

## **THE CLEVELAND FOUNDATION GRANT AGREEMENT**

THIS GRANT AGREEMENT ("Agreement") is made and entered into as of August 01, 2020 ("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 The Cleveland Foundation (the "Grantee"), a not-for-profit corporation, having a principal place of business at 1422 Euclid Avenue, Ohio 44115. The County and the Grantee are collectively referred to as the "Parties."

### **RECITALS**

WHEREAS, the Parties recognize the importance of digital equity, the goal of ensuring that all individuals and communities, including the most disadvantaged, have access to and use of Information and Communication Technologies, including access to reliable internet service; and

WHEREAS, the Parties desire to create a fund to support local digital equity efforts; and

WHEREAS, pursuant to County Council Approval, the County will award One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Grant") to Grantee to support digital equity efforts;

WHEREAS, the County and Grantee desire to enter into this Agreement to govern their respective obligations with respect to the Grant.

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**

The County has awarded the Grantee, a grant in the amount of \$1,500,000.00 (the "Grant") to be disbursed to the Grantee (the "Award"). The Grant shall be disbursed to the Grantee 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) The Grantee agrees that no portion of its Grant shall be used to pay administrative costs (or reimburse it for administrative costs).
- B) The Grantee and County, through its Chief Innovation and Performance Officer, will jointly select projects to be funded with the grant.

4. REPORTING REQUIREMENTS

The Grantee shall provide an update to the County once the grant has been spent. The report shall provide information detailing how the funds were used, including how many households were connected to reliable internet service, how many individuals were connected to reliable internet services, and how many computers and/or hot spots were distributed.

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 or any other contract or agreement between Grantee and the County 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 the Grantee and any and all documents in any format or media.

7. REPRESENTATIONS

The Grantee represents and warrants:

- A. It has full power and authority to execute, deliver and perform this Agreement and its obligations hereunder;
- B. the execution, delivery and performance, by the Grantee under this Agreement or any other provisions of the Program do not, and will not, violate any provision of law or any

court order applicable to the Grantee, and do not, and will not, conflict with or result in a default, under any agreement or instrument to which the Grantee 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 the Grantee.

## 8. DEFAULT

If the Grantee 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 the Grantee, 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 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. The Grantee 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 the Grantee and the County consent to the exclusive jurisdiction of such courts. The Grantee 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. The Grantee personnel may not acquire any personal interest that conflicts with the Grantee's responsibilities under this Agreement. Additionally, the Grantee 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 the Grantee's control, if such an interest would conflict with that official's or employee's duties. The Grantee will disclose to the County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Grantee 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 Innovation and Performance Officer

With a copy to:

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

Grantee's address for notification is:

The Cleveland Foundation  
1422 Euclid Avenue, Ste. 1300  
Cleveland, OH 44115  
Attn: Leon A. Wilson

- 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. The Grantee 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

The Grantee 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 the Grantee.

#### 12. ELECTRONIC SIGNATURE POLICY

The Grantee, its officers, employees, subcontractors, sub-grantees, agents or assigns, agree that this transaction may be conducted by electronic means and agree that all documents requiring the County's signatures and the Grantee'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. The Grantee 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 as they pertain to electronic transactions, and to comply with the electronic signature policy of the County.

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

THE CLEVELAND FOUNDATION

COUNTY OF CUYAHOGA, OHIO  
Armond Budish, County Executive

By:   
Leon A. Wilson  
Chief of Digital Innovation &  
Chief Information Officer

By:   
2020-08-07 14:00:00  
Armond Budish, County Executive  
or designee pursuant to Executive Orders  
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 Stone McGory  
Assistant Director of Law

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

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