

**Vermont Community Broadband Board  
Organizational Meeting  
August 10, 2021 0830am**

**AGENDA**

Meeting will be held in the GIGA Conference Room

3<sup>rd</sup> Floor of 122 State Street, Montpelier VT

Join by video; [https://teams.microsoft.com/join/19%3ameeting\\_YWZIMzhIODItMGU4NC00ZTNmLTljMTetZDkwOWRkYmU4MTgx%40thread.v2/0?context=%7b%22id%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22oid%22%3a%22605bace0-882e-4a4b-a840-042a6319db89%22%7d](https://teams.microsoft.com/join/19%3ameeting_YWZIMzhIODItMGU4NC00ZTNmLTljMTetZDkwOWRkYmU4MTgx%40thread.v2/0?context=%7b%22id%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22oid%22%3a%22605bace0-882e-4a4b-a840-042a6319db89%22%7d)

[join/19%3ameeting\\_YWZIMzhIODItMGU4NC00ZTNmLTljMTetZDkwOWRkYmU4MTgx%40thread.v2/0?context=%7b%22id%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22oid%22%3a%22605bace0-882e-4a4b-a840-042a6319db89%22%7d](https://teams.microsoft.com/join/19%3ameeting_YWZIMzhIODItMGU4NC00ZTNmLTljMTetZDkwOWRkYmU4MTgx%40thread.v2/0?context=%7b%22id%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22oid%22%3a%22605bace0-882e-4a4b-a840-042a6319db89%22%7d)

Join by Phone; tel: +1 802 828 7667, 786 619 358#

Phone Conference ID: 786 619 358#

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08:30	Agenda change requests and vote to approve agenda
08:35	Roll Call – Meeting ground rules
08:40	Minutes approval for 080621 Board meeting
08:45	Staffing discussion
09:30	CUD updates – Pre-construction plans and funding – 3 minutes each
10:00	Review RFP process for pre-construction work
10:45	Core objectives – Design script, network integration, CUD structure
11:30	Base-line data discussion
12:00	Public Comments
12:15	Wrap-up adjourn

Press inquiries; please contact Rob Fish, [Robert.fish@vermont.gov](mailto:Robert.fish@vermont.gov) 802-522-2617



Vermont Community Broadband Board (VCBB)  
112 State Street  
Montpelier, VT 05620-2601

Contact: Rural Broadband Technical Assistance Specialist, 802-522-2617, [robert.fish@vermont.gov](mailto:robert.fish@vermont.gov)

## Broadband Preconstruction Grant Program

ISSUE DATE: **TBD**

QUESTIONS DUE: **TBD**

– 4:30 PM Eastern Time

RFP RESPONSES DUE **BY: TBD**

– 4:30 PM Eastern Time

### OVERVIEW

The Vermont Community Broadband Board ("Board") invites applications from individual Communications Union Districts ("CUDs"), groups of CUDs, or partners of CUDs for funds to facilitate the construction of broadband networks capable of speeds of at least 100 Mbps symmetrical.

### Background and Eligible Costs

As provided by Sec. 2 § 8085 of Act No. 71, which became law on June 8, 2021, the purpose of the Broadband Preconstruction Grant Program ("Program") is to provide grants to CUDs for preconstruction costs related to broadband projects that are a part of a universal service plan.

As provided by Sec. 2 § 8085 of Act No. 71, eligible costs include expenses for feasibility studies, business planning, pole data surveys, engineering and design, and make-ready work associated with the construction of broadband networks, including consultant, legal, and administrative expenses, and any other cost deemed appropriate by the Board's Executive Director until the Board is active.

*Note: The Program is funded by the American Rescue Plan Act of 2021 (ARPA). All ARPA funded projects must either address the impacts of the COVID-19 pandemic or promote sustained economic recovery. Additional state and federal guidelines may impact the administration of this grant program. The Board reserves the right to make changes to this Program as necessary to ensure compliance with any state and federal guidelines, including revocation of grant awards.*

### Funding Available

Up to \$30,000,000 is available to the Preconstruction Program. After the first round, the Board's Executive Director may adjust the amount based on the demonstrated need for preconstruction funding and an evaluation of the need for

construction funding.

CUDs are encouraged to submit a proposal for all expected preconstruction costs related to their phase 1 build-out or what is required to inform negotiations with a potential partner.

Pursuant to Act 71 § 8085(c), to ensure an equitable distribution of funds under the Program to encourage collaborative work among communications union districts, the Board has established a formula for determining the maximum amount available to each CUD via the current interim Program based on the number of unserved and underserved addresses with no plan for service.

Detailed Explanation: Currently, there are approximately 60,000 locations in Vermont without broadband. These locations are defined either as unserved (no broadband service at all) or underserved (service is available at less than 25/3 Mbps. i.e., dial-up or DSL). Of these 60,000 locations, 52,759 do not have plans for any existing carrier to deploy wired service via the FCC's Rural Digital Opportunity Fund or otherwise. The award cap is based on the percentage of these locations in each District's member towns as of June 1, 2021. The amount of preconstruction funding awarded through Act No. 9's CUD Preconstruction and Capacity Building Program was then subtracted. Awards benefitting multiple districts were subtracted equally from each District's cap.

CUDs should refer to the chart below to see the estimated cap on awards to be made to each District. The amount should be used for guidance purposes only. CUDs should only apply for what is needed within the next six months. This cap will be adjusted after each round and as better data becomes available.

The Executive Director of the Vermont Community Broadband Board reserves the right to adjust these caps and the total amount of funding available to ensure an equitable distribution of funding. This includes increasing the amount of funds available for the Program, reallocating funds, or making exceptions to the caps below on a case by case basis.

<b>Communications Union District</b>	<b>% of unserved or underserved premises</b>	<b>Estimated Amount Remaining After CUD Preconstruction and Capacity Awards</b>
Addison CUD	13.46%	\$4,068,000
CVFiber	10.52%	\$3,195,000
Deerfield Valley CUD	13.53%	\$4,077,000
ECFiber	10.40%	\$3,198,000
Lamoille FiberNet CUD	8.53%	\$2,364,000
NEK Broadband	22.18%	\$6,918,000
Northwest CUD	11.46%	\$3,174,000
Otter Creek CUD	5.84%	\$1,755,000
Southern Vermont CUD	4.15%	\$1,251,000

*Note: Potential reasons for adjusting the formula or making exceptions. 1) Towns may join or switch CUDs. Towns may also switch CUDs. 3) There may also be unique time-sensitive opportunities that must be addressed. 4) Consensus may also be reached by the Board on a formula that accounts for density and road miles or includes locations funded by RDOF at a discounted rate. 5) Better data may become available*

### **Distribution of Funds**

Recipients will be provided with 50% of the grant award upon execution of the grant agreement, following by the

remaining 50% upon submission of documents detailing incurred expenses and/or invoices for the remaining 50%.

### **Proposal Submission**

Proposals must be submitted electronically to [vcbb@vermont.gov](mailto:vcbb@vermont.gov) as a PDF. All attachments and supporting materials must be attached as a single zip file.

- **Round 1 Deadline:**
- **After the initial deadline, proposals will be review on a rolling basis.**
- **Notification:** Executive Director shall make recommendations to the Vermont Community Broadband Board within seven business days of receipt of the application. The Board will vote to approve applications at the next board meeting.

### **Elements of Proposal**

In response to this grant opportunity, each Applicant is required to submit a proposal containing the following. In addition to the written submission, applicants may be asked to present to the Vermont Community Broadband Board (VCBB) on their proposal:

#### **Part 1: Transmittal Letter**

- a) Official Name and full contact information for the Communications Union District(s) and any collaborators
- b) DUNS # and SAM #
- c) Applicant Certification: Applicants shall certify that the person submitting the proposal is the person in the Applicant's organization responsible for, or authorized to make, decisions as to the prices quoted and that he or she has not participated in any action contrary to the non-collusion requirements of this grant opportunity

#### **Part 2: Narrative**

The narrative proposal should include, at the minimum, the following information.

- a) History and Map of the Communications Union District
- b) Confirmation of the Communications Union District Commitment to Providing Universal Service to all on-grid unserved and underserved locations. Applicant shall cite any bylaws, operating documents, or studies demonstrating a commitment to universal service.
- c) Overview of previous planning activities
- d) Strategy being pursued to provide 100/100 Mbps to all unserved and underserved on-grid addresses in the District.
- e) Proposed Activities to Further the Strategy - Applicants shall use these funds to accelerate plans to expand connectivity in your service area. Please detail the status and urgency of each activity. Please also highlight any collaboration between CUDs and why this funding is necessary.
- f) Applicants applying to undertake preconstruction activities involving addresses served by a wired connection of speeds of 25/3 Mbps or greater, the Applicant must explain how and why their proposed project is eligible under the criteria outlined in Act 71.

The Broadband Construction program created by Act 71 § 8086 f(2) allows the Vermont Community Broadband Board to:

*"provide a grant to an eligible provider that enables the provision of broadband service in a geographic area currently served, provided that: (1) the proposed project is a cost-effective method for providing broadband service to nearby unserved and underserved locations that is capable of speeds of at least 100 Mbps download and 100 Mbps upload; (2) any overbuild is incidental to the overall objectives of the universal service plan required for funding under this Program."*

- g) Financial controls and grant management plan. Please detail your plan for ensuring compliance with all federal guidelines detailed that apply to State Fiscal Recovery Funds.<sup>1</sup>
- h) Key Board Members and Advisors

### Part 3: Activities and Budget

	Description	Amount
1	High Level Network Design	\$NN,NNN
2	Legal Expenses for Negotiating an MOU with a provider.	\$NN,NNN
3	Administrative Technology	\$N,NNN
	Total	\$XXX,XX

### Part 4: Detailed Project Timeline with Tasks/Milestones

Applicant shall provide a spreadsheet that outlines each task involved in completing each activity described in Section 3. The spreadsheet shall describe key milestones for each project. Progress towards completing the tasks identified must be addressed in each monthly report.

Project	Task/Milestone	Schedule	Status	Budget Remaining

#### <sup>1</sup> **The following [2CFR](#) policy requirements apply to this assistance listing:**

*Subpart B, General provisions*

*Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards*

*Subpart D, Post Federal; Award Requirements*

*Subpart E, Cost Principles*

*Subpart F, Audit Requirements*

*The following 2CFR policy requirements are excluded from coverage under this assistance listing:*

*Not Applicable*

*Additional Information: The following 2 CFR Policy requirements also apply to this assistance listing: 2 C.F.R. Part 25, Universal Identifier and System for Award Management; 2 C.F.R. Part 170, Reporting Subaward and Executive Compensation Information; and 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement). The following 2 CFR Policy requirements are excluded from coverage under this assistance listing: For 2 CFR Part 200, Subpart C, the following provisions do not apply to the SLFRF program: 2 C.F.R. § 200.204 (Notices of Funding Opportunities); 2 C.F.R. § 200.205 (Federal awarding agency review of merit of proposal); 2 C.F.R. § 200.210 (Pre-award costs); and 2 C.F.R. § 200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award). For 2 CFR Part 200, Subpart D, the following provisions do not apply to the SLFRF program: 2 C.F.R. § 200.308 (revision of budget or program plan); 2 C.F.R. § 200.309 (modifications to period of performance); C.F.R. § 200.305 (b)(8) and (9) (Federal Payment)*

## **Part 5: Attachments**

Applicants shall attach the following to the application package

- a) Assurances - The application packet must contain signed version the following documents. These documents are found in the appendix.
  - i. Attachment C
  - ii. Additional Assurances
  - iii. State Fiscal Recovery Assurances
- b) Proof of Insurance as required in Attachment C
- c) Recent W-9 – Within 6 months of the data of the application
- d) Letters of support or other supporting documents

### **Deadlines**

All work should be contracted within 6 months. The grantee must immediately notify the Board if there are delays beyond the grantee's control and request an extension in writing.

### **Performance**

Successful Applicants will be obligated to provide the following:

#### **1. Reporting Requirements:**

##### **b) Monthly**

The recipient CUD will provide a detailed report on the 15<sup>th</sup> of each month. The report must contain a narrative of accomplishments to date and specifically during the most recent report period. The report shall also detail any delays or problems, and a proposal for correcting said problems.

Progress towards completing the tasks and achieving the milestones submitted in the application pack shall be addressed in each monthly report. Below is a template.

Project	Task/Milestone	Schedule	Status	Budget Remaining

Attached to the report should be any contracts, invoices, and expenses incurred to date and an overview of expenses expected to be incurred or contracts signed during the next 30 days. All contracts expected to be signed during the next 30 days are advised to be submitted along with the report.

If the Executive Director finds that the project has deviated from the scope of work outline that was deemed in accordance with state and federal requirements for American Rescue Plan funding, the Board is empowered to issue a "stop-work" order and remaining funds must be returned to the grant program.

##### **b. Interim Report and Presentation**

An interim report accounting for all activities to date must be submitted when 50% of grant funds have been exhausted. The remaining 50% of funds will not be released until the report is received. This comprehensive package of materials must include the following: detailed narrative of accomplishments

since the grant agreement was signed; an updated timetable for construction to commence; problems, delays, and how plans and strategy were and are to be adjusted. Recipients may be asked to present to the Vermont Community Broadband Board on the progress of their effort at this time.

### **c. Final Report**

A final report accounting for all activities to date will be required when all activities have been completed. This comprehensive package of materials must include the following: detailed narrative of accomplishments since the grant agreement was signed; an updated timetable for construction to commence; problems, delays, and how plans and strategy were and are to be adjusted. Recipients may be asked to present to the Board on the progress of their effort at this time.

## **2. Contract Review**

Contracts entered by a grant recipient will be subject to contract review by staff of the Vermont Community Broadband Board (VCBB). The Board will consider the following during the review of the contract. This list is not exhaustive:

- Inclusion of required State Fiscal Recovery Funds language for contracts. This language can be found at <https://finance.vermont.gov/covid-19-guidance>
- Inclusion of all information required for reporting as outlined in the SLFRF Compliance and Reporting Guidance (<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>)
- Inclusion of industry-accepted standards for engineering, construction, and build quality
- Inclusions of standards for data collection
- Inclusion of a schedule for deliverables
- Any other issue or concern the Board believes is pertinent execution or performance of the contract.

3. Grantees are required to notify the Board in writing if they will be significantly deviating from their proposed budget or scope of work.

## **Proposal Review and Selection**

**Review Criteria:** Selection of the winning proposal(s) will be made based on the sole opinion of the Board that the proposal(s) submitted are in the public good of the State. The Board shall consider the following when reviewing proposals:

**Strategy and Process:** The proposal shall explain the CUD's strategy for accelerating their build-out of high speed broadband network capable of speeds of at least 100/100 Mbps? Examples of items the Board may evaluate include:

1. Did the Applicant commit to providing service to all on-grid locations in their District?
2. Will this bring the CUD closer to construction and/or a decision to form a partnership with a private partner?
3. Is the CUD being advised by professionals regarding the logical next steps and overall strategy? Does the proposed project further increase the sophistication of the CUD and their capacity to make and implement sound decisions?
4. Does the proposed scope of work align with the Board's understanding of where the CUD is in its planning and development process?
5. Does the project promote coordination and collaboration between CUDs?
6. Does the project promote a key legislative goal in Act 71?
7. When follow-up questions were posed, did the CUD have answers? How did they respond to push back? Could they provide the additional information and articulate the overall strategy.

The Board reserves the right to make a selection without further discussion of proposals received. Therefore, each proposal must be submitted in the most complete and accurate manner possible.

**Rejection of Proposal:** The Board reserves the right to reject any or all proposals and waive informalities and minor irregularities in proposals received and accept any portion of a proposal if deemed in the State's best interest in accordance with the applicable provisions of law.

**Negotiations with Applicants:** Upon completion of the evaluation process, the Board may select one or more Applicants with which to simultaneously negotiate grant agreements, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State of Vermont. If the Board is successful in negotiating with one or more of the Applicants, the Board will issue a notice of award. If the Board is not successful in negotiating a grant agreement with a selected Applicant, the Board reserves the option of negotiating with another Applicant or choosing not to issue an award.

**Grant Award:** The basis for the selection of the winning Applicant(s) will be made based on the sole opinion of the Board that the proposal(s) submitted will be in the best interest of the State and in accordance with Vermont law.

### **Terms and Conditions**

**Binding Offer:** A proposal submitted in response to this grant opportunity shall constitute a binding offer until approval by the Board of a finalized agreement. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the bidder or an officer of the bidder legally authorized to execute contractual obligations.

**Agreement Modification:** It is possible that decisions or guidance provided by the United States Treasury Board, United States Congress, or the State of Vermont may make it necessary or desirable to modify the contract. Procedures for modification will be defined in the agreement document.

**Proposal Ownership:** All submitted responses may be reviewed by any person after the grant agreement has been signed. The Board reserves the right to use any or all information/material presented in reply to this grant opportunity, including the right to destroy any information at the discretion of the Board. Disqualification of a bidder does not eliminate this right.

**Warranty:** As a condition of delivery of the grant funds, Applicant warrants to the Board that the facts and estimates provided in its response to the CUD Pre-Construction and Capacity Building Grant Program Request for Proposals are, to the best of Applicant's knowledge, correct and true;

**Funding:** All Grant awards are subject to the availability of funding.

**Other Terms and Conditions:** Applicant will be responsible for all other terms and conditions listed in the model Grant Agreement, Attachment C: Standard state Provisions for Contracts and Grants upon execution of a grant agreement.



## ATTACHMENT C: STANDARD STATE PROVISIONS

### FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Board of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- C. Party understands that final payment under this Agreement may be withheld if the Executive Director of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

**State Fiscal Recovery Fund Program Assurances**  
**Issued on June 2, 2021**

Effective June 2, 2021, State Fiscal Recovery Fund (SFR) recipients are required to include the below list of assurances in their SFR program applications and/or awards. Agencies and departments can add to these assurances, but please do not alter or remove any of the listed assurances without prior approval from the COVID-19 Financial Office, by emailing ADM.COVID@vermont.gov.

Unless noted otherwise, these assurances apply to all SFR grant/beneficiary programs.

An authorized signatory of [PLACEHOLDER] must attest to the following by checking the box next to the statement and signing this document.

- ☐ 1. I have the authority to request payment from the State of Vermont. I am requesting payment for costs incurred in connection with section 602 of the Social Security Act, as amended by section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) ("section 602").
- ☐ 2. As required by federal law, the SFR will only be used for approved economic support or costs incurred during the period that begins on March 3, 2021 and December 31, 2024, in response to the COVID-19 public health emergency and its negative economic impacts.
- ☐ 3. [PLACEHOLDER] will report on incurred expenses and/or losses, in a form and at a frequency prescribed by the State of Vermont and will cooperate with the State of Vermont in creating and retaining appropriate documentation to demonstrate that the proposed uses meet the requirements of section 602.
- ☐ 4. To the extent that actual expenditures or demonstrated need is less than the total award amount, [PLACEHOLDER] agrees to return the balance of unspent funds to the State of Vermont. If the United States Board of the Treasury recoups funds from the State of Vermont based on a determination that these award funds were used in a manner not in compliance with section 602, [PLACEHOLDER] agrees that the State of Vermont may recover funds from [PLACEHOLDER] by reducing future funding in State budgets.
- ☐ 5. [PLACEHOLDER] must repay the award or portion of the award to the [AWARDING ENTITY] if: any funds received were issued in error; are based on incorrect representations made to the [AWARDING

ENTITY]; or any costs forming the basis of an award under this Program are covered by other federal funds or federally forgiven loans received by [PLACEHOLDER]. I agree that the final determination of whether there has been a duplication of benefits and the amount to be repaid, if any, will be made by the [AWARDING ENTITY].

- ☐ 6. **[Applies only to grants to subrecipients<sup>2</sup>]** [PLACEHOLDER] has applied for FEMA-Public Assistance funding first for all FEMA-eligible expenses before applying to this grant. [PLACEHOLDER] will only use this grant to cover expenses that are not eligible for FEMA-Public Assistance reimbursement.
- ☐ 7. [PLACEHOLDER] shall maintain and make available to the State of Vermont and/or United States Board of the Treasury, upon request, all documents and financial records sufficient to establish compliance with section 602. Records and supporting documentation must be maintained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. Records to support compliance with subsection 602 may include, but are not limited to, copies of the following:
  - a. General ledger and subsidiary ledgers used to account for (a) the receipt of SFR payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
  - b. Budget records;
  - c. Payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
  - d. Receipts of purchases made related to addressing the public health emergency due to COVID-19;
  - e. Contracts and subcontracts entered into using SFR payments and all documents related to such contracts;
  - f. Grant agreements and grant subaward agreements entered into using SFR payments and all documents related to such awards;
  - g. All documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
  - h. All documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
  - i. All internal and external email/electronic communications related to use of SFR payments; and
  - j. All investigative files and inquiry reports involving SFR payments.
- ☐ 8. To the best of my knowledge, neither [PLACEHOLDER] nor [PLACEHOLDER]'s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.
- ☐ 9. **[Applies only to subrecipient relationships<sup>1</sup>]** [PLACEHOLDER] will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether a Single Audit is required for the prior fiscal year. If a Single Audit is required, [PLACEHOLDER] will submit

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<sup>2</sup> For assistance in determining whether the relationship between the State, and the entity receiving the funds from the State, is a subrecipient relationship, please complete the Federal Award Classification Checklist. CFO written approval is required to classify any entities as "beneficiaries" of COVID-19 relief funding.



a copy of the audit report to the State of Vermont within 9 months. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F.

- ☐ 10. [PLACEHOLDER] will submit reports as required by the State of Vermont, Agency of Administration, and/or [AWARDING ENTITY].
- ☐ 11. The [AWARDING ENTITY] may share the information on this federal award with other Vermont state agencies, and other Vermont agencies can share information with [AWARDING ENTITY] for the purpose of verifying [PLACEHOLDER] 's eligibility for this or another award or stimulus payment related to the COVID-19 pandemic.
- ☐ 12. All of [PLACEHOLDER] 's tax returns are completed and filed through the date of application filing.
- ☐ 13. [PLACEHOLDER] complies with local, state and federal labor laws.
- ☐ 14. [PLACEHOLDER] is in good standing with the Vermont Secretary of State.
- ☐ 15. **[Applies only to hazard grants]** Please certify the following:
  - a. [PLACEHOLDER] has established a process to permit eligible employees to elect not to receive hazard pay funded by a grant provided pursuant to the Program and record keeping procedures to track which employees have elected not to receive a grant.
  - b. [PLACEHOLDER] acknowledges and agrees that grant funds received for hazard pay will only be used to cover hazard pay for eligible employees in accordance with section 602.
- ☐ 16. **[Applies to economic support programs]** [PLACEHOLDER] has faced economic harm resulting from or exacerbated by the COVID-19 public health emergency. This award will support [PLACEHOLDER] in addressing the economic harm brought on by the COVID-19 public health emergency.
- ☐ 17. I attest, under penalty of perjury, that all information provided on this form is true and accurate. I understand that the State of Vermont will rely on this certification as a material representation in making this federal award. Further, I understand that intentional misrepresentation of information is fraud and may subject me or my organization to disqualification from receiving further benefits, administrative penalties, and criminal prosecution.
- ☐ 18. [PLACEHOLDER] understands that, if Federal guidance on the regulations of the State Fiscal Recovery Fund change, it may change the terms of this award.

Printed Name:

Authorized Signature:

Title:

Organization Name:

Date:

## **ADDITIONAL ASSURANCES**

Recipients of awards derived from federal funds are required to establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In addition, awards related to expanding broadband infrastructure must comply with certain restrictions as described in the Interim Treasury Guidelines for the State and Local Fiscal Recovery Funds. See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

To receive an award, an authorized signatory of [PLACEHOLDER] must attest to the following by checking the box next to the appropriate statements and signing this document.

### **Part I: Confirmation of Financial and Monitoring Controls**

- ☐ [PLACEHOLDER] has established financial, and monitoring controls compliant with Uniform Grant Guidelines (2 CFR Part 200) and agrees to follow all procedures in relation to the administration of the CUD Preconstruction and Capacity Grant.
  - Please describe and/or attach all policies and your plan to ensure compliance

OR

- ☐ [PLACEHOLDER] agrees to contract or has contracted with a third party for grant monitoring and compliance with experience in administering grants subject to the Uniform Grant Guidelines, such as the Regional Planning Commission or Local Development District.
  - Name of Entity and Contact Person:

OR

- ☐ [PLACEHOLDER] agrees to complete a training on Uniform Grant Guidelines within 90 days of the execution of this grant agreement. [PLACEHOLDER] agrees to formally establish such controls within 90 days and to follow all federal requirements in the interim
  - Grantee will provide proof of completion of this training upon completion
  - Grant agrees to follow the Uniform Grant Guidelines in the interim
  - A portion of the award dedicated to administrative costs may be used to cover any associated expense.

### **Part II: Other conditions related to contracting and the acceptance of federal awards**

- ☐ [PLACEHOLDER] has read and understands the requirements understands the standard state provisions for grants contained in Attachment C and any changes included in Attachment D.

- By checking this box you are confirming you understand and will follow all provisions, including those related to subcontracting and federal awards in #19 and #31.
- By checking this box you are confirming you understand that a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F
- ☐ [PLACEHOLDER] will use State Fiscal Recovery Funds in accordance with [Bulletin 5](#) and Uniform Guidance (2 CFR part 200)

#### **Part IV: Broadband Infrastructure Funded with State Fiscal Recovery Funds**

- ☐ [PLACEHOLDER] warrants that the broadband project is targeting an unserved or underserved location. *Note: The Interim Final Rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload.*
- ☐ [PLACEHOLDER] warrants that the project, upon completion, will the service, upon completion, reliably meet or exceed symmetrical upload and download speeds of 100 Mbps. *Note: Eligible projects are expected to be designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. Exceptions exist when geography, topography, or excessive costs associated with a project impact the project's ability to meet this speed. In these instances, affected projects would be expected to be designed to deliver service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and scalable to a minimum of 100 Mbps symmetrical for download and upload speeds*

#### **Part IV: Warranty and Payment to Subcontractors**

- ☐ [PLACEHOLDER] warrants to the Board that (i) the facts and estimates provided in its response to the CUD Preconstruction and Construction Program request for proposal are, to the best of Grantee's knowledge, correct and true.
- ☐ [PLACEHOLDER] Grantee agrees to timely pay all amounts due to its subcontractors. The Grant Project, or any part thereof, shall not be encumbered by a mechanics lien or other encumbrance resulting from Grantee's non-payment of obligations due and payable.

Printed Name:

Authorized Signature:

Title:

Organization Name:

Date:

# Preconstruction and Capacity Grants

## **Preconstruction Costs - Definition from Act 71:**

As used in this section, “preconstruction costs” include expenses for feasibility studies, business planning, pole data surveys, engineering and design, and make-ready work associated with the construction of broadband networks, including consultant, legal, and administrative expenses, and any other costs deemed appropriate by the Board.

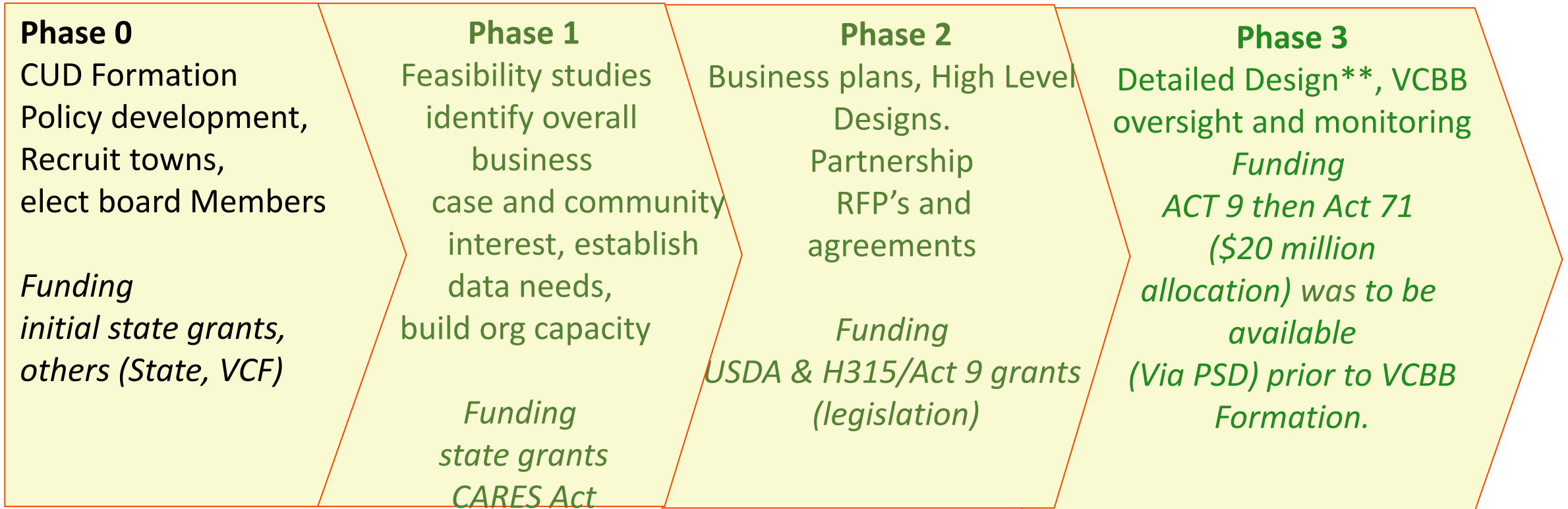
# Definitions

**High Level Design (HLD)** is a global overview of the network, A GIS -based route design, typically using existing poles, with a basic description of the material requirements and costs. It is done from the desk using automated software that calculates the material based on distance-based algorithms. The goal of the HLD is to develop a proposed route and a cost estimate with a 70% confidence level.

**Detailed Design (DD)** addresses specific locations for poles and equipment, network usage and capacity, spares requirements, estimated loss factors, road and railroad crossing plans, power requirements, etc.. DD uses significant field verification of assumptions. DD triggers make-ready applications, construction schedules, and verification test plans. A DD will produce a cost estimate with an 80%+ confidence level. Full confidence comes after the make-ready survey is completed.

# Semi-original Planning Timeline

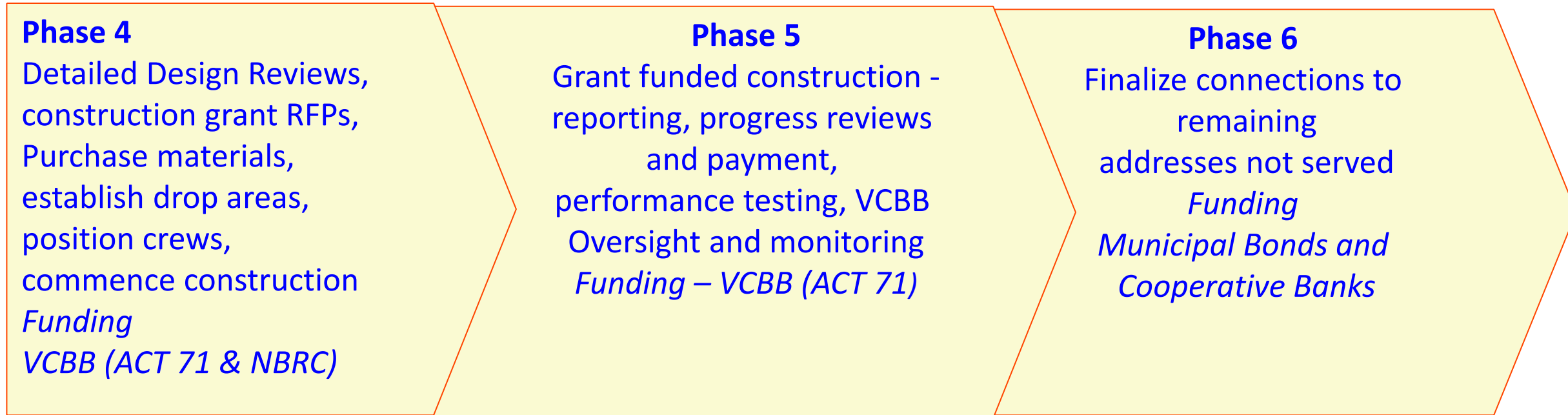
Green is pre-construction; Blue is construction



- Other than ECFiber, all CUDS are now in Stage 2 awaiting funding to enter State 3.

# Semi-original Planned Timeline

Green is pre-construction; Blue is construction



- **Linear progression between phases, but iterative. Work on preconstruction activities related to the next build concurrent to constructing the first build.**
- **Preconstruction and Capacity Building activities are important for**
  - **Business Planning:** New data collected during preconstruction → refines business plans → informs negotiations
  - **Implementation:** Lining up the labor and materials is dependent on completing preconstruction activities

# Interim Funding: Preconstruction and Capacity Program – Act 9

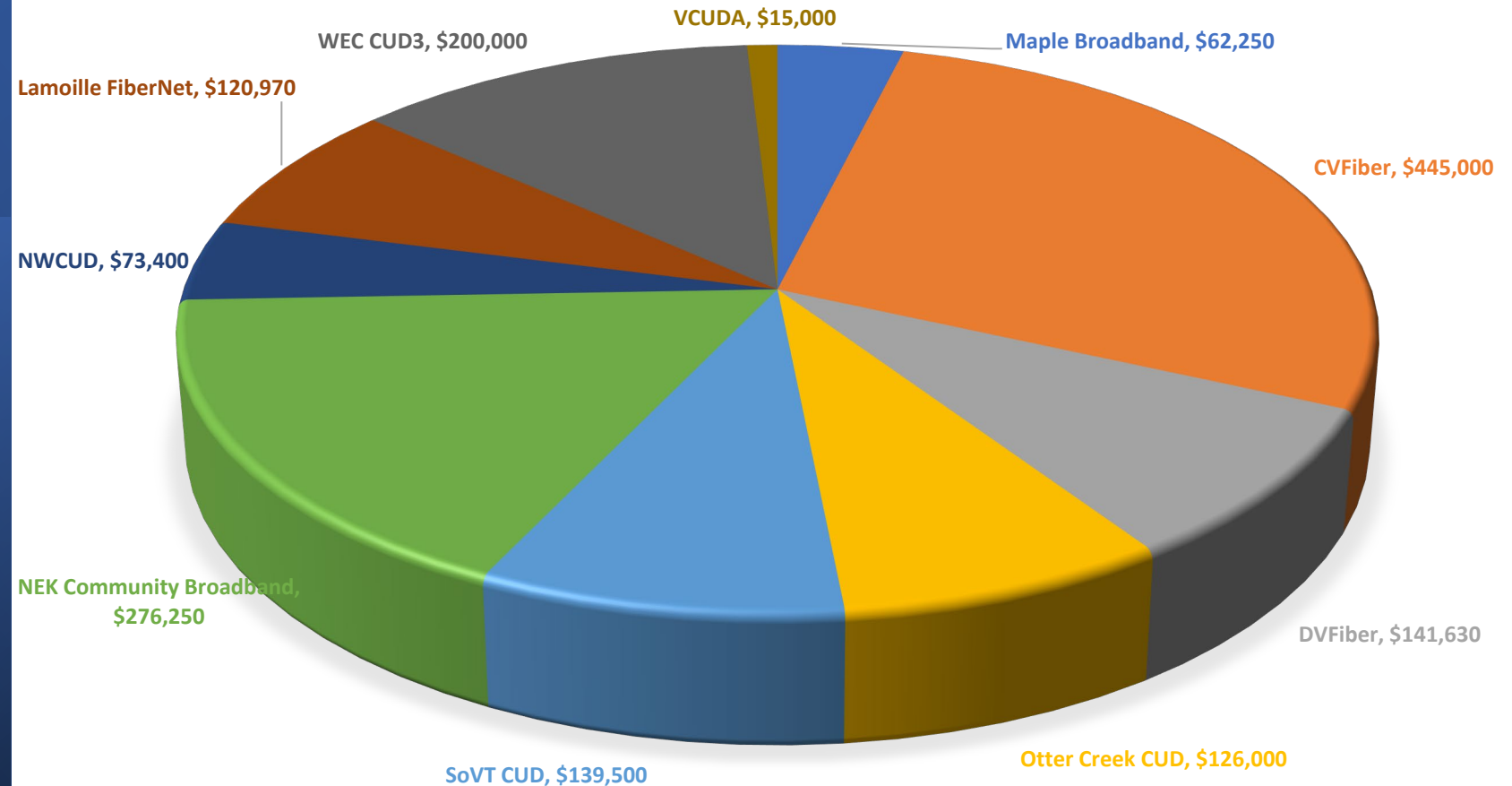
## **Sec. 21. BROADBAND ALLOCATIONS AND APPROPRIATIONS**

- (1) \$1,600,000.00 for a broadband infrastructure program to assist Communications Union Districts (CUD) with preconstruction costs and general support services. Applicants may be: (A) an individual CUD; (B) a group of CUDs working together on a single project; or (C) an external partner working with a single CUD or group of CUDs.
- 
- ☐ Became law April 17
  - ☐ May 7 - Given preliminary approval from the Finance and Management to establish the program using the State Fiscal Recovery Funds.
  - ☐ Round 1 Deadline: May 17, 2021 – For costs through July 2021
  - ☐ Round 2 Deadline: June 2, 2021 – For costs through December 2021
  - ☐ Grant Agreements – July 2021
  - ☐ Funding Dispersed – August 2021
  - ☐ All funds must be obligated – November 2021



## ACT 9 PRECONSTRUCTION FUNDING

# Distribution of Funds



All \$1,600,000 in Act 9 (H315) funding has been obligated to Grant Recipients. \$7,259,218 requested of the Program.  
*Details of each grant will be posted next week.*

## Additional Information

- The CUDs were asked to only request funding for items necessary through the end of 2021.
- DVFiber wanted to wait until the H360 funds were available and they signed an operating agreement. They have now partnered with GWI/ValleyNet and have prepared a draft budget for the H360 funding of \$2.6 Million.
- Maple/Addison, NEK, Lamoille, and CV will likely sign partnership agreements within the next 1-2 months.
- ECFiber has a lot of preconstruction work to be performed in the new towns they add during the last year. I do not have an estimate, but would expect close to or over \$1 million.
- ECFiber and several CUDs did not apply for substantial second-round funding, instead choosing to wait for the more significant amount of funds available via H360
- This funding was to be hold-over until the Act 71 passed.

## Communications Union Districts By the #'s

CUD	Towns*	Underserved w/o a plan	% of underserved among CUDs	% Statewide
CVFiber	21	4789	10.52%	9.10%
DVFiber	24	6156	12.53%	11.70%
ECFiber	30	4734	10.40%	8.99%
Lamoille FiberNet	9	3881	8.53%	7.37%
Maple Broadband	20	6126	13.46%	11.64%
NEK Broadband	48	10095	22.18%	19.18%
NW CUD	12	5189	11.46%	9.86%
Otter Creek CUD	17	2658	5.84%	5.05%
SOVT CUD	12	1887	4.15%	3.59%
Non CUD		7115		13.52%

**\*Waterbury joined CVFiber last week. This addition is not reflected in the numbers above.**

**Wolcott, Washington, Londonderry, and Winhall are each members of two CUDs**

**\*\* Unserved w/o a plan = no pending funded projects – CI, RDOF, CUD Supplemental**

# Communications Union Districts Status Report

CUD	Feasibility Study	Business Plan**	HLD Design, Poles, Executable Project Plans	Ready to begin detailed design - funding only hold-up	Pilot Construction Projects in 2021	Progress Toward Partner Agreement)
CVFiber	yes	Yes	yes	yes	Yes	Responses under review
DVFiber	yes	Yes	awaiting funds	yes	No	GW/ValleyNet
ECFiber	n/a	Yes	Yes	yes	Yes	ValleyNet
Lamoille FiberNet	yes	pending	yes	yes	No	Coordinating with NEK & in talks with local ISPs
Maple Broadband	yes	pending	yes	yes	No	Agreement being finalized
NEK Broadband	yes	Yes	yes	yes	Yes	Responses under review
NW CUD	yes	No	No	no	No	Initial discussions with providers
Otter Creek CUD	yes	Pending	yes	no	No	Discussions with several providers - HLD to inform discussions
SOVT CUD	yes	Pending	n/a	n/a	No	Joint NTIA grant proposal submitted

# Act 71 (H360)

- Became law June 8, 2021
- Sec 6 Interim Grants; Department of Public Service
  - Up to \$20 Million for Preconstruction and Preconstruction
  - Included in the bill to prevent a gap in funding from enactment to the VCBB became operational. The assumption was that these funds would become available quickly.
- PSD Staff drafts a Request for Proposals (June 2021) for new program
- PSD awaits Finance and Management approval for use of the American Rescue Plan State Fiscal Recovery Funds (ARPA-SFR)
- VCBB becomes operational – August 4

# Interim Preconstruction and Construction Grants— Act 71 — Overlapping Authority

- Sec. 6. INTERIM GRANTS; DEPARTMENT OF PUBLIC SERVICE Notwithstanding any other provision of law to the contrary, **to ensure the expeditious disbursement of available funds prior to the organization of the Vermont Community Broadband Board**, the Department is authorized to allocate and disburse up to a total of **\$20,000,000.00**, or up to \$25,000,000.00 if an additional \$5,000,000.00 is approved by the Joint Fiscal Committee, under the Broadband Preconstruction Grant Program and the Broadband Construction Grant Program on or before December 31, 2021 or until the Board is operational, whichever occurs first.

# Act 71 (H360) Preconstruction Grant Process

- VCBB instructs the staff to revise and release the Request for Proposals
- Finance and Management signs off – Compliance with Treasury Guidelines
- Applications accepted on a rolling basis
- Applicant conference or awardee conference to confirm grant requirements and answer questions
- VCBB Executive Director and Staff Review the Applications and make recommendations to the board
- VCBB negotiates with applicants
- Grant agreements drafted detailing the full scope of work
- Contract Review
- Distribution of 50% of Funds
- Ongoing Reporting

# Preconstruction – Act 71

## § 8085. BROADBAND PRECONSTRUCTION GRANT PROGRAM

(a) There is established the Community Broadband Preconstruction Grant Program to be administered by the Board. The purpose of the Program is to provide grants to communications union districts for preconstruction costs related to broadband projects that are part of a universal service plan.

(b) As used in this section, “preconstruction costs” include expenses for feasibility studies, business planning, pole data surveys, engineering and design, and make-ready work associated with the construction of broadband networks, including consultant, legal, and administrative expenses, and any other costs deemed appropriate by the Board.



# Broadband Preconstruction Program – Act 71 § 8085.

## KEY REQUIREMENTS

(a) There is established the Community Broadband Preconstruction Grant Program to be administered by the Board. The purpose of the Program is to provide grants to communications union districts for preconstruction costs related to broadband projects that are part of a universal service plan

### - VERIFICATION REQUIRED IN THE NARRATIVE

(c) To ensure an equitable distribution of funds under this Program and to encourage collaborative work among communications union districts, grant awards shall be scalable and shall be commensurate with the size of a broadband project as determined by the project's service area, road mileage, the number of unserved or underserved locations, or any other metric deemed appropriate by the Board. . . .

### - THIS IS THE FORMULA and CAP

# Broadband Construction Program Requirements – Act 71§ 8086

While not required by the Preconstruction Grant Program, the NARRATIVE section of DRAFT Request for Proposals solicits information related to many of the Construction Grant Program Requirements

**(b) In evaluating grant proposals under this chapter, the Board shall give priority to broadband projects that:**

- (1) leverage existing private resources and assets, with a high priority given to partnerships between a communications union district and a distribution utility;
- (2) demonstrate project readiness;
- (3) provide broadband service that complies with the consumer protection and net neutrality standards established in 3 V.S.A. § 348;
- (4) support low-income or disadvantaged communities;
- (5) promote geographic diversity of fund allocations;
- (6) provide consumers with affordable service options; and
- (7) include public broadband assets that can be shared by multiple service providers and that can support a variety of public purposes.

# Broadband Construction Program Requirements – Act 71§ 8086

While not required by the Preconstruction Grant Program, the NARRATIVE section of DRAFT Request for Proposals solicits information related to many of the Construction Grant Program Requirements

- (c) The Board shall establish policies and standard grant terms and conditions that:
  - (1) reflect payment schedules that ensure maximum accountability;
  - (2) adopt an industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability;
  - (3) establish standards for recouping grant funds and transferring ownership of grant-funded network assets to the State if a grantee materially fails to comply with the terms and conditions of a grant;
  - (4) establish a continuity of operations plan applicable to a network owned by a communications union district that, among other things, contemplates the Board assuming operational control of a network if necessary to maintain uninterrupted broadband service;
  - (5) prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board;
  - (6) allow an applicant to seek reconsideration of an adverse Board decision;
  - (7) Ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance; and
  - (8) comply with Administrative Bulletin 5

# Broadband Construction Program Requirements – Act 71§ 8086

While not required by the Preconstruction Grant Program, the NARRATIVE section of DRAFT Request for Proposals solicits information related to many of the Construction Grant Program Requirements

(f) The Board may provide a grant to an eligible provider that enables the provision of broadband service in a geographic area currently served, provided that:

- (1) the proposed project is a cost-effective method for providing broadband service to nearby unserved and underserved locations that is capable of speeds of at least 100 Mbps download and 100 Mbps upload;
- (2) any overbuild is incidental to the overall objectives of the universal service plan required for funding under this Program; and
- (3) before awarding the grant, the Board makes a reasonable effort to distinguish served and unserved or underserved locations within the geographic area, including recognition and consideration of known or probable service extensions or upgrades.

(g) It is the intent of the General Assembly that a broadband project financed under this Program demonstrates an economically sustainable business model that ultimately will be eligible for financing in the private or municipal bond market

Broadband  
Preconstruction  
Program – Act  
71 § 8085.

## POSSIBLE NEXT STEPS

- **Are there any outstanding policy issues the board would like to discuss today?**
- **Would the Board prefer to review the RFP and answer the few outstanding questions or defer to staff?**
- **Is the Board comfortable authorizing staff to make suggested changes and then release the RFP pending final Finance and Management sign-off?**

Broadband  
Preconstruction  
Program – Act  
71 § 8085.

Outstanding  
Questions

## **Question 1: Determining Allocations per CUD**

- **Do we adjust the formula every time a new town joins a CUD or keep the baseline of June 1, 2021?**
- **Do we set aside an additional amount of funds for make ready projects in areas with density less than X locations/mile?**

Broadband  
Preconstruction  
Program – Act  
71 § 8085.

Outstanding  
Questions

## **Question 2: Addressing Construction Grant Requirements in the Preconstruction application**

- Should we ask the CUDs to address requirements for receiving a construction grant at this stage? *Staff has included items directly tied to preconstruction in the narrative section of the application.*
- Should these requirements be part of the contract review process?

Broadband  
Preconstruction  
Program – Act  
71 § 8085.

Outstanding  
Questions

### **Question 3: Role of the Governing Board and the Executive Director**

- **What decisions does the board want to delegate to the Executive Director? What decisions do they want to be consulted on?**
  - **Adjusting the distribution formula**
  - **Making initial grant recommendations**
  - **Contract review**
  - **Etc**