

TECHNICAL ASSISTANCE AGREEMENT

This Agreement is entered into by and between the **Alabama Department of Economic and Community Affairs**, hereinafter referred to as the “**Department**,” and **Baldwin County**, hereinafter referred to as the “**Community**.” This Agreement is subject to the following terms and conditions as well as Attachment A (Scope of Work), which is hereby incorporated by reference as part of this Agreement.

1. **PURPOSE:** The purpose of this Agreement is to implement the Alabama Community Broadband Technical Assistance Program (“TAP”) project, as set forth in further detail in Attachment A (Scope of Work) (the “Project”), in accordance with: (a) Sections 60102 and 60304 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58; (b) 47 U.S.C. §§ 1702, 1723; and (c) other applicable federal and state laws. The Project will be supported through a Broadband Equity, Access, and Deployment Program Planning Grant (01-20-B093; CFDA 11.035) and/or State Digital Equity Planning Grant (01-30-DP325; CFDA 11.032) awarded to the Department by the U.S. Department of Commerce (“Commerce”).
2. **TECHNICAL ASSISTANCE SERVICES:** The Project shall consist of the technical assistance services described in Attachment A (Scope of Work), unless there is an amendment to this Agreement signed by the Department and the Community in accordance with Section 24 (Amendments). The technical assistance services shall be provided to the Community by the Department or its contractor, CTC Technology & Energy (“CTC”), under the direction of the Department.

THIS IS AN AGREEMENT FOR TECHNICAL ASSISTANCE SERVICES ONLY. THE COMMUNITY UNDERSTANDS AND AGREES THAT NO FINANCIAL AWARD, GRANT, OR OTHER CONSIDERATION WILL BE PROVIDED TO THE COMMUNITY UNDER THIS AGREEMENT.

3. **TERM:** This Agreement shall expire upon Project completion as determined by the Department or as otherwise set forth in this Agreement. The Community shall diligently pursue the development and implementation of the Project so as to ensure completion and shall promptly notify the Department of any event or circumstance that could substantially delay the Project. The Community shall identify at least one point of contact for the Project for the duration of the Term.
4. **REPORTING:** The Community shall provide any information about the Project requested by the Department or CTC necessary to support Department compliance with any reporting, audit, or informational obligations, including but not limited to information regarding Project activities, objectives, barriers, needs assessments, asset inventories, coordination, collaboration, accomplishments, benefits, impacts, performance measures, and implementation. The Department and CTC may request in-person or virtual meetings with Community leadership and stakeholders, including local internet service providers, as part of this information collection process. The Community understands and agrees that any information provided to the Department or CTC related to the Project may be disclosed to Commerce or other third parties, and the Department cannot guarantee the confidentiality of

any information submitted. The Community should not submit any copyrighted or other sensitive business information as part of the Project. Community failure to submit requested information in a complete and timely manner may be cause for termination of this Agreement.

5. **ACCESS TO RECORDS AND RETENTION:** For the limited scope of this Agreement, Commerce, the U.S. Government Accountability Office, the Comptroller General of the United States, the Director of the Department, the Chief Examiner of Public Accounts, or any of their duly authorized representatives shall have the right of access to any pertinent books, documents, papers, and records (electronic or otherwise) of the Community for the purpose of making audits, examinations, excerpts, and transcripts related to the Project. This right also includes timely and reasonable access to Community personnel for the purpose of interview and discussion related to the Project. This right of access is not limited to the required retention period but shall last as long as the records are retained.

Records related to the Project shall be kept for a period of six (6) years from the end of the Term specified in Section 3 (Term) or any longer retention period required under federal law; provided, however, that if any litigation, claim, or audit is started before the expiration of the retention period herein, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

6. **TERMINATION:** The following provisions apply to termination under this Agreement, whether termination by the Department or by the Community. The performance of work under this Agreement may be terminated in whole or in part for the following circumstances:

Termination for Convenience. This Agreement may be terminated by either party with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination.

Termination for Cause. If, through any cause, the Community shall fail to fulfill in a timely manner its obligations under this Agreement, or if the Community shall violate any of the covenants, agreements, or stipulations of this Agreement, and such failure or violation is not corrected within fifteen (15) days after such notice is given by the Department to the Community, the Department shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the Community of such termination or suspension and specifying the effective date thereof.

In the event of termination, for either convenience or cause, all property, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared under this Agreement shall, at the option of the Department, and if in accordance with applicable state and federal regulations, become the property of the Department.

Notwithstanding the above, the Community shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of the Agreement by the Community and the Department and CTC may withhold further technical assistance services for the Project until such time as the exact amount of damages due to the Department from the Community is determined.

7. HEARING ON APPEAL: The Community shall have the right to appeal any determination to terminate made by the Department; however, if the Community has failed to submit its appeal, in writing, within ten (10) calendar days from written notice of the termination and/or has failed to request and receive approval from the Department for extension of such, then the Community shall have no further right of appeal.

A hearing shall be conducted at the Department's offices in Montgomery, Alabama, or any other appropriate location at the Department's discretion, with a written notification of the time, place, and subject matter sent by the Department to the Community.

8. DEBARMENT AND SUSPENSION: The Community certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State of Alabama and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Community.

The Community shall immediately notify the Department if it or any of its principals becomes debarred or suspended. If the Community fails to comply with the obligations in this section, the Department and CTC shall not provide any further technical assistance services for the Project to the Community and the Department shall have no further TAP obligations to the Community under this Agreement until such non-compliance is cured. Such action shall be separate from and in addition to any remedies the federal government may pursue by law.

9. NOT TO CONSTITUTE A DEBT OF THE STATE: It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213 of the Constitution of Alabama, 2022, or any recompilation thereof.
10. NO OBLIGATION TO CONTRACT FURTHER: Nothing in this Agreement is intended to require that the parties contract for further provision or purchase of any goods or services, or require the grant of any funds. Any such arrangement will be the subject of a separate written and signed agreement specifying definitively the goods, services, grant, or other subject matter with respect to which the parties wish to contract further.
11. CONFLICTING PROVISION: If any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.
12. IMMUNITY AND DISPUTE RESOLUTION: The parties to this Agreement recognize and acknowledge that the Department is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Article I, Section 14, Constitution of Alabama, 2022, or any

recompilation thereof. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by the Department of such Constitutional Immunity.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

13. MERIT SYSTEM EXCLUSION: The Community is not to be considered a merit system employee and is not entitled to any benefits of the Alabama State Merit System.
14. DISCLAIMER: The Department specifically denies liability for any claim arising out of any act or omission in the rendering of technical assistance services for the Project.

No contractor, subcontractor, or agency performing services under any agreement, contract, grant, or any other understanding, oral or written, other than an actual employee of the Department, shall be considered an agent or employee of the State of Alabama or the Department or any division thereof. The State of Alabama, the Department, and their agents and employees assume no liability to the Community or any third party for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of the Department, CTC, the Community, or any other person.

THE TECHNICAL ASSISTANCE SERVICES FOR THE PROJECT ARE PROVIDED ON AN "AS IS" BASIS. TO THE EXTENT PERMITTED BY LAW, THE DEPARTMENT DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TECHNICAL PERFORMANCE, AND NON-INFRINGEMENT REGARDING THE TECHNICAL ASSISTANCE SERVICES PROVIDED FOR THE PROJECT.

15. ASSIGNABILITY: The Community shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Department thereto.
16. CONTINGENCY CLAUSE: It is expressly understood and mutually agreed that any technical assistance services provided under this Agreement shall be contingent upon receipt and availability by the Department of funds under the program for which this Agreement is made.

As this Agreement involves the use of federal funds, the Project may be adjusted or terminated in response to any federal rescissions and/or deferrals.

17. CONFLICT OF INTEREST: A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the entity selected for an award: (a) the individual, (b) any member of the individual's immediate family, (c) the individual's partner, or (d) an organization which employs or is about to employ any of the above. The Community certifies by signing this Agreement that no person who presently performs functions, duties, or responsibilities in connection with the Department of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement nor will the Community hire any person having such conflicting interest.
18. AUDIT REQUIREMENTS: Nothing contained in this Agreement shall be construed to mean that the Department cannot utilize its auditors regarding limited scope audits of the Project. Audits of this nature shall be planned and carried out in such a way as to avoid duplication or not to exceed applicable audit coverage limits.

Copies of all required audits must be submitted to the Department and the Alabama Department of Examiners of Public Accounts. Copies may be transmitted by email or traditional mail, at the following addresses:

audit@adeca.alabama.gov

Alabama Department of Economic and
Community Affairs
ATTENTION: Chief Auditor
401 Adams Avenue
P.O. Box 5690
Montgomery, AL 36103-5690

central.records@examiners.alabama.gov

Alabama Department of Examiners of
Public Accounts
ATTENTION: Audit Report Repository
P.O. Box 302251
Montgomery, AL 36130-2251

19. AUDIT EXCEPTIONS/UNRESOLVED QUESTIONED COSTS/OUTSTANDING DEBTS:
The Community certifies by signing this Agreement that it does not have any unresolved audit exceptions, unresolved questioned costs, or finding of fiscal inadequacy as a result of project monitoring. It further certifies that no money is owed to any division of the Department or to the federal government under any program where it has not arranged a repayment plan.
20. SUSPENSION OF SERVICES: In addition to the provisions provided herein, technical assistance services for the Project may be suspended in the event that there is an outstanding audit exception under any program administered by any division of the Department, or in the event there is an amount owing to any division of the Department, or an amount owing to the federal government under any program administered by any division of the Department that is not received in a reasonable and timely manner.

Should the Community incur an unresolved audit exception or have unresolved questioned costs or finding of fiscal inadequacy as a result of any project monitoring by any division of the Department, then the Department shall not enter into any other contract, agreement, grant, etc., with the Community until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved. The Department shall not enter into another contract, agreement, grant, etc., with any individual, agency, company, or government under any program administered by any division of the Department that has not arranged a repayment schedule.

21. PUBLICATION: The Department reserves the right to publicly announce the Project and discuss the Project in any promotional material, statement, document, press release or broadcast. The Community agrees to comply with any guidance or requirements issued by Commerce, the State of Alabama, or the Department regarding any stakeholder outreach materials related to the Project.
22. NONDISCRIMINATION: The Community shall be and is prohibited from discriminating based on race, color, religion, sex, age, handicap, or national origin.
23. COMPLIANCE WITH OTHER FEDERAL, STATE, AND LOCAL LAWS: In addition to the provisions provided herein, the Community shall be responsible for complying with any and all other applicable laws, ordinances, codes, executive orders, and regulations of the federal, state, and local governments related to the Project, and shall be solely responsible for any recoupments or penalties that might arise from such non-compliance. The Department assumes no liability to the Community for any damages arising out of or in any way connected with the Community's non-compliance with laws, ordinances, codes, and regulations of the federal, state, and local governments.

In compliance with Alabama Act 2016-312, the Community hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

24. AMENDMENTS: The Community may request amendments to various portions of this Agreement, including amendments to Attachment A (Scope of Work). All requests for amendments must be submitted in writing to the Department and be approved by the Department in writing prior to implementation.

IN WITNESS WHEREOF, THE DEPARTMENT AND THE COMMUNITY HAVE EXECUTED THIS AGREEMENT AS EVIDENCED BY THE SIGNATURES BELOW:

Alabama Department of Economic and Community Affairs

Baldwin County

Kenneth W. Boswell, Director Date

Authorized Official Date

This Agreement has been reviewed for content and legal form, and complies with all applicable laws, rules, and regulations of the State of Alabama governing these matters.

Title

Contact Person / Phone Number

J. Bradford Currier, Legal Counsel

Mailing Address