



TEXAS PIPES SUB-RECIPIENT GRANT AGREEMENT

This Sub-Recipient Grant Agreement (together with the exhibits attached hereto, this "Agreement") is entered into as of this ___ day of December, 2013 (the "Effective Date") between Texas A&M University, a member of the Texas A&M University System and an agency of the State of Texas ("Recipient" or "TAMU"), located in College Station, Texas, and the City of Corpus Christi ("Sub-Recipient"). Recipient and Sub-Recipient are sometimes referred to herein individually as a "Party" and collectively as the "Parties" hereto.

WHEREAS, Recipient has been awarded Grant No. NT10B1X5570107 ("Grant") by the United States Department of Commerce ("DOC"), National Telecommunications and Information Administration ("NTIA"), under American Recovery and Reinvestment Act ("ARRA") funding, for a Broadband Technology Opportunities Program ("BTOP") project, CFDA No. 11.557, entitled Recovery Act-Texas Pipes ("Texas Pipes"), a copy of which Grant Award is attached hereto as Exhibit A.

WHEREAS, the Parties desire that the City of Corpus Christi be a Sub-Recipient under the Grant.

WHEREAS, in addition to ARRA compliance requirements, each BTOP grant award recipient is subject to program-specific compliance obligations, which the Parties agree to follow.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

ARTICLE 1: NATURE OF SUB-RECIPIENT GRANT

1.1 Both the services contemplated by this Agreement and any Federal funds to pay for these services are governed by the terms and conditions of the Grant and all applicable terms and conditions of the Grant, except those providing for payment by DOC to Recipient, are incorporated by reference herein, including the following:

- a. Grant No. NT10B1X5570107, Exhibit A;
- b. Statement of Work and Schedule, Exhibit B;
- c. Flow-Down Provisions, Exhibit C;
- d. DOC Financial Assistance Standard Terms and Conditions, March 2008, Exhibit D;
- e. American Recovery and Reinvestment Act of 2009 ("ARRA") – DOC Standard Terms and Conditions, Exhibit E;
- f. Special Award Conditions, NT10BIX5570107, Exhibit F;
- g. Line Item Budget, Exhibit G;
- h. 73 Fed. Reg. 7696 (February 11, 2008), Department of Commerce Pre-Award Notification Requirements for Grant and Cooperative Agreements, Exhibit H;

- i. NTIA Certification Regarding Lobbying, Exhibit I;
- j. Special Conditions Addendum for DOC-Vendor Contracts, Exhibit J;
- k. BTOP Recipient Guidance on Signage, Exhibit K;
- l. NTIA BTOP Buy American Notice 74 FR 31410, Exhibit L; and
- m. Cost-Sharing Report Formats, Exhibit M

1.2 Regulations differ governing the requirements as to different classes of Sub-Recipients under this Grant. Certain of these differing relevant regulations are set out in tabular form below and each Sub-Recipient agrees to fully observe the requirements relevant to its entity type:

Organization Type	Administrative Requirements	Cost Principles	Audit Regulations and Standards
For Profit Entities	15 CFR Part 14 ¹	48 CFR Part 31.2 (Federal Acquisition Regulations)	Government Auditing Standards (The Yellow Book) OMB Circular A-133, Subpart B §235
Institutions of Higher Education	15 CFR Part 14	2 CFR Part 220 (OMB Circular A-21) ²	OMB Circular A-133 ³
Non Profit Organizations	15 CFR Part 14	2 CFR Part 230 (OMB Circular A-122)	OMB Circular A-133
Hospitals	15 CFR Part 14	45 CFR, Part 74(E)	OMB Circular A-133
State, Local and Tribal Governments	15 CFR Part 24 ⁴	2 CFR Part 225 (OMB Circular A-87) ⁵	OMB Circular A-133

All references to the “Grant” in this Agreement shall be deemed to include all of the foregoing. Sub-Recipient acknowledges receipt of a copy of, and represents that it has read and understands, all terms and conditions of the Grant.

Sub-Recipient further agrees to comply with all applicable Federal laws, executive orders, regulations and policies governing the Texas Pipes Program, whether or not explicitly listed herein.

ARTICLE 2: ADDITIONAL SUB-RECIPIENT RESPONSIBILITIES

2.1 Sub-Recipient agrees to timely perform all of the activities and obligations that Recipient requests Sub-Recipient to perform and that Recipient reasonably believes are necessary or

¹ 15 C.F.R. Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations (available on-line at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title15/15cfr14_main_02.tpl).

² 2 C.F.R. Parts 215 and 220 (OMB Circular A-21), published in 70 Federal Register 168, Cost Principles for Educational Institutions (available on-line at <http://www.gpo.gov/fdsys/pkg/FR-2005-08-31/pdf/05-16648.pdf>).

³ OMB Circular A-133, Audits of States, Local Government, and Non-Profit Organizations (available on-line at http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf).

⁴ 15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (available on-line at <http://oam.ocs.doc.gov/docs/GRANTS/15cfr24.pdf>).

⁵ 2 C.F.R. Parts 225 (OMB Circular A-87), published in 70 Federal Register 168, Cost Principles for State, Local, and Indian Tribal Governments (available on-line at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf).

appropriate for Sub-Recipient to perform in connection with Recipient's effort to ensure compliance with the terms and conditions of the Grant. Sub-Recipient shall comply, and shall require any contractor or subcontractor performing work on its behalf to comply, with all terms and conditions of the Grant and all applicable Federal, state and local laws and regulations. Sub-Recipient shall not take any action or omit to take any action that would reasonably be expected to cause, or that causes, directly or indirectly, a breach or default of the Grant, including a breach or default of the Grant by Recipient.

2.2 Sub-Recipient acknowledges and agrees that any action or failure to act by Sub-Recipient, or its officers, employees, subcontractors, agents, representatives or any Person (hereinafter defined) performing work under the Grant on behalf of Sub-Recipient (collectively, "Representatives"), that Recipient reasonably believes may jeopardize the funds available to Recipient under the Grant will provide Recipient the right, but not the obligation, to take any action that Recipient believes is necessary to protect its interests, including imposing sanctions on Sub-Recipient or terminating this Agreement pursuant to Section 8.2.

2.3 Insurance: Non-Governmental Subrecipients

a. From and after the Effective Date and for so long as this Agreement is in effect, Sub-Recipient shall procure and maintain, at Sub-Recipient's sole cost and expense, the following insurance against claims which may arise from or in connection with the Grant, this Agreement or the performance of obligations hereunder by Sub-Recipient or its Representatives:

- (i) Commercial General Liability insurance, including contractual liability, products and completed operations, personal injury, and contractual liability enforcement, with a limit of liability of not less than \$2,000,000 per occurrence and not less than \$5,000,000 general aggregate limit for each policy year;
- (ii) Worker's Compensation insurance with statutory limits;
- (iii) Employer's Liability insurance with a limit of liability of not less than \$2,000,000;
- (iv) Automobile Liability insurance with a limit of liability of not less than \$1,000,000 per accident, including owned, non-owned and hired vehicles;
- (iv) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of this Agreement, with a combined single limit per occurrence of not less than \$1,000,000;
- (v) Course of Construction insurance covering the completed value of the project with no coinsurance penalty provisions; and
- (vi) such other insurance policies and with such limits as may be required by DOC or as Recipient shall in good faith deem necessary from time to time.

b. Sub-Recipient shall, within 10 days after the Effective Date, deliver to Recipient an original certificate of the policy or policies of all insurance required to be provided hereunder. Each policy of insurance provided by Sub-Recipient shall:

- (i) be issued by a company or companies approved by Recipient and rated not less than A-IX,
- (ii) name Recipient and DOC as additional insureds,
- (iii) provide that all proceeds shall be payable to Recipient,
- (iv) provide that the policies may not be cancelled or modified in any way except upon thirty (30) days prior written notice to Recipient,
- (v) provide that no act or thing done by Sub-Recipient shall invalidate the policy as against Recipient,
- (vi) contain a waiver of subrogation by the insurance carrier with respect to all obligations assumed by Sub-Recipient pursuant to this Agreement; and
- (vii) otherwise be in such form as shall be reasonably acceptable to Recipient.

Sub-Recipient shall require and verify that all permitted contractors and subcontractors acting on Sub-Recipient's behalf maintain insurance meeting the requirements stated herein.

c. Sub-Recipient shall promptly provide to Recipient copies of any and all notices (including notice of non renewal), claims and demands which Sub-Recipient receives from insurers.

2.4 Notwithstanding anything in this Agreement to the contrary, to the fullest extent permitted by law, Sub-Recipient agrees to indemnify, defend and hold harmless Recipient, its officers, directors, employees, subcontractors, agents and representatives from and against all claims, liens, suits, judgments, losses, attorneys' fees, expenses and damages brought, recovered or exacted for, or on account of, or relating to any acts or omissions of Sub-Recipient or its Representatives.

2.5 NO EVENT SHALL RECIPIENT BE LIABLE TO SUB-RECIPIENT FOR, AND SUB-RECIPIENT HEREBY WAIVES THE RIGHT TO RECOVER, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION AND CLAIMS AGAINST RECIPIENT, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND ANY OTHER TORTS.

ARTICLE 3: STATEMENT OF WORK

3.1 Sub-Recipient agrees to perform its work in accordance with the schedule set forth in the Statement of Work, which is attached hereto as Exhibit B and incorporated by reference herein (the "Statement of Work"). If Sub-Recipient at any time determines that it may be unable to perform timely any of its obligations under the Statement of Work, or any of its obligations under any other provision of this Agreement, Sub-Recipient shall provide immediate notice thereof to Recipient, including all information relating to any delay and the date upon which Sub-Recipient expects to complete performance. This provision, and such notice, shall not relieve Sub-Recipient of its obligations to timely perform all terms and conditions of this Agreement, nor does this provision or such notice take away from Recipient, or in any way

diminish, any of Recipient's rights under this Agreement where Sub-Recipient fails to timely perform under the Statement of Work or any other provision of this Agreement, including Recipient's right to impose sanctions on Sub-Recipient or terminate this Agreement for breach pursuant to Section 8.2.

3.2 In furtherance of Section 3.1 and the other provisions of this Agreement, the Parties hereby acknowledge and agree that, in order to timely perform and fulfill the terms and conditions of the Grant, the ongoing collaboration of the Parties is critical and the Parties need to work together in good faith to timely fulfill their joint and respective obligations relating to, arising under or in connection with this Agreement and the Grant. Sub-Recipient acknowledges and agrees that compliance with the Statement of Work, including active participation in meetings during which Sub-Recipient is prepared to discuss the issues at hand, is critical to the successful performance of the Grant. In the event of Sub-Recipient's willful, persistent or repeated failure to participate in meetings pursuant to the Statement of Work, whether such meetings are in person, telephonically or otherwise, Recipient shall have the right to terminate this Agreement for breach. For purposes of clarification, if Sub-Recipient fails to be prepared for or participate in two or more in person meetings in any year or four or more telephone meetings in any year, such failure shall be deemed a breach of this Agreement and Recipient shall have the right to terminate this Agreement under Section 8.2.

3.3 Sub-Recipient shall comply with 15 C.F.R. §§14.31 – 14.37 in connection with the management and disposition of property used in connection with the performance of the Grant.

3.4 Sub-Recipient shall maintain written standards of conduct governing the performance of its Representatives engaged in the award and administration of contracts relating to the performance of the Grant. Such standards shall comply with the requirements set forth in 15 C.F.R. §14.42.

3.5 Sub-Recipient shall establish written procurement procedures in accordance with the requirements set forth in 15 C.F.R. §14.44, and shall follow such procedures in connection with contracting or subcontracting for goods or services in connection with the performance of the Grant.

3.6 Sub-Recipient shall, to the greatest extent practicable, purchase American-made equipment and products with funding provided under the Grant.

ARTICLE 4: FINANCIAL REPORTING AND PAYMENT

4.1 As consideration for the services described in Exhibit B, the parties shall contribute funding in accordance with Exhibit G.

4.2 Sub-Recipient shall pay Recipient \$144,000 upon signature of this Agreement. Sub-recipient certifies that these funds were not received under another Federal award.

Checks should be made to Texas A&M University and payment forwarded to the following address:

Texas A&M University-Sponsored Research Services
400 Harvey Mitchell Parkway South, Suite 300
College Station, Texas 77845-4375
Attn: Deposits

4.3 Sub-Recipient shall also contribute cost-sharing funds in the amount of \$322,590 in accordance with the budget in Exhibit G. Cost-sharing is required to be completed in accordance 15 CFR Part 14 and the budget appended and incorporated as Exhibit G. Federal funds may not be used to meet the Subrecipient's cost-sharing obligation for this Agreement. Cost-sharing is required to be reported with each invoice in accordance with the Cost Sharing Report Format attached and incorporated Exhibit M.

ARTICLE 5: ADMINISTRATION OF SUB-RECIPIENT PERFORMANCE

5.1 This Agreement is subject to Subpart C of 2 C.F.R. Part 1326, Government-wide Debarment and Suspension (Non-Procurement).

5.2 Sub-Recipient shall comply with 31 U.S.C. §1352, as implemented by 15 C.F.R. Part 28, New Restrictions on Lobbying. Sub-Recipient shall provide to Recipient a completed "Disclosure of Lobbying Activities" (Form SF-LLL) disclosing the use of non-Federal funds for lobbying. Sub-Recipient shall submit such Form SF-LLL to Recipient within fifteen (15) calendar days following the end of any calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted by Sub-Recipient. Sub-Recipient shall flow down this reporting requirement to any sub-awards, contracts or subcontracts exceeding \$100,000 in connection with work under this Grant.

5.3 Sub-Recipient shall not sub-grant or sub-contract any part of this Agreement, including any obligations under the Statement of Work, to any individual, entity, agency, association or other organization, including any governmental authority, instrumentality, self-regulatory organization, commission or organization, any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing (each, a "Person"), without the prior written approval of Recipient. Subrecipients shall insure that vendors agree to comply with vendor provisions applicable to this Grant. A form Vendor Agreement that will be utilized by Recipient is attached as Exhibit J hereto.

5.4 Sub-Recipient shall grant Recipient, DOC and the Comptroller General of the United States access to and the right to inspect any and all property created by or in the control of Sub-Recipient or its Representatives that relates to the Grant, including any and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled checks, statements, and other documents, papers and records of Sub-Recipient and its Representatives, whether written, printed, recorded, produced or reproduced by any electronic, mechanical magnetic or other process or medium in order to make audits inspections, site visits, excerpts, transcripts, copies, or other examinations.

5.5 Sub-Recipient shall comply with the background screening requirements set forth in 73 Fed. Reg. 7696 (February 11, 2008) and Section F of the Department of Commerce Financial Assistance Standard Terms and Conditions.

5.6 Sub-Recipient shall comply with all record retention requirements required by law, including the requirements set forth in 15 C.F.R. §14.53.

5.7 Sub-Recipient represents and warrants that it (i) is not currently identified on any Office of Foreign Assets Control List; (ii) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other

prohibition of United States law, regulation or Executive order of the United States; and (iii) does not provide “material support” to acts of terrorism as defined in the USA Patriot Act. Sub-Recipient agrees to confirm this representation and warranty in writing on an annual basis if requested by Recipient to do so.

5.8 Sub-Recipient shall comply with the Flow-Down Provisions of Exhibit C hereto.

5.9 Sub-Recipient shall timely provide Recipient, at Recipient’s request, such information as Recipient shall determine necessary to comply with its reporting requirements, including those imposed by 15 C.F.R. §§ 14.50 - 14.52.

5.10 Sub-Recipient acknowledges that in connection with the Grant, DOC requires a first priority lien on and security interest in all real and personal property, including equipment, acquired, purchased or improved by or on behalf of Sub-Recipient (collectively, the “Collateral”).

(a) When and as directed by Recipient, Sub-Recipient agrees to execute and deliver, or cause to be executed and delivered, in favor of DOC one or more Form UCC-1 financing statements relating to the Collateral, which shall be filed in the appropriate records of the proper jurisdiction, as well as an agreement and mortgage or similar financing statement relating to any real property constituting Collateral, which shall be filed in the appropriate records of the proper jurisdiction. Such security interests shall be renewed every five years, over the useful life of the equipment in accordance with the requirements of DOC. In addition, Sub-Recipient shall execute and deliver to Recipient, at any time and from time to time, at Sub-Recipient’s sole cost and expense, all assignments and financing statements pursuant to the UCC, including continuation statements thereof, and other documents requested by Recipient including any further instruments, documents, security agreements, amendments, supplements, substitutions, modifications and powers of attorney and to take all actions requested from time to time by Recipient to create, perfect, protect and enforce the security interest of the Collateral, whether now or hereafter acquired.

(b) Sub-Recipient hereby covenants that: (i) Sub-Recipient shall use the Collateral solely for the purposes for which the Grant was awarded and such use shall at all times be in compliance with the terms and conditions set forth in the Grant; (ii) Sub-Recipient shall defend, at its sole cost, its title to the Collateral and the security interest of DOC against all claims of all third parties; (iii) Sub-Recipient shall not make or permit to be made in the future any assignment, pledge, hypothecation, encumbrance or transfer of any of the Collateral and will keep all of the Collateral free from all levies, attachments, liens, security interests, encumbrances and charges of whatsoever kind, whether arising by judicial process or otherwise, and will pay or cause to be paid promptly when due all taxes, fees, assessments and other charges now or hereafter imposed upon the Collateral, and (iv) Sub-Recipient shall keep and maintain adequate records and books of account with respect to the Collateral.

ARTICLE 6: CONFIDENTIALITY

6.1 Subject to Sections 6.4 and 6.5, no Party will, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to any third party acquired

during the performance of this Agreement, or for a period of three (3) years following the termination of the Grant. Information will be considered Confidential Information of a Party if (i) it is disclosed by a Party to the other Party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; (ii) it is disclosed by a Party to the other Party in non-tangible form and is identified as confidential at the time of disclosure; (iii) a Party receives such information from a third party subject to an obligation of confidentiality, or (iv) it contains the disclosing Party's customer lists, customer information, technical information, pricing information, pricing methodologies, or information regarding the disclosing Party's business planning or business operations. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of each Party.

6.2 Information will not be deemed Confidential Information hereunder if such information (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.

6.3 Each Party will secure and protect the Confidential Information of the other Party (including the financial terms of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care.

6.4 Each Party may disclose the other Party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other Party with adequate time for such other Party to seek a protective order; (ii) if in the opinion of counsel for such Party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that Party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a Party to exercise its rights and perform its obligations under this Agreement, so long as in all cases referenced in the clauses above the disclosure is no broader than necessary and the Person who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential. To the extent practicable, each Party is responsible for ensuring that any Confidential Information of the other Party that the first Party discloses pursuant to this Section (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first Party and disclosures pursuant to clause (iii) to a court or arbitrators where a Party seeks to exercise its rights under this Agreement) is kept confidential by the Person receiving the disclosure to the same extent that the receiving Party must keep the information confidential.

6.5 Notwithstanding anything in this Agreement to the contrary, each Party may disclose the other Party's Confidential Information (other than information deemed confidential pursuant to Section 6.1(iii)) to its Members unless both Parties agree in writing that such information shall be kept confidential as to the other Party's Members.

ARTICLE 7: INTELLECTUAL PROPERTY

- 7.1** No license is conveyed pursuant to this Agreement in:
- a. Any “Invention”, as defined in section (c) below, conceived and first reduced to practice or made the subject of a patent application in accordance with patent law in the United States, or in any other country or region, before the Effective Date of this Agreement or independent of work conducted pursuant to the Statement of Work under this Agreement (“Background Invention”); or
 - b. Technical data or computer software developed by or on behalf of a Party before the Effective Date of this Agreement or independent of work conducted pursuant to the Statement of Work under this Agreement (“Background Technical Data and Software”).
 - c. As used in this Section, Invention shall mean any invention or discovery that is or may be patentable or otherwise protectable under 35 U.S.C.
- 7.2** Except as provided in Section 7.3, neither Party claims by virtue of this Agreement any right, title, or interest in or to any issued patent or pending patent applications owned or controlled by the other Party.
- 7.3** The rights in any Invention conceived or first reduced to practice solely or jointly in connection with the performance of the Grant will be determined under the Federal laws pertaining to intellectual property created in the course of federally funded grants. Recipient shall retain title to any Inventions, patents, pending patent applications or other intellectual property rights in Inventions conceived or first reduced to practice by its employees in the course of performance of the Grant. Sub-Recipient shall retain title to any Inventions, patents, pending patent applications or other intellectual property rights in Inventions conceived or first reduced to practice by its employees in the course of performance of the Grant. Recipient and Sub-Recipient shall have joint ownership in any Inventions conceived jointly by their employees during the course of performance of the Grant. Recipient may apply for a non-exclusive or exclusive license to such Inventions in accordance with 37 C.F.R Part 404.
- 7.4** Subject to the rights of the Federal Government under applicable law, Recipient and Sub-Recipient shall have the right to receive and use technical data or software that is created in connection with the performance of the Statement of Work.

ARTICLE 8: TERM AND TERMINATION

- 8.1** Unless earlier terminated in accordance with Section 8.2, this Agreement shall be effective as of June 13, 2011 and shall continue in full force and effect until the September 30, 2013 (such period, the “Term”).
- 8.2** This Agreement may be terminated prior to its expiration as follows, and such termination shall be in accordance with 15 C.F.R. § 14.61(a)(3) and 15 C.F.R. § 14.5 to the extent that such Sections are applicable to such termination:
- a. The Parties may terminate this Agreement by mutual written agreement.
 - b. In the event that the Grant expires or is terminated or the Grant funds become unavailable during the term of this Agreement, Recipient may terminate this Agreement upon notice to Sub-Recipient.
 - c. Recipient may terminate, in whole or in part, the right of Sub-Recipient to proceed with the performance of this Agreement or any aspect of the Statement of Work, for

convenience, and without further obligation except that Sub-Recipient shall be entitled to payment for work properly performed pursuant to the Grant prior to the effective date of such termination.

d. If for any reason whatsoever Sub-Recipient breaches any provision of this Agreement, Recipient shall have the right to terminate this Agreement, in whole or in part at its discretion, effective immediately upon notice to Sub-Recipient. Such notice shall specify the reason for such termination and the termination date. Time is of the essence with respect to all of Sub-Recipient's obligations under this Agreement. For the avoidance of doubt, any failure by Sub-Recipient to timely perform or fulfill any of its obligations shall be deemed a breach of this Agreement.

e. Subject to the rights of any trustee in bankruptcy and to applicable law, in the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Sub-Recipient's property, or for any act of bankruptcy by Sub-Recipient as defined in the Bankruptcy Act, as amended, or for any voluntary petition in bankruptcy by Sub-Recipient, Recipient may terminate the right of Sub-Recipient to proceed with the performance of this Agreement without further obligation.

8.3 In the event that this Agreement expires or is terminated pursuant to this Article 8, Sub-Recipient shall cease work as of the date of expiration or termination, as the case may be, and shall not incur obligations after such date.

8.4 Upon the expiration of this Agreement or upon a termination of this Agreement, all right and title of Sub-Recipient to all real and personal property, including equipment, that has been purchased, acquired or improved by or on behalf of Sub-Recipient and used for joint build components of the network infrastructure pursuant to the Statement of Work shall automatically be transferred to Recipient, subject to applicable law and subject to the security interest of DOC in such property contemplated by Section 5.10. Sub-Recipient agrees to execute and deliver to Recipient such agreements, assignments, documents, and instruments as may be requested by Recipient in order to effectuate such transfer.

ARTICLE 9: DISPUTES

9.1 In the event a dispute between Recipient and Sub-Recipient arises as a result of an act or omission by DOC, such dispute shall be resolved in accordance with the dispute resolution procedures arising under the Grant. The Parties agree to be bound by a decision resulting from such procedures.

9.2 In the event of any dispute between Recipient and Sub-Recipient relating to or arising from the terms or conditions of this Agreement, including the Statement of Work, or the performance by Sub-Recipient of its obligations hereunder, the Chief Executive Officers of each Party shall promptly meet to seek to resolve the dispute in good faith.

ARTICLE 10: MISCELLANEOUS

10.1 This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior written and verbal agreements, representations, promises or understandings between the Parties. This Agreement will not be binding on either Party until and unless it is fully executed by both Parties. Any amendments to this Agreement

will only be effective if they are in writing and executed by both Parties. In the event of a dispute arising from an ambiguity in the terms and conditions of this Agreement, the Parties acknowledge that the Grant Application by Recipient, as well as the written correspondence of the Parties relating hereto and thereto, shall serve as relevant information to determine the intent of the parties and the interpretation thereof.

10.2 The Parties to this Agreement are independent of each other in all matters. The employees or agents of one Party shall not be deemed to be the employees or agents of the other Party for any purpose under federal or state law. Neither Party shall have the right, power or authority to create any obligations, express or implied, on behalf of the other except to the extent provided herein. Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between the Parties.

10.3 Sub-Recipient may use independent contractors, subcontractors or other non-employees (collectively, "Non-employees") to perform, or to act on behalf of Sub-Recipient with respect to, its obligations hereunder. Sub-Recipient's use of Non-employees does not release Sub-Recipient from any of its liabilities or obligations under this Agreement. Sub-Recipient is responsible for all actions and omissions of its Non-employees when its Non-employees are performing for or acting on behalf of Sub-Recipient, and in addition, Sub-Recipient is also responsible for all acts of its invitees or visitors at any office, facility, property or other location that is visited or used in connection with the Grant or this Agreement (the "Properties").

10.4 If any provision of this Agreement shall be determined to be illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect. Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

10.5 Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. Recipient and Sub-Recipient can change their respective notice address by sending to the other party a notice of the new address.

Notices should be addressed as follows:

Recipient: **Texas A&M University**
Attn: Director of Telecommunications
Address: Mail Stop 1174
College Station, Texas 77843-1174
Fax: 979-847-1111
E-mail: telecom@tamu.edu

With a copy to:
Attn: Marcie Avery
Address: 400 Harvey Mitchell Parkway South
Suite 300
College Station, Texas 77845

Phone: 979-862-6451

E-mail: mavery@tamus.edu

Sub-Recipient:

City of Corpus Christi

Attn Admin: Michael Armstrong

Address: 1201 Leopard Street

Corpus Christi, Texas 78401

Phone: 361-826-3740

E-mail: Michaelar@cctexas.com

Attn Technical: David Trevino

Address: 1201 Leopard Street

Corpus Christi, Texas 78401

Phone: 361-826-3754

Cell: 361-876-2310

E-mail: dtrevino@cctexas.com

10.6 Failure of either Party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but such Party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either at law or in equity.

10.7 This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same agreement.

10.8 Each Party hereby represents and warrants that it (i) has full power and authority to execute and perform this Agreement (without needing any other authorizations from any other Person), and (ii) has taken all action necessary to authorize the execution and performance of this Agreement. In addition, each person executing this Agreement on behalf of a Party, does hereby warrant that such person has the right and authority to execute this Agreement on behalf of the relevant Party and that all the procedures and approvals that are necessary and required to enable such person to properly execute this Agreement and to bind the represented Party in accordance with the terms hereof have been followed and secured. At a Party's request, the other Party will provide sufficient evidence confirming the accuracy of the above warranties.

10.9 Each Party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.

10.10 The provisions of this Agreement that by their nature are continuing or need to continue to ensure a Party's rights hereunder are fully protected and shall continue in full force and effect and shall bind the Parties beyond any expiration or earlier termination of this Agreement.

10.11 Any assignment or delegation of all or part of this Agreement or rights or duties hereunder, including assignments by virtue of merger, reorganization, or other similar transactions, by Sub-Recipient shall be void, unless prior written consent thereto is given by Recipient, which consent Recipient may withhold at its sole discretion.

10.12 The substantive laws of the State of Texas govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), Texas

Education Code, venue for a state court suit filed against TAMU, or any officer or employee of Texas A&M University is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas.

10.13 The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

10.14 The headings and captions in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. The pronouns of any gender shall include the other genders, and either the singular or the plural shall include the other.

10.15 Non-Waiver. Sub-recipient expressly acknowledges that Recipient is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Recipient of its right to claim such exemptions, privileges, and immunities as may be provided by law.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first above written.

Texas A&M University

City of Corpus Christi

By: Katherine V. Kissmann By: _____

Name: Katherine V. Kissmann

Name: Ron Olson

Title: Director, Contracts & Grants

Title: City of Corpus Christi City Manager

Date: December 2, 2013

Date: