

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

ANNETTE DUNN
CHIEF INFORMATION OFFICER
Grant No. ____ [For Office use only]

Exhibit E - NOFA #004
Office of the Chief Information Officer of the State of Iowa
Grant Agreement

This Grant Agreement (“**Agreement**” or “**Grant Agreement**”) for the deployment of Broadband Infrastructure as part of the Broadband Grants Program, pursuant to and in accordance with Notice of Funding Opportunity Number 004 issued on October 23, 2020, (“**NOFA**”), is effective as of the date of last signature below (“**Effective Date**”), by and between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**Office**”), and Farmers Cooperative Telephone Company, a Corporation organized under the laws of Iowa (“**Grantee**”). The parties may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**” In consideration of the promises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. Overview.

- 1.1. *Purpose.* This Agreement establishes the terms, conditions, and requirements pursuant to which Grantee must complete the Project as stated in its Application, including the Project Worksheet, Qualitative Attributes Form, Budget Plan, and, to the extent applicable, Outside TSA Infrastructure Worksheet, in exchange for State funds made available pursuant to and in accordance with Iowa Code section 8B.11, Iowa Administrative Code rule 129—22, and the NOFA and Awarded Grantee as stated in the NOIA issued on 10-23-2020. The total award made to Grantee for purposes of this Agreement is \$_____.
- 1.2. *Term.* The term of this Agreement (“**Term**”) shall begin on the Effective Date and continue until the Office has reimbursed Grantee for all Allowable Expenditures following Project Completion in accordance with the terms, conditions, and requirements of this Agreement, unless otherwise terminated in accordance with the terms and conditions of this Agreement.

2. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed to them under Iowa Code chapter 8B, Iowa Administrative Code chapter 129—22, and 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 Iowa Code section 8B.11, Iowa Administrative Code rule 129—22, or any other applicable law, rule, or policy.
- 2.2. “**Grantee Contractor(s)**” means any of Grantee’s authorized subcontractors, affiliates, subsidiaries, or any other third party acting on behalf of or at the direction of Grantee, directly or indirectly, in performing or providing the Project 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 under this Agreement.

3. Project Completion.

- 3.1. *Performance/Certification.* Grantee must complete its Project by the Completion Date identified in its Application. In addition, prior to the disbursement of any State funds, Grantee must, subject to confirmation and verification by the Office in accordance with Section 3.2 (Field Testing):
- 3.1.1. Certify to the Office that the Project was completed as proposed/represented in the Application, including but not limited to, that:
- 3.1.1.1. The final installation Facilitates Broadband service at or above 25/3 Broadband or 100/20 Broadband, whichever is applicable, in each of the applicable Targeted Service Areas identified in the Application/forming the basis of the Project; and
- 3.1.1.2. The final installation Facilitates Broadband service at or above 25/3 Broadband or 100/20 Broadband, whichever is applicable, to the same number of Broadband Units (homes, schools, businesses) located within the Targeted Service Areas forming the basis of the Project as represented in the Application.
- 3.1.2. Identify the total number of Broadband Units to which Broadband service is available in each Targeted Service Area identified in the Application/forming the basis of the Project.
- 3.1.3. Supply the Office with geographic information system (“**GIS**”) data in a form mutually acceptable to both the Office and Grantee demonstrating specifically where Broadband Infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such Broadband Infrastructure actually serves any customers in Targeted Service Area(s) forming the basis of the Application at the time such mapping data is supplied to the Office. Such GIS data must enable the Office to determine which specific homes, schools, and businesses within each Targeted Service Area forming the basis of the

Project have access to 25/3 Broadband or 100/20 Broadband, whichever is applicable, as a result of the Project.

- 3.2. *Field Testing.* The Office may, in its sole discretion, conduct field tests for compliance with the requirements outlined in this Agreement, including Section 3.1 (Performance/Certification), the NOFA, Iowa Code chapter 8B, or Iowa Administrative Code chapter 129—22, on one or multiple occasions for up to five (5) years after Broadband service is certified as complete pursuant to Section 3.1 (Performance/Certification) and Iowa Administrative Code rule 129—22.6(3)(b). The Office may exercise this right both before and after reimbursing a Grantee for any claimed, Allowable Expenditures, but if the Office elects to do so before reimbursing a Grantee for any claimed, Allowable Expenditures, it will do so within a reasonable time, not-to-exceed one (1) year, after Broadband service is certified as complete pursuant to Section 3.1 (Performance/Certification) and Iowa Administrative Code rule 129—22.6(3)(b). Such field tests may include but not be limited to:
- 3.2.1. Speed tests anywhere between a Grantee's central office and the demarcation at any customer's location in a Targeted Service Area or Census Block in which the Project was to be deployed;
 - 3.2.2. In the case of wireless installations, from any location in a Targeted Service Area or Census Block in which the Project was to be deployed; and/or
 - 3.2.3. In the case where a Grantee does not have a customer in a Targeted Service Area being served by the installation, 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 25/3 Broadband or 100/20 Broadband, whichever is applicable, in applicable Targeted Service Area(s) identified in the original Application/forming the basis of the Project. The costs of such certification shall be borne by the Grantee.
- 3.3. *Project Completion.* For purposes of this Agreement, a Project shall be considered "complete" as of the later of the date the Office:
- 3.3.1. Receives the certifications and GIS data required by Section 3.1 (Performance/Certification); and
 - 3.3.2. Verifies that a Project certified as complete complies with the requirements of this Grant Agreement, the NOFA, Iowa Code chapter 8B, and Iowa Administrative Code chapter 129—22 pursuant to and in accordance with Section 3.2 (Field Testing), or affirmatively elects not to exercise this right.
- 3.4. *Consequences of Non-Performance.* Failure to fully satisfy all of the requirements/criteria set forth in Section 3.1 (Performance/Certification), Iowa Code chapter 8B, and Iowa Administrative Code chapter 129—22, as may be verified pursuant to and in accordance with Section 3.2 (Field Testing), or failure to otherwise to complete the Project as represented in the Application, may result in the Office's denial of a request for reimbursement for any or all expenditures related to the Project, and Grantee shall not otherwise be entitled to reimbursement for any such expenditures.

4. Payment Procedures.

- 4.1. *Timing of Payments.* Payment shall be made in one (1) disbursement upon Project Completion, and only after:
- 4.1.1. The Office's confirmation and verification of Project Completion pursuant to and in accordance with Section 3.2 (Field Testing), or following the Office's affirmative election not to exercise this right; and
 - 4.1.2. The Office's receipt of the summary of all final, claimed, Allowable Expenditures and other sufficient or appropriate documentation to support such claimed, Allowable Expenditures in accordance with Section 4.4.
- 4.2. *Total Payment Not to Exceed Thirty-Five Percent (35%).* Total payment of State funds under this Agreement shall not exceed the lesser of:
- 4.2.1. Thirty-five percent (35%) of Grantee's total, estimated, Allowable Expenditures as set forth in the Budget Plan and, to the extent applicable, the Outside TSA Infrastructure Worksheet; or
 - 4.2.2. Thirty-five percent (35%) of Grantee's total, final, Allowable Expenditures upon Project Completion.
- 4.3. *Allowable Expenditures.* Grantee shall only be reimbursed for "**Allowable Expenditures**" actually and previously incurred by Grantee. "**Allowable Expenditure(s)**" mean Project-related expenditures that are:
- 4.3.1. Directly related to the installation of Broadband Infrastructure that Facilitates 25/3 Broadband or 100/20 Broadband, whichever is applicable, in Targeted Services Areas identified in the Application/forming the basis of the Project;
 - 4.3.2. Utilized for the installation of Broadband Infrastructure in Targeted Service Areas identified in the Application/forming the basis of the Project (except and solely to the extent as otherwise permitted by the Outside TSA Infrastructure Process);
 - 4.3.3. Not incurred prior to the date of the issuance of the NOFA.
- Allowable Expenditures may not include expenditures (in other words, "**Disallowed Expenditure(s)**") that are:

- 4.3.4. Related to land buildings, structures, improvements, or equipment not directly used in the transmission of data via Broadband;
- 4.3.5. 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;
- 4.3.6. Indirect labor costs or administrative overhead;
- 4.3.7. Passthrough expenditures with respect to subcontractors or other third parties (including Grantee Contractors) 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.

The Office may deny a request for reimbursement for any expenditures that do not constitute Allowable Expenditures, and Grantee shall not otherwise be entitled to reimbursement for any such expenditures.

- 4.4. *Proof of Allowable Expenditures.* Within sixty (60) days of Project completion and prior to the disbursement of any State funds, Grantee must submit a final summary of all Allowable Expenditures for which Grantee seeks reimbursement on forms supplied by the Office and attest that such Allowable Expenditures are true, accurate, and in fact constitute Allowable Expenditures, actually and previously 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, and corresponding procedures referenced therein, for further requirements/guidance on the types of records/proof that may be required to support a claimed reimbursement for Allowable Expenditures. The Office may deny a request for reimbursement for any expenditures Grantee claims that are submitted more than sixty (60) days after Project completion or that are not supported by sufficient or appropriate documentation, and Grantee shall not otherwise be entitled to reimbursement for any such expenditures.
- 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. The Office will pay all approved amounts in arrears and in conformance with Iowa Code section 8A.514 and Iowa Administrative Code rule 11—41.1(2), and all other applicable laws, rules, regulations, policies and requirements. The Office may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Office shall have the right to dispute any request for payment, invoice, or other supporting documentation and withhold payment of any disputed amount if the Office believes the documentation is inaccurate, incomplete, insufficient, or incorrect in any way. The Office's obligation to make payments under this Agreement is contingent upon the continued availability of funds (federal, state, or otherwise) 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 any Applicable Laws; or (2) a waiver by the Office of any rights or remedies it may have under this Agreement, at law, in equity, or otherwise, 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, and 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.
- 4.6. *Return of Funds to Office.* In addition to and not to the exclusion of any other remedies available to the Office or the State of Iowa under this Agreement, at law, in equity, or otherwise:
 - 4.6.1. Grantee must repay the Office and shall be liable to the Office for the applicable portion of any grant funds previously distributed by the Office to Grantee if the Office, in its sole discretion, determines that:
 - 4.6.1.1. A prior payment, in whole or in part, was comprised of claimed expenditures that did not constitute Allowable Expenditures or were not otherwise reimbursable hereunder, was improperly or incorrectly allocated or was unreasonable, was not supported by sufficient and appropriate documentation, or was otherwise made in a manner inconsistent with or in violation of the terms, conditions, or requirements of this Agreement, the NOFA, and Applicable Laws;
 - 4.6.1.2. A prior reimbursement, in whole or in part, exceeds the thresholds or limitations set forth in Section 4.2 (Total Payment Not to Exceed Thirty-Five Percent (35%)); or

- 4.6.1.3. Any audit (whether state or federal) or other review, the Office or other State of Iowa governmental entity, or any United States governmental entity:
 - 4.6.1.3.1. Takes exception to the Project(s) provided under this Agreement for which reimbursement has been paid, or to the manner in which any related funds have been disbursed or expended;
 - 4.6.1.3.2. Concludes or orders that any funds are deferred or disallowed, or have been disbursed or expended in a manner not consistent with or in violation of Applicable Laws governing the Project or the expenditure of such funds; or
 - 4.6.1.3.3. Concludes or determines that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable.
- 4.6.2. Grantee shall be obligated to repay the Office and shall be liable to the Office for the entire amount of any grant funds previously distributed by the Office to Grantee if the Office, in its sole discretion, determines that:
 - 4.6.2.1. A prior payment, in whole or in part, was used in a manner that does not Facilitate Broadband as identified or described in the original Application/forming the basis of the Project(s);
 - 4.6.2.2. Any representation, warranty, certification, or other statement made by Grantee in the Application, this Agreement, or any documentation submitted to the Office in relation to the administration of this Agreement or the Program proves untrue or inaccurate in any material respect as of the date of the issuance or making thereof;
 - 4.6.2.3. Grantee fails to materially complete the Project(s) as proposed in its Application or agreed to herein;
 - 4.6.2.4. Grantee has violated or failed to comply with any Applicable Laws; or
 - 4.6.2.5. Any of the circumstances identified in Section 4.6.1.3 occur.

If Grantee is obligated to repay/liable to the Office for any amounts under this Section, Grantee shall repay such amounts to the Office within fifteen (15) days of the Office's written request for repayment. The requirements of this Section shall apply to the Grantee and Grantee Contractors, and Grantee shall require and cause any Grantee Contractor used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

- 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, any other agreement, or pursuant to a judgment, or pursuant to any law, rule, or order, the Office or its designee may set off such sum against any sum invoiced or claim for payment made to the Office or any other governmental entity to the State of Iowa issued or made by Grantee. In addition, any amounts due the Office as damages may be deducted by the Office from any money or sum payable by the Office to Grantee pursuant to this Agreement or any other agreement between Grantee and the Office.
- 4.8. *Erroneous Payments and Credits.* Grantee shall promptly pay or refund to the Office the full amount of any overpayment, erroneous payment, or unallowable expense within ten (10) business days after either discovery by the Grantee or notification by the Office of the overpayment, erroneous payment, or unallowable expense. In the event Grantee fails to timely pay or refund any amounts due the Office under this Section 4.8 (Erroneous Payments and Credits), the Office will charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date the payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Office may, in its sole discretion, elect to have Grantee apply any amounts due to the Office under this Section 4.8 (Erroneous Payments and Credits) against any amounts payable by the Office under this Agreement or any other agreement between the Office and Grantee.

5. Default and Termination.

- 5.1. *Termination for Cause by the Office.* The Office may terminate this Agreement without penalty or legal liability upon written notice of Grantee's breach of any term, condition, requirement, or provision of this Agreement, if such breach is not cured within the time period specified in the Office's notice of breach or any subsequent notice or correspondence delivered by the Office to Grantee. Whether Grantee has sufficiently cured the breach shall be determined in the sole discretion of the Office. In addition, the Office may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:
 - 5.1.1. Grantee, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
 - 5.1.2. Grantee or Grantee's Project(s) as implemented has violated or failed to comply with Applicable Laws;
 - 5.1.3. Grantee's officers, directors, employees, agents, subsidiaries, affiliates, contractors, subcontractors, or a Grantee Contractor has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

- 5.1.4. Grantee terminates or suspends its business;
- 5.1.5. Grantee's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 5.1.6. The Office determines or believes Grantee has engaged in conduct that has or may expose the Office or the State to material liability;
- 5.1.7. The Office determines or believes Grantee is not ultimately a "Responsible Grantee," which shall be determined under the the same standards set forth in the definition of Responsible Applicant in the NOFA;
- 5.1.8. Any of the following has been engaged in by or occurred with respect to Grantee or any corporation, shareholder, or entity having or owning a controlling interest in Grantee:
 - 5.1.8.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 5.1.8.2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 5.1.8.3. Making an assignment for the benefit of creditors;
 - 5.1.8.4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Grantee's performance of its obligations under this Agreement; or
 - 5.1.8.5. Taking any action to authorize any of the foregoing.

Grantee shall notify the Office in writing if any of the foregoing events occur that would authorize the Office to immediately terminate this Agreement. The right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of other remedies available to the Office or the State of Iowa under this Agreement, in law, at equity, or otherwise.

- 5.2. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Office shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:
 - 5.2.1. The legislature, governor, or other applicable governing body fail in the sole opinion of the Office to appropriate funds sufficient to allow the Office to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement;
 - 5.2.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Office to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Office in its sole discretion;
 - 5.2.3. If the Office's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
 - 5.2.4. If the Office's duties, programs, or responsibilities are modified or materially altered;
 - 5.2.5. If there is a decision of any court, administrative law judge, or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Office's ability to fulfill any of its obligations under this Agreement; or
 - 5.2.6. In the event any audit (whether state or federal) or other review, the Office or any other State of Iowa governmental entity, or United States governmental entity:
 - 5.2.6.1. Takes exception to the Project(s) provided under this Agreement for which state or federal reimbursement has been paid, or to the manner in which any related funds have been disbursed or expended;
 - 5.2.6.2. Concludes or orders that State or federal funds are deferred or disallowed, or have been disbursed or expended in a manner not consistent with or in violation of Applicable Laws governing the expenditure of such funds; or
 - 5.2.6.3. Concludes or determines that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable.

- 5.3. *Limitation of Payment Obligations.* In the event of a termination of this Agreement for any reason (except for termination pursuant to Section 5.2 (Termination Due to Lack of Funds or Change in Law)), and subject to the terms and conditions of this Agreement, the Office shall, at most, pay only those amounts, if any, to Grantee for aspects of a Project the Office has verified as complete in accordance with the terms and conditions of this Agreement and for which the Office is otherwise obligated to pay pursuant to this Agreement; provided however, that the Office's obligation to pay Grantee such amounts shall be limited by, and subject to, legally available funds. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the Office or the State of Iowa and shall not be construed to require the Office or the State of Iowa to pay any compensation or other amounts not otherwise due hereunder or any amounts otherwise withheld by the Office in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Office or the State of Iowa shall not be liable, under any circumstances, for any of the following:
- 5.3.1. The payment of unemployment compensation to Grantee or any Grantee Personnel;
 - 5.3.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - 5.3.3. Any expenditures that:
 - 5.3.3.1. Do not constitute Allowable Expenditures incurred by Grantee in its performance of this Agreement;
 - 5.3.3.2. Are not properly or correctly allocated in accordance with the allocation methods approved by the Office as part of the Outside TSA Infrastructure Process;
 - 5.3.3.3. Are not supported by sufficient and appropriate documentation; or
 - 5.3.3.4. Are not otherwise reimbursable, due, or owed under the terms or conditions of this Agreement;
 - 5.3.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; or
 - 5.3.5. Any taxes Grantee may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes or property taxes.
- 5.4. *Grantee's duties upon termination.* Upon request of the Office, Grantee shall, within any time periods or deadlines specified by the Office:
- 5.4.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Office may require;
 - 5.4.2. Perform any and all remaining requirements, duties, or obligations as may be required by the State of Iowa;
 - 5.4.3. Notwithstanding any provision in this Agreement to the contrary, refund to the Office within fifteen (15) days of the effective date of a termination of this Agreement for any reason any funds or other amounts paid by the Office that:
 - 5.4.3.1. Pertain to any yet to be completed aspect of any Project(s); or
 - 5.4.3.2. Are or can be required to be returned to the Office under the terms and conditions of this Agreement.
- 5.5. *Survival.* Expiration or termination of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement which:
- 5.5.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
 - 5.5.1.1. Section 3.2 (Field Testing);
 - 5.5.1.2. Section 3.4 (Consequences of Non-Performance);
 - 5.5.1.3. Section 4 (Payment Procedures);
 - 5.5.1.4. Section 5.3 (Limitation of Payment Obligations);
 - 5.5.1.5. Section 5.5 (Survival);
 - 5.5.1.6. Section 6 (Indemnification);
 - 5.5.1.7. Section 7 (Representations, Warranties, and Covenants);
 - 5.5.1.8. Section 8 (Publicity);
 - 5.5.1.9. Section 9 (Confidentiality);
 - 5.5.1.10. Section 10 (General Provisions).
 - 5.5.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.
- 6. Indemnification.**

- 6.1. *Generally.* Grantee shall indemnify and hold harmless the Office and the State of Iowa and their employees, officers, board members, agents, representatives, and officials (“Indemnitees”) from and against any and all 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 any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of:
- 6.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Grantee, including those caused by Grantee, Grantee Contractors, or Grantee Personnel;
 - 6.1.2. Grantee’s, Grantee Contractor’s, or Grantee Personnel’s performance, failed performance, or attempted performance of this Agreement;
 - 6.1.3. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Grantee, Grantee Contractors, or Grantee Personnel;
 - 6.1.4. The failure by Grantee, Grantee Contractors, or Grantee Personnel to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders;
 - 6.1.5. The furnishing or making by Grantee, Grantee Contractors, or Grantee Personnel, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement in any way whatsoever that is false, deceptive, or misleading;
 - 6.1.6. Any failure by Grantee or Grantee Contractors to make any reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, unemployment compensation, workers compensation, employee income, the Affordable Care Act, sales taxes, excise taxes, income taxes, property taxes, and/or other taxes, fees, or costs required by Grantee or Grantee Contractors to conduct business in the State;
 - 6.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Office or the State of Iowa by any Grantee Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another governmental entity or any Grantee Personnel against the Office or the State of Iowa in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Grantee Personnel;
 - 6.1.8. Any claim involving any personal injury or damage to property, caused, in whole or in part, by Grantee, Grantee Contractors, or Grantee Personnel in any way related to this Agreement;
 - 6.1.9. Any claim for violation or infringement of any statutory, regulatory, or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, or misappropriation;
 - 6.1.10. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of or made by Grantee, Grantee Contractors, Grantee Personnel, or any third party, including any claims related to the violation or misappropriation of any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right;
 - 6.1.11. Any claim related to the Office’s failure to disclose GIS data pursuant to applicable state, federal, and/or international laws, rules, regulations, or orders, including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders; or
 - 6.1.12. Any indemnification obligation of Grantee set forth in the NOFA.
- 6.2. Grantee’s obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either Party may assert against the other.
- 6.3. Grantee’s duties as set forth in this Section shall survive termination of this Agreement and shall apply regardless of the date any potential claim is made or discovered by the Office, the State of Iowa, or any Indemnitee.

7. Representations, Warranties, and Covenants.

- 7.1. *Project Warranty.* Grantee represents, warrants, and covenants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, or any Applicable Laws governing this Agreement or the Project, and that any such Project(s) shall satisfy such terms, conditions, or requirements in all material respects. Grantee further represents, warrants, and covenants that it is fully aware of the intended outcomes of any Project(s) to be delivered hereunder, and that any such Project(s) are fit for such intended purposes and uses. 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 or in connection with the administration of this Agreement; and (3) Applicable Laws.
- 7.2. *Ability to Perform.* Grantee represents and warrants that it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Project(s) hereunder.

- 7.3. *Workmanlike Manner.* Grantee represents, warrants, and covenants that all Project(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. *Not in Arrears.* 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.
- 7.5. *Compliance with Laws.* 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 specifically enumerated laws:
- 7.5.1. Iowa Code section 8B.11 and Iowa Administrative Code rule 129—22.
- 7.5.2. 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.
- 7.5.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.5.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.

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.

- 7.6. *Preservation of Implied Warranties/Construction and Interpretation.* 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.** During the Term and at all times after the termination or expiration of this Agreement, 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 state funds; and b) the dollar amount of state funds for the Project(s). Any publication (written, visual, or sound) shall contain the following statements:

“This project was supported by funds made available through 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 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. 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 not intentionally disclose GIS data supplied by Grantee to the Office in connection with this Agreement. Notwithstanding and in addition to the foregoing, the Office may disclose GIS data supplied by Grantee:

- 9.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;
- 9.2. Pursuant to any applicable laws, rules, or regulations;
- 9.3. If the Office reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 9.4. If the Office, in the Office's sole discretion, determines Grantee has not provided or is unwilling to provide facts sufficient to enable the Office to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rules, and regulations.

Prior to disclosing such data as permitted above, the Office shall provide reasonable notice to Grantee of the circumstances giving rise to such disclosure.

10. General Provisions.

10.1. Monitoring, Review, and Status.

10.1.1. **Monitoring and Review.** In addition to any other terms and conditions hereunder of or related to auditing, verifying, or ensuring Grantee's compliance with the terms, conditions, requirements, or limitations of this Agreement, the Office shall monitor and review Grantee's performance under this Agreement to ensure compliance with this Agreement and 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, which shall include 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 which identifies the Office's findings. A corrective action plan with a timetable to address any deficiencies or problems noted in the report may be requested. The corrective action plan shall be submitted to the Office for approval within the timelines outlined in the written report. The Grantee shall implement the plan after it is approved by the Office. Failure to do so may result in suspension or termination of the Agreement, without penalty or liability to the Office. Grantee shall not impose any charge or fee in connection with any review or monitoring conducted by the Office hereunder.

10.1.2. **Status Reports.** The Office may require Grantee to communicate with it about the status of the Project(s). Such communications may include a conference call or an in-person meeting ("**Status Meeting**") or submission to the Office of a report ("**Status Report**") regarding: (a) An overview and status of the Project(s); (b) Issues encountered and being resolved; (c) Updates on the timing of Project completion; (d) Any other information that the Office may reasonably request.

10.1.3. The requirements of this Section shall apply to Grantee and Grantee Contractors and Grantee shall require and cause any Grantee Contractor 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.

- 10.2. *Record Retention/Access to Records.* Grantee shall maintain accurate, current and complete books, documents, and records that sufficiently and appropriately document the proper use of State funds for a period of, whichever is later:
- 10.2.1. At least five (5) years from the date of any final reimbursement disbursed by the Office hereunder; or
 - 10.2.2. If any litigation, claim, negotiation, audit, or other action involving the books, documents, and records has commenced before the expiration of the five-year (5) period, until completion of the action and resolution of all issues which arise from it.
- Such books, documents, and records must document all fees and other amounts charged under this Agreement, and all expenditures and third-party reimbursements. Grantee shall permit the Office or its designee to access and examine, audit, excerpt, and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records relating, directly or indirectly, to Grantee's use of State funds hereunder, and 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 periods as may be specified by the Office, at no charge. 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. The requirements of this Section shall apply to Grantee and Grantee Contractors and Grantee shall require and cause any Grantee Contractor 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 notifies the Office of an issue or finding involving the Grantee's compliance with or violation of any Applicable Laws, Grantee shall bear the cost of the Auditor's review or other similar review and any subsequent assistance provided by the Auditor to determine compliance or address or remediate noncompliance. Grantee shall reimburse the Office for any costs the Office pays to the Auditor for such review or audit.
- 10.4. *Independent Contractor Status.* Grantee shall be considered an independent contractor of the Office in its performance of the Agreement. Grantee, Grantee Contractors, and Grantee Personnel shall not hold themselves out as an employee or agent of the Office or the State of Iowa. Grantee or Grantee Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Grantee Personnel to perform and complete the Project(s). Grantee Personnel are not eligible for and Grantee shall ensure Grantee Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like. Grantee Personnel shall not be considered employees of the Office or the State of Iowa for any purpose, including for federal or state tax purposes. The Office or the State of Iowa shall not withhold taxes on behalf of Grantee or Grantee Contractors. Grantee and Grantee Contractors shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.
- 10.5. *Not a Joint Venture.* Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 10.6. *Obligations of Joint Entities.* If Grantee is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- 10.7. *Assignment and Delegation.* This Agreement may not be assigned, transferred, or conveyed, in whole or in part, without the prior written consent of the other Party, except that the Office may assign, transfer, or convey this Agreement, in whole or in part, to any governmental entity that succeeds the Office's duties hereunder or otherwise assumes responsibility for the functions or duties currently assumed by the Office. For purposes of construing this clause, a transfer of a controlling interest in Grantee, a merger, sale or consolidation of Grantee, or a sale of substantially all of Grantee's assets shall be considered an assignment. Grantee agrees that it shall provide the Office with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Grantee and of any proposed merger, sale, or consolidation of Grantee. Grantee agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Grantee or any affiliate thereof without the prior written consent of the Office. Grantee further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Grantee under this Agreement.
- 10.8. *Use of Third Parties.* Grantee may enter into contracts or subcontracts for the provision or delivery of services related to the Project. Any such contract or subcontract shall be in writing and shall in no way alter the terms and conditions of this Agreement. All contracts or subcontracts shall be subject to the terms and conditions of this Agreement. No contract, subcontract, or other delegation of work shall relieve or discharge Grantee from any obligation, provision, or liability under this Agreement. Grantee shall remain responsible for such performance and shall be fully responsible

and liable for all acts or omissions of any Grantee Contractors or Grantee Personnel. Any action of a Grantee Contractor or Grantee Personnel, which, if done by Grantee, would constitute a breach of this Agreement, shall be deemed a breach by Grantee and have the same legal effect. The term "Grantee" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Grantee Contractors and Grantee Personnel. Grantee shall be solely responsible and liable for any and all payments that may be due Grantee Contractors and Grantee Personnel pursuant to any contract or subcontract. Grantee shall indemnify and hold harmless the State, the Office, and any officers, directors, employees, officials, and agents of either of the foregoing from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Grantee's breach of any contract or subcontract into which it enters, including Grantee's failure to pay any and all amounts due to any Grantee Contractor or Grantee Personnel. If Grantee fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to any Grantee Contractor or Grantee Personnel in connection with the Project, the Office may pay such claim and charge the amount of the payment against funds due or to become due Grantee under this Agreement. The payment of a claim in such manner shall not relieve Grantee or its surety from any obligation with respect to any unpaid claims. All contracts or subcontracts shall contain provisions which allow the Office or its designee to access books, documents, and records and for inspections of work of Grantee Contractors or Personnel, as required of Grantee herein.

- 10.9. *Third-Party Beneficiaries.* Except as otherwise expressly stated herein, there are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the Office, the State of Iowa, the Office's respective successors and permitted assigns, Grantee, and the citizens of the State of Iowa residing in the Targeted Services Areas identified in the Application/forming the basis of the Project.
- 10.10. *Time is of the Essence.* Time is of the essence with respect to Grantee's performance of its obligations under this Agreement.
- 10.11. *Legally Available Funds.* All payments under this Agreement are subject to the Office's receipt of sufficient funds. Any termination, reduction, or delay of state funds to the Office may, at the Office's sole discretion, result in the termination, reduction, or delay of the distribution of State funds to Grantee under this Agreement.
- 10.12. *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.
- 10.13. *Choice of Law and Forum.* 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. Any and all litigation or actions commenced, including but not limited to any proceeding for judicial review commenced pursuant to Iowa Code chapter 17A, in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Grantee irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) 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 Section 10.14 (Notices). If for any reason Grantee's agent is unable to act as such or the address of the agent changes, Grantee shall immediately appoint a new agent and provide the Office with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Office. Nothing in this provision will alter the right of the Office to serve process in any other manner permitted by law.
- 10.14. *Notices.* Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:

Attn: Business Services Division Administrator

Iowa Office of the Chief Information Officer

200 E Grand Ave.

Des Moines, IA 50309

If to Grantee:

Farmers Cooperative Telephone Company

332 Main St ; PO Box 280

Dysart, IA 52224

- 10.15. *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.
- 10.16. *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. Notwithstanding the foregoing, the Office may unilaterally modify the Agreement in order to accommodate any change in any applicable federal, state or local laws, regulations, rules, policies, or orders. A copy of such unilateral modification will be provided to Grantee as an amendment to this Agreement.
- 10.17. *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.
- 10.18. *Headings or Captions and Terms.* The section headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 10.19. *Multiple Counterparts and Electronic Signatures.* This Agreement, any amendments hereto, or any related instruments 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, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of such document(s) so executed shall constitute an original. Signatures on such document(s) that are executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such document(s) may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D ("UETA"), or any other applicable state law, rule, policy, standard, directive, or order. Such document(s) so accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Grantee acknowledges and agrees it will not contest the validity or enforceability of such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Grantee further acknowledges and agrees that it will not contest the validity

- or enforceability of a signed scanned or facsimile copy of such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.
- 10.20. *Attachments.* The Parties agree that if an addendum, attachment, rider, schedule, appendix, or exhibit is attached hereto by the Parties, or referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein. In addition, the NOFA and Grantee's Application, including the Project Worksheet, Qualitative Attributes Form, Budget Plan, and, to the extent applicable, Outside TSA Infrastructure Worksheet, together with any clarifications, attachments, appendices, or amendments to the NOFA and Application are incorporated into this Agreement by this reference as if fully set forth herein; provided, however, that none of Grantee's exceptions, objections or proposed modifications as it relates to the NOFA or any terms associated therewith (collectively "**Grantee Exceptions**") shall be incorporated into this Agreement unless expressly set forth herein. The terms and conditions of the NOFA and any representations in Grantee's Application are made contractual obligations of Grantee, except that any Grantee Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Grantee, the Office, or the State of Iowa hereunder, unless expressly stated herein. In the case of any conflict or inconsistency between the specific provisions of this document, the NOFA, or the Application, any conflict or inconsistency shall be resolved as follows: first, by giving preference to the specific provisions of this document, the Grant Agreement, and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the NOFA; and third, by giving preference to the specific provisions of the Application, including the Project Worksheet, Qualitative Attributes Form, Budget Plan, and, to the extent applicable, Outside TSA Infrastructure Worksheet, but excluding any Grantee Exceptions that are not expressly made a part of this Agreement. References to the Parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the NOFA and Grantee's Application. Failure of the Parties to make reference to the terms of the NOFA or Application in this document shall not be construed as creating a conflict and will not relieve Grantee of the contractual obligations imposed by the terms of the NOFA and Grantee's Application. Terms offered or stated in Grantee's Application, which exceed the requirements of the NOFA, shall not be construed as creating an inconsistency or conflict with the NOFA or this document. Notwithstanding anything herein to the contrary, the Office shall have only those obligations that are expressly stated in this document, and the NOFA and/or Application shall not create any express or implied obligations of the Office.
- 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 Office 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 (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise) and all other defenses available to either, under State and federal laws, rules, and regulations for any claim arising out of or related to this Agreement, whether in state or federal court or any other tribunal or forum.
- 10.27. *Attorney's Fees and Expenses.* In the event Grantee defaults on any of its obligations under this Agreement, Grantee shall pay to the Office all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the State of Iowa) incurred by the Office or the State of Iowa in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 10.28. *Conflicts of Interest.* Grantee represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement between Grantee, Grantee Contractors, or Grantee Personnel and the Office or the State of Iowa that is or may constitute a conflict of interest or the appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement, and Grantee, Grantee Contractors, and Grantee Personnel shall not engage in any conduct or permit any third party from engaging in any conduct that would violate that chapter.

- 10.29. *Brokering Certification.* Grantee certifies that no person representing the Office, nor any external entity or person, has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingency.
- 10.30. *Report Misuses of Funds.* Grantee must promptly refer to the Office any credible evidence that a principal, employee, agent, Grantee Contractor, Grantee Personnel, 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.
- 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 ten (10) months following the end of Grantee's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
- 10.32.3.1. Financial information relative to the expenditure of state and federal monies 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 chapter 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.
- 10.33. *Final Authority.* The Office shall have the final authority to interpret, construe, and apply the terms and conditions of this Agreement. Any decision of the Office related to the interpretation, construction, or application of any terms or conditions or resolution of any disputes under or related to this Agreement shall be final and binding on Grantee, subject to Iowa Administrative Code rule 129—22.6(5) and Iowa Code chapter 17A. Failure to pursue the administrative remedies available pursuant to Iowa Administrative Code rule 129—22.6(5) and thereafter Iowa Code chapter 17A shall render any order rendered by the Office pursuant to the processes set forth in that rule final and binding on the Parties, and shall be deemed a failure to exhaust administrative remedies. Outside of this process, Grantee waives any right, title, or interest it may have to bring a breach of contract claim or any other claim originating in district court or before any other tribunal, whether state or federal, in connection with or otherwise relating to this Agreement. In addition, Grantee waives any right or ability to claim that a final decision rendered pursuant to the above-described process is neither binding nor enforceable, and waives any right, claim, or ability to challenge the Office's authority to interpret, construe, or apply the terms and conditions set forth in this Agreement in the first instance, which interpretations, constructions, applications of law to fact, and underlying findings of fact shall be entitled to fullest and most expansive interpretative deference and deference applicable to findings of fact on judicial

- review as if the Office is fully vested with such authority; this provision shall not be understood, interpreted, or construed as an admission or concession by the Office that it has not otherwise been fully vested with such authority.
- 10.34. *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.
- 10.35. *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. As it relates to Grantee or Grantee Contractors, "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.
- 10.36. *Contingent Awards.* If, at the time an Award is made, the Office determines: (1) a particular Census Block forming the basis of a proposed Project is, in whole or in part, a Targeted Service Area subject to challenge, pursuant to procedures set forth in Iowa Administrative Code rule 129—20.5 or, (2) the Office's administration of the Award process resulting in the Award forming the basis of this Agreement is subject to challenge, pursuant to Iowa Administrative Code rule 22.5(4) and Section 7.24 (Appeal of Award Decision) of the NOFA, including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, 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 a Census Block is ultimately determined to not constitute a Targeted Service Area, 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.

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 ("**State of Iowa**" or "**State**")

Farmers Cooperative Telephone Company ("**Grantee**")

By: _____
 Name: _____
 Title: _____
 Date: _____

By: Shelly Franzenburg
 Name: Shelly Franzenburg
 Title: General Manager
 Date: November 19, 2020

Note: Only fill out and sign below if Grantee is owned, in whole or in part, by one or more parent companies. Where multiple parent companies, or where a parent company is owned by another parent company, complete and sign for each parent company in the hierarchy. Add additional signature blocks as needed.

Co-Signer(s): As required by and in accordance with NOFA #004 Section 7.22 (Co-signatures/Joint and Several) and Section 10.6 (Obligations of Joint Entities) of this Agreement, the parent company(ies) ("**Co-Signer(s)**") signing below agree to be bound by and are jointly and severally liable for any duties, responsibilities, obligations, liabilities, or default of, owed, or caused by Grantee under this Agreement. Notwithstanding the foregoing, unless and until this Agreement is assigned to a Co-Signer in accordance with Section 10.7 (Assignment and Delegation) of this Agreement, Co-signer(s) shall not be entitled to or authorized to exercise any rights, remedies, or any other benefits conferred, due, or owing Grantee under this Agreement, including, but not limited to, the receipt of any payment or reimbursement for any costs or expenses claimed by, due, or owing Grantee under this Agreement.

[Name of Parent Company]
("Co-Signer")

By: _____
Name: _____
Title: _____
Date: _____

[Name of Parent Company]
("Co-Signer")

By: _____
Name: _____
Title: _____
Date: _____