

RUS Project Designation:

[RUS-Designation]

COMMUNITY-ORIENTED CONNECTIVITY BROADBAND
GRANT AND SECURITY 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 AND SECURITY AGREEMENT**

THIS COMMUNITY-ORIENTED CONNECTIVITY BROADBAND GRANT AND SECURITY AGREEMENT (the "Agreement,") dated as of [date], is between [GRANTEE'S NAME] (hereinafter "Grantee,") a [corporation, cooperative, or limited liability company 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 service at the Broadband Grant Speed in rural areas as described in the Application (the Application, 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 and its regulations (respectively 7 USC 950-bb-3 and 7 C.F.R. § 1739), and the Funding Opportunity Announcement ("FOA") published on www.grants.gov on [date], 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 compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS as well as compliance with the requirements of 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (and by adoption, 48 C.F.R. § 31.2 of the Federal Acquisition Regulations).

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

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

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

"Approved Project Service Area" shall mean all or a portion of the Proposed Funded Service Area, as such term is defined in the FOA and detailed in the map submitted to the Agency by the Grantee, that is approved by the Agency for funding.

“Broadband Grant Speed” shall mean the minimum bandwidth set forth in the FOA that the Grantee must deliver to every customer in the Approved Project Service Area.

"Collateral" shall mean any of the property financed with the grant, and pledged as security for the grant, described in Article VII, and more particularly described in Schedule 2.

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

“Essential Community Facility” shall have the meaning as defined pursuant to section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)).

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

"General Terms and Conditions" shall mean the U.S. Department of Agriculture's general grant terms and conditions that are required to be part of any grant agreement awarded by the Department, available at [URL].

“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.

"Permitted Encumbrances" shall mean:

- (1) liens for taxes, assessments and other governmental charges which are not delinquent;
- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Grantee shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Grantee shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Grantee for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Grantee, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Grantee upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Grantee; PROVIDED, HOWEVER, that nothing in this clause 7 is intended to waive any claim or rights that RUS may otherwise have under Federal laws; and
- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Grantee to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection

with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that RUS may otherwise have under Federal laws.

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

“Release of Funds Date” shall mean the date funds are first made available as evidenced by the notice sent by the Agency to the Awardee.

“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.

“Security Documents” shall mean, collectively, any security agreement, financing statement, deposit account control agreement or other document providing collateral for the grant and other obligations hereunder.

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.
- (i) *Recipient and Subrecipient Reporting.* The Grantee has the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006, unless Grantee is exempt from such reporting requirements pursuant to 2 C.F.R. Part 170.

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 Release of Funds Date (“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 a one-time extension of the Expiration Date, not to exceed 12 months, 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 service at the Broadband Grant Speed to 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.

SECTION 3.3 Security Documents

The Grantee shall execute the Security Documents, covering the Collateral, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.

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.* Except Grantees which are units of government and except for grants that are less than \$100,000, RUS shall have received evidence satisfactory to it 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. For existing RUS Borrowers, however, 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.
- (i) *Filed and Recorded Security Documents.* RUS shall have received executed, filed and indexed financing statements covering the Collateral;

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, notwithstanding the provisions on

advances in the General Terms and Conditions, 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 has available cash reserves in an account(s) of the Grantee equal to at least 15% of the Grant. Notwithstanding this amount, and based on the Grantee's Application, Grantee must provide the following matching contribution to the Project (the "Matching Contribution") as set forth on Schedule 1. Grantee must also be current on its quarterly match report.
- (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 General Terms and Conditions

The Grantee acknowledges and agrees that all terms, provisions, and requirements set forth in the General Terms and Conditions (except to the extent expressly modified herein) are hereby incorporated herein by reference and with the same force and effect as though fully set forth herein.

SECTION 5.3 Use of Advances

The Grantee shall expend the Grant funds only for approved purposes as set forth in the Community Connect regulations at 7 CFR 1739, the Scope of Work Plan, the Request(s) for Advance, and in accordance with the Accounting Requirements. 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 5.4 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 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 shall 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 Additional Reporting Requirements

- (a) *Annual Performance Report.* In addition to the project performance and financial reporting requirements of the General Terms and Conditions, for three years starting the first January 31st after Project Completion, Grantee must submit the following information utilizing RUS' online reporting system:
 - (i) existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
 - (ii) the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;
 - (iii) the progress towards fulfilling the objectives for which the assistance was granted;
 - (iv) the speed and average price of the most subscribed tier of the Grantee's broadband service offerings in the Project's service area; and
 - (v) the average price of broadband service in the Project's service area.
- (b) *Annual Map Reporting:* No later than thirty (30) calendar days after the end of the Calendar Year, Grantee shall be required to submit annually updated Approved Project Service Area(s) maps through RUS' online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.
- (c) *Additional Requests.* 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 5.7 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.
- (c) *Procurement Requirements.* The Grantee shall conduct all procurement transactions in accordance with 2 CFR §§ 200.317-326, unless it has received written approval otherwise.
- (d) *General Insurance Requirements.* In addition to the fidelity bond coverage required in Subsection 4.1(h), the Grantee shall take out and maintain insurance on the Project and any other property acquired with the Grant in accordance with 2 C.F.R. § 200.310.

SECTION 5.8 Compliance with Laws

The Grantee will comply with all applicable federal and state laws, regulations, and requirements that govern the Application, the Project, and use of federal grant funds for this Grant.

SECTION 5.9 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 5.10 Community Center

Prior to the Expiration Date, the Grantee shall provide a Community Center within the Approved Project Service Area that affords the access to the public and that is used for providing free access to and/or instruction in the use of broadband Internet service. The Community Center must contain at least two (2) Computer Access Points and wireless access at the Broadband Grant Speed free of all charges to all users for at least 2 years, and must be open and accessible to area residents before, during, and after normal working hours and on Saturdays or Sundays.

SECTION 5.11 Broadband Service

Prior to the Expiration Date the Grantee shall:

- (a) offer broadband service at the Broadband Grant Speed to all residential and business customers within the Approved Project Service Area; and
- (b) offer free broadband service at the Broadband Grant Speed to all Essential Community Facilities within the Approved Project Service Area for at least 2 years starting from the time service becomes available to each Essential Community Facility.

SECTION 5.12 Matching Contribution

- (a) Grantee must provide and expend the Matching Contribution on the Project prior to the expiration of the term of this Agreement, and provide RUS with all supporting documentation thereof. Documentation may include, but not limited to, paid third-party invoices, employee timesheets,

lease agreements, or bank deposit slips, consistent with the *Cost-Sharing or Matching* requirements of 2 C.F.R. § 200.306.

- (b) Grantee must spend the Matching Contribution in accordance with the information submitted in the application, unless it has requested and received prior written consent to modify expenditure of the Matching Contribution.
- (c) At the end of every calendar quarter, Grantee must submit a schedule to RUS that identifies how the Matching Contribution was used to support the Project until the total contribution is expended.

SECTION 5.13 Project Construction Start

The Grantee shall start construction (physical placement of facilities) of the Project within 180 days from the Release of Funds Date.

Section 5.14 Grantee to Defend Title and Remove Liens

Except for Permitted Encumbrances, the Grantee will maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral, and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Grantee shall make, execute, acknowledge, deliver, file and record all such mortgages, financing statements, continuation statements, security agreements, instruments and conveyances as is necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. The Grantee shall maintain the Collateral free of all liens except for Permitted Encumbrances, and will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Grantee is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

Section 5.15 Further Assurances

- (a) The Grantee shall from time to time upon written demand of RUS make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental financing statements, continuation statements, and security agreements with respect to the Collateral as may be requested by RUS.
- (b) The Grantee shall cause this Agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to subsection (a) immediately above, forthwith upon execution to be filed and recorded and refiled and rerecorded as conveyances and security interests in personal property in such manner and in such places as may be required by law or requested by RUS in order to fully preserve the security for the grant, and to perfect and maintain the superior lien of this Agreement and all supplemental security instruments.

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 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 Prohibition Against Internal Confidentiality Agreements

- (a) The Grantee shall not require its employees, contractors, or subrecipients to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The Grantee shall notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements that may currently be in effect that are inconsistent with paragraph (a) of this section are no longer in effect.
- (c) The prohibition in paragraph (a) above does not contravene requirements imposed by a Federal department or agency governing the nondisclosure of classified information.
- (d) If RUS determines that the Grantee is not in compliance with paragraph (a) or (b) of this section:
 - (i) RUS shall cease to make Grant funds available under this Agreement and shall prohibit the Grantee's use of Grant funds under this award; and
 - (ii) RUS may pursue other remedies available due to the Grantee's material failure to comply with award terms and conditions.

SECTION 6.5 Negative Pledge

The Grantee shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest in the Collateral, other than Permitted Encumbrances.

SECTION 6.6 Affiliated Transactions

With respect to the Project, the Grantee shall not enter into any transaction, contract, or dealing with an Affiliate or with the Grantee's or Affiliate's directors, trustees, officers, managers, members (if the Grantee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance grant funds for affiliated transactions on the Project will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

SECTION 6.7 Additional Negative Covenants

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

ARTICLE VII - GRANT OF SECURITY INTEREST

Section 7.1 Collateral

To secure the payment and performance of the Service Obligation, the Grantee hereby pledges, assigns, and transfers to RUS, and grants to RUS a continuing security interest in the Collateral, as more particularly described in Schedule 2.

ARTICLE VIII – TERMINATION, SUSPENSION AND OTHER REMEDIES

SECTION 8.1 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 if:
- (i) RUS does not receive this Agreement, duly executed on behalf of the Grantee, within one hundred twenty (120) days from the date hereof;
 - (ii) 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) construction of the Project has not commenced within 180 days from the date hereof;
 - (iv) RUS has determined that the Grantee has failed to materially meet the milestones set forth in the construction build-out schedule, as outlined in the approved Scope of Work Plan;
 - (v) any representation or warranty made by the Grantee in the Application, 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) the Grantee fails to expend, or fails to provide RUS with evidence satisfactory to RUS that it has spent, Grant funds in accordance with the Accounting Requirements, the Scope of Work Plan, and the Request(s) for Advance submitted to RUS prior to the advance of funds;
 - (vii) 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) 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) Grantee has filed for dissolution or liquidation, or upon the dissolution or liquidation of 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.

- (c) *Effect of Termination.* Upon termination of the Grant: (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 the Project shall not be available for advance by RUS and any advanced portion of the Grant not required by the Grantee for completion of the Project shall be immediately returned to RUS.

SECTION 8.2 Suspension of Advances

RUS may suspend the Grant, in whole or in part, for the reasons specified in Section 8.1 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 8.3 Misrepresentation and Misappropriation

- (a) Upon a determination by RUS that the Grantee did not document Grant expenditures for allowable costs, as required in the Accounting Requirements, 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, 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 IX - MISCELLANEOUS

SECTION 9.1 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	<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 9.2 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 9.3 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 9.4 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 9.5 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 9.6 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 9.7 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 9.8 Severability

If any term, provision or condition, or any part thereof, of this Agreement or the Security Documents 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 and Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

SECTION 9.9 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 9.10 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 9.11 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 9.12 No Third-Party Beneficiary

This Agreement is exclusively between RUS and the Grantee and does not nor is intended to create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds advanced by RUS to the Grantee are intended to finance the Grantee’s Project. Any approvals given by RUS to the Grantee are solely for the benefit of RUS. RUS is not obligated to advance grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Grant Agreement between RUS and the Grantee.

SECTION 9.13 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, including the provision of service at the Broadband Grant Speed to the Community Center and Essential Community Facilities for at least two years; 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: Click or tap here to enter text.

Article III The Grant

1. Section 3.1, Maximum Grant Amount: **\$0,000,000**

Article IV Conditions of Funding

1. Section 4.2(d) Matching Contribution: **\$000,000**
2. Section 4.2(g) Additional Conditions: Click or tap here to enter text.

Article V Affirmative Covenants

1. Section 5.16 Additional Affirmative Covenants: Click or tap here to enter text.

Article VI Negative Covenants

1. Section 6.7 Additional Negative Covenants: Click or tap here to enter text.

Article VIII Miscellaneous

1. Section 9.1:
Grantee's address for purposes of notification: Click or tap here to enter text.

Copy to: Click or tap here to enter text.

RUS' address for purposes of notification:

Copy to: **[name]**
Rural Utilities Service, USDA
Stop **[0000]**, Room **[0000]**-S
1400 Independence Avenue, SW
Washington, DC 20250-1590
[email]

SCHEDULE 2
COLLATERAL

Collateral shall include the following:

All personal property, assets, rights, and fixtures of the Grantee acquired with Award funds, of every kind and description, tangible and intangible, of the kind or nature specifically mentioned herein, or any other kind or nature now owned or hereafter acquired, or built by the Grantee, wherever located, including without limitation all or in part the following (hereinafter the "Collateral"):

I

All right, title, and interest of the Grantee in and to fixtures and personal properties acquired with Award funds, whether tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Grantee, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture; equipment, and any and all other fixtures and personal property of every kind, nature, and description;

II

All right, title, and interest of the Grantee in, to, and under all personal property and fixtures of every kind and nature acquired with Award funds, including without limitation all goods (such as inventory, equipment and any accessions thereto), documents, accounts (such as deposit accounts or trust accounts pursuant hereto) software, general intangibles (such as payment intangibles), supporting obligations, contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently and hereafter defined in the UCC);

III

All right, title, and interest of the Grantee in, to, and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Grantee and any person, firm, corporation, or other corporate entity relating to the Collateral (including contracts for the lease, occupancy, or sale of the Collateral, or any portion thereto);

IV

All right, title, and interest of the Grantee in, to, and under any and all books, records and correspondence relating to the Collateral, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral; and

V

Also, all right, title, and interest of the Grantee in, to, and under all other fixtures and personal property acquired with Awards funds, tangible or intangible, of every kind, nature, and description, and wherever situated, now or hereafter owned or leased by the Grantee, it being the intention hereof that all such property paid for with Award funds now owned or leased but not specifically described herein, or acquired or held by the Grantee after the date hereof, shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Grantee and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law.

