**INTERCREDITOR AGREEMENT**

**THIS INTERCREDITOR AGREEMENT** (this “Intercreditor Agreement”) dated as of the \_\_\_ day of month, 2025 by and among **[LENDING ENTITY]**, in its capacity as the Administrative Agent and Collateral Agent under (and as defined in) the Credit Agreement(the “Bank”), the **U.S. DEPARTMENT OF THE TREASURY** (“Treasury”), **[SUBGRANTEE]** (the “Credit Party”), and [a government agency of the State of xxx] (the “Agency”).

W I T N E S S E T H:

WHEREAS, the State of [xxx] received a Capital Projects Fund award from Treasury pursuant to the Notice of Award dated xxx (FAIN CPFxxx), and by accepting this award, agreed to be subject to the Award Terms and Conditions attached to the Notice of Award, pursuant to which the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (the “Uniform Guidance”) apply to the award and any subawards issued under the award;

WHEREAS, the Credit Party has undertaken to design, acquire, construct, and equip certain high-quality broadband infrastructure and other connectivity infrastructure, devices, and equipment to be located and operated in the proposed funded service areas of xxx (collectively, the “Project”);

WHEREAS, the Credit Party has received a grant (the “Grant”) in the amount of $xxx (the “Grant Funding”) as a subaward of its Capital Projects Fund award for the Project, pursuant to a grant agreement dated as of xxx, by and between the Credit Party and the Agency (the “Grant Agreement”);

WHEREAS, by accepting the Grant, the Credit Party became subject to the provisions of the Uniform Guidance as modified, to the extent applicable, by the requirements set forth in the Supplementary Broadband Guidance issued by Treasury in connection with administration of the Capital Projects Fund, dated May 17, 2023 (the “Treasury Guidance”);

WHEREAS, pursuant to the terms of the Grant, the Credit Party is required to fulfill a matching funds requirement in the amount of $xxx (the “Match”);

WHEREAS, subject to the terms and conditions of that certain Credit Agreement, dated as [DATE] (as modified, amended, restated or supplemented from time to time, the “Credit Agreement” and together with the Collateral Agreement (as defined below) and other related loan documents as modified, amended, restated or supplemented from time to time, collectively, the “Bank Loan Documents”), certain financial institutions (collectively, the “Bank Loan Lenders”) have made a loan to [SUBGRANTEE] in the maximum principal amount of $xxx, which amount is subject to increase pursuant to the terms of the Bank Loan Documents (such amount, together with any increase, the “Bank Loan”);

WHEREAS, proceeds of the Bank Loan in the amount of $[\_\_\_] (the “Match Funding”) are to be used by the Credit Party to finance a portion of the Project in order to satisfy the Match;

WHEREAS, as an inducement to and condition to the Bank Loan Lenders’ willingness to extend the Bank Loan, the Credit Party has granted to the Bank (for the benefit of the Bank Loan Lenders), as collateral for its guarantee of the repayment of the Bank Loan, a first priority lien upon and security interest in, among other things, substantially all assets of the Credit Party, including, without limitation, the Project and the Project Property (as defined below), and as more particularly described in that certain Collateral Agreement dated as of [DATE] (as amended, restated, supplemented or otherwise modified from time to time, the “Collateral Agreement”) and related UCC-1 Financing Statement filed in the office of [xxx] of the State of [xxx] on [DATE] (such assets, the “Bank Collateral”);

WHEREAS, the Collateral Agreement, the Treasury Financing Statement (as defined below), the Covenant (as defined below) and Grant Agreement shall be collectively referred to as the “Collateral Documents”;

WHEREAS, Treasury has a property interest in any personal or real property that has been acquired or improved with the Grant Funding and the Match Funding (the “Project Property”), as provided in 2 CFR 200.311-316, and to the extent applicable, as provided in the Treasury Guidance;

WHEREAS, as provided in 2 CFR 200.311(b) and 200.313(a)(2), the Credit Party may not encumber the Project Property without permission from Treasury, except that, as provided in the Treasury Guidance, the Credit Party may encumber Project Property if Treasury receives a shared first lien position in the Project Property;

WHEREAS, to the extent that the Bank Collateral includes the Project Property, the Bank has agreed to share a first lien interest in the Project Property with Treasury, and that portion of the Project Property included within the scope of the Bank Collateral is referred to herein as the “Shared Collateral”;

