

# STATE OF IOWA

KIM REYNOLDS, GOVERNOR

ADAM GREGG, LT. GOVERNOR

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

**Exhibit E - NOFA #008**  
**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 #008 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 (the "Notice Address")	
<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 Grantee's Agent (if different, delete if inapplicable) (Section 10. )</b> <b>Address to send legal notices pursuant to Section 10.16 if different from above (the "Notice Address")</b>	
<b>Designation under 2 C.F.R. § 200.331:</b> For purposes of this Agreement, Grantee is deemed a "subrecipient" receiving a fixed amount subaward. <i>See generally</i> 2 C.F.R. part 200.	
<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 Capital Projects Fund ("CPF") Notice of Funding Availability ("NOFA") #008.	
<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].	

**6. Documents Incorporated/Order of Precedence.** 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:

1. First, by giving preference to any declarations and/or representations made on this CD&E;
2. Second, by giving preference to Attachment B - Federal Funding Required Provisions;
3. Third, by giving preference to Attachment A - General Terms and Conditions;
4. Fourth, by giving preference to the provisions of the Broadband Grants Program—Empower Rural Iowa, CPF Notice of Funding Availability #008 (Exhibit A);
5. Fifth, by giving preference to the provisions of Grantee's application ([NOFA #008 Application #]) (the "**Application**") in response to the Notice of Funding Availability #008 (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.

**7. Acknowledgement of Subrecipient Status.** By executing this Agreement and accepting this CPF-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 and receiving a fixed amount subaward.

### 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: \_\_\_\_\_

As a condition of entering into this Contract with the Agency, the Grantee certifies that: 1) it has the information required by Iowa Code Chapter 8F and referenced in Section 10.32, Certification Regarding Iowa Code Chapter 8F available for inspection by the Agency and the Iowa Legislative Services Agency; and 2) the Grantee is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the Grantee and the requirements of Iowa Code Chapter 8F.

**Per Iowa Code § 8F.3(2), certification shall be signed by: 1) An officer and director; OR 2) Two directors; OR 3) The sole proprietor of the Grantee, whichever is applicable.**

Grantee:	Grantee:
Signature of Authorized Representative:	Signature of Authorized Representative:
Printed Name:	Printed 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 CPF 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.  
ICS will incur an Administrative pass-through expense of \$4,000,000 to cover Accounting, Management, Design, Project Management and other administrative expenses & overhead.
  - 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. *Period of Performance.* The period of performance begins on March 15, 2021, and ends Sept. 30, 2026 (the "CPF Performance Period"). Only costs associated with project costs incurred, paid, and invoiced to the Office during the CPF Performance Period, or that were incurred prior to Grantee's receipt of this award and subsequently used in the Project, may be considered as Allowable Expenditures under this Grant Agreement. 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 ARP Act Requirements (see Attachment B), 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. 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 federal guidance; and
- 3.3.2.2. Information sufficient to enable the Office to determine which specific Eligible Service Locations within the Project Area 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 within the Project Area 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 and must include the Iowa Address Location ID.
- 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, 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 years 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 service location 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 service location 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 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, to the service locations 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.
  - 3.5.4. Confirms that the Grantee participates in the Affordable Connectivity Program and is offering customers in their completed project area assistance with enrollment.
- 4. Payment Timing and Procedures.**
  - 4.1. **Timing of Payments.** Payment shall be made in accordance with the payment schedule set forth in 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 funds available are capped at the value set forth on page 1 of this Agreement (4. Awarded Funds), however, that value may be reduced if the final Allowable Expenditures upon project completion are lower than those set forth in the Budget Plan.

- 4.3. *Allowable Expenditures.* Grantee shall only be entitled to payment for Allowable Expenditures as enumerated in the NOFA, and in accordance with CPF 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 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\\_sae/sae\\_manual/204/204-200.pdf](https://das.iowa.gov/sites/default/files/acct_sae/sae_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 CPF Compliance and Reporting Guidance, *available at:* <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associate-d-States.pdf>. 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 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 60 days, as provided in Iowa Code section 8A.514. However, an election to pay in less than 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. Any determination of whether to allow prepayment shall be at the sole discretion of the Office. When allowed, prepayment will only be made for anticipated construction costs and only on an as-needed basis. In the event of transfer or assignment of this Agreement before completion of the Project, the Office may require return of some or all of the amounts prepaid.
- 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; were 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; were not otherwise reimbursable hereunder; were improperly or incorrectly allocated; were unreasonable; were not supported by sufficient and appropriate documentation; or were 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 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 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 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 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 Agency.* The Agency may terminate this Agreement upon written notice of Grantee's breach of any material term of the Agreement if the breach is not cured within the time period specified in the Office's notice of breach. In addition, the Office may terminate this Agreement without advance notice if:
- 5.1.1. Grantee makes false statements in connection with the Agreement,
  - 5.1.2. Grantee, its staff, or its subcontractors have engaged in criminal conduct including fraud, misappropriation, embezzlement, or malfeasance,
  - 5.1.3. Grantee takes any steps, as determined in the Agency's discretion, towards dissolution or suspension of business,
  - 5.1.4. Grantee's authority to do business here or elsewhere is threatened or lost,
  - 5.1.5. Grantee has failed to comply with Applicable Laws when performing pursuant to the Agreement,
  - 5.1.6. Grantee's ability to perform is materially impacted by third-party claims of intellectual property violations by Grantee, or
  - 5.1.7. Grantee's actions may expose the Office to material liability.

Grantee shall notify the Agency of any events that could give rise to the Office's right to terminate for cause.

- 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:
- 5.2.1. Grantee will forfeit funds awarded pursuant to this Agreement, including denial for reimbursement for any expenditures related to the project;
  - 5.2.2. Grantee will be ineligible for future grant awards offered by or through the State;
  - 5.2.3. Grantee will be subject to other sanctions as provided by Applicable Laws;
  - 5.2.4. Grantee may be subject to debarment or suspension under Iowa Admin. Code r. 10.13;
  - 5.2.5. Limitation of the state payment obligation to the extent that Grantee fails to serve all Eligible Service Locations in the Project Area so that the Office can contract with a third party to build out the service to the orphaned locations.
- 5.3. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Office may terminate this Agreement, in whole or in part, without penalty or liability and without any advance notice if:
- 5.3.1. the Office determines that it has not been appropriated sufficient funds or funds have been reduced, unallocated, or delayed such that the Office cannot, in the Office's sole discretion, meet its obligations,
  - 5.3.2. the Office's authority has been withdrawn or materially altered, or its duties, programs or responsibilities are modified or materially altered, or
  - 5.3.3. there is a judicial decision that materially or adversely affects the Office's ability to fulfill obligations under this Agreement.
- 5.4. *Limitation of Payment Obligations.* If the Office terminates this Agreement for cause, the Office retains the right to contest amounts that remain unpaid as of the date of termination. In all other termination contexts, the Office will

pay those amounts due for aspects of a Project the Office has verified as complete in accordance with the terms and conditions of this Agreement and for which the Office is obligated to pay up to the date of termination to the extent that funds to make these payments are legally available. Payment is contingent on submission and acceptance of invoices for sums due. Under no circumstances will the Office be liable for sums not expressly owed under the terms of the Agreement.

- 5.5. *Grantee's duties upon termination.* Upon request of the Office, Grantee shall, within any 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 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 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 4.6 (Repayment Obligation).
- 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 60 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 that remain to be performed or by their nature would be intended to be applicable following any such expiration or termination, or that the Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections and associated subsections:
  - 5.8.1. Section 3.4 (Performance Testing);
  - 5.8.2. Section 3.6 (Consequences of Non-Performance);
  - 5.8.3. Section 4 (Payment Timing and Procedures);
  - 5.8.4. Section 5.4 (Limitation of Payment Obligation);
  - 5.8.5. Section 6 (Indemnification);
  - 5.8.6. Section 7 (Representations, Warranties, and Covenants);
  - 5.8.7. Section 8 (Publicity);
  - 5.8.8. Section 9 (Confidentiality);
  - 5.8.9. Section 10 (General Provisions); and
  - 5.8.10. Attachment B (Federal Funding–Required Provisions), attached hereto.
- 5.9. The Office'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 Iowa, and the Office or the State of Iowa 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, or representatives (“**Indemnitees**”) from and against any claims, legal actions, judgments, penalties, recoupments, or other costs, including costs of counsel, in any way arising out of Grantee's performance or attempted performance under this Agreement. Grantee's indemnification obligations survive termination of this Agreement.

## 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: (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 or will obtain all such rights, permits, permissions, licenses and authority in a timely manner so as not to delay any Project(s).
- 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 notifies Grantee of any aspects of any Project(s) performed 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.
  - 7.7.4. American Rescue Plan Act Requirements, including but not limited to guidance issued under relevant programs under Title 42 U.S.C., Chapter 7, subchapter VI.

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 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 will 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. Following each site visit or review of requested information, the Office may submit a written report to the Grantee that 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. Grantee shall maintain a sufficient record keeping system to provide the necessary 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 for a period of at least five 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, 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. At the request of the Office, Grantee shall deliver and provide, at no charge, complete copies of such books, documents and records to the Office or its designee in such formats and within such 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 canceled 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 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 costs the Office pays to the Auditor or federal entity for such review or audit.

- 10.4. *Independent Contractor Status.* Grantee shall at all times be deemed an independent contractor. Grantee, its employees, agents, and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any state agency simply by virtue of work performed pursuant to this Agreement. Grantee shall be responsible for all its withholding taxes, social security, unemployment, worker's compensation and other taxes and shall hold the Office harmless for any claims for same. If Grantee is a non-profit organization or affiliated with a government organization, the Grantee shall file all required state and federal reports to maintain such status.
- 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 may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Agency may assign, transfer, or convey this Agreement, in whole or in part, to any governmental entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency. 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), but Grantee will remain 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. 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.* There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the Office, the State of Iowa, 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.
- 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.* Any legal notices required by the Agreement shall be given in writing by registered or certified mail with proof of receipt, or overnight delivery, which shall be addressed to each party's Notice Address. From time to time, the parties may change the name and address of a party designated in the Notice Address. Such changes shall be in writing to the other party. Notices shall be deemed to have been provided at the time it is actually received in the case of hand delivery; within one day in the case of overnight delivery; or within five 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. This Agreement may not be amended by informal means, such as exchange of correspondence, or through language included on transactional documents.
- 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.* If Vendor defaults or is found to be in breach of its obligations under this Agreement by a court or tribunal of competent jurisdiction or if the Vendor fails to successfully defend against any legal action arising out of or relating to this Agreement, the Vendor shall be liable for and shall promptly reimburse the Agency for all reasonable attorney’s fees, court costs, and any other related expenses incurred by the Agency in enforcing its rights or remedies under this Agreement.
- 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 used 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 prohibit or otherwise currently 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 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 anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not 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 best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Office. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other



Party of the occurrence and reason for the delay. The Parties shall make every 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 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, including as it relates to any advance payments or prepayments.

## 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 Coronavirus Capital Projects Fund, 42 U.S.C. § 804 (“CPF”). 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 B 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. All CPF 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/capital-projects-fund>
  - 2.3. Applicable provisions of Federal Uniform Guidance (2 C.F.R. part 200) applicable to subrecipients receiving a fixed amount subaward. Pursuant to subregulatory guidance published by the U.S. Treasury on May, 17, 2023, Grantee is not required to comply with the cost principles and procurement practices of the Uniform Guidance, and,
  - 2.4. 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. **Ownership & Federal Interest.**
  - 3.1. The federal government’s interest in CPF broadband infrastructure built pursuant to this Agreement will last until December 31, 2034 (the “Federal Interest Period”). Title to real property or equipment acquired or improved under this Agreement (i.e., the broadband infrastructure installed pursuant to this Agreement) (“Project Property”) vests in Grantee, subject to the condition that, for the duration of the Federal Interest Period, Grantee and any successors or transferees:
    - 3.1.1. Must use the Project Property for the authorized purposes of the project in the same manner as Grantee use comparable real property and equipment within its networks in the ordinary course of their business, subject to the rights to disposition provided below,
    - 3.1.2. Must continue to provide internet service to the service areas and at the standard initially agreed upon by the Office and Grantee,
    - 3.1.3. Must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services,
    - 3.1.4. Must comply with the requirements of 2 C.F.R. § 200.310 (Insurance), which may be satisfied by adequate self-insurance,
    - 3.1.5. Must comply with the use and management requirements for equipment in 2 C.F.R. §§ 200.313(c)(4) and 200.313(d), which may be satisfied by applying Grantee’s commercial practices for meeting such requirements in the normal course of business (e.g., commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest,
    - 3.1.6. Must maintain records of real property that include an indication of the applicable federal interest,
    - 3.1.7. May dispose of Project Property when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements as provided in Treasury’s guidance as other Project Property,
    - 3.1.8. May otherwise sell Project Property only after provision of notice to Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the federal property interest; and
    - 3.1.9. Must notify the Office and Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to the ISP or its affiliates.

- 3.2. Pursuant to 2 CFR § 200.316 and in recognition that this broadband program is being executed for the benefit of the public being served by the broadband infrastructure, for the duration of the Federal Interest Period, the Grantee must hold Project Property in trust for the beneficiaries of the CPF broadband infrastructure project.
- 3.3. Grantee may encumber Project Property if Treasury receives a shared first lien position in the Project Property such that, if the Project Property were foreclosed upon and liquidated, Treasury would receive the portion of the fair market value of the property that is equal to Treasury's percentage contribution to the project costs. For example, in the case in which Treasury had contributed 50% of the project costs, Treasury would receive 50% of the fair market value of the Project Property when liquidated. Treasury will post standard forms of liens, covenants, and intercreditor agreements to implement this arrangement, and Grantee shall comply with all such guidance once published. Beyond recognition of this federal Project Property interest, Grantee is not required to record liens or other notices of record.
- 3.4. Grantee shall comply with 2 C.F.R. § 200.312 to the extent any federal-owned real property or equipment is used by the Grantee. If Grantee is not in compliance with the requirements of all guidance issued by Treasury in relation to property subject to the Federal Interest Period, Grantee must request disposition instructions from Treasury pursuant to 2 C.F.R. § 200.311(c) or 200.313(e), as applicable. Subject to the exceptions set forth here, the property standards set forth in 2 C.F.R. § 200.311 and 200.313 - .315 shall not apply.
4. **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.
5. **Internal Controls and Monitoring.** 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.
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 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** In accordance with 2 CFR 200.216 and 2 CFR Pt. 200, App. II, Section K, Grantee is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

9.1.1 For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

9.1.2 Telecommunications or video surveillance services provided by such entities or using such equipment.

9.1.3 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**9.2 Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, and consistent with 2 CFR 200.317 and 2 C.F.R. Pt. 200, App. II, Sec. L, the Grantee should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**9.3 Procurement of recovered materials.** To the extent applicable, and in accordance with 2 CFR Pt. 200, App. II, Section J, the Grantee must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at <https://www.ecfr.gov/current/title-40/part-247> that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**9.4 Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708).** In accordance with 2 CFR Pt. 200, App. II, Sec. E., to the extent that Grantee's contract is in excess of \$100,000 and involves the employment of mechanics or laborers, to the extent mandated under federal law Grantee must act in 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.

**9.5 Clean Air Act 42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act 33 U.S.C. §§ 1251-1387), as amended.** In accordance with 2 CFR Pt. 200, App. II, Section G, and to the extent mandated under federal law, Grantee agrees 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 State and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).

**9.6 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** To the extent required by Federal program legislation, and in accordance with 2 CFR Pt. 200 App. II, Section D, 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 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, and to the extent mandated under federal law, Grantee must 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, Grantee must pay wages not less than once a week. Grantee must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The Agreement is conditioned upon the acceptance of the wage determination. Grantee must report all suspected or reported violations to the Federal awarding agency. Grantee must also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Grantee is 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. Grantee must report all suspected or reported violations to the Federal awarding agency.

**9.7 Rights to Inventions Made Under a Contract or Agreement.** To the extent applicable and in accordance with 2 C.F.R. Pt. 200 App. II, Section F, the Grantee must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**9.8 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. In accordance with 2 C.F.R. Pt. 200, App. II, Section H, Grantee certifies that it is not 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.

**9.9 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 Grantee (and its subcontractors) 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 2 C.F.R. Pt. 200, App. II, Section I, Grantee certifies the following:

9.9.1 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 Customer, 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.

9.9.2 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 Customer, 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.

**9.10 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, in compliance with 2 CFR Pt. 200, Appendix II, Section C. 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:

9.10.1 Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. 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.

9.10.2 Grantee will, in all solicitations or advertisements for employees placed by or on behalf of 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.

9.10.3 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 Grantee's legal duty to furnish information.

9.10.4 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 Grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

9.10.5 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.

9.10.6 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.

9.10.7 In the event of 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 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.

9.10.8 Grantee will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) 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 Grantee. 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 Grantee as a result of such direction by the administering agency, Grantee may request the United States to enter into such litigation to protect the interests of the United States.

9.10.9 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 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.

9.10.10 Grantee agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Grantee 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.

9.10.11 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, 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.

**9.11 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 Grantee (and its subcontractors) that they will maintain a drug-free workplace. In accordance with these laws, and to the extent mandated under federal law, Grantee certifies that it does currently and will continue to provide a drug-free workplace, including by minimally:

9.11.1 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;

9.11.2 Establishing an ongoing drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
- Grantee's policy of maintaining a drug-free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

9.11.3 Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Section 9.11.1.

9.11.4 Notifying the employee in the statement required by Section 9.11.1, as a condition of their continued employment, that the employee will:

- Abide by the terms of the statement; and
- 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.

9.11.5 Notifying the Customer in writing, within ten (10) calendar days after receiving notice under Section 9.11.4) 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.

9.11.6 Taking one of the following actions, within thirty (30) calendar days of receiving notice under Section 9.11.5), with respect to any employee who is so convicted:

- 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
- 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.

9.11.7 Making a good faith effort to continue to maintain a drug-free workplace consistent with Sections 9.10.1 through 9.11.6 during the Term.

**9.12 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.

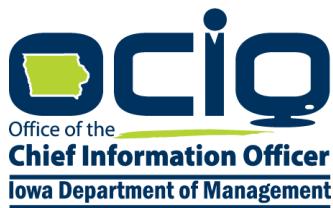
**9.13 Immigration and Naturalization Service.** Grantee certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Grantee Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

**9.14 Federal Funding Accountability and Transparency Compliance.** To the extent required under federal law, Grantee shall comply with the following certification. 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 \$30,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$30,000 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:

9.14.1 Name of entity;

9.14.2 Amount of award;

- 9.14.3 Funding agency;
- 9.14.4 NAICS code for contracts / CFDA program number for grants;
- 9.14.5 Program source;
- 9.14.6 Award title descriptive of the purpose of the funding action;
- 9.14.7 Location of the entity;
- 9.14.8 Principal place of performance;
- 9.14.9 Unique identifier of the entity;
- 9.14.10 Total compensation and names of the top five executives if:
  - 9.14.10.1 More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25M annually; and
  - 9.14.10.2 Compensation information is not already available through reporting to the SEC.
- 9.14.11 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.
- 9.14.12 Grantee certifies the following:
  - 9.14.12.1 Grantee agrees to comply with the provisions of FFATA;
  - 9.14.12.2 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.

**STATE OF IOWA**

KIM REYNOLDS, GOVERNOR

ADAM GREGG, LT. GOVERNOR

**OFFICE OF THE CHIEF INFORMATION OFFICER  
OF THE STATE OF IOWA (“OFFICE”)****Broadband Grants Program—Empower Rural Iowa, Capital Projects Fund  
Funds (“CPF”)****NOTICE OF FUNDING AVAILABILITY (“NOFA”) #008****(Exhibit A)**

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## SECTION 1—Program Overview/Administrative Issues

**1.1. Purpose.** Governor Reynolds has authorized the allocation and expenditure of \$148,960,000 from the American Rescue Plan Act (“ARPA”) Coronavirus Capital Projects Fund (“CPF”) to the Empower Rural Iowa Broadband Grants Program (“Program”) to provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

This grant round is funded using only federal funds. As such, neither the provisions nor the rules adopted pursuant to Chapter 8B apply to this Notice of Funding Availability (“NOFA”). Iowa Code 8B.7(1). Except as otherwise expressly stated herein, the statutory and regulatory requirements of Iowa Code section 8B.11, Iowa Administrative Code chapters 129—20 and 22, or any other similar or related statutory or regulatory requirements, shall not apply to or govern this NOFA. The eligibility requirements and procedures governing this application process shall be solely as set forth in this NOFA #008, including any corresponding attachments referenced or incorporated herein.

This NOFA gives special consideration to Broadband Intervention Zones (“Zones”) across the State of Iowa. These Zones were established under Invitation to Qualify (“ITQ”) #001, which permitted communities across the State of Iowa to identify areas of critical need for broadband investment. Until now, all NOFA offerings allowed broadband providers to select where they wanted to build based on available OCIO mapping data that identified areas lacking broadband. Although this process has resulted in significant buildout throughout the state, there remains a perception that certain areas in the State perpetually go unserved for a variety of reasons. The ITQ attempted to address this perceived problem by affording communities an opportunity to identify geographic areas of concern that both need access to Broadband and are motivated to attract Broadband providers to the area. Broadband Intervention Zones identified through the ITQ process are now being used to prioritize NOFA #008 Broadband application awards.

Ninety-six Zones have been identified. Within each of these Zones, providers that agree to build to 80% or more of the Eligible Service Locations within any Zone will receive additional points and higher levels of state matching funds under this NOFA. Providers are strongly encouraged to examine the Zones as set forth within the Project Selection Tool as outlined in Exhibit K. Providers are also encouraged to evaluate community ITQ applications to fully understand and incorporate into NOFA #008 Applications where appropriate any available Broadband Capital offered by communities as part of the ITQ process.

**Applications that propose to Facilitate broadband services to at least 80% of Eligible Service Locations within any Zone will rank higher under this NOFA than any Application that does not.**

To meet federal funding obligations, Broadband buildout under this NOFA must be completed no later than September 30, 2026. Applications submitted to this NOFA must be designed to provide last-mile broadband service to Eligible Service Locations that: (1) reliably meets or exceeds 100/100 Broadband; or (2) in cases where it is not practicable, because of the excessive cost of the Project, or geography or topography of the area to be served by the Project, to provide Broadband that reliably meets or exceeds 100/20 Broadband. However, 100/20 Broadband Projects must be scalable to 100/100 Broadband within three years of the Project Completion date. These two speed categories are referred to as “Covered Speeds” in this NOFA. Applicants may receive federal matching funds for eligible Projects under this NOFA up to the levels set forth in section 1.6.

Pursuant to the guidelines set forth in the CPF Frequently Asked Questions issued by the United States

Department of Treasury on January 4, 2022, Applications to this NOFA may also include expenditures associated with (1) the acquisition of middle-mile network services from a third party, or (2) construction of new middle-mile networks, provided that such expenditures are necessary, as part of an Applicant's proposed Project, to facilitate last-mile Covered Speeds to Eligible Service Locations.

**This funding opportunity does not utilize state funds. Funds awarded under this NOFA are CPF, and Grantees receiving awards hereunder will be considered “subrecipients” and the awards considered Fixed Amount Subawards for purposes of federal law. (2 C.F.R. § 200.1.)**

**1.2. Key Program Definitions.** The following terms shall be ascribed the following meaning:

- 1.2.1. **“100/100 Broadband”** means reliable one hundred (100) megabits per second of download speed or faster and one hundred (100) megabits per second of upload speed or faster.
- 1.2.2. **“100/20 Broadband”** means reliable one hundred (100) megabits per second of download speed or faster and twenty (20) megabits per second of upload speed or faster, but less than 100/100 Broadband.
- 1.2.3. **“Allowable Expenditure(s)”** means specific types/categories of expenditures Applicants/Grantees may include in their Total Project Cost, and for which Applicants/Grantees may seek reimbursement from the Office. Consistent with guidance issued by the U.S. Treasury on May 17, 2023, the actual costs of expenditures used in construction of the of a broadband project can be considered Allowable Expenditures regardless of their purchase date. Federal funds committed to an award may only be used to cover allowable costs incurred any time prior to September 30, 2026. Examples of permissible categories of Allowable Expenditures are more fully defined and identified in the Budget Plan Allowable Expenditures. Allowable Expenditures may only include expenditures:
  - 1.2.3.1. Directly related to the installation of Broadband Infrastructure that Facilitates Covered Speeds to Eligible Service Locations identified in Applicant’s Core Application and forming the basis of the Project;
  - 1.2.3.2. Relating to the buildout or acquisition of middle-mile service necessary for the Applicant to Facilitate Covered Speeds to Eligible Service Locations identified in Applicant’s Core Application and forming the basis of the Project;
  - 1.2.3.3. That comport with the U.S. Department of the Treasury found at the following link: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>;
  - 1.2.3.4. Permitting, planning, architectural design, engineering design, and work related to environmental, historical, and cultural reviews;
  - 1.2.3.5. Personnel costs including salaries and fringe benefits for staff and consultants required for directly carrying out a Project;
  - 1.2.3.6. Incurred prior to September 30, 2026.

Allowable Expenditures may not include expenditures (in other words, **“Disallowed**

**Expenditure(s)”) that are:**

- 1.2.3.7. Related to land, buildings, structures, improvements, or equipment not directly used in the transmission of data via Broadband;
  - 1.2.3.8. Related to the process of removing existing Broadband Infrastructure, fixtures, or other real property in preparation of the installation of new Broadband Infrastructure forming the basis of the Project;
  - 1.2.3.9. ~~Indirect labor costs or administrative overhead;~~
  - 1.2.3.10. Passthrough expenditures with respect to subcontractors or other third parties operating on an Applicant’s behalf to the extent they are not the result of arm’s length transactions or are not reflective of fair market rates;
  - 1.2.3.11. Identified as ineligible expenditures pursuant to any CPF requirements;
  - 1.2.3.12. Inconsistent with or not permitted by the U.S. Department of the Treasury guidance, which can be found at the following link: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>;
  - 1.2.3.13. Acquisition of spectrum licenses;
  - 1.2.3.14. Operating expenses,
  - 1.2.3.15. Short-term operating leases;
  - 1.2.3.16. Payment of interest or principal on outstanding debt instruments, or other debt service costs incurred prior to March 15, 2021;
  - 1.2.3.17. Fees or issuance costs associated with the issuance of new debt;
  - 1.2.3.18. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or
  - 1.2.3.19. To support or oppose collective bargaining. This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4;
  - 1.2.3.20. Any other expenditures that are not reimbursable under Applicable Law, rule, or policy, as may be more fully defined and described in the Grants Management Policies and Procedures Guide.
- 1.2.4. **“As of Date”** means the date the broadband availability maps and corresponding data sources utilized by the office in determining whether and at which speeds a Communications Service Provider Facilitates broadband service to a particular location. The Broadband Availability Map in effect as of the date of the issuance of this NOFA reflects the availability of Broadband in Iowa as of August 2, 2022.
  - 1.2.5. **“Broadband”** means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver internet services to the public.
  - 1.2.6. **“Broadband Availability Map”** means the statewide map that identifies whether and at which speeds a Communications Service Provider Facilitated Broadband to a

Broadband Unit as of the As of Date, whether a grantee has received a prior state or federal grant to Facilitate 100/20 Broadband to a Broadband Unit, and whether a Broadband Unit is an Eligible Service Location. The Broadband Availability Map is published at: <https://ocio.iowa.gov/broadband-availability-map-version-5>.

- 1.2.7. **“Broadband Grants Core Application”** or **“Core Application”** means the Excel Workbook which contains the central forms to be completed and submitted by an Applicant in connection with this NOFA, including but not limited to the Project Worksheet and Budget Plan.
- 1.2.8. **“Broadband Infrastructure”** means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband Infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband or any other Disallowed Expenditures.
- 1.2.9. **“Broadband Intervention Zone”** or **“Zone”** means a geographic area comprised of Eligible Service Locations selected by the OCIO upon completion of the evaluation of Applications to the Invitation to Qualify published at <https://ocio.iowa.gov/invitation-qualify-001>.
- 1.2.10. **“Broadband Unit(s)”** means a Broadband-serviceable location identified on the Broadband Availability Map.
- 1.2.11. **“Budget Plan”** means the worksheet within the Core Application, labeled **“Exhibit D”**, identifying the Allowable Expenditures and Total Project Costs forming the basis of the Project
- 1.2.12. **“Community Anchor Institutions”** or **“CAI”** means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.
- 1.2.13. **“Coronavirus Capital Projects Fund Requirements”** means all legal obligations associated with the funding source, including but not limited to:
  - 1.2.13.1. All guidance, requirements, and Frequently Asked Questions for The Capital Projects Fund, available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>.
  - 1.2.13.2. All contracts made by a Grantee in excess of \$100,000 that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5);
  - 1.2.13.3. Uniform Administrative Requirements, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 apply to the Capital Projects Fund grant, except any provisions Treasury may determine are inapplicable to a Fixed Amount subaward and subject to such exceptions as may be otherwise provided by

Treasury. Subpart F–Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award;

- 1.2.13.4. Required certification 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 Vendor (and its subcontractors) 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 2 C.F.R. Pt. 200, App. II, Section I, Vendor certifies the following:

No federal funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of the Customer, 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.

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 Customer, 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, Vendor must complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

- 1.2.13.5. For Projects receiving \$5 million or more in grant funds, information may be required by the U.S. Department of Treasury.
- 1.2.14. **“Covered Speeds”** means 100/100 Broadband and 100/20 Broadband, as applicable. However, 100/20 Broadband must be scalable to 100/100 Broadband within three years of the Project Completion date, meaning that Applicant will be capable of Facilitating 100/100 Broadband to all potential subscribers within the Project Area within three years of Project Completion.
- 1.2.15. **“Eligible Service Location”** means a location identified on the Broadband Availability Map to which no provider offers service at speeds greater than or equal to 100/20 Broadband. The location must not have been previously awarded Federal or State broadband incentives for build out greater than 100/20 Broadband. An Eligible Service Location may include a Community Anchor Institution.
- 1.2.16. **“Facilitate”** means a Communications Service Provider’s ability to provide broadband service at or above Covered Speeds to an Eligible Service Location within a commercially reasonable time and at a commercially reasonable price upon request by



a consumer.

- 1.2.17. **“Maximum Funding Request”** means the amount an Applicant may request for reimbursement in accordance with section 1.6.3.
- 1.2.18. **“Project”** means a proposed installation of Broadband Infrastructure by a Communications Service Provider that Facilitates Covered Speeds to a Project Area, and the proposed corresponding budget.
- 1.2.19. **“Project Area”** means one or more Eligible Service Locations to which an Applicant proposes to Facilitate Covered Speeds. The Project Area is established by converting these addresses into a minimum bounding polygon or convex hull formed by enclosing/circumscribing the list of addresses. Reference section 2.2.6.1 (Project Worksheet) and the Project Worksheet for instructions on how to identify a Project.
- 1.2.20. **“Project Completion”** means buildout is complete and service is being Facilitated to Eligible Service Locations in the Project Area.
- 1.2.21. **“Total Project Cost(s)”** means the total costs/expenditures comprising a Project, and for which Applicants/Grantees may seek reimbursement from the Office. Refer to section 1.5.2 (Total Project Costs) for a comprehensive definition of Total Project Costs. Total Project Costs shall be as identified in the Budget Plan. To the extent there is any conflict or inconsistency between the Budget Plan and any other aspect of a Proposal, the costs identified in the Budget Plan shall be determinative.

**1.3. Project Period.** Communications Service Providers will be required to propose anticipated Project initiation, milestone, and completion timelines, including, assuming the anticipated date of Award identified in the table set forth in section 1.7 (Schedule of Important Dates), a date of Project Completion .

- 1.3.1. Construction of a proposed Project may not commence prior to Award.
- 1.3.2. Grantees will be expected to complete their Projects by their represented Project Completion date. Projects must be fully completed by September 30, 2026 to receive funding under this NOFA.

**1.4. Eligibility/Ownership Requirements.** Applicants/Projects must meet each of the following eligibility requirements in order to be considered eligible:

- 1.4.1. Persons eligible to submit Applications in accordance with this NOFA include any Communications Service Provider as defined by Iowa Code chapter 8B, including but not limited to private sector carriers, local governments, utilities, and other entities that intend to Facilitate Covered Speeds.
- 1.4.2. Persons submitting Applications must be the entity that will (1) own the network constructed with grant funds awarded under this NOFA and, (2) be Facilitating last-mile connections to Eligible Service Locations.

**NOTE:** Persons submitting Applications may not be a consultant or third-party. For consultants who wish to assist in the development of an application, the consultant must be added to the applicant organization’s Iowa Grants account.

**NOTE:** In guidance issued by the U.S. Treasury on May 17, 2023, Treasury clarified that certain property standards applied to the ownership of federally-funded broadband

infrastructure built using CPF funds. Grantees will be obligated to comply with the federal property standards and ensure that the CPF-funded broadband infrastructure complies with the federal property standards through December 31, 2034. Please see the draft Grant Agreement for additional detail in this regard.

- 1.4.3. Projects may only consist of activities resulting in the delivery of Broadband within the geographic boundaries of the State of Iowa.
- 1.4.4. Projects must Facilitate Covered Speeds to Eligible Service Locations.  
**Note:** Applicants may NOT submit a single Application that includes a Project comprising buildout speeds of **both** a minimum 100/100 Broadband and minimum 100/20 Broadband. Such Projects must be subdivided into separate Applications that only contain a single buildout speed level.
- 1.4.5. Projects must be completed by September 30, 2026.
- 1.4.6. For Projects where geography, topography, or financial cost make buildout of 100/100 Broadband impracticable, Applicant must certify that Projects will reliably Facilitate broadband at 100/20 Broadband, and such Projects must be scalable to a minimum of 100/100 Broadband within three years of Project Completion.
- 1.4.7. Applicants must have an active Federal System for Award Management (SAM) registration prior to the close of the Application Acceptance Window.

## 1.5. Project/Total Project Costs.

- 1.5.1. *Project Identification.* Applicants must identify their Projects in terms of the Eligible Service Locations to which their Projects will Facilitate Covered Speeds. See section 2.2.6.1 (Project Worksheet) and the Project Worksheet for instructions on how to create a Project using the Broadband Availability Map and identifying key related inputs from the Broadband Availability Map that will be used by the Office in the review, scoring, and ranking process.
- 1.5.2. *Total Project Costs.*
  - 1.5.2.1. Funding, Generally. Applicants are required to state the estimated Total Project Costs forming the basis of the Project and the total amount of federal funds sought in the Budget Plan.

The total amount of federal funds sought is subject to the following:

- 1.5.2.1.1. Estimated Total Project Costs may only comprise Allowable Expenditures.
- 1.5.2.1.2. Estimated Total Project Costs may only include Allowable Expenditures incurred before September 30, 2026.

Applicants are also required to provide the budget in the Iowa Grants system in order to facilitate the Office's reporting obligations and for ease of administration. Applicants should take care to ensure that information supplied in the Iowa Grants System summary budget is consistent with the information supplied in the Budget Plan. **In the event of any**

**inconsistency between the information supplied in the Iowa Grants System summary budget and the information supplied in the Budget Plan, the information identified in the Budget Plan shall be determinative.** The Office reserves the right to conform such summary budget information to the Budget Plan without notice to the Applicant.

1.5.2.2. Advanced Payment. Pending the Office's receipt of required internal approvals governing prepayment of expenses, reference [State Accounting Enterprise \(SAE\), Pre-Payment of Expenses \(last revised May 18, 2017\)](#) [hereinafter "**Prepayment Policy**"], the Office may permit an advanced payment of funds:

1.5.2.2.1. Up to 50% of the Awarded funds may be disbursed to the Grantee upon ~~request~~<sup>acceptance</sup> and subject to written approval and at the sole discretion of the Office. Any advance payments are contingent on (a) the Grantee successfully passing a risk assessment, (b) the expense being included in the Budget Plan, (c) the expense being timed to be in accordance with the actual, immediate cash requirements for implementing the Project, and (d) the Grantee initiating the construction phase. Otherwise, the Office may limit advance payments in accordance with State Accounting Enterprise policy.

1.5.2.2.2. The remaining of the Awarded funds shall be reimbursed in arrears upon Project Completion, consistent with the terms and conditions of the Grant Agreement.

If the Office is unable to obtain required internal approvals to accommodate the above payment schedules globally for all Applicants, the Office will work with individual Applicants on a case-by-case basis to facilitate advance payment in accordance with the limitations and restrictions outlined in the Prepayment Policy. As part of this process, the Office may require, and Grantee may be obligated to supply prior to any prepayment, by way of example only:

1.5.2.2.3. Documentation that indicates the Grantee lacks sufficient working capital to commence the Project; and

1.5.2.2.4. Additional documentation supporting the projected costs as required by the Iowa Department of Administrative Services.

**1.6. Available Funds.** Funding for the Broadband Grants Program comes from federal Coronavirus Capital Project Funds allocated to the Office for such purposes.

1.6.1. The total amount of funds available for Award under this NOFA is up to **\$148,960,000.**

1.6.2. Applicants must clearly state in their Applications the amount of grant funds sought as it relates to a Project.

1.6.3. The Office may, in its sole discretion, award the entire amount available under this

NOFA to a single Applicant, or to multiple Applicants, subject to the limitations that:

- 1.6.3.1. Applications proposing to Facilitate Covered Speeds to Eligible Service Locations may request a Maximum Funding Request of 60%.
- 1.6.3.2. Applicants proposing to Facilitate Covered Speeds to at least 80% of the Eligible Services Locations within any one Broadband Intervention Zone may request a Maximum Funding Request calculated in accordance with the following parameters:
  - 1.6.3.2.1. 80% of the Applicant's proportional estimated Total Project Costs for buildout within a Broadband Intervention Zone for Zones ranked 1-20, and 60% for other Project costs;
  - 1.6.3.2.2. 75% of the Applicant's proportional estimated Total Project Costs for buildout within a Broadband Intervention Zone for Zones ranked 21-40, and 60% for other Project costs;
  - 1.6.3.2.3. 70% of the Applicant's proportional estimated Total Project Costs for buildout within a Broadband Intervention Zone for Zones ranked 41 or lower, and 60% for other Project costs.

NOTE: Applications may propose facilitating Covered Speeds to greater than 80% of Eligible Service Locations in more than one Broadband Intervention Zone. Each Eligible Service Location will be evaluated based on the parameters established in this section 1.6.3 to calculate the Maximum Funding Request available to the Applicant.

- 1.6.3.3. The Office will not award a grant pursuant to this NOFA that exceeds the limitations set forth in section 1.6.3.
- 1.6.3.4. *Not-to-Exceed Total Payment.* The not-to-exceed total payment is capped at the value set forth in the executed grant agreement, however, that value may be reduced if the final Allowable Expenditures upon project completion are lower than those set forth in the Budget Plan.
- 1.6.3.5. Available funding levels may be amended or vary from that listed in this NOFA, or funding may be withdrawn completely, depending on the availability of funding or any other grounds, as determined by the Office in its sole discretion.
- 1.6.4. The Office may, in its sole discretion, provide partial awards in accordance with other elements provided in this section and section 1.6.5.

The decision of whether to award a partial amount in such circumstances may be guided by consideration of the following non-exclusive list of factors:

- 1.6.4.1. Where grant applications have **overlapping** Eligible Service Location(s), the conflict will be addressed as follows:
  - 1.6.4.1.1. First, an Eligible Service Location that is in both Groups A and B will be assigned to the Group A Application.
  - 1.6.4.1.2. Second, within each Group, overlapping Eligible Service Locations will be assigned to fiber-to-the-home Applications.
  - 1.6.4.1.3. Third, within each Group, the Eligible Service Location will

be assigned to the highest ranking Application. *See also* Section 3 for further detail of the Group A/Group B analysis.

- 1.6.4.2. Where the Applicant indicates the Project Area overlaps with an Eligible Service Location(s) in which any Communications Service Provider has already commenced construction or build out.
- 1.6.4.3. Where the Applicant indicates the Project Area overlaps with an Eligible Service Location(s) in which any Communications Service Provider has preexisting Broadband expansion commitments.
- 1.6.4.4. Where Eligible Service Locations within the Project Area have already been awarded, by any state or federal program, including as it relates to prior grant rounds administered by the Office, provided that such grants were awarded to Facilitate 100/20 Broadband or faster.
- 1.6.5. The Office may, in its sole discretion, choose to award the entire or a partial amount of the grant funds requested by an Applicant for any of the following non-exclusive list of factors:
  - 1.6.5.1. Where the Office believes a partial Award would maximize the impact of available funds in furtherance of the core objectives of the Program.
  - 1.6.5.2. Where only an amount less than the funds requested by a particular Applicant remains available following the issuance of all other Awards.
  - 1.6.5.3. Where the Applicant has previously advertised Covered Speeds to Eligible Service Locations within its proposed Project Area.
- 1.6.6. The Office will not entertain Project substitution proposals that seek to substitute an Award of funds granted under this NOFA for any funds awarded to the same Applicant to build in the same Project Area under any prior grant rounds administered by the Office.  
**Note:** This provision is not intended to prohibit Applicants from submitting Project Areas under this NOFA that may have been proposed in whole or in part under prior NOFA rounds, but were not awarded funds under a prior NOFA round.
- 1.6.7. The Office may elect to fully award Projects when prior Broadband commitments will not result in 100/100 Broadband.

**1.7. Schedule of Important Dates.** The following dates and times are set forth for informational purposes only. The Office reserves the right to change these timelines and deadlines at any time. All dates and times listed are local Iowa time. In addition, this section describes the process and phases by and during which the Office will review Applications submitted to the Office pursuant to this NOFA and the manner in which Award decisions will be conducted and made.

EVENT	DATE
1.7.1 NOFA Pre-Publication Notice	6/15/23
1.7.2 Written Questions and Responses	



1.7.2.1 Pre-Application Conference:	6/28/23 at 2:00 PM CST
1.7.2.2 Written Questions Submissions:	6/28/23 - 7/07/23
1.7.2.3 Responses Posted By:	7/14/23
1.7.3 NOFA Issuance; Application Acceptance Window Opens <b>(no Applications will be accepted <u>prior</u> to this date and time)</b>	7/14/23
1.7.4 Application Acceptance Window Closes/Applications Due <b>(no Applications will be accepted <u>after</u> this date and time)</b>	8/25/23, 5:00 PM CST
1.7.5 Application Review Ends:	9/22/23
1.7.6 Final Agency Decision(s)/Notice of Intent to Award (Anticipated)	9/22/23
1.7.7 Grant Agreement Negotiation and Execution	10/27/23

1.7.1. *NOFA Pre-Publication Notice.* The Office will provide notice of the upcoming funding opportunity by posting this NOFA online at Iowa Grants and <https://ocio.iowa.gov/broadband> on the date specified in the table above.

1.7.2. *Written Questions and Responses.* Questions regarding the scope, interpretation, application, or contents of this NOFA may be addressed during the pre-application conference or as part of the formal Written Question and Response process. While the Office will make available administrative support throughout the process to Applicants as more fully described in section 1.8 (Inquiries), only written communications made in response to questions submitted through this process shall be binding on the Office.

1.7.2.1. A pre-application conference will be held virtually at the date and time listed in the table above. The purpose of the pre-application conference is to discuss with prospective Applicants the requirements prescribed by this NOFA and allow prospective Applicants an opportunity to ask questions. Oral responses given during the pre-application conference shall not be considered binding on the Office. The conference may be recorded. Questions asked at the conference that cannot be adequately answered during the conference may be deferred. Participation in the pre-application conference is optional. To join the pre-application conference, please register at the following link: <https://forms.gle/zxkcqhEkzkpvA5eD9>.

1.7.2.2. Written questions related to this NOFA must be submitted to the Office via a Google Form found at <https://ocio.iowa.gov/broadband>. The link will be live following the pre-application conference. Written questions must be submitted no later than the date and time specified in the table above.

1.7.2.3. The Office will prepare written responses to all pertinent, timely, and properly submitted questions and post such responses as an addendum to the NOFA online at <https://ocio.iowa.gov/broadband>. The Office's written responses will be considered part of the NOFA. Verbal responses to any

questions will not be binding on the Office. It is the responsibility of the Applicant to check <https://ocio.iowa.gov/broadband> for written questions and responses to this NOFA.

- 1.7.2.4. Failure to raise a question or issue regarding the scope, interpretation, application, or contents of this NOFA as part of the question and response process shall be deemed a waiver or failure to exhaust administrative remedies for purposes of an appeal of an Award. Such waiver is intended to ensure the Office is able to correct any material issues or errors in an efficient fashion and in a manner that is fair to all prospective Applicants.
- 1.7.3. *NOFA Issuance and Application Acceptance Window Opens.* The Office will provide notice to Communications Service Providers of this funding opportunity by posting the final version of this NOFA online at Iowa Grants and <https://ocio.iowa.gov/broadband> on the date specified in the table above. Applicants must submit Applications through Iowa Grants per the date and time specified in the table above.
- 1.7.4. *Application Acceptance Window Closes/Applications Due.* Applications must be submitted through Iowa Grants no later than the date and time specified in the table above. Applications submitted after the deadline will not be considered by the Office.  
  
**Note:** Applicants are solely responsible for ensuring Applications are timely submitted. Failure to timely submit an Application within the Application Acceptance Window will result in rejection of the Application. The date and time as recorded by Iowa Grants shall serve as the official regulator for the submission date and time of Applications. Applications submitted to the Office in any manner other than that through Iowa Grants will not be considered by the Office. Applications must be fully and properly filled out and include all required forms or attachments, including those identified herein or otherwise required by Iowa Grants. An incomplete Application may result in rejection of the entire Application. **“Iowa Grants Registration Instructions,”** labeled **“Exhibit J,”** gives detailed instructions on how to create, access, and submit Applications in Iowa Grants.
- 1.7.5. *Application Review.* Following the expiration of the Application Acceptance Window, the Office will review Applications received and conduct the Application Review as more fully described below and in section 3.1 (Quantitative Factors), and as follows:
  - 1.7.5.1. Technical Review. The purpose of the **“Technical Review”** is to review applications for completeness in accordance with Applicable Law and this NOFA. Applications that are timely submitted will be reviewed for completeness and accuracy.
    - 1.7.5.1.1. High Cost Project Worksheet: This worksheet may be sent to Applications that meet or exceed the High Cost Threshold defined in Section 2.2.6.9.
    - 1.7.5.1.2. Large Project Worksheet: This worksheet may be sent to Applicants that meet or exceed the Large Project Threshold as defined in Section 2.2.6.10.
  - 1.7.5.2. Quantitative Scoring. Quantitative scoring takes place in conjunction with the Technical Review. Quantitative scores will be calculated utilizing the

formulas in section 3.1 (Quantitative Factors). A Project's quantitative score is the outcome of predetermined formulas that require little-to-no exercise of discretion by the Office as part of the evaluation process. Applications will then be rank ordered consistent with the Rank Ordering Procedure established in section 3.

- 1.7.5.3. Disqualification and/or Ineligibility Review. Applications that do not comply with the terms, conditions, and requirements of Applicable Law and section 1.9 of this NOFA may be disqualified or ruled ineligible for an Award.
- 1.7.6. *Final Agency Decision(s)/Notice of Intent to Award.* The Office will review all Applications received in accordance with the terms, conditions, and requirements of Applicable Law and this NOFA, and make a final agency decision regarding whether, to which Applications, and in what amount(s) to award grant funds. In making final Award decision(s), the Office may consider a variety of information or materials. In formulating its final recommendation(s), the Office is not bound by the results of the scoring process set forth in this NOFA. The Office will notify each Applicant of award decisions by issuing a **Notice of Intent to Award ("NOIA")**. Such NOIA shall be distributed by email to the Applicant's Authorized Official. The Office will also post the NOIA online at <https://ocio.iowa.gov/broadband>. Unsuccessful Applicants are solely responsible for reviewing this website to determine their Award status.
- 1.7.7. *Risk Assessment.* Following the issuance of the NOIA, but prior to negotiating a grant agreement, the successful Applicant will complete a risk assessment. The Office will provide a link to the successful Applicant to access the risk assessment after the NOIA is posted. The successful Applicant must complete the risk assessment within 10 business days of the Office sending the link. If a risk assessment has not been executed within this timeframe, the Office may, in its sole discretion, cancel the Award with respect to that Applicant and begin negotiations with another Applicant, as deemed appropriate by the Office. The Office may, in its sole discretion, extend the time period for negotiations of the risk assessment.
- 1.7.8. *Grant Agreement Negotiation and Execution.*
  - 1.7.8.1. After the successful Applicant has completed the risk assessment, the Office will distribute final Grant Agreements for the successful Applicants' review and signature. Successful Applicants will be given 10 business days from the date of transmission of the final Grant Agreement to return the executed agreement to the Office. If a Grant Agreement has not been executed within this timeframe, the Office may, in its sole discretion, cancel the Award with respect to that Application and begin negotiations regarding another Application, as deemed appropriate by the Office. The Office may, in its sole discretion, extend the time period for negotiations of the Grant Agreement.
  - 1.7.8.2. By submitting an Application, Applicant acknowledges its acceptance of the terms and conditions of the NOFA and the Grant Agreement without change, except as otherwise expressly stated in its Application and otherwise permitted herein. If Applicant takes exception to a provision in the Grant Agreement, it must state the reason for the exception, and set

forth the specific language it proposes to include in place of that section or provision through a redline with comments in the margins. If Applicant's exceptions or proposed responses materially alter the NOFA or the requirements of Applicable Law, or if Applicant submits its own terms and conditions or otherwise fails to follow the process described herein, the Office may reject the Application, in its sole discretion, without further negotiation.

- 1.7.8.3. As part of the Grant Agreement process, the Office may evaluate and consider in conjunction with the Grantee any information about broadband buildout received by the Office after the As of Date. Consideration of such after-acquired information may result in a change of Grantee buildout obligations as compared to the buildout proposed in Grantee's Application.

**1.8. Inquiries.** Inquiries related to this NOFA may be made in the following ways:

- 1.8.1. Formal inquiries for which Applicants seek binding responses from the Office related to this NOFA must be submitted in accordance with section 1.7.2 (Written Questions and Responses). Only written communications made in response to questions submitted through this process shall be binding on the Office.
- 1.8.2. The Office will make available administrative support throughout the application process to Applicants. Such support includes assisting Applicants in navigating and completing required forms or attachments associated with the application process, including but not limited to transposing information from the Broadband Availability Map to Applications or corresponding forms and attachments. This is a service made available to Applicants to assist in navigating the more complex aspects of the Application process. Contact [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov) for further information. Communications made in response to questions submitted through this process shall not be binding on the Office.
- 1.8.3. *Unauthorized Contact.* With the exception of the available support described above, unauthorized contact with employees of the Office or independent contractors utilized by the Office regarding this NOFA or any Application submitted in connection herewith may result in disqualification. Including as it relates to the administrative support services described above, representations made by the Office's officers, employees, or independent contractors, whether made verbally, in writing, or otherwise, are not binding on the Office or otherwise incorporated into or made part of this NOFA, unless made in response to questions submitted through the process set forth in section 1.7.2 (Written Questions and Responses).

**1.9. Rejection/Disqualification or Cancellation of NOFA.** The Office reserves the right to reject, in whole or in part, any or all Applications, disqualify an Applicant, to advertise for new Applications, to arrange to receive or itself perform the services described herein, to abandon the need for such services, or to cancel this NOFA at any time for any reason, including when in the best interests of the Office, the Program, or the State of Iowa to do so. Any Application may be rejected outright and not evaluated, or an Applicant disqualified, for any of the following reasons:

- 1.9.1. The Applicant is not an eligible Applicant in accordance with section 1.4 (Eligibility/Ownership Requirements).

- 1.9.2. The Project is not an eligible Project in accordance with section 1.4 (Eligibility/Ownership Requirements).
- 1.9.3. The Applicant is not a Responsible Applicant.
- 1.9.4. The Applicant indicates that the Project will proceed regardless of whether funds are awarded to the Applicant under this NOFA.
- 1.9.5. Reserved.
- 1.9.6. Where the Applicant indicates the Project Area overlaps with an Eligible Service Location in which any Communications Service Provider has already commenced construction or build out.
- 1.9.7. Where the Applicant indicates the Project Area overlaps with an Eligible Service Location in which any Communications Service Provider has preexisting Broadband expansion commitments.
- 1.9.8. Where an Eligible Service Location within the Project Area has already been awarded, by any state or federal program provided that such grant was awarded to Facilitate 100/20 Broadband or faster.
- 1.9.9. Reserved.
- 1.9.10. Where Eligible Service Locations within a lower ranking Project overlap with Eligible Service Locations of any other higher ranking Project concurrently seeking funds pursuant to this NOFA.
- 1.9.11. An Application is submitted in a manner other than through Iowa Grants.
- 1.9.12. An Applicant fails to include required or sufficient information to determine whether a requirement of the NOFA has been satisfied.
- 1.9.13. An Applicant fails to follow the Application instructions or presents information requested by this NOFA in a manner inconsistent with the instructions of the NOFA.
- 1.9.14. An Applicant provides misleading or inaccurate answers.
- 1.9.15. An Applicant states that a requirement of this NOFA cannot be satisfied.
- 1.9.16. An Applicant's response materially changes a requirement of this NOFA.
- 1.9.17. An Applicant's response limits or attempts to limit any right(s) of the Office.
- 1.9.18. An Applicant fails to respond to the Office's request for information, documents, or references.
- 1.9.19. An Applicant fails to include any signature, certification, authorization, or stipulation required by this NOFA.
- 1.9.20. An Applicant alters the language in any exhibit, certification, authorization, or other form required to be submitted in connection with this NOFA.
- 1.9.21. An Applicant initiates unauthorized contact concerning or related to this NOFA with an officer, employee, or independent contractor of the Office.
- 1.9.22. An Applicant submits an Application that includes a Project proposing building out at both 100/100 and 100/20 Broadband.



- 1.9.23. An Applicant proposes to only build out middle-mile service with no last-mile service to be provided to an Eligible Service Location.
- 1.9.24. An Applicant proposes to build out a wireless network, but does not demonstrate within Exhibit I Wireless Project Design Worksheet that:
  - 1.9.24.1. The design of the proposed wireless network backhaul is “future proof,” meaning that the network backhaul is capable of Facilitating Covered Speeds to every Eligible Service Location within the Project Area upon Project Completion; and
  - 1.9.24.2. All Eligible Service Locations in the Applicant’s propagation study are included in the Application.
- 1.9.25. An Applicant proposes to build out 100/20 Broadband but does not provide a sufficient justification for why 100/100 Broadband is impractical to construct due to factors such as excessive deployment costs or geographic barriers.
- 1.9.26. An Applicant proposed to build out 100/20 Broadband but does not certify that the service will be scalable to 100/100 Broadband within three years.
- 1.9.27. An Applicant does not furnish a letter from the community to be served by the proposed Project that the proposed pricing is affordable as set forth in section 2.2.7.2.
- 1.9.28. In the sole determination of the Office, the Applicant provides insufficient justification in Exhibit L - High Cost Project Worksheet for exceeding the High Cost Threshold.
- 1.9.29. In the sole determination of the Office, the Applicant provides insufficient justification in Exhibit M - Large Project Worksheet.

**1.10. Grants Management Policies and Procedures Guide.** The Office will issue a Grants Management Policies and Procedures Guide in conjunction with the Grant Agreement negotiation and execution process. This Guide will describe the financial, oversight, and administrative requirements, policies and procedures the Office requires Grantees to follow in the Office’s administration of Awards. Grantees must adhere to the Grants Management Policies and Procedures Guide, which shall be considered a contractual obligation of a successful Grantee.

**1.11. Additional Terms and Conditions.** Section 7 (NOFA Administration/Terms and Conditions Governing Application Process) sets forth standard terms and conditions that govern the administration of the NOFA, as opposed to terms and conditions in this Section 1 (Program Overview/Administrative Issues) that are designed to assist Applicants in preparing their Application. Applicants and Applications must comply with all terms and conditions set forth in this NOFA.

## SECTION 2—Form and Content of Applications

These instructions prescribe the submission, format, and content requirements of the Application. They are designed to facilitate a uniform review process. Failure to adhere to these instructions may result in rejection of an Application. Applicants must complete each Application form required by this NOFA following the instructions herein and within Iowa Grants. Some forms may be in the format of web forms, otherwise uploaded forms must be in a .PDF, or in the case of the Core Application, .XLSM, as part of this application process. Redacted or “public” versions of electronic documents must also be uploaded as part of the application process to the extent an Applicant seeks confidential treatment of any information supplied to the Office in accordance with section 7.18 (Disposition of Applications/Public Records).

**2.1. Iowa Grants Instructions.** All Applications and corresponding forms and attachments must be submitted through Iowa Grants. Registration and Application Instructions are outlined in the “**Iowa Grants Registration and Application Instructions**,” labeled as “**Exhibit J**.”

### **2.2. Required Forms/Submissions.**

- 2.2.1. *General Information.* This form requires an Applicant to identify the name, address, telephone number, email address, and other general information of the Authorized Official to respond to inquiries regarding the Application and other required information.
- 2.2.2. *Applicant/Owner Organization.* This form requires information about Applicant’s organization, including legal name, address, alternate mailing address for warrants/payments, and identification of whether Applicant is a subsidiary of one or more parent companies and specific identification of all corresponding parent companies within any chain of ownership and a visualization of the relationship between all parent companies to one another and the subsidiary. Applicants must identify the official legal name under which they are registered with applicable authorities, including, as applicable, the Iowa Secretary of State. Applicants should not simply identify the organization’s “doing business as” name.
- 2.2.3. *Executive Project Summary.* This form asks Applicants to provide:
  - 2.2.3.1. A brief description of the Project;
  - 2.2.3.2. The projected engineering/design phase completion date;
  - 2.2.3.3. The projected construction start date of the Project;
  - 2.2.3.4. The projected date of Project Completion;
  - 2.2.3.5. If the Applicant proposes to Facilitate Broadband service within a Broadband Intervention Zone, a description of how any Community Broadband Capital<sup>1</sup> offered by a Community Applicant through the Invitation to Qualify may be used.<sup>2</sup>
- 2.2.4. *Demonstrated Experience.* This form requires information about Applicant’s

<sup>1</sup> see Invitation to Qualify #001 Exhibit A Section 4.2.3 provided at <https://ocio.iowa.gov/document/itq-001-327-0>, which defines Community Broadband Capital as “in-kind or financial contributions identified by a Community Applicant that could be offered to directly support the construction of a Broadband infrastructure project within a [Broadband Intervention Zone].”

<sup>2</sup> Offers of Community Broadband Capital within Broadband Intervention Zones are provided at <https://ocio.iowa.gov/invitation-qualify-001>

demonstrated experience in provisioning Broadband. Applicant shall include relevant information about their experience that has prepared them to deploy their Project, such as, community partnerships and services; history of organization; number of years in business; number of years of experience providing the types of services sought by this NOFA; if the Applicant is a relatively new provider/market entrant, an explanation of the benefits, if any, of being a newer provider/market entrant; or the level of technical experience in providing the types of services sought by this NOFA. An Applicant may also submit references for three current or previous customers or clients knowledgeable of Applicant's performance in providing services similar to the services described in this NOFA.

- 2.2.5. *Minority Impact Statement.* This form collects information about the potential impact of the Project on minority groups.
- 2.2.6. *Central Forms.* Applicant shall complete and upload the following central forms related to this NOFA.

**Note:** Exhibits B through D are located in separate Worksheets within the Broadband Grants Core Application Excel Workbook.

- 2.2.6.1. Project Worksheet. This form, labeled “**Exhibit B,**” requires Applicant to define its Project by identifying key inputs from the Broadband Availability Map. These key inputs include, but are not limited to:
  - 2.2.6.1.1. The total number of Eligible Service Locations forming the basis of the Project to which Applicant will Facilitate Covered Speeds;
  - 2.2.6.1.2. The Broadband Intervention Zone(s), if any, associated with each Eligible Service Location forming the basis of the Project;
  - 2.2.6.1.3. The maximum upload and download speeds, stated in megabits per second, to be Facilitated to the Project Area upon Project Completion;
  - 2.2.6.1.4. The type of delivery platform of the Broadband Infrastructure underlying the Project;
  - 2.2.6.1.5. Key product attributes of the Broadband services to be Facilitated in the Project Area as described in section 3.1.6.

**Note:** Reference the “**Project Selection and Data Export/Import Instructions,**” labeled “**Exhibit K,**” for instructions on how to properly complete this aspect of the Application, which is largely auto-populated from data to be input by Applicants into the “**ESL Input**” tab in the Core Application.

- 2.2.6.2. CPF Form. This form, labeled “**Exhibit C,**” requires the Applicant to describe the percentage of federal funding requested, line miles of fiber, and related information required by the U.S. Department of Treasury in connection with CPF funding. Applicants may optionally submit a lower Maximum Funding Request percentage in Exhibit C.

- 2.2.6.3. Budget Plan. This form, labeled “**Exhibit D,**” requires the Applicant to state its estimated Total Project Costs and corresponding Allowable Expenditures in the categories provided on the form.
- 2.2.6.4. Grant Agreement. Successful applicants will be required to execute a Grant Agreement, labeled “**Exhibit E.**” Applicants that accept the terms and conditions of the Grant Agreement as proposed will be asked to certify their acceptance. Applicants proposing changes to the Grant Agreement must abide by section 1.7.8 (Grant Agreement Negotiation and Execution).
- 2.2.6.5. Certification, Authorization, and Release of Information Form. This form, labeled “**Exhibit F,**” requires the Applicant, or a representative of Applicant’s with legal authority to bind Applicant to:
- 2.2.6.5.1. Certify to the Office the completeness, accuracy, truthfulness, performance capabilities, and satisfaction of key legal requirements of or related to the Application;
  - 2.2.6.5.2. Certify to the Office that for completed service offerings funded by this NOFA, Applicant will allow subscribers in the service area to utilize the Federal Communications Commission’s (FCC) Affordable Connectivity Program (ACP) program;
  - 2.2.6.5.3. Authorize the Office, independent contractors, or other third parties acting on behalf of or directed by the Office to obtain information about Applicant from third parties, and additionally authorizes such third parties to supply such requested information to the Office; and
  - 2.2.6.5.4. Certify to the Office that any 100/20 Broadband funded by this NOFA will be scalable to 100/100 within 3 years of Project Completion.
- 2.2.6.6. Form 22. This form, labeled “**Exhibit G,**” requires the Applicant to indicate whether or not it intends to request confidential treatment of cost information in Exhibit D of the Core cost information in Exhibit D of the Core Application.
- 2.2.6.7. Application Checklist. This form, labeled “**Exhibit H,**” is designed to assist Applicant in ensuring Applicant has completed and submitted all forms and materials required by this NOFA. Applicant is not expected to return this form to the Office with its Application.
- 2.2.6.8. Wireless Project Design Worksheet. This form, labeled “**Exhibit I,**” requires Applicants that propose wireless Projects to provide additional information concerning project design with a special emphasis on backhaul design. Such information will be used by the Office to assess whether Applications proposing wireless Projects are capable of providing reliable Covered Speeds to the Project Area at the time of Project Completion. **Applicant is not expected to return this form to the Office unless a wireless Project is proposed.**

- 2.2.6.9. High Cost Project Worksheet. This form, labeled “**Exhibit L,**” requires an Applicant to justify its average cost per passing when the cost per passing resides within the top 25% of all applications submitted to this NOFA (“High Cost Threshold”). Separate High Cost Thresholds will be generated for wireless and wireline delivery platforms. Applications exceeding the High Cost Threshold may receive notice from the Office seeking justification for the high cost. The Office may use the information in the determination of whether or not to disqualify an Application exceeding the High Cost Threshold. **Applicants exceeding the High Cost Threshold may be identified by the Office following the closure of the Application Acceptance Window and notified with instructions to complete the worksheet.**
- 2.2.6.10. Large Project Worksheet. This form, labeled “**Exhibit M,**” requires an Applicant to justify the quantity of Eligible Service Locations to which the Applicant collectively, including all entities attached or connected to the Applicant, proposes to Facilitate Covered Speeds when that quantity is in the top 25% of all Applicants to this NOFA (“Large Project Threshold”). Applications exceeding the Large Project Threshold may receive notice from the Office seeking justification for the number of Eligible Service Locations to which new service will be Facilitated. Such information will be used by the Office to assess whether Applicants meeting the Large Area Project Threshold are capable of conforming to the build out timelines associated with this NOFA. The Office may use the information in the determination of whether or not to disqualify an Application exceeding the Large Project Threshold. **Applicants exceeding the Large Project Threshold may be identified by the Office following the closure of the Application Acceptance Window and notified with instructions to complete the worksheet.**

For purposes of calculating the number of Eligible Service Locations to which the Applicant collectively, including entities attached or connected to the Applicant, proposes to Facilitate Covered Speeds, the Office will evaluate whether entities submitting grant applications have any form of business tie, such as parent/subsidiary, joint venture, substantial correlation between members of the governing bodies of entities, or other form of affiliate entity. When such business ties exist, the Office will consider such entities as attached or connected to other applicants.

Applicants must disclose all known entity grant applications in their applications that are attached or connected to the Applicant and update that disclosure once the list of grant applicants is published by the Office. To the extent this associated-applicants evaluation reveals cumulative total numbers that meets the Large Area Project Threshold, the Office will conduct a comprehensive review that may include, but not be limited to, the current status of project completion for any prior federal or state-funded grant awards made and, may disqualify applications on a first-in, first-out basis, retaining the applications for the associated entities that fall below the cumulative cap.



**NOTE:** Given the limited timeframe available for project construction under this NOFA, the Office believes that buildout commitments must be of a reasonable size and distributed among various communication services providers to guarantee project completion by the end of the Project Period.

Applicants that are unable to complete Projects risk the reversion of funds to the federal government by the Office, leaving Eligible Service Locations without funding to construct new broadband service.

2.2.7. *Product Pricing Form.* This form requires Applicants to provide speeds and pricing tiers to be offered, including the following:

2.2.7.1. Pricing for:

2.2.7.1.1 a Covered Speed package (see section 3.1.7.3),

2.2.7.1.2 the speed package associated with the highest upload and download speed provided in Exhibit B, and

2.2.7.1.3 at least one low cost option offered at speeds that are sufficient for a household with multiple users to simultaneously engage in telework and remote learning.

2.2.7.2. A signed letter from a representative of the community to be served by the proposed Project, indicating that the Applicant's proposed pricing for the Covered Speed package is affordable for the community.

## SECTION 3—Scoring Methodology

Scoring and ranking Applications submitted in response to this NOFA will occur through quantitative factors, more fully outlined below. A maximum of 100 points is available. Specific point values assigned to each evaluation factor set forth in section 3.1 (Quantitative Factors), are posted in section 3.2 (Scoring Rubric).

The Office recognizes that some of the factors identified below compete with each other. This is by design. Completed Projects will be expected to meet or exceed any statements or representations made in connection with questions or inputs associated with scored factors outlined below, and any related answers or inputs shall be deemed contractual obligations of Applicant and incorporated by reference into a resulting Grant Agreement as if fully set forth therein.

*Rank Ordering Procedure.* Following the scoring process using the factors set forth in section 3.1, all Applicants will be subject to the Rank Ordering Procedure:

- First, as part of the Technical Review described in section 1.7.5.1 the Office will group Applications accordingly: Group A will consist of Applications that will Facilitate Covered Speeds to at least 80% of the Eligible Service Locations in at least one Broadband Intervention Zone (“Group A”), and Group B will consist of all others (“Group B”);
- Second, Applications will be ranked within Group A and Group B by cumulative points; and
- Third, the highest scoring Application within Group B will be assigned a rank order that immediately follows the lowest ranked Application within Group A. The remaining Applications in Group B will be assigned successive ranks consistent with their cumulative score for the factors set forth in section 3.1.

All Applications in Group A will be awarded until funding is exhausted. If funding remains after awards are made to Applications in Group A, Applications in Group B will be awarded funds until funding is exhausted.

**3.1. Quantitative Factors.** The inputs for this section 3.1 (Quantitative Factors) are supplied by Applicant on the Project Worksheet and the Budget Plan.

- 3.1.1. *Total Eligible Service Locations Facilitated.* This factor operates on the premise that Projects Facilitating Covered Speeds to the most Eligible Service Locations help to achieve the core goals of the Program. Accordingly, the total count of Eligible Service Locations each Applicant represents will be Facilitated with Covered Speeds upon Project Completion (“Total Eligible Service Locations”) will be compared against each other to calculate the Total Eligible Service Locations score for each Applicant.
- 3.1.2. *Efficiency.* This factor operates on the premise that the more Eligible Service Locations Facilitated through lower Total Project Costs, the more efficient the delivery. Thus, Projects resulting in higher Eligible Service Location facilitation per dollar spent represent more efficient use of grant dollars.

**Formula:** The estimated Total Project Cost **divided by** ( $\div$ ) by the Total Eligible Service Locations Facilitated as represented in Section 3.1.1, upon Project Completion.

This results in a project-dollars per Eligible-Service-Locations-Facilitated measure.

The lower the measure, the more efficient the project. The resulting measure of all Applicants will be compared against each other to calculate the Efficiency score for each individual Applicant.

- 3.1.3. *Rurality*. This factor operates on the premise that Projects located in rural areas are in greater need of Broadband service than other areas. For purposes of this factor, “rurality” is defined as a function of Broadband Unit density per square mile.

**Formula:** The aggregate number of Broadband Units within the Project Area **divided by ( $\div$ )** the total square miles forming the basis of the Project Area.

This results in a “rurality” measure. The lower the measure, the more “rural” the Project. The resulting measure of all Applicants will be compared against each other to calculate the Rurality score for each individual Applicant.

- 3.1.4. *Completeness*. This factor operates on the premise that Projects that make Covered Speeds available to a higher proportion of Eligible Service Locations forming the basis of a Project Area further the Program’s objectives.

**Formula:** The Total Eligible Service Locations comprising the Project Area as represented in Section 3.1.1 **divided by ( $\div$ )** the total number of the Eligible Service Locations within the Project Area.

This results in a “completeness” measure. The higher the measure, the more complete the Project. The resulting measures of all Applicants will be compared against each other to calculate the Completeness score for each individual Applicant.

- 3.1.5. *Relative Speed*. This factor operates on the premise that Projects that Facilitate higher upload/download speeds further the objectives of the Program. The two subcategories set forth below will be allocated one half each of the total points available within this broader Relative Speed category.

**Note:** Applications proposing buildout speeds of both 100/100 Broadband or faster and 100/20 Broadband or faster are prohibited, as per section 1.9.22.

- 3.1.6.1. SubCategory 1 - Application Type. Applicant must indicate in its Application whether it will be proposing a Project to build out either 100/100 Broadband or 100/20 Broadband. This does NOT indicate the maximum speed being Facilitated but simply distinguishes whether the Project is able to meet the 100/100 required threshold.

**Formula:** Applications proposing 100/100 Broadband will receive all of the points available to this subcategory. Applications proposing 100/20 Broadband will receive none of the points available to this subcategory.

- 3.1.6.2. SubCategory 2 - Average Speed. “**Average Speed**” means average maximum upload and download speed measured in megabits per second that the Applicant represents will be Facilitated to all Eligible Service Locations forming the basis of the Project as set forth in Exhibit B.

**Formula:** The average maximum upload/download speeds in terms of megabits per second that the Applicant represents will be Facilitated to all

Eligible Service Locations forming the basis of the Project.

The resulting averages of all Applicants will be compared against each other to calculate the Average Speed score for each individual Applicant.

- 3.1.6. *Prospective Product Attributes.* This factor operates on the premise that Projects that will deploy more reliable Broadband products further the objectives of the Program. Inputs relevant to this factor include, as defined and described in more detail below, Availability, Latency, Performance Credits, and Data Caps. Applicants may use the most favorable product offering that will be made available within a commercially reasonable time and at a commercially reasonable price within the Project Area upon request by a consumer as a result of the Project. Applicants must use the same product offering to respond to all product attribute questions/inputs. Each of the four subcategories set forth below will be allocated one fourth of the total points available within this broader Prospective Product Attributes category.

- 3.1.6.1. SubCategory 1 - Availability. “**Availability**” means the estimated percentage of total time that the product is operative or available when measured over a 30 day calendar month (720 hours) upon Project Completion. A product is considered inoperative or unavailable when service is degraded to a level at which packets are not passing between the user point of demarcation and the host point of demarcation.

**Formula:**

- 3.1.6.1.1. Products Facilitating greater than or equal to 99.9% Availability will receive all of the points available within this subcategory.
- 3.1.6.1.2. Products Facilitating greater than or equal to 99% Availability but less than 99.9% Availability will receive half of the points available within this subcategory.
- 3.1.6.1.3. Products Facilitating less than 99% Availability will receive none of the points available within this subcategory.

- 3.1.6.2. SubCategory 2 - Latency. “**Latency**” means the average time it is estimated to take, expressed in milliseconds (ms), for data to travel from the customer edge router ingress/egress point to the “**Internet Speed Test Tool**” published at <https://iowa.speedtestcustom.com/>. Applicants must respond to this question by providing the anticipated Latency the customer will experience as measured by the Internet Speed Test Tool upon subscribing to the proposed service upon the date of Project Completion.

**Formula:**

- 3.1.6.2.1. Products with a Latency of less than 30 ms will receive all of the points available within this subcategory.
- 3.1.6.2.2. Products with a Latency of greater than or equal to 30 ms but less than 60 ms will receive half of the points available within this subcategory.

3.1.6.2.3. Products with a Latency of greater than or equal to 60 ms will receive none of the points available within this subcategory.

3.1.6.3. SubCategory 3 - Performance Credits. **“Performance Credits”** means a credit or other similar discount or incentive to customers for failing to meet a minimum service level as guaranteed in a contract between the Communications Service Provider and a customer.

**Formula:**

3.1.6.3.1. Communications Service Providers that offer a Performance Credit will receive all of the points available within this subcategory.

3.1.6.3.2. Communications Service Providers that do not offer a Performance Credit will receive none of the points available within this subcategory.

3.1.6.4. SubCategory 4 - Data Cap. **“Data Cap”** means any imposition, in any form, that is imposed by a Communications Service Provider on a customer that either cuts off service, throttles service speeds, or imposes additional charges for amounts of data above the limitation.

**Formula:**

3.1.6.4.1. Products with no Data Cap will receive all of the points available within this subcategory.

3.1.6.4.2. Products with a Data Cap will receive none of the points available within this subcategory.

3.1.7. *CPF Areas of Emphasis.* This factor takes into consideration areas which the U.S. Department of Treasury encourages recipients of CPF to consider when providing funds for broadband Projects. To conform with these areas of emphasis, the Office will award points to the following subcategories presented here. Each of the three subcategories set forth below will be allocated a proportion of total points available within the broader CPF Areas of Emphasis category as identified below.

3.1.7.1. Subcategory 1 - Delivery Platform. The U.S. Department of Treasury encourages recipients to focus on broadband Projects that facilitate physical broadband connections to Eligible Service Locations. Delivery Platform will receive 35% of the points availability within this category.

**Formula:**

3.1.7.1.1. Applicants that will provide fiber optic service to Eligible Service Locations will receive all of the points available within this subcategory.

3.1.7.1.2. Applicants that will not provide fiber optic service to Eligible Service Locations will receive none of the points available within this subcategory.

3.1.7.2. Subcategory 2 - Applicant Business Structure. The U.S. Department of Treasury encourages recipients to focus on broadband networks that will be



owned, operated by, or affiliated with local governments, non-profits, and co-operatives. Applicant Business Structure will receive 30% of the points available within this category.

**Formula:**

3.1.7.2.1. Applicants that are local governments, non-profits, or co-operatives will receive all of the points available within this subcategory.

3.1.7.2.2. Applicants that are not local governments, non-profits, or co-operatives will receive none of the points available within this subcategory.

3.1.7.3. Subcategory 3 - Affordability. The U.S. Department of Treasury requires the Office to consider affordability as a part of the project selection process. In conformance with this guidance, the Office will evaluate the price per megabit of packages conforming to the minimum buildout Covered Speeds. Affordability will receive 35% of the points available within this category.

Information concerning speed/pricing tiers to be offered by Applicant, including the speed/pricing of Applicant's affordability offerings will be collected in the Product Pricing Form in Iowa Grants. In addition to other products made available to consumers described in the webform, Applicants must provide a price for a product with the applicable Covered Speed proposed in their Project, meaning the Applicant must state a price for a service package offering 100 megabits per second download and 100 megabits per second upload for all 100/100 Broadband Applications or 100 megabits per second download and 20 megabits per second upload for all 100/20 Broadband Applications..

**Formula:** The monthly pricing (*i.e.*, monthly recurring cost to consumer) of the 100 megabits per second download and 100 megabits per second upload or 100 megabits per second download and 20 megabits per second upload as applicable subscription package offered to each of the Eligible Service Locations Facilitated as a part of the Applicant's Project **divided by ( $\div$ )** the sum of upload and download megabits offered at the 100/100 Broadband (*i.e.*, 200) or 100/20 Broadband (*i.e.* 120) as applicable speeds that Applicant is minimally required to facilitate under this NOFA.

This results in a "cost per megabit to the consumer" measure. The lower the measure, the more affordable the broadband service Facilitated as a result of the proposed Project. The resulting measures of all Applicants will be compared against each other to calculate the Affordability score for each individual Applicant.

3.1.8. *Federal Matching Funds Requested.* This factor considers whether an Applicant requests the total matching funds available for its Project as calculated under section 1.6.3 or a lesser amount. This factor operates under the premise that Applicants requesting less than the total matching funds available for a Project will permit the Office to more widely disburse available funds, increasing the overall impact of the program.

**Formula:**

The percentage of the total matching funds available requested by Applicant will be identified by the Office and applied to the table below to determine the percentage of points awarded for this subcategory.

<u>Percentage of total matching funds requested by Applicant (X)</u>	<u>Percentage of Points Available For Category</u>
$95\% < X \leq 100\%$	0%
$90\% < X \leq 95\%$	25%
$85\% < X \leq 90\%$	50%
$80\% < X \leq 85\%$	75%
$X \leq 80\%$	100%

- 3.1.9. *Broadband Intervention Zone Ranking.* This factor operates on the premise that Applicants proposing to Facilitate Covered Speeds in higher-ranking Broadband Intervention Zones further the goals of the Program.

**Formula:**

$$\left( \frac{X - Y + 1}{X} \right) \times \text{Total Points Available In Category}$$

Where:

X = Total Number of Broadband Intervention Zones

Y = Rank of highest ranking Broadband Intervention Zone within which the Application will Facilitate Covered Speeds to 80% or more of the Eligible Service Locations within the Broadband Intervention Zone

Applications not proposing to Facilitate Covered Speeds to 80% or more of the Eligible Service Locations within any Broadband Intervention Zone will receive zero (0) points for this factor.

**3.2. Scoring Rubric.** The Scoring Rubric identifies the specific point values assigned to each evaluation factor set forth in section 3.1 (Quantitative Factors). A total of 100 points is available. While the Office will utilize the points system described herein as a tool to assist in initially determining the relative merits of each Application, such scores are in no way binding on the Office. The Office will ultimately make decisions, in its sole discretion regarding whether, to which Applications, and in what amounts to award grant funds. Such decisions will be based on which Projects are most likely to have the greatest impact in leveraging grant funds to reduce Eligible Service Locations, and taking into consideration the factors outlined in this NOFA.

<b>Scoring Categories</b>	<b>Weight (Percentage (%) of 100 points available)</b>	<b>Points (Total Points Available (100) * Weight)</b>
3.1.1 Total Eligible Service Locations Facilitated	11.11%	11.11
3.1.2 Efficiency	2.78%	2.78
3.1.3 Rurality	5.56%	5.56
3.1.4 Completeness	19.44%	19.44
3.1.5 Relative Speed	16.67%	16.67
3.1.6 Prospective Product Attributes	8.33%	8.33
3.1.7 CPF Areas of Emphasis	11.11%	11.11
3.1.8 Federal Matching Funds Requested	2.78%	2.78
3.1.9 Broadband Intervention Zone Ranking	22.22%	22.22

## SECTION 4—Attachments

The following forms and reference documents can be found on the OCIO Broadband Grants website, available at <https://ocio.iowa.gov/broadband-grants>:

- **Exhibit A.** This Notice of Funding Opportunity #008 (“NOFA”).
- **Broadband Grants Core Application or Core Application.** This is an Excel Workbook containing the central forms to be completed and submitted by an Applicant in connection this NOFA, including the following key exhibits:
  - **Exhibit B—Project Worksheet.** This is an Excel Worksheet wherein Applicant defines the Project boundaries and supplies the Office with key data elements to be utilized primarily by the Office in the quantitative aspects of reviewing, scoring, and ranking Applications. This worksheet will be used to identify the Project Area and will be incorporated into the grant agreement by reference.
  - **Exhibit C—CPF Form.** This is an Excel Worksheet wherein Applicant indicates the percentage of federal funding requested, counts of served institutions, line miles of fiber, and related information.
  - **Exhibit D—Budget Plan.** This is an Excel Worksheet wherein Applicant identifies the Allowable Expenditures and Total Project Costs forming the basis of a Project. Reference section 1.5.2 (Total Project Costs), section 2.2.6.3 (Budget Plan) and the Budget Plan in the Core Application Excel Workbook for more detailed information on the budget process.
- **Exhibit E—Grant Agreement.** This is the standard grant agreement to be entered between the Office and an Applicant awarded funds in connection with this NOFA. The Grant Agreement establishes the terms, conditions, and requirements governing the delivery, administration, and oversight of a Project. Reference section 1.7.8 (Grant Agreement Negotiation and Execution) for terms, conditions, and requirements related to the contracting process. Identify any requested changes to the grant agreement by following the directions in the Iowa Grants application forms. This is an attachment to the application only when changes are requested.
- **Exhibit F—Certification, Authorization, and Release of Information.** This is a form by which the Authorized Official certifies the completeness, accuracy, truthfulness, performance capabilities, and satisfaction of key legal requirements of or related to the Application or subsequent performance should Applicant be awarded grant funds and successfully execute a Grant Agreement, and which authorizes the Office, independent contractors, or other third parties acting on behalf of the Office to obtain information about Applicants from third parties, and which authorizes such third parties to supply such requested information to the Office.
- **Exhibit G—Request for Confidentiality or Form 22.** This is a form submitted as part of an Application where Applicant may request the confidential treatment of specifically-identified information or materials submitted as part of an Application. Reference Section 7.18 (Disposition of Applications/Public Records) for information regarding this process and the limitations associated therewith.
- **Exhibit H—Application Checklist.** This is a checklist completed as part of an Application process and is designed to assist Applicants in ensuring they have completed and submitted all forms, materials, and information required by this NOFA. **Applicant is not expected to return this form to the Office with its Application.**

- **Exhibit I—Wireless Project Design Worksheet.** This form is submitted as part of an Application where Applicant proposed buildout of a wireless network. Any Applicant proposing a wireless Project must respond to all the requested information and upload a single responsive PDF document to the Iowa Grants system containing the information. **Complete this exhibit ONLY IF you are proposing a wireless Project as part of your Application.**
- **Exhibit J—Iowa Grants Registration and Application Instructions.** These instructions help Applicants register and navigate the Iowa Grants system. These instructions are applicable to this NOFA opportunity and help the Applicant complete and navigate the online application through the Iowa Grants system, including walking Applicant through the process of uploading required forms referenced herein.
- **Exhibit K—Project Selection and Data Export/Import Instructions.** These instructions show the Applicant how to properly define their Project using the Broadband Availability Map and export the Eligible Service Location and/or Broadband Intervention Zone information forming the basis of their Project. This export is used to populate the Eligible Service Location Input Tab “**ESL Input Tab**” located within the Core Application. The ESL Input Tab auto populates other key aspects of the Application in the Core Application, including the Project Worksheet, which is central to the Application process.
- **Exhibit L—High Cost Project Worksheet.** This is a form requiring Applicants to justify the average cost per passing when the cost per passing exceeds the High Cost Threshold. Applications exceeding the High Cost Threshold will receive notice from the Office seeking justification for the high cost. **Complete this exhibit ONLY IF you are contacted by the Office after the Application Acceptance Window closes.**
- **Exhibit M—Large Project Worksheet.** This is a form requiring Applicants to justify the quantity of Eligible Service Locations to which the Applicant collectively, including all entities attached or connected to the Applicant, proposes to Facilitate Covered Speeds when that quantity is in the top 25% of all Applicants to this NOFA. **Complete this exhibit ONLY IF you are contacted by the Office after the Application Acceptance Window closes.**



## SECTION 5—Reference Materials

The following reference materials are available by clicking on the links identified below:

- The Broadband Availability Map and related information, *available at* <https://ocio.iowa.gov/broadband-availability-map-version-5>.
- Notice of Funding Availability #008 public posting, *available at* <https://ocio.iowa.gov/empower-rural-iowa-broadband-grant-program-notice-funding-availability-008>.
- Capital Projects Fund Guidance for States, Territories, and Freely Associated States, *available at* <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>.
- The Department of Treasury's CPF Frequently Asked Questions, *available at* <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.
- Applicable sections of the 2 CFR, *available at* <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>.
- List of all Broadband Intervention Zones established under Invitation to Qualify #001, *available at* <https://ocio.iowa.gov/invitation-qualify-001>

## SECTION 6—Glossary of Additional Terms

In addition to other terms defined elsewhere in the NOFA, this Glossary defines additional terms used throughout the NOFA that primarily relate to the administration of the NOFA, as opposed to key program terms and critical concepts the understanding of which are essential for an Applicant to prepare a thoughtful and responsive Application and which key program terms are defined in section 1.2 (Key Program Definitions). The following terms as used throughout the NOFA shall be ascribed the following meaning:

- 6.1. **“Applicable Law”** 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 CPF Requirements.
- 6.2. **“Applicant(s)”** means a Communications Service Provider submitting an Application in response to this NOFA.
- 6.3. **“Application(s)”** means a Communications Service Provider’s materials and responses to this NOFA, including the Iowa Grants Application, the Project Worksheet, CPF Form and the Budget Plan, together with any clarifications, attachments, appendices, or amendments to the NOFA requesting grant funds.
- 6.4. **“Authorized Official”** means an individual identified by an Applicant, in writing, who is authorized to respond to inquiries and make binding decisions on behalf of and for an Applicant in connection with an Application or Grant Agreement.
- 6.5. **“Award”** means grant funds made available through this NOFA to an Applicant.
- 6.6. **“Iowa Grants System”** or **“Iowa Grants”** means the State of Iowa’s electronic grants management system through which Applicants may view and explore funding opportunities made available by State of Iowa agencies, and through which Applicants must submit Applications in response to such opportunities, including this NOFA. The Iowa Grants System is available at: <https://www.iowagrants.gov/index.do>.
- 6.7. **“Grantee”** means a NOFA #008 grant recipient.
- 6.8. **“Responsible Applicant”** means an Applicant that has the capability in all material respects to successfully complete and deliver a Project in accordance with the terms, conditions, requirements, and restrictions of Applicable Law, this NOFA, and the resulting Grant Agreement if awarded grant funds. In determining whether an Applicant is a Responsible Applicant, the Office may consider various factors including, but not limited to: the Applicant’s competence and qualifications to successfully complete and deliver a Project; the Applicant’s integrity and reliability; the past performance of the Applicant, including Applicant’s past contract terminations, litigation, debarments, compliance with applicable terms, conditions, or requirements, or timely completion of past projects; Applicant’s criminal history; Applicant’s financial stability; Applicant’s experience in addressing projects of similar size and complexity; and the best interests of the Office, the Program, and the State. An Applicant’s inability to fully certify/attest to all of the items identified in the Certification, Authorization, and Release of Information Form may result in the Office concluding an Applicant is not a Responsible Applicant.

## SECTION 7—NOFA Administration/Terms and Conditions Governing Application Process

This section sets forth standard terms and conditions that primarily relate to the administration of the NOFA.

- 7.1. Amendments to NOFA.** The Office reserves the right to amend this NOFA at any time. In the event the Office decides to amend this NOFA, a written amendment will be posted at <https://ocio.iowa.gov/broadband>. Applicants are advised to check this website periodically for amendments to this NOFA. In the event an amendment occurs after the submission deadline is closed, the Office will email the written amendment to each Applicant's Authorized Official.
- 7.2. Open Competition.** Awards will be made through a fair, open, and objective process. Accordingly, no attempt shall be made by any Applicant to induce any other person or firm to submit or not submit an Application for the purpose of restricting competition. Doing so may result in disqualification.
- 7.3. Withdrawal of Applications.** An Application may be withdrawn by the request of an Applicant at any time prior to the due date and time. An Applicant desiring to withdraw an Application shall submit notification including the Application ID, title of the Application, and the Applicant organization name via email to [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov). After this funding opportunity closes, the Office may reject Applications that have been created in the Iowa Grants System but which have not been finally submitted.
- 7.4. Resubmission of Withdrawn Applications.** A withdrawn Application may be resubmitted by an Applicant at any time within the Application Acceptance Window in the same manner as permitted by sections 1.7.3 and 1.7.4 of this NOFA.
- 7.5. Costs of Application Preparation.** All costs of preparing an Application are the Applicant's sole responsibility. The Office is not responsible for any costs incurred by an Applicant related to the preparation or submission of an Application or any other activities undertaken by an Applicant related in any way to this NOFA.
- 7.6. Multiple Applications.** An Applicant may submit one or more Applications for different Project Areas.
- 7.7. Construction of NOFA.** This NOFA shall be construed in light of pertinent legal requirements and Applicable Laws. Changes in applicable statutes and rules may affect the award process or the resulting Grant Agreement. Applicants are responsible for ascertaining relevant legal requirements.
- 7.8. Issuance of NOFA Not Commitment by the Office.** The issuance of this NOFA in no way constitutes a commitment by the Office to issue any Award or enter into a Grant Agreement with any Applicant or other interested person or party.
- 7.9. Oral Presentation.** Applicants may be requested to make an oral presentation related to their Application. The determination of any need for presentations and the location, order, and schedule of any such presentations shall be at the sole discretion of the Office. If an oral presentation is required, Applicants may clarify or elaborate on their Application, but may not substantively change, alter, or amend their original Application.
- 7.10. Restrictions on Gifts and Activities.** Iowa Code Chapter 68B contains laws that restrict gifts which may be given or received by state officers or employees, requires certain individuals to disclose information concerning their activities with state government, and prohibits inappropriate use of influence and conflicts of interest. Applicants are responsible for determining the applicability of that chapter to their activities, for complying with the requirements thereof, and for avoiding other potential or actual conflicts of interest. In addition, Iowa Code Chapter 722 provides that it is a felony offense to bribe a public official.
- 7.11. Use of Subcontractors.** Applicant's are permitted to seek reimbursement for Allowable Expenditures incurred through the use of contractors, subcontractors, and other third parties in the performance of the services contracted for through this NOFA process. Terms, conditions, and restrictions on the use of contractors, subcontractors, and other third parties are as found in Applicable Law, this NOFA, and the Grant Agreement. Current officers or employees of the State of Iowa may not act as contractors, subcontractors, or other third parties in an Applicant's performance of the services contracted for through this NOFA process. Applicants are fully responsible for all work contracted for or agreed to through this NOFA process and any resulting Grant Agreement, including work performed by contractors, subcontractors, and other third parties. No contract or subcontract into which an Applicant enters and which relates to performance of any obligations hereunder and any resulting Grant Agreement will, in any way, relieve an Applicant of any responsibility for performance of its duties or obligations with respect thereto.
- 7.12. Criminal Background Checks.** Except as otherwise prohibited by Applicable Law, the Office reserves the right to conduct criminal history and other background investigations into an Applicant, its officers, directors, managerial and supervisory personnel, clerical or support personnel, and other personnel utilized or retained by an Applicant in connection with this application process or any Grant Agreement. Such information may be obtained or used in determining whether to issue a Notice of Intent to Award, including in determining whether an Applicant is a Responsible Applicant, or as a precondition to

executing a Grant Agreement with an Applicant who has been awarded grant funds. An Applicant shall cause any/all necessary waivers to be executed by appropriate persons to effectuate such background investigations. Disqualifying offenses may include, but are not limited to, crimes involving an element of dishonesty, fraud, or other crimes of moral turpitude.

- 7.13. Reference Checks.** Except as otherwise prohibited by Applicable Law, the Office reserves the right to contact any reference(s) to verify any information contained in an Application or to discuss the Applicant's qualifications.
- 7.14. Information from Other Sources.** As part of and during the Application process, the Office reserves the right to obtain and consider information from other sources about an Applicant, including but not limited to the Applicant's capability and performance across the State, the Applicant's financial stability, past or pending litigation, or any publicly available information. Such information will be used solely as permitted by Applicable Law and for the purposes of judging Applications against the requirements or criteria otherwise identified in this NOFA. In addition, the Office reserves the right to consider information elicited in or supplied in response to one section of the NOFA in considering or evaluating other sections of the NOFA or an Application, or obtained from other sources identified in or permitted by the NOFA, including but not limited to the Broadband Availability Map.
- 7.15. Verification of Application Contents.** Except as otherwise prohibited by Applicable Law, the Office reserves the right to verify the contents of an Application submitted by an Applicant. Misleading or inaccurate responses may result in rejection of an Application.
- 7.16. Waivers and Variances.** The Office reserves the right to waive or permit cure of non-material variances in an Application's form and content, provided such action is in the best interest of the Office, the Program, and the State of Iowa. In the event the Office waives or permits the cure of non-material variances, such waiver or cure will not modify the terms, conditions, or requirements of this NOFA or excuse an Applicant from full compliance with the terms, conditions, or requirements of this NOFA. The determination of materiality shall be in the sole discretion of the Office.
- 7.17. NOFA Application Clarification Process.** The Office may request clarification from Applicants for the purpose of resolving ambiguities or questioning information presented in an Application. Clarifications may occur throughout the Application review process. Requests for clarification will be issued to the Applicant's Authorized Official. Clarification responses shall be in the format specified by the Office and shall address only the information requested. This may include written questions, interviews, or site visits. Responses shall be submitted to the Office within the time stipulated by the Office at the time of the request and will be deemed part of the Application. Notwithstanding the foregoing, the Office at its sole discretion may reject clarifying information received from an Applicant where the clarifying information materially alters the content or substance of the Application. Failure to timely respond to or otherwise comply with a request for clarification may result in disqualification.
- 7.18. Disposition of Applications/Public Records.** All Applications and the contents associated therewith shall become the property of the Office. The Office will post the public aspects of Applications to a public internet site. Further, the Office is generally subject to the State's public records law, Iowa Code chapter 22, and corresponding implementing rules. Applicants or other persons or parties submitting information to the Office are encouraged to familiarize themselves with Iowa Code chapter 22 before submitting Applications or other information to the Office. Requests for confidentiality must also conform to section 2.2.6.6 of this NOFA.

In addition, the following terms, conditions, and processes shall govern requests from Applicants for the confidential treatment of information supplied to the Office in connection with an Application. These terms, conditions, and processes are designed to strike a fair balance between the need for transparency and Applicants' legitimate claims for confidential treatment of information or materials. As a general matter, the Office will treat all information submitted by Applicants or by other persons or parties to the Office as public, nonconfidential records unless an Applicant or other person or party requests that specific information submitted be treated as confidential at the time of submission to the Office in accordance with the following:

- 7.18.1. An Applicant or other person or party requesting confidential treatment of portions of an Application or other information submitted to the Office must:
  - 7.18.1.1. Fully complete and submit to the Office a Form 22;
  - 7.18.1.2. Clearly identify in the Application the specific information within each specific section of the Application for which Applicant seeks confidential treatment;
  - 7.18.1.3. Conspicuously mark the outside of any Application and individual exhibits or attachments thereto as containing confidential information;
  - 7.18.1.4. Mark each page upon which confidential information appears; and

- 7.18.1.5. Submit a public copy of the Application from which claimed confidential information has been excised. Any claimed confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public information as possible. In submitting a public copy of electronic documents to the Office, Applicants may excise information for which they seek confidential treatment and replace it with clear, conspicuous, **BOLD** language indicating that information has been redacted (*i.e.*, “[REDACTED]”) from a specific aspect/area of the Application. For assistance in redacting information in the Core Application, please contact administrative support as identified in section 1.8.2.
- 7.18.2. Form 22 will not be considered fully complete unless, for each confidentiality request, the Applicant or other person or party:
  - 7.18.2.1. Enumerates the specific grounds in Iowa Code chapter 22 or other Applicable Law that support treatment of the specific information as confidential;
  - 7.18.2.2. Justifies why the specific information should be maintained in confidence;
  - 7.18.2.3. Explains why disclosure of the specific information would not be in the best interest of the public; and
  - 7.18.2.4. Sets forth the name, address, telephone number, and email address of the individual authorized by the person or party submitting such information to respond to inquiries from the Office concerning the confidential status of such information. This person may be the same person as the Applicant’s Authorized Official.
- 7.18.3. Notwithstanding the foregoing, subject 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), the Office will treat W-9s or other tax documents provided through Iowa Grants to facilitate payment/reimbursement as confidential, and Applicants need not and should not include a request for confidential treatment for such document(s) in their Form 22.
- 7.18.4. Failure to request that information be treated as confidential in accordance with the foregoing shall relieve the Office and State personnel from any responsibility for maintaining the information in confidence. An Applicant’s request for confidentiality that does not comply with the terms, conditions, or process set forth in this section 7.18 (Disposition of Applications/Public Records Law) is grounds for rejecting an Application, or denying a request for confidential treatment. Blanket requests to maintain an entire Application submitted to the Office as confidential will be categorically rejected.
- 7.18.5. If the Office receives a request for information or materials related to an Application marked as confidential or if a judicial or administrative proceeding is initiated to compel the release of such materials or information, Applicant shall, at its sole expense, appear in such action and defend its request for confidentiality. If, upon reasonable notice to Applicant, Applicant fails to appear to defend its request for confidentiality, the Office may release the information or material, or otherwise bill the Applicant any costs or expenses incurred in defending the same (including but not limited to the reasonable time and value of the Iowa Attorney General’s Office or other attorney or law firm utilized by the Office or the State). Additionally, if Applicant fails to comply with the confidentiality process set forth herein, Applicant’s request for confidentiality is unreasonable, Applicant fails to supply the Office with sufficient information to determine whether Applicant’s request for confidential treatment is founded, or Applicant rescinds its request for confidential treatment, the Office may release such information or material with or without providing advance notice to Applicant and with or without affording Applicant the opportunity to obtain an order restraining its release from a court of competent jurisdiction. Applicant waives any claims it may have against the Office or the State of Iowa related to the confidential treatment of any information or materials submitted as part of this application process that result, in whole or in part, from any deficiencies with or related to compliance with this section 7.18 (Disposition of Applications/Public Records Law), or that otherwise result from Applicant’s failure to comply with the terms, conditions, or requirements of this NOFA.
- 7.19. **Copyright.** By submitting an Application, Applicants agree and acknowledge that the Office will, subject to section 7.18 (Disposition of Applications/Public Records Law): post the public aspects of Applications received as part of this NOFA process online; release, distribute, and copy Applications for the purpose of facilitating input, recommendations, and evaluation processes, or as is otherwise necessary in administering the selection and Award process; and release, distribute, and copy Applications in response to requests for public records. By submitting an Application, Applicant consents to such



releases, disclosures, and copying and grants the Office and the State of Iowa a right and license to do so, warrants and represents that such release, distribution, or copying will not violate the rights of any third party, and agrees to indemnify and hold harmless the Office and the State of Iowa and their employees, officers, board members, agents, representatives, and officials (“**Indemnitee(s)**”) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs 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 the Office, State, or any Indemnitee) directly or indirectly related to, resulting from, or arising out of any such release, distribution, or copying. In the event an Applicant copyrights or attempts to copyright its Application, the Office may reject the Application.

- 7.20. Authority to Bind.** An individual authorized to legally bind the Applicant shall sign any and all documents requiring signature and associated with this Application process. Any such documents may be executed, scanned, and transmitted electronically. Electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures.
- 7.21. Waiver of Claims.** An Applicant’s submission of an Application constitutes acceptance of the terms, conditions, criteria, and requirements set forth in this NOFA and operates as a waiver of any and all objections to the contents of the NOFA. By submitting an Application, an Applicant agrees that it will not bring any claim or have any cause of action against OCIO or the State of Iowa based on the terms or conditions of this NOFA or the application process.
- 7.22. Co-signatures/Joint and Several.** In the case of a parent and a subsidiary, both the parent, and the subsidiary that will be performing the Project, will be required to co-sign any resulting Grant Agreement and shall be jointly and severally liable for any duties, responsibilities, obligations, liabilities, or default with respect thereto.
- 7.23. Choice of Law and Forum.** This NOFA 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 NOFA shall be the state or federal courts sitting in Polk County, Iowa. Any litigation related to this NOFA shall be brought and maintained in the courts sitting in Polk County, Iowa. Grantees and Applicants waive any objection to such jurisdiction based on forum non conveniens or otherwise. This forum designation in no way waives a litigant’s obligation to exhaust administrative remedies.
- 7.24. Appeal of Award Decision.** The Office will notify successful Applicants of the Office’s decision by sending their Authorized Official a copy of the NOIA, and will notify unsuccessful Applicants by posting the NOIA online at [www.iowagrants.gov](http://www.iowagrants.gov) and <https://ocio.iowa.gov/broadband>. Unsuccessful Applicants are solely responsible for reviewing such websites to determine their Award status. From the date and time of such posting, adversely affected Applicants will have 5 days to appeal such decision(s) by filing a Notice of Intent to Appeal pursuant to Iowa Admin Code r. 129–11.3(1). Failure to challenge the Office’s decision within the 5-day period shall waive any other claims an Applicant may have as it relates to the Office’s administration of the process and otherwise be deemed a failure to exhaust administrative remedies. Applicants may appeal an adverse decision only for a timely submitted Application. Appeals must clearly and fully identify all issues being contested and demonstrate what requirements or procedures in Applicable Law, rule, or the NOFA were violated. In the event of an appeal, the Office will continue working with successful Applicants pending the outcome of the appeal.
- 7.25. Contingent Awards.** If, at the time an Award is made, all or part of a successful Applicant’s award is subject to challenge, the Office may, contemporaneous with the challenge process, proceed to enter into this Agreement with 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 an Eligible Service Location is ultimately determined to be ineligible, 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 non-eligibility 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.