

West Virginia BEAD Program Letter of Credit

Irrevocable Standby Letter of Credit

No. _____

[Name of Issuing Bank or Credit Union]
[Address of Issuing Bank or Credit Union]

Date of Issuance: _____
Amount: _____
Expiration Date: _____

BENEFICIARY
West Virginia Department of Economic Development
ATTN: Office of Broadband
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

LETTER OF CREDIT PROVIDER
[Formal Name of Applicant]
[Address of Applicant]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Formal Name of Applicant], in your favor, as required by the Broadband Equity, Access, and Deployment (BEAD) Program’s Notice of Funding Opportunity, issued by the National Telecommunications and Information Administration (NTIA) on May 12, 2022, and the State of West Virginia’s Initial Proposal Volume 2 approved by NTIA, our Irrevocable Standby Letter of Credit No. _____, in the amount of [*State amount of Letter of Credit in words and figures*], expiring at the close of banking business at our office described in the following paragraph, on the date which is six (6) years from the date of issuance or such earlier date as the Letter of Credit is terminated by the West Virginia Department of Economic Development.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [*Bank or Credit Union Address*] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of

documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by [*check/wire transfer of funds*] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the West Virginia Department of Economic Development's certificate purportedly signed by two authorized representatives of the West Virginia Department of Economic Development in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of West Virginia. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[Name of Bank or Credit Union]

[Bank or Credit Union Signature]

ANNEX A

Form of Draft

To: [Bank or Credit Union]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

PAY TO THE ORDER OF WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT BY
[CHECK/WIRE TRANSFER]

FUNDS TO: _____

Account (_____)

AS WEST VIRGINIA BEAD PROGRAM REPAYMENT

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

\$(AMOUNT IN NUMBERS)

West Virginia Department of Economic Development

By: _____

Name:

Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank or Credit Union] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the West Virginia Department of Economic Development ("WVDED") and (b) the requirements established in the Broadband Equity, Access, and Deployment (BEAD) Program's Notice of Funding Opportunity, issued by the National Telecommunications and Information Administration on May 12, 2022, and the State of West Virginia's Initial Proposal Volume 2 approved by NTIA (the "BEAD Program Requirements"), pursuant to which [Name of Selected Subawardee] (the "Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the BEAD Program Requirements), that:

The [Name of Selected Subawardee] has [describe the event that triggers the draw], and is evidenced by a letter signed by the Director of the WVDED's Office of Broadband or [his/her] designee, dated __, 20__, a true copy of which is attached hereto. Accordingly, a draw of the entire amount of the Letter of Credit No. _____ is authorized.

OR

West Virginia Department of Economic Development certifies that given notice of non-renewal of Letter of Credit No. _____ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the BEAD Program Requirements, WVDED is entitled to receive payment of \$_____ representing the entire amount of Letter of Credit No. _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

West Virginia Department of Economic Development

By: _____

Name:

Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank or Credit Union] (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the “Letter of Credit”) issued by the Bank in favor of the West Virginia Department of Economic Development (“WVDED”), and (b) the requirements established in the Broadband Equity, Access, and Deployment (BEAD) Program’s Notice of Funding Opportunity, issued by the National Telecommunications and Information Administration on May 12, 2022 (the “BEAD Program Requirements”) and the State of West Virginia’s Initial Proposal Volume 2 approved by NTIA, (all capitalized terms used herein but not defined herein having the meaning stated or described in the BEAD Program Requirements), that:

(1) [include one of the following clauses, as applicable]

(a) The BEAD Program Requirements have been fulfilled in accordance with the provisions thereof; or

(b) [Provider/Selected Subawardee] has provided a replacement letter of credit satisfactory to the WVDED.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 20__.

West Virginia Department of Economic Development

By: _____

Name:

Title:

By: _____

Name:

Title: