

RUS Project Designation:

[RUS-Designation]

COMMUNITY-ORIENTED CONNECTIVITY BROADBAND
GRANT AGREEMENT

dated as of [date]

between

[GRANTEE'S NAME],

as Grantee

and

THE UNITED STATES OF AMERICA

as Grantor

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

**COMMUNITY-ORIENTED CONNECTIVITY BROADBAND
GRANT AGREEMENT**

THIS COMMUNITY-ORIENTED CONNECTIVITY BROADBAND GRANT AGREEMENT (the “Agreement,”) dated as of [date], is between [GRANTEE’S NAME] (hereinafter “Grantee,”) a [corporation, cooperative, limited liability company, local government, Indian tribal government, or other entity] existing under the laws of [State], and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service (“RUS.”)

WHEREAS, the Grantee has applied for financial assistance (“Application”) to RUS to finance a project providing broadband access in rural areas as described in a scope of work plan (the scope of work plan and any revisions thereto, all as approved in writing by RUS, hereinafter the “Scope of Work Plan;”)

WHEREAS, RUS is willing to extend financial assistance in the form of a grant (the “Grant”) to the Grantee, pursuant to the Community Oriented Connectivity Broadband Grant Program (7 C.F.R. § 1739) and all applicable federal regulations, on the terms and conditions stated herein; and

WHEREAS, The Grantee is willing to secure the grant and its other obligations to RUS on the terms stated herein;

THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

“Accounting Requirements” shall mean, for for-profit entities, the accounting requirements in 7 C.F.R. § 3015, and 48 C.F.R. 31.2, and for state and local governments and non-profit entities, the accounting requirements of 7 C.F.R. §§ 3016 and 3019, and OMB Circulars A21, A87, A110, A122, and A133.

“Advance” or “Advances” shall mean an advance or advances made by RUS pursuant to this Agreement.

“Application” shall have the meaning as defined in the first recital hereof.

“Approved Purposes” shall have the meaning as defined in Section 5.2 hereof.

“Community Connect Regulations” shall mean the regulations promulgated under 7 C.F.R. § 1739.

“Critical Community Facility” shall have the meaning as defined in 7 C.F.R. § 1739.3.

“Expiration Date” shall have the meaning as defined in Section 3.1(b) hereof.

“Laws” shall have the meaning as defined in paragraph (e) of Article II.

“Matching Contribution” shall have the meaning as defined in Section 4.2(d) hereof.

“Project” shall have the meaning as defined in Section 3.2(a) hereof.

“RUS Regulations” shall mean the rules, regulations and bulletins of general applicability published by RUS from time to time, as such rules, regulations and bulletins exist at the date of applicability thereof, and shall also include any rule and regulations of any Federal entity which RUS is required by law to implement. Any reference to specific RUS Regulations shall mean the version of and cite to such regulation effective at the date of applicability thereof.

“Scope of Work Plan” shall have the meaning as defined in the first recital hereof.

ARTICLE II - REPRESENTATIONS AND WARRANTIES OF THE GRANTEE

Recognizing that RUS is relying hereon, the Grantee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc.* The Grantee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has all requisite and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under this Agreement; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Grantee of this Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and do not violate any provision of law or any charter, articles of incorporation, organizational documents or bylaws of the Grantee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Grantee is a party or by which it may be bound. The Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* This Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Grantee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, “Laws.”)
- (f) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Grantee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Grantee.
- (g) *Principal Place of Business.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Schedule 1 hereto.
- (h) *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations and written documents that it has submitted to RUS in connection with this Grant.

ARTICLE III – THE GRANT

SECTION 3.1 Grant Amount and Expiration Date

- (a) *Grant Amount.* RUS agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, a Grant, in the maximum amount specified in Schedule 1 hereto.
- (b) *Expiration Date.* The Grant, and the obligation of RUS to advance the Grant, or any portion thereof, shall expire on a date three (3) years from the date hereof (“Expiration Date.”) No portion of the Grant will be advanced by RUS to the Grantee after the Expiration Date. RUS, in its sole discretion, may approve one extension of the Expiration Date, provided that the Grantee notify RUS, in writing at least ten days prior to the Expiration Date, of the reasons and need for an extension, together with a suggested, revised Expiration Date.

SECTION 3.2 Project

- (a) *Grant Purpose.* The Grant has been made solely to finance the project specifically described in the Application and Scope of Work Plan (hereinafter the “Project”) in order to furnish or improve community-oriented broadband service in rural areas.
- (b) *Changes to Project.* The Grantee shall obtain the prior written approval of RUS for any material change to the scope, design, activities, construction, or objectives of the Project, including, but not limited to, the technologies to be used, the communities to be served, the community-oriented connectivity plan as set forth by the Grantee in its Application for this Grant, or to any changes to discrete budget line items, or the amount of Grant funds allocated thereto, within the overall Project.

ARTICLE IV – CONDITIONS OF FUNDING

SECTION 4.1 General Conditions

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Executed Grant Agreement.* RUS shall receive duly executed originals of this Agreement;
- (c) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative grantees, RUS shall have received copies of the Grantee’s articles of incorporation or charter and bylaws. With respect to limited liability companies or similar grantees, RUS shall have received copies of the Grantee’s organization documents;
- (d) *Authorizations.* RUS shall have received evidence satisfactory to it that all documents and proceedings of the Grantee necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect;
- (e) *Approvals.* RUS shall have received evidence satisfactory to it that the Grantee has duly registered when and where required by law with all state, federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, permits, licenses, franchises and approvals necessary for, or required as a condition of, the validity and enforceability of this Agreement and for the construction and operation of the Project;

- (f) *Opinion of Counsel.* RUS shall receive an opinion of counsel for the Grantee (who shall be acceptable to RUS) in form and content acceptable to RUS;
- (g) *ACH.* That Grantee agrees to use of the Automated Clearing House (ACH) Payment System that deposits funds directly into the bank account Grantee designates; and
- (h) *Fidelity Bond Coverage.* RUS has received from the Grantee for Grants in the amount of \$100,000 or more, except Grantees which are units of government, evidence, satisfactory to RUS, that the Grantee has obtained fidelity bond coverage, from a surety doing business with the United States listed in 31 C.F.R. § 223, in an amount at least fifteen percent (15%) of the Grant, covering all officers, employees, or agents of the Grantee authorized to receive, disburse, or receive and disburse the Grant funds. Notwithstanding, for existing RUS Borrowers, RUS may waive this fidelity bond coverage requirement, if after evaluation, RUS has determined that adequate fidelity bond coverage is already maintained by the Grantee as an RUS Borrower under an existing loan or guarantee agreement between the Grantee and RUS.

SECTION 4.2 Conditions to Advances

The obligations of RUS to approve any Advance of the Grant is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date.
- (b) *Requisitions and Supporting Documentation.* That RUS shall have received, not more frequently than once a month, a completed Standard Form 270, *Request for Advance or Reimbursement* (hereinafter "Request for Advance,") bearing the original signature of the officer, employee, or agent of the Grantee authorized to receive, disburse, or receive and disburse the Grant, and supporting documentation from the Grantee in accordance with this Agreement and RUS Regulations. All Advances shall be limited to the minimum amounts required for the Grantee's immediate disbursement needs and shall be requested by the Grantee only for actual immediate cash requirements of the Grantee. All Advances shall either be provided on a reimbursement basis, supported by documentation, including, but not limited to, paid third-party invoices, employee timesheets or lease agreements, or based on unpaid third-party invoices for eligible grant purposes.
- (c) *Certification of Authority.* That RUS has received from the Grantee a duly authorized and executed certification of authority designating an officer, employee, or agent of the Grantee as the person or persons authorized to execute and submit, on behalf of the Grantee, the Request for Advance.
- (d) *Matching Contribution.* Evidence that the Grantee has provided or will provide for a matching contribution, as defined and set forth in 7 C.F.R. § 1739.14 ("Matching Contribution,") to the Project as set forth on Schedule 1, in an amount at least equal to a percentage (as specified in Schedule 1) of the Grant, unless the Grantee has already fulfilled the Matching Contribution requirement in its entirety. Such evidence shall be in the form of documentation including, but not limited to, paid third-party invoices, employee timesheets, lease agreements, or bank deposit slips, and consistent with the *Cost-Sharing or Matching* Subparts of 7 C.F.R. §§ 3015, 3016, and 3019.
- (e) *Compliance with Agreement.* That Grantee is in material compliance with this Agreement.
- (f) *Additional Documents.* The Grantee agrees to provide RUS with such additional documents as RUS may request.

- (g) *Additional Conditions.* That Grantee has met all additional conditions specified in Schedule 1 hereto.

ARTICLE V – AFFIRMATIVE COVENANTS

SECTION 5.1 Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article V.

SECTION 5.2 Use of Advances

The Grantee shall expend the Grant funds only for approved purposes as set forth in the Scope of Work Plan (“Approved Purposes,”) in accordance with Community Connect Regulations, the Accounting Requirements, and the Request(s) for Advance. The Grant shall not be expended to cover any costs incurred in connection with the Project prior to the date of receipt by RUS of the Application. The Grantee acknowledges that RUS approval for any Request for Advance shall not be a waiver of any provision or requirement contained or cited herein, but shall be subject to a subsequent compliance review.

SECTION 5.3 Unused and Disallowed Advances

- (a) The Grantee shall return to RUS forthwith all or any advanced portion of the Grant not disbursed by the Grantee for the Project or not needed to complete the Project at the completion of the Project.
- (b) The Grantee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by a RUS compliance review. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against requests for Advances or repaying the disallowed amount directly to the United States Treasury.

SECTION 5.4 Financial Books

- (a) The Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, third-party invoices, receipts, timesheets, and bills of sale, adequate to identify the purposes for which and the manner in which Grant and other funds were expended on the Project. The Grantee shall maintain all such records and copies of forms or financial reports, submitted to RUS in connection with the Grant, for the longest of: (i) three years from the date the Grantee submits its final annual Project performance activity report; (ii) three years from resolution of disputed items with RUS; or (iii) three years from disposition of property acquired with Grant funds during the term of the Grant.
- (b) The Grantee will maintain complete, accurate, and current disclosure of the financial results of each Project in accordance with the Community Connect Regulations and Accounting Requirements. The source and application of funds shall be readily identified by the continuous maintenance of updated records, with all accounting records being supported by source documentation. Established procedures shall be used for determining the reasonableness, allowability, and allocation of costs in accordance with the Community Connect Regulations and the Accounting Requirements.

SECTION 5.5 Rights of Inspection and Compliance Reviews

- (a) The Grantee shall afford RUS, the Office of Inspector General of USDA and the General Accounting Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to access and inspect the Project, and any and all books, records, accounts, including electronic books, records, accounts, and electronic mail messages, regardless of the physical form or characteristics, invoices, timesheets, contracts, leases, payrolls, canceled checks, statements, other documents, and papers of every kind belonging to or in any way pertinent to the Grant, and to make copies, audits, examinations, excerpts or extracts therefrom.

- (b) The Grantee shall afford RUS, reasonable opportunity, at all times during business hours and upon prior notice, to conduct a compliance review to determine compliance with this Agreement and to determine whether expenditures and disbursements of the Grant were for approved purposes, and/or in accordance with the Grantee's Request(s) for Advance and the supporting documentation thereto.

SECTION 5.6 Financial Audits

The Grantee shall provide RUS with an audit for each year in which a portion of the Grant is expended, in accordance with the following provisions:

- (a) *For-Profit Entities.* The Grantee shall provide an independent audit report to RUS within 120 days after the as of audit date in accordance with 7 C.F.R. § 1773, *Policy on Audits of RUS Borrowers*.
- (b) *State, Local Government, or Non-Profit Organization.* The Grantee shall provide an audit to RUS by the earlier of (i) 30 days after the receipt of the audit or (ii) 9 months after the end of the audit period, in accordance with 7 C.F.R. § 3052, *Audits of States, Local Governments, and Non-Profit Organizations*.

SECTION 5.7 Annual Project Performance Activity Report

The Grantee shall provide RUS with a Project performance activity report which will be due annually on or before March 31, beginning with the year in which all or any portion of the Grant is first advanced and continuing in subsequent years until completion of the Project. The Project performance activity reports shall include, but are not limited to: (i) a comparison of actual accomplishments to the objectives established for the period; (ii) a description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods, accompanied by a statement of action taken or planned to resolve the situation; and (iii) objectives and timetables established for the next reporting period. The final annual Project performance activity report shall be due ninety (90) days after the Expiration Date, termination of the Grant, the Project completion, or the final disbursement of the Grant by the Grantee, whichever event occurs last.

SECTION 5.8 Miscellaneous Information to be Provided to RUS

The Grantee shall furnish to RUS such information regarding the condition, financial or otherwise, or operations of the Grantee as RUS may, from time to time, reasonably request.

SECTION 5.9 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Grantee shall be responsible for managing the day-to-day operations of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair. The Grantee shall provide the service described in the Application and, if the Project is owned, leased or operated by participants other than the Grantee, the Grantee shall monitor such participants and ensure the Project is operated in accordance with representations in the Application.
- (b) *Construction in Accordance with Scope of Work Plan.* The Grantee shall cause the Project to be constructed and completed in accordance with the discrete budget line items within the overall Scope of Work Plan approved by RUS.
- (c) *Procurement Requirements.* The Grantee shall conduct all procurement transactions, regardless of whether by sealed bids or by negotiation, in a manner that provides maximum open and free competition.
- (d) *General Insurance Requirements.* The Grantee shall take out and maintain insurance on the Project

and any other property acquired with the Loan in accordance with 7 C.F.R. §§ 3015.15-.17, if a for-profit entity, and with 7 C.F.R. § 3019.31, if a non-profit, and shall take out and maintain the fidelity bond coverage required in Subsection 4.1(h) hereof.

SECTION 5.10 Compliance with Laws

The Grantee will comply with all applicable federal statutes, regulations, and requirements that govern the Application, the Project, and use of federal grant funds for this Grant, as well as the provisions contained herein.

SECTION 5.11 Nondiscrimination

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Grantee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 1 hereto, entitled Equal Opportunity Contract Provisions.
- (b) *Equal Opportunity Contract Provisions Also Bind the Grantee.* The Grantee further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.
- (c) *Codes of Conduct.* The Grantee shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts in accordance with 7 C.F.R. §§ 3015, 3016, and 3019.
- (d) *Sanctions and Penalties.* The Grantee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Grantee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Grantee, or may refer the case to the Department of Justice for appropriate legal proceedings.

SECTION 5.12 Additional Project Funding

The Grantee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

SECTION 5.13 Community Center

The Grantee shall provide a community center within the proposed service area and make broadband transmission service available, free of all charges, to users within the center for at least two (2) years. At a minimum, the

center must have ten (10) computer access points.

SECTION 5.14 Broadband Service

The Grantee shall deploy basic broadband service, free of all charges for at least two (2) years, to all Critical Community Facilities located within the proposed service area.

SECTION 5.15 Matching Contribution

In addition to complying with the matching requirements of the Community Connect Regulations, the Grantee must provide and expend the Matching Contribution toward the Project prior to the expiration of the term of this Agreement, and provide RUS with all supporting documentation thereof.

SECTION 5.16 Build Out and Build-Out Plan

The Grantee shall:

- (a) Submit a build-out plan of the Project (the “Build-Out Plan”), acceptable in form and substance to RUS, within 60 days from the date hereof, which shall be consistent with the application for the Grant, and which when submitted, shall be incorporated into the agreement under Schedule 2;
- (b) Commence with build out of the Project within 180 days from the date hereof; and
- (c) Complete build out of the project within two (2) years from the date of the first advance, but no later than the Expiration Date.

SECTION 5.17 Additional Affirmative Covenants

The Grantee shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – NEGATIVE COVENANTS

SECTION 6.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the negative covenants set forth in this Article VI.

SECTION 6.2 Contracts

The Grantee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation or maintenance of the Project and shall not enter into any contract for the use by others of the Project.

SECTION 6.3 Historic Preservation

The Grantee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

SECTION 6.4 Local Exchange Telecommunications Services

The Grantee shall not use any Advance or facilities financed with Grant funds to provide for any local exchange telecommunications services to any person or entity already receiving such service.

SECTION 6.5 Additional Negative Covenants

The Grantee shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VII – TERMINATION, SUSPENSION AND OTHER REMEDIES

SECTION 7.1 Termination of the Grant by RUS

- (a) *Termination of the Grant by RUS.* RUS, in its sole discretion, may terminate the Grant, in whole or in part:
- (i) if RUS does not receive this Agreement, duly executed on behalf of the Grantee, within one hundred twenty (120) days from the date hereof;
 - (ii) if all conditions to the Grant, and all conditions to advance stated herein are not satisfied within one hundred twenty (120) days from the date hereof;
 - (iii) if the Grantee has not submitted a Build-Out Plan, acceptable in form in substance to RUS, within 60 days from the date thereof;
 - (iv) if build out of the Project has not commenced within 180 days from the date hereof, or if the Project build out has not been completed within two years from the date of the first Advance;
 - (v) if RUS has determined that the Grantee has failed to materially comply with the terms and conditions of this Agreement, including but not limited to meeting the milestones set forth in the Build-Out Plan, or that the Grantee has failed to strictly comply with any federal regulation cited herein;
 - (vi) if any representation or warranty made by the Grantee in the Application, Scope of Work Plan, request for Advance, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made;
 - (vii) if the Grantee fails to expend, or fails to provide RUS with evidence satisfactory to RUS that it has spent, Grant funds on allowable Grant costs in accordance with the Scope of Work Plan, Project budget, and the Request(s) for Advance submitted to RUS prior to the advance of funds;
 - (viii) if the Grantee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry on any material portion of its business, or an event occurs which can reasonably be expected to result in its dissolution or termination;
 - (ix) if a court having proper jurisdiction shall enter a decree or order for relief with respect to the Grantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (A) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official or (B) ordering the winding up or liquidation of its affairs; or the Grantee shall commence a voluntary case under any applicable bankruptcy insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; or

- (x) upon the dissolution or liquidation of the Grantee, or upon the filing for dissolution or liquidation by the Grantee.
- (b) *Notice of Termination.* RUS shall provide the Grantee with written notice of termination of the Grant as provided in Section 8.1 hereof, setting forth the reason(s) for termination. The termination of the Grant shall be effective as of the date of receipt of such notice of termination by the Grantee.

SECTION 7.2 Termination of the Grant by the Grantee

The Grantee may terminate the Grant by written notification to RUS, setting forth the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of Grant funds to be terminated. In the case of a partial termination, if RUS determines that the remaining portion of the Grant will not accomplish the Approved Purposes, then RUS may terminate the Grant in its entirety, and request reimbursement of all advanced Grant funds.

SECTION 7.3 Mutual Termination of the Grant by RUS and the Grantee

RUS and the Grantee may mutually agree, in writing, to terminate the Grant upon certain conditions, specifying the effective date of the termination, and in the case of a partial termination of the Grant, any unadvanced portion of the Grant to be terminated and any advanced portion of the Grant to be returned to RUS.

SECTION 7.4 Effect of Termination of the Grant

Upon termination of the Grant pursuant to Sections 7.1, 7.2 or 7.3 hereof: (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant, (2) the Grantee shall cancel as many outstanding obligations as possible, and seek to mitigate the costs of any outstanding obligations, and (3) any unadvanced portion of the Grant not required for Approved Purposes shall not be available for advance by RUS and any advanced portion of the Grant not required by the Grantee for Approved Purposes or for completion of the Project shall be immediately returned to RUS.

SECTION 7.5 Suspension of Advances

RUS may suspend the Grant, in whole or in part, for the reasons specified in Section 7.1 hereof as a basis for Grant termination.

- (a) *Suspension Procedure.* RUS shall issue to the Grantee a suspension notice stating the reasons for the suspension, any corrective action which the Grantee may be required to take, and the effective date of the suspension. The suspension shall remain in effect until RUS provides written notice to the Grantee that all corrective actions which RUS may have prescribed have been taken, or until RUS provides the Grantee with written notification of the termination of the suspension.
- (b) *Effect of Suspension.* New obligations shall not be incurred by the Grantee during the suspension, following the date of notice of suspension, unless specifically authorized by RUS, in writing. RUS will allow necessary allowable costs which the Grantee could not reasonably avoid during the suspension, if the obligations were properly incurred prior to the date of the suspension and not in anticipation of the suspension or termination. During the suspension, appropriate adjustments shall be made to the Grant by RUS in order that credit not be given to the Grantee for disbursements made in payment of unauthorized obligations incurred by the Grantee during the suspension. RUS may also make adjustments by disallowing all or part of the costs of the Project that are not in compliance with this Agreement or RUS may withhold subsequent Advances.

SECTION 7.6 Failure to Document Grant Expenditures and Misappropriation

- (a) Upon a determination by RUS that the Grantee did not document Grant expenditures for allowable costs, as required herein, or that the Grantee did not utilize the Grant in the manner and exclusively for

the Project as approved by RUS, RUS may, in its sole discretion:

- (i) Disallow all or a part of the expenditures and disbursements of the Grant and require the Grantee to deposit such funds into a separate account to be applied toward other approved Project purposes or to reimburse the Government;
 - (ii) Suspend making Advances;
 - (iii) Terminate the Grant; and/or
 - (iv) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.
- (b) If any representation or warranty made by the Grantee in the Application, Scope of Work Plan, Request for Advance, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made, RUS may, in its sole discretion:
- (i) Suspend making Advances;
 - (ii) Require the Grantee to reimburse the Government for all or any part of the Grant;
 - (iii) Terminate the Grant; and/or
 - (iv) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.

ARTICLE VIII - MISCELLANEOUS

SECTION 8.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Receipt of all such communications shall be deemed to have occurred when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C.20250-1500
Attention: Administrator
Fax: (202) 720-1725

Grantee
See Schedule 1

With a copy to:
See Schedule 1

With a copy to:
See Schedule 1

SECTION 8.2 Expenses

To the extent allowed by law, the Grantee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Agreement or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

SECTION 8.3 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

SECTION 8.4 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law, and in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

SECTION 8.5 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Grantee and RUS and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States; in the event of such transfer, all security interests, rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

SECTION 8.6 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement is intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement. No amendment, modification, or waiver of any provision hereof, and no consent to any departure of the Grantee herefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 8.7 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

SECTION 8.8 Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

SECTION 8.9 Schedules, Attachments, and Counterparts

Each Schedule and Attachment hereto and referred to herein is each an integral part of this Agreement. Moreover, this Agreement may be executed in several counterparts, each of which shall be deemed to be an original.

SECTION 8.10 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

SECTION 8.11 Amendment of Laws and RUS Regulations

Nothing contained herein shall restrict in any way RUS' right to amend, rescind or supplement any of the RUS Regulations or to seek such changes to existing Laws.

SECTION 8.12 Interest on Disallowed Amounts

Disallowed and reimbursable Advance amounts hereunder shall accrue interest payable to RUS from the date RUS delivers to the Grantee a written demand for payment. Interest shall accrue at a rate equal to the lesser of (a) twelve percent (12%) per annum or (b) the maximum interest rate permissible by law. Termination of the Grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Grantee's obligation to return any disallowed expenditures.

SECTION 8.13 Term

This Agreement shall remain in effect until one of the following events has occurred:

- (a) The Grantee and RUS replace this Agreement with another written agreement;
- (b) All of the Grantee's obligations under this Agreement have been discharged; or
- (c) This Agreement has been terminated pursuant to the provisions of Article VII hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[GRANTEE'S NAME]

by: _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
Administrator of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (g) Grantee's address:

Article III The Grant

1. Section 3.1, Maximum Grant Amount:

Article IV Conditions of Funding

1. Section 4.2(d) Matching Contribution shall be equal to at least 15% of the Grant.
2. Section 4.2(d) Matching Contribution Schedule: A schedule, satisfactory to RUS, detailing the timeframe for providing the Matching Contribution before termination of this Agreement must be furnished before any grant funds will be advanced.
3. Section 4.2(g) Additional Conditions:

Article V Affirmative Covenants

1. Section 5.17 Additional Affirmative Covenants:

Article VI Negative Covenants

1. Section 6.5 Additional Negative Covenants:

Article VIII Miscellaneous

1. Section 8.1 Grantee's address for purposes of notification:

Copy to:

2. Section 8.1 RUS' address for purposes of notifications:

Copy to: