

KIM REYNOLDS, GOVERNOR  
ADAM GREGG, LT. GOVERNOR

## STATE OF IOWA

MATT BEHRENS, INTERIM DIRECTOR &  
Interim CHIEF INFORMATION OFFICER

Grant No. [REDACTED] [For Office use only]

**Exhibit E - NOFA #007**  
**Office of the Chief Information Officer of the State of Iowa ("OCIO")**  
**Grant Agreement**

**Contracts Declaration and Execution ("CD&E")**

<b>Title of Contract:</b> NOFA #007 Grant Agreement ("Agreement")	<b>Grant Agreement Number:</b> [Grant Agmt #]
<b>Name of State Agency:</b> Iowa Office of the Chief Information Officer ("Office") <b>Address:</b> 200 E. Grand Avenue, Des Moines, IA 50309	
<b>Business Name of Grantee:</b> [Business name of Grantee] ("Grantee") a [type of entity] organized under the laws of the state of [Name of State]. <b>Business Address:</b> [Grantee Principal Place of Business/Headquarters] <b>Mailing Address (if different, delete if inapplicable):</b> <b>Address of Registered Agent (if different, delete if inapplicable):</b>	
<b>1. Overview/Purpose.</b> This Agreement establishes the terms and conditions pursuant to which Grantee must complete the Project(s) as more fully described in its Application in consideration for funds made available pursuant to and in accordance with the Broadband Grants Program—Empower Rural Iowa, Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF") Notice of Funding Availability ("NOFA") #007.	
<b>2. Term.</b> The term of this Agreement (the "Term") shall begin on the date of last signature below (the "Effective Date") and continue until the Office has reimbursed Grantee for all Allowable Expenditures following Project completion in accordance with the terms and conditions of this Agreement, unless otherwise terminated in accordance with the terms and conditions of this Agreement.	
<b>3. Scope.</b> The scope of this Agreement is the installation of the project ("Project") identified in the Broadband Grants Core Application Excel Workbook ("Core Application") that was submitted with the Application. The scope identified in the Core Application is hereby incorporated by reference into this Agreement.	
<b>4. Awarded Funds.</b> The total Award made to Grantee for purposes of this Agreement is: \$ [REDACTED].	
<b>5. Project Completion Date.</b> Grantee must fully finish its Project(s) by [Date of Completion], <u>unless the work is delayed for reasons beyond Grantee's control</u> .	
<b>6. Documents Incorporated/Order of Precedence.</b> This Agreement is composed of multiple parts which, when enumerated below, are each incorporated into and made part of this Agreement by this reference. In the event of any conflict or inconsistency between the specific provisions of an incorporated part, any such conflict or inconsistency shall be resolved in the following order: <ol style="list-style-type: none"><li>1. First, by giving preference to any declarations and/or representations made on this CD&amp;E;</li><li>2. Second, by giving preference to Attachment B - Federal Funding Required Provisions;</li><li>3. Third, by giving preference to Attachment A - General Terms and Conditions;</li></ol>	

4. Fourth, by giving preference to the provisions of the Broadband Grants Program—Empower Rural Iowa, Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”) Notice of Funding Availability #007 (Exhibit A);
5. Fifth, by giving preference to the provisions of Grantee’s application ([NOFA #007 Application #]) (the “**Application**”) in response to the Notice of Funding Availability #007 (Exhibit A). For the sake of clarity, none of Grantee’s exceptions, objections, or proposed modifications respecting the NOFA or any terms associated therewith, including to a draft of this Agreement (collectively “**Grantee Exceptions**”), shall be incorporated into this Agreement unless expressly set forth herein. Grantee reserves the right to decline funds made available pursuant to and in accordance with the Broadband Grants Program—Empower Rural Iowa, CSLFRF should the Grantee Exceptions incorporated herein not be accepted by the Office or if the Parties are unable to reach a mutually acceptable agreement for delivery and deployment of the Project.

**7. Acknowledgement of Subrecipient Status.** By executing this Agreement and accepting this CSLFRF-funded award made available under the American Recovery Plan Act and this NOFA, Grantee acknowledges that it shall be deemed a “Subrecipient” as defined by Applicable Law.

#### 8. Signatures.

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have caused their respective duly authorized representatives to execute this Agreement, which is effective as of the date of last signature below (“**Effective Date**”).

STATE OF IOWA, acting by and through the Office  
of the Chief Information Officer  
 (“Office”)

[Business Name of Grantee]  
 (“Grantee”)

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

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

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

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

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

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

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

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

## Attachment A - General Terms and Conditions

1. **Overview.** This Attachment A sets forth the general terms and conditions for the deployment and delivery of the Project(s) as more fully described in the CD&E and Grantee's Application. The "Grantee" and the "Office" for purposes of this Attachment A means the parties identified on the CD&E, each party also be referred to herein individually as a "**Party**" or collectively as the "**Parties**." References in this Attachment A to the "Agreement" mean the Grant Agreement Number identified on the CD&E.
2. **Definitions.** Unless otherwise specifically defined herein, capitalized terms used but not defined herein shall have the meanings ascribed to them in the NOFA. In addition to any other terms defined herein, the following terms shall be ascribed the following meanings:
  - 2.1. "**Applicable Law(s)**" means any and all applicable federal, state, foreign, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, and specifically including CSLFRF Requirements in place at execution of this Agreement, as well as any and all future amendments, changes, or additions to such laws as of the effective date of such change.
  - 2.2. "**Grantee Contractor(s)**" means any of Grantee's authorized subcontractors, affiliates, subsidiaries, subgrantees, subrecipients, or any other third party acting on behalf of or at the direction of Grantee, directly or indirectly, in performing or providing the Project(s) under this Agreement.
  - 2.3. "**Grantee Personnel**" means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Grantee or any Grantee Contractor performing or providing the Project(s) under this Agreement.
3. **Project Completion.**
  - 3.1. *Performance.* Except if delayed for reasons beyond Grantee's reasonable contract, Grantee must fully finish its Project(s) by the date set forth in the CD&E in accordance with and consistent with any deadlines established in the NOFA. Grantee's Project(s) must be deployed and implemented in a manner that complies with all applicable terms, conditions, requirements, and limitations set forth in this Agreement, the NOFA, and as proposed/represented in the Application. Except in the case of any prepayments contemplated by the NOFA ("**Authorized Prepayment(s)**"), prior to being reimbursed for any Allowable Expenditures, Grantee's Project(s) must be "complete" as that term is more fully defined and described herein.
  - 3.2. *Certification.* Subject to the confirmation and verification of the Office, and in accordance with Section 3.3 (Proof of Project Completion), Grantee must certify to the Office that the Project was completed as proposed/represented in the Application, including but not limited to a certification representing that:
    - 3.2.1. The final installation Facilitates Broadband service that reliably meets or exceeds 100/100 Broadband; or,
    - 3.2.2. In cases where 100/100 Broadband was not practicable because of the geography or topography of the area to be served by the Project, or because of the excessive cost of the Project, provide certification that the Project reliably meets or exceeds 100/20 Broadband, including such justifications upon which Grantee relied to determine 100/100 Broadband was not feasible, and provide certification that the Project will be scalable to 100/100 Broadband within three years of the Project Completion Date.
    - 3.2.3. The Project fully complies with and satisfies any and all terms and conditions identified in this Agreement, the NOFA, and all applicable federal, state, foreign, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, including CSLFRF Requirements, all of which may be updated, amended, modified, or added to from time to time and all of which are incorporated herein by reference as of the date of any such change in the law (collectively "**Applicable Laws**").
  - 3.3. *Proof of Project Completion.*
    - 3.3.1. Obligation to Provide Proof. In order to certify project completion and receive final disbursement of funds, Grantee must provide the Office with approved documentation, or proof, that is substantively accurate and complete as set forth in section 3.3.2 (Acceptable Substance of Proof) and in an acceptable data format as set forth in section 3.3.3 (Acceptable Format of Proof). Notwithstanding the foregoing, the Office reserves the right to determine, in its sole discretion, the completeness and sufficiency of proof provided to the Office by Grantee pursuant to this section. If the Office determines that Grantee's completeness and sufficiency of proof is not sufficient, it will inform Grantee without delay. Grantee will then have twenty-one (21) days to update its proof. Grantee acknowledges that its failure to satisfy its obligation to provide proof as required in this section may delay or prohibit certification of project completion and disbursement of funds.
    - 3.3.2. Acceptable Substance of Proof. In order to be considered substantively complete, proof of project completion submitted to the Office must at a minimum demonstrate with specificity where Broadband installation has occurred consistent with Grantee's Application. Such proof must include:
      - 3.3.2.1. Any and all information required to be provided to the federal government pursuant to the CSLFRF Compliance and Reporting Guidance, available at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal->

- [recovery-funds/recipient-compliance-and-reporting-responsibilities](#), including but not limited to Expenditure Categories 5.16-5.17 applicable to broadband infrastructure, and
- 3.3.2.2. Information sufficient to enable the Office to determine which specific Broadband Units (homes, schools, businesses) within each Eligible Service Area(s) forming the basis of the Project have access to 100/100 Broadband or 100/20 Broadband, as applicable, as a result of the Project, and,
  - 3.3.2.3. As-built infrastructure drawings or schematics for which Grant funds have been utilized, regardless of whether such installation actually serves any Broadband Units in the Eligible Service Area(s) forming the basis of the Project at the time such proof is supplied to the Office; and/or,
  - 3.3.2.4. Tower locations and propagation map(s) or model(s); and/or,
  - 3.3.2.5. Address or locations of service locations.
- 3.3.3. **Acceptable Format of Proof.** Grantee shall provide proof of project completion to the Office in any one of the following acceptable data formats, in no particular order:
- 3.3.3.1. Computer Aided Design or “CAD” file which should at a minimum show the project area, including road or landmarks in order to identify project area, and infrastructure buildout design (fiber, OSP, and/or other infrastructure needed to serve customers); or,
  - 3.3.3.2. Project Map in PDF format which should at a minimum show clearly legible streets or other landmarks, show a project area that is clearly delineated, and locations that are now served or can be provided service within 10 business days; or,
  - 3.3.3.3. Spreadsheet of Service Locations, which should at a minimum provide locations as longitude (x) and latitude (y) that are serviceable by the new infrastructure or addresses that are served or can be served. For the sake of clarity, and by example only, coordinates should be shown as Longitude (-92.123456), Latitude (42.123456), OR Address (101 Z Ave Street, Madrid, IA, 50333); or,
  - 3.3.3.4. An ESRI shape file; or,
  - 3.3.3.5. A Google Earth KML or KMZ; or,
  - 3.3.3.6. Upon the express prior approval of the Office, [not to be unreasonably withheld](#), any other format deemed acceptable by the Office.
- 3.4. **Performance Testing.** The Office may, in its sole discretion, conduct performance tests for purposes of verifying compliance with the terms of this Agreement, the NOFA, and Applicable Laws, on one or multiple occasions for up to five (5) years after Broadband service is certified as complete pursuant to Section 3.2 (Certification). The Office may exercise this right both before (with the exception of Authorized Prepayments) and after reimbursing a Grantee for any claimed, Allowable Expenditures; provided that if the Office elects to do so before reimbursing a Grantee for any claimed, Allowable Expenditures, it will do so within a reasonable time, not-to-exceed ~~one (1) year~~ [ninety \(90\) days](#) after Broadband service is certified as complete pursuant to Section 3.2 (Certification). Such performance tests may include but are not be limited to:
- 3.4.1. Speed tests anywhere between a Grantee’s central office and the demarcation at any customer’s location in a Census Block in which the Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service;
  - 3.4.2. In the case of wireless installations, from any location in a Census Block in which the Infrastructure Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service; and/or,
  - 3.4.3. In the event Grantee does not have a customer in a Census Block being served by the installation, a certification obtained by the Grantee and supplied to the Office from an independent, third-party, properly licensed engineer that the installation Facilitates Broadband service at or above 100/100 Broadband or 100/20 Broadband, as applicable, in the Census Block(s) identified in the Core Application. The costs of such certification shall be borne by the Grantee.
- 3.5. **Project Completion.** For purposes of this Agreement, a Project shall be considered “complete” as of the later of the date the Office:
- 3.5.1. Accepts the certifications and proof of project completion provided by Grantee as required by this Section; and,
  - 3.5.2. Verifies that a Project certified as complete complies with the requirements of this Agreement, the NOFA, and Applicable Laws, including pursuant to and in accordance with the Performance Testing obligations of this Section, or
  - 3.5.3. Otherwise affirmatively elects to verify that the project is complete without exercising its rights to Performance Tests or conduct any other monitoring, review, or audit rights available to the Office under this Agreement.
- 3.6. **Consequences of Non-Performance.** Failure to fully satisfy the criteria set forth in Section 3.1 (Performance), and Section 3.2 (Certification), all Applicable Laws, as may be verified pursuant to Section 3.2 (Performance Testing), or failure to otherwise complete the Project as represented in the Core Application, may result in the Office’s denial of a request for reimbursement for any expenditures related to the Project [aspects that failed to satisfy such criteria](#), and Grantee shall not otherwise be entitled to reimbursement for such expenditures.

#### 4. Payment Timing and Procedures.

- 4.1. *Timing of Payments.* Payment shall be made in accordance with the payment schedule set forth in section 1.5.2.3 of the NOFA. With the exception of Authorized Prepayments, no payments for reimbursable Allowable Expenditures shall be made until after:
  - 4.1.1. The Project is “complete” as defined and described in Section 3 (Project Completion); and
  - 4.1.2. The Office receives a summary of all final, claimed, Allowable Expenditures and other sufficient or appropriate documentation required by the Office to support such claimed Allowable Expenditures.
- 4.2. *Not-to-Exceed Total Payment.* Total payment of funds under this Agreement shall not exceed the lesser of the Maximum Funding Request or the Federal Matching Funds Requested identified in Exhibit C of the Core Application, and the lesser of:
  - 4.2.1. Grantee’s total, estimated Allowable Expenditures as set forth in the Budget Plan and, to the extent applicable, the Outside TSA Infrastructure Worksheet; or
  - 4.2.2. Grantee’s total, final Allowable Expenditures upon Project completion.
- 4.3. *Allowable Expenditures.* Grantee shall only be entitled to payment for Allowable Expenditures as enumerated in the NOFA, and in accordance with CSLFRF requirements and the U.S. Department of the Treasury. The Office may order the return of any funds previously disbursed or deny a request for reimbursement for any expenditures that do not constitute Allowable Expenditures, and Grantee shall not otherwise be entitled to payment or reimbursement for any expenditures that do not constitute Allowable Expenditures.
- 4.4. *Proof of Allowable Expenditures.* Within thirty (30) days of completing the Project, and, with the exception of Authorized Prepayments, prior to the disbursement of any funds Grantee must submit a final summary of all Allowable Expenditures incurred in connection with the Project on forms supplied by the Office and attest that such Allowable Expenditures are true, accurate, and in fact constitute Allowable Expenditures, actually incurred by Grantee. The Office may request, in its sole discretion, and Grantee may be required to supply, additional records to verify any Allowable Expenditures claimed by Grantee. Such records may include invoices, original itemized receipts, copies of checks, check registers, or bank statements indicating credit card invoices were paid. *See* Department of Administrative Services - State Accounting Enterprise, Procedure Number 204.200, *available at* [https://das.iowa.gov/sites/default/files/acct\\_sac/sac\\_manual/204/204-200.pdf](https://das.iowa.gov/sites/default/files/acct_sac/sac_manual/204/204-200.pdf) and corresponding procedures referenced therein. For further requirements/guidance on the types of records/proof that may be required to support a claimed Allowable Expenditures see the CSLFRF Compliance and Reporting Guidance, *available at:* <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. The Office may order the return of any funds previously distributed or deny a request for reimbursement for any expenditures Grantee claims that do not constitute Allowable Expenditures, that are submitted more than thirty (30) days after the Project is finished, or the Project Completion Date, whichever is earlier, or that are not supported by sufficient or appropriate documentation, and Grantee shall not otherwise be entitled to payment or reimbursement for any such expenditures, and shall be obligated to return any applicable funds to the Office.
- 4.5. *Compensation, generally.* Notwithstanding anything in this Agreement to the contrary, in no event shall the Office be obligated to pay Grantee any fees, costs, compensation or other amounts in excess of the amount expressly set forth herein in accordance with the terms, conditions, limitations, and requirements of this Agreement, unless the Office otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by the Office. Prior to making any payment, the Office shall review any request for payment and related supporting documentation for compliance with this Agreement, the NOFA, and Applicable Laws. With the exception of Authorized Prepayments, the Office will pay all approved amounts in arrears and in conformance with Iowa Code section 8A.514 and Iowa Admin. Code r. 11-41.1(2), and all other applicable laws, rules, regulations, policies and requirements. The Office may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Office shall have the right to dispute any request for payment, invoice, or other supporting documentation and withhold payment of any disputed amount if the Office believes the documentation is inaccurate, incomplete, insufficient, or incorrect in any way. The Office’s obligation to make payments under this Agreement is contingent upon the continued availability of funds to the Office. No payment, including final payment, shall be construed as or constitute: (1) acceptance of any Project(s) as satisfying the terms, conditions, or requirements of this Agreement, the NOFA, or Applicable Laws; or (2) a waiver by the Office of any rights or remedies it may have to enforce the terms of this Agreement, and Grantee shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. By making any payments under this Agreement, the Office does not waive its ability to challenge any payment or reimbursement for either failing to comply with this Agreement, the NOFA, or any Applicable Laws. Grantee agrees that its acceptance of the last payment from the Office under this Agreement shall operate as a release of any and all claims related to this Agreement that Grantee may have or be capable of asserting against the Office or the State of Iowa, provided that such final payment includes an executed, written mutual release by Grantee and the Office or the State of Iowa of all claims.
- 4.6. *Repayment Obligation.* In the event that any funds, including any Authorized Prepayment, are deferred and/or disallowed as a result of any audits; was expended in violation of the laws applicable to the expenditure of such funds;



or any payment was comprised of claimed expenditures that did not constitute Allowable Expenditures; was not otherwise reimbursable hereunder; was improperly or incorrectly allocated; was unreasonable; was not supported by sufficient and appropriate documentation; or was otherwise made in a manner inconsistent with or in violation of the terms, conditions, or requirements of this Agreement, the NOFA, or any Applicable Laws, Grantee shall be liable to the Office for the full amount of any claim disallowed and for all related penalties incurred directly attributable to Grantee's negligence or noncompliance, and Grantee shall immediately return to the Office funds subject to this Repayment Obligation. This remedy is in addition to and not to the exclusion of any other remedies available to the Office under this Agreement, at law, in equity, or otherwise.

- 4.7. *Set-off Against Sums Owed by Grantee.* In the event Grantee owes the Office or any other governmental entity of the State of Iowa any sum under this Agreement, or any other agreement, pursuant to a judgment, or pursuant to any law, rule, or order, the Office or its designee may set off such sum against any sum invoiced or claim for payment made to the Office or any other governmental entity to the State of Iowa issued or made by Grantee. In addition, any amounts due the Office as damages may be deducted by the Office from any money or sum payable by the Office to Grantee pursuant to this Agreement or any other agreement between Grantee and the Office.
- 4.8. *Erroneous Payments and Credits.* Grantee shall promptly pay or refund to the Office the full amount of any overpayment, erroneous payment, or unallowable expense within ten (10) business days after either discovery by the Grantee or notification by the Office of the overpayment, erroneous payment, or unallowable expense. In the event Grantee knowingly fails to timely pay or refund any amounts due the Office under this Section (Erroneous Payments and Credits), the Office will charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date the payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Office may, in its sole discretion, elect to have Grantee apply any amounts due to the Office under this Section (Erroneous Payments and Credits) against any amounts payable by the Office under this Agreement or any other agreement between the Office and Grantee.
- 4.9. *Reimbursable Expenses.* With the exception of Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, there shall be no other reimbursable expenses associated with this Agreement. Except for expenditures that constitute Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, Grantee shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Grantee.

## 5. **Default and Termination.**

- 5.1. *Termination for Cause by the Office.* The Office may terminate this Agreement without penalty or legal liability upon written notice of Grantee's breach of any term, condition, requirement, or provision of this Agreement, if such breach is not cured within the reasonable time period specified in the Office's notice of breach or any subsequent notice or correspondence delivered by the Office to Grantee. Whether Grantee has sufficiently cured the breach shall be determined in the sole discretion of the Office. In addition, the Office may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:
  - 5.1.1. Grantee, directly ~~or indirectly~~, furnished any statement, representation, warranty or certification in connection with this Agreement, including as set forth in Attachment B (Federal Funding—Required Provisions), attached hereto, that is false, deceptive, or materially incorrect or incomplete;
  - 5.1.2. Grantee or Grantee's Project(s) as implemented has violated or failed to comply with any Applicable Laws, including any Applicable Laws identified or referenced in Attachment B (Federal Funding—Required Provisions), attached hereto;
  - 5.1.3. Grantee's officers, directors, employees, agents, subsidiaries, affiliates, contractors, subcontractors, or a Grantee Contractor has been proven to have committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
  - 5.1.4. Grantee terminates or suspends its business;
  - 5.1.5. Grantee's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
  - 5.1.6. The Office determines ~~or believes~~ Grantee has engaged in conduct that has or may expose the Office or the State to material liability;
  - 5.1.7. The Office determines ~~or believes~~ Grantee is not ultimately a **"Responsible Grantee,"** which shall be determined under the ~~the~~ same standards set forth in the definition of Responsible Applicant in the NOFA;
  - 5.1.8. Any of the following has been engaged in by or occurred with respect to Grantee or any corporation, shareholder, or entity having or owning a controlling interest in Grantee:
    - 5.1.8.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any

- involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- 5.1.8.2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
  - 5.1.8.3. Making an assignment for the benefit of creditors;
  - 5.1.8.4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Grantee's performance of its obligations under this Agreement; or
  - 5.1.8.5. Taking any action to authorize any of the foregoing.
- Grantee shall notify the Office in writing if any of the foregoing events occur that would authorize the Office to immediately terminate this Agreement.
- 5.2. *Remedies for Breach of Contract.* In addition to and not to the exclusion of any remedies available at law, Grantee's breach of this Agreement may result in one or all of the following remedies:
- ~~Grantee will forfeit funds awarded pursuant to this Agreement;~~
- 5.2.1. Grantee will be ineligible for future grant awards offered by or through the State;
  - 5.2.2. Grantee will be subject to other sanctions as provided by Applicable Laws.
- 5.3. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Office shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:
- 5.3.1. The legislature, governor, or other applicable governing body fail in the sole opinion of the Office to appropriate funds sufficient to allow the Office to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement;
  - 5.3.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Office to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Office in its sole discretion;
  - 5.3.3. If the Office's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
  - 5.3.4. If the Office's duties, programs, or responsibilities are modified or materially altered;
  - 5.3.5. If there is a decision of any court, administrative law judge, or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Office's ability to fulfill any of its obligations under this Agreement; or
  - 5.3.6. In the event any audit (whether state or federal) or other review, the Office, or United States governmental entity:
    - 5.3.6.1. Takes exception to the Project(s) provided under this Agreement for which state or federal reimbursement has been paid, or to the manner in which any related funds have been disbursed or expended;
    - 5.3.6.2. Concludes or orders that State or federal funds are deferred or disallowed, or have been disbursed or expended in a manner not consistent with or in violation of any Applicable Laws governing the expenditure of such funds;
    - 5.3.6.3. Concludes or determines that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable.
- 5.4. *Limitation of Payment Obligations.* In the event of a termination of this Agreement for any reason (except for termination pursuant to Section 5.2 (Termination Due to Lack of Funds or Change in Law)), and subject to the terms and conditions of this Agreement, the Office shall, at most, pay only those amounts, if any, to Grantee for aspects of a Project(s) the Office has verified as complete in accordance with the terms and conditions of this Agreement and for which the Office is otherwise obligated to pay pursuant to this Agreement; provided however, that the Office's obligation to pay Grantee such amounts shall be limited by, and subject to, legally available funds. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the Office or the State of Iowa and shall not be construed to require the Office or the State of Iowa to pay any compensation or other amounts hereunder in the event of Grantee's breach of this Agreement or any amounts otherwise withheld by the Office in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Office or the State of Iowa shall not be liable, under any circumstances, for any of the following:
- 5.4.1. The payment of unemployment compensation for Grantee or any Grantee Personnel;
  - 5.4.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

- 5.4.3. Any expenditures that:
  - 5.4.3.1. Do not constitute Allowable Expenditures;
  - 5.4.3.2. Are not properly or correctly allocated in accordance with the allocation methods approved by the Office;
  - 5.4.3.3. Are not supported by sufficient and appropriate documentation; or
  - 5.4.3.4. Are not otherwise reimbursable, due, or owed under the terms or conditions of this Agreement;
- 5.4.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or commitments made in connection with this Agreement; or
- 5.4.5. Any taxes Grantee may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes, or property taxes.
- 5.5. *Grantee's duties upon termination.* Upon request of the Office, Grantee shall, within any reasonable time periods or deadlines specified by the Office:
  - 5.5.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Office may require;
  - 5.5.2. Perform any and all remaining requirements, duties, or obligations as may be required by the federal government or State of Iowa;
  - 5.5.3. Notwithstanding any provision in this Agreement to the contrary, refund to the Office, within fifteen (15) days of the effective date of any termination of this Agreement for any reason, any prepaid or advance fees, funds, or other amounts paid by the Office that:
    - 5.5.3.1. Pertain to any yet to be completed aspect of any Project(s); or
    - 5.5.3.2. Are required to be returned to the Office under any of the circumstances specified in Section 4.4 (Return of Funds to the Office).
- 5.6. *Termination for Convenience.* The Office may terminate this Agreement, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Grantee. Termination for convenience may be for any reason or no reason at all.
- 5.7. *Termination for Cause by Grantee.* Grantee may only terminate this Agreement upon written notice of the breach by the Office of any material term, condition, or provision of this Agreement, if such breach is not cured within sixty thirty (60/30) days of the Office's receipt of Grantee's written notice of breach.
- 5.8. *Survival.* Expiration or termination of this Agreement will not release Grantee from any duties, liabilities, or obligations set forth in this Agreement which:
  - 5.8.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections and associated subsections:
    - 5.8.1.1. Section 3.4 (Performance Testing);
    - 5.8.1.2. Section 3.6 (Consequences of Non-Performance);
    - 5.8.1.3. Section 4 (Payment Timing and Procedures);
    - 5.8.1.4. Section 5.4 (Limitation of Payment Obligation);
    - 5.8.1.5. Section 6 (Indemnification);
    - 5.8.1.6. Section 7 (Representations, Warranties, and Covenants);
    - 5.8.1.7. Section 8 (Publicity);
    - 5.8.1.8. Section 9 (Confidentiality);
    - 5.8.1.9. Section 10 (General Provisions); and
    - 5.8.1.10. Attachment B (Federal Funding–Required Provisions), attached hereto.
  - 5.8.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.
- 5.9. The Office's-Party's right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of any other remedies available to the Office or the State of IowaParties, and the Office or the State of IowaParties shall be entitled to exercise any other rights and pursue any other remedies available under this Agreement, in law, at equity, or otherwise.

## 6. Indemnification.

- 6.1. *Generally.* Grantee shall indemnify and hold harmless the Office and the State of Iowa and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any and all third party claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs, recoupments, and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement in any way whatsoever, to the extentincluding any such claims are related to, resulting from, or arising out of:
  - 6.1.1. Any violation or unmaterial uncured breach of any term or condition of this Agreement by or on behalf of Grantee, including any violation caused by Grantee, Grantee Contractors, or Grantee Personnel;



- 6.1.2. Grantee's, Grantee Contractor's, or Grantee Personnel's performance, failed performance, or attempted performance of this Agreement;
- 6.1.3. Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Grantee, Grantee Contractors, or Grantee Personnel;
- 6.1.4. The failure by Grantee, Grantee Contractors, Grantee Personnel, the Project(s), or the use any funds disbursed hereunder to comply with any Applicable Laws;
- 6.1.5. The furnishing or making by Grantee, Grantee Contractors, or Grantee Personnel, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or misleading;
- 6.1.6. Any failure by Grantee or Grantee Contractors to make any reports, payments, withholdings, or obtain or provide any insurance required by Applicable Laws, including with respect to Social Security, unemployment compensation, workers compensation, employee income, the Affordable Care Act, sales taxes, excise taxes, income taxes, property taxes, and/or other taxes, fees, or costs required by Grantee or Grantee Contractors to conduct business in the State;
- 6.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Office or the State of Iowa by any Grantee Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another governmental entity or any Grantee Personnel against the Office or the State of Iowa in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Grantee Personnel;
- 6.1.8. Any claim involving any personal injury or damage to property, caused, in whole or in part, by Grantee, Grantee Contractors, or Grantee Personnel in any way related to this Agreement;
- 6.1.9. Any claim for violation or infringement of any statutory, regulatory, or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, security, confidentiality, misappropriation, or security to the extent such claim is caused by Grantee, Grantee Contractors, or Grantee Personnel;
- 6.1.10. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any person, including any claims related to the violation or misappropriation of any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right to the extent such claim is caused by Grantee, Grantee Contractors, or Grantee Personnel;
- 6.1.11. Any claim related to the Office's failure to disclose geospatial data pursuant to applicable state, federal, and/or international laws, rules, regulations, or orders, including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders to the extent the Office's failure to disclose such data is caused by Grantee, Grantee Contractors, or Grantee Personnel; or
- 6.1.12. Any indemnification obligation of Grantee set forth or described in the NOFA.
- 6.2. Grantee's obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either Party may assert against the other.
- 6.3. Grantee's duties as set forth in this Section shall survive termination of this Agreement and shall apply regardless of the date any potential claim is made or discovered by the Office, the State of Iowa, or any Indemnitee, subject to any applicable Statute of Limitations and/or Statute of Repose.

## 7. Representations, Warranties, and Covenants.

- 7.1. Grantee represents and warrants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, and intended outcomes of any Project(s) to be delivered hereunder, and that any such Project(s) shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.
- 7.2. Grantee represents and warrants that at the time of execution of this Agreement: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Project(s) required hereunder.
- 7.3. Grantee represents, warrants, and covenants that all Projects(s) be performed or provided under this Agreement shall be performed or provided in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of this Agreement and the highest standards of performance applicable to service providers in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Office promptly notifies Grantee of any aspects of any Project(s) performed reasonably determined to be in violation of this standard, Grantee shall re-perform the relevant aspects of the Project(s) at no additional cost to the Office or impacted consumers, such that the Project(s) are rendered in the above-specified manner, or if the Grantee is unable to perform the Project(s) as warranted, Grantee shall reimburse the Office any fees or compensation paid to Grantee for the unsatisfactory performance.
- 7.4. Grantee represents, warrants, and covenants that it is knowledgeable about, and shall comply with, all Applicable Laws in connection with its performance of this Agreement and with all terms, conditions, requirements, and

assurances, made directly or implicitly, set forth or made by Grantee in or under this Agreement, the NOFA, the Application, and Applicable Laws.

- 7.5. Grantee represents, warrants, and covenants that the Project(s) will at all times meet, conform to and comply with: (1) this Agreement; (2) any and all representations or assurance made, directly or implicitly, in the Application; and (3) Applicable Laws.
- 7.6. Grantee represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State or any department, agency, office, or any other governmental entity, unit, or subdivision thereof, including but not limited to the payment of taxes and employee benefits. Grantee represents that its accounting system is adequate to comply with this Agreement.
- 7.7. Grantee represents, warrants, covenants, and promises that Grantee, Grantee Contractors, and Grantee Personnel have complied with and will continue to comply with, that the Project(s) as implemented will comply with, and that the use or expenditure of any funds paid hereunder will comply with any and all Applicable Laws, both generally and in connection with the performance of this Agreement, including the following:
  - 7.7.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Grantee shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
  - 7.7.2. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
  - 7.7.3. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws if they are applicable.
  - 7.7.4. American Rescue Plan Act Requirements.

Grantee shall take such steps as necessary to ensure Grantee Contractors and Grantee Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement to the contrary, Grantee, Grantee Contractors, and Grantee Personnel's failure to fulfill any requirements set forth in this Section shall be regarded as a material breach of this Agreement and the Office may cancel, terminate, or suspend, in whole or in part, this Agreement without penalty or legal liability. In addition, the Office or its designee may declare Grantee ineligible for future State contracts in accordance with authorized procedures or Grantee may be subject to other sanctions as provided by law, rule, or order.
- 7.8. All representations, warranties, and covenants made by Grantee in this Agreement, whether or not this Agreement specifically denominates Grantee's promise as a warranty or whether the warranty is created only by Grantee's affirmation or promise, or is created by a description of the Project(s) or related outcomes to be provided or that will result, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand those warranties. Grantee's warranties provided in this Section 7 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Office, the State of Iowa, and any and all consumers intended to benefit from such warranties, this Agreement, or the Project(s) resulting herefrom.

8. **Publicity.** The Grantee shall, when issuing statements, press releases, or any marketing or promotional materials describing the Project(s), ensure such materials or communications clearly state: a) the percentage of the total cost of the Project(s) which was or will be financed with federal or state funds; and b) the dollar amount of federal or state funds for the Project(s). Any publication (written, visual, or sound) shall contain the following statements:

“This project was supported by federal funds made available through the American Rescue Plan Act and the State of Iowa, acting by and through the Office of the Chief Information Officer (OCIO). Points of view expressed herein are those of the author or speaker and do not necessarily represent the official position or policies of the United States Government or State of Iowa or endorsement of the project.”

In addition, during the Term and at all times after the termination or expiration of this Agreement, Grantee, Grantee Contractors, and Grantee Personnel shall not make any media release or other public announcement related to the Project(s) without the Office's prior written notification and opportunity for participation/involvement. Except as otherwise required herein, Grantee, Grantee Contractors, and Grantee Personnel shall acquire no right to use, and shall not use, without OCIO's or the State of Iowa's prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the Office or the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; or (b) to express or imply any endorsement of the Project(s).

9. **Confidentiality.**

- 9.1. “Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “Disclosing Party”) to the other party (a “Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that constitutes Personal Information (Iowa Code § 715C.1(11)), the Office’s security protocols and procedures, Office system architecture, information that could compromise the security of the Office’s network or systems, and information about the Office’s current or future competitive procurements, including the evaluation process prior to the formal announcement of results. Confidential Information does not include any information that: (1) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (2) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (3) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (4) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (5) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; or (6) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
- 9.2. In the event the Office receives a request for information marked confidential and the Office is unable to definitively determine that the information is not subject to disclosure under Applicable Law, the Office will give written notice to the Grantee seventy-two (72) hours prior to the release of the information to allow the Bidder to seek injunctive relief pursuant to Iowa Code §§ 22.5 or 22.8. The Grantee’s failure to request confidential treatment of material pursuant to this section and the relevant law will be deemed, by the Office and State personnel, as a waiver of any right to confidentiality that the Grantee may have had.
- 9.3. The Grantee’s employees, agents, and subcontractors may have access to Confidential Information maintained by the State to the extent necessary to carry out its responsibilities under the Agreement. The Grantee shall presume that all information received pursuant to the Agreement is confidential unless otherwise designated by the State. No Confidential Information collected, maintained, or used in the course of performance of the Agreement by Grantee shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Agreement or thereafter. Any data supplied to or created by the Grantee shall be considered the property of the State. The Grantee must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, in whatever form it is maintained, promptly at the request of the State. In the event that a subpoena or other legal process is served upon the Grantee for records containing Confidential Information, the Grantee shall promptly notify the State and cooperate with the State ~~or the State~~ in any lawful effort to protect the Confidential Information. The Grantee shall immediately report to the State any unauthorized disclosure of Confidential Information.

## 10. General Provisions.

### 10.1. *Monitoring, Review, and Status.*

- 10.1.1. Monitoring and Review. In addition to any other terms and conditions hereunder of or related to auditing, verifying, or ensuring Grantee’s compliance with the terms, conditions, requirements, or limitations of this Agreement, the Office shall monitor and review Grantee’s performance under this Agreement to ensure compliance with this Agreement, including Applicable Laws. Such review and monitoring shall include the Office’s assessment of any claims or invoices and any reports furnished by Grantee pursuant to this Agreement. The Office reserves the right to monitor Grantee performance through site visits, reports, or other means deemed necessary by the Office. The Grantee agrees that the Office may conduct during regular business hours site visits to review contract compliance, assess management controls, and assess relevant services and activities. Grantee agrees to ensure the cooperation of Grantee Personnel in such efforts and to provide to the Office all information requested by the Office in the manner determined by the Office; this includes allowing the Office to inspect Grantee or Grantee Contractor’s facilities and books and records in order to monitor and evaluate performance of this Agreement. Notwithstanding anything to the contrary in this Agreement, Grantee shall have no obligation under this Agreement to share any information considered by Grantee to be confidential unless such disclosure is required by applicable law. Following each site visit or review of requested information, the Office may submit a written report to the Grantee which identifies the Office’s findings. A corrective action plan with a timetable to address any deficiencies or problems noted in the report may be requested. The corrective action plan shall be submitted to the Office for approval within the timelines outlined in the written report. The Grantee shall implement the plan after it is approved by the Office. Failure to do so may result in suspension or termination of the Agreement, without penalty or liability to the Office. Grantee shall not impose any charge or fee in connection with any review or monitoring conducted by the Office hereunder.

- 10.1.2. **Status Reports.** The Office may require Grantee to communicate with it about the status of the Project(s). Such communications may include a conference call or an in person meeting (“**Status Meeting**”) or submission to the Office of a report (“**Status Report**”) regarding: (a) An overview and status of the Project(s); (b) Issues encountered and being resolved; (c) Updates on the timing of Project completion; (d) Any other information that the Office may reasonably request.
- 10.1.3. The requirements of this Section shall apply to Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.
- 10.1.4. Any and all of the rights granted to the Office by this Section or otherwise referred to in this Section, or duties or obligations of Grantee under this Section or otherwise referred to in this Section, may be exercised or invoked by the Office or any other entity designated by the Office, including contractors hired by the Office for such purpose or the United States government.
- 10.2. **Record Retention/Access to Records.** Grantee shall maintain accurate, current, and complete books, documents and records that sufficiently and properly document Grantee’s performance under this Agreement, and identify the source and application of funds received or used under this Agreement. Such records must document all fees and other amounts charged under this Agreement, and all expenditures and third-party reimbursements (the “Financial Records”). Grantee shall maintain a sufficient record keeping system to provide the necessary Financial Records data for the purposes of planning, monitoring and evaluating its business and the Project(s). Grantee shall maintain and make available all books, documents and records of the Financial Records for a period of at least five (5) years following the later of the date of final payment, termination, or expiration of this Agreement, or the completion of any required audit, or for a longer period if required by Applicable Law. If any litigation, claim, negotiation, audit or other action involving Grantee’s books, documents and records has commenced or is likely to commence before the expiration of the required retention period, Grantee must retain the records beyond the required retention period until completion of the action and resolution of all issues which arise from it. Grantee shall permit the Office, the Auditor of the State of Iowa, or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records related to the Financial Records, electronic or optically stored and created records or other records of Grantee relating directly or indirectly to Grantee’s performance under this Agreement, wherever located. Notwithstanding anything to the contrary in this Agreement, Grantee shall have no obligation under this Agreement to share any information considered by Grantee to be confidential unless such disclosure is required by applicable law. At the request of the Office, Grantee shall deliver and provide, at no charge, complete copies of such books, documents and records related to the Financial Records to the Office or its designee in such formats and within such reasonable time period as may be specified by the Office in its request. Grantee shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Based on the audit findings, the Office reserves the right to address Grantee’s board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with Applicable Laws addressing proper use of government funds, Grantee shall comply with these additional records retention and access requirements:
- 10.2.1. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds, cash contributions made by Grantee and third party in-kind (property or service) contributions must be verifiable from Grantee’s records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- 10.2.2. Grantee shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 10.2.3. Grantee, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Office.
- The requirements of this Section shall apply to the Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.
- 10.3. **Reimbursement of Audit Costs.** If the Auditor of the State of Iowa or a federal entity notifies the Office of an issue or finding involving the Grantee’s compliance with or violation of Applicable Laws or the terms, conditions, requirements, or limitations of this Agreement governing Grantee’s use of funds distributed under this Agreement, Grantee shall bear the reasonable cost of the Auditor’s review or other similar review and any subsequent assistance provided by the Auditor or federal entity to ~~determine compliance or address or~~ remediate noncompliance. Grantee



- shall reimburse the Office for any reasonable costs the Office pays to the Auditor or federal entity for such review or audit, to the extent that noncompliance has been found.
- 10.4. *Independent Contractor Status.* Grantee, Grantee Contractors, and Grantee Personnel shall not hold themselves out as an employee or agent of the Office or the State of Iowa. Grantee or Grantee Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Grantee Personnel to perform and complete the Project(s). Grantee Personnel are not eligible for and Grantee shall ensure Grantee Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like. Grantee Personnel shall not be considered employees of the Office or the State of Iowa for any purpose, including for federal or state tax purposes. The Office or the State of Iowa shall not withhold taxes on behalf of Grantee or Grantee Contractors. Grantee and Grantee Contractors shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.
- 10.5. *Not a Joint Venture.* Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 10.6. *Obligations of Joint Entities.* If Grantee is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- 10.7. *Assignment and Delegation.* This Agreement or the rights to any funds hereunder may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Office may assign, transfer, or convey this Agreement, in whole or in part, to any governmental entity that succeeds the Office's duties hereunder or otherwise assumes responsibility for the functions or duties currently assumed by the Office. For purposes of construing this clause, a transfer of a controlling interest in Grantee, a merger, sale or consolidation of Grantee, or a sale of substantially all of Grantee's assets shall be considered an assignment. Grantee agrees that it shall provide the Office with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Grantee and of any proposed merger, sale, or consolidation of Grantee. Grantee agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Grantee or any affiliate thereof without the prior written consent of the Office. Grantee further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Grantee under this Agreement.
- 10.8. *Use of Third Parties.* Subject to Applicable Laws, Grantee may enter into contracts or subcontracts for the provision or delivery of services related to the Project(s). The Grantee may enter into these contracts to complete the project provided that the Grantee remains responsible for all deliverables provided under this Agreement. All restrictions, obligations, and responsibilities of the Grantee under this Agreement shall also apply to the subcontractors and the Grantee shall include in all of its subcontracts a clause that so states, to the extent applicable to vendors, contractors or subcontractors of Grantee. The Office shall have the right to request the removal of a subcontractor from the Agreement for good cause.
- 10.9. *Procurement.* Grantee shall develop and adhere to procurement procedures that comply with all Applicable Laws. Grantee shall have and maintain written policies and adhere to procurement procedures that ensure fair, open, and objective competition and that comply with all Applicable Laws. Fair, open, and objective competition, free of fraud, favoritism, or abuse, or the appearance thereof, resulting from arms-length-transactions, is required unless specific advanced approval is obtained from the Office to use a noncompetitive approach in contracting for any good or service. All contracts for goods or services, or subcontracts entered into by Grantee in the performance of this Agreement, shall be the result of ~~a competitive process and~~ arm's length transactions and shall not be the result of family, business, or other personal ties or interests that are or could be perceived to be a conflict of interest or the result thereof.
- 10.10. *Third Party Beneficiaries.* Except as otherwise expressly stated herein, there are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the Office, the State of Iowa, the Office's respective successors and permitted assigns, the federal government, and Grantee.
- 10.11. *Time is of the Essence.* Time is of the essence with respect to Grantee's performance of its obligations under this Agreement, but completion of the Project is subject to reasonable industry standards, and Grantee is excused for delays beyond its reasonable control.
- 10.12. *Legally Available Funds.* All payments under this Agreement are subject to the Office's receipt of sufficient funds. Any termination, reduction or delay of available funds to the Office may, at the Office's sole discretion, result in the termination, reduction, or delay of the distribution of funds to Grantee under this Agreement.
- 10.13. *Cumulative Rights.* The various rights, powers, options, elections, and remedies of the Office and the State provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities available at law, in equity, or otherwise, and shall in no way affect or impair the right of the Office or the State of Iowa to pursue any other contractual, equitable, or legal remedy to which they may be



- entitled. The election by the Office or the State of Iowa of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 10.14. *Choice of Law, Forum, and Dispute Resolution.* This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. The exclusive jurisdiction for any and all litigation related to this Agreement shall be the state or federal courts sitting in Polk County, Iowa. Any litigation between the parties related to this Agreement shall be brought and maintained in the courts sitting in Polk County, Iowa. Grantee waives any objection to such jurisdiction based on forum non conveniens or otherwise. Grantee irrevocably consents to service of process by certified or registered mail addressed to Grantee's agent identified in the CD&E.
- 10.15. *Notices.* Notices under this Agreement shall be in writing and delivered to each party's signatory representative at the addresses provided in the CD&E. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS. Each such notice shall be deemed to have been provided:
- At the time it is actually received in the case of hand delivery;
  - Within one (1) day in the case of overnight delivery, courier or services such as Federal Express with guaranteed next-day delivery; or
  - Within five (5) days after it is deposited in the U.S. Mail.
- 10.16. *Integration.* This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included or incorporated into this Agreement. Grantee acknowledges that it has thoroughly read this Agreement and all related terms and conditions, including any attached or incorporated schedules, exhibits, and other like documents, and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Office or the State of Iowa on the basis of draftsmanship or preparation thereof.
- 10.17. *Amendments.* This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Office and Grantee. Both Parties must execute all amendments to this Agreement in writing in order for the amendments to this Agreement to be binding.
- 10.18. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 10.19. *Headings and Captions.* The section headings or captions used in this Agreement are for identification purposes only and are non-substantive.
- 10.20. *Multiple Counterparts and Electronic Signatures.* This Agreement, any amendments hereto, or any related instruments, attachments, exhibits, or addenda executed separately in connection with this Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties. Each copy of such document(s) so executed shall constitute an original. The parties consent to the use of electronic signatures for execution of this Agreement, and any such electronic signatures shall be deemed original signatures.
- 10.21. *Material Breaches.* References in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 10.22. *Taxes.* Grantee shall be responsible for paying any taxes (including sales taxes, excise taxes, use taxes, income taxes or property taxes) incurred by Grantee in the performance of this Agreement.
- 10.23. *Certification Regarding Sales and Use Tax.* By executing this Agreement, Grantee certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code § 423.1(47) and (48).
- 10.24. *Tobacco Free Environment.* Grantee agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. Grantee agrees that it shall comply with Iowa's Smokefree Air Act, contained at Iowa Code chapter 142D.
- 10.25. *Exclusivity.* This Agreement is not exclusive, and the Office or the State of Iowa may enter into other Agreements with third parties for the provision of similar services.
- 10.26. *Sovereign Immunity.* Notwithstanding anything in this Agreement to the contrary, neither the Office nor the State of Iowa waives any immunity defenses (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise) or any other defenses available to either by entering into this Agreement, and specifically retains and reserves all immunity defenses.
- 10.27. *Attorney's Fees and Expenses.* In the event Grantee-either Party defaults on any of its obligations under this Agreement, Grantee-the defaulting Party shall pay to the Office-non-defaulting Party all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the State-of-Iowanon-defaulting Party) incurred by the Office-or-the State-of-Iowanon-defaulting Party in enforcing this Agreement or any of its rights and remedies with respect thereto.

- 10.28. *Conflicts of Interest.* Grantee represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement between Grantee, Grantee Contractors, or Grantee Personnel and the Office or the State of Iowa that is or may constitute a conflict of interest or the appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement, and Grantee, Grantee Contractors, and Grantee Personnel shall not engage in any conduct or permit any third party from engaging in any conduct that would violate that chapter.
- 10.29. *Brokering Certification.* Grantee certifies that no person representing the Office, nor any external entity or person, has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingency.
- 10.30. *Report Misuses of Funds.* Grantee must promptly refer to the Office any credible evidence that a principal, employee, agent, contractor, subgrantee or subrecipient, subcontractor, or other person has either: 1) submitted a false claim for grant funds as that term is use under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any Grantee Contractor for the Project(s) hereunder.
- 10.31. *Restrictions and certifications regarding non-disclosure agreements and related matters.* Grantee may not require any Grantee Contractor or Grantee Personnel to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to the Office or an investigative or law enforcement representative of a federal or state department or agency authorized to receive such information. Grantee represents that it neither requires nor has required internal confidentiality agreements or statements from Grantee Contractors or Grantee Personnel that currently expressly prohibit or otherwise currently intentionally restrict (or purport to prohibit or restrict) such Grantee Contractors or Grantee Personnel from reporting waste, fraud, or abuse as described above.
- 10.32. *Certification Regarding Iowa Code Chapter 8F.* If Grantee is or becomes subject to Iowa Code chapter 8F during the entire term of this Agreement, including any extensions or renewals thereof, Grantee shall comply with the following:
- 10.32.1. Grantee shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.
  - 10.32.2. Grantee will provide the information described in this section to the Office or the Legislative Services Agency upon request. Grantee shall not impose a charge for making information available for inspection or providing information to the Office or the Legislative Services Agency.
  - 10.32.3. Pursuant to Iowa Code § 8F.4, Grantee shall file an annual report with the Office and the Legislative Services Agency within ten (10) months following the end of Grantee's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
    - 10.32.3.1. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Agreement. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.
    - 10.32.3.2. Financial information relating to all service contracts with the Office during the preceding year, including the costs by category to provide the contracted services.
    - 10.32.3.3. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of Grantee covering the preceding year.
    - 10.32.3.4. Corrective action taken or planned by Grantee in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.
    - 10.32.3.5. Any changes in the information submitted in accordance with Iowa Code § 8F.
    - 10.32.3.6. A certification signed by an officer and director, two directors, or the sole proprietor of Grantee, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.
  - 10.32.4. This Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications.
- 10.33. *Authorization.* Grantee represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- 10.34. *Force Majeure.* Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could reasonably anticipate or which if anticipated, is incapable of reasonably being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not reasonably have been avoided through the exercise of ~~all~~ due care, such as acts of God,

war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Grantee or Grantee Contractors; ~~claims or court orders that restrict Grantee's or Grantee Contractor's ability to perform or deliver the services contemplated by this Agreement; strikes; labor unrest; Covid 19, pandemics, epidemics or any other outbreak or event causing illness or disease or resulting in a state of emergency or disaster declared by either the State of Iowa or the United States of America; any impacts to any Grantee Contractor's, Grantee Personnel, or Grantee's supply chain caused in whole or in part by any pandemic, epidemic or outbreak, illness or disease.~~ If delay results from a Grantee Contractor's conduct, negligence or failure to perform, Grantee shall not be excused from compliance with the duties and obligations of Grantee hereunder unless the Grantee Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Grantee's performance, Grantee shall immediately use its ~~reasonable best~~ efforts to directly provide alternate, and to the extent ~~reasonably~~ possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Office, ~~but shall not be unreasonably withheld~~. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall ~~promptly immediately~~ notify the other Party of the occurrence and reason for the delay. The Parties shall make every ~~reasonable~~ effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events.

10.35. *Contingent Awards.* If at the time an Award is made the Office's determination of whether any geographic area forming the basis of a proposed Project(s), in whole or in part, or any Project(s) itself, in whole or in part, is eligible to receive funding under the Program is currently subject to challenge, or the Office's administration of the Award process resulting in the Award forming the basis of this Agreement is subject to challenge, including any subsequent judicial review or appeal from any administrative challenge process, the Office may proceed to enter into this Agreement ~~with~~ the Grantee. Notwithstanding the foregoing or anything in this Agreement to the contrary, the aspect(s) of the Office's Award(s) that is subject to such challenge at the time of the execution of this Agreement shall be valid and enforceable only to the extent the Office's original determination or Award, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal therefrom. If a geographic area or a Project(s) itself is ultimately determined to not be eligible, in whole or in part, or a portion of an Award is later deemed invalid, in whole or in part: the Grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the Office may require the Grantee to amend the Agreement to reflect such result; and the Grantee will be required to reimburse the Office for any corresponding funds previously distributed by the Office, ~~but not yet utilized~~, including as it relates to any advance payments or prepayments.

~~+10.35-10.36.~~ *Title.* Pursuant to 2 C.F.R. §§ 200.313-.314, title to procured equipment, materials, and supplies funded, in whole or in part, by this Grantee shall vest in Grantee. ~~To further clarify, title to everything installed and constructed by Grantee pursuant to the Project, regardless of whether paid for, in whole or in part, by any grant, public funds or any money or funds provided by any government entity, shall at all times remain with Grantee, including without limitation any fiber, network, equipment, cables, hardware, conduit, duct space, laterals, and any related materials, equipment and supplies (collectively, the "Network"). Grantee shall be free to transfer, sell or assign the Network, in whole or part, at any time without restriction to any Grantee affiliate or to any third party, as determined by Grantee in its sole discretion regardless of whether the Network is paid for, in whole or in part, by any grant, public funds or any money or funds provided by any government entity.~~

## Attachment B – Federal Funding - Required Provisions

### Overview and Scope

1. **Overview.** This Attachment B sets forth the additional federal funding requirements applicable to a grant of funds under Section 602 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) (“ARP Act”) and the NOFA. The “Grantee” and the “Office” for purposes of this Attachment B means the parties identified on the CD&E, each party may also be referred to herein individually as a “**Party**” or collectively as the “**Parties**.” References in this Attachment A to the “Agreement” mean the Grant Agreement Number identified on the CD&E. Capitalized terms not defined herein shall have the meanings provided in the NOFA or Applicable Law.
2. **ARP Act Requirements.** ARP Act requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of Grantee. The Treasury Guidance and related Frequently Asked Questions clarify and provide guidance as to the applicable C.F.R. provisions relating to internal controls, subrecipient monitoring and management, and audit requirements that apply to the Office and thereby sub awardees or contractors receiving such funds through this NOFA. These requirements are therefore considered legally binding and enforceable under this NOFA. The Office reserves the right to pursue any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds, or recoupment as may be necessary to ensure compliance with ARP Act requirements. Grantee’s obligations in regard to ARP Act requirements include but are not necessarily limited to:
  - 2.1. The ARP Act;
  - 2.2. 31 C.F.R. part 35;
  - 2.3. The Coronavirus State and Local Recovery Funds guidance, including any updates or changes thereto (“**Treasury Guidance**”), available at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>;
  - 2.4. The Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, including any updates or changes thereto (“**Treasury FAQ**”), which at the time of the publication of this NOFA was last updated as of July 19, 2021, and was available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>;
  - 2.5. Applicable provisions of Federal Uniform Guidance (2 C.F.R. part 200), including but not limited to:
    - 2.5.1. 2 C.F.R. § 200.216 (prohibition on certain telecomm. and video surveillance services and equipment);
    - 2.5.2. 2 C.F.R. § 200.303 (regarding internal controls);
    - 2.5.3. 2 C.F.R. § 200.322 (domestic preferences for procurements);
    - 2.5.4. 2 C.F.R. § 200.323 (procurement of recovered materials);
    - 2.5.5. 2 C.F.R. §§ 200.330 through 200.332 (regarding subrecipient monitoring and management);
    - 2.5.6. 2 C.F.R. § 200.471 (telecommunication costs and video surveillance costs); and,
    - 2.5.7. 2 C.F.R. part 200, Subpart F (regarding audit requirements)
  - 2.6. Any other specific grant award requirements set forth in any grant agreement or other similar document between the State of Iowa and federal government governing the use of ARP Act funds or applicable to Projects receiving ARP Act funds.
3. **Necessary and Allowable Expenditures.** Grantee represents and warrants that the funds from this grant shall only be used for Allowable Expenditures as defined in the NOFA.
4. **Internal Controls and Single Audit Act, SubPart F.** Funds allocated in connection with the Agreement are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332. To the extent required to comply with 2 C.F.R. 200, Subpart F - Audit Requirements, Grantee shall complete an audit at the end of the Grantee’s fiscal year ending after December 30 each year, if required.
  - 4.1. ARP Act funds distributed hereunder count toward the \$750,000 or more threshold applicable to federal awards spent during the fiscal year, which triggers 2 C.F.R. part 200, subpart F regarding audit requirements for nonprofits or governmental entities. Nonprofit and local government subrecipients that expend \$750,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200. A copy of the final audit report shall be submitted to the Office if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Office. The audit report, if required, shall include a schedule of the prior year’s questioned costs (to the extent applicable), along with a response to the current status of the prior year’s questioned costs. Copies of all management letters written as a result of the audit shall also be forwarded to the Office within one (1) month of the time of receipt by the Grantee accompanied by an action plan, if applicable, for each. Grantee shall provide the Office with a copy of any written audit findings or reports, whether in draft or final form, required to be submitted to the Office per the criteria above within two (2) Business Days following receipt by the Grantee. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Office that the required audit was conducted in accordance with Government Auditing Standards and that neither the schedule



of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Office. See the OMNI Circular, Section 200.330, Subrecipient and Contractor Determinations for a discussion of subrecipient versus contractor (vendor) relationships.

- 4.2. These audit requirements do not generally apply to for-profit business; however, the Office remains responsible for ensuring compliance with the Agreement and ARP Act requirements through the implementation of audit and monitoring controls pursuant to 2 C.F.R. 200.501(h). These requirements are addressed in the Project certification, monitoring, review, status, and recoupment provisions in Sections 3 (Project Completion), 4 (Payment Timing and Procedures), 10.1 (Monitoring, Review, and Status), and 10.2 (Records Retention and Access).

The requirements of this Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

5. **Cost Principles.** To the extent applicable, in addition to any other terms, conditions, restrictions, or limitations applicable to Allowable Expenditures or reimbursable expenses or costs under the Agreement, the costs or expenses charged, paid, or reimbursed under the Agreement shall be determined as allowable under the cost principles detailed in 2 CFR 200 Subpart E – Cost Principles. To the extent that indirect costs qualify as Allowable Expenditures under the Agreement and Grantee does not have an indirect cost rate, the de minimis rate shall apply.
6. **Restriction on Leveraging Funding.** No portion of the funds received under the Agreement may be used for the purpose of obtaining additional federal funds under any other law of the United States, except if authorized under that law.
7. **Federal Award Management System.** Unique entity identifier and System for Award Management (SAM)—Required. Grantees must normally (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Proof of SAM registration and corresponding account information must be provided by Grantee before any payments will be made under the Agreement.
8. **Recovery of Funds.** If a State or federal audit takes exception to the Project(s) provided under the Agreement for which federal funds have been paid or reimbursed, or if federal funds are deferred and/or disallowed as a result of any audits (or expended in violation of the laws applicable to the expenditure of such funds, including ARP Act Requirements), Grantee will be liable to the Office and the State or Iowa (or any other applicable governmental entity, including the United States Department of Treasury) for the full amount of any such payment, reimbursement, or any claim disallowed (or the amount of funds expended in violation of applicable laws or requirements) and for all related penalties incurred. If the Office or any federal governmental entity concludes that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable under the Agreement, Grantee will be liable to the Office and the State of Iowa (or any other applicable governmental entity, including the United States Department of Treasury) for such cost. Grantee shall pay to the Office or State of Iowa (or any other applicable governmental entity, including the United States Department of Treasury) all amounts for which the Grantee is liable under this section within ten (10) business days of receiving a written demand or written notice. The Office may withhold any payment under the Agreement if Grantee fails to timely make any payment required by this Section. The requirements of this Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with the Agreement to agree to and be subject to and bound by such terms and provisions.
9. **Required Certifications.** Each of the following required certifications set forth below is a material representation of fact upon which reliance is placed by the Office prior to distributing federal funds. In addition to any criminal penalties authorized by Iowa Code section 720.2 that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, a Grantee that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect shall be obligated to repay the Office the entire amount of any grant funds previously distributed by the Office to Grantee under the Agreement. By signing the Agreement, Grantee's authorized representative who must be expressly authorized to make the below certifications on behalf of Grantee, under penalty of perjury as authorized by Iowa Code section 622.1 and pursuant to the laws of the State of Iowa, certifies and attests to Grantee's compliance with the following. The following certifications shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications. Grantee may be required to provide any information identified or required in connection with the below certifications as a precondition to receiving funds under the Agreement.
  - 9.1. **Drug Free Workplace.** This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.). These regulations require certification by Grantees (and Grantee Contractors) that they will maintain a drug-free workplace. In accordance with these Applicable Laws, Grantee certifies that it does currently and will continue to provide a drug-free workplace, including by minimally:



- 9.1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 9.1.2. Establishing an ongoing drug-free awareness program to inform employees about:
  - 9.1.2.1. The dangers of drug abuse in the workplace;
  - 9.1.2.2. Grantee's policy of maintaining a drug-free workplace;
  - 9.1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - 9.1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- 9.1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by Section 9.1.1.
- 9.1.4. Notifying the employee in the statement required by Section 9.1.1, as a condition of their continued employment, that the employee will:
  - 9.1.4.1. Abide by the terms of the statement; and
  - 9.1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- 9.1.5. Notifying the Office in writing, within ten (10) calendar days after receiving notice under Section 9.1.4 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- 9.1.6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under Section 9.1.5, with respect to any employee who is so convicted:
  - 9.1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 9.1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- 9.1.7. Making a good faith effort to continue to maintain a drug-free workplace consistent with Sections 9.1.1 through 9.1.6 during the Term.
- 9.2. *Lobbying.* This certification is required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. § 1352. These regulations require certification by Grantees (and Grantee Contractors) that they have not engaged in prohibited lobbying activities and/or have filed any required disclosures in accordance with these Applicable Laws. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code; any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. In accordance with these Applicable Laws, Grantee certifies the following:
  - 9.2.1. No federal funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of the Office, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - 9.2.2. If any funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the Office, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, Grantee must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 9.3. *Suspension and Debarment.* This certification is required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. part 19 regarding Debarment, Suspension, and Other Responsibility. A contract award must not be made to parties listed on the government-wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- 9.4. *Certification Regarding Environmental Tobacco Smoke.* This certification is required by Public Law 103-227, also known as the Pro-Children Act of 1994 (“**Pro-Children Act**”). The Pro-Children Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The Pro-Children Act also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The Pro-Children Act does not apply to children’s services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. In accordance with these Applicable Laws, Grantee certifies and agrees to the following with respect to it and its principles, as applicable. Grantee certifies that it will comply with the requirements of the Pro-Children Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act.
- 9.5. *Assurance of Compliance Nondiscrimination in Federally Assisted Programs & Equal Opportunity.* This certification requires Grantee to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” To the extent required by these Applicable Laws, Grantee certifies during the performance of this Agreement that:
- 9.5.1. The Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 9.5.2. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 9.5.3. The Grantee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Grantee's legal duty to furnish information.
- 9.5.4. The Grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 9.5.5. The Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 9.5.6. The Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 9.5.7. In the event of the Grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Grantee may be declared ineligible for further Government contracts or federally assisted

- construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 9.5.8. The Grantee will include the portion of the sentence immediately preceding paragraph 9.5.1 and the provisions of paragraphs 9.5.1 through 9.5.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.
  - 9.5.9. The Grantee further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the Grantee so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
  - 9.5.10. The Grantee agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of grantees and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
  - 9.5.11. The Grantee further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
  - 9.6. *Americans with Disabilities Act*. Grantee certifies that it shall comply with Subtitle A, title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Department of Justice implementing regulation, 28 C.F.R. part 35.
  - 9.7. *Equal Treatment for Faith Based Organizations*. Grantee shall comply with any applicable requirements of 28 C.F.R. part 38, governing "Equal Treatment for Faith Based Organizations." The Equal Treatment Regulation provides in part that grant awards may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Grant recipients, including contractors may still engage in inherently religious activities, but such activities must be separate in time or place from the grant funded program, and participation in such activities by individuals receiving services from the Grantee or a subgrantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs funded through grant funding are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding the foregoing, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See [http://www.ojp.gov/about/ocr/equal\\_fbo.htm](http://www.ojp.gov/about/ocr/equal_fbo.htm).
  - 9.8. *Immigration and Naturalization Service*. Grantee certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Grantee Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.
  - 9.9. *Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708)*. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). To the extent applicable, Grantee must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in

surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9.10. *Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Grantee agrees to comply with these Applicable Laws, violations of which must be reported to the Office and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).

9.11. *Federal Funding Accountability and Transparency Compliance.* This certification is required by the Federal Funding Accountability and Transparency Act (“FFATA”). FFATA requires recipients of individual federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. In accordance with 2 C.F.R. part 170 (Reporting Subaward and Executive Compensation Information), the Office must report the following information for any grant award subject to the FFATA reporting requirements:

- 9.11.1. Name of entity;
- 9.11.2. Amount of award;
- 9.11.3. Funding agency;
- 9.11.4. NAICS code for contracts / CFDA program number for grants;
- 9.11.5. Program source;
- 9.11.6. Award title descriptive of the purpose of the funding action;
- 9.11.7. Location of the entity;
- 9.11.8. Principal place of performance;
- 9.11.9. Unique identifier of the entity (DUNS #);
- 9.11.10. Total compensation and names of the top five executives if:
  - 9.11.10.1. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25M annually; and
  - 9.11.10.2. Compensation information is not already available through reporting to the SEC.
- 9.11.11. Grantees must submit FFATA required data by the end of the month, plus 30 days, in which the award or any subsequent award amendment is made.
- 9.11.12. Grantee certifies the following:
  - 9.11.12.1. Grantee agrees to comply with the provisions of FFATA;
  - 9.11.12.2. Grantee agrees to provide needed information as outlined above to the Office within the timelines identified above, or upon request by the Office, as is necessary to facilitate the Office’s compliance with FFATA.

9.12. *Davis-Bacon Act/Copeland Act.* When required by Federal program legislation,<sup>1</sup> all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, if required under applicable law, contractors/grantees must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, if required under applicable law, contractors/grantees must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation if required under applicable law. The decision to award a contract/grant or subcontract must be conditioned upon the acceptance of the wage determination if required under applicable law. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency if required under applicable law. The contracts/grants must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public

<sup>1</sup> Pursuant to guidance issued as late as September 2021, the U.S. Treasury has conveyed that the Davis-Bacon Act does not directly apply to ARPA-funded projects that are valued at less than \$10 million dollars. See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions § 6.17 (available at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>) (last updated July 19, 2021). However, documentation of compliance with Davis-Bacon may obviate other reporting obligations for projects valued at \$10 million and above. See State and Local Fiscal Recovery Funds, Compliance and Reporting Guidance p. 21 (available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>) (last updated Sept. 30, 2021).

Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor/grantee or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

9.11.13.9.12.1. Notwithstanding the foregoing, Grantee assumes that the Davis Bacon Act does not apply to the work funded in whole or in part by this Grant. Should Davis-Bacon be determined to apply, Grantee reserves the right to adjust its application budget and/or its funding reimbursement requests to reflect the increases in administrative and wages costs arising from the Act.