WHEREAS, the Shared Collateral is described in Annex A, appended hereto; and

WHEREAS, Treasury and the Bank wish to set forth the relative priority, parity and dignity of their interests in the Shared Collateral with respect to the Bank Loan and the Grant;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The relative priorities of Treasury’s and the Bank’s respective liens and interests in the Shared Collateral shall be as set forth in this Intercreditor Agreement, without regard to the actual time, order, manner or method of grant, filing, perfection or attachment of such liens, the lack of any thereof, or the description of any such Shared Collateral by or for the benefit of Treasury or the Bank. This Intercreditor Agreement shall govern in all respects the interests of Treasury and the Bank in the Shared Collateral, and, to the extent contrary hereto, any prior agreements between Treasury and the Bank with respect to the Shared Collateral are hereby superseded and shall be of no further force and effect. The parties acknowledge and agree that, pursuant to the Bank Loan Documents, the Credit Party has granted a first priority lien and security interest in the portion of the Bank Collateral that does not constitute Shared Collateral (such portion, the “Non-Shared Collateral”) to secure the Bank Loan. Notwithstanding anything to the contrary contained in this Intercreditor Agreement, none of the Non-Shared Collateral, the Bank’s lien thereon, or the exercise of any rights and remedies by the Bank with respect thereto, shall be subject to the terms of this Intercreditor Agreement.

2. The liens held by Treasury securing the Grant Funding and by the Bank securing the Bank Financing Amount (as defined below) with respect to the Shared Collateral (the “Pari Passu Liens”) constitute first priority liens in the Shared Collateral that are equal and of parity in priority and dignity at all times, and each of Treasury and the Bank acknowledges the other’s rights, on a *pari passu* basis, in the Shared Collateral. The liens held by the Bank with respect to the Shared Collateral securing the Bank Loan principal, accrued and unpaid interest thereon, and other obligations owing from time to time under the Bank Loan Documents in excess of the Bank Financing Amount (such excess, the “Excess Bank Financing Amount”) shall be junior to the Pari Passu Liens (the “Junior Liens”).

3. Not later than fifteen (15) days after the date hereof, the Credit Party shall execute (if applicable) in favor of Treasury and file in each applicable jurisdiction (1) the UCC-1 Financing Statement attached as Annex B hereto (the “Treasury Financing Statement”) and (2) the Covenant of Purpose, Use and Ownership attached as Annex C hereto (the “Covenant”) evidencing Treasury’s interest in the Project Property, and shall deliver to Treasury a copy of each such Treasury Financing Statement and Covenant with a certification from an attorney in good standing under the laws of the State of [xxx] that they were duly completed and filed in the appropriate office in each of the applicable jurisdiction(s). The Credit Party shall file such UCC-3 Continuation Statements as necessary to extend the effectiveness of the Treasury Financing Statement for the duration of the federal interest period ending December 31, 2034. Notwithstanding the foregoing, Treasury reserves the right to file the foregoing should the Credit Party fail to do so.

4. In the event of an attachment, repossession, foreclosure, sale or other disposition (a “Disposition”) of the Credit Party’s right, title, interest and estate in and to any of the Shared Collateral pursuant to any of the Collateral Documents or the Uniform Guidance or the Treasury Guidance, as applicable, or in the event that either Treasury or the Bank otherwise receives any proceeds in respect of any of the Shared Collateral, all cash proceeds, including any proceeds of a condemnation award or insurance policy, shall be applied (1) FIRST, to Treasury or the Bank, as applicable, to cover reasonable costs and expenses incurred by either party in connection with such Disposition or receipt of such proceeds, (2) SECOND, to Treasury and the Bank pro rata based on the ratio of (a) (i) in the case of the Bank, the principal amount of the Bank Loan outstanding up to the Match Funding, plus accrued and unpaid interest thereon (the “Bank Financing Amount”) and (ii) in the case of Treasury, the amount of the Grant Funding then outstanding (i.e., disbursed to the Credit Party and not repaid pursuant to this provision or otherwise), in each case, to (b) the sum of the foregoing clauses (a)(i) and (ii), to be applied to the Bank Financing Amount in accordance with the terms of the Bank Loan Documents and to the Grant Funding in accordance with the terms of the Grant Agreement, the Uniform Guidance or the Treasury Guidance, as applicable, and (3) THIRD, to the Bank, to be applied to the Excess Bank Financing Amount in accordance with the terms of the Bank Loan Documents. The remainder of such proceeds, if any, following satisfaction of the amounts owed to Treasury and the Bank, shall be distributed to persons or entities legally entitled thereto. Any application of any proceeds to the Bank Financing Amount pursuant to this section shall reduce the amount of the Match Funding for purposes of the calculation of the Bank Financing Amount, and such amount shall not thereafter be increased as a result of any subsequent advance of funds under the Bank Loan. If Treasury, the Bank or the Credit Party receives any amount in respect of any of the Shared Collateral, including pursuant to a Disposition (it being understood that regularly scheduled payments of principal and interest shall not constitute amounts received in respect of any of the Shared Collateral for purposes of this section), that exceeds the amount such party is entitled to receive pursuant to this Section 4, such party will promptly notify the other parties and pay such excess amount to the other party or parties so that the provisions of this Section 4 are given full effect.

5. Notwithstanding the provisions of Sections 1, 2, 3, or 4 hereof, if either Treasury or the Bank submits a credit bid with respect to any Shared Collateral at a foreclosure sale (which bid is the successful bid), the credit bid net of sale costs will be credited against the Bank Financing Amount and the amount of the Grant Funding pro rata, in the same manner as set forth in Section 4 hereof, and each of Treasury and the Bank will acquire pro rata ownership in the Shared Collateral, in part or in whole, purchased on such pro rata basis.

6. Treasury’s consent shall not be required for any sale by the Bank of all or any portion of the Non-Shared Collateral. All sales of the Shared Collateral shall be subject to the terms of this Intercreditor Agreement.

7. Nothing herein contained shall preclude the Credit Party from making or the Bank from collecting payments required or permitted to be made in accordance with the terms of the Bank Loan Documents, including any amendments thereto, subject to the provisions of Section 4 with respect to any such payments made with the proceeds of any Disposition of Shared Collateral.

8. The Credit Party hereby agrees to give to Treasury prompt written notice of the occurrence of an event of default under the Bank Loan Documents (a “Bank Default”). The Agency hereby agrees to give to the Bank and Treasury prompt written notice of the occurrence of a default under the Grant Agreement or any default by the Credit Party on the requirements applicable to it with respect to the Project Property set forth in 2 CFR 200.310-200.316 of the Uniform Guidance, as modified, to the extent applicable, by provisions of the Treasury Guidance (either of which, a “Grant Default”).

9. Treasury and the Bank shall cooperate in a reasonable manner in connection with any exercise of their respective rights and remedies to realize upon the Shared Collateral in the event of a Bank Default or a Grant Default. Notwithstanding anything to the contrary contained in this Intercreditor Agreement, Treasury, the Agency and the Bank shall each retain their respective discretion as to the timing and method of exercising the rights and remedies available to each of them pursuant to their respective Collateral Documents, subject only to the distribution of proceeds of any Shared Collateral in accordance with Section 4.

10. The Bank shall be empowered to service and manage the Bank Loan in the ordinary course of its business in the same manner in which it services similar loans in its portfolio and otherwise in accordance with the usual practices and procedures employed by Bank on similar accounts in which it has no shared liens. The Bank shall have the right in its discretion to proceed or not to proceed and to determine the timing and manner of its exercise of rights and remedies against the Bank Collateral (including the Shared Collateral) in accordance with the Bank Loan Documents. Treasury may request in writing that the Bank take specified action on behalf of Treasury with respect to the exercise and enforcement of Treasury’s rights and remedies against any of the Shared Collateral. Without limiting the foregoing, the parties agree that the Bank shall not have any duty or obligation first to marshal or realize upon any type of the Bank Collateral (including the Shared Collateral), or to sell, dispose of or otherwise liquidate all or any portion of the Bank Collateral (including the Shared Collateral), in any manner that would maximize the return to any party to this Intercreditor Agreement, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such parties from such realization, sale, disposition or liquidation. The rights and remedies provided in this Intercreditor Agreement will be cumulative and not exclusive of other rights or remedies provided by law. Nothing herein shall be construed to impose any fiduciary or other duty on the Bank to Treasury, except as expressly set forth herein.

11. Neither Treasury nor the Bank will (i) take any action or support any other person or entity in taking any action to challenge such other party’s interest in such Project Property, including the validity, nature, or enforceability of such interest or (ii) attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Intercreditor Agreement. Each of Treasury and the Bank hereby waives any and all rights to affect or challenge the method or appropriateness of any action taken by the other party with respect to the Shared Collateral, subject only to the requirement that in enforcing or realizing upon the Shared Collateral each of Treasury and the Bank must act in a reasonable manner.

12. Each of Treasury, the Agency and the Bank shall give each other a copy of any written notice it provides to the Credit Party exercising or refraining from exercising any powers or rights which it may have with respect to the Shared Collateral under or in respect of any of the Bank Loan Documents, Collateral Documents or the Uniform Guidance. The Bank shall provide Treasury written notice prior to commencing a Disposition of any of the Shared Collateral.

13. The Credit Party shall not create, incur, or suffer any lien, agreement, pledge, assignment, or other encumbrance on, or security interest in, the Shared Collateral, other than the Pari Passu Liens and the Junior Liens. Under no circumstances shall either Treasury or the Bank accept or demand a pledge of any of the Credit Party’s property which constitutes Shared Collateral as collateral security for any other indebtedness or obligation of the Credit Party to such party, without first obtaining the prior written consent of the other party.

14. (a) Without limitation of the generality of the foregoing, each of Treasury and the Bank (1) shall not be responsible for the performance or observance of any of the terms, covenants or conditions under the Bank Loan Documents or Grant Agreement, if any, and related Collateral Documents, as applicable, and (2) shall incur no liability hereunder by acting upon any notice, consent, certificate or other instrument or writing believed by such party to be genuine and signed or sent by the proper party.

(b) Notwithstanding any other provision of this Intercreditor Agreement to the contrary, Treasury and the Bank agree that each of them may unilaterally grant an extension of time for payment or performance by the Credit Party and make compromises and settlements with the Credit Party without the consent of the other parties under this Intercreditor Agreement, and without affecting the validity and enforceability of this Intercreditor Agreement. In the event Treasury or the Bank grants an extension or makes a compromise or settlement with respect to any of the Shared Collateral, it shall give the other parties notice within thirty (30) days of such accommodation.

15. Each of the Credit Party, Treasury and the Bank hereby agrees to promptly execute and deliver such additional documents as may be reasonably requested by another party to evidence or effectuate the terms hereof.

16. Any notices, requests, demands or other communications required hereunder shall be effective when delivered via email to the following addresses:

If to the Bank:

[ADDRESS]

Attention: xxx

Email: xxx

With a copy to:

xxx

[ADDRESS]

Attn: xxx

Email: xxx

If to Treasury:

U.S. Department of the Treasury

1500 Pennsylvania Avenue NW

Washington, DC 20220

Attention: Patrick Orr, Acting Director, Coronavirus Capital Projects Fund

Email: xxx

with a copy to CapitalProjectsFund@treasury.gov

If to the Credit Party:

xxx

[ADDRESS]

Attention: xxx

E-mail: xxx

With copy to:

xxx

[ADDRESS]

Attention: xxx

Email: xxx

If to the Agency:

xxx

17. This Intercreditor Agreement shall be governed by and construed in accordance with federal law. Insofar as there may be no applicable federal law, or to the extent that a court looks to the laws of any state, the law of the State of New York shall provide the applicable state law without regard to any conflict of law provisions (other than section 5-1401 of the New York General Obligations Law) that would result in the application of the substantive law of any jurisdiction other than the State of New York. Any action by the Bank against the United States that is within the exclusive jurisdiction of the United States Court of Federal Claims must be brought in that Court. All other actions shall be brought in the United States District Court for the District of Columbia, and the parties hereto consent to personal jurisdiction and venue in that Court.

18. This Intercreditor Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Treasury and the Bank may sell, assign, or otherwise transfer all or any part of their respective interests in this Intercreditor Agreement in connection with a sale, assignment or other transfer of the Capital Projects Fund award or Bank Loan, as applicable, without the consent of any other party to this Intercreditor Agreement, but any successor or assignee must acknowledge to the other party that it is bound hereby prior to any such sale, assignment, encumbrance or transfer.

19. This Intercreditor Agreement shall be in effect so long as both the Bank and Treasury hold a security interest or property interest in any portion of the Shared Collateral.

20. This Intercreditor Agreement may not be amended, nor any provision modified or waived, except by a writing signed by all parties hereto. The provisions of this Intercreditor Agreement are severable, and if any of these provisions shall be held by any court of competent jurisdiction to be unenforceable, such holding shall not affect or impair any other provision hereof. This Intercreditor Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

21. Notwithstanding any provision of this Intercreditor Agreement, nothing contained herein shall be construed to effect a subordination or change in lien position of either Treasury or the Bank in favor of any entity that is not a party to this Intercreditor Agreement, it being the intent of the parties hereto to provide for shared first lien positions solely in favor of Treasury and the Bank with respect to the Shared Collateral. This Intercreditor Agreement shall not be construed to subordinate the lien positions of either of Treasury or the Bank to that of any third party or to confer any other right or benefit upon any entity which is not a party to this Intercreditor Agreement. It is the intent of Treasury and the Bank that any intervening liens or security interests will not affect the rights of the Treasury and the Bank as such would exist had this Intercreditor Agreement not been made.

22. The Credit Party shall not be entitled under any circumstance to rely upon the failure of Treasury, the Agency or the Bank to comply with the terms of this Intercreditor Agreement, and nothing contained herein shall be deemed to authorize the Credit Party to take any action not permitted under the documents to which the Credit Party and Treasury, the Agency or the Bank is a party.

***[SIGNATURE PAGE TO FOLLOW]***

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first set forth above.

**[LENDING ENTITY]**, as Administrative Agent

By:

Name:

Its:

**U.S. Department of the Treasury**

By:

Name:

Its:

**[SUBGRANTEE]**

By:

Name:

Its:

**XXX**, a governmental agency of the State of xxx

By:

Name:

Its:

Annex A

Description of Shared Collateral

[*See attached*]

Annex B

UCC-1 Financing Statement

[*See attached*]

Annex C

Covenant of Use, Ownership and Purpose

[*See attached*]