



SIREPA

**SOUTHEAST IOWA REGIONAL
ECONOMIC & PORT AUTHORITY**

April 21, 2022

**Meeting of the Board of Directors
9:30am – 10:30am**

**In-person at: SIREPA Building
2495 280th St, Montrose, IA**

And Via Zoom

Call-In: (312) 626-6799 Meeting ID: 830 9773 5483

<https://us02web.zoom.us/j/83097735483>

Agenda

I. Call to Order, Chair (Boyer):

Roll Call:

- a. Director Denise Boyer, Chair
- b. Director Mike Hickey, Vice-Chair
- c. Director Michael Dunn, Treasurer
- d. Director Jack Smith
- e. Director, Bob Dodds
- f. Director, Bruce Hardy
- g. Ex-Officio, Garry Seyb, Lee County Supervisor
- h. Ex-Officio, Rick Larkin, Lee County Supervisor
- i. Ex-Officio, Matt Larson, State Treasurer's Office

II. Approve Agenda of April 21, 2022 Meeting (Board Action)

III. Approve Minutes of December 7, 2021 Meeting (Board Action)

IV. Consider Lee County / SIREPA Broadband Funding Contract (Board Action)

V. Consider Danville Telecom / SIREPA Broadband Project Contracts (Board Action)

VI. KL Megla Building Update (Board Information)

VII. Matters from the Floor

VIII. Adjourn (Board Action)



SIREPA

SOUTHEAST IOWA REGIONAL ECONOMIC & PORT AUTHORITY

Minutes of the SIREPA Board of Directors
Tuesday, December 7, 2021, 1:30 p.m.
In-Person at KL Megla Building or via Zoom
2495 280th St, Montrose, IA

I. Call to Order at 1:30 p.m. by Mike Hickey, Vice-Chair

Roll Call:

Members Present: Director Mike Hickey (Vice Chair); Director Michael Dunn (Treasurer); Director Jack Smith; Director Bob Dodds; Director Bruce Hardy; Matt Larson, Ex-Officio via Zoom

Members Absent: Director Denise Boyer (Chair), Garry Seyb, Ex-Officio, and Rick Larkin, Ex-Officio

SEIRPC Staff Present: Mike Norris; Zach James, and Sherri Jones via Zoom

Guest(s) Present: Chuck Vandenberg, Pen City Current; Dennis Fraise, Lee County Economic Development Group; Tim Fencl, Danville Telecom via Zoom

II. Consider Approval of Agenda (Board Action):

Smith made a motion to approve the December 7, 2021 meeting agenda after moving item V. to item III., second by Dunn. All ayes, motion carried.

III. Lee County Fiber Project Update (Board Information):

Norris gave a brief project overview adding that SIREPA, Danville Telco, and Lee County assembled what was described from officials close to the process as “one of, if not the best application” received in the state for State of Iowa Office of Chief Information Officer Notice of Funding Opportunity 6 funds. He also outlined the roles and responsibilities of Danville Telco and SIREPA and explained the five agreements needed and their status: 1) Lee County/SIREPA funding agreement; 2) SIREPA/Danville Telco funding agreement; 3) SIREPA/Danville Telco lease agreement; 4) Danville Telco/State of Iowa OCIO NOFO 6 grant

agreement; and 5) Danville Telco/Vantage Point services agreement. Norris said SEIRPC staff will work with the county, Danville Telco and legal counsel to draft and review documents before presenting them to the SIREPA board. Vandenberg asked when the second draw down would take place and Fencil said he doesn't have that answer yet. Fencil added that Danville Telco does have an agreement with Vantage Point, who will manage the construction company. Dunn asked if there would be an audit and Norris replied that there would be an audit a year after funds are received and closed out. Fencil said that once we have the agreements between Lee County and SIREPA and Danville Telco and SIREPA then Phase I could begin in Spring 2022. He said he plans to meet with Vantage Point sometime in March.

IV. Consider Approval of Meeting Minutes (Board Action):

Hardy made a motion to approve the August 27, 2021, Meeting Minutes, second by Smith. All ayes, motion carried.

V. Approve SEIRPC Invoice (Board Action):

Norris reviewed the invoice from SEIRPC in the amount of \$6,767.75. He said that SEIRPC appreciates the relationship with SIREPA and is pleased with the successes of purchasing the KL Megla building and the Lee County Broadband Grant. Dunn made a motion to approve invoice #2022-089 for \$6,767.75, second by Hardy. All ayes, motion carried.

VI. KL Megla Building Update (Board Information):

Norris said that in late August 2021, SIREPA closed on the KL Megla building in Montrose with help from LCEDG. LCEDG occupies the office space and coordinates any routine or unique facility needs. An opportunity with PV Pallet has created the chance for supplemental facility revenue. PV Pallet is using an office space and 10,000sf cold storage building for \$2,000 per month. The additional funds will help offset unforeseen expenses and is deposited in the joint account with LCEDG. The Career Exploration Center process continues, and the direction now is high school exploratory courses held at the KL Megla Building starting in Fall 2022 and concurrent enrollment courses structured under the Career Exploration umbrella held at the Keokuk SCC Campus. Norris thanked Dennis Fraise for his hard work and time invested in the project.

VII. Matters from the Floor (Board Information):

Norris said that the next meeting is expected to take place in late February 2022.

VIII. Adjourn (Board Action):

Smith made a motion to adjourn at 2:38 p.m., second by Dunn. All ayes, motion carried.

GRANTEE: Southeast Iowa Regional Economic and Port Authority (SIREPA)
AGREEMENT NUMBER: 2
DATE OF AWARD LETTER: Feb. 22, 2022
PROJECT COMPLETION DATE: 12/31/2026
GRANT AMOUNT: \$1,950,000

LEE COUNTY BOARD OF SUPERVISORS
AMERICA RESCUE PLAN ACT FUNDING AGREEMENT

THIS America Rescue Plan Act Funding Agreement ("Agreement") is made by and between Lee County, Iowa, (the "County") 933 Avenue H, Fort Madison, Iowa, 52627 and Southeast Iowa Regional and Economic Port Authority (the "Grantee") (Collectively "the parties").

WHEREAS the Lee County Board of Supervisors is the elected body representing Lee County, Iowa; and

WHEREAS, the U.S. Congress has passed and President Joe Biden has signed into law the America Rescue Plan Act ("ARPA") establishing a stimulus program allocating funding to counties in all 50 states, including Iowa, pursuant to the America Rescue Plan Act of 2021, for the purpose of providing recovery funds to help mitigate the negative economic impact of the COVID-19 pandemic, and

WHEREAS, the Grantee submitted a grant application ("Application") to the County and the County determined that the Grantee and its proposed Project are eligible for funding under the guidance established by the County through the U.S. Department of Treasury's Interim Final Rules published in May of 2021; and

WHEREAS, in approving the Application, the County has relied upon the Grantee's representations of proposed Project activities, the Grantee's management and financial condition, investment of other Project funds, and other material information contained in the application; and

WHEREAS, the Grantee accepts the Grant upon the terms and conditions set out in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the Parties agree to the following terms and conditions:

- 1. COSTS DIRECTLY RELATED.** "Costs Directly Related" means expenditures that are incurred directly for the development or execution of the Project. Examples of costs not directly related include: international travel, domestic travel outside the state of Iowa, insurance.
- 2. GRANTEE.** "Grantee" means the entity described above whose application for a Grant was approved by County.

3. PROJECT. "Project" means the activities and other obligations to be performed or accomplished by the Grantee as described in this Agreement, by the County ARPA Administrator, in the award letter, and in the application submitted through the County ARPA Administrator.

4. PROJECT COMPLETION PERIOD. "Project Completion Period" means the period commencing with the Date of Award Letter and ending with the Project Completion Date, or Dec. 31, 2026, whichever is sooner. No project expenses can be incurred under the ARPA guidelines after Dec. 31, 2026.

7. PRIOR EXPENSES. No expenditures made prior to the Date of Award Letter may be included as Project costs for the purpose of this Agreement.

8. TOTAL PAYMENT. Total payment of county ARPA funds under this Agreement shall not exceed \$1,950,000 for Costs Directly Related to the Project as shown in the approved application unless modified by written amendment of this Agreement. Any termination, reduction, or delay of federal funds to the County shall, result in a termination, reduction, or delay of County funds to the Grantee.

10. REPAYMENT OBLIGATION. In the event that any state and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of this Agreement or the laws applicable to the expenditure of such funds, the Grantee shall be liable to County for the full amount of any claim disallowed and for all related penalties incurred. If the County determines at any time, based on the authority and directive provided by the U.S. Department of Treasury, whether through monitoring, internal, state or federal audit, closeout procedures or by other means that the Grantee has received grant funds or requested reimbursement for costs which are unallowable under the terms of this Agreement or applicable laws, the Grantee will be notified of the questioned costs and given an opportunity to justify questioned costs prior to Treasury's final determination of the disallowance of costs. If it is Treasury's final determination that costs previously paid by County are not allowable under the terms of this Agreement, the expenditures will be disallowed and the Grantee shall immediately repay to the County any and all disallowed costs. The requirements of this paragraph shall apply to the Grantee as well as any subcontractors, including but not limited to, consultants retained by the Grantee.

11. REPORTING REQUIREMENTS. The Grantee shall provide, review and sign reports as specified below in the form and content specified by the County. 1. Quarterly: A report describing work completed in each quarter due the last day in January, April, July, and October during the contract period; 2. Within 60 days after the Project Completion Date: A report documenting completion of the Project. The report shall include photos, narrative of the activities completed, final financial sources and uses deployed to complete the project, including ARPA funds, and signed by the Grantee's authorized representative.

12. PAYMENT PROCEDURES. Payment shall be made on a request basis. Grantee shall use funds only for Costs Directly Related to the Project. Requests for funds shall be made through County ARPA Administrator using a General Accounting Expenditure form. Disbursement claims must be for an amount equal to or greater than \$500 per request. If the total Grant Amount has not been claimed within sixty (60) days after the Project Completion Date, then the COUNTY shall be under no further obligation for further disbursement. The Grantee shall prepare, review, and sign all requests for payment and verify that claimed expenditures are allowable Costs Directly Related to the Project. The Grantee shall maintain original documentation adequate to support the claimed costs on file with County ARPA Administrator and provide such documentation upon request.

13. DEFAULT. The occurrence of any one or more of the following events shall constitute cause for County to declare the Grantee in default of its obligations under this Agreement: a) non-performance; b) a failure by the Grantee to make substantial and timely progress toward completion of the Project and performance of the Agreement; c) a breach of any term of this Agreement or any attachment thereto; d) utilizing grant proceeds for purposes not described in approved project application/description, or for expenses that are not Costs Directly Related to the Project. The County shall issue a written notice of default providing therein a thirty (30) day period during which the Grantee shall have an opportunity to cure, provided that cure is possible and feasible.

14. TERMINATION. This Agreement may be terminated in the following circumstances: a) As a result of the Grantee's default under this Agreement and failure to cure within the time period provided; b) immediately, as a result of the termination or reduction of funding to County or Grantee or the de-authorization of County to engage in activities or conduct business under this Agreement; or c) immediately upon written mutual agreement by all parties to terminate the Agreement.

15. REMEDY UPON TERMINATION. In the event of termination of this Agreement or reduction of the Agreement amount, the exclusive, sole and complete remedy of the Grantee shall be reimbursement for Project costs expended prior to termination.

16. NONASSIGNMENT OF AGREEMENT. The Grantee may not assign, transfer or convey in whole or in part this Agreement; delegate any of its obligations or duties under this Agreement; or pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Grantee under this Agreement.

17. WRITING REQUIRED. No change, modification, or termination of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed by the parties. Notwithstanding the sentence above, County may unilaterally modify the Agreement at will in order to accommodate any change in any applicable federal, state or local laws, regulations, rules or policies. A copy of such unilateral modification will be given to the Grantee as an amendment to this Agreement.

18. COMPLIANCE WITH LAWS AND REGULATIONS: DECLARATION OF THE GRANTEE. The Grantee shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders. The Grantee declares that it has complied with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement.

19. COMPLIANCE WITH EE0/AA PROVISIONS/EMPLOYMENT OF INDIVIDUALS LEGALLY AUTHORIZED TO WORK IN IOWA. The Grantee shall comply with the provisions of federal, state and local laws, rules and executive orders to ensure that no employee or applicant for employment is discriminated against because of race, religion, color, age, sex, sexual orientation, gender identity, national origin, or disability. The Grantee shall only employ individuals legally authorized to work in the State of Iowa. A breach of this provision shall be considered a material breach of this Agreement and all or a portion of the assistance received is subject to recapture.

20. INDEMNIFICATION AGAINST LOSS OR DAMAGE. The Grantee agrees to indemnify and hold harmless the U.S Department of Treasury, the State of Iowa, Lee County and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments including, without limitation the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of: any breach of this Agreement; any negligent, intentional or wrongful act or omission of the Grantee or any agent or subcontractor utilized or employed by the Grantee; the Grantee's performance or attempted performance of this Agreement, including any agent or subcontractor utilized or employed by the Grantee; any failure by the Grantee to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Grantee to conduct business in the State of Iowa; or any violation of any rights of any third party. The Grantee's duties and obligations under this section shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the County or any other Indemnified Party.

21. RIGHT TO REVIEW AND OBSERVE: ACCESS TO RECORDS. The County shall have the right to review and observe, at any time, completed work or work in progress related to the Agreement. The Grantee shall permit the County or its agents to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, reports, papers and records of the Grantee relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. Upon the request of the County, the Grantee shall deliver to County or its agents said documentation or materials within 30 days.

22. PUBLIC RECORDS: RECORDS RETENTION. All records submitted to or inspected by the County regarding this Agreement, including this Agreement, shall be public records and subject to the Open Records Law in Iowa Code chapter 22. All records of the Grantee relating to this Agreement shall be retained for a period of three (3) years following the date of final payment or completion of any required audit, whichever is later.

23. SURVIVAL OF AGREEMENT. If any portion of this Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

24. GOVERNING LAW. This Agreement shall be interpreted in accordance with the law of the State of Iowa and any action relating to the Agreement shall only be commenced in the Iowa District Court for Lee County or the United States District Court for the Southern District of Iowa.

25. LEGISLATIVE CHANGES. The Grantee expressly acknowledges that the funds provided by the County is subject to administrative change through rulemaking by the United States Department of the Treasury. Should rules be adopted which alter eligible uses of ARPA funds, the Grantee shall not hold the County liable in any manner for the resulting changes. The County shall use best efforts to provide thirty (30) days written notice to the Grantee of any consequential rule change affecting eligible uses of the ARPA funds. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Agreement to address the rule-making change. Nothing in this paragraph shall affect or impair the County's right to terminate the Agreement pursuant to the termination provisions.

26. WAIVER. Except as specifically provided for in a waiver signed by duly authorized representatives of County and the Grantee, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent right to require performance or to claim a breach.

27. NONAGENCY. The Grantee, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the County or any agency, division or department of the County simply by virtue of work performed pursuant to this Agreement. The Grantee's employees shall not be considered employees of the County for federal or state tax purposes simply by virtue of work performed pursuant to this Agreement.

28. ORDER OF PRIORITY. In the event of a conflict between documents, the following order or priority shall be applied: (a) Articles 1-31 of this Grant Agreement; (b) County Award Letter sent by County ARPA Administrator; (c) Application Information, as sent to county and on file with the County ARPA Administrator.

29. INTEGRATION. This Agreement contains the entire understanding between the Grantee and the County and any representations that may have been made before or after the signing of this Agreement, which are not contained herein, are nonbinding, void and of no effect. Neither of the parties has relied on any such prior representation in entering into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract as of the Effective Date first stated.

SOUTHEAST IOWA REGIONAL ECONOMIC AND PORT AUTHORITY:

BY: _____
Denise Boyer, Chair

DATE: _____

LEE COUNTY, IOWA:

BY: _____
Matt Pflug, Chairman Board of Supervisors

DATE: _____

Prepared by: Ross J. Braden, Lee County Attorney

Memo



To: SIREPA Directors
From: Mike Norris, Executive Director, SIREPA Staff
Date: April 21, 2022
Re: Danville Telco Broadband Contract

BACKGROUND

SIREPA previously applied for and was approved for \$1,950,000 in Lee County ARPA funds for broadband expansion in partnership with Danville Telecom, which received \$3,552,250 for the project from the Iowa OCIO. The expansion project will build 57 miles of fiber backbone and make fiber to the user available for 120 or more Tier 1 (mapped service under 25/5 mbps) customers in Lee County.

SIREPA will secure the project by contracting with Lee County for their ARPA funds and deployed as match for the Iowa OCIO funds. SIREPA will then contract with Danville Telecom to provide the match to the broadband expansion project and to lease the fiber backbone to Danville Telecom for 10 years, which SIREPA will own.

DANVILLE TELCO FUNDING AGREEMENT

The contract secures \$3,550,250 in State of Iowa funds via the OCIO to complete the broadband project as described in the application to Lee County in July, 2021. Key contract provisions are below:

- Item 1/2, Contract Structure/Purpose: Lays out purpose of the contract and references Exhibit C as the annual lease amount for SIREPA to lease fiber backbone to Danville. Specific lease terms in Attachment 2 Lease Terms.
 - Danville is responsible for providing for engineering, construction and operation of the project.

- Item 3, Project Financing: Describes the OCIO grant and ARPA funds that Danville and SIREPA bring to the project, respectively.
 - SIREPA shall make two payments before the two identified project phases:
 - Phase 1: \$700,000 approximately 30 days before scheduled commencement of engineering, permitting, environmental review, bill of materials for electronics.
 - Phase 2: \$1,212,750 approximately 30 days before scheduled commencement of construction of the fiber backbone.

- Danville is responsible for overall project financing past the SIREPA payments.

The section also describes each party's responsibility to the fiber backbone:

- Danville will be responsible for all ordinary operating expenses and routine maintenance of the backbone ("Middle Mile System" in the contract).
 - In event of forced relocation of fiber backbone due to road reconstruction or other publicly-sponsored project, the costs of relocation will be shared equally.
 - Danville shall lease the fiber backbone for 10 years, with payments starting 12 months after project completion or December 1, 2023, whichever is later. Danville shall make 10 total annual payments of \$95,637.50.
- Item 6 Default and Remedies: Default includes assigning the Project as security for creditors, files for bankruptcy, general failure to follow terms of agreement for 60 days. Remedies include agreement termination or legal remedies for either party.
 - Item 8, Mutual Indemnification: Each party agrees to hold harmless and indemnify the other party for its own individual liabilities not caused or involving the other party. If a Loss results from a concurrent act of the parties, each shall be liable on an equitable basis.
 - Item 9, Insurance: Each party shall maintain a policy of comprehensive liability insurance of no less than \$1 million per occurrence and \$2 million aggregate.
 - Lease Agreement in Attachment 2:
 - 2.1 Danville shall deliver to SIREPA as-built documentation of the fiber backbone after completion.
 - 3.1 Lease to Danville is exclusive; SIREPA cannot assign, sell, resell, sublease, license, transfer, or grant rights to the backbone to anyone else.
 - References back to main contract body for payment information (Exhibit C)

NEXT STEPS

Staff will forward the contract signed by the SIREPA board chair to Danville upon an affirmative vote to approve the contract. Danville will return the signed contract and likely a Phase I commencement notification.

FUNDING AGREEMENT

Public-Private Fiber Construction, Fiber Lease and Network Maintenance and Operations

Parties and Contact Information	
Southeast Iowa Regional Economic and Port Authority (“SIREPA”)	Danville Mutual Telephone Company (“Danville Telecom”)
Primary Contact: Mike Norris, Administrator	Primary Contact: Tim Fencl, General Manager & CEO
Phone: 319-753-4310	Phone: (319) 392-4251
Email: mnorris@seirpc.com	Email: tfencl@danvilletelco.net
Address: 211 N Gear Ave, Suite 100 West Burlington, IA 52655	Address: 102 S. Main Street, PO Box 158 Danville, IA 52623
Contract Terms	
1. Contract Structure	<p>SIREPA has accepted Danville Telecom’s proposal for a public-private partnership to provide middle-mile fiber infrastructure (the “Middle Mile System”) to support Danville Telecom’s deployment of last-mile fiber infrastructure and high speed (estimated at gigabit speeds or higher) broadband services to identified Tier 1 (unserved or underserved) locations in rural Lee County, Iowa (the “Last Mile System”). The purpose and intent of the parties is that the Projects would provide service to Tier 1 unserved or underserved households, or businesses at speeds at or above 100 mbps up and download, to meet federal highspeed broadband thresholds and sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.</p> <p>This Funding Agreement (this “Agreement”) is intended to be a definitive, legally binding agreement, setting forth certain rights and responsibilities as it relates to the parties’ initial Project any future Projects completed pursuant to or in accordance with the current or any future similar proposals.</p>
2. Project Details	<p><i>Project Name:</i> Lee County Fiber to Tier 1 Customers Project (the “Project”)</p> <p><i>Project Description:</i> The Project is as described in Danville Telecom’s successful application to the Iowa Office of Chief Information Officer (“OCIO”) Broadband Grants Program—Empower Rural Iowa Notice of Funding Availability #006 (“NOFA #006”). The Project will be funded in part by OCIO Grant No. 416413 and shall be subject to the terms, conditions, and requirements set forth in the NOFA #006 Grant Agreement between Danville Telecom and OCIO, dated ____10/19/2021____ and attached hereto as <u>Attachment 1</u> (the “Grant Agreement”).</p> <p><i>Project Map:</i> See <u>Exhibit A</u></p> <p><i>Project Assets:</i> See <u>Exhibit B</u></p> <p><i>Fiber Specifications:</i></p>

	<p>Fiber specifications shall be as set forth in the Grant Agreement.</p> <p><i>Construction Specifications:</i></p> <p>Construction specifications shall be as set forth in the Grant Agreement.</p> <p><i>Project Fee Schedule to lease Fiber Backbone from SIREPA:</i></p> <p>See <u>Exhibit C</u></p> <p><i>Engineering:</i></p> <p>Project engineering will be completed by a Danville Telecom-contracted engineering firm for the joint design of the Project.</p> <p><i>Assistance with Bidding:</i></p> <p>Project construction bidding will be completed by a Danville Telecom-contracted engineering firm.</p> <p><i>Danville Last-Mile Commitment:</i></p> <p>As part of the Project, and during the 10-year term of the Project Lease, Danville Telecom, at its expense, shall construct distribution fiber and deploy broadband services over last mile facilities consistent with the scope of the Project as contained in the Grant Agreement.</p>
<p>3. Project Financing</p>	<p><i>State Grant Program:</i></p> <p>OCIO has awarded Danville Telecom up to \$3,549,250.00 in state grant funding to finance construction of the Project. The Project as approved by OCIO includes \$1,912,750.00 in funding from SIREPA (the “Funding Commitment”), sourced from Lee County, Iowa, Fiscal Recovery Funds. The Project and the obligations of the parties under this Agreement are subject to the terms, conditions, and requirements set forth in the Grant Agreement.</p> <p><i>SIREPA Funding:</i></p> <p>SIREPA will contribute the Funding Commitment in two Project phases, based on the following schedule:</p> <p><i>Phase 1:</i> Phase 1 shall include environmental review, site staking, engineering, bill of materials and electronics for the Middle Mile System. Approximately thirty (30) days prior to the scheduled commencement of Phase 1, SIREPA shall release to Danville Telecom an amount equal to the estimated costs of the Phase 1 activities (anticipated to be \$700,000.00) to fund the Phase 1 activities.</p> <p><i>Phase 2:</i> Phase 2 shall include construction of the Middle Mile System. Approximately thirty (30) days prior to the scheduled commencement of Phase 2, SIREPA shall release to Danville Telecom an amount equal to the remaining balance of the County Funding Commitment following the Phase 1 payment (anticipated to be \$1,212,750.00) to fund the Phase 2 activities.</p> <p><i>Danville Telecom Funding:</i></p> <p>Danville Telecom will fund all Project costs in excess of the County Funding Commitment. Danville Telecom may recover a portion of such costs from the State of Iowa OCIO pursuant to and in accordance with the Grant Agreement.</p> <p><i>Ordinary and Extraordinary Costs:</i></p>

	<p>During the initial 10-year term, Danville Telecom shall perform and be responsible, at its sole cost, for all ordinary operating expenses and routine maintenance for the Middle Mile System constructed as part of the Project. This includes, without limitation, scheduled maintenance as contemplated under Section 6.2 of the Project Lease Terms. In the event of a relocation of all or any portion of the Middle Mile System in connection with road construction or a another publicly-sponsored project such costs shall be shared equally, 50% by Danville Telecom and 50% by SIREPA.</p> <p><i>Option to Purchase:</i></p> <p>At the expiration of the initial 10-year term of the Project Lease, Danville Telecom shall have the option to purchase the Middle Mile System for the Option Price set forth in the Project Fee Schedule.</p>
<p>4. Contract Documents</p>	<p>The terms of the Grant Agreement are incorporated herein by reference. The terms applicable to the construction, lease and network maintenance and operation of the Project shall be substantially as set forth in Attachment 2: Project Lease Terms, which is incorporated herein by reference (the “Project Lease Terms”). The Project Lease Terms are incorporated herein by reference.</p>
<p>5. Term</p>	<p>The term of the initial Project shall be the term of the Project Lease. This Agreement shall remain in effect until expiration or termination of the Project Lease in accordance with its terms.</p>
<p>6. Default and Remedies</p>	<p>A party shall be in default under this Agreement if (a) such party makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (b) an involuntary petition in bankruptcy or other insolvency action is filed against such party and is not dismissed within one hundred and twenty (120) days; (c) such party fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of sixty (60) days after written notice from the other party (or if such failure is not susceptible of a cure with such sixty (60) day period, cure has not been commenced and diligently pursued thereafter).</p> <p>In the event of a default by one party, the non-defaulting party may: (i) terminate this Agreement, in whole or in part, in which event the non-defaulting party shall have no further duties or obligations hereunder, or (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance or injunctive relief.</p>
<p>7. Confidentiality</p>	<p>Except as to the extent required by law, no party to this Agreement will disclose or use, and will direct its representatives not to disclose or use to the detriment of the other party, any Confidential Information (as defined below) with respect to the other party furnished, or to be furnished, by the other party, or its representatives at any time or in any manner other than in connection with its evaluation of Projects or as necessary or appropriate in making any filing or obtaining any consent or approval required for the performance and completion of the Project contemplated hereby.</p> <p>For purposes of this Agreement, “Confidential Information” means trade secrets or similar confidential or proprietary information of whatever nature or form relating to the disclosing party and its affiliates (including any customer of or supplier or lender to the disclosing party and its affiliates) regardless of whether the information was communicated orally, in writing or by electronic transmission, including costs, pricing, names, finances, marketing plans, business opportunities,</p>

	<p>forecasts, orders, personnel names or information, organizational structure, customer information, research, development, designs, specifications, drawings, maps, blueprints, diagrams, third party confidential information and other similar technical, financial or business information; provided, however, that Confidential Information shall not include (a) information that was already in the possession of the receiving party prior to disclosure and was not acquired or obtained from the disclosing party or its representatives; (b) information that was in the public domain (as evidenced by printed documentation of a date earlier than the date of disclosure) or that becomes part of the public domain through no fault of the receiving party or its representatives; (c) information rightfully obtained by the receiving party from an independent source, not known by the receiving party or its representatives to be bound by a confidentiality agreement with or other continuing legal or fiduciary obligation of confidentiality to the disclosing party; or (d) information that is independently developed by the receiving party or its representatives without use of or reference to any Confidential Information.</p> <p>Any Confidential Information which the receiving party, in the reasonable opinion of its legal counsel, is required by federal or state law or regulation (including the Iowa Open Records Law, Iowa Code Chapter 22), governmental request, court order, subpoena, regulation or other process of law to disclose, may be disclosed in accordance with such requirement provided that the receiving party shall have promptly notified the disclosing party prior to any such intended disclosure and provided further that the receiving party and its representatives shall have cooperated with the disclosing party in all reasonable efforts to protect the Confidential Information from such disclosure, including seeking an appropriate protective order. Upon the written request of the disclosing party, the non-disclosing party will promptly return to the disclosing party or destroy any Confidential Information in its possession and certify in writing to the disclosing party that it has done so.</p> <p>The provisions of this Paragraph shall survive expiration or termination of this Agreement.</p>
<p>8. Indemnity</p>	<p><i>Mutual Indemnification</i></p> <p>To the extent permitted by law, each party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns (as applicable “Indemnitor”) agrees to indemnify, defend, protect and hold the other party and its directors, officers, directors, employees, agents, successors, and assigns (collectively, “Indemnified Persons”) harmless from and against any demand, claim, suit, settlement, judgment, award, loss, liability, action or causes of action, assessment, damage, obligation, fine, refund of monies, injury, taxes, penalty, charge, deficiency, diminution in value, cost and expense, including interest, investigation expenses, and reasonable fees and disbursements of counsel, accountants, consultants, vendors and other experts (collectively, “Losses”) (i) arising out of the Indemnitor’s performance or nonperformance under this Agreement; (ii) arising out of the performance or nonperformance of any subcontractor retained by Indemnitor; or (iii) incurred by reason of any act of commission or omission directly or indirectly attributable to any of Indemnitor’s undertakings and obligations under this Agreement, except to the extent such Losses are due to the negligence or more culpable conduct of the Indemnified Persons.</p>

	<p><i>Conditions and Limitations</i></p> <p>The indemnification obligations of each party shall be subject to the following:</p> <p>(a) The Indemnified Person shall provide the Indemnitor prompt written notice of any Losses that are the subject of the indemnification obligation.</p> <p>(b) The Indemnified Person shall give the Indemnitor full information and assistance in connection with such Losses.</p> <p>(c) Where a Loss is the result of the concurrent acts of the parties, each shall be liable under this Agreement on equitable basis, to the extent of its fault or liability therefor.</p> <p>(d) Except as otherwise specified herein, neither party shall consent to the entry of any judgment or enter into any settlement of a Loss without the other party’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.</p> <p>(e) All indemnification obligations shall survive termination or expiration of this Agreement.</p>
<p>9. Force Majeure</p>	<p>Notwithstanding any other provision of this Agreement, neither SIREPA nor Danville Telecom shall be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the affected party and that was not reasonably foreseeable, or if foreseeable could not have been prevented or avoided by the affected party through the exercise of due diligence, including but not limited to an earthquake, tornado, hurricane, derecho, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism (including cyberterrorism), or civil unrest, national or industry-wide strikes, lockouts or other labor unrest, epidemics, pandemics or actions of a governmental authority that were not requested, promoted, caused by or imposed as a result of actions of failures to act of the affected party (each a “Force Majeure Event”). A Force Majeure Event shall not include economic hardship, changes in market conditions, labor availability (except national or industry-wide strikes, lockouts or other labor unrest); late delivery or shortage of materials, consumable, equipment or utilities; adverse climatic conditions or non-performance or delay by any contractor, unless such event is otherwise caused by a Force Majeure Event.</p> <p>A party whose performance is impacted by a Force Majeure Event shall provide immediate notice to the other party of the circumstances giving rise to a claim of a Force Majeure Event and shall act diligently and make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance. Each party shall bear its own costs and expenses incurred in connection with a Force Majeure Event (including for any efforts to mitigate the effect or impact of the Force Majeure Event), and neither shall seek recovery of such costs or expenses from the other party.</p> <p>The deadline by when a party must perform an obligation under this Agreement, other than payment of money, shall be postponed by the period of time by which the party’s ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event. A Force Majeure Event shall under no circumstances excuse a party from failure to honor its indemnity obligations as set forth above.</p>

<p>10. Notices</p>	<p>Any notice or communication required or permitted to be given hereunder shall be in writing and may be delivered by hand, deposited with a nationally recognized overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party indicated above, or to such other address as either party may notify the other in writing from time to time.</p>
<p>11. Limits of Liability</p>	<p>Notwithstanding any other provisions of this Agreement, except in cases of fraud, willful misconduct or intentional misrepresentation or for obligations under Paragraph 7 (Confidentiality), in no event shall either party be liable hereunder for Losses that are consequential, indirect, incidental, special, reliance or punitive, including, but not limited to, lost profits, loss of opportunity, loss of goodwill or other economic damages (except to the extent payable to a third person).</p> <p>NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, THAT ANY SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.</p>
<p>12. Insurance</p>	<p>During the term of this Agreement, each party shall maintain a policy of comprehensive general liability insurance, including independent contractors, operations, contractual liability, public liability, bodily injury, and property damage, written by a carrier licensed to do business in the State of Iowa, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Each party shall maintain motor vehicle liability insurance, including coverage for owned/leased, non-owned or hired motor vehicles in the following amounts: (i) bodily injury liability with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) each person and a limit of at least One Million Dollars (\$1,000,000.00) each accident; (ii) property damage liability with a limit of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate. Each party shall name the other party, including its officers, employees, and agents, as additional insureds on these liability policies for the said purpose and use of this Agreement. Each party shall also maintain Workers' Compensation insurance if applicable to meet the requirements of applicable law, and employer's liability with a limit of at least One Million Dollars (\$1,000,000) each accident. Certificates of insurance evidencing such insurance coverage shall be provided by one party to the other party upon such party's reasonable request. In the event a party fails to maintain the required insurance coverage and a claim is made or suffered, the defaulting party shall indemnify and hold harmless the other party from any and all claims for which the required insurance would have provided coverage.</p> <p>The indemnity provisions of this Paragraph shall survive expiration or termination of this Agreement.</p>
<p>13. Representations and Warranties</p>	<p>By execution of this Agreement, each party represents and warrants to the other that: (a) the party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b) the party has full right and authority to enter into, execute, deliver and perform this Agreement in accordance with the</p>

	<p>terms hereof and thereof; (c) the party’s execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or agency or any arbitrator, applicable to such party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such party, (iii) any material agreement to which it is a party, or (iv) any instrument to which such party is or may be bound or to which any of its material properties or assets is subject; (d) the party’s execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the party, threatened against or affecting the party of any of its properties, assets or businesses in any court or before or by any governmental authority or agency that could, if adversely determined, reasonably be expected to have a material adverse effect on the party’s ability to perform its obligations under this Agreement; and (g) the party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.</p>
<p>14. Taxes</p>	<p>Each party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.</p>
<p>15. Points of Contact</p>	<p>Each party will have a single point of contact designated in its organization at all times to oversee the coordination of all operational issues under this Agreement (the “Primary Contact”). The Primary Contacts for each party as of the date of this Agreement are as set forth above. The Primary Contact of a party can be changed by such party at any time upon notice to the other party. The Primary Contact will manage and monitor issues with respect to any operational issues relating to this Agreement. All information provided by either party to the other party shall be used solely for the purposes contemplated by this Paragraph and shall be treated as Confidential Information under this Agreement.</p>
<p>16. Dispute Resolution</p>	<p><i>Escalation Procedure.</i></p> <p>All disputes between the parties are to first be discussed for a potential mutually acceptable resolution by the Primary Contacts. In connection with any dispute, each party will cooperate in good faith to provide the other party with documents and other information relevant to the matter in dispute and reasonably requested by such party. To the extent the Primary Contacts are unable to resolve the dispute on mutually acceptable terms within twenty (20) business days from the date either party first notifies the other party’s Primary Contact in writing of a dispute, either party may then invoke the arbitration provisions pursuant to this Paragraph (to resolve the dispute).</p> <p><i>Arbitration.</i></p> <p>Disputes between the parties not resolved by the Primary Contacts shall be resolved by binding arbitration in accordance with the expedited procedures of the Commercial Arbitration Rules of the American Arbitration Association (the “AAA Rules”).</p> <p><i>Arbitration Procedures.</i></p>

For disputes submitted to binding arbitration, arbitration shall be initiated by either party by giving written notice to the other party of intention to arbitrate, which notice shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested. The arbitration shall be heard by a panel of three third party arbitrators. Each party shall select one arbitrator within fifteen (15) days of such notice of arbitration and the two arbitrators shall select the third arbitrator within ten (10) days thereafter. The hearings shall be held at a mutually agreed upon location within the State of Iowa, unless otherwise agreed by both parties, at which the parties may present evidence (including, without limitation, witnesses and documentation) and argument in support of their respective positions. If the parties cannot agree upon an arbitration location, the arbitration shall be conducted in Des Moines, Iowa. All hearings shall be conducted in English, unless otherwise agreed by both parties. Arbitration shall be held and concluded within sixty (60) days following selection of the last arbitrator. The arbitrators shall have the power and authority, consistent with applicable law, to compel attendance of witnesses and production of documents at hearing. Except where contrary to the provisions set forth in the Agreement, the AAA Rules shall be applied to all matters of procedure; provided, however, that the arbitration shall not be conducted under the auspices of the AAA and the fee schedule of the AAA shall not apply.

Limited Discovery.

The party initiating arbitration (the “**Movant**”) will provide to the other party (the “**Respondent**”) a list of witnesses it expects in good faith to testify at the hearing and a copy of all documents that it expects to present at the hearing within fifteen (15) days after the notice of arbitration, and the Respondent will provide to the Movant a list of witnesses it expects in good faith to testify at the hearing and a copy of all documents that it expects to present at the hearing within fifteen (15) days after the date such list and copies are provided by Movant. The parties agree that in any arbitration proceeding a party may reasonably request, and the arbitrators may order the other party to comply with such request, a limited number of documents or other information in the possession of such requested party, to the extent such documents and information are directly germane and relevant to the dispute that is the subject of such arbitration. Except as provided in the preceding sentence, there shall be no other pre-hearing discovery between the parties (including, without limitation, requests for documents and/or information or depositions) and the arbitrators shall have no power or authority to order such pre-hearing discovery between the parties.

Limits on Arbitration.

The arbitrators shall have no power or authority to relieve the parties from their agreement hereunder to arbitrate. The arbitrators shall be limited to interpreting the applicable provisions of this Agreement, the facts presented to them, and shall have no authority or power to alter, amend, modify, revoke or suspend any condition or provision of this Agreement; or to create, draft or form a new agreement between the parties; or to render an award which, by its terms, has the effect of altering or modifying any condition or provision hereof; or to terminate this Agreement or any other agreement between the parties.

Notwithstanding anything herein to the contrary, to the extent the arbitrators consider the performance of the parties pursuant to this Agreement, in the event the arbitrators determine that there is such a breach, the arbitrators shall be strictly limited to determining whether a breach of the applicable provisions occurred, and

	<p>the parties shall have all remedies available under this Agreement, as may be applicable, for such breach(es).</p> <p><i>Expenses of Arbitration.</i></p> <p>The parties will each bear their own expenses of the arbitration and will share equally the expenses of the arbitrators.</p> <p><i>Arbitrators' Award.</i></p> <p>The arbitrators shall make an award which may include an award of damages (but may not include attorneys' fees) and said award shall be in writing setting forth the facts to support their conclusions and decision. The decision rendered by the arbitrators will be final, conclusive, and binding upon the parties, and any judgment thereon may be entered and enforced in any court of competent jurisdiction.</p> <p><i>Continuation of Performance Pending Arbitration.</i></p> <p>Except where this Agreement permits a party to terminate or suspend performance, in whole or in part, the parties will continue to provide all services and honor all other commitments under this Agreement, including, without limitation, making payments in accordance with this Agreement during the course of resolution of disputes and arbitration pursuant to this Agreement.</p> <p><i>Defense.</i></p> <p>Failure to comply with the arbitration requirements of this Paragraph shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court with respect to any controversy or dispute relating performance or non-performance under this Agreement.</p>
<p>17. No Partnership</p>	<p>The relationship between the parties shall not be that of partners, agents, or joint venturers of or for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes. Neither party will have any responsibility or liability of any kind to any subcontractors or third parties providing services to or for the benefit of the other party. Except as otherwise specified herein, each party will be free to manage and control its business and communications network and systems as it sees fit, without the management, control or assistance of the other party.</p>
<p>18. Cooperation</p>	<p>Upon each party's acceptance of this Agreement, the parties agree to work in good faith expeditiously toward the successful planning, funding and completion of the Project. Each party agrees that it will not at any time voluntarily engage, directly or indirectly, in any actions intended to frustrate the purpose and intent of the parties to move forward with the Project or to make the Project less desirable to the other party. Without limiting the foregoing, each party shall take all commercially reasonable action necessary to remain eligible for, and each agrees to cooperate with the other to qualify for and obtain financial assistance for the Project under, available state and federal programs.</p>
<p>19. Compliance with Laws</p>	<p>The parties shall comply with, conform to, and abide by all applicable and valid laws, regulations, rules and orders of all governmental agencies and authorities, and agree that the Agreement is subject to such laws, regulations, rules and orders. Without limitation, each party shall comply, at its own expense, with the provisions</p>

	of all applicable federal, state and municipal laws, regulations, and requirements applicable to them as an employer.
20. Governing Law	This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa without giving effect to any choice or conflict of law provision (whether in the State of Iowa or any other jurisdiction) that would cause the application to this Agreement of the laws of any jurisdiction other than the State of Iowa.
21. Binding Effect; Assignment	This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, that a party may not assign this Agreement nor assign or delegate any of its rights, interests or obligations hereunder, without the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.
22. Severability	If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason, be held by any court or governmental agency or authority of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for either party. Upon determination that any provision of this Agreement is invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.
23. Survivability	The respective obligations of the parties that by their nature would continue beyond the termination or expiration of this Agreement will survive such termination or expiration.
24. Integration	This Agreement and the addenda and exhibits constitute the entire agreement between the parties with respect to the subject matter of this Agreement, and supersede all previous understandings, commitments or representations, whether oral or written, concerning the subject matter. Each party acknowledges that the other party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the parties. The parties may propose updates to the addenda and exhibits of this Agreement from time to time. Upon written approval of a proposed update to an addendum or exhibit by the other party, the updated addendum or exhibit shall replace and supersede the existing addendum or exhibit.
25. Waiver	The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained or available pursuant to applicable law, shall not be construed as a waiver or relinquishment of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
26. Expenses	Except as otherwise expressly set forth this Agreement, the parties will each be responsible for and bear all of their own costs and expenses (including construction

	costs and any legal, accounting, consulting, engineering or other fees and expenses) incurred at any time in connection with evaluating, pursuing or completing the Project.
27. Counterpart Signatures	This Agreement and any and all exhibits or attachments hereto may be executed in one or more counterparts, each of which shall be an original. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

The parties, intending to be legally bound, are signing this Agreement as of the date set forth below:

SIREPA: SOUTHEAST IOWA REGIONAL ECONOMIC AND PORT AUTHORITY	Danville Telecom: DANVILLE MUTUAL TELEPHONE COMPANY
Signature:	Signature:
Print Name: Denise Boyer	Print Name: Tim Fencil
Title: Board Chair	Title: General Manager & CEO
Date:	Date:

Attachment 1

Grant Agreement

Grant No. 416413 [For Office use only]

Exhibit E - NOFA #006
Office of the Chief Information Officer of the State of Iowa
Grant Agreement

Statement Concerning Statutory References: References in this NOFA to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

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 006 issued on July 1, 2021, (“**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 Danville Mutual 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 and conditions by which Grantee must abide in consideration for State grant funds made available under the Empower Rural Iowa Broadband Grant Program pursuant to Iowa Code § 8B.11, Iowa Administrative Code rule 129—22, and the NOFA.
- 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 and conditions of this Agreement, unless otherwise terminated in accordance with the terms and conditions of this Agreement.
- 1.3. *Scope.* The scope of the project is 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.
- 1.4. *Funds.* Grantee is awarded \$3,549,250.00 in exchange for completing the Project in accordance with the terms and conditions of this Agreement, Iowa Code § 8B.11, Iowa Administrative Code rule 129—22, and the NOFA.

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 § 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 other staff or personnel acting on behalf of or at the direction of Grantee or a Grantee Contractor performing or providing the Project under this Agreement.

3. Project Completion.

- 3.1. *Performance Certification.* Grantee must complete its Project by October 1, 2024. 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 (Performance 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 100/100 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 100/100 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 Targeted Service Areas to which Broadband Service is Facilitated, and the total number of Broadband Units to which Broadband service is Facilitated in each Targeted Service Area upon Project completion.
- 3.1.3. Supply the Office with geographic information system (“GIS”) data in a form acceptable to the Office 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 100/100 Broadband or 100/20 Broadband, whichever is applicable, as a result of the Project.
- 3.2. *Performance Testing.* The Office may, in its sole discretion, conduct performance 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)(c). 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)(c). Such performance 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 100/100 Broadband or 100/20 Broadband, whichever is applicable, in applicable Targeted Service Area(s) as identified in Exhibit B of the Core Application and 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 (Performance Testing).
- 3.4. *Consequences of Non-Performance.* Failure to fully satisfy the 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 Section 3.2 (Performance Testing), or failure to otherwise complete the Project as represented in the Core Application, may result in the Office’s denial of a request for reimbursement for any expenditures related to the Project, and Grantee shall not otherwise be entitled to reimbursement for 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 (Performance Testing); and
 - 4.1.2. The Office’s receipt of the summary of all final, claimed Allowable Expenditures and other sufficient documentation to support such claimed Allowable Expenditures in accordance with Section 4.4.
- 4.2. *Not-to-Exceed Total Payment.* Total payment of State funds under this Agreement shall not exceed the lesser of the Maximum Funding Request or the State Matching Funds Requested identified in Exhibit C of the Core Application, and the lesser of:
 - 4.2.1. Grantee’s total, estimated Allowable Expenditures as set forth in the Budget Plan and, to the extent applicable, the Outside TSA Infrastructure Worksheet; or
 - 4.2.2. Grantee’s total, final Allowable Expenditures upon Project completion.

The State will not fund projects for more than the Project costs after accounting for any Federal, local, or external matching.

- 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 100/100 Broadband or 100/20 Broadband, whichever is applicable, in Targeted Services Areas identified in Exhibit B of the Core Application and forming the basis of the Project;
 - 4.3.2. Utilized for the installation of Broadband Infrastructure in Targeted Service Areas identified in Exhibit B of the Core Application and 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, unless the expenditure meets the following conditions:
 - 4.3.3.1. The cost incurred must be cost reasonable. A cost is reasonable when it is consistent with the market standards for comparable inventory. Inventory is the quantity of goods or materials in stock.
 - 4.3.3.2. The item has a demonstrated proof of purchase and payment.
 - 4.3.3.3. The inventory purchased is within its useful life.
- 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, 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 § 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 § 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 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. 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 payment, in whole or in part, exceeds the thresholds or limitations set forth in Section 4.2 (Not-to-Exceed Total Payment); 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 Core Application and 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 the Core 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 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 a involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to such relief or to the appointment of or taking possession by any such official in a voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under 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. *Remedies for Breach of Contract.* A breach of any term, condition, requirement, or provision of this Agreement on behalf of the Grantee may result in one or all of the following remedies:
- 5.2.1. Grantee will forfeit funds awarded pursuant to this Agreement;
 - 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 law, rule, or order.
- 5.3. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Office shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:

- 5.3.1. The legislature, governor, or other applicable governing body fail in the sole opinion of the Office to appropriate funds sufficient to allow the Office to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement;
 - 5.3.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Office to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Office in its sole discretion;
 - 5.3.3. If the Office's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
 - 5.3.4. If the Office's duties, programs, or responsibilities are modified or materially altered;
 - 5.3.5. If there is a decision of any court, administrative law judge, or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Office's ability to fulfill any of its obligations under this Agreement; or
 - 5.3.6. In the event any audit (whether state or federal) or other review, the Office or any other State of Iowa governmental entity, or United States governmental entity:
 - 5.3.6.1. Takes exception to the Project(s) provided under this Agreement for which state or federal reimbursement has been paid, or to the manner in which any related funds have been disbursed or expended;
 - 5.3.6.2. Concludes or orders that State or federal funds are deferred or disallowed, or have been disbursed or expended in a manner not consistent with or in violation of Applicable Laws governing the expenditure of such funds; or
 - 5.3.6.3. Concludes or determines that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable.
- 5.4. *Limitation of Payment Obligations.* In the event of a termination of this Agreement for any reason (except for termination pursuant to Section 5.3 (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:
- 5.4.1. The payment of unemployment compensation to Grantee or any Grantee Personnel;
 - 5.4.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - 5.4.3. Expenditures that:
 - 5.4.3.1. Do not constitute Allowable Expenditures incurred by Grantee in its performance of this Agreement;
 - 5.4.3.2. Are not properly or correctly allocated in accordance with the allocation methods approved by the Office as part of the Outside TSA Infrastructure Process;
 - 5.4.3.3. Are not supported by sufficient and appropriate documentation; or
 - 5.4.3.4. Are not otherwise reimbursable, due, or owed under the terms or conditions of this Agreement;
 - 5.4.4. Damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; or
 - 5.4.5. Taxes Grantee may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes or property taxes.
- 5.5. *Grantee's duties upon termination.* Upon request of the Office, Grantee shall, within any time periods or deadlines specified by the Office:
- 5.5.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Office may require;
 - 5.5.2. Perform all remaining requirements, duties, or obligations as may be required by the State of Iowa;

- 5.5.3. Notwithstanding provisions in this Agreement to the contrary, refund to the Office within fifteen (15) days of the effective date of termination of this Agreement for any reason, any 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 or can be required to be returned to the Office under the terms and conditions of this Agreement.
- 5.6. *Survival.* Expiration or termination of this Agreement for any reason will not release either Party from liabilities or obligations set forth in this Agreement which:
 - 5.6.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
 - 5.6.1.1. Section 3.2 (Performance Testing);
 - 5.6.1.2. Section 3.4 (Consequences of Non-Performance);
 - 5.6.1.3. Section 4 (Payment Procedures);
 - 5.6.1.4. Section 5.4 (Limitation of Payment Obligations);
 - 5.6.1.5. Section 5.6 (Survival);
 - 5.6.1.6. Section 6 (Indemnification);
 - 5.6.1.7. Section 7 (Representations, Warranties, and Covenants);
 - 5.6.1.8. Section 8 (Publicity);
 - 5.6.1.9. Section 9 (Confidentiality);
 - 5.6.1.10. Section 10 (General Provisions).
 - 5.6.2. 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 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. A 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. A claim of misappropriation of a trade secret or infringement or violation of 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) all representations or assurance made, directly or implicitly, in the Core 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 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. *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 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 § 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 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 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. Except as otherwise required herein, Grantee, Grantee Contractors, and Grantee Personnel shall acquire no right to use, and shall not use, without 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 § 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 § 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 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 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 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. 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 status meeting in the form of a conference call or an in-person 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. All 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 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 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 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 Exhibit B of the Core Application and 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 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:

Timothy Fencil

Danville Mutual Telephone Company

102 S Main St

Danville, IA 52623

- 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, amendments hereto, or 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 said documents 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, Funding Sources 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, Funding Sources 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, whereas 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.

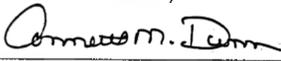
- 10.25. *Exclusivity.* This Agreement is not exclusive, and the Office or the State of Iowa may enter into other Agreements with third parties for the provision of similar services.
- 10.26. *Sovereign Immunity.* Notwithstanding anything in this Agreement to the contrary, neither the Office nor the 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 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 Admin. Code r. 129—22.6(5) and Iowa Code ch. 17A. Failure to pursue the administrative remedies available pursuant to Iowa Admin. Code r. 129—22.6(5) and thereafter Iowa Code ch. 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 is 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; 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 §§ 17A.19 and 17A.20, may, contemporaneous with the challenge process, proceed to enter into this Agreement with Grantee. Notwithstanding the foregoing or any contrary provisions in this Agreement, 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 appeals and contested case process, 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 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")

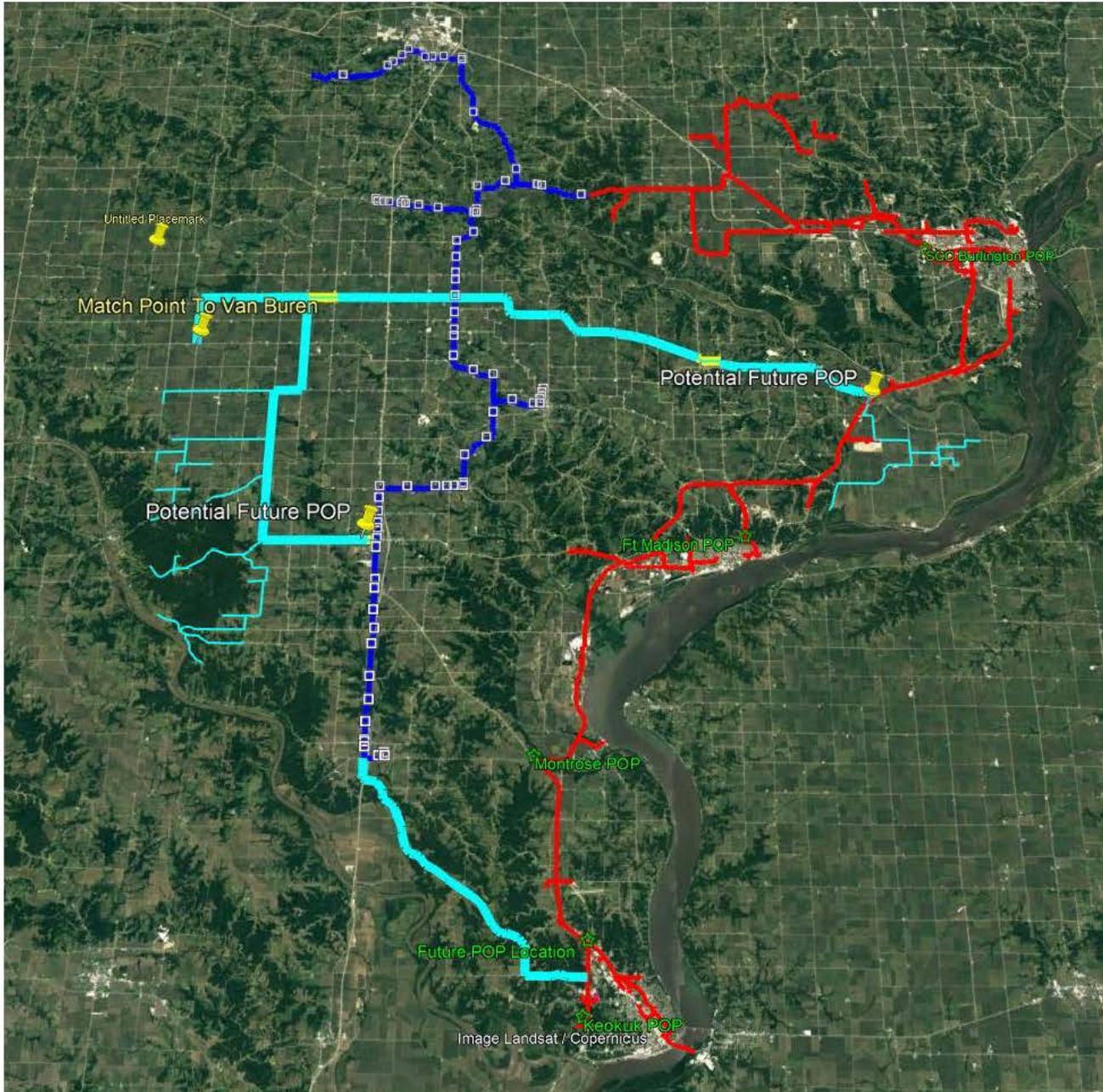
By: 
Name: Annette M. Dunn
Title: Director
Date: 10/19/2021

Danville Mutual Telephone Company
("Grantee")

By: 
Name: TIMOTHY J FENCL
Title: GENERAL MANAGER & CEO
Date: 10/12/21

Exhibit A

Project Map



LEE COUNTY BROADBAND EXPANSION MAP:
EXISTING AND PROPOSED FIBER TRANSMISSION

July 26, 2021

RED = Existing Danville Fiber

Thick Light Blue = SIREPA/Danville fiber backbone

Dark Blue = Existing Aureon fiber

Exhibit B

Project Assets

Middle Mile System:

Identified from as-built information supplied by project engineer.

*to the extent the costs of the Middle Mile System exceed the County Funding Commitment, Danville Telecom shall be solely responsible for the excess costs. In no event shall SIREPA be responsible for Project funding in any amount above the County Funding Commitment.

Last Mile System:

Identified from as-built information supplied by project engineer.

Exhibit C

Project Fee Schedule

Project Lease Payments:

Nonrecurring Charges	\$95,637.50
Annual Recurring Charges	An amount equal to 50% of the County Funding Commitment, paid in ten (10) equal annual installments during the initial ten-year term. Payments shall begin on December 1, 2023, or 12 months after construction of the MMS is completed, whichever is later. Thereafter, payments shall be made on or before December 1 of each year until 10 payments are made.

Option Price:

Provided Danville Telecom performs its material obligations under the Project Lease, including without limitation the timely construction and launch of commercial service using the Middle Mile System and the timely payment of all monthly recurring charges during the initial ten-year term, the Option Price shall be: \$100.00.

Other Fees and Charges:

N/A

Attachment 2

Project Lease Terms

These Project Lease Terms are attached to, incorporated within and made part of that certain Funding Agreement - Public-Private Fiber Construction, Fiber Lease and Network Maintenance and Operations, dated as _____, 2022 (the “**Agreement**”) between SOUTHEAST IOWA REGIONAL ECONOMIC AND PORT AUTHORITY (“**SIREPA**”), and DANVILLE MUTUAL TELEPHONE COMPANY (“**Danville Telecom**”).

1. **Defined Terms.**

Whenever used in the Agreement, including in any schedules, addenda or exhibits, the following terms shall have the meaning ascribed to them below. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings ascribed therein.

“**Agreement**” is as defined in the introductory paragraph and includes any and all exhibits and attachments thereto and any other addenda, exhibits or written amendments thereto to which the parties may agree from time to time.

“**Construction Specifications**” means the construction specifications for the Middle Mile System, as identified in the Agreement.

“**Fiber Specifications**” means the fiber and conduit specifications for the Middle Mile System, as identified in the Agreement.

“**Last Mile System**” and “**LMS**” means the fiber optic communications facilities (including fiber optic cable, conduit and related fiber optic infrastructure) owned and installed by Danville Telecom in connection with the Project, as specifically identified and described in the Agreement.

“**Leased Lit Fiber**” means fiber optic cable and related infrastructure which is “lit” or activated for the transport of data over the facilities.

“**Leased Fiber**” means identified, dedicated Leased Lit Fiber comprising the Middle Mile System, as set forth in the Agreement.

“**Legal and Regulatory Requirements**” means any provision of any federal, state, local, or other constitution, statute, treaty, ordinance, rule, regulation, regulatory or administrative guidance, principle of common law or equity, order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any governmental authority or agency, including, as applicable, any Required Rights.

“**Middle Mile System**” and “**MMS**” means the fiber optic communications facilities (including fiber optic cable, conduit and related fiber optic infrastructure) owned by SIREPA in connection with the Project, as specifically identified and described in the Agreement.

“**Project**” means a public-private project to provide fiber infrastructure and high speed (gigabit speeds or higher) broadband services to identified unserved or underserved locations in Lee County, as more specifically described and identified in the Agreement.

“**Project Lease**” means the contractual arrangement (including these Project Lease Terms, and applicable provisions of the Project Agreement) by which Danville Telecom leases Leased Fiber from SIREPA.

“**Project Fee Schedule**” means the financial terms of the Project Lease as set forth in the fee schedule contained in the Agreement.

“**Required Rights**” means the permissions a party must have to perform its obligations under the Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use rights of way, easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental agency or authority or third persons with respect to (a) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (b) any requirement by a governmental authority for the engagement in a business or enterprise.

“**Rights Fees**” means all rights, licenses, permits, authorizations, rights-of-way, easements, pole attachments, franchises, encroachments, or license fees, charges or assessments of any kind relating to a party’s execution of its obligations under the Agreement, whether imposed by a governmental authority or agency or a private entity.

2. **Project Construction.**

2.1. MMS Construction. Danville Telecom will arrange financing, develop engineering plans and contract for construction of the MMS, of which the Leased Fiber shall be a part. Danville Telecom shall deliver to SIREPA, the initial owner of the MMS, complete documentation regarding the as-built condition of the MMS after completion of the construction. Danville Telecom’s failure to complete construction of the MMS or to otherwise maintain and operate the MMS portion of the Project shall be a material breach of the Agreement.

2.2. LMS Construction. Danville Telecom will arrange financing, develop engineering plans and contract for construction of the LMS. Danville Telecom’s failure to complete construction of the LMS or to otherwise maintain and operate the LMS portion of the Project shall be a material breach of the Agreement.

2.3. Required Rights and Rights Fees. Danville Telecom shall obtain and maintain throughout the term of the Project Lease, at its expense, all applicable Required Rights, and shall pay all Rights Fees, relating to the construction and ownership of the MMS including the Leased Fiber. Danville Telecom shall obtain and maintain throughout the term of the Project Lease, at its expense, all applicable Required Rights, and shall pay all Rights Fees, relating to the construction and ownership of the LMS.

3. **Lease of Fiber.**

3.1. Lease. Subject to the provisions of the Agreement, SIREPA shall lease the Leased Fiber to Danville Telecom on a dedicated basis, including rights of exclusive access to and uninterrupted use of the Leased Fiber for the term of the Project Lease. In addition to its other rights and remedies under this Agreement, Danville Telecom may, during the term of the Project Lease, enjoin SIREPA from any attempt to, assign, sell, resell, sublease, license, transfer, grant an indefeasible right of use or other similar right or interest in the Leased Fiber to any third party.

3.2. Leased Lit Fiber. For the avoidance of doubt, the Leased Fiber shall consist of Leased Lit Fiber. Notwithstanding the preceding, SIREPA’s obligations extend only to middle-mile or “backbone”

transport to support Danville Telecom's deployment and operation of the LMS. Danville Telecom shall be solely responsible for the configuration and operation of the LMS, including the provision of all distribution facilities, interconnection facilities, lateral facilities, network equipment, testing equipment and procedures, maintenance and other facilities, equipment, arrangements or actions necessary for Danville Telecom to use the Leased Fiber in connection with its operation of the LMS.

3.3 Lease Term. The term of the Project Lease shall commence on the Completion Date (as defined in Section 4.4) and shall continue for a term of ten (10) years from the Completion Date.

3.4 Lease Payments. In exchange for the lease of the Leased Fiber, Danville Telecom agrees to pay SIREPA certain nonrecurring and monthly recurring charges as set forth in the Project Fee Schedule.

3.5 Access. SIREPA shall provide Danville Telecom with reasonable access to the Leased Fiber at appropriate connection points. The parties shall cooperate in good faith to make and maintain such splicing, re-arrangements and installations as necessary to interconnect their facilities for the operation of the Project(s) as provided in this Agreement. All connections shall be performed in accordance with mutually approved specifications and applicable operating procedures. The costs of all such interconnection, together with the costs of splicing, shall be the sole responsibility of Danville Telecom.

3.6 Representations and Warranties concerning Leased Fiber. Danville Telecom represents and warrants that the Leased Fiber is designed, engineered, installed, and constructed in accordance with the terms and provisions of this Agreement, including (a) the Fiber Specifications, (b) the Construction Specifications and (c) any and all applicable Legal and Regulatory Requirements; Danville Telecom shall notify SIREPA in writing of its discovery of a deviation from the specifications set forth herein which Danville Telecom reasonably determines is likely to materially adversely affect the operation or performance of the Leased Fiber (which notice shall be given within thirty (30) days of such discovery), the affected portion of the Leased Fiber shall be repaired to such specification by Danville Telecom at Danville Telecom sole cost and expense.

EXCEPT AS SET FORTH IN THE PRECEDING SUBSECTION, SIREPA MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED FIBER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

4. Testing and Completion of Leased Fiber.

4.1 Specifications. To the extent not already constructed and installed, Danville Telecom shall design, engineer, construct and install each segment of the MMS containing any Leased Fiber substantially in accordance with the Construction Specifications and Fiber Specifications, in a workmanlike manner and otherwise in accordance with ordinary industry standards and applicable Legal and Regulatory Requirements.

4.2 Construction Activities. Danville Telecom shall have the exclusive right to control all activities concerning construction of the MMS, including installation and splicing of the Leased Fiber. Danville Telecom acknowledges and agrees that SIREPA is not responsible for performing any construction or installation work other than as specified in the Agreement. To the extent any portion of the MMS is being constructed during the term of the Agreement, SIREPA shall have the right, but not the obligation, at SIREPA's sole expense and with reasonable prior notice to Danville Telecom, to inspect the construction of the MMS, including splicing and testing of the Leased Fiber; provided that no inspection or failure to inspect by SIREPA shall impair, modify or amend any of the representations, warranties or agreements between the parties as set forth herein.

4.3 Testing. Where applicable, Danville Telecom shall test the Leased Fiber in accordance with procedures and standards set forth in the Fiber Specifications or otherwise mutually agreed by the parties (“**Acceptance Testing**”). Acceptance Testing may be performed span-by-span along each segment of the Leased Fiber route as cable splicing progresses so that test results may be reviewed in a timely manner. SIREPA shall have the right (but not the obligation), at SIREPA’s sole expense, to be present and observe Acceptance Testing.

4.4 Acceptance. When Danville Telecom has completed Acceptance Testing and reasonably determines the Leased Fiber is installed and operating substantially in accordance with the Fiber Specifications, Danville Telecom shall provide notice of the same to SIREPA. SIREPA shall, within ten (10) business days of receipt of the completion notice, either accept or reject the completion notice. SIREPA shall be permitted to reject a completion notice, only if SIREPA specifies a material failure of the Leased Fiber to comply with the Fiber Specifications, by delivery of written notice to Danville Telecom. In the event SIREPA rejects a completion notice, Danville Telecom shall promptly, and at no cost to SIREPA, commence to remedy the defect or failure specified in SIREPA’s notice. Thereafter Danville Telecom shall again give SIREPA a completion notice with respect to such fiber. The foregoing procedure shall apply again and successively thereafter until Danville Telecom has remedied all defects or failures specified by SIREPA. Any failure by SIREPA to timely reject a completion notice shall be deemed to constitute acceptance for purposes of this Agreement, and SIREPA shall be deemed to have delivered a notice of acceptance on the tenth (10th) business day after delivery of the completion notice. For purposes of this Agreement, the “**Completion Date**” shall be the date on which SIREPA has accepted a completion notice for all segments of Leased Fiber.

5. **Project Operation.**

5.1 Operational Services. Except as otherwise expressly provided herein or in the Agreement, (a) SIREPA will own the MMS. Danville Telecom will operate, maintain, and will incur all operating expenses related thereto related to the MMS; and (b) Danville Telecom will own, operate and maintain the LMS and will incur all operating expenses related thereto. Danville Telecom shall also provide power, management, engineering support and monitoring of the MMS and LMS and shall bear all responsibility and expense in providing and maintaining the switching facilities and all other necessary equipment and services to light and operate the Leased Fiber. _____

~~_____ 5.2 Network Facilities. Neither party shall have any limitations on the types of electronics or technologies employed to use the Leased Fiber, and a party may make additions, enhancements or substitutions to its facilities and equipment, provided that any facilities or equipment actually deployed shall not materially interfere with the performance of the other party’s facilities or network, or the respective rights of the parties under the Agreement, and provided that the costs of making or accommodating any additions, enhancements or substitutions are borne solely by the party responsible for making or requiring such additions, enhancements or substitutions. All facilities and equipment deployed by the parties shall be maintained in good repair and shall meet ordinary industry standards for the transport of voice, video and data traffic. Without limiting the preceding, all facilities and equipment shall be installed and maintained in accordance with ordinary industry standards and all applicable Legal and Regulatory Requirements.~~

5.3 Permitted Use.

(a) The Leased Fiber will be used solely for the transport of Internet-protocol enabled services, including voice, video and data traffic.

(b) Danville Telecom shall use the Leased Fiber in accordance with all applicable Legal and Regulatory Requirements.

(c) Danville Telecom shall have no right to assign, license, sublease, sell or resell capacity, or otherwise grant any other person any access to or rights of use of the Leased Fiber, except with the consent of SIREPA, which consent shall not be unreasonably withheld, conditioned or delayed.

6. **Project Maintenance.**

6.1 Network Operations Center. Danville Telecom shall operate and maintain a Network Operations Center capable of receiving MMS-related alarms twenty-four (24) hours a day, seven (7) days a week and shall monitor the MMS twenty-four (24) hours a day, seven (7) days a week. Danville Mutual's maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week.

6.2 Scheduled Maintenance. Routine maintenance and repair of the MMS will be performed as necessary to keep the Project in good operating condition, at SIREPA's reasonable request or in Danville Mutual's reasonable discretion, all at Danville Mutual's expense. Scheduled maintenance will commence upon the Completion Date, and will include without limitation (a) inspection of the MMS, including the Leased Fiber, on a regularly scheduled basis, which shall be no less than once each calendar quarter; (b) appropriate routine preventative maintenance on the MMS, in accordance with standard industry practices; (c) performance of all required cable locates and participation in Iowa One Call for all locations along the MMS; (d) maintenance of an inventory of spare cable and other equipment, together with maintenance equipment, at strategic locations to facilitate timely restoration of the MMS; and (e) non-routine maintenance, repair and replacement of the MMS arising out of the negligent or more culpable action or inaction of Danville Telecom or Danville Telecom's personnel.

6.3 Unscheduled Maintenance. Non-routine maintenance and repair of the MMS which is not included as scheduled maintenance will be performed by or under the direction of Danville Telecom and at Danville Telecom's expense. Unscheduled maintenance will commence upon the Completion Date and shall include maintenance in response to: (a) notification by any third party of any failure, interruption or impairment in the operation of the MMS, or any event imminently likely to cause the failure, interruption or impairment in the operation of the MMS; or (b) any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the MMS, each to the extent the same is not included in the definition of scheduled maintenance.

6.4 Cooperation and Coordination.

(a) The parties shall use Danville Telecom's escalation list and escalation procedures, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Danville Telecom in meeting maintenance service objectives and regarding all other aspects applicable to MMS maintenance and operations.

(b) All maintenance shall be in accordance with ordinary industry standards and comply with this Agreement and all applicable Legal and Regulatory Requirements. The precautions to be taken by Danville Telecom will include notifications to SIREPA upon service interruption. In the event that any scheduled maintenance or unscheduled maintenance requires a truck roll or reconfiguration involving

the MMS, then Danville Telecom shall, make such personnel of Danville Telecom available as may be necessary in order to accomplish such maintenance.

(c) Danville Telecom represents and warrants, that maintenance work performed by Danville Telecom on the MMS will not normally result in interruptions or defects. Scheduled maintenance which is reasonably expected to produce any signal discontinuity or jeopardize the use of the MMS in any material respect generally will be scheduled after midnight and before 5:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for scheduled maintenance weekends as mutually agreed by the parties.

(d) Danville Telecom will use commercially reasonable efforts to notify SIREPA at least ten (5) days prior to the date of any scheduled maintenance that may result in an outage or degradation in the use of the MMS, and as soon as possible, but in no event later than eight (8) hours after becoming aware of the need for unscheduled maintenance. SIREPA may be present during the performance of any scheduled maintenance or unscheduled maintenance so long as this right or the exercise thereof does not interfere with Danville Telecom's ability to perform its obligations under this Agreement. In the event that scheduled maintenance is canceled or delayed for whatever reason as previously notified, Danville Telecom will use commercially reasonable efforts to notify SIREPA at the earliest opportunity, but in no event less than forty-eight (48) hours after cancellation, and will comply with the above-provisions for any re-scheduled activity.

6.5 Response and Restoration. Danville Telecom will respond to any interruption of service or a failure of the MMS as quickly as possible, but in no event later than four (4) hours after Danville Telecom became actually aware of the failure or interruption, in accordance with the procedures set forth herein. Danville Telecom shall address the problem by working diligently to enable restored service as soon as technically practical and commercially reasonable, in accordance with the procedures set forth herein. In order to accomplish such objective, SIREPA acknowledges that such repairs may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such unscheduled maintenance, Danville Telecom will commence its planning for permanent repair, and thereafter promptly notify SIREPA of such plans, and shall use commercially reasonable efforts to implement such permanent repair as soon as possible thereafter. In performing permanent repairs, Danville Telecom shall comply with any applicable Fiber Specifications or Construction Specifications. Danville Telecom shall provide to SIREPA any modifications to these specifications as may be necessary or appropriate in any particular instance for SIREPA's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

6.6 Subcontracting. Danville Telecom may subcontract any of the maintenance services hereunder; provided that Danville Telecom shall require the subcontractor(s) to perform in accordance with the requirements and procedures set forth herein. The use any such subcontractor shall not relieve Danville Telecom of any of its obligations hereunder. For clarity, a subcontractor is required to perform in accordance with the requirements set forth herein only for the maintenance task they are subcontracted to perform and Danville Telecom is responsible for all other obligations hereunder.

Memo



To: SIREPA Board of Directors
From: Mike Norris, Executive Director, SIREPA Staff
Date: March 31, 2022
Re: KL Megla Building Update

SIREPA purchased the KL Megla building August 26, 2021 with the backing of Lee County Economic Development Group (LCEDG) secured by a Funding Agreement and Put Option.

Since that time the facility has been very busy. The following is a status of each entity currently utilizing the facility and their status in summary. The Joint Account held by LCEDG and SIREPA has a balance of approximately \$87,000. The funds have been stretched due to the lease revenues coming into the account from building lessees. The balance is well ahead of initial projections.

LCEDG

The group has moved their offices into the KL Megla building and furnished them to great effect. Already multiple meetings have been held in the facility to the credit of LCEDG and benefit of area schools, workforce development officials and supporters, and businesses.

Dennis Fraise and staff have done a commendable job of managing daily operations of the building and minimizing SIREPA expense while doing so. LCEDG has communicated all activities ahead of time with SIREPA staff.

PV PALLET

This startup solar panel pallet / crate manufacturer has signed a sub-lease (an ability granted in SIREPA-LCEDG lease agreement) for office and storage space – well within the ability of SIREPA to facilitate economic development. The lease is valued at \$1,000/mo for one office, periodic use of board room and warehouse space.

HEARTLAND RESEARCH

This faith-based group will reassemble and display a replica 200BC-era sailing ship. The group is in the separate building to the north of the main facility. Annual lease value \$12,000, already pre-paid. The group is also paying for electrical to be run into the building and to connect to the septic system for sanitary use (county permits are in effect and the system has plenty of capacity).

UTILITY COMPANY

MJ Electric is parking trucks temporarily in the western part of the facility. Temporary lease value is \$1,200 per month.

CAREER ADVANTAGE CENTER

Plans for some light building construction are in place with the Fort Madison Building Trades class. The work will separate a storage area from the Career Advantage Center along with building out an office and meeting room and making the bathrooms ADA compliant. Proponents expect to have students in the building by Fall, 2022.



ROBOTICS

WELDING

ROQUETTE

CONAGRA
BRANDS

SEITHER & CHERRY CO.
AXALTA
SWM
Independent
Can Company

MOHRELD
Electro
Scotts Miracle-Gro
Climax Molybdenum
A Fresport-McMoRan Company
Amsted Rail

CAC Career
Advantage
Center
LEE COUNTY

NELSON
Building Solutions Since 1913

HENNIGES
AUTOMOTIVE

SILGAN
CONTAINERS

ZIEGLER
CASTINGS
KEOKUK STEEL
CASTINGS

SIEMENS Gamesa
DU PONT

HUFFMAN

J.J. NIGHTING COMPANY
CASE II
CRYOTECH

GREGORY
DESIGN & MANUFACTURING

dinand Stuekerjuergen Inc.
Stake Iowa