FORM CD-450 (REV. 10/18) U.S. DEPARTMENT OF COMMERCE	X GRANT COOPERATIVE AGREEMENT
FINANCIAL ASSISTANCE AWARD	**FEDERAL AWARD ID NUMBER** 06-40-MM438
RECIPIENT NAME CALIFORNIA DEPARTMENT OF TECHNOLOGY	**PERIOD OF PERFORMANCE** 03/01/2023 - 12/31/2026
STREET ADDRESS 10860 GOLD CENTER DRIVE	**FEDERAL SHARE OF COST** $73,000,000.00
CITY, STATE ZIP RANCHO CORDOVA, CA 95670-6024	**RECIPIENT SHARE OF COST** $114,586,206.04
AUTHORITY 47 U.S.C. Sec. 1741	**TOTAL ESTIMATED COST** $187,586,206.04
CFDA NO. AND NAME 11.033 Middle Mile (Broadband) Grant Program	
PROJECT TITLE: California Middle Mile Broadband Initiative - Spurs	

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modifications by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

X DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

R & D AWARD

FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE

X SPECIFIC AWARD CONDITIONS

X LINE ITEM BUDGET

X 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101

48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES

MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.

X OTHER(S): GENERAL TERMS AND CONDITIONS for the NTIA MIDDLE MILE GRANT PROGRAM, April 2023

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER	DATE
Andrew Rittgers	06/15/2023
PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL ANDREW RITTGERS Digitally signed by ANDREW RITTGERS Date: 2023.06.15 13:45:44 -06'00'	DATE

Mark Monroe Deputy Director, MMBI Mark Monroe (Aug 24, 2023 11:16 PDT) Aug 24, 2023

Award Number: 06-40-MM438, Amendment Number 0
Federal Program Officer: Sarah Bleau
Requisition Number: MM438
Employer Identification Number: 680278724
UEI Number: VTMETSLNMSW4
Recipient ID: 0629493
Requestor ID: 0629493

Award ACCS Information

Bureau	FCFY	Project-Task	Organization	Object Class	Obligation Amount
61	2023	4720001-000	06-00-0000-00-00-00-00	41-19-00-00	$73,000,000.00

Award Contact Information

Contact Type	Contact Name	Email	Phone
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NIST Grants Officer:
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NIST Grants Specialist:
Tiffany Peters
100 Bureau Drive, MS 1650
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(267) 334-6448

NIST Financial Assistance Award Number: 06-40-MM438
Amendment: NEW
Recipient: California Department of Technology

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
MIDDLE MILE GRANT PROGRAM
FINANCIAL ASSISTANCE
SPECIFIC AWARD CONDITIONS

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1. Introduction:

The National Institute of Standards and Technology (NIST), servicing for the National Telecommunications and Information Administration (NTIA), hereby enters into this grant number 06-40-MM438 with California Department of Technology to support the work described in the proposal entitled "California Middle Mile Broadband Initiative – Spurs" dated September 30, 2022, and any revisions received during the application review, which are hereby incorporated into this award by reference. Where the terms of this award and the proposal differ, the terms of this award shall prevail.

2. Recipient Contact Information:

Administrative:
Mark Monroe
Deputy Director for Middle Mile Initiatives
California Department of Technology
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3. NTIA Contact Information:

Federal Program Officer
Sarah Bleau
National Telecommunications and Information Administration
US Department of Commerce
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Washington, DC 20230
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Email: sbleau@ntia.gov

4. NIST Contact Information:

Grants Officer:
Andrew Rittgers
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National Institute of Standards and Technology
100 Bureau Drive, Mail Stop 1650
Gaithersburg, MD 20899-1650
Telephone: 301-975-2000
Email: tiffany.peters@nist.gov

5. Award Payments:

This award is hereby funded through advanced payments using the Department of Treasury's Automated Standard Application for Payments (ASAP) system. Payments will be issued in accordance with 2 CFR § 200.305 and the Department of Commerce Financial Assistance Standard Terms and Conditions, B.02, dated November 12, 2020.

Payments for allowable costs may be drawn down as needed by the Recipient enrolled in ASAP. Funds may be requested through ASAP by the authorized *Payment Requestor* who is the individual designated by the Recipient to access Federal funds.

This award has the following control or withdrawal limits set in ASAP:

_____ None
_____ Agency Review required for all withdrawals (see explanation below)
_____ Agency Review required for all withdrawal requests over $_____ (see explanation below)
__X__ Maximum Draw Amount controls (see explanation below)
$_____ each month
$_____ each quarter
$___0.00____ Max drawdown amount

Explanation:
Environmental Assessment & National Historic Preservation Act Compliance Requirements restriction
The total amount of Federal funding is hereby withheld until the requirements identified in the National Institute of Standards and Technology General Terms and Conditions for the NTIA Middle Mile Grant Program, Term #11 – Environmental Assessment and #12 – National Historic Preservation Act (Six-Month Expenditure Plan), are satisfied.

6. Return Payments for Funds Withdrawn through ASAP:

Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction may only be completed by the Recipient's financial institution. Full or partial amounts of payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned items and ensure that funds are properly credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will

be dishonored and returned to the originating depositary financial institution (ODFI). The Payment Requestor/Recipient Organization should notify the NIST Grants Office and provide a reason whenever return payments are made.

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the return is to be credited. Additional detailed information is accessible at: https://www.fiscal.treasury.gov/asap/.

7. Period of Performance and Funding Limitations:

The period of performance and budget incorporated into this award cover a **three**-year period of performance and provide for a maximum total amount of $**73,000,000** in Federal funding. This award is being fully funded via this award action.

The maximum amount of NTIA funding in support of this award will not exceed the amount specified in the award documents, unless otherwise amended in writing by the NIST Grants Officer. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal funds being made available pursuant to this award.

8. Federal and Non-Federal Cost Sharing:

As directed by Section 60401(f) of the Infrastructure Act, each recipient must commit to a non-federal cost share of no less than 30 percent of the total project cost, unless exempted through a partial or complete waiver for Tribal governments and Native entities.

Pursuant to this award, NIST hereby approves the committed non-federal cost share in the amount of **$114,586,206.04** per the proposal's budget on the part of the recipient and becomes a binding requirement under subject award (*see* 2 CFR §200). The cost sharing ratio for this award is **38.92%** Federal share and **61.08%** Non-Federal share. See 2 CFR §200.306 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section B.03 for the treatment of cost sharing.

9. Notice of Funding Opportunity – Middle Mile Grant Program

The Department of Commerce, National Telecommunications Information Administration Notice of Funding Opportunity (NOFO) No. NTIA-MMG-2-2022, Middle Mile Grant Program, dated May 13, 2022, is incorporated by reference into this award. It is accessible at: https://www.grants.gov/web/grants/view-opportunity.html?oppId=340300. Select "Closed" or "Archived" Opportunity Status to view the NOFO.

10. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements:

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements as published in the Federal Register on December 30, 2014 (79

FR 78390) is incorporated by reference into this award. It is accessible at: http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30297.pdf.

11. Department of Commerce Financial Assistance Standard Terms and Conditions:

As indicated on the Form CD-450 for this award, the Department of Commerce Financial Assistance Standard Terms and Conditions (ST&C) issued November 12, 2020 are incorporated by reference into this award. The Department's ST&C, as well as a link to 2 CFR Part 200, are accessible at: https://www.commerce.gov/oam/policy/financial-assistance-policy

12. Bi-annual Performance and Financial Reporting Requirements

The Recipient must submit a Federal Financial Report (SF-425), and Performance Progress Report on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof.

Reports are due no later than 30 calendar days following the end of each reporting period. A final SF-425 and Performance Progress Report (Closeout) must be submitted within 120 days after the expiration of the period of performance. Subrecipients are required to submit their final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

All SF-425 and Performance Progress Reports must, at minimum, comply with the reporting requirements and contain all information and certifications specified in the NOFO.

All SF-425 and Performance Progress Reports must be submitted to the NTIA Grants Portal at https://grants.ntia.gov/, with copy to the Federal Program Officer, within the prescribed timeframes identified in the terms and conditions of the award.

The Recipient organization name, NIST award number, and reporting period must be included in the submission. The Recipient contact information should be included in the body of the message. To the greatest extent possible, SF-425 and Performance Progress Reports should be submitted together in the same submission.

SF-425 and Performance Progress Reports must not be sent directly to NIST/NTIA personnel, other than when copying the Federal Program Officer on submissions to the https://grants.ntia.gov/ Portal.

Any SF-425 or Performance Progress Reports sent directly to NIST/NTIA personnel will be returned to the sender with instructions on how to submit through the https://grants.ntia.gov/ Portal.

No other correspondence may be sent through this Portal; timely responses to any other inquiries received in this mailbox are not guaranteed. The Portal will not be used for any other purpose ***except*** for purposes identified above.

Eligible entities that receive an award shall comply with any other reasonable reporting requirements determined necessary by the NTIA Assistant Secretary.

13. Department of Commerce Financial Assistance Standard Terms and Conditions Section B.06 Indirect or Facilities and Administrative Costs:

NIST will reimburse the Recipient for indirect or F&A costs in accordance with 2 C.F.R. § 200.414 and Section B.06. of the Department of Commerce Financial Assistance Standard Terms and Condition, dated November 12, 2020.

If an indirect cost rate has not been established, and NIST is identified as the cognizant agency for indirect costs in accordance with 2 C.F.R. § 200.1, "Cognizant agency for indirect costs," within 90 calendar days of the award start date, the Recipient must electronically submit to gmdaudit@nist.gov the documentation (indirect cost rate proposal, cost allocation plan, etc.) necessary to allow NIST to perform an indirect cost rate proposal review. Organizations that have previously established indirect cost rates with NIST must submit a new indirect cost rate proposal for indirect costs within six months after the end of the organization's fiscal year.

If your submission includes Personally Identifiable Information (PII) or Business Identifiable Information (BII), please send an email to gmdaudit@nist.gov to request a secure link.

The requirements for determining the relevant cognizant agency and for developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in 2 C.F.R. § 200.414 and in Appendices III-VII to 2 C.F.R. Part 200. For additional guidance on preparing indirect cost proposals, please review the Department of Labor's Guide for Indirect Cost Determination at: https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm. Section I.B and I.C lists the various types of indirect cost rates and the circumstances under which such rates would apply. The guide also addresses common indirect cost problems and contains useful FAQs.

14. Unfunded Grant Actions Mailbox (UGAM):

Requests for unfunded award actions, which include, but are not limited to, requests for no-cost extension, change in key personnel, change in scope of work, budget revisions, award transfer, and novation, must be submitted to: UGAM@nist.gov, within the prescribed timeframes identified in the terms and conditions of the award.

Unfunded award action requests and related correspondence, including justification to support the request, sent to the mailbox ***must*** contain the following information in the email subject line: (1) Recipient name; (2) NIST award number; (3) Principal Investigator/Project Director; and (4) Action being requested (e.g. no cost extension, change in key personnel, etc.).

Unfunded award action requests must not be sent directly to NIST personnel (e.g. Grants Specialist, Grants Officer, Administrative Assistant, GMD Division Chief, Federal Program Officer, etc.).

Any requests sent directly to NIST personnel will be returned to the sender with instructions on how to submit through the UGAM@nist.gov mailbox.

No other correspondence may be sent through this mailbox; timely responses to any other inquiries received in this mailbox are not guaranteed. The mailbox will not be used for any other purpose ***except*** for purposes identified above.

Requests that are processed will be authorized via a Form CD-451 Amendment to the Financial Assistance Award or a Non-Funded Administrative Change Letter.

15. Climate Resilience

Because retrofitted and new infrastructure for broadband might be expected to have a lifetime of 20 years or more, the Recipient must account not only for current risks but also for how the frequency, severity, and nature of these extreme events may plausibly evolve as our climate continues to change over the coming decades.

Accordingly, the recipient must develop a plan for regularly assessing the changing weather and climate risks that could impact the network. Such a plan must demonstrate that the risks are understood and characterized to account for and respond to these areas for the 20 years following deployment, utilizing at least one resource or tool at https://toolkit.climate.gov/content/understanding-climate-risk-resources-ntia-applicants. The plan should also detail how the weather and climate risks identified are addressed through avoidance and/or mitigation for the network. The plan should articulate how this process of evaluating the updated climate and weather risk and incorporating that information into the network design, maintenance, upgrades, or similar will be performed at least once during the period of performance and periodically over the life of the project.

The recipient is to report on its climate risk reanalysis in the biannual performance reports.

16. No Duplication of Federal Funding

No federal funds may be used to duplicate costs, services, connections, facilities, or equipment that have been authorized through another federal program. To the extent that a Middle Mile Program project is later deemed to include duplicate funding from another federal program, the NIST Grants Office and NTIA reserve the right to disallow the costs associated with the duplication of federal funds or service and/or to reallocate the funds to allowable activities within the project.

18. Signage and Public Acknowledgements:

The Recipient is required to post project signage and to include public acknowledgments in published and other collateral materials (e.g., press releases, marketing materials, webpages, plaques) satisfactory in form and substance to NIST, that identifies the nature of the project and indicates that the project is funded by Infrastructure Investment and Jobs Act. The Recipient employing project signage is required to use the official Investing in America emblem in accordance with the Official Investing in America Emblem Style Guide: https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf. Costs associated with signage and public acknowledgments must be reasonable and limited. Signs or public acknowledgments should not be produced, displayed or published if doing so results in unreasonable cost, expense, or recipient burden. The Recipient is encouraged to use recycled or recovered materials when procuring signs. Any construction site signage should be displayed throughout the construction phase of the project in an easily visible location directly linked to the work taking place. The Recipient is responsible to maintain the signage in good condition throughout the construction period.

End of Specific Award Conditions

U.S. DEPARTMENT OF COMMERCE
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
GENERAL TERMS AND CONDITIONS
for the
NTIA MIDDLE MILE GRANT PROGRAM

April 2023

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1. **Project Management Conference**

Shortly after approval of the award, NIST (on behalf of NTIA) may contact the Recipient to arrange a project management conference. The purpose of the project management conference is to explain to the Recipient its post-approval responsibilities for administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements. The Recipient's authorized representative, architect/engineer, financial representative, and possibly the Recipient's legal counsel should attend.

2. **Property Trust Relationship and Public Notice Filings for Grant-Acquired Property**

In accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity (*i.e.*, Recipient or Subrecipient) as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). The non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

The Grants Officer may require a non-Federal entity (*i.e.*, a Recipient or Subrecipient) to execute and to record (as applicable) a statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part pursuant to a Middle Mile Grant Program award is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to NTIA and to the NIST Grants Officer and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the NIST Grants Officer may further require the non-Federal entity to provide NTIA and the NIST Grants Officer with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be promptly returned to the Grants Officer. The non-Federal entity may use model documentation made available by NTIA.

Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes NTIA and/or the NIST Grants Officer to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The NIST Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the NIST Grants Officer are made.

3. Land, Easements, and Rights of Way

The Recipient must disclose all encumbrances to NIST. NIST will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life.

4. Project Sign

The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction phase of the project a sign(s) satisfactory to NIST that identifies the project and indicates that the project is Federally funded. The sign shall:

- Be designed in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide found here: https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf
- Be placed in an easily visible location that can be directly linked to the work taking place; and,
- Identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law."

The recipient should use best effort to use recycled or recovered materials when procuring signs. The recipient shall also ensure costs associated with signage are reasonable and limited,

NIST also may require that the Recipient maintain a permanent plaque or sign at the project site with the same or similar information.

5. Eminent Domain

In accordance with Executive Order 13406, "*Protecting the Property Rights of the American People"* (June 28, 2006), the Recipient agrees:

(a) Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties;

(b) Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the Project for such purposes; and

(c) Any use of the power of eminent domain to acquire land, easements or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without prior written consent of NIST constitutes an unauthorized activity and/or use of funds under the award, and subjects the recipient to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

6. Construction Contract Security Bond

Pursuant to 2 CFR § 200.326, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently $250,000), the Recipient may submit its bonding policy and requirements to the Grants Officer for a determination whether the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum bonding requirements of 2 CFR § 200.326 (Bonding requirements) shall apply.

7. Inspection And Testing of Materials

The Recipient shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Recipient shall ensure that documentation of same is cataloged and retained.

8. Energy Efficiency

The Recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.

9. Requirements During Construction

During construction, the Recipient is responsible for:

(a) Ensuring project completion in accordance with approved plans and specifications;
(b) Monitoring project progress and reporting progress to NTIA and NIST;
(c) Providing for required construction permits and adequate construction inspection;
(d) Promptly paying costs incurred for the project purposes;
(e) Monitoring contractors' compliance with Federal, State, and local requirements; and
(f) Constructing and maintaining in good condition throughout the construction period, of a sign or signs, at the project site in a conspicuous place indicating that the Federal Government is participating in the project.

10. Recipient and Contractor Compliance with Applicable Requirements

The Recipient shall comply, and must require each subrecipient or contractor, including lower tier subrecipients or subcontractors, to comply with all applicable Federal, state, and local laws and regulations. The Recipient is responsible for ensuring that all contracts necessary for design and construction of the Project facilities are implemented in compliance with the Terms and Conditions of this Award.

11. Environmental Assessment

The Recipient must comply with all environmental standards and identify to NTIA any impact a proposed infrastructure project may have on the environment. The Recipient may not expend

any federal infrastructure funds other than for engineering design, permitting and work related to environmental, historical and cultural reviews, and limited, preliminary procurement funds, as described below, prior to the following:

- The completion of environmental review and issuance of a Categorical Exclusion (Cat Ex) Decision Memo, Record of Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter "decision documents") that meets the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);

- The completion of any required consultations, to include consultations with the State Historic Preservation Office (SHPO) and the appropriate federally recognized Native American tribes, under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*) (NHPA), and/or consultations with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq*.); and/or

- Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

Project implementation (site preparation, demolition, construction, ground disturbance, or any other project implementation activities) may not begin prior to the completion of the above activities. The completion of a draft environmental assessment (EA) or equivalent document, and completion of any required consultations under Section 106 of the NHPA, must be completed no later than six months after the award date unless a formal request for extension is submitted and approved by the Grants Officer. The Recipient must comply with all conditions placed on the project as the result of consultation processes.

Subject to the Grants Officer's approval of the Recipient's 6-month expenditure plan (described below), the allowable use of award funds prior to beginning project implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction project planning, including collecting environmentally-related information;
- Applications for environmental permits;
- Studies such as an Environmental Assessment (EA), and any wetland delineations, biological assessments, archaeological surveys, or other required analyses;
- Administrative costs;
- Pre-award application costs; and/or
- Required consultation activities.

The allowable use of funds for limited, preliminary procurements prior to beginning project implementation includes, but is not limited to, the initiation of activities necessary to meet the project completion requirements as specified in the award, including the following:

- Purchase or lease of equipment, or entering into binding contracts to do so;

- Purchase of applicable or conditional insurance; and/or
- Funds used to secure land or building leases, including right-of-way easements.

The allowable use of preliminary procurement funds is limited; must not result in an irrevocable commitment of resources; and is only allowed after inclusion in and approval of an initial 6-month expenditure plan. The initial 6-month expenditure plan is due in advance of any infrastructure funds draw down from ASAP and will be reviewed by the Federal Program Officer, who will make recommendations to the Grants Officer (who has final approval authority) to ensure all proposed procurement funds are reasonable and necessary to ensure that the project completion deadline requirements are met. All contracts must contain early termination clauses with termination costs clearly specified. All equipment purchased or leased in advance of project implementation and before issuance of the decision documents and completion of applicable consultations must be stored in locations other than the proposed project site and where there will be no impact to the environment, human health, or cultural resources (in most cases, this means equipment must be stored in existing warehouses). Under no circumstances will grant funds be drawn down for clearing or excavating land, or demolition or construction of buildings or towers, before all environmental SACs are completed and cleared. This limited, preliminary allowable use of funds for purchases and leases is designed for recipient flexibility and to streamline preparation for project implementation simultaneously during environmental review and conducting of consultations; the clause, and all applicable restrictions, is lifted once the decision document and applicable consultations are complete and approved.

While this SAC is in effect, the Recipient shall submit, in advance of any drawdowns of funds from ASAP, an initial 6-month expenditure plan that presents the proposed planning and design activities and limited, preliminary procurement activities and costs. The initial 6-month expenditure plan will be submitted via email to the Federal Program Officer, who will review it and provide recommendations to the Grants Officer for final approval to ensure that the proposed activities and expenditures are reasonable and necessary in the context of environmental compliance. The Federal Program Officer must review and recommend, and the Grants Officer must approve the initial 6-month expenditure plan prior to fund drawdowns through ASAP.

The completion of a draft EA will be submitted via email to the Environmental Federal Program Officer and Federal Program Officer. Once the environmental review has been completed, NTIA will review all documentation and determine whether the review sufficiently addresses all resource areas and whether the project may qualify for approval decision. Projects found to have significant impacts to environmental or historic resources may face de-obligation of funding if impacts cannot be mitigated. The Recipient is required to provide any information requested by NTIA to ensure both initial and ongoing compliance with environmental and historic preservation laws, regulations, and best practices. The Recipient shall notify NTIA within 24 hours upon receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Office (THPO), USFWS, or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies.

Any change to the approved project scope that has the potential for altering the nature or extent of environmental or cultural resources impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable regulatory requirements.

For all ground disturbing activities that occur during project implementation in the vicinity of known archaeological sites or suspected or known burials, the Recipient must ensure that an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitors ground disturbance, and if any potential archeological resources or buried human remains are discovered, then the Recipient must immediately cease construction in that area and notify NTIA and the interested SHPO, THPO, and tribes. Such construction activities may then only continue with the written approval of NTIA.

A revised 6-month expenditure plan is due within 30 days of submitting a FONSI to NTIA. The revised 6-month expenditure plan must outline how the Recipient plans on expending the remaining budget costs related to construction-type activities. This plan should be submitted via email to the Federal Program Officer who will review it and provide recommendations to the Grants Officer for final approval to ensure that the proposed activities and expenditures are reasonable and necessary. The Federal Program Officer must review and recommend, and the Grants Officer must approve, the revised 6-month expenditure plan prior to fund drawdowns through ASAP.

12. National Historic Preservation Act

The Recipient may not expend any federal infrastructure funds other than for engineering design, permitting and work related to environmental, historical and cultural reviews, and limited, preliminary procurement funds prior to the following:

- The completion of any required consultations, to include consultations with the State Historic Preservation Officer (SHPO) and the appropriate federally recognized Native American tribes, under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*) (NHPA); and/or
- Demonstration of compliance with all other applicable Federal, State, and local environmental laws and regulations.

Project implementation (site preparation, demolition, construction, ground disturbance, or any other project implementation activities) may not begin prior to the completion of the above activities. The completion of any required consultations under Section 106 of the NHPA must be completed no later than six months after the award date unless a formal request for extension is submitted and approved by the Grants Officer. The Recipient must comply with all conditions placed on the project as the result of consultation processes.

Subject to the Grants Officer's approval of the Recipient's 6-month expenditure plan (described below), the allowable use of funds for planning and design activities prior to beginning project implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction project planning, including collecting culturally-related information;

- Applications for cultural resource approvals and/or permits;
- Studies and any archaeological, architectural history, or traditional cultural property surveys, or other required analyses;
- Administrative costs;
- Pre-award application costs; and/or
- Required consultation activities.

The allowable use of funds for limited, preliminary procurements prior to beginning project implementation includes, but is not limited to, the initiation of activities necessary to meet the project completion requirements as specified in the award, including the following:

- Purchase or lease of equipment, or entering into binding contracts to do so;
- Purchase of applicable or conditional insurance; and/or;
- Funds used to secure land or building leases, including right-of-way easements.

While this SAC is in effect, the Recipient shall submit, in advance of any drawdowns of funds from ASAP, an initial 6-month expenditure plan that presents the proposed planning and design activities and limited, preliminary procurement activities and costs. The initial 6-month expenditure plan will be submitted via email to the Federal Program Officer, who will review it and provide recommendations to the Grants Officer for final approval to ensure that the proposed activities and expenditures are reasonable and necessary in the context of environmental compliance. The Federal Program Officer must review and recommend, and the Grants Officer must approve the initial 6-month expenditure plan prior to fund drawdowns through ASAP.

The allowable use of preliminary procurement funds is limited; must not result in an irrevocable commitment of resources; and is only allowed after inclusion in and approval of an initial6-month expenditure plan. The initial 6-month expenditure plan is due in advance of any infrastructure funds draw down from ASAP and will be reviewed by the Federal Program Officer, who will make recommendations to the Grants Officer (who has final approval authority) to ensure all proposed procurement funds are reasonable and necessary to ensure that the project completion deadline requirements are met. All contracts must contain early termination clauses with termination costs clearly specified. All equipment purchased or leased in advance of project implementation and before completion of applicable consultations must be stored in locations other than the proposed project site and where there will be no impact to the environment, human health, or cultural resources (in most cases, this means equipment must be stored in existing warehouses). Under no circumstances will grant funds be drawn down for clearing or excavating land, or demolition or construction, before all environmental SACs are completed and cleared. This limited, preliminary allowable use of funds for purchases and leases is designed for recipient flexibility and to streamline preparation for project implementation simultaneously during consultations; the clause, and all applicable restrictions, is lifted once the applicable consultations are complete, and decision document is issued.

Consultation documentation will be submitted via email to the Environmental Federal Program Officer and Federal Program Officer. Once the consultation activities have been completed, NTIA will review all documentation and determine whether the consultation activities sufficiently address historical and/or cultural resource impacts. Projects found to have

significant impacts to environmental or historic resources may face de-obligation of funding if impacts cannot be mitigated. The Recipient is required to provide any information requested by NTIA to ensure both initial and ongoing compliance with environmental and historic preservation laws, regulations, and best practices. The Recipient shall notify NTIA within 24 hours upon receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Officer (THPO), or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies.

For all ground disturbing activities that occur during project implementation in the vicinity of known archaeological sites or suspected or known burials, the Recipient must ensure that an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitors ground disturbance, and if any potential archeological resources or buried human remains are discovered, then the Recipient must immediately cease construction in that area and notify NTIA and the interested SHPO, THPO, and tribes. Such construction activities may then only continue with the written approval of NTIA.

Any change to the approved project scope that has the potential for altering the nature or extent of cultural resources impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable regulatory requirements.

A revised 6-month expenditure plan is due within 30 days of submitting a FONSI to NTIA. The revised 6-month expenditure plan must online how the Recipient plans on expending the remaining budget costs related to construction-type activities. This plan should be submitted via email to the Federal Program Officer who will review it and provide recommendations to the Grants Officer for final approval to ensure that the proposed activities and expenditures are reasonable and necessary. The Federal Program Officer must review and recommend, and the Grants Officer must approve, the revised 6-month expenditure plan prior to fund drawdowns through ASAP.

13. <u>Tribal Employment Rights Ordinances</u>

In accordance with Departmental policy, NIST must recognize Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and is incorporated by NTIA into Middle Mile Grant Program grants with Native American/Alaska Native/Native Hawaiian entities. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under as provided under 2 CFR § 200.403.

14. <u>Scheduling Inspection for Final Acceptance</u>

The Recipient will schedule its final inspection when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of the Recipient, the architect/engineer, and the contractor(s) will make the Recipient's final inspection. NTIA must be given advance notice of the final inspection so that a representative of NTIA may participate.

15. Build America, Buy America – Required Use of Domestic Fiber Optic Glass and Fiber Optic Cable

A. Applicability & Scope: Pursuant to the Infrastructure Investment and Jobs Act, 2021, Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA) including the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52 (BABA), as well as guidance provided by Memorandum for Heads of Executive Departments and Agencies, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Executive Office of the President, Office of Management and Budget (April 18, 2022) (OMB M-22-11), recipients of a federal financial assistance award from the U.S. Department of Commerce (DoC) are hereby notified that none of the funds provided under this award may be used for a Middle Mile (MM) infrastructure project unless all of the fiber optic glass and fiber optic cable used in the project is produced in the United States. The Buy America domestic content procurement preference only applies to fiber optic glass and to fiber optic cable that are consumed in, incorporated into, or affixed to a MM infrastructure project. As applicable, the requirements of this subsection must be included in all subawards and contracts, including all contracts and purchase orders for work or products pursuant to this program.

B. Waivers: When necessary, recipients may apply for, and DoC may grant, a waiver from the Buy America domestic content procurement preference applicable to MM awards. When DoC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America domestic content procurement preference in any case in which DoC determines that:

1) applying the Buy America domestic content procurement preference to the fiber optic glass and/or fiber optic cable needed for the MM project would be inconsistent with the public interest;
2) the fiber optic glass and/or fiber optic cable needed for the MM project are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3) the inclusion of fiber optic glass and/or fiber optic cable needed for the MM project and produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America domestic content procurement preference must be submitted in writing. The NTIA Federal Program Officer will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver accessible at: https://www.whitehouse.gov/omb/management/made-in-america/build-america-buy-america-act-federal-financial-assistance/.

Please note that NTIA has waived the Buy America domestic content procurement preference requirement for all iron, steel, manufactured products, and construction

materials used in MM infrastructure projects, with the exceptions of fiber optic glass and fiber optic cable. See *Limited Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Middle Mile Grant Program Awards*, which was issued by the Assistant Secretary of Commerce for Communications and Information on April 18, 2023 and is accessible at: https://www.commerce.gov/oam/build-america-buy-america.

Notwithstanding the NTIA waiver and excepting fiber optic glass and fiber optic cable used in a MM project, the Recipient should, as appropriate and consistent with law and to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). As applicable, the requirements of this subsection must be included in all subawards, including all contracts and purchase orders for work or products pursuant to this program. See 2 CFR § 200.322, *Domestic preference for procurements*.

C. Definitions:

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives[1]—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

In the case of construction materials, all manufacturing processes for the construction material must have occurred in the United States.[2]

"Domestic content procurement preference'' means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure;

[1] IIJA, § 70917(c)(1).
[2] *Id.* at § 70912(6)(C).

and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

''Project'' means the construction, alteration, maintenance, or repair of infrastructure in the United States.

D. Recordkeeping and Reporting: In accord with 2 C.F.R. § 200.334, *Retention requirements for records*, the recipient is required to maintain detailed records pertinent to a MM award, including financial records, procurement records, and real property/equipment records. In this connection, the recipient is required to maintain detailed records concerning the acquisition of all iron, steel, manufactured products, and construction materials used in MM projects. For fiber optic glass and fiber optic cable used in a MM project, this includes but is not limited to the: acquisition date; acquisition price; verification of domestic sourcing (unless DoC issues a waiver); how it was used in the project; and current location. Additionally, the recipient is required to maintain detailed records concerning the acquisition of iron, steel, manufactured products, and construction materials from foreign sources that are used in a MM project, including but not limited to: acquisition date; acquisition price; efforts to source domestically; foreign source(s); how it was used in the project; and current location. NTIA may require the recipient to report such information to the Agency at a time and in the format specified by the NTIA Federal Program Officer.

E. Questions: Questions concerning the Buy America domestic content procurement preference requirements applicable to MM awards should be addressed to the NTIA Federal Program Officer.

16. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Pursuant to 2 CFR § 200.321, the Recipient and its subrecipients must take all necessary affirmative steps (as described in 2 CFR § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

17. Open Network Requirements

The Recipient must comply with NTIA's open network requirements, which allows all other broadband service providers to interconnect with networks and other broadband infrastructure deployed using funds from this grant program on fair and non-discriminatory terms and conditions. The requirement to interconnect will apply to Recipients that deploy middle mile networks or submarine cable landing stations and not last mile networks.

- **Interconnection**: Recipients shall allow interconnection in perpetuity to grant-funded facilities at any technically feasible point along the network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the Recipient's facilities to a requesting party's facilities for the exchange of traffic. In addition, Recipients shall connect to the public Internet directly or indirectly and provide requesting parties with an ability to connect to the

Internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory.

- **Negotiate in Good Faith**: Recipients shall negotiate in good faith with all requesting parties (*i.e.*, public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.
- **Wholesale Broadband Service**: NTIA encourages Recipients to offer wholesale broadband services at rates and terms that are reasonable and nondiscriminatory

18. Prohibition on Use for Covered Communications Equipment or Services

A Recipient or subrecipient may not use grant funds received under the Middle Mile Grant Program to purchase or support any covered communications equipment or service (as defined in section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1608)). *See also* 2 C.F.R. 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment), which also applies to this award.

19. <u>Prevention of Waste, Fraud, and Abuse</u>

Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, NTIA may direct a Recipient's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-recipients (for financial matters and/or general oversight related to the grant). NTIA will provide instructions on when and how to take such training(s), and costs incurred by a Recipient relative to the training (*e.g.*, staff time) are eligible for reimbursement pursuant to the NTIA award.

Further, recipients must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Should a Recipient detect any fraud schemes or any other suspicious activity, the grant recipient must contact its assigned NTIA Federal Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible. Additionally, in accordance with 2 CFR § 200.113, an applicant or recipient must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in Section 200.339. (*See also* 2 CFR Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.)

20. Protection of Whistleblowers

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, Office of Inspector General Hotline, as indicated at https://www.oig.doc.gov/Pages/Hotline.aspx, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855.

OMB Approval No. 4040-0008
Expiration Date: 02/28/2025

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1. Administrative and legal expenses	$ 0	$	$ 0
2. Land, structures, rights-of-way, appraisals, etc.	$ 0	$	$ 0
3. Relocation expenses and payments	$ 0	$	$ 0
4. Architectural and engineering fees	$ 25,387,800	$	$ 25,387,800
5. Other architectural and engineering fees	$ 1,560,000	$	$ 1,560,000
6. Project inspection fees	$ 0	$	$ 0
7. Site work	$ 0	$	$ 0
8. Demolition and removal	$ 0	$	$ 0
9. Construction	$ 151,703,447.87	$	$ 151,703,447.87
10. Equipment	$ 0	$	$ 0
11. Miscellaneous	$ 0	$	$ 0
12. SUBTOTAL *(sum of lines 1-11)*	$ 178,651,247.87	$ 0	$ 178,651,247.87
13. Contingencies	$ 8,934,958.17	$	$ 8,934,958.17
14. SUBTOTAL	$ 187,586,206.04	$ 0	$ 187,586,206.04
15. Project (program) income	$ 0	$	$ 0
16. TOTAL PROJECT COSTS *(subtract #15 from #14)*	$ 187,586,206.04	$ 0	$ 187,586,206.04
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X 38.92 %		$ 73,000,000