

Attachment B

Illustrative Form of Letter of Credit

[Subject to Issuing Bank Requirements]

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

[Name and Address of Issuing Bank]

[Date of Issuance]

Amount: \$100,000.00

[Expiration Date]

Beneficiary:

[Empire State Development]

[Address]

Applicant:

[Applicant Name]

[Address]

Ladies and Gentlemen:

We hereby issue, at the request of [Applicant], in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation (“ESD” or “Beneficiary”) as required under the New NY Broadband Grant Program Request for Proposal Guidelines (“the RFP Guidelines”) issued on January 8, 2016, as may be amended from time to time, our Irrevocable Standby Letter of Credit No. \_\_\_\_\_, in the amount of \$100,000.00/One Hundred Thousand Dollars, expiring at the close of banking business at our office described in the following paragraph, on the date which is [two (2) years from the date of issuance or the date which is one year from the date of issue, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to the Beneficiary, by a nationally recognized overnight delivery service, at least sixty but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by delivery to us of a certificate of termination in substantially the form of Annex C (the “Expiration Date”).

Funds under this Letter of Credit are available upon Beneficiary’s demand for payment in the form attached hereto as Annex A, presented at our office described below, and referring thereon to the number of the Letter of Credit, accompanied by Beneficiary’s written and completed certificate signed by Beneficiary 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 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 the 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 Beneficiary’s payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee an for the account Beneficiary designates, in accordance with the instructions set forth in the demand 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 Beneficiary's certificate, purportedly signed by two authorized representatives of Beneficiary, in the form attached as Annex C.

Any fees associated with the issuance of this Letter of Credit, draws thereunder, or the Letter's termination are the responsibility of [Applicant], and may not be charged to Beneficiary.

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 New York, including the Uniform Commercial Code as in effect in the State of New York. 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]

[Bank Signature]

ANNEX A

Form of Demand

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: \_\_\_\_\_

AT SIGHT

PAY TO THE ORDER OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION, D/B/A THE EMPIRE STATE DEVELOPMENT CORPORATION, BY [CHECK / WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: Empire State Development  
Attn: Controller Department  
35th Floor  
633 Third Avenue  
New York, NY 10017

OR

Bank Account (\_\_\_\_\_) )  
ABA No: \_\_\_\_\_

AS NEW NY BROADBAND PROGRAM  
APPLICATION DEPOSIT

[AMOUNT IN WORDS] DOLLARS

\$ [AMOUNT IN NUMBERS]

New York State Urban Development Corporation,  
d/b/a the Empire State Development Corporation

By: \_\_\_\_\_  
Name:  
Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by the Bank in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESD"), and (b) Section IV H of the New NY Broadband Program Request for Proposal Guidelines issued by ESD on January 8<sup>th</sup>, 2016 (the "RFP Guidelines"), as may be amended from time to time, pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in those RFP Guidelines), that:

LC Provider has [failed to enter into a Grant Disbursement Agreement with ESD to implement Project #\_\_\_ within 180 days of ESD's selection of LC Provider for a grant award through the New NY Broadband Program, as required under the RFP Guidelines]. This failure is evidenced by a letter signed by [the Executive Vice President of Innovation and Broadband at ESD, 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

[ESD certifies that, given notice of non-renewal of Letter of Credit No. \_\_\_\_\_ and failure of the LC Provider to obtain a satisfactory replacement thereof, the BPO is entitled to receive payment of \$100,000.00, 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\_\_.

New York State Urban Development Corporation,  
d/b/a the Empire State Development Corporation

By: \_\_\_\_\_  
Name:  
Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. \_\_\_\_ (the "Letter of Credit") issued by the Bank in favor of the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESD"), and (b) Section IV H of the New NY Broadband Program Request for Proposal Guidelines issued by ESD on January 8<sup>th</sup>, 2016 (the "RFP Guidelines"), as may be amended from time to time, pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in those RFP Guidelines), that:

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

(a) The RFP Guidelines have been fulfilled in accordance with the provisions thereof;

OR

(b) [LC Provider] has provided a replacement letter of credit satisfactory to ESD.

(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 [specify time of day] on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

New York State Urban Development Corporation,  
d/b/a the Empire State Development Corporation

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

Name:

Title:

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

Name:

Title: