

1 **MEMORANDUM OF UNDERSTANDING**

2 This Memorandum of Understanding (“MOU”) is dated _____ and is
3 between the County of Fresno (“Fresno County”), the County of Kings (“Kings County”), the
4 County of Madera (“Madera County”), the County of Merced (“Merced County”), and the County
5 of Tulare (“Tulare County”), each a political subdivision of the State of California (individually
6 referred to as “County” and collectively the “Parties”).

7 **Recitals**

8 A. Whereas, access to reliable and affordable broadband is essential for full participation in
9 today's economy, including access to education, healthcare, public safety, and essential
10 government services.

11 B. Whereas, each of the Parties is working to engage with internet service providers (ISPs)
12 to expand broadband access and services to residents and businesses within each party's
13 respective county.

14 C. Whereas, it is in the public interest that the Parties coordinate their efforts to improve
15 broadband access and digital literacy skills in the San Joaquin Valley region by pursuing
16 available state and federal grant funding opportunities, specifically the Broadband Equity
17 Access and Deployment (BEAD) Program and California Digital Equity Capacity Grant Program,
18 and as future grant opportunities arise.

19 D. Whereas, in the judgment of the Parties, it is necessary and desirable to enter into this
20 MOU memorializing the terms and conditions mutually agreed to between the Parties to apply
21 for broadband grant opportunities as a region.

22 The parties therefore agree as follows:

23 **Article 1**

24 **Scopes of Services**

25 1.1 **Scope of Services.** The Scope of Services specific to the pre-identified broadband
26 grants (BEAD and California Digital Equity and Capacity) are outlined in Exhibits A and B to this
27 MOU.
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1 1.2 **Amendments to the Scope of Services.** If the Parties unanimously agree to pursue
2 future broadband grant opportunities, the Scope of Services exhibits within this MOU may be
3 modified to incorporate the scopes of services of the future broadband grants. Additionally, the
4 Scopes of Services within this MOU may be amended to reflect changes in broadband grant
5 requirements. The Parties’ County Administrative Officer (CAO) or County Executive Officer
6 (CEO), or their designee, are authorized to approve Scope of Services amendments on behalf
7 of their respective County.

8 1.3 **Dispute Resolution Process.** Disputes shall be resolved by a majority vote (e.g.,
9 three votes out of five votes) of the Parties, with each County receiving one vote.

10 **Article 2**

11 **Term of MOU**

12 2.1 **Term.** This MOU is effective on April 8, 2025 and terminates on April 7, 2028, except
13 as provided in section 2.2, “Extension,” or Article 4, “Termination and Suspension,” below.

14 2.2 **Extension.** The term of this MOU may be extended for no more than two, one-year
15 periods only upon written approval of all parties at least 30 days before the first day of the next
16 one-year extension period. Each County’s CAO or CEO, or their designee, is authorized to sign
17 the written approval on behalf of its respective County. The extension of this MOU by each
18 County is not a waiver or compromise of any default or breach of this MOU by the other
19 counties existing at the time of the extension whether or not known to each County.

20 **Article 3**

21 **Notices**

22 3.1 **Contact Information.** The persons and their addresses having authority to give and
23 receive notices provided for or permitted under this MOU include the following:

24 **For Fresno County:**
25 Director of Information Technology/Chief Information Officer
26 Information Technology Services Department
27 333 W. Pontiac Way
28 Clovis, CA 93612
 broadband@fresnocountyca.gov

1 **For Kings County:**
2 County Administrative Officer
3 Administration
4 1400 W. Lacey Blvd.
5 Hanford, CA 93230
6 Kyria.Martinez@co.kings.ca.us

7 **For Madera County:**
8 Assistant County Administrative Officer
9 County Administration
10 200 W. 4th Street, Suite 4200
11 Madera, CA 93637
12 Joel.Bugay@maderacounty.com

13 **For Merced County:**
14 County Executive Officer
15 County Executive Office
16 2222 M Street
17 Merced, CA 95340
18 dalia.costa2@countyofmerced.com

19 **For Tulare County:**
20 County Administrative Officer
21 County Administration
22 2800 W. Burrel
23 Visalia, CA 93291

24 3.2 **Change of Contact Information.** Any County may change the information in section
25 3.1 by giving notice as provided in section 3.3.

26 3.3 **Method of Delivery.** Each notice between the Parties provided for or permitted
27 under this MOU must be in writing, state that it is a notice provided under this MOU, and be
28 delivered either by personal service, by first-class United States mail, by an overnight
29 commercial courier service, or by Portable Document Format (PDF) document attached to an
30 email.

31 (A) A notice delivered by personal service is effective upon service to the recipient.

32 (B) A notice delivered by first-class United States mail is effective three business
33 days after deposit in the United States mail, postage prepaid, addressed to the recipient.

34 (C) A notice delivered by an overnight commercial courier service is effective one
35 business day after deposit with the overnight commercial courier service, delivery fees
36 prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

1 (D) A notice delivered by PDF document attached to an email is effective when
2 transmission to the recipient is completed (but, if such transmission is completed outside
3 of business hours, then such delivery is deemed to be effective at the next beginning of
4 a business day), provided that the sender maintains a machine record of the completed
5 transmission.

6 3.4 **Claims Presentation.** For all claims arising from or related to this MOU, nothing in
7 this MOU establishes, waives, or modifies any claims presentation requirements or procedures
8 provided by law, including the Government Claims Act (Division 3.6 of Title 1 of the Government
9 Code, beginning with section 810).

10 **Article 4**

11 **Termination and Suspension**

12 4.1 **Termination for Non-Allocation of Funds.** The terms of this MOU are contingent
13 on the approval of funds by the appropriating government agency. If sufficient funds are not
14 allocated, then any County, upon at least 30 days' advance written notice to the other Parties,
15 may:

16 (A) Modify the services under this MOU; or

17 (B) Withdraw from this MOU without affecting the continuing participation of the
18 remaining Parties.

19 4.2 **Termination for Breach.**

20 (A) Upon determining that a breach (as defined in paragraph (C) below) has
21 occurred, the Non-Breaching Parties may give written notice of the breach to the
22 Breaching County. The written notice may suspend performance under this MOU and
23 must provide at least 30 days for the Breaching County to cure the breach.

24 (B) If the Breaching County fails to cure the breach to the Non-Breaching Parties'
25 satisfaction within the time stated in the written notice, the Non-Breaching Parties may
26 terminate this MOU immediately.

27 (C) For purposes of this section, a breach occurs when, in the determination of the
28 Parties, the Breaching County has:

- 1 (1) Obtained or used funds illegally or improperly;
- 2 (2) Failed to comply with any part of this MOU;
- 3 (3) Submitted a substantially incorrect or incomplete report to the Parties; or
- 4 (4) Improperly performed any of its obligations under this MOU.

5 4.3 **Withdrawal Without Cause.** In circumstances other than those set forth above, any
6 County may withdraw from this MOU without affecting the continuing participation of the
7 remaining Parties by giving at least 30 days advance written notice to the other Parties.

8 4.4 **No Penalty or Further Obligation.** Any termination of this MOU by any County
9 under this Article 4 is without penalty to or further obligation of the terminating County.

10 4.5 **Terminating County's Rights upon Termination.** Upon termination for breach
11 under this Article 4, the Terminating County may demand repayment by the remaining Parties
12 of any monies disbursed to the remaining Parties under this MOU that, in the Terminating
13 County's sole judgment, were not expended in compliance with this MOU. The remaining
14 Parties shall promptly refund all such monies upon demand. This section survives the
15 termination of this MOU.

16 **Article 5**

17 **Independent Contractor**

18 5.1 **Status.** In performing under this MOU, each County, including its officers, agents,
19 employees, and volunteers, is at all times acting and performing as an independent
20 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
21 venturer, partner, or associate of the other Parties.

22 5.2 **Verifying Performance.** Each County has no right to control, supervise, or direct the
23 manner or method of the other Parties' performance under this MOU, but each County may
24 verify that the other Parties are performing according to the terms of this MOU.

25 5.3 **Benefits.** No County has rights to employment rights or benefits available to the
26 other Parties' employees. The Parties are solely responsible for providing to its own
27 employees all employee benefits required by law. Each Party shall save the other Parties
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1 harmless from all matters relating to the payment of their respective employees, including
2 compliance with Social Security withholding and all related regulations.

3 **Article 6**

4 **Mutual Indemnity and Defense**

5 6.1 **Indemnity.** Each County shall indemnify, hold harmless, and defend the other
6 Parties (including its officers, agents, employees, and volunteers) against all claims, demands,
7 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
8 liabilities of any kind to itself, the other Parties, or any third party that arise from or relate to the
9 performance or failure to perform by the Parties (or any of its officers, agents, subcontractors, or
10 employees) under this MOU. Each County may conduct or participate in its own defense without
11 affecting the other Parties' obligation to indemnify and hold harmless or defend itself.

12 6.2 **Survival.** This Article 6 survives the termination of this MOU.

13 **Article 7**

14 **Insurance**

15 7.1 With respect to performance of work under this MOU, each County recognizes that
16 the other Parties are self-insured, in whole and/or in part, and shall maintain, to the extent not
17 so self-insured, and shall require all their respective subcontractors and other agents who
18 provide services in connection with this MOU to maintain, all insurance as described in Exhibit
19 C, which is attached and incorporated by this reference. Each County is responsible for its own
20 self-insured retentions and deductibles. Each County agrees to provide the other Parties with
21 applicable certificates of insurance upon request.

22 **Article 8**

23 **Public Records**

24 8.1 **Public Records.** Each County is not limited in any manner with respect to its public
25 disclosure of this MOU or any record or data that the other Parties may provide to the County.
26 The County's public disclosure of this MOU or any record or data that the other Parties may
27 provide to the County may include but is not limited to the following:
28

1 (A) The County may voluntarily, or upon request by any member of the public or
2 governmental agency, disclose this MOU to the public or such governmental agency.

3 8.2 The County may voluntarily, or upon request by any member of the public or
4 governmental agency, disclose to the public or such governmental agency any record or data
5 that the Parties may provide to the County, unless such disclosure is prohibited by court order.

6 (A) This MOU, and any record or data that the Parties may provide to the County, is
7 subject to public disclosure under the Ralph M. Brown Act (California Government Code,
8 Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

9 (B) This MOU, and any record or data that the Parties may provide to the County, is
10 subject to public disclosure as a public record under the California Public Records Act
11 (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section
12 6250) ("CPRA").

13 (C) This MOU, and any record or data that the Parties may provide to the County, is
14 subject to public disclosure as information concerning the conduct of the people's
15 business of the State of California under California Constitution, Article 1, section 3,
16 subdivision (b).

17 (D) Any marking of confidentiality or restricted access upon or otherwise made with
18 respect to any record or data that the Parties may provide to the County shall be
19 disregarded and have no effect on the County's right or duty to disclose to the public or
20 governmental agency any such record or data.

21 8.3 **Public Records Act Requests.** If the County receives a written or oral request
22 under the CPRA to publicly disclose any record that is in the Parties' possession or control, and
23 which the County has a right, under any provision of this MOU or applicable law, to possess or
24 control, then the County may demand, in writing, that the Parties deliver to the County, for
25 purposes of public disclosure, the requested records that may be in the possession or control of
26 the Parties. Within five business days after the County's demand, the Parties shall (a) deliver to
27 the County all of the requested records that are in the Parties' possession or control, together
28 with a written statement that the Parties, after conducting a diligent search, has produced all

1 requested records that are in the Parties' possession or control, or (b) provide to the County a
2 written statement that the Parties, after conducting a diligent search, does not possess or
3 control any of the requested records. The Parties shall cooperate with the County with respect
4 to any County demand for such records. If the Parties wish to assert that any specific record or
5 data is exempt from disclosure under the CPRA or other applicable law, it must deliver the
6 record or data to the County and assert the exemption by citation to specific legal authority
7 within the written statement that it provides to the County under this section. The Parties'
8 assertion of any exemption from disclosure is not binding on the County, but the County will give
9 at least 10 days' advance written notice to the Parties before disclosing any record subject to
10 the Parties' assertion of exemption from disclosure. The Parties shall indemnify the County for
11 any court-ordered award of costs or attorney's fees under the CPRA that results from the
12 Parties' delay, claim of exemption, failure to produce any such records, or failure to cooperate
13 with the County with respect to any County demand for any such records.

14 **Article 9**

15 **General Terms**

16 9.1 **Modification.** Except as provided in Article 4, "Termination and Suspension," this
17 MOU may not be modified, and no waiver is effective, except by written agreement signed by all
18 parties. The Parties acknowledges that County employees have no authority to modify this MOU
19 except as expressly provided in this MOU.

20 9.2 **Non-Assignment.** No Party may assign its rights or delegate its obligations under
21 this MOU without the prior written consent of the other Parties.

22 9.3 **Governing Law.** The laws of the State of California govern all matters arising from
23 or related to this MOU.

24 9.4 **Jurisdiction and Venue.** The Parties consent to California jurisdiction for actions
25 arising from or related to this MOU, and, subject to the Government Claims Act, all such actions
26 must be brought and maintained in Fresno County.

27 9.5 **Construction.** The final form of this MOU is the result of the parties' combined
28 efforts. If anything in this MOU is found by a court of competent jurisdiction to be ambiguous,

1 that ambiguity shall not be resolved by construing the terms of this MOU against any of the
2 Parties.

3 9.6 **Days.** Unless otherwise specified, “days” means calendar days.

4 9.7 **Headings.** The headings and section titles in this MOU are for convenience only and
5 are not part of this MOU.

6 9.8 **Severability.** If anything in this MOU is found by a court of competent jurisdiction to
7 be unlawful or otherwise unenforceable, the balance of this MOU remains in effect, and the
8 parties shall make best efforts to replace the unlawful or unenforceable part of this MOU with
9 lawful and enforceable terms intended to accomplish the parties’ original intent.

10 9.9 **Nondiscrimination.** During the performance of this MOU, the Parties shall not
11 unlawfully discriminate against any employee or applicant for employment, or recipient of
12 services, because of race, religious creed, color, national origin, ancestry, physical disability,
13 mental disability, medical condition, genetic information, marital status, sex, gender, gender
14 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
15 all applicable State of California and federal statutes and regulation.

16 9.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
17 of the Parties under this MOU on any one or more occasions is not a waiver of performance of
18 any continuing or other obligation of the Parties and does not prohibit enforcement by the
19 County of any obligation on any other occasion.

20 9.11 **Entire Agreement.** This MOU, including its exhibits, is the entire agreement
21 between the Parties with respect to the subject matter of this MOU, and it supersedes all
22 previous negotiations, proposals, commitments, writings, advertisements, publications, and
23 understandings of any nature unless those things are expressly included in this MOU. If there is
24 any inconsistency between the terms of this MOU without its exhibits and the terms of the
25 exhibits, then the inconsistency will be resolved by giving precedence first to the terms of this
26 MOU without its exhibits, and then to the terms of the exhibits.

27 9.12 **No Third-Party Beneficiaries.** This MOU does not and is not intended to create any
28 rights or obligations for any person or entity except for the parties.

1 9.13 **Authorized Signature.** Each Party represents and warrants to the other Parties that:

2 (A) The Party is duly authorized and empowered to sign and perform its obligations
3 under this MOU.

4 (B) The individual signing this MOU on behalf of its respective County is duly
5 authorized to do so and his or her signature on this MOU legally binds the Party to the
6 terms of this MOU.

7 9.14 **Electronic Signatures.** The parties agree that this MOU may be executed by
8 electronic signature as provided in this section.

9 (A) An “electronic signature” means any symbol or process intended by an individual
10 signing this MOU to represent their signature, including but not limited to (1) a digital
11 signature; (2) a faxed version of an original handwritten signature; or (3) an electronically
12 scanned and transmitted (for example by PDF document) version of an original
13 handwritten signature.

14 (B) Each electronic signature affixed or attached to this MOU (1) is deemed
15 equivalent to a valid original handwritten signature of the person signing this MOU for all
16 purposes, including but not limited to evidentiary proof in any administrative or judicial
17 proceeding, and (2) has the same force and effect as the valid original handwritten
18 signature of that person.

19 (C) The provisions of this section satisfy the requirements of Civil Code section
20 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
21 Part 2, Title 2.5, beginning with section 1633.1).

22 (D) Each party using a digital signature represents that it has undertaken and
23 satisfied the requirements of Government Code section 16.5, subdivision (a),
24 paragraphs (1) through (5), and agrees that each other party may rely upon that
25 representation.

26 (E) This MOU is not conditioned upon the parties conducting the transactions under
27 it by electronic means and either party may sign this MOU with an original handwritten
28 signature.

1 9.15 **Counterparts.** This MOU may be signed in counterparts, each of which is an
2 original, and all of which together constitute this MOU.

3 *[SIGNATURE PAGES FOLLOW]*
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The Parties are signing this MOU on the date stated in the introductory clause.

COUNTY OF FRESNO

Ernest Buddy Mendes, Chairman of the Board
of Supervisors of the County of Fresno

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: _____
Deputy

For accounting use only:

Org No.: 2540
Account No.: 7295
Fund No.: 0001
Subclass No.: 10000

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The Parties are signing this MOU on the date stated in the introductory clause.

COUNTY OF KINGS

By: _____
County Administrative Officer

Approved as to Form:

By: _____
County Counsel

Approved and Endorsement Received:

By: _____
Risk Manager

1 The Parties are signing this MOU on the date stated in the introductory clause.

2 COUNTY OF MADERA

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5 _____
6 County Administrative Officer
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The Parties are signing this MOU on the date stated in the introductory clause.

COUNTY OF MERCED

Raul Lomeli Mendez, County Executive Officer

Attest:
Raul Lomeli Mendez
Clerk of the Board of Supervisors
County of Merced, State of California

By: _____
Deputy

APPROVED AS TO LEGAL FORM:
Forrest W. Hansen
Merced County Counsel

By: _____
Rina M. Gonzales
Chief Deputy County Counsel

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The Parties are signing this MOU on the date stated in the introductory clause.

COUNTY OF TULARE

County Administrative Officer

Approved as to Form:

Deputy County Counsel
Matter No. 2025358

Exhibit A

Scope of Services:

Broadband Equity, Access, and Deployment (BEAD) Program

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4 **1. BEAD Priority Locations.** Each County shall be responsible for identifying the priority
5 locations within their respective county for the BEAD program.

6 **2. Unanimous Decision to Apply for Grants.** The Parties shall unanimously agree to
7 apply for the BEAD grant as a region. If the Parties cannot reach a unanimous decision, then
8 the Parties shall apply for the BEAD grant separately.

9 **3. Key Personnel.** The key personnel and/or point of contact for each County is as follows:

10 (A) Fresno County: Assistant Director of Information Technology

11 (B) Kings County: Deputy County Administrative Officer (CAO)/Assistant CAO

12 (C) Madera County: Assistant County Administrative Officer

13 (D) Merced County: Management Analyst, County Executive Office

14 (E) Tulare County: Grants and Resources Manager

15 **4. Communication Among the Parties.** The Parties shall establish a regular meeting
16 schedule to ensure projects are meeting projected timelines, communicate updates, and resolve
17 issues in a timely manner. If a project spanning two or more Counties are awarded BEAD
18 funding, the awarded Counties shall schedule biweekly meetings for communication and
19 coordination purposes. The Parties understand that the meeting frequency may increase and/or
20 decrease depending on the needs of the project. For efficiency purposes, these meetings shall
21 be virtual whenever operationally feasible.

22 **5. BEAD Request for Proposal.** The Parties shall issue a Request for Proposal (RFP) to
23 solicit qualified internet service providers (ISPs) to perform last mile broadband infrastructure
24 build-out projects throughout the Parties' county boundaries.

25 (A) **Lead County.** Fresno County shall be the Lead County responsible for
26 managing and overseeing the RFP process on behalf of the Parties. Fresno
27 County shall issue the BEAD RFP in coordination with the other Parties and
28 serve as the primary point of contact for the RFP respondents.

Exhibit A

1 (B) **Parties' Responsibilities.** The Parties shall collectively review and evaluate the
2 BEAD proposals. Proposal selection recommendations shall be based on a
3 majority vote of the Parties after consultation with each County's respective
4 Board members.

5 **6. BEAD Application.**

6 (A) **Lead Applicant.** Fresno County shall be the Lead Applicant responsible for
7 submitting the BEAD application(s) on behalf of the Parties if the projects are
8 located within Fresno County, including projects that cross county boundaries
9 and are primarily within Fresno County's boundaries.

10 (B) **BEAD Application Cost Sharing.** If the Parties unanimously agree to submit
11 one or more BEAD applications, the application costs shall be split across the
12 Parties by each County's population. For example, if Fresno County's population
13 represents approximately 48% of the Parties' total population, then Fresno
14 County shall be responsible for 48% of the BEAD application cost.

15 **7. County-Exclusive BEAD Projects.** If a broadband project is located exclusively within
16 one of the party's county boundaries, then that county ("Responsible County") shall be
17 responsible for managing the grant via the subrecipient agreement, including but not limited to
18 coordination efforts with the ISP, compliance with the grant reporting requirements, and other
19 terms of the BEAD program.

20 **8. BEAD Projects Crossing County Boundaries.** If a broadband project crosses county
21 boundaries, the Lead County shall be the county in which the majority of the project is located.
22 For example, if 75% of a project is located in Fresno County and 25% of the project is located in
23 Madera County, then Fresno County shall be the Lead County for that project, and shall have
24 primary responsibility to manage the project, in coordination with the other Parties.

25 **9. Distribution of Grant Funds.** The Parties, through each County's CAO or CEO, or their
26 designee, are authorized to approve Scope of Services amendments on behalf of their
27 respective County. The Parties shall determine a reasonable method for distributing grant funds
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Exhibit A

1 after BEAD funds are awarded to the Parties and shall amend this Exhibit A to memorialize the
2 grant fund distribution process.

3 **10. Reimbursement Provisions Among the Parties.** The Parties, through each County's
4 CAO or CEO, or their designee, are authorized to approve Scope of Services amendments on
5 behalf of their respective County. The Parties shall determine reasonable reimbursement
6 provisions after BEAD funds are awarded to the Parties and/or in cases where one County
7 ("Paying County") covers costs on behalf of another County ("Covered County"). Once
8 determined, the Parties shall memorialize the reimbursement provision process by amending
9 this Exhibit A.

10 **11. Grant Compliance.** Each County shall be responsible for adhering to the BEAD
11 program requirements. The Parties shall coordinate and communicate with the other Parties as
12 needed to ensure projects are meeting projected timelines. Each County shall work with the
13 relevant ISP to ensure project milestones are completed timely.

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Exhibit B

Scope of Services:

California Digital Equity Capacity Grant (DECG) Program

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4 **1. Priority Locations.** Each County shall be responsible for identifying the priority
5 locations within their respective county for the DECG program.

6 **2. Unanimous Decision to Apply for Grants.** The Parties shall unanimously agree to
7 apply for the DECG grant as a region. If the Parties cannot reach a unanimous decision, then
8 the Parties shall apply for the DECG grant separately.

9 **3. Key Personnel.** The key personnel and/or point of contact for each County is as follows:

10 (A) Fresno County: Assistant Director of Information Technology

11 (B) Kings County: Deputy County Administrative Officer (CAO)/Assistant CAO

12 (C) Madera County: Assistant County Administrative Officer

13 (D) Merced County: Management Analyst, County Executive Office

14 (E) Tulare County: Grants and Resources Manager

15 **4. Communication Among the Parties.** The Parties shall establish a regular meeting
16 schedule to ensure projects are meeting projected timelines, communicate updates, and resolve
17 issues in a timely manner. If a project spanning two or more Counties are awarded DECG
18 funding, the awarded Counties shall schedule biweekly meetings for communication and
19 coordination purposes. The Parties understand that the meeting frequency may increase and/or
20 decrease depending on the needs of the project. For efficiency purposes, these meetings shall
21 be virtual whenever operationally feasible.

22 **5. DECG Request for Proposal.** The Parties shall issue a Request for Proposal (RFP) to
23 solicit qualified bidders to provide services specific to the DECG program.

24 (A) **Lead County.** Fresno County shall be the Lead County responsible for
25 managing and overseeing the RFP process on behalf of the Parties. Fresno
26 County shall issue the DECG RFP in coordination with the other Parties and
27 serve as the primary point of contact for the RFP respondents.
28

Exhibit B

1 (B) **Parties' Responsibilities.** The Parties shall collectively review and evaluate the
2 DECG proposals. Proposal selection recommendations shall be based on a
3 majority vote of the Parties.

4 **6. DECG Application.**

5 (A) **Lead Applicant.** Fresno County shall be the Lead Applicant responsible for
6 submitting the DECG application(s) on behalf of the Parties if the projects are
7 located within Fresno County, including projects that cross county boundaries
8 and are primarily within Fresno County's boundaries.

9 (B) **DECG Application Cost Sharing.** If the Parties unanimously agree to submit
10 one or more DECG applications, the application costs shall be split across the
11 Parties by each County's population. For example, if Fresno County's population
12 represents approximately 48% of the Parties' total population, then Fresno
13 County shall be responsible for 48% of the DECG application cost.

14 **7. County-Exclusive DECG Projects.** If a broadband project is located within one of the
15 party's county boundaries, then that county ("Responsible County") shall be responsible for
16 managing the grant via the subrecipient agreement, including but not limited to coordination
17 efforts with the awarded bidders, compliance with the grant reporting requirements, and other
18 terms of the DECG program.

19 **8. DECG Projects Crossing County Boundaries.** If a broadband project crosses county
20 boundaries, the Lead County shall be the county in which the majority of the project is located.
21 For example, if 75% of a project is located in Fresno County and 25% of the project is located in
22 Madera County, then Fresno County shall be the Lead County for that project, and shall have
23 primary responsibility to manage the project, in coordination with the other Parties.

24 **9. Distribution of Grant Funds.** The Parties, through each County's CAO or CEO, or their
25 designee, are authorized to approve Scope of Services amendments on behalf of their
26 respective County. The Parties shall determine a reasonable method for distributing grant funds
27 after DECG funds are awarded to the Parties and shall amend this Exhibit A to memorialize the
28 grant fund distribution process.

Exhibit B

1 **10. Reimbursement Provisions Among the Parties.** The Parties, through each County's
2 CAO or CEO, or their designee, are authorized to approve Scope of Services amendments on
3 behalf of their respective County. The Parties shall determine reasonable reimbursement
4 provisions after DECG funds are awarded to the Parties and/or in cases where one County
5 ("Paying County") covers costs on behalf of another County ("Covered County"). Once
6 determined, the Parties shall memorialize the reimbursement provision process by amending
7 this Exhibit B.

8 **11. Grant Compliance.** Each County shall be responsible for adhering to the DECG
9 program requirements. The Parties shall coordinate and communicate with the other Parties as
10 needed to ensure projects are meeting projected timelines. Each County shall work with the
11 relevant internet service provider (ISP) to ensure project milestones are completed timely.

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Exhibit C

Insurance Requirements

1. Required Policies

Without limiting each County's right to obtain indemnification from the other Parties or any third parties, the other Parties, at their sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this MOU.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Parties shall obtain an endorsement to this policy naming each County, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this MOU are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by each County is excess only and not contributing with insurance provided under the other Parties' policies.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this MOU.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.

Because each County is a governmental entity, each County may satisfy the policy requirements above through a program of self-insurance, including an insurance pooling arrangement or joint exercise of powers agreement.

2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Parties sign this MOU, and at any time during the term of this MOU as requested by each County ("Requesting County"), the other Parties shall deliver, or cause its broker or producer to deliver, to the Requesting County by mail or email to the person identified to receive notices under this MOU, certificates of insurance and endorsements for all of the coverages required under this MOU.
- (B) **Acceptability of Insurers.** All insurance policies required under this MOU must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this MOU an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this MOU, each County shall provide to the other Parties, or ensure that the policy requires the insurer to provide to the other Parties, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, each County shall, or shall cause the insurer to, provide written notice to the

Exhibit C

other Parties not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, each County shall, or shall cause the insurer to, provide written notice to the other Parties not less than 30 days in advance of cancellation or change. Each County in its sole discretion may determine that the failure of the other Party or its insurer to timely provide a written notice required by this paragraph is a breach of this MOU.

- (D) **County's Entitlement to Greater Coverage.** If the other Parties have or obtain insurance with broader coverage, higher limits, or both, than what is required under this MOU, then each County requires and is entitled to the broader coverage, higher limits, or both. To that end, the County shall deliver, or cause its broker or producer to deliver, to the other Parties certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this MOU.
- (E) **Waiver of Subrogation.** Each County waives any right to recover from the other Parties, their officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this MOU. The Parties are solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the other Parties' waiver of subrogation under this paragraph is effective whether or not the other Parties obtain such an endorsement.
- (F) **County's Remedy for Parties' Failure to Maintain.** If a County fails to keep in effect at all times any insurance coverage required under this MOU, the other Parties may, in addition to any other remedies it may have, suspend or terminate this MOU upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the other County. The Parties may offset such charges against any amounts owed by the other County to the Parties under this MOU.
- (G) **Subcontractors.** Each County shall require and verify that all subcontractors used for the provision of services under this MOU maintain insurance meeting all insurance requirements provided in this MOU. This paragraph does not authorize each County to provide services under this MOU using subcontractors.