise for an evaluation of any application's compliance with the Phase 3 Requirements, including, but not limited to, a determination of the status of an Additional Service Area; whether or not proposed technology solutions meet the Program's goals; and the commercial-

[41] This evidence might include, for example, more detailed evidence gathered from new ride-outs of the impacted areas, or documented confirmation of broadband service that they are receiving from another provider.

reasonableness of an application. In rendering such evaluations, these entities may consider: (1) any response by an applicant to questions in the Portal; and/or (2) application materials uploaded by the applicant, including network design plans and technology specifications.

All applications that comply with the Phase 3 Requirements (or have obtained a waiver from certain Requirements, *as described in Section VI, above*) (Qualifying Applications) will be advanced to the Phase 3 Reverse-Auction Process (*as described below*).

X. PHASE 3 REVERSE-AUCTION

A. Auction Structure

As noted above, Phase 3 will conduct two separate Reverse-Auction processes to address CAF-eligible CBs and non-CAF-eligible CBs, which will occur independently of each other.

1. New York State Auction

Relative to applications in the New York State Auction seeking to address non-CAF-eligible CBs (*as identified on Lists A, B, and D on the Phase 3 Lists of Eligible CBs*), there will be two separate auctions within each REDC Region: (1) an auction ranking applications to address the Region's Eligible Unserved CBs; and (2) an auction ranking applications to address the Region's Eligible Underserved CBs (*i.e.*, an application proposing to address Eligible Underserved CBs will not be evaluated against an application to address Eligible Unserved CBs, or CAF-eligible CBs).

Where an individual application proposes to serve Units in more than one REDC Region, that application will be considered in the Region where the largest number of Units in its proposed Service Area is located.

Applications proposing Additional Service Areas will be considered in the auction consistent with the character of the Units to be addressed – as Unserved or Underserved (*e.g.*, an Additional Service Area application proposing to address exclusively Unserved Units will be ranked in the Region's Unserved auction). Where an individual Additional Service Area application proposes to address a combination of Unserved and Underserved Units, that application will be considered in the auction consistent with the character of the largest number of Units in its proposed Service Area (*e.g.*, where the largest number of Units in an Additional Service Area application are Underserved, the application will be considered in the Region's Underserved auction).

Applications seeking to address CAF-eligible CBs will not be considered in the New York State Auction. Such applications will be considered separately, through the New York CAF Auction.

2. New York CAF Auction

Applications in the New York CAF Auction seeking to address CAF-eligible CBs (*as identified on List D of the Phase 3 Lists of Eligible CBs*) will be considered based on the results of a single, technology-neutral auction. Unlike the New York State Auction, applicants seeking to address CAF-eligible CBs may submit a statewide application. However, such applications may not include non-CAF-eligible CBs, and proposals seeking to address non-CAF-eligible CBs will not be considered within the New York CAF Auction.

3. Auction Operation

All applications – whether in the New York State Auction or the New York CAF Auction - must offer network/technology capabilities and characteristics, at a minimum, consistent with one of three service tiers ("Tiers"): Above Baseline, Baseline and Minimum.

The specific requirements for each Tier are as follows:

Tier*	Speed (download/upload)	Latency	Monthly Usage Allowance
Above Baseline	≥ 100/20 Mbps	Low	Unlimited
Baseline	≥ 25/4 Mbps	Low	Unlimited
Minimum	≥ 25/3 Mbps	High	*≥150 GB***

**While classification in the Tiers will be assessed on the basis of network capabilities for all applications – whether submitted in the New York State Auction or the New York CAF Auction – applicants should review Section V.F to review all Program requirements concerning service and pricing.*

*** To meet the Minimum Service Tier's required minimum 150 GB Monthly Usage Allowance, no more than 50 GB may be provisioned to off-peak hours. Applicants offering the Minimum Service Tier cannot impose "hard" Internet data caps, stopping a user's access to Internet content where this Usage Allowance is exceeded.*

Latency is the time it takes for a data packet to travel from one point to another in a network, and is commonly expressed in terms of milliseconds. In these Tiers, which are based on FCC Latency standards, applicants offering "Low" latency performance levels must commit to meet a minimum latency standard of 95% or more of all peak period measurements of network round trip latency at or below 100 milliseconds. Applicants offering "High" latency performance levels must commit to meet a minimum latency standard of 95% or more of all peak period measurements of network round trip latency at or below 750 milliseconds and, with respect to voice performance, a score of four or higher using the Mean Opinion Score adopted by the FCC.

Relative to both the New York State Auction and the New York CAF Auction, qualifying applications that are confirmed as being commercially-reasonable will be selected to participate in each auction.[42] For avoidance of doubt, the commercially-reasonable funding threshold will be determined by ESD in its sole discretion and may be set at different levels of required per-Unit State Investment for each eligible CB in Phase 3.

Further, ESD reserves the right to consider the availability of Program funding, consistent with its goal of achieving statewide high-speed broadband access and priority for Unserved areas, in setting the commercially-reasonable funding threshold or selecting applications for awards based on the auction results.

i. New York State Auction

In the Regional auctions addressing non-CAF eligible CBs (*as identified on Lists A, B, and D of the Phase 3 Lists of Eligible CB*s), qualifying and commercially-reasonable applications proposing to offer Above Baseline services will be prioritized and the auction will consider such applications before applications in other Tiers. Applications offering Baseline services will only be considered where no qualifying and commercially-reasonable applications offering Above Baseline services are submitted to address the same proposed CBs. Applications offering Minimum service will only be considered where no qualifying and commercially-reasonable applications offering Above Baseline or Baseline services are submitted to address the same proposed CBs.

ii. New York CAF Auction

All qualifying and commercially-reasonable applications seeking to address CAF-eligible CBs will compete against one another in the New York CAF Auction, which will be a single, technology-neutral Reverse-Auction. Unlike the New York State Auction, applicants to the New York CAF Auction may submit statewide applications. The New York CAF Auction will rank the applications in ascending order by requested per-Unit State Investment after application of the notional bidding credits (*as discussed below*).

B. Auction Mechanics

The Reverse-Auctions will rank qualifying applications in order of requested State Investment per-Unit-served,[43] prioritizing the lowest-cost applications. To illustrate this process:

> Two applicants submit Phase 3 proposals that address identical Service Areas. Applicant A's project will serve 500,000 Unserved Units, at a total

[42] *As discussed in Section X.F, below.*

[43] A modifier will be applied to applications that propose to address all Eligible Unserved CBs or all CAF-eligible CBs within an REDC Region (*see Section X.D*).

project cost of $1.2 million. Applicant A proposes to fund their project with a private financial commitment of $700,000, and seeks a $500,000 award from the Program. The amount of State Investment for Applicant A's project will therefore be $1.00 per-Unit-served ($500,000 award/500,000 Units). Applicant B's project will also serve 500,000 Unserved Units, at a total project cost of $1.75 million. Applicant B proposes to fund their project with a private financial commitment of $250,000, and seeks a $1.5 million award. The amount of State Investment for Applicant B's project will be $3.00 per-Unit-served ($1.5 million award/500,000 Units). Assuming that both applications meet all Phase 3 Requirements, using the Reverse-Auction methodology, Applicant A's proposal – which sought the lowest amount of State Investment per-Unit-served – would be funded.

Please note, however, that, notwithstanding each application's proposed amount of requested per-Unit State Investment, the operation of the Auction will be subject to certain modifiers discussed below.

C. Bidding Credits for Speeds/Service (*New York CAF Auction Only*)

To ensure that the Program selects those projects most consistent with its speed and service goals to address CAF-eligible CBs, the New York CAF Auction will provide notional bidding credits to qualifying and commercially-reasonable applications proposing higher speed and low latency services, based on the Tiers described above (*see Section X.A.3*).

The bidding credits applicable to each Tier are noted below:

Tier	Bidding Credit
Above Baseline	85%
Baseline	50%
Minimum	0%

The bidding credits will be applied as a dollar amount to each application's proposed amount of per-Unit State Investment and be calculated by multiplying (a) the bidding credit percentage in the respective Tier by (b) the Reserve Price, which shall be equal to $7,983 per-Unit. To illustrate the application of these bidding credits, assume that two applicants seek to address the same collection of Eligible CBs:

Applicant A proposes to offer "Minimum" service (Internet speeds of 25/3 Mbps, with 150 GB Monthly Usage Allowances and High

> Latency), at a proposed per-Unit State Investment of $500. Applicant A would receive no bidding credit and its per-Unit State Investment would be $500 in the auction. Applicant B proposes to offer "Above Baseline" service (Internet speeds exceeding 100/20 Mbps, with Unlimited Monthly Usage Allowances and Low Latency), at a proposed per-Unit State Investment of $7,000. Applicant B would receive a bidding credit of $6,785 (85% x $7,983), reducing Applicant B's per-Unit State Investment to $215 ($7,000 - $6,785) for purposes of the Auction. As a result of the bidding credit, Applicant B would have the lower amount of per-Unit State Investment and, thus, be the winning bidder.

Where, after consideration of applicable bidding credits, two or more applications have an equal amount of per-Unit State Investment (*i.e.*, the applications are "tied"), the Program would prioritize funding of the application falling into a superior service tier. To illustrate this scenario:

> Applicant A proposes to offer "Baseline" service (Internet speeds of 25/4 Mbps, with Unlimited Usage Allowances and Low Latency), at a proposed per-Unit State Investment of $5,000. Applicant A would receive a bidding credit of $3,991 (50% x $7,983) and its per-Unit State Investment would be $1,009 in the Auction ($5,000 - $3,991). Applicant B proposes to offer "Above Baseline" service (Internet speeds exceeding 100/20 Mbps, with Unlimited Usage Allowances and Low Latency), at a proposed Per-Unit State Investment of $7,794. Applicant B would receive a bidding credit of $6,785 (85% x $7,983), reducing Applicant B's per-Unit State Investment to $1,009 ($7,794 - $6,785) for purposes of the Auction. Both applications would tie in the Auction based on the respective amounts of per-Unit State Investment after application of bidding credits. However, Applicant B would be awarded based on its superior Tier.

To the extent these Bidding Credits reduce the amount of per-Unit State Investment for any one or more applications below zero, the New York CAF Auction will consider negative numbers and prioritize the application with the lowest negative number.

Please note that these bidding credits will only affect the operation of the New York CAF Auction, they will not reduce the applicant's actual award, which will be based on the applicant's actual requested State Investment per-Unit, without any modifiers.

D. Additional Incentives to Address Unserved Areas (*both New York State Auction and New York CAF Auction)*

The Program encourages applications that seek to extend service to Unserved areas. To that end, applications proposing to address (1) all Eligible Unserved CBs (as identified on List A of the Phase 3 Lists of Eligible CBs) within an REDC Region; OR (2) all CAF-eligible CBs (as identified on List C of the Phase 3 Lists of Eligible CBs) within an REDC Region, will receive a premium of **10%** in that Region's Reverse-Auction -- *i.e.*, in calculating such applicants' requested State Investment per-Unit for purposes of the relevant Reverse-Auction, the Program will apply a 10% discount. Similarly, where an individual applicant, through one or more applications, proposes to address all Eligible Unserved CBs OR CAF-eligible CBs within two or more REDC Regions, the applicant will receive a premium of **20%** relative to their application(s).

To illustrate the application of this discount:

> Two Phase 3 applicants in the New York CAF Auction submit competing proposals addressing CAF-eligible CBs in the same REDC Region. Based on the number of Units their applications propose to address and their requested grant awards, Applicant A's project will be $500 per-Unit served, and Applicant B's project will be $525 per-Unit-served. However, only Applicant B proposes to address all CAF-eligible CBs within that REDC Region. Therefore, Applicant B's amount of per-Unit State Investment will be discounted by 10% in the Reverse-Auction ($52), for an adjusted per-Unit State Investment of $473. Based on this modifier, Applicant B's project would receive priority in the Reverse-Auction.

The table below summarizes these Incentives.

Incentive	Description
10%	Application addresses all Eligible Unserved CBs OR all CAF-eligible CBs within at least one REDC Region
20%	Applicant, through one or more applications, addresses all Eligible Unserved CBs OR all CAF-eligible CBs within two or more REDC Regions

Like the application of the bidding credits, these incentives will only affect the operation of the Phase 3 Reverse-Auction, they will not reduce the applicant's actual award, which will be based on the applicant's actual requested State Investment per-Unit, without any modifiers.

i. New York CAF Auction

For applications in the New York CAF Auction seeking to address CAF-eligible CBs, these incentives will be applied before any applicable bidding credits.

E. Non-Fully-Financed Proposals (*both New York State Auction and New York CAF Auction*)

As discussed in Section V.G, where an application is not fully-financed at the time of its submission, the application - provided it meets all other requirements of the Program - will be considered where no other qualifying, commercially-reasonable, and fully-financed application is submitted to address the same proposed Service Area. In any event, such applicants will be required to achieve full-financing within 60-days of the submission of their application. This provision applies to both the New York State Auction and the New York CAF Auction.

F. Funding Hierarchy (*both New York State Auction and New York CAF Auction*)

In the event that Program funds for Phase 3 awards are insufficient to fund all qualifying and commercially-reasonable applications meeting the Requirements stated herein, funds shall be awarded based on the following prioritization:

- First: Applications proposing to address Eligible Unserved CBs, applications proposing to address CAF-eligible CBs, and Additional Service Area applications proposing to address exclusively Unserved Units.
- Second: Applications proposing to address Units, the majority of which are Unserved, in Additional Service Areas.
- Third: Applications proposing to address Units, the majority of which are Underserved, in Additional Service Areas.
- Fourth: Applications proposing to address Eligible Underserved CBs, and Additional Service Area applications proposing to address exclusively Underserved Units.

XI. PHASE 3 TIMELINE

Beginning on June 6, 2017, the Portals for the New York State Auction and the New York CAF Auctions will open for applications. Applicants will be required to submit their applications online through the Portals. The Portals will ask applicants to answer questions and submit detailed information concerning their projects, proposed Service Areas, management and financial capabilities, total project cost, and (importantly) the State Investment that applicants are seeking on a dollars-per-Unit-served basis. Applications must meet the Phase 3 Requirements to qualify for the Reverse-Auctions (unless granted a waiver from certain Requirements).

The Portals will close at 4:30pm ET, on August 15, 2017 (the Application Deadline); the Program will not consider applications for Phase 3 submitted after the Application Deadline.

ESD may contact any applicant for the limited purpose of requesting additional information or documentation necessary to complete their application. Additionally, applicants will be required to pay a nonrefundable $250.00 Application Fee and provide the Application Deposit.[44]

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

Please note that ESD reserves the right to negotiate with any and all applicants within the requirements of these Guidelines to best serve the interests of the State of New York. The scope of such negotiations may include the applicant's proposed Co-Investment, consistent with the Program's goal of minimizing costs to the State. Please note, however, that ESD will never exercise this right in a manner that changes the outcome of the Phase 3 Reverse-Auctions.

A. Additional Note for Applicants in the New York CAF Auction

Further, where the Program selects multiple applications by an individual applicant to address CAF-eligible CBs, ESD reserves the right to consolidate such applications into a single award for purposes of presenting the proposals to the FCC, which may include contracting for the projects through a single GDA.

XII. ADDITIONAL PROCEDURES FOR NEW YORK CAF AUCTION

Successful applicants in the New York CAF Auction must comply with various FCC procedural requirements and reporting obligations before they may receive CAF support.

A. Submission of Long-Form Application to the FCC

Successful applicants in the New York CAF Auction will have ten (10) business days after announcement of their winning bid to submit a long-form application to the FCC. This application must comply with the requirements the FCC has adopted for the CAF Phase 2 auction and include certain ownership information, a description of how the required construction will be funded, and a description of the technology and system design the

[44] *See Appendix E*

applicant intends to use to deliver voice and broadband service, accompanied by a network diagram certified by a professional engineer.

The long-form application must also include a number of certifications, including the following:

1. A certification that the applicant is financially and technically qualified to meet the public-interest obligations in each CAF-eligible CB for which it seeks support;

2. A certification that the applicant will meet the relevant FCC public-interest obligations, including the requirement to offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

3. A certification that the applicant will have available funds for all project costs that exceed the amount of CAF support authorized by the FCC to be received for the first two years of its support term, and that the applicant will comply with all program requirements; and

4. A certification that the party submitting the certifications is authorized to do so on behalf of the applicant.

B. ETC Designation

Successful applicants must also submit to the FCC appropriate documentation of their designation as an ETC in all CAF-eligible CBs for which they will receive support within 180 days of being announced as a winning applicant. In addition to submitting the relevant ETC order, each successful applicant should provide documentation showing that the designated areas (*e.g.*, census blocks, wire centers) cover its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. For example, the obligation may be satisfied by providing maps of the ETC designation area, map overlays of the winning bid areas, or charts listing designated areas. Additionally, successful applicants must submit a letter with their documentation from an officer of the company certifying that their ETC designation covers the relevant areas in New York State where the successful applicant will receive CAF support.

Successful applicants may wait until after they have been announced as winning applicants in the CAF-eligible CBs to obtain their ETC designation. Please note that successful applicants must be designated as an ETC in the CAF-eligible CBs before they are authorized to receive CAF support. As such, any entities that already are designated as an ETC in their own service territory may need to amend such designation to ensure that it includes the appropriate CAF-eligible CBs.

C. Ongoing Reporting

Once the FCC authorizes successful applicants, those applicants will receive CAF support from USAC on a monthly basis for a period of ten years. Like all CAF support recipients, approved applicants will be required to file on a recurring basis, and by no later than the last business day of the second calendar month following each support year, the number of locations and locational information where they offer service meeting the requisite public-interest obligations, and identify the technology they use to serve those locations. Additionally, CAF support recipients must demonstrate that they have met their build-out deadlines by submitting, no later than the last business day of the second calendar month following the deadline, a certification that they were offering broadband meeting the requisite FCC public interest obligations to the required number of locations. Recipients will also be required to submit annual reports pursuant to the FCC rules. Such reports must contain the same information required of all CAF Phase 2 support recipients.

Lastly, successful applicants that were designated as ETCs by the PSC must have the PSC certify on their behalf by October 1st of each year that the high-cost support "was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." If the applicant was designated as an ETC by the FCC, it must submit this certification directly to the FCC.

XIII. LEGAL TERMS AND CONDITIONS

By applying for Phase 3 Funding, Applicants are agreeing to adhere to the following terms and conditions:

A. Non-Collusion

To obtain funding under Phase 3, applicants will be required to attest that: (1) their applications - including the costs presented and grant amounts requested therein - have been developed independently, without collusion, consultation, communication, or agreement for the purposes of restricting competition in ESD's selection of Phase 3 grant recipients; (2) unless otherwise required by law, the costs presented and grant amounts requested in their Phase 3 application will not knowingly be disclosed by the applicant to any other applicant or to any competitor; and (3) no attempt has been made, or will be made, by the Applicant to submit or to not submit an application for the purposes of restricting competition in ESD's selection of Phase 3 grant recipients.

B. Compliance With Laws and Good Standing with NYS Contracts

To obtain funding under Phase 3, Applicants must attest to substantial compliance with all Federal, State, and local laws, and consent to an investigation of their standing with all NYS

contracts. Applicants must also assent to the completion of a background check. ESD may modify or cancel an award based on an Applicant's non-compliance with laws or a finding that the applicant is not in good standing with any NYS contract, either at the time of their application submission or thereafter.

C. Non-Discrimination Policy

It is the policy of the State of New York, including specifically ESD, to comply with all Federal, State and local laws, policies, orders, rules and regulations that prohibit the unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

D. M/WBE Goals

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

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

E. Service-Disabled Veterans-Owned Business Enterprise Goals

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

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

F. Applicability of New York State SEQR Requirements

In New York State, most projects or activities proposed by a State agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review (SEQR). SEQR may apply to Phase 3 Projects that involve construction or other activities which may affect the environment by changing the use,

appearance or condition of a site or structure. If the project requires review under SEQR, Funding Recipients must maintain such records and take such actions necessary to demonstrate such compliance. Each project funded under Phase 3 of the Program will be assessed by ESD to determine whether SEQR applies, and in cases where ESD determines that SEQR is applicable to a project, compliance with SEQR will be a precondition to an applicant receiving disbursements of awarded Program funds.

G. Applicability of Smart Growth Review Requirements

The State Smart Growth Public Infrastructure Policy Act of 2010 requires that public infrastructure projects approved, undertaken, supported or financed by a State Infrastructure Agency, which includes ESD, to the extent practicable, are consistent with relevant Smart Growth Criteria specified in the law. Phase 3 projects may be subject to review under this law. Accordingly, ESD may request that a Smart Growth Impact Statement be completed for the project.

H. Environmental Sustainability

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

I. Sharing of Tax Information

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

J. Sharing of Labor Information

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

K. Severability

As noted above, these Phase 3 Request for Proposal Guidelines govern two separate solicitations –the New York State Auction and the New York CAF Auction. The subsequent invalidity or unenforceability of any portion of these Guidelines shall in no way affect the validity or enforceability of the other portions. Any invalid or unenforceable provision shall be deemed severed from these Guidelines and the balance of the Guidelines shall remain in full force and effect as if these Guidelines did not contain such invalid or unenforceable portion. Similarly, should any legal restraint, administrative proceeding, or judicial action stay or delay commencement of one of the Auctions, ESD shall have the sole authority to determine whether to proceed with the other Auction notwithstanding such restraint, proceeding, or action.

L. Sharing of Information with Federal Communications Commission

Applicants to the New York CAF Auction authorize ESD to share information concerning their proposals, including application documents and supporting submissions, with the Federal Communications Commission for the purpose of administering the New York CAF Auction. Materials shared in this matter will be subject to all applicable FCC rules and processes concerning the handling of confidential information.

XIV. QUESTIONS

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

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

APPENDIX A

GENERAL DEFINITIONS

1. **Additional Service Area (ASA)** – Refers to an application proposing to serve Unserved or Underserved Units in any CB on List D

2. **Applicant** – Refers to any entity or group of entities submitting a proposal for Phase 3 of the New NY Broadband Grant Program

3. **Application Deposit** – To participate in Phase 3, applicants will be required to provide a deposit in the amount of $100,000.00, in the form of a Letter of Credit, pursuant to the terms of Appendix E

4. **Application Fee** – Applicants will be required to pay a non-refundable amount of $250, pursuant to the terms of Appendix E

5. **Bifurcated Census Block** – Census Blocks in which the applicant is proposing to serve fewer than all Eligible Units because the CB is divided by a cable franchise boundary or a telephone exchange boundary

6. **CAF-eligible Locations** - The FCC requires that Connect America Fund recipients offer service meeting the applicable service standards to a set number of locations. Only HU's as defined by the U.S. Census Bureau and businesses that are expected to demand consumer-grade broadband services (typically, small businesses) may be counted towards a CAF recipient's total locations for purposes of meeting the FCC's deployment obligations

7. **Census Block (CB)** – The smallest geographic unit used by the U.S. Census Bureau

8. **Co-Investment** – Refers to the applicant's financial commitment to the project (also referred to as "Matching Funds")

9. **Connect NY Broadband Grant Program (Connect NY)** - The "Connect NY" Broadband Program provided grants to promote and expand high-speed Internet access in rural upstate and underserved urban areas of the State

10. **Connect America Fund (CAF)** – a Federal Communications Commission (FCC) program that supports the deployment of voice and broadband networks.

11. **Consumer Price Index (CPI)** – A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services

12. **Dependent Application** – Applicants submitting multiple applications may request that an individual application be considered in combination with not more than one other of their applications by designating such an application as a "Dependent Application," provided that such a combination reduces the aggregate amount of requested State investment to fund both applications (*as discussed in Section V.A.4 of these Guidelines*)

13. **Digital Subscriber Line (DSL)** - A technology for bringing high- bandwidth information to homes and small businesses over ordinary copper telephone lines

14. **Educational Opportunity Centers (EOC's)** – Members of a statewide network of educational institutions that operate in affiliation with the State University of New York

15. **Eligible Census Blocks (Eligible CBs)** – Census Blocks that may be included in a Phase 3 Application. These are identified on the List of Eligible Census Blocks, and may be "Eligible Unserved CBs" (List A), "Eligible Underserved CBs" (List B), "Additional Service Area CBs" (List D), or "CAF-eligible CBs" (List C)

16. **Eligible Project Costs** – Expenses eligible for reimbursement under the New NY Broadband Program RFP Grant Guidelines (*as discussed in Appendix C of these Guidelines*)

17. **Eligible Telecommunications Carrier (ETC) –** Telecommunications carriers authorized by the FCC or a state public utilities commission to receive federal CAF support

18. **FCC Waiver Order** – The January 26, 2017 Order from the FCC approving New York's request to waive the Phase 2 FCC competitive bidding rules in New York, allowing the disbursement of CAF funding in connection with the New NY Broadband Program

19. **Fiber-to-the-Home (FTTH)** – A network that delivers Internet service over optical fiber directly to an end-user home, business, or other Unit

20. **Fixed Wireless** – Wireless devices or systems that are situated in fixed locations

21. **Housing Unit (HU)** – Defined by the U.S. Census Bureau as a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall

22. **Hybrid Fiber Coaxial (HFC)** - A broadband network combining optical fiber and coaxial cable

23. **Last-Mile** – Components of a network that provide broadband service to end-user premises or devices through an intermediate point of aggregation (*e.g.*, remote terminal, fiber node, wireless tower, or other equivalent access point)

24. **Linked Application** – Where an applicant designated one application as "dependent" on another, the application joined to the Dependent Application is referred to as a "Linked Application" (*as discussed in Section V.A.4 of these Guidelines*)

25. **Middle Mile** – Network components that provide broadband service from one or more centralized facilities (*e.g.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facilities) to an Internet point of presence

26. **Minimum Service Area** – Phase 3 applications must address at least 250 Units or serve all Eligible CBs within an REDC Region

27. **Modification Limit** – The maximum percentage reduction in Units an applicant agrees to accept as compared to the original number of proposed Units in said application. This limit is 20% unless the applicant agrees to a higher percentage reduction. A reduction in the total number of Units may not exceed this defined modification limit without the Applicant's agreement

28. **Modified Award** – Refers to an allocation of funding an applicant may receive if their proposed Service Area overlaps with that of another applicant (*as discussed further in Section V.A.5 of these Guidelines*)

29. **New NY Broadband Program Phase 3 (Phase 3)** – Refers to this third allocation of New NY Broadband Program grant awards, *as discussed throughout these Guidelines*

30. **New York CAF Auction** – Refers to the statewide auction ranking proposals to address Census Blocks eligible for FCC CAF funding (List C of the Phase 3 Lists of Eligible CBs). The New York CAF Auction will occur separate and apart from the New York State Auction

31. **New York State Auction** – Refers to the regional auctions ranking proposals to address Census Blocks not eligible for FCC CAF funding – Eligible Unserved CBs (List A of the Phase 3 Lists of Eligible CBs); Eligible Underserved CBs (List B) and/or Additional Service Area CBs (List D). The New York State Auction will occur separate and apart from the New York CAF Auction

32. **Phase 3 Requirements** – Criteria that applications must meet to be considered in the Phase 3 Reverse-Auction (*as discussed in Section V of these Guidelines*)

33. **Project** – Applicant's Proposed Phase 3 Project

34. **Qualifying Applications** – Applications that meet the Phase 3 Requirements (or are granted a waiver) and may be considered in the Phase 3 Reverse-Auction

35. **Qualifying Connect NY and REDC Projects** – Connect NY and REDC Broadband Projects that will deliver broadband at Internet download speeds of at least 25 Mbps. Because they meet the New NY Broadband Program's speed goals, service areas for these projects will not be considered in Phase 3

36. **Regional Economic Development Councils (REDC's)** – Established in 2010 by Governor Cuomo, these 10 public-private partnerships are made up of local experts and stakeholders and work to develop long-term strategic plans for economic growth for their respective regions of the State

37. **REDC Priority Areas** – Prior to February 15, 2016, each REDC had the opportunity to identify priority areas within their Region requiring Broadband service. To the extent such areas correspond with Eligible CBs, they would be designated "REDC Priority Areas." In the event two Phase 3 applications are received, which qualify in all other respects and are substantially similar in amounts of State Investment per-Unit-Served, applications serving REDC Priority Areas shall be given priority

38. **Required Pricing Tier** – A broadband pricing tier for residential users offering service at minimum Internet speeds of 25/4 (download/upload) at a monthly rate not to exceed $60 (including any connection fees, equipment fees, and/or surcharges), except for applicants offering Minimum Service, *as described in Section V.F*

39. **Reserve Price** – The price used to calculate the Bidding Credits for purposes of the New York CAF Auction, which shall be equal to $7,983 per-Unit (*see Section X.C*)

40. **Reverse-Auction** – A type of auction in which the roles of buyer and seller are reversed. In an ordinary auction (also known as a forward auction), buyers compete to obtain a good or service by offering increasingly higher prices. In a Reverse-Auction, the sellers compete to obtain bids from the buyer and prices will typically decrease as the sellers outbid each other

41. **Satellite Internet Access** – Internet service provided through a communications satellite

42. **Served** – An area where broadband service is available from a wireline facilities-based provider at advertised speeds equal to or higher than 100 Mbps (download)

43. **Service Area** – Refers to the geographic territory in which an applicant has proposed to provide service

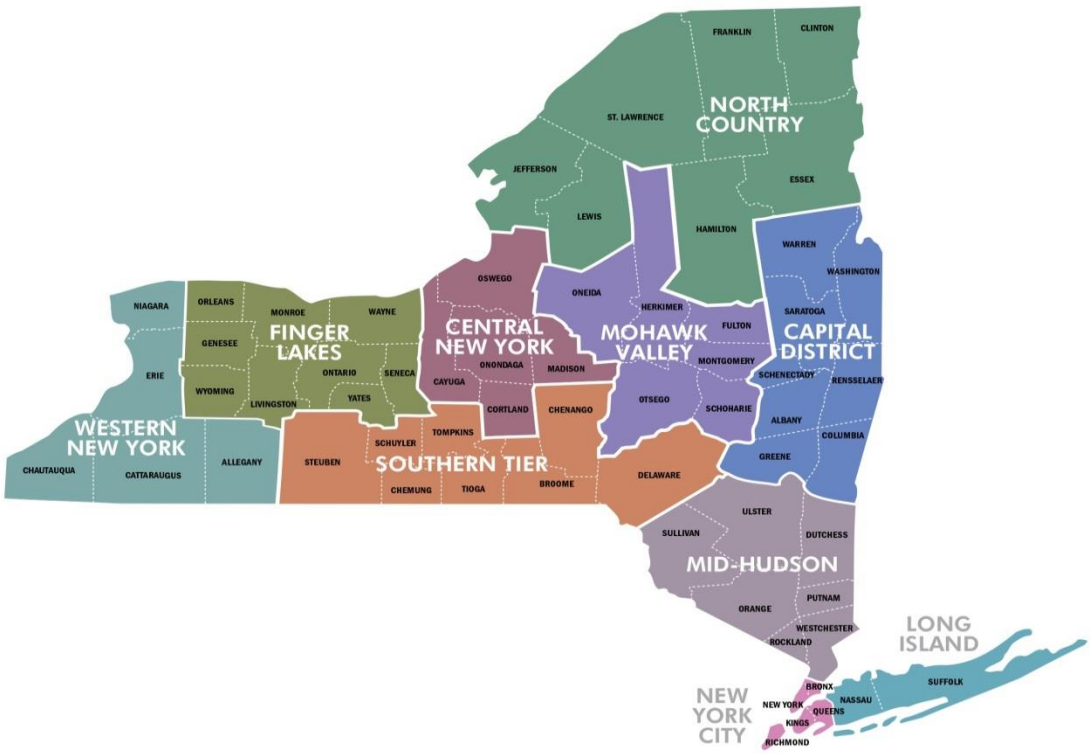
44. **Underserved** – An "Underserved" area is defined as an area where broadband service is only available from a wireline-based provider at advertised Internet download speeds between 25 Mbps and 99 Mbps

45. **Units** – "Units" include Housing Units, commercial properties, governmental buildings, healthcare facilities, K-12 schools, libraries, educational opportunity centers, institutions of higher education, and other community institutions. Unit counts provided by the BPO for the CAF-eligible CBs reflect the FCC's CAF-eligible location totals

46. **Unserved** – An "Unserved" area is defined as an area where the fastest available advertised Internet download speed offered by a wireline -based provider is less than 25 Mbps

APPENDIX B

MAP OF NYS ECONOMIC DEVELOPMENT REGIONS



APPENDIX C

PHASE 3 ELIGIBLE AND INELIGIBLE EXPENSES

New NY Broadband Program Phase 3 funds may be used:[45]

- To fund the construction or improvement of all facilities required to pass all Units[46] located within the Applicant's Service Area with a network capable of providing the specified broadband service.
    - "Construction or improvement" should also include the cost of all network infrastructure and electronics required to connect Units to the network in order to provide service to end-users located within the Service Area that are expected to subscribe to service upon completion of the project (*i.e.*, the cost to "run drops" to anticipated customers), where such connections are within standard drop lengths,[47] require standard electronics, and do not require the placement of poles on the end-user's premises (Special Construction). Such costs, exclusive of Special Construction and equipment sold or leased to end-user customers, are eligible expenses within these Guidelines.
    - "Construction and improvement" also includes costs associated with end-users located within the Service Area that are not expected to subscribe to service upon project completion. Applicants must provide service, in a reasonable timeframe and at no additional cost (outside the standard monthly recurring cost for service), to the locations of these potential customers where such connections are within standard drop lengths, require standard electronics, and do not require Special Construction. Such costs, exclusive of Special Construction and equipment sold or leased to end-user customers, are eligible expenses within these Guidelines.
    - Systems shall be designed and constructed so that customers not within a standard drop length only require installation of a longer drop, and, only in very extreme instances, additional amplification for that customer.
- For the upfront investment associated with installing and/or upgrading existing broadband facilities on a one-time, capital improvement basis, in order to expand broadband access and increase capacity.

[45] Please note that, to be considered an eligible expense under the New NY Broadband Program, any infrastructure to be constructed or upgraded must be located in New York State.

[46] Please note that, while projects must be completed by December 31, 2018, applicants may submit a proposal that assumes reimbursement of costs associated with customer installations for a period up to 24 months beyond their project completion date. Because Phase 2 grants are to be disbursed on a reimbursement basis, grantees will only be permitted to recover actual costs incurred based on requested customer installations.

[47] 16 NYCRR section 895.5(b)(3) defines standard drop lengths as 150 feet.

- Where proposed construction or equipment or other items (leases, expenses, indirect costs) may serve both the proposed areas and other areas (dual use), the applicant shall calculate the percentage of passings in the proposed area or areas relative to the total number of passings, and only that percentage of the cost of dual use construction or equipment shall be eligible.
- To fund the cost of long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service.
- To fund reasonable make-ready expenses incurred as a result of providing broadband service.
- To fund reasonable indirect costs associated with the implementation of the grant efforts and consistent with the principles outlined in the New NY Broadband Program Phase 3 RFP Guidelines, excluding maintenance and operating expenses, customer operations, general and administrative costs, efforts associated with bidding on and obtaining the grants, and any efforts not associated with the actual deployment of the network.
    - An applicant may not seek indirect costs in an amount constituting more than 15% of the applicant's total eligible expenses.
    - Such costs must be identified as line-items in the application to be eligible for reimbursement. Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed. When seeking reimbursement, applicants must submit such indirect costs as line-items and provide justification for the expense.

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

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

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

Ineligible Expenses:

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

APPENDIX D

PHASE 3 GRANT DISBURSEMENT AGREEMENT

<u>Please note</u>: This Grant Disbursement Agreement (GDA) is a template to be used for New NY Broadband Program Phase 3 awards. Notwithstanding this form, specific terms and conditions of each executed GDA may vary, based on the terms of each application. Additionally, Empire State Development (ESD) reserves the right to modify and/or update this template.

<u>NEW NY BROADBAND PROGRAM</u>

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

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT ("ESD" or "GRANTOR"):	633 Third Avenue New York, NY 10017 Contact: «Project_Manager» Phone: «Project_Mgr_Phone» E-mail: «Project_Mgr_email»
THE GRANTEE:	<<Original_Name_Client>> <<Street_Address_Client>> Contact: Phone: E-mail: Federal Taxpayer ID#:
PROJECT NAME:	<<Project_Name>>
PROJECT LOCATION:	<<Project_Town>>, <<Project_Zip codes>>
PROJECT NUMBER:	<<Project_Number>>
GRANT AMOUNT:	<<Grant_Amt>>
FUNDING SOURCE:	New NY Broadband 15-16 Capital

ESD APPROVAL DATE: <<Approval_Date>>

PACB APPROVAL DATE: <<PACB_Approval_Date>>

EXPIRATION DATE: _____

TERMS AND CONDITIONS

1. The Project

The Grantee shall:

(a) Complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the "Project").

