

**CONSORTIUM BIDDING AGREEMENT
RURAL DIGITAL OPPORTUNITY FUND – AUCTION 904**

This Consortium Agreement for the Rural Digital Opportunity Fund (“RDOF”) Phase I Auction 904 (“Agreement”) is made and entered into by and between the entities executing this Agreement as further identified on **Exhibit A**, effective as of the date each executes this Agreement, provided that no such effective date shall be later than July 15, 2020. Each signatory is individually a “Party” or “Member” and jointly all signatories are the “Parties” or “Members”.

WHEREAS, the Parties are familiar with plans by the Federal Communications Commission (“FCC”) to conduct a reverse auction that will award up to \$16 billion over the course of ten (10) years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks as designated by the FCC in Auction 904 (the “Auction”).

WHEREAS, the FCC has adopted census block groups (“CBG”) containing one or more eligible census blocks as the minimum geographic area for bidding in the Auction;

WHEREAS, the FCC recognized that service providers for this Auction may use permissible auction mechanisms, including consortia, to bid for support in the Auction;

WHEREAS, each of the Parties represents that it meets the qualifications to participate in the Auction, including, but not limited to, the financial and operational requirements, and will be able to meet the minimum requirements for voice and broadband services as required for this Auction;

WHEREAS, the Parties desire to form a consortium, as permitted under the FCC’s rules, to allow the Parties to file a single Short-Form application to bid in the Auction and later allocate any winning CBG bids among the Members pursuant to the Divide Winning Bids process adopted by the FCC and pursuant to the allocation set-forth herein;

WHEREAS, each individual Member shall be responsible for submitting a Long-Form application with respect to the winning CBG bid(s) allocated to such Member and shall be responsible for complying with the applicable performance requirements associated with such winning bid.

WHEREAS, with respect to the limited purposes of this Agreement, all of the Parties want to communicate with one another prior to, during and after the Auction on bids and bidding strategy and to conduct business planning discussions that may affect the support being sought; and

WHEREAS, the Parties desire to memorialize their discussions and agreements;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Short-Form Application. The Parties will cooperate to timely submit to the FCC, on behalf of the consortium, a Short-Form Application, FCC Form 183 (the "Application") to participate in the Auction. To the extent required by the FCC rules, the Parties will select one Member upon whose financial qualifications the application will be based and who will effectively serve as the lead applicant (the "Lead Applicant"). In the Application, the Parties will select the state(s) and the associated performance requirements, including throughput and latency combinations, upon which the relevant Member intends to bid and which network and services the relevant Member intends to deploy as set forth in such Member's **Exhibit B** hereto. To ensure timely submission, the members shall provide all information required for the Application at least ten days prior to the filing deadline including, without limitation, the information required in Appendix A of FCC 20-77 regarding such Member's operational information regarding its experience providing voice, broadband, and/or electric distribution or transmission service and its plans for provisioning service if awarded support.
2. No Interest in Other Applications; No Joint Bidding Arrangements. No Member shall submit a separate short-form application or be an "applicant" in another application as defined by the FCC's rules, FCC rule 1.21002(a), which definition includes the entity filing the application, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant. No Member shall enter into any joint bidding arrangements with any other applicant, which includes any arrangements that (1) relate to any eligible area in the Auction, and (2) address or communicate bids or bidding strategies, including arrangements regarding Rural Digital Opportunity Fund support levels (i.e., price point percentages) and specific areas on which to bid, as well as any arrangements relating to the post-auction market structure in any eligible area.
3. Bidding Plan. Each Party will engage Olsen Thielen & Co., Ltd ("Olsen Thielen") to perform bidding services during the Auction. In cooperation with Olsen Thielen, the Parties shall formulate a plan to arrange for timely bidding in the Auction including communications regarding bidding. Each Party will complete an **Exhibit B** to identify the CBG's on which it desires to bid, the performance and latency tier ("T+L") such member will meet in such CBG, and the minimum amount of support acceptable for such CBG. If more than one Member desires to seek support within the same CBG, the Members will follow the procedure set-form in Section 4, below. Each Party acknowledges that once a bid is placed for a specific CBG and T+L, such bid cannot be withdrawn and the Member is responsible for all obligations, including without limitation, any performance or default obligations, associated with such bid(s).
4. Divide Bids, Long-Form Application.

- a. If the consortium is the winning bidder for support in any target CBG(s), then during the Divide Winning Bid process, the consortium will identify the Member that will receive the support and undertake the performance obligations for such CBG(s) as allocated on **Exhibit B** and the bidding process. Each Member agrees that it will timely submit a Long-Form application with respect to the winning CBG bid(s) allocated to such Member and will be responsible for complying with all obligations, including the applicable performance requirements or default obligations associated with such winning bid(s).
 - b. Each Member acknowledges that under the Divide Winning Bid process, the consortium may not assign a single winning bid to more than one Member. Thus, the consortium may not split a winning CBG bid and divide eligible census blocks between two or more Members. If two or more Members desire to seek support in the same CBG, such Members shall engage in good faith negotiations to determine which Member will be assigned such conflicted CBG if a waiver or other regulatory relief cannot be obtained. Such Members further shall engage in good faith negotiation to enter into such agreements as are reasonably necessary to allow the assigned Member-recipient to satisfy the applicable performance requirements under the FCC's rules, while also allowing the other Member to provide the services in the census blocks that such other Member desires to serve, to the greatest extent possible. Such agreements may include, wholesale and resale agreements, interconnection agreements, or other agreements that allow the Members effectively to subdivide a winning CGB into smaller areas. Such Members also may, upon mutual agreement and at their sole expense, and holding the other Members and Lead Applicant harmless (unless the Lead Applicant is one of the Members seeking support in the same CBG as another Member), seek a waiver of the applicable FCC rules and procedures or other regulatory relief.
5. Expenses. All Parties will contribute equally to any consulting or legal expenses incurred in preparation of this Agreement, expenses incurred in the preparation filing and prosecution of the Application, participation in the Auction (including bidding) up and through the Divide Winning Bid process, as required to accomplish the purposes of this Agreement; *provided*, however that a Member shall no longer be required to share in the pro rata expenses incurred in Auction participation after reasonable advanced notice to Olsen Thielen that such Member no longer desires the consortium to bid on any CBGs, and provided that the Member is not then currently obligated to any winning bid or support commitment under applicable FCC rules. Upon a member dropping out from participation in the Auction, all expenses incurred thereafter shall be split equally among the remaining participating Members.
 6. Prohibited Conduct and Compliance with Laws. Each Member agrees not to engage in any prohibited communications under Section 1.21002 of the FCC's rules, 47 C.F.R. § 1.21002, or any policies or procedures adopted for the Auction.

Without limiting the foregoing, each Member agrees and acknowledges that it is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period. Without limiting the foregoing, but for avoidance of doubt, all the Member of the consortium are parties to same application, and the Members may communicate with the other consortium Members regarding bids and bidding strategy. Each Member further agrees to comply with all antitrust and other applicable laws.

7. Representations and Warranties. Each Party represents and warrants to all the other Parties that it:
 - a. is validly existing, and in good standing in the jurisdiction of its formation, and that it has the request power and authority to enter into this Agreement and perform the obligations herein.
 - b. meets the qualifications to participate in the Auction, including, but not limited to, the legal, technical, and financial qualifications to participate in a Commission auction for universal service support and to meet the performance requirements for the provision of voice and broadband services as required for this Auction.
 - c. is not a party to another application in the Auction, and has not entered into any other consortium agreement or any joint bidding arrangements as defined by the FCC.

8. INDEMNIFICATION AND LIMITATION ON LIABILITY. Each Party (an "Indemnifying Party") agrees to reimburse, indemnify and hold harmless every other Party and their affiliates, and its and their respective shareholders, partners, members, managers, directors, officers, agents, employees, successors and assigns (each, an "Indemnified Party") against and in respect of any and all damages, losses, deficiencies, liabilities, assessments, fines, judgments, costs and other expenses (including reasonable legal fees and expenses) (collectively, "Losses") incurred or suffered by any Indemnified Party that result from, relate to or arise out of any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant by such Indemnifying Party under this Agreement or any exhibit, document, agreement or instrument furnished pursuant hereto, and all claims made by third parties that arise out of, are based upon or allege any such misrepresentation, breach or nonfulfillment or that are inconsistent with the accuracy of any such representation or warranty or the fulfillment of any such agreement or covenant, and any and all investigations, audits or proceedings by third parties for the purpose of determining whether to make such a claim; *provided that, ABSENT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE LEAD APPLIANT SHALL NOT BE LIABLE FOR ANY HARM, LOSS OR DAMAGE RESULTING OR ALLEGED TO RESULT FROM SUCH MEMBER SERVING AS LEAD APPLICANT FOR THE*

PARTICIPATION IN THE AUCTION. NO PARTY SHALL BE LIABLE FOR ANY ACT OR OMISSION OF ANOTHER PARTY WITH RESPECT TO SUCH OTHER PARTY'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE.

9. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by overnight courier or electronic mail (provided that communications sent by electronic mail are concurrently sent by overnight courier, and that communications sent by means other than electronic mail shall also be sent by electronic mail) in accordance with this Agreement, to the addresses set forth on Exhibit A, until a Party provides timely notice to the other Parties of any change to its contact information.
10. Termination.
 - a. This Agreement shall terminate one (1) business day after the Long-Form Application Deadline or the end of the "quiet period", whichever is later, unless extended by mutual agreement.
 - b. This Agreement may be terminated upon mutual agreement of the Parties.
 - c. This Agreement may be terminated by the other Parties with respect to a Party if such Party becomes subject to a voluntary or involuntary proceeding under the United States Bankruptcy Code and such proceeding is not dismissed or resolve within thirty days.
 - d. The provisions of Sections 4, 7, 8, 11 and any obligation which by its nature is intended to survive termination shall survive termination of this Agreement.
11. Miscellaneous.
 - a. Confidentiality of the Terms of this Agreement. The terms of this Agreement, as well as information disclosed herein between the Parties or pursuant to this Agreement, including bidding information, will be kept strictly confidential by the Parties and their Agents (as defined below), which confidentiality obligation will survive the termination or expiration of this Agreement for a period of two (2) years. Notwithstanding the foregoing, the Parties may make disclosures on a need to know basis or as otherwise required by law to officers, directors, employees, attorneys, consultants, and accountants (collectively, "Agents") as required to perform obligations under this Agreement; *provided however*, that the Parties shall cause all Agents to honor the limitations under Section 6 regarding Prohibited Communications; and *further provided* that a copy of this Agreement may be submitted to the FCC by any Party as may be required, and all Parties agree to seek confidential treatment from the FCC to the extent permitted by the FCC's rules.

- b. No Joint Enterprise. The Parties to this Agreement are independent companies. This Agreement shall not be construed to create a partnership, joint venture or other entity between the Parties, or to alter the relationship of the Parties under any other agreement. No Party shall become or be deemed the general agent for the another by virtue of this Agreement, nor shall any Party be liable for debts or obligations of any other Party.
- c. Waivers; Amendments. No delay or failure to exercise any right, power, or remedy accruing to any Party hereunder shall be construed to be a waiver of any breach or default under this Agreement, or any acquiescence therein, or a waiver of any similar breach or default therefore or thereafter occurring. No provision of this Agreement shall be waived unless such waiver is made in writing signed by the Parties. This Agreement may not be amended, modified or change except by a written document signed by the Parties hereto.
- d. Successors and Assigns. This Agreement shall be binding upon and insure to the benefit of the Parties hereto, their respective heirs, representatives, successor and permissible assigns. This Agreement may not be assigned by any Party whether by operation of law or otherwise without the prior written consent of the other Members other than to an operating affiliate under the FCC's rules, so long as such assignment complies with FCC law. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- e. No Third Party Beneficiaries. Nothing herein, expressed or implied, is intended to nor shall confer on any person other than the Parties hereto any right, remedies, obligations, or liability under or by reason of this Agreement.
- f. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without reference to its provisions relating to conflicts of law, and the Communications Act of 1934, as amended and the implementing rules and regulations of the FCC. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the remaining provisions of this Agreement will stay in force. In addition, the Parties agree to negotiate in good faith a provision to replace the provision found invalid or unenforceable that will have, to the extent possible the same economic effect.
- g. Further Assurances. Each Party will execute and deliver such further documents and take such further actions as any other Party may reasonably request consistent with the provisions hereof to effectuate the intent and purposes of this Agreement.

- h. Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein and made a part of this Agreement.
- i. Counterparts. This Agreement, including Exhibit A, may be executed in multiple counterparts and delivered by electronic mail or facsimile, each of which shall be considered an original and all of which shall constitute one and the same instrument.
- j. Entire Agreement. This Agreement supersedes any other agreements between the Parties, whether oral or written, relating to the matters contemplated herein and constitutes the entire agreement by and between the Parties.

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute on Exhibit A, attached hereto.

EXHIBIT A

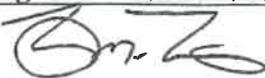
Consortium Member	Contact Information	Signature Block/ Title	Date
Southwest Minnesota Broadband Services	Travis Thies (507) 662-4001 travist@mysmbs.com	 General Manager	July 13, 2020
Federated Rural Electric Association	Scott Reimer (507) 847-3520 reimer@federatedrea.coop	General Manager	July 13, 2020

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EXHIBIT B

Consortium Member	State	CBGs	Performance Tier/Latency
Southwest MN Broadband Services	[REDACTED]	[REDACTED]	[REDACTED]

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Consortium Member	State	CBGs	Performance Tier/Latency
Federated Rural Electric Association	[REDACTED]	[REDACTED]	[REDACTED]