

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW JERSEY BOARD OF PUBLIC UTILITIES
AND
NEW JERSEY INSTITUTE OF TECHNOLOGY

THIS MEMORANDUM OF UNDERSTANDING is made this 26 day of January 2022 by and between the New Jersey Board of Public Utilities (“BPU” or “Board”) through its Office of Chief of Staff and the New Jersey Institute of Technology (“NJIT”) (collectively, the “Parties”) setting forth the roles and responsibilities of the Parties in connection with the development of a New Jersey Broadband Access Study Affordability and Accessibility Report and GIS map. The BPU and NJIT are both instrumentalities of the State of New Jersey (“State” or “New Jersey”).

BACKGROUND

WHEREAS, the BPU is charged with the authority to ensure that safe, adequate, and reliable utility services are provided at reasonable, non-discriminatory rates to all members of the public who desire such services and to develop and regulate a competitive, economically cost-effective energy policy that promotes responsible growth and clean renewable energy sources while maintaining a high quality of life in New Jersey;

WHEREAS, NJIT is a not for profit entity and public research institution providing resources for technology and practices through research, analysis, and education programs;

WHEREAS, the Broadband Access Study Commission was established on July 7, 2021.¹ Pursuant to the Act, Governor Phil Murphy created the Broadband Access Study Commission within the BPU to evaluate the impediments of access to broadband service throughout New Jersey and to address issues preventing the widespread availability of broadband service to New Jersey

¹ L.2021, c.161 https://www.njleg.state.nj.us/2020/Bills/AL21/161_.PDF (the “Act”)

residents, including physical access, deployment, and affordability of broadband service (the “Commission”);

WHEREAS, the members of the Commission are presently being appointed and designated. Once assembled, the Commission will meet for a period of one year;

WHEREAS, the Commission has been directed to report its findings, conclusions, and recommendations to the Governor and the State Legislature no later than one year following its first meeting pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1);

NOW, THEREFORE, in consideration of the promises and mutual representations, warranties, and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. SCOPE OF THE MOU

This Memorandum of Understanding defines the framework and conditions under which the Parties intend to establish a cooperative relationship to the mutual benefit of the Parties and the residents of New Jersey, and will begin upon execution of this agreement and conclude upon the issuance of the Commission’s final report to the Governor and State Legislature. As more fully described below and within the Request for Response (“RFR”), NJIT’s Proposal in response to the RFR, NJIT’s responses to clarifying questions raised by BPU and NJIT’s BAFO and Budget Justification per Task, the State of New Jersey Standard Terms and Conditions, and Attachments A and B, respectively, which are incorporated herein by reference (the foregoing documents incorporated by reference are hereafter referred to together with this Memorandum of Understanding collectively as the “MOU”), the Parties will participate in a collaborative effort to provide a timely and robust map and report for the Commission’s review that shall include areas within New Jersey that presently do not have either any access to broadband service or affordable

broadband service. The terms and conditions of the MOU represent the entire scope of this agreement and supersede all former representations, whether written or verbally communicated.

II. DUTIES OF THE PARTIES

1. NJIT shall perform the following:

- A. Become familiar with the goals of the Act to ensure the deliverables conform with its purpose;
- B. All work specified in the Scope of Work section of the RFR and any supplemental responses by NJIT to its proposal for the agreed upon price and duration as set out in the RFR and supplemental documents, to specifically include Attachments A and B, respectively, which are incorporated herein by reference;
- C. Complete the deliverables within ninety (90) days from the date of the initial project launch or in the event completion is delayed for any reason, provide adequate written advance notice to BPU explaining the delay and the projected completion date;
- D. Conduct a project launch meeting with the State Contract Manager (“SCM”) within five (5) business days of the notification of the contract award, and meet at least bi-weekly with the SCM thereafter based on a schedule agreed to by the Parties. Additionally, NJIT shall attend and contribute as needed at all Commission meetings, including the monthly meetings, for a period of one year or for so long as necessary to complete the Scope of Work;
- E. Conduct stakeholder outreach to counties, municipalities, and stakeholder groups to identify areas by street name within New Jersey that presently do not have adequate access to broadband service and act as a liaison between BPU and those outside parties as appropriate;

- F. Provide technical support to BPU, as needed;
 - G. Lead, plan, research, and provide expertise necessary to achieve the Scope of Work of the RFR consistent with the Act;
 - H. Enter data into a GIS mapping system accessible by the Commission to determine the areas where broadband service will need to be expanded;
 - I. Enter data into a GIS mapping system that identifies areas within New Jersey with an at-risk population who may not be able to afford broadband service;
 - J. Draft a New Jersey Broadband Access Study Affordability and Accessibility Report and complete the GIS mapping system as described above with data addressing both broadband availability and affordability within the State for use by the Commission in formulating a final report to the Governor and State Legislature;
 - K. Perform work within the parameters of the agreed upon budget and notify the SCM in the event that a deviation from the budget is anticipated by providing a detailed written explanation for the anticipated deviation prior to performing the work. NJIT shall not incur additional costs or expenses in the performance of this engagement without first receiving prior approval and authorization from the SCM; and
 - L. Follow the procedures set out in Attachments A and B, respectively, to receive payment for work completed under this engagement, and provide additional information to support the invoice when requested.
2. BPU shall perform the following:
- A. Advise NJIT in this collaborative effort, as necessary;
 - B. Serve as a liaison to outside parties, as necessary;
 - C. Attend and contribute to NJIT meetings, as necessary;

- D. Keep the Commission informed of the development of this report and mapping system consistent with the goals of the Act; and
 - E. Remit timely payment to NJIT following the procedure set out in Attachments A and B, respectively, for work authorized and completed under this engagement.
3. Pursuant to Governor Murphy's EO 271, NJIT hereby certifies that it has a policy in place, for work performed within the State of New Jersey: (1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or (2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and (3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments. NJIT further certifies that in the event it uses a subcontractor as part of this engagement and the subcontractor will be performing work within the State of New Jersey, that the subcontractor has a policy in place consistent with EO 271.

III. DESIGNATED REPRESENTATIVES

Written communication among the Parties for the purpose of this MOU as defined above shall be delivered to the following representatives:

New Jersey Board of Public Utilities
Attn: Frank Gaffney, Business Ombudsman
44 S. Clinton Avenue
Post Office Box 350
Trenton, NJ 08625-0350

New Jersey Board of Public Utilities
Attn: Aida Camacho-Welch, Secretary
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

New Jersey Institute of Technology
Attn: Abdallah Khreishah
323 Dr. Martin Luther King Jr Blvd.
Newark, NJ 07102

IV. MISCELLANEOUS

A. Subject to the Availability of Funds. All obligations of the Parties pursuant to this MOU are subject to appropriations and the availability of funds. A failure by the Parties to perform any condition on its part to be performed under this MOU as a result of the failure of the Legislature to appropriate funds shall not in any manner constitute a breach or default by the Parties.

B. Rights to Materials. BPU shall retain exclusive rights to the mapping system, the underlying data, and all information gathered for purposes of creating the mapping system and resulting report in its full and complete form without redaction. NJIT shall cooperate in providing all documents under this engagement to BPU within a reasonable period of time upon written request by BPU.

C. No Personal Liability. No official or employee of BPU shall be charged personally by NJIT, its employees, agents, contractors, or subcontractors with any liability or held liable to NJIT, its employees, agents, contractors, or subcontractors under any term or provision of this MOU or because of its execution or attempted execution or because of any breach or attempted or alleged breach of this MOU.

No official or employee of NJIT shall be charged personally by BPU, its employees, agents, contractors, or subcontractors with any liability or held liable to BPU, its employees, agents, contractors, or subcontractors under any term or provision of this MOU or because of its execution or attempted execution or because of any breach or attempted or alleged breach of this MOU.

D. Captions. The captions appearing in this MOU are inserted and included solely for convenience and shall not be considered or given effect in construing this MOU, or its provisions, in connection with the duties, obligations, or liabilities of the Parties or in ascertaining intent, if a question of intent arises. The preambles are incorporated into this paragraph as though set forth in verbatim.

E. Entirety of Agreement. This MOU represents the entire and integrated agreement between the Parties and supersedes any and all prior agreements or understandings (whether or not in writing). No modification or termination hereof shall be effective unless in writing and approved as required by law.

F. Amendments. This MOU may be amended or extended by the written request of any Party and with the consent of the other Parties as needed for the production of a substantive report to be provided to the Commission. Any proposed amendment of this MOU shall be submitted by one Party to the other Parties at least five (5) business days prior to formal discussion or negotiation of the issue. Any amendment of this MOU shall be set forth in writing and signed by an authorized representative of each Party in order to become effective.

G. No Third-Party Beneficiaries. This MOU does not create in any individual or entity the status of third-party beneficiary, and this MOU shall not be construed to create such status. The rights, duties, and obligations contained in this MOU shall operate only among the Parties and shall inure solely to the benefit of the Parties. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties intend and expressly agree that only the Parties shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring any action for breach of this MOU.

H. No Assignment. This MOU shall not be assignable, but shall bind and inure to the benefit of the Parties hereto and their respective successors.

I. Governing Law. This MOU and the rights and obligations of the Parties shall be interpreted, construed, and enforced in accordance with the laws of the State of New Jersey. This MOU shall be subject to all the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. Any claims asserted against the State in connection with this MOU shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. It is acknowledged by all Parties that the Parties are covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Tort Claims Fund.

J. Authority. By execution of this MOU, the Parties represent that they are duly authorized and empowered to enter into this MOU and to perform all duties and responsibilities established in this MOU.

K. Term. This MOU shall be effective as of the date hereinabove written and, unless terminated as set forth below, shall remain in effect for a term of one (1) year from the first meeting of the Commission, unless extended by the Parties by agreement and in writing consistent with applicable legislation.

L. Termination. BPU and NJIT may terminate this MOU upon thirty (30) days' written notice. The Parties shall consult on the conditions of the termination, including the date on which the termination shall take effect. The Parties shall meet within sixty (60) days after the effective date of the termination to settle accounts.

M. Counterparts. This MOU may be executed in duplicate parts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the Parties have signed this Memorandum of Understanding on the date first written above.

Witness:

Jesus Novoa

New Jersey Institute of Technology

By: Atam P. Dhawan
Atam Dhawan, PhD

Dated: 2/2/2022

Witness:

Aida Camacho Welch

New Jersey Board of Public Utilities

By: Joseph L. Fiordaliso
Joseph L. Fiordaliso, President

Dated: January 26, 2022

APPROVED AS TO FORM:

Andrew J. Bruck
Acting Attorney General, State of New Jersey

By: Terel Klein
Terel Klein
Deputy Attorney General

Dated: January 26, 2022