

REQUEST FOR BOARD ACTION

MEETING DATE:

August 18, 2026

AGENDA SECTION:

Reports

DEPARTMENT

Administration

SUBMITTED BY:

Nick Lemmer

ACTION REQUESTED

Adopt a resolution (full text of resolution attached) to:

1. Accept the USDA ReConnect Program Grant in the amount of \$3.12 million;
2. Authorize Board Chair to execute the ReConnect Program Grant and Security Agreement;
3. Direct staff to open a Pledged Deposit Account for this purpose, and;
4. Authorize staff to execute all such instruments, make all such payments, and do all other such acts that may be necessary to carry out the purposes and intent of the forgoing resolutions.

NARRATIVE

Background

The USDA ReConnect Program funds rural broadband expansion through the Rural Utilities Service (RUS) to support education, healthcare, business, and economic growth. In 2021, the Board authorized applying for ReConnect funding with Nuvera Communications as the selected provider. The project scope was updated in 2024 due to rising costs, and the County Administrator was notified on December 19 that the application was accepted with Goodhue County and Nuvera Communications named as co-awardees.

The Board previously took two actions regarding this project:

- January 6: Authorized signing documents related to the grant program, as required.
- March 3: Authorized staff to assign roles in the USDA financial reporting system, as required.

At the June 16 Committee of the Whole meeting, staff provided an update and sought direction. Staff outlined the binding obligations and risks associated with the Grant and Security Agreement, noting that county compliance heavily depends on Nuvera. Staff noted the limited flexibility afforded to the County and Nuvera by RUS to modify or assign grant requirements to more accurately allot obligations and risks.

Following the June 16 meeting, staff and Commissioner Flanders appealed to RUS leadership, who subsequently clarified its limited oversight role over arrangements between co-awardees, establishing a viable path forward. This resulted in the drafting of the two “sub-agreements” with Nuvera.

Discussion

County Board adoption of these resolutions is a requirement of the grant closing process. Their adoption is the final Board action before Goodhue County and Nuvera execute the agreements, after which staff will submit the complete package to the USDA for final approval so fiber optic installation can begin in 2026.

By adopting this resolution, the Board is authorizing staff to execute and enter into the two agreements with Nuvera Communications. While the two agreements with Nuvera do assign responsibility to Nuvera for meeting many of the terms of the Grant agreement, they do not relieve the County of all obligations nor eliminate risks entirely. Specifically, in moving forward, the County:

- Agrees to maintain a Pledged Deposit Account as primary account holder, provide annual audit documentation, and file the required grant reporting documents supplied by Nuvera as required under the grant.
- Acknowledges that additional staff time will be devoted in the near term on coordination with Nuvera, and in the longer term on monitoring compliance.
- Accepts the risk of potential future obligations and/or financial penalties under that Grant Agreement, should Nuvera default on its obligations under the two agreements with the County.

ATTACHMENTS

- **Board Resolution**
- **ReConnect Program Grant and Security Agreement:** The primary agreement between the co-awardees (Goodhue County and Nuvera) and the federal government.
- **Agreement to Assign Responsibilities under ReConnect Program Grant:** Agreement between Goodhue County and Nuvera assigning primary reporting duties to Nuvera.
- **Operations Agreement:** Agreement between Goodhue County and Nuvera contractually obligating Nuvera to build the fiber-optic infrastructure and deliver broadband service for the full 20-year grant term.

Note: The County Attorney and Nuvera have reviewed and approved these documents

RESOLUTION

RESOLVED that the Corporation accept a grant from the United States of America (the "Government,") acting through the Administrator of the Rural Utilities Service ("RUS,") an amount not to exceed \$3,210,000 ("Grant") to be used for such purposes as approved by RUS; and

RESOLVED that the BOARD OF COMMISSIONERS CHAR is authorized on behalf of the Corporation to execute and deliver under its corporate seal, which the secretary is directed to affix and attest, as many counterparts, respectively, as shall be deemed advisable of grant documents, including a Grant and Security Agreement, deposit account control agreement and financing statements, as required by RUS; and

RESOLVED that a separate account (hereinafter called the "Pledged Deposit Account"), be opened in MERCHANTS BANK, N.A., and all proceeds of the Grant shall be deposited in such account which shall be pledged to the Government and held in accordance with the provisions of the Grant and Security Agreement and the deposit account control agreement; and

RESOLVED that the officers of the Corporation be, and each of them is authorized in the name and on behalf of the Corporation, to execute all such instruments, make all such payments and do all such other acts as in the opinion of the officer or officers acting may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions.

RUS Project Designation:

MN 1716 A70

ReCONNECT PROGRAM

GRANT AND SECURITY AGREEMENT

January 13, 2026

between

GOODHUE COUNTY

and

NUVERA COMMUNICATIONS, INC.

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF
AGRICULTURE RURAL UTILITIES SERVICE

ReCONNECT PROGRAM GRANT AND SECURITY AGREEMENT

THIS GRANT AND SECURITY AGREEMENT (this "Agreement"), dated as of January 13, 2026, is among **GOODHUE COUNTY** the ("Principal Awardee"), a local government existing under the laws of Minnesota and **NUVERA COMMUNICATIONS, INC.** ("Second Awardee"), a for profit existing under the laws of Minnesota, hereinafter collectively referred to as the "Co-Awardees" and each individually a "Co-Awardee", and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS").

The Principal Awardee has been provided Congressionally Directed Spending under the Consolidated Appropriations Act, 2022, Public Law 117-103 (the FY2022 Appropriations"), under which RUS was directed to finance the construction of a broadband infrastructure project to serve rural areas (the "Project").

RUS is willing to extend financial assistance, in the form of a grant to the Co-Awardees, pursuant to the Consolidated Appropriations Act, 2018, Pub. L. 115-141, § 779 (the "FY2018 Appropriations"), the FY2022 Appropriations, Title VI of the Rural Electrification Act of 1936 (7 U.S.C. §§ 901 *et seq.*), and all applicable federal regulations, on the terms and conditions stated herein. The Co-Awardees are willing to secure the grant and its other obligations to RUS on the terms stated herein.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I – DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS, as well as compliance with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200 and the system of accounting prescribed by RUS Bulletin 1770B-1.

"Advance" or "Advances" shall mean the disbursement of grant funds in accordance with this Agreement.

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

“Approved Project Service Area” shall mean all or a portion of the Proposed Funded Service Area, as such term is defined in the ReConnect Regulation and detailed in the map submitted to the Agency by the Principal Awardee, that is approved by the Agency for funding.

"Award" shall mean the grant described in Article III.

"Buildout Timeline" shall mean the detailed schedule describing the Project build out, submitted to and approved by the RUS, as may be amended from time to time with prior written RUS consent.

"Business Day" shall mean any day that RUS and the Department of Treasury are both open for business.

"Co-Awardees" shall mean all grantees named in the first paragraph hereof.

"Collateral" shall mean any of the property financed with the grant, and pledged as security for the grant, described in Article IX, and more particularly described in Schedule 2.

"Composite Economic Life" means the weighted (by dollar amount of each class of facility in the Award) average economic life of all classes of facilities in the Award, as determined by RUS.

"Distribution" shall have the meaning as defined in Section 7.4.

"Eligible Purposes" shall mean purposes and expenses which are specified in the ReConnect Regulations as being eligible for funding.

"Event of Default" shall have the meaning as defined in Article X.

"Expiration Date" shall have the meaning as defined in Section 3.1(b).

"Form 481" shall have the meaning as defined in Section 4.3(d).

"GAAP" shall mean generally accepted accounting principles in the United States.

"Grant" shall mean the grant described in Section 3.1.

“Grant Agreement” shall mean, collectively, this Agreement and the Security Documents.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Co-Awardee or on the ability of the Co-Awardees to perform their obligations under the Grant Agreement as determined by RUS.

"Network Design" shall mean the network as described in the documentation provided to RUS.

"Permitted Encumbrances" shall mean:

- (1) liens for taxes, assessments and other governmental charges which are not delinquent;
- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED each Co-Awardee shall have set aside on its books adequate reserves with respect thereto;

- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business, and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED each Co-Awardee shall have set aside on its books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Awardee shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Awardee shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED each Co-Awardee shall have set aside on its books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Awardee for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Co-Awardees, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Co-Awardees upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Co-Awardees; PROVIDED, HOWEVER, that nothing in this clause 7 is intended to waive any claim or rights that RUS may otherwise have under Federal laws; and
- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Co-Awardees to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that RUS may otherwise have under Federal laws.

"Pledged Deposit Account" shall have the meaning as defined in Section 5.4.

"Project" means all of the work, as approved by the Agency, to be performed to bring broadband service to all premises in the Approved Project Service Area, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance or other funds.

"Project Completion" shall mean that all Award funds for construction of the broadband system, excluding those funds for subscriber drop connections and customer premises equipment, have been advanced to the Co-Awardees by RUS.

"RE Act" shall mean the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

"ReConnect Program Construction Procedures" shall mean the procedures for construction and Advances, attached hereto as Attachment 1.

"ReConnect Regulations" shall mean the regulations of the ReConnect program promulgated at 7 C.F.R. 1740.

“Release of Funds Date” shall mean the date funds are first made available as evidenced by the notice sent by the Agency to the Co-Awardees.

“Security Documents” shall mean, collectively, any security agreement, financing statement, deposit account control agreement or other document providing collateral for the grant and other obligations hereunder.

“Service Obligation” shall mean the period in which grant assets must be placed into service to carry out the purposes of the ReConnect Program, and the time period in which grant assets must be secured as an exclusive, first lien on behalf of the government.

"Subsidiaries" shall mean the subsidiaries listed in Schedule 1.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Recognizing that RUS is relying hereon, each Co-Awardee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Co-Awardee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Grant Agreement; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Co-Awardee of the Grant Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of such Co-Awardee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which said Co-Awardee is a party or by which it may be bound. Such Co-Awardee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Grant Agreement, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each part of the Grant Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Co-Awardee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Co-Awardee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.").

- (f) *Information Submitted to Agency.* All information, reports, and other documents and data submitted to RUS in connection with the project were, at the time the same were furnished, complete, and correct in all material respects.
- (g) *Principal Place of Business.* The principal place of business and chief executive office of each Co-Awardee is at the address of the Awardee specified in Schedule 1 hereto.
- (h) *Organization Number.* Each Co-Awardee's organization number is correctly identified in Schedule 1 hereto.
- (i) *Subsidiaries and Parent.* Any subsidiaries or parent of the Co-Awardees are disclosed on the attached Schedule 1.
- (j) *Additional Representations and Warranties.* The Co-Awardee further represents and warrants as set forth in Schedule 1.

ARTICLE III – THE GRANT

Section 3.1 Grant Amount and Expiration Date.

- (a) *Grant Amount.* RUS agrees to make, and the Co-Awardees agree to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a grant, in the amount specified in Schedule 1 hereto (the "Grant").
- (b) *Expiration Date.* The obligation of RUS to advance the Award, or any portion thereof, shall expire on a date ("Expiration Date") five (5) years from the Release of Funds date.

Section 3.2 Security Documents

The Co-Awardees shall execute the Security Documents, covering the Collateral, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.

Section 3.3 Project

- (a) *Grant Purpose.* The grant has been made solely to finance the broadband infrastructure project specifically defined herein ("Project").
- (b) *Changes to Project.* The Principal Awardee shall obtain the prior written approval of RUS for any material change to the network design, construction, buildout timeline, delivery of services, and/or objective(s) of the Project.

Section 3.4 ACH Payments

The Principal Awardee consents to the use of the Automated Clearing House (ACH) Payment System and to the deposit of award funds directly into the Pledged Deposit Account.

ARTICLE IV – CONDITIONS OF FINANCIAL ASSISTANCE

Section 4.1 Conditions Precedent to Closing

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Grant Agreement.* RUS shall receive duly executed originals of the Grant Agreement;
- (c) *Authorizations.* RUS shall have received satisfactory evidence that all parts of the Grant Agreement and proceedings of the Co-Awardees necessary for duly authorizing the execution, delivery and performance of the Grant Agreement have been obtained and are in full force and effect;
- (d) *Approvals.* RUS shall have received satisfactory evidence that the Co-Awardees has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each part of the Grant Agreement;
- (e) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS;
- (f) *Cybersecurity Risk Management.* RUS shall have received satisfactory evidence that the Co-Awardees have considered and addressed cybersecurity risks consistent with the cybersecurity performance goals for critical infrastructure and control systems directed by the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, or the current draft of these goals, found at <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>;
- (g) *Opinion of Counsel.* RUS shall have received an opinion of counsel for each Co-Awardee (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Co-Awardees operate; and
- (h) *Additional Conditions.* The Co-Awardees have met all additional conditions specified in Schedule 1 hereto.

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Current Financial Information and Certificate of Authority.* RUS has received from the Principal Awardee a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Principal Awardee as the person or persons authorized to execute and submit, on behalf of the Principal Awardee, RUS Form 481, "Financial Requirement Statement;"
- (b) *Additional Conditions.* The Co-Awardees have met all additional conditions specified in Schedule 1 hereto.

Section 4.3 Conditions to Individual Advances

The obligations of RUS to approve any Advance are subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Co-Awardees contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Co-Awardee with respect to the Project;
- (d) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, unless otherwise agreed to by RUS, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter "Form 481"), bearing the original signature of the officer, employee, or agent of the Principal Awardee authorized to receive, disburse, or receive and disburse the Award, with supporting documentation from the Principal Awardee in accordance with the ReConnect Program Construction Procedures. Advances shall be limited to the minimum amounts required for the Co-Awardee's immediate disbursement needs and shall be requested by the Principal Awardee only for actual immediate cash requirements of the Co-Awardees. Such grant advances shall be provided on a reimbursement basis, or based on unpaid third-party invoices for Eligible Purposes, or contracts approved by RUS, in accordance with the ReConnect Program Construction Procedures;
- (e) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by any Co-Awardee and located in such a flood hazard area, such Awardee shall have submitted evidence, in form and substance satisfactory to RUS or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) such Awardee has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations;
- (f) *Compliance with Buildout Timeline and Reporting Requirements.* That RUS has received from the Principal Awardee evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Buildout Timeline and Reporting requirements in Section 6.4;
- (g) *Compliance with Grant Agreement.* That the Co-Awardees are in material compliance with the Grant Agreement;
- (h) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Co-Awardees have obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (i) *Additional Documents.* That the Co-Awardees agree to provide RUS with such additional documents as RUS may request; and
- (j) *Additional Conditions.* That the Co-Awardees have met all additional conditions specified in Schedule 1 hereto.

ARTICLE V – AFFIRMATIVE COVENANTS

Section 5.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Co-Awardees shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2 Use of Advances

The Co-Awardees shall expend Award funds only for Eligible Purposes in accordance with the RUS approved line-item Project budget and Form(s) 481 submitted to RUS prior to the advance of funds.

Section 5.3 Unused and Disallowed Advances

- (a) The Co-Awardees shall return to RUS forthwith all or any advanced portion of the grant not disbursed for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.
- (b) The Principal Awardee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by an RUS grant audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against other approved purposes on Form(s) 481 or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Principal Awardee a written demand for payment. Interest shall accrue on disallowed grant Advances at the then current United States Treasury rate as prescribed by the Secretary of the Treasury. Closeout of the grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Principal Awardee's obligation to return any disallowed expenditures.

Section 5.4 Deposit of Advances into Pledged Deposit Account

- (a) The Principal Awardee shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be identified by the RUS' designation of the Principal Awardee followed by the words "Pledged Deposit Account." The Principal Awardee shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by an RUS audit into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which Advances were made, or for such other purposes as may be approved in writing by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with the ReConnect Program Construction Procedures.
- (b) *First Lien on Pledged Deposit Account.* The Principal Awardee shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in form acceptable to RUS.

Section 5.5 Miscellaneous Notices

The Principal Awardee shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Grant Agreement or the receipt of any notice given pursuant to the Grant Agreement with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under any other part of the Grant Agreement.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Principal Awardee or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- (e) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Principal Awardee as RUS may, from time to time, reasonably request.

Section 5.6 Service Obligation

The Co-Awardees shall provide the level of broadband service described in the RUS approved Project commencing from the date of Project Completion until the end of the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1. Co-Awardees acknowledge that given the significant amount of government contribution to the Project in the form of a grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default. Co-Awardees also acknowledges that grant assets must be secured as an exclusive, first lien on behalf of the government, as required by the ReConnect Program.

Section 5.7 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Co-Awardees shall be responsible for the management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with Network Design and Buildout Timeline.* The Principal Awardee shall cause the Project to be constructed and/or built out and completed in accordance with the Network Design submitted with the RUS approved project, as such design may be amended with prior RUS consent, and the Buildout Timeline. The Principal Awardee shall also ensure that facilities constructed with award funds are capable of delivering 100 Mbps symmetrical service to every premise in the Approved Project Service Area at the same time.
- (c) *General Insurance Requirements.* The Co-Awardees shall take out and maintain insurance on the Project and any other property acquired with the grant in accordance with 7 CFR Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 4.2(a) hereof.
- (d) *Contracting.* The Co-Awardees may, in accordance with the ReConnect Program Construction Procedures, contract for goods and services to be funded by the Award,

using RUS form contracts or private contracts, provided that private contracts must comply with equal employment opportunity and civil rights requirements.

- (e) *Commencement and Completion of the Project.*
 - (1) The Co-Awardees are required to commence the Project within 180 days from the date that RUS notifies in writing that the environmental review process has been concluded; and
 - (2) Project Completion shall occur within five years from the Release of Funds Date.
- (f) *National Programmatic Agreement.* If indicated on Schedule 1, Principal Awardee shall be bound by the requirements of the National Programmatic Agreement (NPA), whose terms and conditions shall be incorporated into this Agreement. Failure to abide by the NPA, if entered into, shall be an Event of Default hereunder.

Section 5.8 Preservation of Existence and Rights

The Co-Awardees shall take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

Section 5.9 Compliance with Laws

With respect to the Project, Co-Awardees shall comply with all applicable federal and state laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 CFR pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102); (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); (vi) The Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; (vii) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970; (viii) The Native American Graves Protection and Repatriation Act (25 USC 3001 *et seq.*, 43 CFR § 10.4); (ix) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*); (x) The Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996); and (xi) The Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA).

Section 5.10 Equal Opportunity Requirements

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Co-Awardees shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.
- (b) *Equal Opportunity Contract Provisions Also Bind the Co-Awardees.* The Co-Awardees further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

- (c) *Sanctions and Penalties.* The Co-Awardees agree that they shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Co-Awardees further agree that they shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Co-Awardees agree that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Co-Awardee, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.11 Purchases with Award Funds

Except as specifically authorized in writing in advance by RUS, all facilities, materials, equipment, supplies, replacements and all other items purchased with Award funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

Section 5.12 Co-Awardees to Defend Title and Remove Liens

Except for Permitted Encumbrances, the Co-Awardees will maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Co-Awardees shall make, execute, acknowledge, deliver, file and record all such mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as is necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. The Co-Awardees shall maintain the Collateral free of all liens except for Permitted Encumbrances, and will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Co-Awardee is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

Section 5.13 Further Assurances

- (a) Each Co-Awardee shall from time to time upon written demand of RUS make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental financing statements, continuation statements, and security agreements with respect to the Grant Collateral as may be requested by RUS.
- (b) Co-Awardees shall cause this Agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to subsection (a) immediately above, to forthwith upon execution to be filed and recorded and refiled

and rerecorded as conveyances and security interests in personal property in such manner and in such places as may be required by law or requested by RUS in order to fully preserve the security for the grant, and to perfect and maintain the superior lien of this Agreement and all supplemental security instruments.

Section 5.14 Buy American

- (a) *Funding to Non-Federal Entities.* Principal Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the IIJA. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.
- (b) *Funding to All Other Entities.* Principal Awardees that are not Non-Federal Entities shall be governed by the Agency's Buy American requirement at 7 CFR part 1787. Any requests for waiver of these requirements must be submitted pursuant to those regulations.

Section 5.15 Corrective Action

Within thirty (30) days of: (i) sending the financial reports required by Section 6.4(a) hereof that show the Financial Requirements of Section 5.16 were not met for the reported fiscal period; or (ii) being notified by RUS that such requirements were not met for the period, whichever is earlier, the Principal Awardee, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified Financial Requirements on a timely basis and shall promptly implement said plan.

Section 5.16 RDOF Funding

If Co-Awardees are recipients of Rural Digital Opportunity Fund (RDOF) funding, Co-Awardees acknowledges and certifies that neither funds under this Award nor under the RDOF award will be used to reimburse the same expenditures. Such Co-Awardees must also maintain separate accounts to track sources and uses of each funding source.

Section 5.17 Additional Affirmative Covenants

The Co-Awardees shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – ACCOUNTING AND REPORTING

Section 6.1 Financial Records

- (a) Co-Awardees must establish an accounting system satisfactory to RUS in compliance with Accounting Requirements. Such a system of accounts must account for all funds advanced under this Agreement separately from all other funds for the Project.
- (b) The Co-Awardees shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records and bills of sale, adequate to identify the purposes for which, and the manner in which grant, and other funds were expended on the Project. The Co-Awardees shall at all times keep, and safely preserve, proper books, records and

accounts in which full and true entries shall be made of all dealings, business, and affairs of the Co-Awardees and its Subsidiaries, in accordance with its system of accounts complying with Paragraph (a) immediately above. The Co-Awardees shall maintain copies of all documents submitted to RUS in connection with the Award until the longer of (i) all audits have been completed, (ii) the term of this Agreement or (iii) three years subsequent to close-out of the Award.

Section 6.2 Rights of Inspection

The Co-Awardees shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 6.3 Annual Audit

- (a) Non-Federal Entities, which include Awardees that are States, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, shall provide RUS with an audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements). The Awardee must follow subsection 200.502 in determining federal awards expended. All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. In addition, the Awardee must include the value of new federal loans made along with any grant expenditures from all federal sources during the Awardee's fiscal year. Therefore, the audit submission requirement for this program begins in the Awardee's fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor's report; or (ii) nine months after the end of the Awardee's audit period.
- (b) For all other entities, Awardees shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 C.F.R. part 1773, Policy on Audits of RUS Borrowers. Note that with respect to Advances that contain loan funds, the audit is required after an Advance has been made, and, thereafter, from the close of each subsequent fiscal year until the loan is repaid in full. With respect to Advances that only contain grant funds, the audit is required until all grant funds have been expended or rescinded. While an audit is required, Awardees must also submit a report on compliance and internal controls over financial reporting, as well as a report on compliance with aspects of contractual agreements and regulatory requirements.

Section 6.4 Reporting

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter during the period in which grant funds are available for expenditure, the Principal Awardee must submit to RUS utilizing RUS' online reporting system, the following information: balance sheets, income statements, statements of cash flow, and the number of customers taking broadband service. In addition, the Principal Awardee must provide RUS with such other reports concerning the financial condition or operation of the Principal Awardee, including its Subsidiaries, as RUS may request.

- (b) *Annual Performance Report.* For three years starting the first January 31st after Project Completion, the Principal Awardee must submit the following information utilizing RUS' online reporting system:
 - (i) existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
 - (ii) the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;
 - (iii) the progress towards fulfilling the objectives for which the assistance was granted;
 - (iv) the speed and average price of the most subscribed tier of the broadband service offerings in the Project's service area; and
 - (v) the average price of broadband service in the Project's service area.
- (c) *Annual Map Reporting:* No later than thirty (30) calendar days after the end of the Calendar Year, the Principal Awardee shall be required to submit annually updated Approved Project Service Area(s) maps through RUS' online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.
- (d) *Close Out Report.* The Awardee shall deliver a close out report to RUS no later than one hundred twenty (120) days after the expiration or termination of the Award or expenditure of all Award funds. The close out report shall address: (i) a the accomplishments of the Project; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; (iii) a description of how funds were spent against the original general budget submitted to RUS, and (iv) a final buildout map on the RUS mapping tool indicating that all construction has been completed as proposed.

ARTICLE VII – NEGATIVE COVENANTS

Section 7.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Co-Awardees shall duly observe each of the negative covenants set forth in this Article VII.

Section 7.2 Negative Pledge

The Co-Awardees shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest in the Collateral, other than Permitted Encumbrances.

Section 7.3 Contracts

The Co-Awardees shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or management of all or any substantial part of the Project, and shall not enter into any contract for the use by others of all or any substantial part of the Project.

Section 7.4 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization

The Co-Awardees shall not change its principal place of business, place of conducting business, or type of organization without the prior written consent of RUS.

Section 7.5 Changing Name or Place of Incorporation or Organization

The Co-Awardees shall not change its legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

Section 7.6 Historic Preservation

The Co-Awardees shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 7.7 Restrictions on Transfers of Property

- (a) Except as provided in Paragraph (b), and excluding any property which the Co-Awardees must sell to customers in the ordinary course of business, the Co-Awardees shall not sell, lease or transfer any Collateral to any other person or entity (including any subsidiary or affiliate of the Co-Awardees) without the prior written consent of the RUS.
- (b) So long as a Co-Awardees is not in default hereunder, such Co-Awardee may, without obtaining the consent of RUS, sell or otherwise dispose of, free from the lien hereof, any of the Collateral which is neither necessary to, nor useful for, the operation of the Project, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Co-Awardees; provided, however, that the Co-Awardees shall follow 2 C.F.R. 200 with respect to any proceeds.

Section 7.8 Restrictions on Changes to Line Item Budget

The Principal Awardee agrees that the budget for the Project is a line-item budget and agrees not to make any revisions to the RUS approved line item Project budget, including, without limitation, the part of the budget for construction, without the prior written approval of RUS.

Section 7.9 Affiliated Transactions

With respect to the Project, the Co-Awardees shall not enter into any transaction, contract, or dealing with an Affiliate or with the Co-Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Grantee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance grant funds for affiliated transactions on the Project will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

Section 7.10 Additional Negative Covenants

The Co-Awardees shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VIII – GRANTOR’S RIGHTS

Section 8.1 Termination of Award Offer

RUS, in its sole discretion, may terminate the offer to make the grant if it does not receive the Grant Agreement, duly executed on behalf of the Co-Awardees and all conditions in Section 4.1 hereof are not satisfied within sixty (60) days from the date that RUS notifies in writing that the environmental review process has been concluded.

Section 8.2 Audits and Compliance Reviews

After giving prior notification to the Co-Awardees, RUS has the right to conduct compliance reviews and audits of the Co-Awardees to assure compliance with the Grant Agreement, ReConnect Regulations, and the Accounting Requirements.

Section 8.3 Disallowed Expenditures

Upon a determination by RUS that any Co-Awardee did not expend Award funds on Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:

- (a) Disallow all or a part of the expenditures and disbursements of the Award and require the Co-Awardees to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes on Form(s) 481 or to reimburse the Government, as provided in Section 5.3 hereof;
- (b) Suspend future Advances; and/or
- (c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Grant Agreement or law.

Section 8.4 Suspension of Advances

RUS may, in its absolute discretion, suspend approving Advances on the Award upon its making a determination that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend approving advances of the Award upon the occurrence of an Event of Default.

Section 8.5 Right to Expend Money

RUS shall have the right (without prejudice to any of its rights with respect to any Event of Default) to advance or expend moneys for the purpose of procuring insurance, or for the payment of insurance premiums as required hereunder, or to advance or expend moneys for the payment of taxes, assessments or other charges, or to save the Collateral from sale or forfeiture for any unpaid tax or assessment, or otherwise, or to redeem the same from any tax or other sale, or to purchase any tax title thereon, or to remove or purchase any mechanics’ liens or other encumbrance thereon, or to make repairs thereon or to comply with any covenant herein contained or to prosecute and defend any suit in relation to the Collateral or in any manner to protect the Collateral and the title thereto, and all sums so advanced for any of the aforesaid purposes with interest thereon at the highest legal rate, but not in excess of twelve per centum (12%) per annum shall be deemed a charge upon the Collateral and shall be forthwith paid to RUS upon demand. It shall not be obligatory for RUS in making any such advances or expenditures to inquire into the validity of any such tax title, or of any such taxes or assessments or sales therefore, or of any such mechanics’ liens or other encumbrance.

Section 8.6 Right to File Financing Statements

RUS shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Co-Awardees, as RUS deems necessary to perfect a first lien

on the Collateral and to maintain and preserve such perfected first lien for the Composite Economic Life. The Co-Awardees, jointly and severally, shall reimburse RUS for any expenses incurred in the exercise of this right.

ARTICLE IX - GRANT OF SECURITY INTEREST

Section 9.1 Collateral

To secure the payment and performance of the Service Obligation, the Co-Awardees hereby pledges, assigns, and transfers to RUS, and grants to RUS a continuing security interest in the Collateral, as more particularly described in Schedule 2.

Section 9.2 Continuing Rights with Respect to Grant Assets

- (a) Given the significant grant to the Project, the government must be provided an exclusive first lien on all grant assets during the Service Obligation of the Award, as defined in Section 5.7, which shall not be shared *pari passu* with any other entity. Thereafter, any sale or disposition of grant assets must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 C.F.R. part 200. the Co-Awardees acknowledge that this part will apply to all grant funds of Co-Awardees received under the Grant, regardless of the Co-Awardees' entity status or type of organization.
- (b) With respect only to grant assets received by a Co-Awardee, each Co-Awardee agrees and acknowledges that pursuant to the regulation, such Co-Awardee must repay funds corresponding to such assets to the government if the Project is sold or merged into another entity without RUS approval during the Service Obligation of the grant. Additionally, the Principal Awardee shall be jointly liable with each Co-Awardee, such that the government may bring suit against one or each entity to enforce its rights.

ARTICLE X - EVENTS OF DEFAULT

Section 10.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Co-Awardees in the Grant Agreement, Form(s) 481 or any certificate furnished to RUS under the Grant Agreement, or for the Project shall prove to have been incorrect in any material respect at the time made;
- (b) Improper Expenditures. The Co-Awardees expend Award funds on costs which are not Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;
- (c) Failure to Keep Adequate Records. The Co-Awardees fail to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein;
- (d) Failure to Build in Accordance with Buildout Timeline. The Co-Awardees fail to commence build out of the Project within 180 days from the date that RUS notifies in writing that the environmental review process has been concluded or otherwise fails to meet or exceed milestones established in the Buildout Timeline, as it may be amended with prior written RUS consent;

- (e) Failure to Comply with Accounting and Reporting Requirements. Any Co-Awardee fails to comply with the accounting and reporting requirements in Article VI;
- (f) Other Covenants. Default by the Principal Awardee in the observance or performance of any other covenant or agreement contained in any part of the Grant Agreement, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Principal Awardee by RUS;
- (g) Adverse Effects. The Principal Awardee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of its business or the Awardee files for or an event occurs which can reasonably be expected to result in its dissolution or termination; and/or
- (h) Service Obligation. The Co-Awardee fails to provide the Service Obligation on the Project with respect to the grant.

ARTICLE XI - REMEDIES

Section 11.1 General

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Grant Agreement in the manner, upon the conditions, and with the effect provided in the Grant Agreement, and may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article X hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 11.2 Remedies

In addition to the remedies referred to in Section 11.1 hereof, upon the occurrence of an Event of Default, RUS may:

- (a) Refuse to make any advance or further advance on account of the Award, but any advance thereafter made by RUS shall not constitute a waiver of such default;
- (b) Terminate the obligation to further advance on account of the Award;
- (c) RUS shall have the right to enter and/or remain upon the premises of the Principal Awardee without any obligation to pay rent to the Principal Awardee or others, or any other place or places where any of the Collateral is located and kept and: (i) remove the Collateral therefrom in order to maintain, collect, sell, and/or liquidate the Collateral or, (ii) use such premises, together with materials, supplies, books, and records of the Principal Awardee, to maintain possession and/or the condition of the Collateral, and to prepare the Collateral for sale, liquidation, or collection. RUS may require a Co-Awardee to assemble the Collateral and make it available to RUS at a place to be designated by RUS;
- (d) RUS shall have, in addition to any other rights and remedies contained in this Agreement, all of the rights and remedies of a secured party under the Uniform Commercial Code in force in the state identified in the first paragraph hereof, as well

as the state where the Collateral is located, as of the date hereof, all of which rights and remedies shall be cumulative, and nonexclusive.

ARTICLE XII - MISCELLANEOUS

Section 12.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by email) delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by email delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1510
Attention: Administrator
Email: Email: sm.reconnect.cds@usda.gov

Co-Awardees
See Schedule 1

With a copy to:
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1590, Room No. 4121
Washington, D.C. 20250-1590
Attention: Deputy Assistant Administrator: Aylene Mafnas
Email: TelecomPMRA@usda.gov

With a copy to:
See Schedule 1

Section 12.2 Notices of Actions Against Collateral

Any notice required to be given by RUS of a sale or other disposition or other intended action by RUS with respect to any of the Collateral, or otherwise, made in accordance with this Agreement at least five (5) days prior to such proposed action, shall constitute fair and reasonable notice to the Co-Awardees of any such action.

Section 12.3 Expenses

To the extent allowed by law, the Co-Awardees shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Grant Agreement or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 12.4 Filing Fees

To the extent permitted by law, the Co-Awardees agree to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of

any document or instrument in connection herewith. The provisions of this section shall survive the execution and delivery of this Agreement.

Section 12.5 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 12.6 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

Section 12.7 Consent to Jurisdiction

The Co-Awardees hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Co-Awardees 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 the Awardee's address set forth in Schedule 1. The Co-Awardees 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 DC Federal Courts and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Co-Awardees in their own jurisdiction.

Section 12.8 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.9 Rescission

The Principal Awardee may elect to rescind the Award, in which event RUS shall release the Co-Awardees from their obligations hereunder, provided the Co-Awardees comply with such terms and conditions as RUS may impose for such release.

Section 12.10 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Co-Awardees and RUS and their respective successors and assigns, except that the Co-Awardees

may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.

- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 12.11 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement and all parts of the Grant Agreement are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and any other part of the Grant Agreement. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Co-Awardees here from or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 12.12 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 12.13 Severability

If any term, provision, condition, or any part thereof, of this Agreement or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 12.14 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 12.15 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other part of the Grant Agreement, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 12.16 Term

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Co-Awardees and RUS replace this Agreement with another written agreement;
or
- (b) All of the Co-Awardee's obligations under this Agreement, including the Service Obligation, have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GOODHUE COUNTY

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

NUVERA COMMUNICATIONS, INC.

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
Administrator
of the Rural Utilities Service |

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (g) Principal Awardee's Principal Place of Business:
509 W. 5th St. Red Wing, MN 55066
2. Second Awardee's Principal Place of Business:
27 N. Minnesota St., New Ulm, MN 56073
3. Paragraph (h) Principal Awardee's Organization Number: N/A
Second Awardee's Organization Number: N/A
4. Paragraph (i) Principal Awardee's Subsidiaries: N/A
Second Awardee's Subsidiaries: N/A
5. Paragraph (i) Principal Awardee's Parent: N/A
Second Awardee's Parent: NA
6. Paragraph (j) Additional Representations and Warranties:

The Second Awardee represents and warrants that it is a transmitting utility.

Article III The Grant

1. Section 3.1(a) Grant amount: \$3,210,000.00

Article IV Conditions Precedent to Closing

1. The additional conditions referred to in Section 4.1(h) are as follows:

N/A

Conditions Precedent to Release of Funds

2. The additional conditions referred to in Section 4.2(b) are as follows: N/A

Conditions Precedent to Individual Advances

3. N/A
4. Section 4.3(h) Required permits, licenses, franchise, and other approvals: N/A
5. The additional conditions to advance referred to in Section 4.3(j) are as follows: N/A

Article V Affirmative Covenants

1. Section 5.7 Composite Economic Life of RUS financed facilities: **20 years**
2. Section 5.8(f) Awardee is subject to the following National Programmatic Agreement (NPA):
N/A
3. The additional affirmative covenants referred to in Section 5.17 are as follows:

Article VII Negative Covenants

1. The additional negative covenants referred to in Section 7.9 are as follows:

N/A

Article XII Miscellaneous

1. Section 12.1 Awardee's address for purposes of notification:
Scott Arneson
County Administrator
509 W 5th St. STE 310
Red Wing, MN 55066
2. Section 12.1 Address for Awardee's notification copy:
Stephen O'Keefe
Office of the Goodhue County Attorney
454 W. 6th St. Red Wing, MN 55066

|

SCHEDULE 2

COLLATERAL

Collateral shall include the following:

All personal property, assets, rights, and fixtures of the Co-Awardees acquired with Award funds, of every kind and description, tangible and intangible, of the kind or nature specifically mentioned herein, or any other kind or nature now owned or hereafter acquired, or built by the Co-Awardees, wherever located, including without limitation all or in part the following (hereinafter the "Collateral"):

I

All right, title, and interest of the Co-Awardees in and to fixtures and personal properties acquired with Award funds, whether tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Co-Awardees, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture; equipment, and any and all other fixtures and personal property of every kind, nature, and description;

II

All right, title, and interest of the Co-Awardees in, to, and under all personal property and fixtures of every kind and nature acquired with Award funds, including without limitation all goods (such as inventory, equipment and any accessions thereto), documents, accounts (such as deposit accounts or trust accounts pursuant hereto) software, general intangibles (such as payment intangibles), supporting obligations, contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently and hereafter defined in the UCC);

III

All right, title, and interest of the Co-Awardees in, to, and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Co-Awardees and any person, firm, corporation, or other corporate entity relating to the Collateral (including contracts for the lease, occupancy, or sale of the Collateral, or any portion thereto);

IV

All right, title, and interest of the Co-Awardees in, to, and under any and all books, records and correspondence relating to the Collateral, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral; and

V

Also, all right, title, and interest of the Co-Awardees in, to, and under all other fixtures and personal property acquired with Awards funds, tangible or intangible, of every kind, nature, and description, and wherever situated, now or hereafter owned or leased by the Co-Awardees, it being the intention hereof that all such property paid for with Award funds now owned or leased but not specifically described herein, or acquired or held by the Co-Awardees after the date hereof, shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Co-Awardees and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law.

ATTACHMENT 1

RECONNECT PROGRAM CONSTRUCTION PROCEDURES

ATTACHMENT 2

EQUAL OPPORTUNITY CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- (b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the contractor's commitments under this section and shall post copies of the notice in conspicuous place available to employees and applicants for employment.
- (d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with the procedure authorized in Executive Order 11246 of September 14, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Agreement to Assign Responsibilities under ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures

This Agreement to Assign Responsibilities under ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures (the “Agreement”), dated as of [DATE], is between Goodhue County (“Principal Awardee”) and Nuvera Communications (“Second Awardee”).

WHEREAS, the Principal Awardee has been provided Congressionally Directed Spending under the Consolidated Appropriations Act, 2022, Public Law 117-103, under which The United States of America, acting through the Administrator of the Rural Utilities Service (RUS) was directed to finance the construction of a broadband infrastructure project MN 1716 A70 (the “Project”).

WHEREAS, the parties and RUS have agreed to a ReConnect Program Grant and Security Agreement, dated [DATE], covering the construction of the Project.

WHEREAS, because the Second Awardee will construct and, once complete, own and operate the broadband infrastructure for the Project, the parties wish to establish the responsibilities and obligations of each party as they pertain to the Project

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Background

Under the ReConnect Program Grant and Security Agreement, the Principal Awardee and Second Awardee are jointly responsible for all aspects of the agreement. In this case, the Principal Awardee is facilitating the grant award as the financial passthrough for the Second Awardee, while the Second Awardee is in the business of performing the work and services outlined in the grant award to construct, own and operate the broadband infrastructure for the Project.

2. Effective Date/Term

Effective Date: This agreement shall become effective upon final execution and remain in effect until all work, services, and obligations under the ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures are fulfilled and The United States of America, acting through the Administrator of the Rural Utilities Service no longer has a security interest in the project; currently expected to be 20 years from the date of project completion.

3. Scope of Assignment

As to each other, the Parties hereby agree to be fully responsible for the following obligations and duties under the ReConnect Program Grant and Security Agreement (attached as Exhibit A and incorporated herein by reference) and the ReConnect Program Construction Procedures (attached as Exhibit B and incorporated herein by reference):

- 3.1. The Principal Awardee will maintain a Pledged Deposit Account as primary account holder, provide annual audit documentation, and file the required grant reporting documents (including Form 481) supplied by Nuvera as required under the grant.
- 3.2. Second Awardee agrees to abide by the Operating Agreement entered between the parties and to perform and be responsible for the following obligations under the ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures including, but not limited to, the following:
 - a) **Perfect a Senior Lien/Security Interest** – Along with Principal Awardee, perfect a senior lien/security interest in the personal property and fixtures acquired with grant funding and filing with the correct authority.
 - b) **Collateral** – Maintain all assets, tangible and intangible, equipment, records, and correspondence relating to the collateral acquired with grant funds, while defending any claims/liens should they arise. Assume ownership of all assets in the event of abandonment pursuant to Section 9.1 of the Operating Agreement.
 - c) **Design and Buildout** – Provide compliance documentation with Network Design, Buildout Timeline, and Reporting requirement as well as notify the Principal Awardee of default, litigation, regulatory, or any other information that could have a direct effect on the project. Notification of changes orders for submission to RUS for approval. Adhering to all the requirements set out in the ReConnect Program Grant and Security Agreement and ReConnect Program Construction Procedures; responsible for all plans, documentation, recordkeeping, completion of Forms/Documentation required by RUS.
 - d) **Environmental Review** – If required, work with RUS on the environmental review process.
 - e) **Contractors and/or Sub-Contractors** – Negotiations and assignment of project to contractors and/or sub-contractors. Monitor compliance with ReConnect Program Grant and Security Agreement and ReConnect Program Construction Procedures and adhere to all federal/state policies related to the grant (buy American, labor laws – EEO, Civil Rights, etc.) Insurance requirements and maintain certificate of insurance or performance bonds.

- f) **Fees** - Responsible for all banking fees, permits, licenses, contracts, right of way, easements, and any real estate transactions and the cost or fees that go along with them and reimburse Principal Awardee for all third-party costs incurred to administer the grant.
- g) **General Insurance** - Responsible for carrying the required insurance coverage along with maintaining a fidelity bond or theft insurance coverage and the cost associated with that coverage.
- h) **Disbursements** – Preparation of RUS Form 481 for submission by Principal Awardee, along with all required supporting documentation in accordance with ReConnect Program Construction Procedures. If an expenditure is disallowed, Second Awardee will be responsible for reimbursing RUS the amount disallowed plus interest. Interest shall accrue at the then current United States Treasury rate.
- i) **Records** – Maintain and make available all records and documents in compliance with RUS’ accounting requirements. Assist with the timely preparation of work papers and provide documentation required for the yearly audit.
- j) **Quarterly Reports** – Provide customer broadband service data within 30 days after the end of each calendar year quarter along with any additional information requested by RUS.
- k) **Annual Performance Reports** – Preparation of information detailing network service improvements, end-user estimates of new or upgraded infrastructure, progress toward fulfilling project objectives, broadband speed and average pricing data of most subscribed tier in the project service area, and the average price of broadband service in the project area.
- l) **Annual Map Reporting** – Prepare an updated approved project service area map showing areas of construction completion, location of residences and businesses that are receiving new broadband service within 30 days after the end of the calendar year. The annual reporting will continue until the entire approved project service area can receive broadband.
- m) **Close-Out Report** – Within 120 days after the expenditure of all award funds, prepare the close out report addressing project accomplishments, description of problems, delays, or adverse conditions and what the effect was on the project, financial expenditures compared to original budget along with a narrative of variances, and final buildout map indicating all construction has been completed as proposed.

- n) **Service** - Second Awardee shall ensure that facilities constructed with grants funds are capable of delivering 100 Mbps symmetrical service to every premise in the approved project service area at the same time. Will keep equipment and lines in good repair and provide service to the entire project service area for as long as this agreement is in effect.

3.3. The parties agree to cooperate fully and in good faith in the performance of their respective obligations under this agreement.

3.4. The parties agree to fulfill all obligations in strict compliance with USDA and RUS requirements.

3.5. This scope of assignment shall not otherwise be viewed as a limitation on the Parties other obligations under the ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures:

4. Indemnification and Financial Responsibility

4.1. Each Party to this agreement agrees to defend, indemnify and hold harmless the other Party, its employees and officials harmless from any penalties, claims, demands, actions or causes of action, including reasonable attorney fees and expenses arising out of any act or omission of the other Party, or its subcontractors, partners, or independent contractors or any of their agents employees in the performance of or with relation to any of the work, services, or commitments to be performed or furnished by the Party , their subcontractors, partners or independent contractors or any of their agents or employees under this Agreement, the ReConnect Program Grant and Security Agreement, and the ReConnect Program Construction Procedures

4.2. In the event funds distributed under the grant are recalled or pulled back by RUS, Second Awardee shall be fully responsible for funds already distributed to Second Awardee, its agents, hires, and subcontractors, for work performed under the grant. This includes responsibility for any repayment of grant funds to RUS. Primary Awardee shall not be liable for, or responsible for, any loss incurred by Second Awardee due to repayment of grant funds, or for grant funds being recalled or pulled back. Primary Awardee's sole responsibility to RUS in such an event is limited to funds received under the grant that remain undispersed and held in accounts controlled by Primary Awardee.

5. Enforcement

This contract shall be enforceable under the laws of the State of Minnesota. Any breach of this agreement may result in legal remedies, including but not limited to recovery of damages, termination of subcontracting arrangements, and pursuit of indemnification.

6. Entire Agreement

This contract, along with the Operating Agreement entered between the parties, constitutes the entire agreement between the parties and supersedes any prior understanding or agreements, whether written or oral.

If any provision of this agreement is found to conflict with any terms of the Operating Agreement, this agreement controls.

Additional requirements contained in other sections of the ReConnect Program Grant and Security Agreement and the ReConnect Program Construction Procedures may also be the sole or joint responsibility of the parties to this agreement.

Signatures

By signing below, all parties agree to the terms of this agreement:

Goodhue County (Principal Awardee)

Nuvera Communications (Second Awardee)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**OPERATING AGREEMENT BETWEEN
GOODHUE COUNTY, PRINCIPAL AWARDEE, AND
NUVERA COMMUNICATIONS INC., SECOND AWARDEE
FOR FIBER OPTIC OPERATIONS**

FIBER OPTIC OPERATING AGREEMENT

An Operating Agreement (Agreement) together with attachments made by and between **Principal Awardee**, MN, acting by and through its Board of Commissioners (“**Principal Awardee**”) and **Second Awardee**, a private internet service provider.

BACKGROUND

Principal Awardee wishes every resident and business within the Proposed Funded Service Area to have access to a dedicated fiber optic network capable of offering, at a minimum, a gigabyte to each location.

Principal Awardee has received \$X million in Congressionally Directed Spending via the USDA RUS ReConnect Program to assist with constructing a fiber-optic network, in which **Second Awardee** has been named Co-Awardee.

Due to federal requirements, **Principal Awardee** must own the fiber-optic network but wishes to work with a preferred partner who would be responsible for its operations and maintenance.

Principal Awardee chooses **Second Awardee** as its preferred partner.

Principal Awardee will construct the network using a qualified contractor to deploy fiber-optic cables from a meet point with **Second Awardee**'s existing framework, including drops to customer locations.

Principal Awardee and **Second Awardee** will mutually identify the meet point where the **Second Awardee** network will connect to **Principal Awardee**'s network.

Second Awardee will provide and own the Optical Network Terminals (ONTs) at the customers' locations and the access electronics in the **Second Awardee** central office.

Second Awardee will provide the labor to install the ONTs in the customers' homes and businesses, along with any additional in-home wiring that will be required. This will be done at **Second Awardee**'s expense. **Principal Awardee** will provide a pre-terminated connector in an NID shell on the exterior of the premises that shall serve as the point of interconnection.

Second Awardee will fund and own its portion of the network and network elements needed to offer services over the **Principal Awardee** owned fiber.

Second Awardee will provide the core routers, edge routers, and in-home customer routers for the managed wifi service at **Second Awardee**'s expense.

Second Awardee will work with **Principal Awardee** through this operating agreement, the separate Agreement to Assign Responsibilities, and the ReConnect Program Grant and Security Agreement to satisfy the requirements of the Congressionally Directed Spending Program. **Second Awardee** agrees to be responsible for the operation and maintenance of this fiber network generally, and this includes activities and responsibilities such as:

- Required CDS speed testing and closeout documentation.
- Arrange and pay for locating services for the entire network.

- In the event of a fiber cut or the need to replace any fiber-optic cable, **Second Awardee** will pay 100% of the costs for the materials and the contractors to perform the restoration. If it is determined any other party is responsible for the cut, that party will incur the expenses for restoration. This would include events such as improperly located cables or disregard for field markings for locates. In those examples, the locate company or contractor improperly reading field markings would be responsible for damages and restoration.
- Maintain spare parts needed for the repair of the network.
- Provide the labor to troubleshoot and fix any failures.

Should **Principal Awardee** lease capacity to another service provider, it agrees to pay for all the aforementioned costs (e.g., locating services, fiber cut repair, engineering, splicing, staking, inspection, permitting, return to service, spare parts, troubleshooting, and fixes), and notify **Second Awardee** of the new lease arrangement.

Second Awardee will maintain multiple channels for customers to request service, report trouble, or seek technical assistance. These include email, website contacts, toll-free phone numbers, and offices in City A and City B.

Second Awardee will sell services over the **Principal Awardee** network at the same rates **Second Awardee** sells services on non-owned networks.

Second Awardee will participate in the Federal Lifeline for payment assistance for low-income households.

DEFINITIONS

The following terms are used in this Agreement:

- A. "Right-of-Way" means the real property, including all fee simple, easements, access rights, rights of use, and other interests owned by or operated by a government entity devoted to road or highway purposes.
- B. "Effective Date" is the date upon which all Parties have executed this Agreement.
- C. "Fiber" means a glass strand or strands which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- D. "Fiber Facilities" means a handhole, conduit, splice enclosures, and related equipment.
- E. "Fiber-optic cable" or "Cable" means a collection of fibers with a protective outer covering.
- F. "Cable" means a cable containing one or more fibers constructed and owned by **Principal Awardee**, for which **Second Awardee** has access pursuant to the terms of this Agreement.
- G. "Fibers" means the specific **Principal Awardee**-owned Fiber described in Attachment A, for which access is granted to **Second Awardee** pursuant to the terms of this Agreement.

- H. "Optical Splice Point" means a point where **Principal Awardee**'s Cable is connected to another entity's Cable within a splice enclosure.
- I. "Relocation" means any physical movement of fiber optic cable or conduit required due to reconstruction, modification, change in grade, expansion, or relocation of a county road or highway, a city street, or other public improvement.

In consideration of their mutual promises, the Parties expressly agree as follows:

ARTICLE I

ACCESS TO CABLE AND FIBERS

Section 1.1 **Second Awardee** desires access in **Principal Awardee**'s Cable in order to operate the broadband network on their behalf, further described in Attachment A to this Agreement. In consideration of the mutual promises in this Agreement, **Principal Awardee** grants access to **Second Awardee** in the Cable identified in Attachment A, pursuant to contractual arrangements. **Second Awardee** shall be entitled to use the Fibers for any lawful purposes subject to (i) agreeing to be bound by all laws, regulations, and any requirements of the access to rights-of-way and (ii) otherwise complying with the terms and conditions of this Agreement.

Section 1.2 Subject to the terms and conditions of this Agreement, **Principal Awardee** hereby grants to **Second Awardee** access and use the Fibers within the Cable as delineated in Attachment A for **Second Awardee** use in accord with and during the term of this Agreement.

Section 1.3 The Fibers are provided to **Second Awardee** "as is." If any new Fiber Facilities or any fiber splices are needed for interconnection to the **Second Awardee** network, **Second Awardee** shall be responsible for coordinating this work with **Principal Awardee** and shall pay all costs and fees associated with connecting the Fibers to other fibers not owned by **Principal Awardee** for **Second Awardee**'s network purposes.

Section 1.4 Subject to the terms and conditions of this Agreement, **Principal Awardee** hereby grants to **Second Awardee** access and use the Fiber Facilities as delineated in Attachment A for the Cable in accordance with and during the term of this Agreement. The Fiber Facilities are provided to **Second Awardee** "as is."

Section 1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree nothing in this Agreement shall operate to limit, interfere with, or otherwise adversely affect either Party's right to manage, control, construct, relocate, maintain, replace, and expand the portion of its fiber optic network equipment and infrastructure that is not subject to this Agreement and is not included in the description of Fiber and Fiber Facilities in Attachment A.

Section 1.6 Assignment. No Party may assign or transfer any rights or obligations under this Agreement to a third party without the other Party's prior consent, which shall not be unreasonably delayed or withheld. If the assignment of this Agreement is approved, an assignment agreement shall be

fully executed and approved by the same Parties or their successors in office. The Parties shall sign all papers and agreements needed to affect such transfer.

ARTICLE II EFFECTIVE DATE AND TERM

The term of this agreement shall begin on the date of execution by all Parties and shall remain in full force for twenty years from the execution date, which is thus deemed the useful life of the infrastructure unless extended or sooner terminated hereunder.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.1 Second Awardee's use of the Fibers shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and restrictions.

Section 3.2 Principal Awardee represents and warrants it has the right to grant access in its Cable.

Section 3.3 Second Awardee's use of the Fiber Facilities shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and restrictions.

Section 3.4 Principal Awardee represents and warrants it has the right to grant access in its Fiber Facilities.

ARTICLE IV LIABILITY; INDEMNIFICATION

Section 4.1 Neither **Second Awardee** nor **Principal Awardee** shall be liable to the other for any indirect, special, punitive, or consequential damages arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either Party hereto, its directors, officers, employees, servants, contractors, and agents.

Section 4.2 To the extent permitted by law, **Second Awardee** assumes, releases, and agrees to indemnify, defend, protect, and save **Principal Awardee** (including its elected officials, officers, agents, representatives, and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions, negligence, or willful misconduct of **Second Awardee**, its directors, officers, employees, servants, contractors, and agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

To the extent permitted by law, **Principal Awardee** assumes, releases, and agrees to indemnify, defend, protect, and save **Second Awardee** (including its officers, agents, representatives, and employees)

harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions, negligence, or willful misconduct of **Principal Awardee**, its directors, officers, employees, servants, contractors, and agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

Notwithstanding the foregoing, such indemnity is limited to the amount of available insurance coverage, and nothing herein shall be considered as a waiver of **Second Awardee**'s and **Principal Awardee**'s statutory tort limits under Minn. Stat. Chap. 466.

Section 4.3 Nothing contained herein shall operate as a limitation on the right of either Party to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation, or use of the Fiber or Cable; provided, (i) neither Party to this Agreement shall have any claim against the other Party for indirect, incidental, special, punitive, or consequential damages (including, but not limited to, any claim from any customer for loss of services), and (ii) each Party shall assign such rights or claims, execute such documents, and do whatever else may be reasonably necessary to enable the injured Party to pursue any action against such third party.

ARTICLE V FORCE MAJEURE

The obligations of the Parties hereto are subject to force majeure, and neither Party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute, accidents, acts of God, fire, flood, earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such Party's failure to place orders therefor timely; lack of transportation; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either Party. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance. It shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

ARTICLE VI MAINTENANCE, REPAIR, FEES RELOCATION OF CABLE

Section 6.1 Maintenance. **Second Awardee** shall maintain the Cable and Fiber Facilities or contract with a third party for maintenance, breaks, and repairs. **Second Awardee** agrees to be responsible for 100% of costs in maintenance, breaks, and fixes in the Cable and Fiber Facilities.

Section 6.2 Fees. Except as stated in the separate Agreement to Assign Responsibilities, neither Party will impose, and neither Party shall pay a fee, maintenance, or repair cost for the use of the Fiber Facilities and Cable during the term of this Agreement.

Section 6.3 Future Splicing. Costs for future splicing shall be the responsibility of the Party requesting the splicing. Splicing shall be performed by a contracted third party as agreed by the Parties.

Section 6.4 Relocation. Second Awardee will be responsible for the relocation of the conduit.

Section 6.5 Insurance. Second Awardee shall carry and maintain at its expense insurance covering all grant assets, fiber, and facilities for the duration of this agreement.

ARTICLE VIII CONFIDENTIALITY

The Parties agree and recognize this Agreement, as well as information and documents the Parties receive from one another during the term of this Agreement, may be considered public data under the Minnesota Government Data Practices Act, Minn. Stat. Ch 13, as amended, and all associated rules. The Parties agree to comply with the Minnesota Government Data Practices Act as it applies to all data provided by the Parties under this Agreement and to all data created, collected, received, stored, used, maintained, or disseminated by either Party under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either Party. If either Party receives a request to release data arising out of or related to the Fiber Facilities or the use, operation, or maintenance thereof, the Party receiving the request must immediately notify the other Party of the request. The Parties will promptly consult and discuss the best way to respond to the request.

ARTICLE IX ABANDONMENT; TERMINATION; EFFECT OF TERMINATION

Section 9.1 Should Principal Awardee decide to abandon all or part of the Fibers during the term of this Agreement, it may do so by providing sixty (60) days' notice informing Second Awardee in writing of its intent to abandon. Such abandonment shall be at no cost to either Party except as set forth in this Article. Suppose Principal Awardee provides notice of intent to abandon. In that case, Second Awardee may notify Principal Awardee prior to the twenty-year expiration of the notice period of its intent to take ownership of the Fibers. If Second Awardee provides timely notice of its intent to take ownership, the Parties will execute any agreements or documents transferring the legal title of the Fibers to Second Awardee. Each Party is to bear their own costs associated with executing any agreements or documents to transfer legal title under this Article.

Section 9.1.A Abandonment and transfer of ownership of the assets shall not relieve either party of their other obligations and responsibilities under this Agreement, the separate Agreement to Assign Responsibilities, and the ReConnect Program Grant and Security Agreement.

Section 9.2 This Agreement shall terminate upon written notice from either Party to the other if a default occurs that is not cured within the time allowed hereunder.

ARTICLE X DEFAULT

Section 10.1 Neither Party shall be in default under this Agreement unless and until the other Party has given the defaulting Party written notice of such default, and the defaulting Party shall have

failed to cure the default within thirty (30) days after receipt of such notice; provided, that where a default cannot reasonably be cured within the thirty (30) day period if the defaulting Party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice or until the default is cured, whichever is shorter.

Section 10.2 Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party may take any action it determines, in its discretion, to be necessary to correct the default and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.

ARTICLE XI NOTICES

Section 11.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to **Principal Awardee**:

Principal Awardee
Address
City, MN 12345
Contact

With a copy to:

Attorney
Attn: Contact

If to **Second Awardee**:

Second Awardee
Address
City, MN 12345
Contact

With a copy to:

Attorney
Attn: Contact

Section 11.2 Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which includes acknowledgment of delivery, and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit; if sent by commercial overnight delivery service, upon verification of receipt.

ARTICLE XII LIMITATION ON PROPERTY INTEREST

This Agreement does not grant **Second Awardee** any property interest, or estate in, or lien upon **Principal Awardee**'s property, **Principal Awardee**'s Optical Fiber Network, or any components thereof, or any intellectual property, except for the use of the Fibers during the term of this Agreement. All liens, claims, and charges of **Second Awardee** shall not attach to any interest of **Principal Awardee** or any property owned by **Principal Awardee**.

This Agreement does not grant **Principal Awardee** any property interest or estate, in or lien upon **Second Awardee**'s property, its Fiber Facilities, Optical Fiber Network, any components thereof, or any intellectual property. All liens, claims, and charges of **Principal Awardee** shall not attach to any interest of **Second Awardee** or in any property owned by **Second Awardee**.

ARTICLE XIII GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provision. The Parties agree that any action arising out of this Agreement or with respect to its enforcement shall be filed in the **Principal Awardee** District Court, State of Minnesota.

ARTICLE XIV INDEPENDENT CONTRACTOR

The performance by **Principal Awardee** and **Second Awardee** of all duties and obligations under this Agreement shall be as independent local government unit and independent commercial operator and not as agents of the other Party, and no person employed or utilized by a Party shall be considered the employee or agent of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The Parties agree this Agreement does not create a partnership between, or a joint venture of, **Principal Awardee** and **Second Awardee**.

ARTICLE XV MISCELLANEOUS

Section 15.1 The headings of the Articles in this Agreement are strictly for convenience. They shall not in any way be construed as amplifying or limiting any of the terms, provisions, or conditions of this Agreement.

Section 15.2 When interpreting this Agreement, words used in the singular shall include the plural and the plural, the singular, and "of" is used in the inclusive sense where such meanings would be appropriate.

Section 15.3 If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, then the Parties hereby waive such provision to the extent that it is found to be invalid or unenforceable and to the extent that to do so would not deprive one of the Parties of the substantial benefit of its bargain. Such provision, to the extent allowable by law and the preceding sentence, shall not be voided or canceled but will be modified by such court to become enforceable with all of the other terms of this Agreement continuing in full force and effect.

Section 15.4 This Agreement may be amended only by a written instrument executed by all Parties.

Section 15.5 No failure to exercise and no delay in exercising, on the part of either Party hereto, any right, power, or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either Party of a breach of any provision of this Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both Parties.

Section 15.6 All actions, activities, consents, approvals, and other undertakings of the Parties in this Agreement shall be performed reasonably and promptly.

Section 15.7 Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

Section 15.8 This Agreement is solely for the benefit of the Parties hereto and their permitted successors and assigns.

ARTICLE XVI ENTIRE AGREEMENT

This Agreement and any Attachments referenced and attached or to be attached through any amendment, along with the Agreement to Assign Responsibilities entered into between the Parties, constitute the entire agreement between the Parties and supersede all prior negotiations, understandings, and agreements, whether oral or written.

If any provision of this agreement is found to be in conflict with any terms of the Agreement to Assign Responsibilities, the Agreement to Assign Responsibilities controls.

PRINCIPAL AWARDEE

SECOND AWARDEE

By: _____

By: _____

Date: _____

Date: _____

Approved as to Form

By: _____

Date: _____

ATTACHMENT A

Fiber Map and Eligible Locations for CDS Investment

ATTACHMENT A

