California Public Utilities Commission (CPUC)

Application for the Broadband, Equity, Access, and Deployment (BEAD) Grant Program

# 7.2C Surety Bond Template

The following template for a single obligee is based on language recommended by The Surety & Fidelity Association of America (SFAA). (See “SFAA BEAD Program Surety Bond Information Kit” at <https://surety.org/wp-content/uploads/2024/07/NASBP-BEAD-Program_Full-Kit.pdf>.)

In this instance, the subgrantee is the bonded principal and the obligee (the California Public Utilities Commission (CPUC)) is the entity that is protected should the subgrantee fail to meet its award agreement obligations.

The CPUC provides the applicant with the following options for structuring the performance bond obligations:

* Comply with the letter of credit requirement at no less than 25 percent of the subaward amount as outlined in the initial NTIA guidance; or
* Provide performance bonds equal to 100 percent of the BEAD subaward amount; or
* Choose to have their letter of credit or performance bond obligation progressively reduced (from 25 percent or 100 percent of the subaward amount) with completion of deployment milestones based on a percent buildout completion schedule provided by the CPUC.
* Request that the committed amount for the letter of credit or the performance bond be reduced where 1) funding will be issued on a reimbursable basis and the CPUC has implemented all other subgrantee accountability measures as set out in the BEAD NOFO rules (Section IV.C.1.b); 2) funding will be on a reimbursable basis for periods of no more than six months; and 3) the letter of credit or performance bond remains at 10 percent of the subaward until the subgrantee successfully demonstrates 100 percent project or completion or the period of performance for the subaward has ended.

[FINANCIAL INSTITUTION LETTERHEAD]

Date of Issuance: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Amount of Bond: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Surety for PERFORMANCE BOND**

OBLIGEE/BENEFICIARY

California Public Utilities Commission

Attn: Darcie L. Houck, Commissioner of the California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

GUARANTOR/SURETY COMPANY

Address

Address

To Whom It May Concern:

We hereby establish, at the request and for the account of [Subgrantee/Principal], in your favor, as required under the Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity at 72, § IV.D.2.a.ii (BEAD NOFO), the Notice of Programmatic Waiver regarding BEAD Letter of Credit Requirement, issued by the National Telecommunications and Information Administration ("NTIA"), and as required by the Initial Proposal Volume 2 (IPv2) of the State of California, our commitment to issue a Performance Bond in the sum of [State amount of Bond in words and figures], on behalf of [Subgrantee/Principal] which sum represents 100 percent of the award sum. As noted in California’s IPv2:

Applicants choosing to obtain a performance bond will be required to submit a letter from a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570 which contains the dollar amount of the performance bond.

The undersigned certifies that it possesses a Certificate of Authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570 and, if an award is made, hereby commits to issue a Performance Bond in the requisite amount for [Subgrantee/Contractor/Principal] for 100 percent of the award amount, naming the California Public Utilities Commission (CPUC) as the Obligee. It is understood and agreed that a Performance Bond must be secured prior to the [Subgrantee/Principal] entering into any award agreement with the CPUC.

The undersigned further acknowledges the Performance Bond requirements may be modified under certain permissible events, such as where the CPUC issues funding on a reimbursable basis and the Subgrantee/Principal meets deployment milestones or, where the CPUC issues funding on a reimbursable basis consistent with the BEAD NOFO (Section IV.C.1.b) and reimbursement is for periods of no more than six months each.

The Performance Bond requirements will be presumed to be set at 100% of the subaward amount but may be modified in accordance with the terms and conditions set forth in California’s IPv2, and at the discretion of the CPUC.

Sincerely,

Guarantor/Surety Company

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Illustrative Form of PERFORMANCE BOND**

[Financial Institution officer name and title]

[Financial Institution corporate name]

[Financial Institution street address]

[Financial Institution state and ZIP code]

[Subgrantee officer name and title]

[Subgrantee corporate name]

[Subgrantee street address]

[Subgrantee state and ZIP code]

California Public Utilities Commission

Attn: Darcie L. Houck, Commissioner of the California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Re: Bond Form, Single Obligee

Bond No. \_\_\_\_\_\_\_\_\_\_

Dear CPUC,

[SUBGRANTEE] (“Principal”), with primary place of business at \_\_\_\_\_\_\_\_\_\_\_\_; and [FINANCIAL INSTITUTION] (“Surety”) a company having a certificate of authority to conduct surety insurance business issued in the State of California, are held and firmly bound unto the California Public Utilities Commission (CPUC) (“Obligee”), in the maximum penal sum of [DOLLARS] Dollars ($\_\_\_\_\_\_\_\_\_) (“Penal Sum”).

WHEREAS, the above named Principal has been awarded a subgrantee agreement, [PROJECT NAME], subgrant no., under the California Broadband Equity, Access, and Deployment (“BEAD”) Program by Obligee pursuant to the selection process detailed in California’s Initial Proposals and the CPUC’s BEAD subgrant agreement. Principal is required to furnish security in the form of a surety bond to secure performance solely of the infrastructure build-out portion of the subgrantee agreement, as further described in the following specific subgrantee agreement provisions and exhibits: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Work”).

For purposes of this Surety Bond, Work associated with this Project shall be deemed completed to a particular BEAD broadband serviceable location within the Project area when the Principal provides performance acceptance testing as defined in California’s Initial Proposals and any NTIA requirements, from that address location to the CPUC that demonstrate to the Obligee that Principal is providing Qualifying Broadband, as defined in the scope of the Work and the rules of the BEAD Program.

In accordance with the BEAD Notice of Funding Opportunity, qualifying broadband to an address location that is not a Community Anchor Institution (CAI) means the broadband service that the Principal provides under the Project has (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds; Qualifying Broadband to a CAI means broadband service that Principal provides under the Project that has (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

**NOW, THEREFORE**, it is the condition of this Bond that, once the Principal completes the Work, as explained above, the Surety’s obligations under this Surety Bond will terminate. Otherwise, the Surety’s obligations shall remain in full force and effect. The Obligee may not invoke the provisions of this Surety Bond if the Obligee is in material breach of its obligations under the subgrantee agreement.

Regardless of the number of years this Surety Bond is in force or of the number of claims made under this Surety Bond, the Surety’s aggregate liability under this Surety Bond shall not exceed the maximum Penal Sum stated above.

**SURETY OBLIGATIONS** If the Principal is in default pursuant to the terms of the subgrantee agreement regarding the said Work, and the Obligee has so declared the Principal in default, the Surety promptly may remedy the default or shall:

1. Complete the Principal’s obligations regarding said Work, with the consent of the Obligee, through the Principal; or
2. Arrange for completion of the Principal’s obligations regarding said Work through another entity acceptable to the Obligee, and the Surety shall make sufficient funds available to the successor entity to pay for completion of the Principal’s obligations up to the maximum Penal Sum of the Bond; or
3. Reimburse the Obligee the reasonable costs to complete the Principal’s obligations regarding said Work, not to exceed the maximum Penal Sum of the Bond, less the subgrant amount balance.

**DISPUTES** All disputes regarding this Bond shall be instituted in the United States District Court for the [Northern District, Middle District, Southern District] of California and shall be commenced within one year after the Principal’s default. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

**AMENDMENT** The Penal Sum of this Bond shall automatically be reduced as Work completion milestones are met by the Principal in accordance with the applicable surety bond provisions of the subgrantee agreement.

This Bond is entered this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

SURETY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Attach Power of Attorney)

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRINCIPAL

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_