

RUS Project Designation:

[RUS DESIGNATION]

BROADBAND INITIATIVES PROGRAM

GRANT AGREEMENT

dated as of [date]

between

[GRANTEE'S NAME]

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

**BROADBAND INITIATIVES PROGRAM
GRANT AGREEMENT**

THIS GRANT AGREEMENT (this “Agreement,”) dated as of [date] is between [GRANTEE’S NAME] (“Grantee,”) a [corporation or limited liability company] existing under the laws of [STATE], and the UNITED STATES OF AMERICA, acting through the Administrator of the Rural Utilities Service (“RUS.”)

The Grantee has applied for financial assistance (“Application”) from RUS under the Broadband Initiatives Program’s (“BIP”) technical assistance grant program, as such technical assistance is described in the Application and herein (hereinafter the “Project.”)

RUS is willing to extend financial assistance, in the form of a grant to the Grantee, pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) (the “Recovery Act”), and the Notice of Funds Availability published at 74 Fed. Reg. 33104, and all applicable federal regulations, on the terms and conditions stated herein; and

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

ARTICLE I - DEFINITIONS

“Advance” shall mean the disbursement of Grant funds by RUS in accordance with this Agreement.

“Application” shall have the meaning as defined in the second paragraph hereof.

“BIP” shall mean the Broadband Initiatives Program, administered by RUS, and created pursuant to the Recovery Act.

“Event of Default” shall have the meaning as defined in Article VII.

“Form 270” shall have the meaning as defined in Section 4.3(d).

“Grant” shall mean the grant described in Article III.

“Grantee” shall mean the Grant recipient named in the first paragraph hereof.

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

“NOFA” shall mean the Notice of Funds Availability, published in the Federal Register at 75 Fed. Reg. 3820 on January 22, 2010.

“Project” shall have the meaning as defined in Paragraph (a) of Section 3.4.

“Regional Broadband Development Strategy Plan” shall have the meaning as described in Section 5.5.

“RFP” shall mean the Request for Proposals, published in the Federal Register at 75 Fed. Reg. 25185 (May 7, 2010).

ARTICLE II - REPRESENTATIONS AND WARRANTIES

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 legal power 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 necessary to conduct 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 have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization 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) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Grantee is a party that would affect the Grantee's performance under this Agreement.
- (g) *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.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Grantee is at the address of the Grantee specified in Schedule 1 hereto.
- (i) *Organization Number.* The Grantee's organization number is correctly identified in Schedule 1 hereto.

ARTICLE III – THE GRANT

Section 3.1 Grant Amounts and Advance

- (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 amount specified in Schedule 1 hereto (the “Grant”).
- (b) *Advance and Expenditure.* The RUS shall advance all Grant funds in one Advance within sixty (60) days of all conditions in Article IV being met. All grant funds must be expended within one year of receipt.

Section 3.2 ACH Payments

The Grantee consents to the use of the Automated Clearing House (ACH) Payment System.

Section 3.3 Project

Grant Purpose. The Grant has been made solely to finance the provision of technical assistance as specifically described in the RUS approved Application (“Project,”) the result of which shall be the submission of a Regional Broadband Development Strategy Plan.

ARTICLE IV – CONDITIONS OF FINANCIAL ASSISTANCE

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied within (60) sixty days from the date hereof (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Grant Agreement.* RUS shall receive duly executed originals of this Agreement;
- (b) *Articles of Incorporation.* With respect to corporate and cooperative Grantees, RUS shall have received certified copies of the Grantee’s most recent articles of incorporation. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Grantee’s most recent organization documents;
- (c) *Authorizations.* RUS shall have received satisfactory evidence that this Agreement and all 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; and
- (d) *Additional Conditions.* The 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 Grant Funds

The Grantee shall expend Grant funds solely for the technical assistance as described in the approved Application.

Section 5.3 Unused and Disallowed Grant Funds

- (a) The Grantee shall return to RUS forthwith all or any advanced portion of the Grant not disbursed by the Grantee for the Project with any interest earned thereon.
- (b) RUS has the right to conduct compliance reviews and audits of the Grantee to assure compliance with this Agreement. Upon a determination by RUS that the Grantee either did not expend Grant funds for Grant purposes, that the Grantee cannot verify expenditures in accordance with this Agreement, or that the Grantee has not provided the agreed upon services, as required in the RFP, RUS may disallow all or a part of the expenditures and disbursements of the Grant. RUS may require the Grantee to redeposit any disallowed funds to be applied toward other approved Project purposes or to reimburse the Government. The Grantee shall address any disallowances, as directed by RUS. In the event RUS demands repayment, the disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Grantee a written demand for payment. Interest shall accrue at the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Closeout 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 5.4 Compliance with Laws

Grantees shall comply with all applicable federal and state laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 C.F.R. pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 C.F.R. pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); and (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 C.F.R. pt. 102). *See* 7 C.F.R. pts. 15 and 15b and 45 C.F.R.pt. 90, RUS Bulletin 1790-1 (“Nondiscrimination among Beneficiaries of RUS Programs”).

Section 5.5 Regional Broadband Development Strategy Plan

Within one year from the receipt of Grant funds, the Grantee must submit to the RUS, at the address provided in Article 8.1, a Regional Broadband Development Strategy Plan addressing the proposals outlined in the Application. No extensions of this deadline will be given.

ARTICLE VI – ACCOUNTING AND REPORTING

Section 6.1 Financial Records

- (a) The Grantee must establish an accounting system satisfactory to RUS that accounts for all funds advanced under this Agreement separately from all other funds for the Project, as required by the Recovery Act.
- (b) The Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, to identify the proper expenditure of grant funds. The Grantee shall maintain copies of all documents submitted to RUS in connection

with the Grant for the longer of either (i) the term of this Agreement or (ii) for three (3) years subsequent to close-out of the Grant.

Section 6.2 Rights of Inspection

The Grantee shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to 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, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind in any way pertaining to the Project, and to make copies or extracts therefrom.

Section 6.3 BIP Close Out Report

The Grantee shall deliver a close out report to RUS no later than ninety (90) days after the expiration or termination of the Grant, or the completion of the Project and expenditure of all Grant funds. The close out report shall address : (i) a comparison of actual accomplishments to the objectives set forth in the RUS approved Application; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; and (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application.

Section 6.4 Recovery Act Reporting

No later than ten (10) calendar days after each calendar quarter in which the Grantee receives the assistance award funded in whole or part with grant funds, the Grantee shall submit through <http://www.federalreporting.gov> the information required by 2 C.F.R. 176. The final report should summarize the Grantee's quarterly filings and state whether the project's goals have been satisfied.

ARTICLE VII – GRANT TERMINATION AND OTHER REMEDIES

Section 7.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Any condition precedent to closing set forth in Article IV is not satisfied within sixty (60) days from the date hereof;
- (b) The Grantee materially fails to comply with the terms and conditions of this Agreement, the RFP, and/or any regulation and statute cited herein, including, without limitation, the following:
 - (i) The Grantee does not expend Grant funds as required herein;
 - (ii) The Grantee does not submit the Regional Broadband Development Strategy Plan as described in Section 5.5 and in the Application.
 - (iii) The Grantee fails to keep adequate records, including the failure to document Grant fund expenditures as required herein; and
 - (iv) The Grantee fails to comply with the accounting and reporting requirements of Article VI.

- (c) Any representation or warranty made by the Grantee in the Application, Form(s) 270, this Agreement, and any certification, or other supporting documentation associated therewith, shall be incorrect in any material respect at the time made;

Section 7.2 Termination of the Grant

- (a) *Termination of the Grant by RUS.*
 - (i) RUS, in its sole discretion, may terminate the Grant, in whole or in part, upon the occurrence of an Event of Default.
 - (ii) 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.
- (b) *Termination of Grant by the Grantee.* The Grantee may terminate the Grant by written notification to RUS, setting forth the reasons for such termination and the effective date..
- (c) *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..
- (d) *Effect of Termination of the Grant.* Upon termination of the Grant pursuant to this Section: (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant; and (2) the Grantee shall cancel as many outstanding obligations as possible, and seek to mitigate the costs of any outstanding obligations.

Section 7.3 Other Remedies

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated herein, and may pursue such other remedies that are generally available at law or in equity including, but not limited to, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available following the occurrence of an Event of Default. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

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. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given 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.
Stop 1510, Room No. 5135
Washington, D.C.20250-1510
Attention: Administrator
Fax: (202) 720-1725

Grantee
See Schedule 1

With a copy to:
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1599, Room No. 2868
Washington, D.C. 20250-1599
Attention: Kenneth Kuchno
Fax: (202) 690-4389

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 this 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 Consent to Jurisdiction

The Grantee hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Grantee irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Grantee's address set forth in Schedule 1. The Grantee hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Grantee in its own jurisdiction.

Section 8.6 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED

BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.7 Rescission

The Grantee may elect to rescind the Grant, in which event RUS shall release the Grantee from its obligations hereunder, provided the Grantee complies with such terms and conditions as RUS may impose for such release.

Section 8.8 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 of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 8.9 Complete Agreement; Waivers and Amendments

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 and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 8.10 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 8.11 Severability

If any term, provision, 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 8.12 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 8.13 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 8.14 Right of Setoff

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Grantee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Grantee or for the credit or account of the Grantee against any and all of the obligations of the Grantee now or hereafter existing hereunder. RUS agrees to notify the Grantee promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Grantee waives all rights of setoff, deduction, recoupment or counterclaim.

Section 8.15 Term

This Agreement shall remain in effect for three years from the date hereof, unless one of the following three 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 VIII 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 _____
[Position]
of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (h) Grantee's principal place of business:
2. Paragraph (i) Grantee's Organization Number:

Article III The Grant

1. Section 3.1(a) Grant amount:

Article IV Conditions Precedent to Closing

1. The additional conditions referred to in Section 4(d) are as follows:

Article VIII Miscellaneous

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