

October 17, 2019

RE: Request for Interest  
Assistance for Broadband Expansion Pilot Projects

Local Officials:

As you may be aware, the Maryland State Legislature provided \$2 Million in the FY2020 operational budget to the Department of Housing and Community Development to support the Office of Rural Broadband (Office) in its efforts to assist in expansion of broadband into unserved rural areas of Maryland.

Attached you will find a Request for Interest (RFI) directed at Local Jurisdictions interested in implementing Broadband Pilot Projects in unserved, rural areas. The RFI outlines the Office's intention to provide financial assistance in an amount not to exceed \$200,000 per application for up to 50% of the cost of Pilot Projects as well as applicant eligibility requirements. A minimum of \$1 million of State funding is available for this pilot program. Responding to the RFI does not obligate the Local Jurisdiction to any actual work or costs associated with a potential project. Local Jurisdictions should carefully review the eligibility requirements prior to making an application decision.

The response process is outlined in the RFI; responses are requested by January 7, 2020. The Office is available to answer questions via phone or email, or to meet directly with Local Jurisdictional personnel to discuss the RFI. Please contact Kenrick (Rick) Gordon, Director, at 301-429-7426 (office), 301-802-0671 (mobile) or [kenrick.gordon@maryland.gov](mailto:kenrick.gordon@maryland.gov).

Respectfully:



Kenrick M. Gordon, P.E.  
Director

# Governor's Office of Rural Broadband



## Request for Interest

in

Assistance for Broadband Expansion

for

Unserved Rural Areas

FY 2020 Broadband Pilot Funding Program

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Prepared by: Kenrick M. Gordon, P.E., Director

Publication date: ***October 21, 2019***

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## 1. Executive Summary

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The State of Maryland's Legislature provided \$2 Million in the FY2020 Operating Budget to the Department of Housing and Community Development ("Department") to support the Office of Rural Broadband ("Office") in its efforts to assist in expansion of broadband into unserved rural areas of Maryland. A minimum of \$1 million is available for this pilot program.

In order to best use the limited resources at its disposal, the Office is looking to assist Local Jurisdictions (County or Municipal) in implementing solutions to the problem of delivering broadband to unserved rural residents and businesses (the proposed solution is referred to as the "Project"). It is expected that the Local Jurisdictional applicant ("Applicant") will have a strong incumbent service provider ("ISP") with whom the Applicant will partner ("ISP Partner") in implementing the Project. The ISP Partner will have the means and desire to provide service to the Applicant's unserved rural residents and businesses. The Applicant and the ISP Partner will be responsible for the overall implementation of the Project. The Applicant or its ISP Partner will be the owner of any facilities constructed as part of the Project.

The Office understands that geography and population distribution may require creative options for ubiquitous broadband deployment. As such, the Office is technology neutral; any technology capable of meeting speed and latency requirements set forth in this document is permissible.

This Request For Interest ("RFI") is issued as a means of information gathering. Evaluation of responses to this RFI will guide the Office in determining which Local Jurisdictions may receive funding in support of a Project. With adequate future budgetary allocations to the Department, additional funding may be made available for additional Projects. However, the Office is under no obligation to provide assistance to any Local Jurisdiction responding to this RFI.

Participation in this RFI is voluntary. Neither the Office nor the Department will pay for the preparation of any information submitted by an applicant in response to the RFI or for the Office's use of that information.

## 2. Broadband Pilot Funding Program

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Through the Broadband Pilot Funding Program ("Program"), the Office will facilitate the award of funding to selected Applicants to assist in the implementation of Projects that involve partnering with ISPs to extend existing broadband service into Unserved Rural Areas. The Office will review applications to ensure that the information contained therein is complete and proposes a sustainable broadband construction project. The Office may coordinate with other

State Agencies on the use of State assets where they may feasibly benefit the Project. While the Department will provide financial resources to help fund the Project, and the Office will provide technical assistance and oversight, the Applicant and/or its ISP Partner will be the owner of any facilities constructed as part of the Project, and will be responsible for the overall funding, implementation and operation of the Project.

Any Applicant awarded funding under the Program must also commit to funding a minimum 50% of the Project's capital construction cost ("Match"). The source of the Match must be identified in the response to this RFI. Projects for which the Match is comprised of funding from both the Applicant and the ISP Partner may receive greater consideration than those without ISP Partner contribution. Projects for which the Match commitment is greater than the 50% minimum requirement may also receive greater consideration during the evaluation.

The Applicant may apply for funding for one or multiple Projects. Projects may be applied for separately or Projects may be separate and distinct areas in a single application. Each Project will be evaluated on its own merits. A \$200,000.00 funding limit will apply to each application selected for funding regardless of the number of projects included in the application. The Match will be required for each application selected for funding. If one Project relies on another Project for proper networking, this must be fully explained and defined in the network requirements discussion section of the Applicant's response to this RFI.

### 2.1. Eligible Applicants

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Counties or municipalities listed on the Maryland Manual On-Line website (<https://msa.maryland.gov/msa/mdmanual/01glance/html/locgov.html>) are considered local jurisdictions and eligible to apply for funding.

### 2.2. Eligible Project Areas

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Only Projects that will serve Unserved Rural Areas are eligible for funding. To constitute a Rural Area, the geographic location of the Project must fall within a rural area as defined by Maryland Code, State Finance and Procurement Article, §2-207 (a)(7) and (8).

An unserved area is an area lacking terrestrial, fixed internet service at speeds above 25 Mbps download and 3 Mbps upload with a latency above 50 milliseconds.

The response to the RFI must identify a Proposed Funded Service Area ("PFSA") including the geographic Project area, community name or names, total route miles, total number of unserved homes and businesses passed by the Project and average number of homes and businesses per mile. Projects may include one or more, or parts of one or more, Rural Areas.

A graphical map outlining the PFSA and the showing the infrastructure to be constructed must be included in the Response. A GIS shp, kmz or kml file is requested, but not required.

### 2.3. Timeframe

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It is the Office's intent to facilitate the award of funding beginning in April, 2020. Funding agreements must be entered into by May 15, 2020, and all Projects must be completed by December 31, 2021.

### 2.4. Authority

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The Local Jurisdiction must have entered into a partnership with an ISP Partner prior to entering into a funding agreement with the Department. It is the Local Jurisdiction's responsibility to acquire any legal authority necessary to do so. The Office will not assist the Local Jurisdiction in negotiating or contracting with the ISP Partner.

### 2.5. Funding

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The Office will facilitate the award of funding to the Applicant for its development of a Project or Projects. Financial assistance of up to 50% of the capital construction cost of each application, in an amount not to exceed \$200,000.00 per application, may be available. A Match of at least 50% of the capital cost of each project is required. Matching funds will only be considered if used for eligible grant purposes as defined in Section 4.6.

The source of the Match must be identified in the Applicant's Response to this RFI ("Response"). Projects for which the Match is comprised of contributions from both the Applicant and the ISP Partner may receive greater consideration than those without ISP Partner participation. Projects for which the Match commitment is greater than the 50% minimum requirement may also receive greater consideration during the evaluation. Match from the Applicant or any other source, except for match from the ISP, must be in the form of cash. In-kind matches from the Applicant or other non-ISP sources are not acceptable.

An ISP Partner's contribution to the Match may be comprised of a cash contribution or in-kind capital construction costs directly related to the Project. Capital costs may include last-mile facilities, subscriber installations, or other similar costs. An ISP's in-kind contribution must be documented in the construction budget.

### 3. Network Requirements

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The Office will only support Projects that are able to provide a minimum internet connectivity of 25 Mbps down and 3 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers' location ("Broadband"). The network must be capable of providing the minimum connectivity to all subscribers within the proposed project area. Proposed subscribers must all be offered the minimum connectivity or higher. Subscriber offerings of less than the minimum connectivity are allowable, but only in conjunction with offerings that include or exceed the minimum connectivity.

### 4. RFI Response Requirements

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Responses to this RFI should explain how the Applicant's approach will further the Office's goal of ensuring that residents in Unserved Rural Areas, as defined in Section 2.4, are to be provided access to High Speed Internet. While there is no minimum or maximum length of the required response, please be concise and limit your Response to the information requested. If some of the information requested is not available at this time, please state this in your Response.

#### 4.1. Grant Application Form

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Please complete the attached Grant Application for Broadband Funding Pilot Projects. A fillable pdf is also available on the program website at <https://dhcd.maryland.gov/ruralbroadband>

#### 4.2. Cover Letter

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Please include a cover letter with the Applicant Name, authorized representative contact name, contact address, phone number and email address.

A separate letter from the ISP Partner with similar information must also be included.

#### 4.3. Executive Summary

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Please provide an Executive Summary of the Project. The Summary should provide an overview of the area being served, how the area was chosen and what problems the residents in the area face. It should include how the proposed project will help alleviate those problems, increase quality of life, and provide enhanced opportunities for businesses and rural residents. Be clear and provide convincing links between the project and the benefits to the Proposed Funded Service Area (PFSA).

The Applicant's Response to this RFI **must** name an ISP Partner. The Response should also describe what assistance or cooperation that the Applicant will offer to the ISP Partner, if any.

4.3.1. You must also provide a distinct summary of the project that may be released to the public directly or via press release to the media. This summary must be separated from the other parts of the Response, **with a start and stop clearly identified**.

#### 4.4. Experience

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Please provide a statement of experience of the senior team that will participate in any funded Project, both from the Applicant and from the ISP Partner.

#### 4.5. Network Design and Construction

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Please provide a description of the network to be constructed. The description should provide the network speed, latency capabilities and backhaul method and requirements. The description should discuss pole attached vs. underground for wired networks and tower type expectations for a wireless network. Identify whether construction will be performed by the ISP Partner's own crews, or if contracted services will be utilized, or a combination of the two. While it is anticipated that the ISP Partner will ultimately own the facilities constructed, please confirm the intended final ownership and any restrictions to be placed on the future use of any facility constructed as part of the Project.

#### 4.6. Subscriber Profile

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Please provide a description of the Unserved Rural Area you intend to serve through the Project and any existing internet service in that area. Please also provide the projected take rate, projected pricing, types of new services, and demographic data relating to the geographic Project area. This section of the Response should offer an estimate of the overall number of unserved households and businesses in the geographic Project area that could receive service from the Project.

#### 4.7. Budget

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Provide a line item capital construction budget outlining cost of all major construction work to be performed including outside plant, electrical equipment, cabinets, customer premise equipment, etc. on the Capital Budget form attached (an electronic version of the form is available at <https://dhcd.maryland.gov/ruralbroadband>). A sample budget is included with the electronic version.

**Eligible Grant Purposes.**

Matching funds will only be considered if used for eligible grant purposes.

Grant funds may be used to finance:

1. The construction of facilities used to deploy service at the Broadband Grant Speed to ALL end users located within the PFSA.
2. Middle mile infrastructure directly necessary to provide service to an end user.
3. Electronics necessary to deliver service to an end user including, but not limited to Optical Line Terminals (OLT’s), Optical Network Terminals (ONT’s), routers, switches, firewalls, wireless radio equipment, antennae, access points and modems and any necessary equipment shelters.

**Match Exception:** The construction cost of towers or cost of tower structural improvements necessary to provide service to an end user can be considered match. However, the purchase of towers is not an eligible match or grant purpose. Constructed towers must be owned by the applicant.

***NOTE: All equipment purchased for this Project must be new and non-depreciated.***

**Ineligible Grant Purposes.**

Grant funds may not be used to finance:

1. The duplication of any existing Broadband Service provided by other entities.
2. Middle mile infrastructure not directly necessary to provide service to an end user.
3. Expenses related to the provision of telephone or video service which are not necessary for the delivery of Broadband Service.
4. Engineering design services whether in-house or consultant-based.
5. The purchase of land, construction of buildings or towers, building renovations or tower improvements.
6. Operating expenses.

***NOTE: Costs incurred by the applicant County, or others on behalf of the applicant County, for facilities, installed equipment, or other services rendered prior to submission of a completed Response shall not be considered as eligible for grant or match purposes.***

#### 4.8. Schedule

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Describe the proposed schedule for implementing the Project, assuming a Summer 2020 start. Provide a timeline with key milestones. Include a description of how subscribers will be connected, whether phased construction and phased subscriber connection is expected, etc.

#### 5. Response Process

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Please submit one (1) electronic pdf copy of your Response to rural.broadband @maryland.gov on or before January 7, 2020. The budget submitted with the Response should be submitted as a pdf as well as an excel spreadsheet. If a shape file is included, it should be clearly named to identify the PFSA included. All items included with the Response should be combined into one zip file (.zip) to ensure the submission is bound together and no portions are lost during transmission or review. File names used should clearly identify the file contents.

Please identify any information contained in your Response that you contend to be proprietary or confidential. **You must also provide a summary of the project that may be released to the public directly or via press release to the media. This summary must be separated from the other parts of the response, with a start and stop clearly identified.**

Additionally, please note:

- a. The Office reserves the right to waive any formalities on the RFI process, to re-issue the RFI, to amend the RFI, to extend the dates provided herein, or to suspend the RFI as the Office may determine, at its sole discretion, is in the best interest of the Office.
- b. No reimbursement will be made by the Office for any costs incurred in responding to this RFI, developing or submitting responses to the RFI, or attendance at meetings or interviews.
- c. The Office reserves the absolute right to conduct such investigations as it deems necessary to assist in the evaluation of any Response to the RFI and to establish the experience, unserved nature of the PFSA, the responsibility, reliability, references, reputation, business ethics, history, qualifications and financial ability of the applicant, proposed partner(s), independent consultants and suppliers. The purpose of such investigation is to satisfy the Office that those named in any Response have the experience, resources and reputation necessary to perform the work.
- d. Successful applicants will be chosen based on qualifications, evaluation of Responses, and a possible interview. The Office reserves the right to conduct such discussions or negotiations with Counties or other entities as it deems necessary to assist in the evaluation of any

proposal, to secure maximum clarification and completeness of any proposal, and to select the Responses that best meet the requirements of the Office and the public interest.

- e. All awardees will be required to execute a Memorandum of Understanding (“MOU”) that outlines the obligations of the awardee and State to the “Project”. A sample “MOU” is available for review.
- f. Questions should be addressed to Kenrick Gordon, Director, Governor’s Office of Rural Broadband at [kenrick.gordon@maryland.gov](mailto:kenrick.gordon@maryland.gov) or 301-429-7426. The Office will do its utmost to timely answer questions related to this RFI.



Governor's Office of Rural Broadband

# Grant Application Form for Broadband Pilot Project

*(additional information required – see RFI for all application requirements)*

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

\_\_\_\_\_

## Applicant Information

Jurisdictional Legal Name (must match W9):

\_\_\_\_\_

Federal EIN Number: \_\_\_\_\_

*Attach a copy of your most current IRS W-9 Form*

Address:

Street: \_\_\_\_\_

City: \_\_\_\_\_

County: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

## Contact Information

*This should be the primary contact for the person coordinating all elements of this application. This is the person the Office will contact with any questions regarding the application.*

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

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

## Project Information

Estimated Funding:

Applicant: \_\_\_\_\_

ISP: \_\_\_\_\_

State: \_\_\_\_\_

Other: \_\_\_\_\_

Project Total: \_\_\_\_\_



Governor's Office of Rural Broadband

Proposed Funded Service Area (PFSA):

**PFSA must be unserved with no locations receiving broadband service at 25 Mbps download by 3 Mbps upload speeds with a latency at or below 50ms. The PFSA should be shown on an attached graphical map.**

Grant Speed:

**Service speeds of 25 Mbps download by 3 Mbps upload speeds with a maximum of 50ms latency must be available to all end users within the PFSA.**

Technology used to serve the subscriber:

*Check all that apply*

- Fiber Optics to the Premise
- Coax to the Premise
- Unlicensed Fixed Wireless      Frequency Band: \_\_\_\_\_
- Licensed Fixed Wireless      Frequency Band: \_\_\_\_\_
- Other: \_\_\_\_\_

Unserved Households and Businesses passed:

Households: \_\_\_\_\_

Businesses: \_\_\_\_\_

Other: \_\_\_\_\_

Describe the methodology used to determine the unserved locations (e.g. field review, survey results, etc.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Average Number of homes and businesses per mile or per tower: \_\_\_\_\_

**Capital Budget**

**Project Budget**

BUDGET	Unit	No. of Units	Unit cost	Total	Grant	Other Funding	Description
<b><u>BROADBAND SYSTEM</u></b>							<b>Note:</b> These items are general in nature, applicants should modify and expand the form as required to describe their specific project.
Outside plant (fiber, coaxial, copper, etc.)	LF			\$ -			
Towers – new construction (monopole, lattice, etc.)	EA			\$ -			Grant funds may not be used for tower construction or improvements. However, tower construction or improvement costs can be used as match.
Electronic Equipment (FTTH, wireless, etc.)	EA			\$ -			
Customer Drops	LF			\$ -			
Customer premises equipment	EA			\$ -			
<b>Total Broadband System</b>							<b>Note:</b> Other funding must equal or exceed the amount of grant funding requested. Match must be expended prior to requesting grant funds.

**Sample Capital Budget**

**Project Budget**

BUDGET	Unit	No. of Units	Unit cost	Total	Grant	Other Funding	Description
<b><u>BROADBAND SYSTEM</u></b>				\$ -			<b>Note:</b> These items are general in nature, applicants should modify and expand the form as required to describe their specific project.
Outside plant (fiber, coaxial, copper, etc.)							
Fiber interconnect - 24 count fiber including slack loops, splicing and 10M strand	LF	5280	\$ 5.50	\$ 29,040.00	\$ 29,040.00		24 count aerial fiber from existing cabinet to new cabinet
Coax cable	LF	10000	\$ 6.50	\$ 65,000.00	\$ 65,000.00		coax from distribution cabinet to subscriber
Towers – new construction (monopole, lattice, etc.)	N/A						
Electronic Equipment (FTTH, wireless, etc.)	N/A						
Distribution Cabinet including all electronics	EA	2	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00		new cabinets at each end of the fiber distribution
Customer premises equipment including installation	EA	100	\$ 1,500.00	\$ 150,000.00		\$ 150,000.00	including coax drop and installation at subscriber premise
<b>Total Broadband System</b>				<b>\$ 264,040.00</b>	<b>\$ 114,040.00</b>	<b>\$ 150,000.00</b>	<b>Note:</b> Other funding must equal or exceed the amount of grant funding requested. Match must be expended prior to requesting grant funds.

**Note:** If the budget is established as shown, the customer premise equipment installation would have to be completed prior to requesting grant funding reimbursement. This is to ensure that the match is accounted for prior to grant funds being provided. Alternatively, the grant and other funding could be equalized for each line in the budget and grant fund reimbursements requested as construction progresses.

**SAMPLE**

**MEMORANDUM OF UNDERSTANDING  
REGARDING  
FUNDING OF PILOT PROJECTS FOR BROADBAND EXPANSION**

This Memorandum of Understanding Regarding Funding for Pilot Projects for Broadband Expansion (“**Agreement**”) is made by and between the Department of Housing and Community Development (“**DHCD**”), a principal department of the State of Maryland (“**State**”) and \_\_\_\_\_ County (the “**County**”). DHCD and the County are each a “**Party**,” and may be collectively referred to as the “**Parties**.”

WHEREAS, there is a deficit of broadband resources serving rural residents and businesses in the State; and

WHEREAS, DHCD supports the mission of the State and, in particular, the Governor’s Office of Rural Broadband (the “**Office**”), to deliver broadband internet to rural communities in Maryland experiencing such a deficit; and

WHEREAS, it is the goal of DHCD, in support of the Office, to aid counties experiencing such a deficit by supporting these counties in implementing solutions to the problem of delivering broadband to unserved rural residents and businesses; and

WHEREAS, the County seeks funding support for development of two pilot projects for extending existing broadband service into Unserved Rural Areas (“**Projects**”); and

WHEREAS, the State has allocated funding to DHCD for the purpose of supporting the development of broadband to serve presently-underserved rural areas; and

WHEREAS, DHCD has agreed to aid the County by providing funding where necessary to support the Projects; and

NOW, THEREFORE, in consideration of the mutual commitments made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Recitals**

The Recitals set forth above are hereby incorporated and made a part of this Agreement.

**2. Term**

The term of this Agreement shall begin after all appropriate Party approvals have been obtained and the Agreement has been executed by all Parties, and will terminate on December 31, 2020, unless earlier terminated pursuant to Section 5 hereof.

**3. Definitions**

**3.1 “County Match”** means the funds committed to the Projects by the County and, if applicable, the Internet Service Provider partner, to match the funding committed by DHCD to the Projects under this Agreement.

**3.2 “ISP”** means the internet service provider partnering with the County for the Projects, \_\_\_\_\_.

**3.3 “Minimum Network Requirements”** means a minimum internet connectivity of 25 Mbps down and 3 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers’ location.

**3.4 “Projects”** means the County’s pilot projects to extend broadband services into Unserved Rural Areas, as described in detail in the County’s Responses to the RFI, attached hereto as Exhibits \_\_\_\_\_ and \_\_\_\_\_, and identified therein as the \_\_\_\_\_ Project and \_\_\_\_\_ Project.

**3.5** “**Project Areas**” means the geographic area to be served with internet connectivity as a result of the Projects, as identified in Exhibits \_\_\_\_\_ and \_\_\_\_\_. The Project Areas must be located within an Unserved Rural Area.

**3.6** “**RFI**” means the *Governor’s Office of Rural Broadband Request for Interest in Assistance for Broadband Expansion for Unserved Rural Areas – Pilot Projects*, published on \_\_\_\_\_.

**3.7** “**Unserved Rural Area**” means a geographic area lacking terrestrial, fixed internet service at speeds above 25 Mbps download and 3 Mbps upload, falling within a Census Rural Area.

**4. Obligations of Parties**

**4.1 DHCD**

**4.1.1 Funding.** To support the Projects, DHCD commits to providing funding to the County, on a reimbursement basis, in an amount not to exceed \_\_\_\_\_ (“**Funding**”). Reimbursement funding per Project is available as follows: \_\_\_\_\_. The following conditions apply:

**4.1.1.1** Funding shall only be provided for actual, eligible Project costs;

**4.1.1.2** Funding shall not exceed fifty percent (50%) of the actual Project cost of each Project;

**4.1.1.3** Funding shall only be provided to the extent that the County Match is provided, as described in Section 4.2.2.1.3 below.

**4.1.1.4** Eligible Project costs are costs relating to the capital assets required to provide service, meeting Minimum Network Requirements, to end user subscribers within the Project Areas.

## **4.1.2 Invoicing and reimbursement.**

**4.1.2.1** The County shall submit invoices for reimbursement of eligible Project costs, with supporting documentation to DHCD, with a courtesy copy to the Office, for reimbursement of Project costs no later than thirty (30) days after County payment of Project costs. Invoices must include the following information:

**4.1.2.1.1** Date of invoice;

**4.1.2.1.2** Date and description of expense or service for which reimbursement is requested;

**4.1.2.1.3** Identification of whether the incurred costs are for the \_\_\_\_\_ or \_\_\_\_\_ Project.

**4.1.2.1.4** Cumulative Project cost to-date for that Project;

**4.1.2.1.5** Cumulative DHCD reimbursements to-date for that Project;

**4.1.2.1.6** Percentage of overall Project cost paid by DHCD to-date.

**4.1.2.2** In conjunction with each reimbursement request submitted to DHCD, the County shall provide a report to the Office setting forth the number of unserved homes in the past, the number of initial subscribers since the expansion (if any), and the number of fiber miles placed.

**4.1.2.3** DHCD or the Office may require the submission of additional supporting documentation.

**4.1.2.4** Reimbursements may be made on paid or unpaid invoices.

**4.1.2.5** DHCD will make reimbursements within sixty (60) days after approval of an invoice submitted pursuant to 4.1.2.1.

**4.1.3 Discretion.** DHCD, in its sole discretion, may approve or deny reimbursement requests made pursuant to Sections 4.1.1. In reviewing, approving, and processing funding requests, DHCD may consult with the Office.

## **4.2 The County**

### **4.2.1 Eligibility for Funding.**

**4.2.1.1** The County is a grantee of funds from DHCD and this Agreement constitutes a grant agreement.

**4.2.1.2** The County must fully execute each Project for funding to be awarded. In the event that the County defaults on this obligation, funding may be recalled by DHCD as to any uncompleted Project.

### **4.2.2 Project**

**4.2.2.1** The Projects must meet the following criteria for funding to be provided pursuant Section 4.1.

**4.2.2.1.1** The Projects must serve an Unserved Rural Area.

**4.2.2.1.2** The Projects must meet Minimum Network Requirements.

**4.2.2.1.3** A County Match in the amount of One Dollar (\$1.00) for every One Dollar (\$1.00) of funding provided by DHCD is required.

**4.2.2.1.4** The Projects will conform in all material respects with the County's responses to the RFI, attached hereto as Exhibit \_\_\_\_\_ and \_\_\_\_\_. The scope of these Exhibits may be modified with approval of DHCD, in consultation with the Office.

**4.2.2.2** The Projects will be owned by the County or the ISP. The County is responsible for overall funding and implementation of the Projects.

**4.2.2.3** The County will seek the assistance and advice of the Office in executing the Projects. The County will accept the Office's advice and suggestions in good faith.

**5. Early Termination**

**5.1** If a Party fails to fulfill any or all of its obligations under this Agreement properly and on time, or otherwise violates any provision of this Agreement, any non-defaulting Party may terminate this Agreement by giving thirty (30) days prior written notice of such default to each other Party. The non-defaulting Parties shall allow thirty (30) days for a defaulting Party to cure said default. If the default is not cured within the thirty (30) day cure period, a non-defaulting Party may terminate this Agreement without further notice. The thirty (30) day notice shall specify the acts or omissions relied upon for termination.

**5.2** DHCD may terminate this Agreement for convenience upon sixty (60) days' notice to the other Parties. In the event of an early termination under this Section, the County will be reimbursed all reasonable costs incurred prior to the date of notice of termination, pursuant to Section 4.1.1.

**5.3** Funding under this Agreement is subject to budget constraints and legislative approvals. If funds are not appropriated or made available to DHCD for the amounts identified in this Agreement, this Agreement shall be automatically terminated, without any action required.

**6. Notices**

All notices required under this Agreement shall be made in writing, delivered by first-class mail (with a courtesy copy by e-mail), and deemed received three (3) days after mailing. All notices shall be directed as follows:

If for DHCD, to:

Kenneth C. Holt  
Secretary  
Department of Housing and Community Development  
7800 Harkins Road  
Lanham, MD 20706

With courtesy e-mail to: kenneth.holt@maryland.gov

*and*

Kenrick Gordon  
Director, Governor's Office of Rural Broadband  
Department of Housing and Community Development  
7800 Harkins Road  
Lanham, MD 20706

With courtesy e-mail to: kenrick.gordon@maryland.gov

If for the County, to:

\_\_\_\_\_  
\_\_\_\_\_

With courtesy e-mail to: \_\_\_\_\_

**7. Liability**

7.1 Each Party assumes sole responsibility for the obligations to be performed by it under this Agreement.

7.2 To the extent permitted by law, the County shall defend, indemnify, and hold harmless DHCD, the Office, and the State, from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the

County, its officials, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification. The County's obligation to defend, indemnify, and hold harmless DHCD, the Office, and the State, shall survive the termination of this Agreement.

**7.3** In any agreement for execution of the Projects with the ISP, the County shall require the ISP to defend, indemnify, and hold harmless DHCD, the Office, and the State, from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from any breach of this Agreement or any direct or indirect, willful or negligent, act or omission by the ISP, its officers, employees, or agents, in connection with the subject of this Agreement, unless such claims arise from or are the sole result of intentional misconduct or gross negligence of the party seeking to enforce this right to indemnification.

**7.4** Nothing provided in this Agreement shall be construed as a waiver of the Tort Claims Acts and related funding provisions or the defense of governmental immunity by the Parties as to any third party.

**7.5** It is hereby stipulated and agreed between the Parties that with respect to any tort claim or action arising out of any services performed under or pursuant to this Agreement, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions or omissions of its own agents, officers and employees. In any action or claim arising out of any services performed under or pursuant to this Agreement, each Party shall assume the defense of itself, its own officers, agents

or employees in accordance with the Maryland Tort Claims Act, Md. Code Ann., State Gov't Art., §12-101, *et seq.* and the Maryland Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, *et seq.*, as the case may be.

**7.6** Each of the Parties shall immediately notify the other of any claim or suit made or filed against them or their subcontractors regarding any matter resulting from or relating to their obligations under this Agreement and will cooperate, assist, and consult with the other in the defense or investigation of any claim, suit, or action made or filed against any of the Parties relating to the obligations of such Party under this Agreement.

**8. Records**

The County will maintain accurate records of all documents relating to this Agreement, all expenses incurred under this Agreement, and all services provided to the County for which reimbursement is made under Section 4.1.1. The County shall make the records and its administrative offices, personnel, consultants, or volunteers who are involved in the implementation of this Agreement available to DHCD and the Office upon request. All such records shall be maintained for a period of three (3) years after funding is provided by DHCD or, with respect to the cash flow reserves, for three (3) years after the five (5) year period covered by the pro forma has run, or for the applicable period of limitations, whichever is longer. In cases where unresolved audit questions may require retention of some or all of said records for a longer period, the County will turn over all records that may be required to be retained beyond the three (3) year period identified herein to DHCD.

**9. Compliance with Laws**

Each Party to this Agreement hereby represents and warrants that it shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.

**10. Certifications**

**10.1** The Parties agree to not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, familial status, marital status, national origin, ancestry, or physical or mental disability or any other characteristic forbidden as a basis for discrimination by applicable laws. The Parties agree to comply with other non-discrimination provisions of federal and State law.

**10.2** The signatory for the County in this Agreement is an officer of the County and is authorized to act in connection with the matters described in this Agreement. This Agreement has been duly authorized, executed, and delivered in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the County, subject to the approval of \_\_\_\_\_ of \_\_\_\_\_ County

**10.3** The Parties warrant that they shall comply with the State's policy concerning drug and alcohol free workplaces as set forth in COMAR 01.01.1989.18 and 21.11.08, and shall remain in compliance throughout the term of this Agreement.

**11. Entire Agreement**

This Agreement, together with any exhibits attached hereto and incorporated by reference, represents the complete, total and final understanding of the Parties and no other understanding or representations oral or written, regarding the subject matter of this Agreement shall be deemed to exist or bind the Parties at the time of the execution.

**12. No Waiver**

The failure to insist in any one or more instances upon a Party's strict performance of any of its obligations under this Agreement shall be limited to that particular instance, and shall not be deemed or construed as a waiver or relinquishment of the right to require and enforce the future performance of such obligations.

**13. Severability**

If any term, covenant, or condition of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this Agreement shall be construed without such provision, and shall, nevertheless, remain in full force and effect as long as the essential terms of this Agreement remain valid, legal, reasonable, and enforceable.

**14. Amendments**

This Agreement may not be changed, altered, or modified except by written agreement executed by the Parties. Except for any specific provision of this Agreement which is amended in accordance with this Section, this Agreement remains in full force and effect after any such amendment.

**15. Miscellaneous**

**15.1** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland.

**15.2** This Agreement shall not be assignable or transferable without the prior written consent of the Parties.

**15.3** Section headings and subheadings in this Agreement are used for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**15.4** This Agreement is for the exclusive benefit of the DHCD and the County. No other person or entity shall have rights under or be deemed a beneficiary of this Agreement.

**15.5** This Agreement may be executed in counterparts; all such executed counterparts shall be deemed one agreement. Signatures of the Parties, transmitted by facsimile or by electronic mail printable in tangible form to the other Party, shall be as effective as an original signature delivered by the signing Party.

**16. Exhibits**

The following Exhibits attached hereto are an integral part of this Agreement and are incorporated herein by reference:

**Exhibit A:** Response to RFI dated \_\_\_\_\_, concerning \_\_\_\_\_ Project.

**Exhibit B:** Response to RFI dated \_\_\_\_\_, concerning \_\_\_\_\_ Project.

**Exhibit C:** Award Letter for the \_\_\_\_\_ and \_\_\_\_\_ Project

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the dates identified below.

[SIGNATURES ON FOLLOWING PAGE]

DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

\_\_\_\_\_  
Date

\_\_\_\_\_  
BY: Kenneth C. Holt  
Secretary

Approved as to form and legal sufficiency  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_ COUNTY

\_\_\_\_\_  
Date

\_\_\_\_\_  
BY:  
ITS: