

PUBLIC TELEVISION STATION DIGITAL TRANSITION
GRANT AGREEMENT

dated as of Month, Day, 2012

between

[GRANT RECIPIENT]
as Grantee

[GRANT ID]

and

THE UNITED STATES OF AMERICA
as Grantor

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

**PUBLIC TELEVISION STATION DIGITAL TRANSITION
GRANT AGREEMENT**

THIS PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT AGREEMENT (the "Agreement,") dated as of Month, Day, 2012, is between [GRANT RECIPIENT] (hereinafter "Grantee,") a public agency 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 converting Grantee's public television station services from analog to digital broadcasting in compliance with Federal Communications Commission mandates, 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 Public Television Station Digital Transition Grant Program (7 C.F.R. § 1740) 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.

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

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

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

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

“Public Television Station Digital Transition Regulations” shall mean the regulations promulgated under 7 C.F.R. § 1740.

“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) *Public Television Station.* The Grantee is a "public television station," as defined in the Public Television Station Digital Transition Regulations.
- (d) *Consents.* The Grantee has all mandatory local, state, or other governmental authorizations, building permits, zoning permits and other authorizations that may be necessary to complete the Project, including, but not limited to, all appropriate and necessary construction permits, grants of special temporary authority or other necessary authorizations from the Federal Communications Commission ("FCC"), or can demonstrate that such authorizations are pending approval from the appropriate authority, or warrants that such authorizations will be duly sought.
- (e) *Litigation.* There is no pending or threatened action, suit or proceeding before any court or governmental agency, authority or body or any arbitrator concerning the Grantee or this Agreement which, if adversely determined, would have a material adverse effect on the Grantee's ability to perform its obligations under this Agreement.
- (f) *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.
- (g) *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.")
- (h) *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.
- (i) *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.
- (j) *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. Grant cannot be renewed. The award term cannot be extended.

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 complete all or a portion of the digital transition of the Grantee's television broadcasting system.
- (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 area to be served, or the manner in which the proposed digital television features will be implemented, 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, or Statutory Authority.* RUS shall have received copies of the Grantee's articles of incorporation, charter, or implementing statute;
- (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; and
- (f) *ACH.* That Grantee agrees to use of the Automated Clearing House (ACH) Payment System that deposits funds directly into the bank account Grantee designates.

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, whether made prior to expenditure or in reimbursement thereof, shall be supported by documentation, including, but not limited to, paid receipts, paid or unpaid third-party invoices or other similar written evidence itemizing the Eligible Purpose(s) and the dollar amount(s) requested. Installation of equipment may be performed by the Grantee’s employees, in which case such work shall be fully documented. If the RUS determines that a request for Advance includes receipts, invoices or other written evidence of insufficient detail such that the RUS cannot reasonably determine whether or not such request for Advance is justified and consistent with the project application budget, the RUS shall, within 30 days of receipt thereof, request from the Grantee more detailed information regarding the Eligible Purpose(s) and dollar amount(s) comprising the request. If the Grantee does not provide the requested evidence or if the Grantee provides insufficient evidence for the RUS to determine whether a request for Advance or reimbursement is for an Eligible Purpose, the RUS shall be under no obligation to advance the Grant funds requested.
- (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) *Compliance with Agreement.* That Grantee is in material compliance with this Agreement.
- (e) *Consents.* The RUS shall be under no obligation to advance any portion of the Grant unless and until such authorizations or consents of Article II (d) relevant to the Grant are approved.
- (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 eligible purposes as set forth in the Scope of Work Plan (“Eligible Purposes,”) in accordance with Public Television Station Digital Transition Regulations, RUS 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 earlier of the completion of the Project or at the termination of this Agreement.
- (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 Public Television Station Digital Transition 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 Public Television Station Digital Transition 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, at 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 Reporting and Performance Requirements

- (a) The Grantee shall submit to the RUS on a semiannual basis, 30 working days after the end of June and December, periodic performance reports ("Performance Reports") and permit periodic inspection of the Project by a representative of the RUS. The Standard Form Performance Program Report (SF PPR) must be used. The Grantee shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The project performance reports shall include, but shall not be limited to, the following: (i) comparison of actual accomplishments to the objectives established for the period; (ii) reasons why established objectives were not met; (iii) problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods; and (iv) objectives and timetables for the next reporting period.

- (b) The Grantee shall submit to the RUS on a quarterly basis, 30 working days after the end of each calendar quarter, periodic financial reports (“Financial Reports”) on Standard Form 425, *Federal Financial Report*.
- (c) The final Performance Report and final Financial 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, of 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.
- (b) *Construction.* The Grantee shall cause the Project to be constructed and completed in accordance with the description of the Project, time frames, and discrete budget line items set forth in its Application and Scope of Work Plan approved by RUS, as well as in accordance with all equipment and construction specifications and requirements for digital television mandated by the FCC.
- (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.

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 Equipment and Supplies

- (a) Title to equipment and supplies acquired under this Grant shall vest, upon acquisition, in the Grantee or Project participants as described in the Application and this Agreement. The Grantee shall maintain property records which accurately provide the following: (i) a description of the equipment, including manufacturer's serial number or other identification number; (ii) acquisition date and cost; (iii) sources of the equipment; (iv) percentage (at the end of the budget year) of Federal participation in the cost of the Project for which the equipment was procured; and (v) location, use and condition of the equipment. A physical inventory of equipment shall be taken and the results reconciled with equipment records at least once every two years. A control system shall be in effect to ensure adequate safeguards to

prevent loss, damage or theft of the equipment. Any such loss, damage or theft shall be reported to the RUS.

- (b) The property shall be used for the Project as long as needed for that purpose. When the equipment or supplies are no longer needed for the Project, disposition shall be made in accordance with 7 C.F.R. §§ 3015, 3016, or 3019, as applicable.

SECTION 5.13 Project Funding

- (a) 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.
- (b) The Grantee covenants that it shall not use the Grant funds to replace, reimburse or otherwise discharge any financial support previously provided or assured from any other source. The Grantee agrees that its level of expenditure for the Project will not be reduced as a result of the Grant, except as proposed by the Grantee in its Grant application.

SECTION 5.14 CCR Registration and DUNS Number

The Grantee shall comply with the additional requirements set forth in Attachment A regarding Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Numbers. For the purposes of this Agreement the term “you” in Attachment A shall mean “Grantee” as defined hereunder.

SECTION 5.15 Subawards and Executive Compensation

The Grantee shall comply with the additional requirements set forth in Attachment B regarding Subawards and Executive Compensation. For the purposes of this Agreement the term “you” in Attachment B shall mean “Grantee” as defined hereunder.

SECTION 5.16 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 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 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 authorized and executed on behalf of the Grantee, within ninety (90) 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 build-out of the Project is not commenced within 180 days from the date hereof or is not at least 50% completed, as determined by RUS, within 12 months of the date hereof;

- (iv) if RUS has determined that the Grantee has failed to materially comply with the terms and conditions of this Agreement, or that the Grantee has failed to strictly comply with any federal regulation cited herein;
 - (v) 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;
 - (vi) 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;
 - (vii) 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;
 - (viii) 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
 - (ix) 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:

<u>RUS</u> Rural Utilities Service United States Department of Agriculture 1400 Independence Avenue, S.W. Washington, D.C. 20250-1500 Attention: Administrator Fax: (202) 720-1725	<u>Grantee</u> See Schedule 1
<u>With a copy to:</u> See Schedule 1	<u>With a copy to:</u> 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 No Further Assistance

In making this Grant, the RUS is under no obligation to provide further Federal financial assistance or support to the Grantee.

SECTION 8.14 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.

[enter legal name of grantee]

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

Paragraph (i) Grantee's Principal Place of Business:

[enter address of grantee]

Article III The Grant

Section 3.1 Maximum Grant Amount: [enter grant award amount]

Article IV Conditions of Funding

Section 4.2(f) Additional Conditions: not applicable to this grant

Article V Affirmative Covenants

Section 5.16 Additional Affirmative Covenants: not applicable to this grant

Article VI Negative Covenants

Section 6.4 Additional Negative Covenants: not applicable to this grant

Article VIII Miscellaneous

Section 8.1

Grantee's address for purposes of notification, copy to:

[enter grantee address]

USDA's address for purposes of notifications, copy to:

Advanced Services Division
Telecommunications Program - RUS - USDA
1400 Independence Avenue, S.W. – Stop 1550
Washington, D.C.20250-1550
Attention: Director

ATTACHMENT A

I. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under [2 CFR 25.110](#), you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward*:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ____210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

ATTACHMENT B

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, [Pub.L. 111-5](#)) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

- i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\)](#), [78o\(d\)](#)) or [section 6104 of the Internal Revenue Code of 1986](#). (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <http://www.ccr.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or [section 6104 of the Internal Revenue Code of 1986](#). (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate

- in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.