

## **DIGITALC GRANT AGREEMENT**

THIS GRANT AGREEMENT ("Agreement") is made and entered into as of September 7, 2021 ("Effective Date") by and between the County of Cuyahoga County, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (the "County") and DigitalC, ("DC" or "Subrecipient"), an Ohio non-profit corporation with a location at 6815 Euclid Avenue, Cleveland, Ohio 44103. The County and DC re herein collectively referred to as the "Parties" or individually as "Party".

### **Recitals**

WHEREAS, DC is a local non-profit working to increase access to technology to the City of Cleveland's underserved households; and

WHEREAS, DC has requested match funding for a project to implement a Citizens Broadband Radio Service network ("LTE-CBRS") that will reach approximately 70% of Cleveland's Central Neighborhood with the capacity to serve 720 households (the "Mission Activities"); and

WHEREAS, pursuant to County Approval, the County will award an amount not to exceed Three Hundred Thirty Thousand Dollars (\$330,000.00) (the "Grant") to DC to support the Mission Activities, as described in Exhibit 1;

WHEREAS, the County and DC desire to enter into this Agreement to govern their respective obligations with respect to the Grant for the Mission Activities.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties from the other, and intending to be legally bound, the Parties agree as follows:

### **AGREEMENT**

1. **ACCURACY OF RECITALS; DEFINED TERMS**

The Parties acknowledge the accuracy of the above Recitals, which are incorporated into and made a part of this Agreement.

2. **CONFIRMATION OF AWARD**

DC has requested, and the County has awarded DC, a grant in an amount not to exceed \$330,000.00 (the "Grant") to be disbursed to DC (the "Award"). The Grant shall be disbursed to DC upon the terms and conditions set forth in this Agreement.

3. CONDITIONS

The obligations of the County under this Agreement are subject to the satisfaction of the following conditions, which conditions may only be waived by the County (in the County's sole discretion and in writing), for whose sole benefit such conditions exist:

- (a) DC agrees its Grant shall not be used to pay for costs outside those listed on Exhibit 1.
- (b) DC shall follow all administrative requirements listed in Exhibit 3, if applicable.

4. REPORTING REQUIREMENTS

DC shall provide an update to the County once the funds have been spent. The report shall provide information detailing how the funds were used. DC will also provide monthly status updates on the progress of the infrastructure build. Once the build is complete, DC will provide monthly reports on the success of the internet access program. This report should include the following:

- (a) Number of households signed-up for service within the Central Neighborhood
- (b) If the household signed up for service under this Agreement, did the household have in-home broadband internet prior to this program. Internet through mobile hotspot or other similar equipment should not be counted as in-home broadband for this purpose.
- (c) Any households signed-up for service as part of this Agreement that have discontinued service. If available, the reason for the discontinuation of service

If any additional reporting is required as a result of funding source, the County will work with DC to collect necessary data.

5. INDEMNIFICATION

The Parties acknowledge that as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. The Parties agree that no provision of this Agreement may be interpreted to obligate either party to indemnify or defend the other party.

6. PUBLIC RECORDS; CONFIDENTIALITY

The Parties acknowledge that the County is a political subdivision of the State of Ohio and as such is subject to the Ohio Revised Code and other law related to the keeping of and access to public records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and DC and any and all documents in any format or media.

7. REPRESENTATIONS

DC represents and warrants:

- (a) It has full power and authority to execute, deliver and perform this Agreement and its obligations;
- (b) the execution, delivery and performance, by DC under this Agreement or any other provisions of the Mission Activities do not, and will not, violate any provision of law or any court order applicable to DC, and do not, and will not, conflict with or result in a default, under any agreement or instrument to which DC is a party or by which it or any of its property or assets is or may be bound; and
- (c) this Agreement has by proper action, been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of DC.

8. DEFAULT

If DC breaches any of its representations under this Agreement or fails to perform any of its obligations or is in default under any other condition of this Agreement for a period of thirty (30) days after date of the County's written notice to DC, the County may, at its sole option, terminate this Agreement and will be under no further obligation to disburse any Grant funds remaining under this Agreement.

9. TERM OF AGREEMENT

This Agreement shall become effective as of the Effective Date and shall remain in full force and effect for one year from the Effective Date, unless extended by written agreement of the Parties.

10. MISCELLANEOUS

- (a) This Agreement, with its exhibits (if any), contains the Parties' entire agreement with respect to the subject matter herein. This Agreement may not be modified except by written instrument signed by both Parties and referring to the particular provisions to be modified.
- (b) This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Ohio and applicable federal law. DC and the County agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement and DC and the County consent to the exclusive jurisdiction of such courts. DC agrees not to challenge this provision, and agrees not to attempt to remove any legal action related to this Agreement or any alleged breach of this Agreement outside of Cuyahoga County for any reason.

- (c) All County contracts, including this Agreement, are subject to all applicable laws adopted in the Cuyahoga County Code, including but not limited to Title IV: Ethics, and Title V: Contracts and Purchasing. The Cuyahoga County Code and enacted County ordinances are available at <http://code.cuyahogacounty.us>.
- (d) DC personnel may not acquire any personal interest that conflicts with DC's responsibilities under this Agreement. Additionally, DC will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under DC's control, if such an interest would conflict with that official's or employee's duties. DC will disclose to the County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. DC will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the County has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.
- (e) Each of the Parties authorize the other to use such Party's name in connection with any press release, any online or printed marketing materials, or for any similar use.
- (f) All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

County's address for notification is:

Cuyahoga County Office of Innovation and Performance  
2079 East 9<sup>th</sup> Street  
Cleveland, Ohio 44115  
Attention: Chief

With a copy to:

Cuyahoga County Department of Law  
2079 East 9th Street  
Cleveland, Ohio 44115  
Attention: Director of Law

DC's address for notification is:

6815 Euclid Avenue

Cleveland, Ohio 44103  
Attention: CEO

- (g) Neither Party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.
- (h) The failure of either Party to require performance by the other party of any provision of this Agreement or any exhibit shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of the provision itself.
- (i) If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the Parties' objectives to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.
- (j) The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.
- (k) DC may not assign this Agreement without the prior written consent of the County.
- (l) Except as expressly provided in this Agreement, no amendment, change, waiver, or discharge of this Agreement is valid unless in writing and signed by both of the Parties.
- (m) Each of the Parties will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.
- (n) Each of the Parties shall comply with all applicable state and federal laws regarding keeping a drug-free workplace.
- (o) Each of the Parties agree to make all pertinent books and records and other documents pertaining to its obligations under this Agreement available to the other and its designated agents for purpose of audit and examination upon reasonable request during the term of this Agreement and for a period of two (2) years from the expiration date or final payment under this Agreement, whichever is later; provided however, that should either Party be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, copies of the aforesaid records shall be retained until the completion of said audit at which time they will be returned to such Party.

- (p) This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

11. NON-DISCRIMINATION

DC agrees to provide the services hereunder without discrimination on account of gender, race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, to the extent required by law. The Parties agree that discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations, are incorporated to the extent binding upon DC.

12. ELECTRONIC SIGNATURE POLICY

DC, its officers, employees, subcontractors, sub-DCs, agents or assigns, agree that this transaction may be conducted by electronic means and agree that all documents requiring the County's signatures and DC's signatures, including this Agreement, may be executed by electronic means, and that the electronic signature affixed by either Party to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. DC also agrees on behalf of the aforementioned entities and persons, to be bounded by the provisions of Chapter 304 and 1306 of the Ohio Revised Code.

13. FEDERAL REQUIREMENTS

(a) Eligible Expenses:

Cuyahoga County, in its sole and absolute discretion, may reimburse and/or provide funding to Subrecipient for "Eligible Expenses". Notwithstanding anything herein to the contrary, "Eligible Expenses" shall not include lost revenue. Failure of Subrecipient to comply with the provisions of this Agreement, including non-compliance with 2 C.F.R. 200, may result in expenses being disallowed, withholding of federal funds, and/or termination of this Agreement.

(b) Compliance with Federal Requirements:

Subrecipient acknowledges that Eligible Expenses funded or reimbursed by the County to Subrecipient are not considered to be grants but are "other financial assistance" under 2 C.F.R. 200.40. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Subrecipient agrees to comply with all applicable federal laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to

utilize available funds under this Agreement to supplement rather than supplant funds otherwise available.

During the performance of this Agreement, the Subrecipient shall comply with all applicable federal laws and regulations, including, but not limited to, the following:

- (i) Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. 7501-7507).
- (ii) Subrecipients are subject to a single audit or program specific audit pursuant to 2 C.F.R. 200.501(a) when Subrecipient spends \$750,000 or more in federal awards during their fiscal year.
- (iii) Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls.
- (iv) Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
- (v) Fund payments are subject to Subpart F regarding audit requirements.
- (vi) Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement, including but not limited to 2 C.F.R. 200.303, 2 C.F.R. 200.330-332, 2 C.F.R. 200.501(a), and 2
- (vii) C.F.R. Part 200 Subpart F.
- (viii) With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

(c) Program Fraud & False or Fraudulent Statements or Related Acts:

Subrecipient and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.

(d) Debarment / Suspension and Voluntary Exclusion:

Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov).

(e) Hatch Act:

Subrecipient must comply with provisions of the Hatch Act of 1939 (Chapter 15 of Title V of the U.S.C.) limiting the political activities of public employees, as it relates to the programs funded.

(f) Certification:

The subrecipient further certifies the funds received for reimbursement from the Coronavirus Relief Funds were or will be used only to cover those costs that:

- (i) Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (ii) Were not accounted for in the budget most recently approved as of March 27, 2020; and
- (iii) Were incurred during the period that begins on March 1, 2020, and ends on December 31, 2024.

Subrecipient understands any award of funds pursuant to this agreement must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure and that the subrecipient has reviewed the guidance established by U.S. Department of the Treasury and certify costs meet the required guidance. Any funds expended by the subrecipient or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to Cuyahoga County.

Subrecipient agrees that they will retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with §200.333 Retention requirements for records of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

Subrecipient understands any funds provided pursuant to this agreement cannot be used as a revenue replacement for lower than expected tax or other revenue collections and cannot be used for expenditures for which the subrecipient has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same




expense they pertain to electronic transactions, and to comply with the electronic signature policy of the County.


[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly signed and delivered by the undersigned as of the day and year first above written.

DIGITALC

COUNTY OF CUYAHOGA, OHIO

By:   
Dorothy C. Baunach  
Its: CEO

Armond Budish, County Executive  
By:   
Arm  
2021-09-08 11:41:52  
or d  
No. EO2018-0002 dated October 31, 2018  
or No. EO2018-0001 dated February 26, 2018

The legal form and correctness  
of this Contract is hereby approved:  
Law Department  
County of Cuyahoga, Ohio

Gregory G. Huth, Director of Law

By: Jonathan McGory  
Assistant Director of Law

Electronic Signature: JONATHAN MCGORY, ASSISTANT LAW DIRECTOR

  
2021-09-08 11:05:36

## Exhibit 1

### CENTRAL NEIGHBORHOOD PROJECT

#### DIGITALC

DigitalC is a nonprofit, anchored in proximity to some of Cleveland's least connected and most underserved neighborhoods, that is built on the belief that technology can grow community empowerment from the ground up. DigitalC is Cuyahoga County's own WISP. Our network, EmpowerCLE, currently provides low-cost broadband service to more than 900 families in Cuyahoga County.

This project will enable the County and DigitalC to implement an LTE-CBRS network that will reach approximately 70% of the neighborhood with the capacity for 720 households.

#### Project Main Milestones:

- Site survey, coverage, and capacity planning.
- Core Network Expansion.
- Extend 10Gbps middle mile into Central neighborhood.
- Implement 3 LTE-CBRS Base Stations

DigitalC will sign up customers and have a tech team to do the CPE and in-home Wi-Fi installations. Offered throughput is up to 50Mbps down and 10Mbps up.

Phase 1 - Last Mile Expansion with LTE (70% Neighborhood Coverage)	Qty	Cost
Base Stations	3	\$ 240,000
Building Infrastructure (Masts, power, grounding, conduits)	3	\$ 90,000
Core Expansion	1	\$ 50,000
		\$ 380,000

Household Equipment & Provisioning & Install	500	\$ 180,000
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**Total** \$ 560,000

## Exhibit 2

The following information is provided pursuant to 2 C.F.R. 200.331(a)(1):

- Subrecipient's name (must match the name associated with its unique entity identifier): DigitalC.
- Subrecipient's unique entity identifier (DUNS): 080417404
- Subaward Period of Performance Start and End Date: March 11, 2021, through December 31, 2024.
- Total Amount of Federal Funds allocated to the Subrecipient: \$330,000.00
- Federal Award Program Description:

Cuyahoga County has received Coronavirus Relief Funds pursuant to the American Rescue Plan, a portion of which it has chosen to allocate in the spirit of community cooperation to political subdivisions and non-profits in the county.
- Name of Federal Awarding Agency: U.S. Department of the Treasury
- Name of pass-through entity: Cuyahoga County, Ohio
- Contact Information for pass-through entity: Michael Chambers, Chief Fiscal Officer, Cuyahoga County, 2079 E. 9<sup>th</sup> Street, Cleveland, Ohio 44115. Email Info: [mchambers@cuyahogacounty.us](mailto:mchambers@cuyahogacounty.us)
- Award is for Research & Development (R&D): NO

### Exhibit 3

#### I. ADMINISTRATIVE REQUIREMENTS

##### A. Financial Management

Subrecipient agrees to comply with and agrees to adhere to appropriate accounting principles and procedures, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Expenses.

##### B. Duplication of Benefits; Subrogation

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155).

If Subrecipient receives duplicate benefits from another source, Subrecipient must refund the benefits provided by Cuyahoga County to Cuyahoga County.

Subrecipient must execute and deliver a Duplication of Benefits and Subrogation Agreement ("Duplication of Benefits Certification"), in the form attached hereto as Attachment B. Subrecipient shall comply with all terms and conditions of the Duplication of Benefits Certification, including, without limitation, Subrecipient's obligation to promptly notify Cuyahoga County of any disaster assistance received from any other source.

##### C. Documentation & Recordkeeping

As required by 2 C.F.R. 200.331(a)(5), Cuyahoga County, or any duly authorized representative of Cuyahoga County, shall have the right of access to any records, documents, financial statements, papers, or other records of Subrecipient that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to Subrecipient under this Agreement. The right of access also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents. The right of access is not limited to the required retention period, as set forth in paragraph D below, but lasts as long as the records are retained.

##### D. Record Retention

Subrecipient shall retain sufficient records, which may include, but are not limited to financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Agreement to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of three (3) years from the date of submission of the final expenditure report.

#### E. Internal Controls

Subrecipient must comply with 2 C.F.R. 200.303 and establish and maintain effective internal control over the funds allocated under this Agreement and provide reasonable assurance that the Subrecipient is managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission.

#### F. Personally Identifiable Information

Subrecipient must comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information designated as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

#### G. Monitoring & Compliance

Cuyahoga County shall evaluate the Subrecipient’s risk of noncompliance and monitor the activities of Subrecipient as necessary to ensure that the CRF funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement. Monitoring of Subrecipient shall include reviewing invoices for eligible expenses, reviewing payroll logs, applicable contracts and other documentation that may be requested by the County to substantiate eligible expenses. Failure to submit proper documentation verifying eligible expenses may result in termination of this agreement and recoupment of awarded funds from the Subrecipient.

Cuyahoga County shall verify that Subrecipient is audited as required by 2 C.F.R. Part 200 Subpart F—Audit Requirements. Cuyahoga County may take enforcement action against noncompliant Subrecipient as described in 2 C.F.R. 200.338 Remedies for noncompliance of this part and in program regulations

## H. Close-Outs

Subrecipient shall close-out its use of funds under this Agreement by complying with the closeout procedures set forth in 2 C.F.R. 200.343 and the procedures described below. Subrecipient's obligation to Cuyahoga County will not terminate until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to:

Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over funding provided under this Agreement.

### I. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Cuyahoga County, the Federal awarding agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be resolved by Subrecipient within 30 days after notice of such deficiencies by the Subrecipient. Failure of Subrecipient to comply with the audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

If Subrecipient expends \$750,000 or more in total federal assistance (all programs) in a single year, must have an audit conducted of Coronavirus Relief Funds in accordance with 2 C.F.R. Part 200, Subpart F—Audit Requirements. Subrecipient shall submit a copy of that audit to Cuyahoga County.

Subrecipients who do not meet the Single Audit threshold are required to have a program-specific Coronavirus Relief Funds audit conducted in accordance with § 200.507 - Program-Specific Audits and may be required to submit such copy of that audit to Cuyahoga County.

Issues arising out of noncompliance identified in a Single or Program-Specific Coronavirus Relief Funds audit are to receive priority status of remediation or possible return of all funds to Cuyahoga County.