(b) Comply with the minimum Grantee service level requirements and reporting requirements.

(c) Comply with Good Faith Marketing Efforts as set forth in paragraph 23.

2. Project Reporting

(a) **Key Project Indicators.** Exhibit K lists the Key Project Indicators ("Indicators") for your broadband project which will be achieved by the end of the term of this Agreement. The Grantee represents and warrants that it will complete all Indicators. If Grantee fails to deliver broadband services as indicated in Exhibit K, it shall repay to ESD a portion, or the entire Grant disbursed as set forth in Exhibit E. ESD reserves the right, but is under no obligation to waive this requirement.

(b) **Reporting to ESD**. (i) Indicators are required to be reported quarterly from award inception to the end of this Agreement. The Grantee shall submit electronically to nysbroadband@esd.ny.gov a Key Project Indicator Reporting Form ("Report"), attached as Exhibit L, to ESD on a quarterly basis, within ninety (90) days of execution of this Agreement and every ninety (90) days thereafter until the end of this Agreement. (ii) Grantee also agrees to provide ESD with verbal or written status updates, ("Updates") including but not limited to progress regarding the Grant Project and any known impediments or delays, upon ESD's reasonable request, but not more frequently than on a monthly basis. ESD is entitled to rely on the Reports and Updates to determine performance of the Grant Project. Failure to submit Reports and Updates when due may result in deferred distribution of ESD grant funds ("Grant Funds") as set forth in Exhibit E.

(c) **Third Party Reporting and Compliance.** (i) Broadband Mapping ("Mapping"). Grantee is required to provide ESD or designated agent, broadband data as follows and as indicated in Exhibit M. Bolded terms below are defined in Exhibit L.

(i) **Addresses and Service Characteristics**, attached as Table 1, where new broadband service is deployed or upgraded within the project footprint ("Footprint") must be reported quarterly, when new or upgraded broadband service is delivered to customers, within 30 days of ESD's request, but not more frequently than on a monthly basis, and at the completion of this Agreement.

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

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

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

3. Conditions Precedent to Disbursement of the Grant

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

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

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

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

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

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

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

4. Disbursement and Recapture Terms

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

(a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E of this Agreement. Disbursements will be made upon submittal to ESD and approval by ESD of
    (i) A Report
    (ii) Updates
    (iii) Mapping
    (iv) A Milestone Report
    (v) Grantee is in compliance with NESC requirements
    (vi) A Payment Requisition Form and any supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit J.

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

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

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

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

5. Non Discrimination and Contractor & Supplier Diversity

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

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of, or in any way in connection with the Project, and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability, other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Responsibility Provisions

(a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.

(c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee's expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her

designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

(a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.

(c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.

(d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.

(e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.

(f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of

Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.

(g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

(h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.

(i) It shall maintain business operations for the broadband network and all related equipment necessary to provide broadband services within the Footprint for the term of this Agreement.

(j) The Grant shall be used solely for project expenses in accordance with the terms and conditions of this Agreement.

(k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.

(l) Grantee will use Grant Funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes. Grantee acknowledges that Grant Funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of State law. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, periodically request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9(a)(iii) of the GDA to provide information upon request to ESD.

(m) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

(n) The Project shall be capable of offering Internet download speeds consistent with Grantee's application and all requirements of the Program to all Units, as defined within the New NY Broadband Program RFP Guidelines, within each Census Block addressed by the Project. The Project may not divide any Census Block, except as permitted by the Broadband Program Office pursuant to the RFP Guidelines. Further, to the extent the actual number of Units in any Census Block differs from Grantee's proposal, it is the responsibility of Grantee to ensure that the Project passes all Units identified by the Broadband Program Office. Grantee may not seek additional grant funds above the Award in connection with passing such Units.

Additionally, if the Project utilizes wireless technology components, the Grantee further agrees that it will add such equipment/facilities required to connect customers and deliver Internet speeds consistent with the Grantee's application to all Units within each Census Block to be addressed by the Project, even if subscribership to the Grantee's network exceeds the Grantee's expectations. This includes:

- *Subscribing Units*: All customer Units within the Project Location must be provided access to the Grantee's network even if the Grantee's subscription rate exceeds the network's capacity. *I.e.*, if the Grantee is more successful than planned in attracting subscribers, subscribers must be provided access with Internet speeds consistent with Grantee's application.

- *Radio Access Network (RAN) site Radio Frequency (RF) capacity*: If subscribership exceeds the Grantee's plan, Grantee must expand RAN site RF capacity to provide subscriber throughput consistent with Grantee's application.

- *RAN site Backhaul and Peering Capacity*: If RAN site demand exceeds the Grantee' plan, Grantee must expand backhaul and/or peering capacity to provide subscriber throughput consistent with Grantee's application.

Grantee may not seek additional grant funds above the Award to add such equipment/facilities.

(o) Grantee shall offer the New NY Broadband Program's Required Pricing Tier, as a service option to residential users for a period of five (5) years from following the first date that end-users of service provided through the Project may be connected. The Required Pricing Tier will provide for broadband Internet service at minimum speeds of 25/4 Mbps (download/upload), at a monthly rate not to exceed $60. Such service should not impose caps on the end-user's bandwidth usage (data caps). The

$60 monthly rate should include any connection fees, standard modem equipment fees (excluding fees for use of a wireless router), and/or surcharges.

The $60 monthly rate described above need not include a one-time installation fee. Such a fee shall not exceed $49 (regardless of whether the fee is paid in one or over several installments), except where providing service to an end-user would require Grantee to make a connection in excess of 300 feet, measured as the offset from the road to the typical termination point on the end-user's premises. In such cases, the Grantee is permitted to charge a custom installation fee in excess of $49.

The rate is effective as of December 2015, and may be increased annually by the provider at a rate reflecting the rate of inflation as measured by the Consumer Price Index (CPI) or according to a rate published by ESD, whichever such increase would be greater. Additionally, to the extent ESD modifies the Program's pricing requirements for future rounds of the Program, and such changes are favorable to Grantees, ESD will make these revised terms available to existing Grantees.

9. Default and Remedies

(a) Each of the following shall constitute a default by the Grantee under this Agreement:

(i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, to the reasonable satisfaction of ESD and within the time frames established under this Agreement, including without limitation, failure to complete Indicators and Milestones by the end of the term of this Agreement.

(ii) Failure to submit Reports, Updates, Mapping, and Milestone Reports, and failure to be in compliance with NESC requirements for over 60 days. ESD reserves the right to waive this requirement.

(iii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement, or otherwise reasonably requested by ESD in connection with the Grant.

(iv) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in, or in connection with this Agreement, the Security Agreement (as defined in Section 24 hereof), or the Grant.

(v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.

(vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business. This includes, without limitation, the announced or actual cessation of business activities at the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any State or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.

(vii) Failure by the Grantee, for any period of time, to comply with the terms and procedures of Section 7 of this Agreement.

(viii) The occurrence of an Event of Default, as defined in the Security Agreement.

(b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) 9(a)(ii), 9(a)(iii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default is pursuant to paragraph 9(a)(i), 9(a)(ii) or 9(a)(iii), cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraphs 9(a)(iv), 9(a)(v), 9(a)(vi), 9(a)(vii), and 9(a)(viii) are not subject to the cure provisions provided herein.

(c) Upon occurrence of a default pursuant to paragraph 9(a)(i), 9(a)(ii), 9(a)(iii), 9(a)(iv), 9(a)(v), 9(a)(vi), 9(a)(vii), or 9(a)(viii), ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit E of this Agreement and (iii) proceed to protect and enforce its rights hereunder and under the Security

Agreement forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in this Agreement or in the Security Agreement or for the enforcement of any legal or equitable rights or remedies as ESD shall deem most effectual to protect and enforce such rights hereunder or under the Security Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement (unless terminated prior to such date pursuant to paragraph 9 (b) hereof).

11. Books and Records; Project Audit

(a) The Grantee will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.

(b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Maintenance of Insurance

The Grantee shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub consulting agreement. Any such additional types or amounts of coverage are specified herein – *see Table E* (*below*), if applicable.

I. COMMERCIAL GENERAL LIABILITY INSURANCE.

Limits of Liability:
$1,000,000 Each Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$10,000 Medical Expense Limit (any one person)
$1,000,000 Damage to Rented Premises (each occurrence)
(a) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.
(b) Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
(c) Policy shall include coverage for Independent Contractors;
(d) Policy shall include Contractual Liability for liability assumed under this contract

II. COMMERCIAL AUTO LIABILITY INSURANCE. If applicable:

Limit of Liability:
$1,000,000 Each Accident
(a) Policy shall be written on ISO Form Number CA 00 01 covering any auto (Symbol 1), or if Grantee has no owned autos, covering hired, (Symbol 8) and non-owned autos (Symbol 9)

III. WORKERS' COMPENSATION INSURANCE. Workers' Compensation and Disability Benefits as required by New York State.
Employer's liability
$1,000,000 Bodily Injury each Accident
$1,000,000 Bodily Injury by Disease - Policy Limit
$1,000,000 Bodily Injury by Disease - Each Employee

IV. UMBRELLA/EXCESS LIABILITY. If applicable, see Table E.

V. PROFESSIONAL LIABILITY INSURANCE. If applicable, see Table E.

VI. Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

VII. OTHER REQUIREMENTS.

(a) The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation, and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds.

(b) As respects General Liability, additional insured endorsements shall be on a form at least as broad as ISO Forms CG 20 10 07 04 & CG 20 37 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which the above parties are required to be named as Additional Insureds.

(c) Grantee shall, by specific endorsement to its primary commercial general liability policy and, if applicable, automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and non-contributory with any other valid and collectible insurance available to the Additional Insureds.

(d) Acceptance and/or approval by the Corporation of any insurance does not, and shall not, be construed to relieve the Grantee of any obligations, responsibilities or liabilities.

(e) All required insurance shall be obtained at the Grantee's sole cost and expense; shall be primary and non-contributory to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(f) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(g) Grantee shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(h) Grantee shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein and add the Corporation as additional insured on a form at least as broad as ISO Form CG 20 38 04 13 and CG 20 37 07 04 combined.

(i) The Grantee shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Grantee shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(j) Not less than thirty (30) days prior to the expiration or renewal date, the Grantee shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

(k) The Grantee shall cause to be included in each of its policies a waiver of the insurer's right of subrogation against the Corporation or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Grantee waives or has waived before the loss, the right of recovery against the Corporation or (ii) any other form of permission for the release of the Corporation.

TABLE E - Additional Insurance

Excess Liability

Limits of Liability: ($2,000,000) per occurrence (For Project Location in New York City, Long Island or Westchester)

Limits of Liability ($1,000,000) per occurrence (For Project Location OUTSIDE of New York City, Long Island or Westchester)

Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability.

Policy to include a drop down provision over primary policies.

13. Survival of Provisions

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

14. Notices

(a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:

(i) via certified or registered United States mail, return receipt requested;
(ii) by facsimile transmission;
(iii) by personal delivery;
(iv) by expedited delivery service; or
(v) by e-mail.

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

Empire State Development

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

With a copy to:

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

<<Orgn_Name_Client>>

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

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

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent

in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

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

16. No Waiver

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

17. Integration/Modification

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

18. Governing Law

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

19. Confidentiality of Information

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

20. Special Provisions

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

21. Litigation Costs

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

22. Waiver

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

23. Good Faith Marketing Efforts

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

(1) Copies of its press releases, marketing plans, and promotional or marketing materials
(2) Copies of any advertisements

(3) Specific reasons for low adoption rates
(4) Contingency plan to increase adoption rates

Promotion/Marketing of Broadband Service to Project Location

Grantee's promotional and/or marketing materials, including websites and other Internet-based marketing, shall state, at a minimum, that "This deployment of broadband service is supported by a grant awarded to [insert Grantee name] by New York State through the New NY Broadband Program." These materials must be provided to the ESD Broadband Program Office for review and approval before being issued. Upon the request and approval of the Broadband Program Office, the Grantee shall also include an official logo or similar approved graphic provided by the Broadband Program Office next to the foregoing statement of recognition.

Additionally, all press releases relating to launch of service shall recognize the New NY Broadband Program grant with language as per the foregoing paragraph. Such releases, as well as any additional press statements or releases that include information about, or otherwise reference, whether directly or indirectly, the Grantee's New NY Broadband Program grant, and/or implementation thereof, must be provided to ESD for review and approval before being issued.

Please send draft marketing and/or promotional materials, as well as draft press releases, to Ana.Rua@esd.ny.gov.ESD reserves the right to change the designated contact for purposes of this Paragraph with notice to the Grantee.

24. Security Agreement

Contemporaneously with the delivery of this Agreement, the Grantee and ESD shall enter into a Security Agreement substantially in the form attached hereto as Exhibit P (together with all amendments and supplements thereto hereafter made in conformity therewith and herewith, the "Security Agreement").

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

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

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

(date)

<<Orgn_Name_Client>>

(Signature)

(Printed name and title)

(date)

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports & D&C Requirements
EXHIBIT C	Employment Goals
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement & Recapture Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Documentation of Project Costs
EXHIBIT F-3	Equity Expenditure and Project Cost Affidavit
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – MWBE Requirements and Procedures
EXHIBIT G-1	Intentionally Deleted
EXHIBIT G-2	Intentionally Deleted
EXHIBIT G-3	Intentionally Deleted
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Non-Discrimination and Contractor & Supplier Diversity – SDVOB Requirements and Procedures
EXHIBIT H-1	Intentionally Deleted
EXHIBIT H-2	SDVOB Contractor Compliance and Payment Report

EXHIBITS, Cont.

EXHIBIT I	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT J	Special Provisions
EXHIBIT K	Key Project Indicators
EXHIBIT L	Key Project Indicator Report
EXHIBIT M	Broadband Mapping Data Specifications
EXHIBIT N	Project Milestones
EXHIBIT O	Project Milestones Report
EXHIBIT P	The Security Agreement

EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

Intentionally Deleted

EXHIBIT C: EMPLOYMENT GOALS

Intentionally Deleted

EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
633 Third Avenue
New York, NY 10017

Attn: «Project_Manager»

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

Ladies and Gentlemen:

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

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

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

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

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and other representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

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

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

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

3. Under the Uniform Commercial Code as in effect on the date hereof in the State of New York (the "NY UCC"), the provisions of the Security Agreement are effective to create a security interest in the Debtor's rights in that portion of the Collateral (as defined in the Security Agreement) in which a security interest may be created under the NY UCC, in favor of the Secured Party to secure the Obligations (as defined in the Security Agreement).

4. Under the Uniform Commercial Code as in effect on the date hereof in [identify name of jurisdiction where financing statement is filed] (the "Filing UCC"), the Financing Statement[s] [is][are] in sufficient form for filing in the [identify filing office[s] where the financing statement is filed] (the "Filing Office[s]"). Under the Filing UCC, the security interest of the Secured Party will be perfected in the Debtor's rights in that portion of the UCC Collateral in which a security interest can be perfected under the Filing UCC by the filing of a financing statement in the Filing Office[s] upon the later of the attachment of the security interest and the filing of the Financing Statement[s] in the Filing Office[s].

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York and the Uniform Commercial Code, as in effect on the date hereof in [any jurisdiction other than New York where a financing statement is being filed]. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

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

Very truly yours,

EXHIBIT E: DISBURSEMENT AND RECAPTURE TERMS

Disbursement

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

Fees due:

Reimbursement for out-of-pocket expenses $_____ (To be determined)

TOTAL due: $_____

I. Grant Disbursements

Funds will be disbursed for reimbursement of eligible expenses during the course of design and/or construction as frequently as quarterly, in proportion to ESD funding share of XX% of the total project costs, provided Milestones are achieved. Funds will only be disbursed if the Grantee is in compliance with the terms and conditions of this Agreement. Grantees must submit to ESD, the Report; Updates; Mapping; a Milestones Report; evidence supporting completion of Milestones and Indicators; invoices; and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments; and Grantee is in compliance with NESC requirements. Failure to submit any of the referenced supporting documents when due may result in deferred distribution of the Grant Funds. Payment will be made upon acceptance by ESD of submitted expenses and documentation. Expenses must be incurred on or after AWARD DATE to be considered eligible project costs. ESD reserves the right to waive the requirement related to the completion of meeting Milestones or Indicators.

II. Final Disbursement

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

Grantee must submit all documentation for the final disbursement of the Grant for reimbursement of costs associated with design and construction of the Project by no later than _____, 20__.

Grantee must submit all documentation for the final disbursement of the Grant for reimbursement of costs associated with installation of service on customer premises by no later than _____, 20 __.

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

Wire Transfer Information:

Please provide:

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

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

Deferral Terms

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

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

Recapture Terms

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

Recapture Amount

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

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

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

(i) 100% of the disbursed amount if the transfer occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
(ii) 80% of the disbursed amount if the transfer occurred in the second full calendar year after the disbursement was made;
(iii) 60% of the disbursed amount if the transfer occurred in the third full calendar year after the disbursement was made;
(iv) 40% of the disbursed amount if the transfer occurred in the fourth full calendar year after the disbursement was made;
(v) 20% of the disbursed amount if the transfer occurred in the fifth full calendar year after the disbursement was made.

(b) The Recapture Amount, if the failure to complete Indicators or Milestones occurs, shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

(i) 100% of the disbursed amount if 0% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
(ii) 90% of the disbursed amount if 1% to 10% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
(iii) 80% of the disbursed amount if 11% to 20% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
(iv) 70% of the disbursed amount if 21% to 30% of the Milestones and Indicators are completed by the time of submitting final reporting requirements;
(v) 60% of the disbursed amount if 31% to 40% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
(vi) 50% of the disbursed amount if 41% to 50% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
(vii) 40% of the disbursed amount if 51% to 60% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
(viii) 30% of the disbursed amount if 61% to 70% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
(ix) 20% of the disbursed amount if 71% to 80% of the Milestones or Indicators are completed by the time of the submitting final reporting requirements;
(x) 10% of the disbursed amount if 81% to 90% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;
(xi) 5% of the disbursed amount if 90% to 99% of the Milestones or Indicators are completed by the time of submitting final reporting requirements;

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

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

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

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

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

Dear «Project_Manager»:

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

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

Invoice #: _____

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

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

1) To the best of my knowledge, information and belief, the expenditures for which <<Orgn_Name_Client>> is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and <<Orgn_Name_Client>>, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD's Internal Audit Department.

2) I have the authority to submit this invoice on behalf of <<Orgn_Name_Client>>. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.

3) I hereby attach the following documents for ESD approval, in support of this requisition:

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

___ Exhibit H-2: SDVOB Contractor Compliance and Payment Report
___ Exhibit K: Key Project Indicator Report
__ Exhibit N: Project Milestones Report

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM, Cont.

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

4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.

5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.

6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

Signature: _____ Date:_____

Print Name: _____

Title:_____

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

EXHIBIT F-1: FINANCIAL CONDITION DOCUMENTATION

[Letterhead of CPA]

(Date)

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

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

Dear [Project Manager]:

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

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

1. Obtain from the Company, their most recent historical financial statements that have been prepared subsequent to the project's approval date. Read the financial statements for the purpose of noting whether there is any indication that the company has filed bankruptcy or whether the entity has experienced a default on any of its debt obligations. Report as a finding any indication that the Company may have filed for bankruptcy or has experienced a default subsequent to the Project's approval date.

2. Request all minutes of the board of directors and other committee meetings since the date of the project's approval. If minutes are not available, obtain any abstracts or notes from such meetings. Read the minutes or abstracts and report as a finding any indication that the Company has filed for bankruptcy or whether the entity has

experienced a default on any of its debt obligations subsequent to the project's approval date.

3. Obtain a description and evaluation of any pending litigation, claims, or assessments and examine supporting documents, including legal correspondence. Report as a finding any indication that the Company may have filed for bankruptcy or whether the entity has experienced a default on any of its debt obligations subsequent to the project's approval date.

4. Obtain or prepare an analysis of notes payable, long-term debt, capitalized lease obligations, and other financing transactions or arrangements, such as lines of credit that existed as of the project's approval date. Compare balances in the company's liability accounts to debt amortization schedules and, if applicable, to the terms of new debt agreements. Report any findings of default.

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

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

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

Sincerely,

_____, CPA

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

EXHIBIT F-2: DOCUMENTATION OF PROJECT COSTS

[CPA Letterhead]

Report of Independent Accountants

Date

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

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

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

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

1. Obtained the attached "Statement of Actual Costs" for the Project (<<Project_Name, <<Project_Number>>) prepared by the Company.

2. Agreed the total per the Statement of Actual Costs to the Company's financial accounting records – the fixed asset subledger (…or name appropriate financial record report)

3. For costs and expenses appearing on the Statement of Actual Costs, selected a sample for detailed testing of underlying transactions. [CPA will indicate method of selection, dollar value and percentage of items sampled.]

4. For each asset or expense item selected, obtained the supporting documentation, such as purchase orders, receiving reports, invoices and cancelled checks as deemed appropriate [CPA will indicate which documentation was used].

5. Examined the supporting documentation for sampled items, noting the invoice date, invoice number and invoice amount. Agreed the dollar amount on the invoice to the Company's financial accounting records (fixed asset subledger – or appropriate report name) and the statement of actual costs.

6. For each invoice examined, obtained the related wire transfer documentation noting the wire transfer date, number, and amount. Then, agreed the wire transfer amount to the vendor invoice amount.

7. For each asset or expense item selected, determined that such sampled item is a capital expense in accordance with applicable state and federal law.

[Summarize any exceptions, if applicable]

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

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

(CPA)

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

<u>Specified Party Contact Information:</u>
Empire State Development
633 Third Avenue
New York, NY 10017
(«Project_Manager»)

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

***Equity Amount** refers to the Grantee's share of the project cost, **not** the total project cost, and should not include financing from sources other than the Grantee.
****Project Cost** should correspond to the total stated in Exhibit F-2

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

The Undersigned, being duly sworn, deposes and says:

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

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

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

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

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

_____
By:
Name:
Title:

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

Notary Public

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

I. General Provisions

A. Empire State Development ("ESD") is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Recipient to the subject Grant Disbursement Agreement (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the ESD, to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. For purposes of this project, ESD hereby establishes an overall goal of __% for MWBE participation, __% for New York State certified minority-owned business enterprises ("MBE") participation and __% for New York State certified women-owned business enterprises ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of qualified MBEs and WBEs.

B. For purposes of providing meaningful participation by MWBEs on the project and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: https://ny.newnycontracts.com.

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

C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful

participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Each Contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to ESD within seventy two (72) hours after the date of the notice by ESD to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the ESD may provide the Contractor or Subcontractor a model statement (see Form OCSD-1 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:

    a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the

basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

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

C. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to ESD, either prior to, or at the time of, the execution of the contract.

B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the project pursuant to the prescribed MWBE goals set forth in Section III-A of this Exhibit.

C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor's non-responsiveness.

V. Waivers

A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Contractor may arrange to provide such evidence via a non-electronic method to ESD.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

A. Where ESD determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to ESD liquidated damages.

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

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

NEW YORK STATE OF OPPORTUNITY. Empire State Development

EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Intentionally Deleted

NEW YORK STATE OF OPPORTUNITY. Empire State Development

EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

STAFFING PLAN

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EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WORKFORCE UTILIZATION REPORT

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EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WORKFORCE UTILIZATION REPORT

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EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WAIVER REQUEST FORM

Waiver Applicant	
Contractor Name:	Fed ID No.:
Full Address:	Contract / RFP Number:
Project Details (Contract Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)

By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on pages three and four of this form for the precise definition of "Good Faith Effort". Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity (OCSD).

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EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WAIVER REQUEST FORM

***CURRENT CONTRACT VALUE: $**

***CURRENT MBE & WBE GOALS:**

MBE: _____ % **+** WBE: _____ % **= OVERALL MWBE GOAL**: _____ %

INDICATE ONLY THE OVERALL MWBE GOAL IF SPECIFIC MBE AND WBE GOALS WERE NOT ASSIGNED.

***CONTRACTOR IS REQUESTING :**

1. ☐ **MBE** Waiver – A waiver of the MBE Goal for this procurement is requested.
   CURRENT MBE GOAL: _____ %
   REQUESTED MBE GOAL: _____ %
2. ☐ **WBE** Waiver – A waiver of the WBE Goal for this procurement is requested.
   CURRENT WBE GOAL: _____ %
   REQUESTED WBE GOAL: _____ %
3. ☐ **OVERALL MWBE Waiver** – A waiver of the MWBE Goal for this procurement is requested.
   CURRENT OVERALL MWBE GOAL: _____ %
   REQUESTED MWBE GOAL: _____ %

PREPARED BY (Signature): _____ Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.

***Name and Title of Preparer:**	***Telephone Number:**	***Email:**

Submit with the bid or proposal or if submitting after award submit to: **Empire State Development Corporation**	***** FOR M/WBE USE ONLY *****	
	REVIEWED BY:	**DATE:**

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WAIVER REQUEST FORM

Office of Contractor and Supplier Diversity **633 Third Avenue, 35th 3Floor** **New York, New York 10017**	**Waiver Granted:** ☐ **YES** **MBE:** ☐ **WBE:** ☐ ☐ **Total Waiver** ☐ **Partial Waiver** ☐ **ESD Certification Waiver** ☐ ***Conditional** ☐ **Notice of Deficiency Issued** _____ * **Comments:**

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

WAIVER REQUEST FORM

5 NYCRR §142.8 - Contractor's Good Faith Efforts

(a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:

(1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;

(2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;

(3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;

(4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;

(5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.

(b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:

(1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;

(2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;

(3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;

(4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;

(5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-6

QUARTERLY MWBE COMPLIANCE AND PAYMENT REPORT

CONTRACTOR/GRANT AWARDEE
(or "REPORTING COMPANY"):

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

CONTRACT/PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

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

PRIME CONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	DESCRIPTION OF SERVICES	MWBE CONTRACT AMOUNT	MWBE PAYMENTS PREVIOUSLY REPORTED	MWBE PAYMENTS ON CURRENT REPORT	TOTAL MWBE PAYMENTS TO DATE
	$			$	$	$	$
	$			$	$	$	$
	$			$	$	$	$

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-6

QUARTERLY MWBE COMPLIANCE AND PAYMENT REPORT

PRIME CONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	DESCRIPTION OF SERVICES	MWBE CONTRACT AMOUNT	MWBE PAYMENTS PREVIOUSLY REPORTED	MWBE PAYMENTS ON CURRENT REPORT	TOTAL MWBE PAYMENTS TO DATE
	$			$	$	$	$

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

SIGNATURE: _____ **DATE:** _____

NEW YORK STATE OF OPPORTUNITY. Empire State Development

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-6

QUARTERLY MWBE COMPLIANCE AND PAYMENT REPORT

SUBMIT REPORT TO: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
EMPIRE STATE DEVELOPMENT
633 THIRD AVENUE, 35th FLOOR
NEW YORK, NY 10017

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

QUESTIONS? Please contact the OCSD or email the office at ocsd@esd.ny.gov.

Denise Ross Project Manager, OCSD (212) 803-3226 denise.ross@esd.ny.gov Capital District Mid-Hudson Mohawk Valley North Country NYC DED Procurement Contracts	Jazmin Thomas Project Associate, OCSD (212) 803-3571 Jazmin.Thomas@esd.ny.gov ESD Procurement Contracts ESD Subsidiaries – AYCDC, ESNMC, HCDC, MSDC, QWDC	Geraldine Ford Project Manager, OCSD (716) 846-8205 geraldine.ford@esd.ny.gov Finger Lakes Long Island Southern Tier Central New York Western New York ESD Subsidiaries– *ECHDC*, *USA NIAGARA*, *CCDC*

NEW YORK STATE OF OPPORTUNITY. Empire State Development

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-6

QUARTERLY MWBE COMPLIANCE AND PAYMENT REPORT

EXHIBIT H: PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses ("SDVOBs") strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, the Recipient of the subject Grant Disbursement Agreement (the "Contractor" and the "Contract," respectively) are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés, and other supporting roles.

ESD is required to implement the provisions of Article 17-B and 9 NYCRR Part 252 ("SDVOB Regulations") for all State contracts as defined therein. The Contractor agrees, at no additional cost to ESD, to fully comply and cooperate with ESD in the implementation of these provisions. The Contractor's demonstration of "good faith efforts" pursuant to 9 NYCRR 252.2 shall be a part of these requirements.

Failure to comply with all the requirements herein may result in a finding of a breach of contract leading to the assessment of such damages as allowed by the Contract.

II. Contract Goals

For purposes of this project, ESD hereby establishes a goal of __% for SDVOB participation based on the current availability of qualified SDVOBs.

SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Pursuant to 9 NYCRR 252.2, the Recipient will be required to document "good faith efforts" to provide meaningful participation by SDVOBs. The Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with SDVOB participation goals as set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to ESD for the appropriate damages, as set forth herein.

III. SDVOB Utilization Plan

The Contractor represents and warrants that it has submitted an SDVOB utilization plan (SDVOB Contractor Performance Use Form). The Contractor agrees to use such SDVOB utilization plan for the performance of SDVOBs on the project pursuant to the prescribed SDVOB goals set forth in section II of this Exhibit.

The Contractor further agrees that a failure to submit and/or use such SDVOB utilization plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a breach, ESD shall be entitled to any remedy provided herein.

IV. Waivers

If the Contractor, after making good-faith efforts, is unable to comply with SDVOB goals, the Contractor may submit a request for a waiver (OCSD-S2). The waiver must document the good-faith efforts employed by the Contractor to meet such goals.

V. Contractor Compliance Report

The Contractor is required to submit a quarterly SDVOB Contractor Compliance Report (Form OCSD-S1) documenting the progress made towards achievement of the SDVOB goals of the Contract. The SDVOB Contractor Compliance Report by the 10th day following the end of each quarter over the term of the Contract documenting the progress made towards achievement of the SDVOB goals of the Contract.

VI. Damages

Where ESD determines that the Contractor has willfully and intentionally failed to comply with the SDVOB participation goals, the Contractor shall be obligated to pay to ESD liquidated damages.

Such damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to SDVOBs had the Contractor achieved the contractual SDVOB goals; and
2. All sums actually paid to SDVOBs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by ESD, the Contractor shall pay such liquidated damages to ESD within sixty (60) days after they are assessed.
\

EXHIBIT H-1: SDVOB Contract Performance Use Form

Intentionally Deleted

EXHIBIT H-2: SDVOB Contractor Compliance and Payment Report

To Be Provided

Exhibit I: Employment Reporting Form (With Company's NYS Form 45 Attached)

To Be Provided

EXHIBIT J: SPECIAL PROVISIONS

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

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

If the company is not a corporation but a limited liability company (LLC):
In 8(c), reference to "corporation" shall mean limited liability company, reference to "incorporation" shall mean organization, and reference to "corporate" shall mean organizational.

If there is more than one location, either where the project takes place OR where jobs will be reported:
All references to "Project Location" shall mean "Project Locations."

If ESD's grant is to a public agency (e.g., an urban renewal agency), and being passed through to a Beneficiary, so the Grantee is not the one operating the business, add:
Paragraph 8(i) shall mean that Grantee and/or Beneficiary shall maintain or cause to be maintained business operations at the Project Location for the term of this Agreement.

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

Paragraph 25 is added to Terms and Conditions, as follows:

25. Joint and Several Liabilities

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

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

EXHIBIT K: KEY PROJECT INDICATORS

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

To Be Provided

EXHIBIT L: KEY PROJECT INDICATOR REPORT

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

To Be Provided

EXHIBIT M: BROADBAND MAPPING DATA SPECIFICATIONS

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

Preparing Your Company's Data

The following Record Format Template describes the required fields to be included with each data submission.

Submit data in an excel spreadsheet and use the identifiable file naming convention listed below

– *New NY Broadband [COMPANY NAME], CFA# [ ] Address-Level Reporting Data*

Please note that wireless providers are required to provide address-level data based on projected availability. It is understood that such data will reflect the provider's best estimate of network coverage. However, such projects will still be subject to such field-verification and validation, as determined by BPO to be necessary to confirm that the projects meet all requirements of the New NY Broadband Program, including coverage of all Units within awarded Census Blocks.

Table 1: Record Format Template

New NY Broadband, Phase 1
Exhibit M: Address-Level Reporting Data

Project Name:
Project Number:
CFA Number:
Organization Name:

Reporting Period:

Census Block ID	**Address**			**Full CB/Partial CB**
	Street Address	City	Zip Code	

EXHIBIT N: PROJECT MILESTONES

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

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

Time Period	Quarter	Milestones
Year 1	Qtr. 1	• Order construction material. • Provide approvals to the Utility Companies to complete make-ready work. • Finalize network design and order construction material • Phase-3: Engage with Economic Development partners to survey residents in the proposed service areas to determine those with most interest in broadband services. • Hold discussions with Municipal Officials to determine priority builds dependent upon survey responses.
	Qtr. 2	• Phase-2: Commence construction and activation. Roll-out marketing campaign and educational programs in concert with our Economic Development partners. Connect subscribers #25-50. • Phase-3: Begin network design for final project routes as determined by survey and municipal guidance. Submit pole attachment applications to utility companies for attachment licenses along the pole routes. Submit initial construction material order. • Evaluate marketing and adoption efforts milestones
	Qtr. 3	• Phase-1: Segment completion. Connect subscribers # 50-55. • Phase-2: Complete construction and activation. Connect subscriber's # 55-150. • Phase-3: Continue Field Engineering and Commence Pole Attachment Application Process.
	Qtr. 4	• Phase-2: Marketing Completion: Connect subscribers #150-250. • Phase-3: Complete Field Engineering and Pole Attachment Applications. Complete Network Design.

Sample Milestones

EXHIBIT O: PROJECT MILESTONE REPORT

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

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

Time Period	Quarter	Milestones	Milestone Status Reporting Date: _____ to _____
Year 1	Qtr. 1	• Order construction material. • Provide approvals to the Utility Companies to complete make-ready work. • Finalize network design and order construction material • Phase-3: Engage with Economic Development partners to survey residents in the proposed service areas to determine those with most interest in broadband services. • Hold discussions with Municipal Officials to determine priority builds dependent upon survey responses.	Sample Milestones
	Qtr. 2	• Phase-2: Commence construction and activation. Roll-out marketing campaign and educational programs in concert with our Economic Development partners. Connect subscribers #25-50. • Evaluate marketing and adoption efforts milestones	
	Qtr. 3	• Phase-1: Segment completion. Connect subscribers # 50-55.	
	Qtr. 4	• Phase-2: Segment completion. Connect subscribers #150-250.	

EXHIBIT P: THE SECURITY AGREEMENT

THE SECURITY AGREEMENT

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

THIS SECURITY AGREEMENT, dated as of _____ __, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, this "Security Agreement"), is by and between _____, a _____ (the "Debtor"), and New York State Urban Development Corporation d/b/a/ Empire State Development, a [public-benefit corporation formed under the laws of the State of New York](the "Secured Party").

W I T N E S S E T H:

WHEREAS, this Security Agreement is entered into in connection with that certain Grant Disbursement Agreement, dated as of _____ __, 2016, between the Debtor and the Secured Party (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "GDA");

NOW, THEREFORE, in consideration of the Secured Party entering into the GDA with the Debtor to enable the Debtor to receive ESD grant funds ("Grant Funds") in accordance therewith, the Debtor hereby agrees as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms. Unless otherwise defined herein, all terms defined in the UCC (as defined below) shall have the meanings assigned to them in the UCC. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the GDA. As used herein, the following terms have the following meanings:

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Collateral" has the meaning assigned to it in Article II hereof.

"Debtor" has the meaning set forth in the preamble.

"Event of Default" shall mean any of the following:

(i) The making by the Debtor of any material false statement or the omission by the Debtor to state any material fact in or in connection with this Security Agreement or the GDA;

(ii) (a) The creation or existence of any other security interest in any of the Collateral other than Permitted Liens or (b) the transfer, sale or lease of any of the Collateral except in accordance with the terms hereof;

(iii) The announced or actual cessation or termination of business activities by the Debtor at the Project Location or of the Project itself, including all activities and provision of services required in connection with the Project; or

(iv) The Debtor becomes insolvent or consents to the appointment of a trustee, receiver, assignee, liquidator or similar official, making a general assignment for the benefit of its creditors or filing a voluntary proceeding under Chapter 7 or 11 of the Bankruptcy Code or any other federal, state or foreign bankruptcy or insolvency law (a "Bankruptcy Proceeding") or (b) the filing against the Debtor of an involuntary Bankruptcy Proceeding that is not discharged or dismissed within sixty (60) days.

"Obligations" means the full, complete and timely performance and payment of all obligations of any type or nature of the Debtor to the Secured Party, including without limitation, all obligations under this Security Agreement, the GDA and arising from the disbursement of the Grant Funds or otherwise.

"Permitted Liens" means [*please identify*].

"Secured Party" has the meaning set forth in the preamble.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

ARTICLE II

GRANT OF SECURITY INTERESTS

As security for the prompt and complete payment and performance in full of all the Obligations, the Debtor hereby grants to the Secured Party a security interest in all of the Debtor's right, title and interest in, to and under the following, in each case, whether now owned or existing or hereafter acquired or arising (all of which being hereinafter collectively called the "Collateral"):

(a) [all Goods (including without limitation, all Equipment, Inventory and Fixtures), Documents or other personal property (i) acquired or improved with the Grant Funds, including, in any event, all Goods described on Schedule A hereto, or (ii) located within the Project Location and/or Footprint];

(b) [all Accounts, Chattel Paper, General Intangibles and other contract rights and agreements arising from the use of the Grant Funds or arising out of, related to or useful in connection with the completion and/or the performance of the Project; provided, however, that licenses or authorizations issued or granted by the Federal Communications Commission to Debtor or any of its affiliates shall not be considered Collateral for purposes of this Security Agreement];

(c) to the extent not otherwise included above, all Supporting Obligations of the foregoing; and

(d) to the extent not otherwise included above, all Proceeds, products, Accessions, additions, substitutions, replacements, rents and profits of or in respect of any or all of the foregoing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

The Debtor hereby represents and warrants to the Secured Party as follows:

(a) It has full power and authority to execute and deliver this Security Agreement and perform its obligations hereunder, including without limitation, the power and authority to grant a security interest in the Collateral to the Secured Party.

(b) This Security Agreement has been duly authorized, executed and delivered by the Debtor and is binding and enforceable against the Debtor in accordance with its terms. The security interests in the Collateral granted to the Secured Party hereunder constitute valid and continuing security interests in the Collateral.

(c) Upon the filing of financing statements naming the Debtor as "debtor" and the Secured Party as "secured party" and describing the Collateral in the filing offices set forth on Schedule B hereto, the security interests in the Collateral granted to the Secured Party hereunder will constitute perfected security interests therein to the extent that such security interests can be perfected by the filing of a financing statement.

(d) The Debtor is the legal and beneficial owner of the Collateral free and clear of any lien, claim, encumbrance, option or right of others, except for (i) the security interest created under this Security Agreement and (ii) Permitted Liens.

(e) The Debtor's chief executive office is located in the State of _____, its jurisdiction of organization is the State of _____, and its exact legal name is as set forth in the recitals.

(f) There are no actions pending or threatened by or against the Debtor in which an adverse decision could reasonably be expected to have a material adverse effect upon the financial condition, operating results, assets, operations or business prospects of the Debtor.

(g) The fair salable value of the Debtor's assets exceeds the fair market value of its liabilities, and Debtor is able to timely pay its debts as they mature.

(h) The Debtor has timely filed all required tax returns and has paid, or has made adequate provisions to pay, all material taxes, except those being contested in good faith and with respect to which adequate reserves are set aside.

(i) No written representation, warranty or other statement of the Debtor in any certificate or written statement given to Secured Party contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading.

ARTICLE IV

COVENANTS

The Debtor covenants and agrees with the Secured Party that, from and after the date of this Security Agreement until all Obligations shall have been fully performed and indefeasibly paid in full:

4.1 Change of Name; Identity or Corporate Structure. The Debtor shall not change its name, identity, corporate structure, or jurisdiction of organization (in each case within the meaning of Article 9 of the UCC) until (i) it shall have given to the Secured Party thirty (30) days prior written notice thereof and (ii) with respect to such new name, identity, corporate structure, or jurisdiction of organization, it shall take all action to maintain the full force and effect and perfected status of the security interest of the Secured Party in the Collateral intended to be granted hereby with first priority (except for Permitted Lien that are permitted to have greater priority), including without limitation, the taking of all actions as the Secured Party may reasonably request .

4.2 Further Assurances. At any time and from time to time, upon the request of the Secured Party, the Debtor will promptly and duly execute and deliver any and all such further instruments, endorsements, and other documents, make such filings, give such notices and take such further action as the Secured Party may reasonably deem necessary in order to obtain the full benefits of this Security Agreement and to exercise all of the rights, remedies and powers herein granted, including, without limitation, the filing of any financing statements, in form acceptable to the Secured Party under the Uniform Commercial Code in effect in any jurisdiction with respect to the security interests granted hereby. The Debtor also hereby authorizes the Secured Party and its counsel to file any financing or continuation statements and amendments thereto, in all jurisdictions and with all filing offices as the Secured Party may reasonably determine are necessary to perfect the security interest granted by this Security Agreement. Such financing statements shall describe the Collateral in the same manner as described in this Security Agreements or in such other manner as the Secured Party determines, in its sole discretion, is necessary or advisable to ensure the perfection of its security interest.

4.3 Rights Concerning the Collateral.

(a) The Secured Party may inspect any Collateral, all books and records related thereto and the premises upon which the Collateral is located, at any time upon reasonable notice.

(b) After an Event of Default has occurred and is continuing, the Secured Party shall have the right to enforce the Debtor's rights against account debtors

and other obligors, to notify such account debtors to make payments directly to the Secured Party and to take all actions in connection therewith.

(c) The Debtor shall comply with the insurance requirements set forth in Section 12 of the GDA.

(d) The Debtor will cause all Equipment which constitutes Collateral to be maintained and preserved in the same condition, repair and working order as when new, ordinary wear and tear excepted, and will as soon as practicable make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. The Debtor will promptly furnish to the Secured Party a statement respecting any loss or damage exceeding $[•] to any of the Equipment or Inventory constituting Collateral of such Debtor.

(e) The Debtor has the risk of loss of the Collateral. The Secured Party has no duty to collect any income accruing on the Collateral or to preserve any rights relating to the Collateral.

(f) The Debtor may not:

(i) make any transfers, sales or leases of any of the Collateral, except for sales of Equipment and Inventory in the ordinary course of business;

(ii) license any of the Collateral;

(iii) create or permit to exist any other security interest, lien, claim or encumbrances in any of the Collateral other than Permitted Liens; or

(iv) otherwise transfer or dispose of any of the Collateral.

(g) The Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Debtor and in the name of the Debtor or in its own name, from time to time in the Secured Party's discretion, for the purpose of carrying out the terms of this Security Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Security Agreement. The Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE V

REMEDIES

5.1 Acceleration; Rights and Remedies Generally. Upon the filing of any proceeding with respect to the Debtor under the terms of any bankruptcy or insolvency statute or law, including without limitation, the filing of any petition under any chapter of the United States Bankruptcy Code with respect to the Debtor, all performance and payment of all Obligations shall immediately be due. If any Event of Default shall have occurred and be continuing, the Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the Uniform Commercial Code of any applicable jurisdiction.

5.2 Proceeds. The proceeds received by the Secured Party in respect of any sale of, collection from or other realization upon all or any part of the Collateral shall be applied, together with any other sums held by the Secured Party pursuant to this Security Agreement, by the Secured Party to the fulfillment and satisfaction of all Obligations in such order as the Secured Party may determine. The Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Article 9 of the UCC or otherwise, shall be to deal with it in the same manner as the Secured Party deals with similar property for its own account.

ARTICLE VI

MISCELLANEOUS

6.1 Advances by Secured Party. On failure of the Debtor to perform any of the covenants or agreements contained herein, the Secured Party may, at its sole option and in its sole discretion, perform the same or cause the performance of the same and in so doing may expend such sums as the Secured Party may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a lien, expenditures made in defending against any adverse claim and all other expenditures which the Secured Party may reasonably make for the protection of the security hereof or which the Secured Party may be compelled to make by operation of law. All such sums and amounts so expended shall be repayable by the Debtor promptly upon notice thereof and written demand therefor, shall constitute additional Obligations and shall bear interest from the date that is five business days after the date said amounts are demanded in writing at the Default Rate. No such performance of any covenant or agreement by the Secured Party on behalf of the Debtor and no such advance or expenditure therefor shall relieve the Debtor of any default under the terms of this Security Agreement or the GDA.

6.2 Notices. All notices and other communications hereunder shall be in writing and shall be addressed as follows (or at such other address for a party as shall be specified by like notice):

If to the Secured Party:

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

With a copy to:

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

If to the Debtor:

With copies to:

All such notices or communications shall be deemed to have been delivered and received: (a) if delivered in person, on the day of such delivery, (b) if by facsimile, on the day on which such facsimile was sent, provided that receipt is personally confirmed by telephone, (c) if by certified or registered mail (return receipt requested), on the fifth Business Day after the mailing thereof or (d) if by reputable overnight delivery service, on the second Business Day after the sending thereof.

6.3 Amendments and Waivers. The provisions of this Security Agreement may not be amended, nor may the Debtor take any action herein prohibited or omit to perform any action required hereunder to be performed by it, except with the written consent of the Secured Party.

6.4 Costs and Expenses. The Debtor shall reimburse the Secured Party for all of its reasonable costs and expenses incurred in connection with the exercise of its rights hereunder, which shall include all reasonable attorneys' fees and legal expenses of the Secured Party. For the avoidance of doubt, all such expenses shall constitute Obligations hereunder.

6.5 Successors and Assigns. This Security Agreement shall be binding upon and inure to the benefit of the Debtor, the Secured Party, all future holders of the Obligations and each of their respective successors and assigns, except that the Debtor may not assign or transfer any of its rights or Obligations under this Security Agreement without the prior written consent of the Secured Party. The Secured Party may assign or transfer any of its rights hereunder in its sole discretion. If an assignment is made, the Debtor shall render performance under this Security Agreement to the assignee. The

Debtor waives and will not assert against any assignee any claims, defenses, or setoffs which the Debtor could assert against the Secured Party except defenses which cannot be waived.

6.6 Severability. In case any provision in or obligation under this Security Agreement or the Obligations shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or Obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.7 Effectiveness. This Security Agreement shall become effective on the date on which the Debtor and the Secured Party shall have signed a counterpart hereof.

6.8 GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

6.9 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) ANY LEGAL ACTION OR PROCEEDING AGAINST ANY PARTY HERETO WITH RESPECT TO THIS AGREEMENT AND ANY ACTION FOR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, DEBTOR AND THE SECURED PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND APPELLATE COURTS FROM ANY APPEAL THEREOF. DEBTOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS NOTICE ADDRESS PROVIDED PURSUANT TO SECTION 6.2 HEREOF. EACH OF DEBTOR AND THE SECURED PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED IN ANY OTHER JURISDICTION.

(b) EACH OF DEBTOR AND SECURED PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

6.10 Counterparts. This Security Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

6.11 Termination. At such time as all Obligations shall have been fully performed and paid in full, as the case may be, the Collateral shall be released from the security interest created hereby, and this Security Agreement and all obligations (other than those expressly stated to survive such termination) of the Secured Party and the Debtor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Debtor. At the request and sole expense of the Debtor following any such termination, the Secured Party shall deliver to the Debtor any Collateral held by the Secured Party hereunder, and execute and deliver to the Debtor such documents as the Debtor shall reasonably request to evidence such termination.

(*Remainder of page intentionally left blank*)

IN WITNESS WHEREOF, the Debtor and the Secured Party have caused this Security Agreement to be duly executed and delivered as of the date first above written.

_____,
as Debtor

By: _____
Name:
Title:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE STATE DEVELOPMENT

_____,
as Secured Party

By: _____
Name:
Title:

Schedule A to Security Agreement

Goods[48]

[48] To be completed with specific descriptions of collateral, e.g. type of equipment, manufacturer, model and serial number.

Schedule B to Security Agreement

Locations of Filing Office

APPENDIX E

Instructions on Submission of Application Fees and Deposit

Per the New NY Broadband Program (the Program) Phase 3 Request for Proposal Guidelines (the RFP Guidelines),[49] each applicant must provide a $100,000 Application Deposit and a $250 Application Fee for their application to be considered complete. Instructions for the payment of those fees are described here.

I. APPLICATION DEPOSIT

As discussed in the RFP Guidelines, applications to the Program represent binding commitments to carry out the proposed projects, and applicants shall be required to provide a deposit in the amount of $100,000.00 (the Application Deposit) to ensure that the applicant enters into a Grant Disbursement Agreement (GDA) and the Security Agreement (Security Agreement), in substantially similar form as Appendix D to the RFP Guidelines, with Empire State Development (ESD) to complete their proposed project. The Application Deposit must take the form of a Letter of Credit (LOC), issued in substantially the same form as set forth in Attachment B to this memorandum, and must be received by ESD no later than 4:30 PM on August 15, 2017.

If an applicant is not selected for participation in the Program, ESD will return the applicant's LOC within 30 days of notifying the applicant in writing that their application has been declined.

If an applicant is selected for a grant award through the Program, the applicant will have 180 days, upon written notification of their award, to enter into a GDA and Security Agreement with ESD for the selected broadband project. Should the applicant fail to do so, unless granted an extension in writing by ESD, the Application Deposit will be nonrefundable, and ESD will be entitled to draw upon the full amount of the LOC.

Please note that only one Application Deposit will be required per applicant, irrespective of the number of applications filed. However, should an applicant filing more than one application refuse to enter into a GDA and Security Agreement with ESD for any one or more of their applications, the Application Deposit shall be nonrefundable. Applicants filing more than one application to the Program should provide, along with their LOC, a complete list of all applications filed by the applicant.

An applicant may submit a single LOC to satisfy the Application Deposit requirement in connection with separate applications filed by both the applicant and its wholly-owned subsidiary. However, the Letter of Credit must be valid and enforceable relative to both entities. The bank issuing the Letter must provide a written acknowledgment that ESD can draw upon the Letter of Credit if either entity (the applicant or its subsidiary) is selected for participation in the New NY Broadband Program and fails to enter into a Grant Disbursement Agreement and Security Agreement for their respective project.

[49] The RFP Guidelines may be amended from time to time. For clarify, references to the RFP Guidelines herein will refer to the current version.

Additionally, to the extent a group of entities jointly submits one or more applications, the Program will only require one Application Deposit on behalf of that entire group (*i.e.*, the Program will not require each entity in the group to submit a Deposit). Where a group of entities jointly submits more than one application, only one Application Deposit will be required on behalf of that group for all applications filed. However, multiple Application Deposits will still be required where the composition of two groups of applicants differs in any respect (*i.e.*, if an entity participates in joint applications involving different partners, each application will be viewed as having been filed by a different applicant and will require the submission of multiple Application Deposits).

To the extent an applicant submitted an LOC in a prior New NY Broadband Program funding round, the LOC has not yet been released by ESD, and that LOC remains valid, the applicant may request that the LOC be applied to fulfill the Application Deposit requirement in connection with Phase 3.

Upon an applicant's execution of a GDA(s) and Security Agreement(s) with ESD for the selected project(s), ESD will return the applicant's Application Deposit within 30 days.

Additionally, all fees associated with obtaining the LOC, draws thereunder, or the LOC's termination will be the responsibility of the Applicant, and not ESD.

II. APPLICATION FEE

The applicant is also required to provide an Application Fee (referred to in the RFP Guidelines), which shall be submitted in the form of a bank check or certified check, payable to ESD, in the amount of $250. This fee is nonrefundable, regardless of whether the applicant is selected as a funding recipient.

Applicants must file one Application Fee per application. Applicants filing more than one application will be required to submit one Fee per application.

The applicant should submit their Application Deposit and Application Fees by mail to:

Empire State Development
Attn: Controller Department
35th Floor
633 Third Avenue
New York, NY 10017

If the applicant fails to submit an Application Deposit and all required Application Fees by 4:30pm on August 15, 2017, any related applications submitted by the applicant will be considered incomplete and will not be eligible for program funding.

Attachment A

Illustrative Form of Letter of Credit

[Subject to Issuing Bank Requirements]
No. _____

[Name and Address of Issuing Bank]

[Date of Issuance]
Amount: $100,000.00
[Expiration Date]

Beneficiary:
[Empire State Development]
[Address]

Applicant:
[Applicant Name]
[Address]

Ladies and Gentlemen:

We hereby issue, at the request of [Applicant], in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESD" or "Beneficiary") as required under the New NY Broadband Program Phase 3 Request for Proposal Guidelines ("the RFP Guidelines") issued on August 4, 2016, as may be amended from time to time, our Irrevocable Standby Letter of Credit No._____, in the amount of $100,000.00/One Hundred Thousand Dollars, expiring at the close of banking business at our office described in the following paragraph, on the date which is [two (2) years from the date of issuance or the date which is one year from the date of issue, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to the Beneficiary, by a nationally recognized overnight delivery service, at least sixty but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by delivery to us of a certificate of termination in substantially the form of Annex C (the "Expiration Date").

Funds under this Letter of Credit are available upon Beneficiary's demand for payment in the form attached hereto as Annex A, presented at our office described below, and referring thereon to the number of the Letter of Credit, accompanied by Beneficiary's written and completed certificate signed by Beneficiary substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of the Letter of Credit, on or prior to

the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with Beneficiary's payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee an for the account Beneficiary designates, in accordance with the instructions set forth in the demand presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of Beneficiary's certificate, purportedly signed by two authorized representatives of Beneficiary, in the form attached as Annex C.

Any fees associated with the issuance of this Letter of Credit, draws thereunder, or the Letter's termination are the responsibility of [Applicant], and may not be charged to Beneficiary.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below) and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[Name of Bank]

[Bank Signature]

ANNEX A

Form of Demand

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

PAY TO THE ORDER OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION, D/B/A THE EMPIRE STATE DEVELOPMENT CORPORATION, BY [CHECK / WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: Empire State Development
Attn: Controller Department
35th Floor
633 Third Avenue
New York, NY 10017

OR

Bank Account (_____)
ABA No: _____

AS NEW NY BROADBAND PROGRAM APPLICATION DEPOSIT

[AMOUNT IN WORDS] DOLLARS

$ [AMOUNT IN NUMBERS]

New York State Urban Development Corporation,
d/b/a the Empire State Development Corporation

By: _____
Name:
Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit") issued by the Bank in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESD"), and (b) Section IV H of the New NY Broadband Program Phase 3 Request for Proposal Guidelines issued by ESD on August 4, 2016 (the "RFP Guidelines"), as may be amended from time to time, pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in those RFP Guidelines), that:

LC Provider has [failed to enter into a Grant Disbursement Agreement with ESD to implement Project #___ within 180 days of ESD's selection of LC Provider for a grant award through the New NY Broadband Program, as required under the RFP Guidelines]. This failure is evidenced by a letter signed by [the Executive Vice President of Innovation and Broadband at ESD, or [his/her] designee], dated ___ 20__, a true copy of which is attached hereto. Accordingly, a draw of the entire amount of the Letter of Credit No. _____ is authorized.

OR

[ESD certifies that, given notice of non-renewal of Letter of Credit No. _____ and failure of the LC Provider to obtain a satisfactory replacement thereof, the BPO is entitled to receive payment of $100,000.00, representing the entire amount of Letter of Credit No. _____.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

New York State Urban Development Corporation,
d/b/a the Empire State Development Corporation

By:_____
Name:
Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. ___ (the "Letter of Credit") issued by the Bank in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESD"), and (b) Section IV H of the New NY Broadband Program Phase 3 Request for Proposal Guidelines issued by ESD on August 4, 2016 (the "RFP Guidelines"), as may be amended from time to time, pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in those RFP Guidelines), that:

(1) [Include one of the following clauses, as applicable]

(a) The RFP Guidelines have been fulfilled in accordance with the provisions thereof; OR

(b) [LC Provider] has provided a replacement letter of credit satisfactory to ESD.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

New York State Urban Development Corporation,
d/b/a the Empire State Development Corporation

By:_____
Name:
Title:

By:_____
Name:
Title:

APPENDIX F

ADDITIONAL REQUIREMENTS FOR NOT-FOR-PROFITS

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

1) New York State Grants Gateway

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

Grants Gateway Prequalification Process

a. Register with the Grants Gateway

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

NYS Grants Reform

99 Washington Avenue

Room 1530

Albany, NY 12210-2814

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

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

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

2) Attorney General's Charities Bureau

Information on registration is below:

OSC

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

Phone: Toll free: (866) 370-4672

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

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

3) State Comptroller's VendRep System

OAG

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

Phone: (212) 416-8401

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

APPENDIX G

CHALLENGE AFFIDAVIT

State of New York

County of _____)

The undersigned affiant, _____, being first duly sworn, hereby deposes and says:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am an officer of _____ (the "Company") duly authorized to execute this affidavit.

2. I hereby affirm that the Company currently offers broadband Internet service at download speeds of 100 Mbps, within a normal serving interval and without special construction charges, to all addresses having access to electric utility service within each Census Block referenced on the attached List of Challenged Census Blocks, and will continue to offer such service, without grant support from the State of New York, for a period of five (5) years from the date of this affidavit.

3. I hereby affirm that the Company is prepared to enter into an Agreement with Empire State Development memorializing the commitment above.

This the ____ day of _____, 2017.

_____

Title _____

Sworn to before me this ____ day

of _____, 2017.

X_____

(Notary Public)

LIST OF CHALLENGED CENSUS BLOCKS

[Note: On submission, please provide a spreadsheet in Microsoft Excel format with the fields displayed below.]

Census Block ID	Max Speed Provided by Your Company	Percent of the Housing Units in this block that you provide this speed to	BPO List that this Block Appears On
36XXXXXXXXXXX	100 Mbps	100%	List A - Unserved

APPENDIX H

Guidance for CAF-Eligible Applications

To assist such applicants in the development of qualifying proposals, the BPO recommends that applicants seeking to address CAF-eligible CBs note and review the following terms of our Phase 3 RFP Guidelines specific to CAF-eligible applications. Except where otherwise expressly stated herein, all other terms and conditions of these Phase 3 RFP Guidelines remain in force relative to such applications.

A. Applications to address CAF-eligible CBs (*as identified on List C of the Phase 3 Lists of Eligible CBs*) must be submitted on a stand-alone basis and cannot include CBs drawn from other lists (*see Section III*);

B. Such applicants may submit a single statewide application (*see Section V.G.4*);

C. Such applications must serve a minimum service area of 5,000 Units, except that applications based on Preliminary Statements-of-Interest submitted to the BPO may serve a minimum service area of 250 Units (*see Section V.A.2*);

D. Such applicants may not seek an amount of New York State funding, excluding federal CAF funding, in excess of 70% of total eligible project costs (*see Section V.B*);

E. CAF recipients will be required to meet Internet speed, usage, and latency requirements based on the FCC's CAF Phase 2 Auction Performance Tiers and Latency (*see Section V.C.3*);

F. If funded, applications to address CAF-eligible CBs will be subject to the December 31, 2018 completion requirement, as well as the FCC general build-out requirements, which require deployment of facilities funded by CAF support to be completed within six years of funding authorization (*see Section V.E.1*);

G. CAF recipients will also be required to certify to the FCC that they offer voice and broadband service at reasonably comparable rates (*see Section V.F.4*);

H. Where applicants seek to provide service in CAF-eligible CBs and do not submit audited financial statements, the FCC will require such applicants to submit audited financial statements from the prior fiscal year no later than 180 days after New York publicly announces them as a winning applicant and before the FCC will authorize the disbursement of CAF support. Entities that do not ultimately provide audited financial statements will be subject to a base forfeiture from the FCC of $50,000 (*see Section V.G.2*);

I. Applications to address CAF-eligible CBs will be evaluated through the reverse-auction methodology set forth in these RFP Guidelines, which include applicable bidding credits (*see Section X.C*);

J. CAF recipients will be required to provide an irrevocable, standby letter of credit conforming to the FCC's requirements, in addition to the Program's Application Deposit (*see Section V.H.2*);

K. CAF Recipients will be subject to FCC procedural and reporting requirements, including ETC designation and submission of long-forms (*see Section XII.B*)