

ConsensusDocs™ 240
STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

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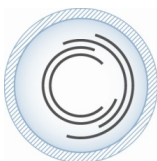
ConsensusDocs 240

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ARTICLE 1 AGREEMENT

This Agreement is made this [] Day of [] in the year 2016, by and between the

OWNER, Massachusetts Technology Park Corporation
 75 North Drive, Westborough, MA 01581,

an independent public instrumentality of the Commonwealth of Massachusetts (the “Commonwealth”), established, organized, and existing pursuant to Chapter 40J of the Massachusetts General Laws and doing business as the Massachusetts Technology Collaborative acting in accordance with G. L. c. 40J, § 6B,

and the

DESIGN PROFESSIONAL or DESIGN ENGINEER []

Tax identification number (TIN) []



for services in connection with the following PROJECT: Massachusetts Broadband Institute *Last Mile* Networks

Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1 DEFINITIONS

2.1.1 "Agreement" means this ConsensusDocs 240, Standard Agreement Between Owner and Design Professional, as modified, and exhibits and attachments made part of this Agreement upon its execution.

2.1.1.1 The following exhibits are part of this Agreement:

EXHIBIT A: Project Overview and other relevant data defining the Project

EXHIBIT B: Pricing Matrices

EXHIBIT C: Key Project Personnel

EXHIBIT D: Progress Payment Release and Lien Waiver Forms

EXHIBIT E: Final Release and Lien Waiver Forms

2.1.2 "Business Days" are all Days, except weekends and official federal or state holidays where the Project is located.

2.1.3 "Cluster" means a subset of no more than eight (8) Towns that decide to participate in a centralized design and construction process administered by the Owner, with the Towns constituting each subset to be determined in accordance with section 3.3. Towns in a Cluster need not be adjacent to one another

2.1.4 "Construction Management Firm" means each of the persons or entities retained by the Owner to perform multiple construction disciplines for different aspects of the project such as outside plant ("OSP"), inside plant ("ISP"), active electronics, civil construction of network shelters, construction management, construction, installation, materials and equipment procurement and similar Work for the Project, and in appropriate contexts all such Construction Management Firms collectively, and includes the Construction Management Firms' respective Representative(s).

2.1.5 A "Consultant" is a person or entity retained by the Design Professional as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Services under this Agreement, including any Pole Data Collector(s) under contract with the Owner.

2.1.6 "Day" means a calendar day.

2.1.7 "Design Professional" is the person or entity identified in article 1 and includes the Design Professional's representative.

2.1.8 "Laws" means federal, state, and local laws, ordinances, bylaws, codes, rules, and regulations applicable to the Services and with which the Design Professional and its instruments of service and other work product must comply that are enacted as of the Agreement date.



- 2.1.9 "Mass Tech Collaborative" means the Owner identified in this Agreement, an independent public instrumentality of the Commonwealth of Massachusetts chartered by the Commonwealth.
- 2.1.10 "MB123" means the **MassBroadband 123** middle mile network owned by the Owner, which is available for use by the Network.
- 2.1.11 "Network" means the network(s) to be designed pursuant to this Agreement and constructed to carry out the Project.
- 2.1.12 "Owner" is the person or entity identified in article 1 and includes the Owner's representative as a disclosed agent of the Owner.
- 2.1.13 "Parties" means the Owner and Design Professional collectively.
- 2.1.14 "Pole Data Collector" means one or more firms under contract with the Owner to perform pole data collection services on existing poles owned by Route Facility Owners.
- 2.1.15 "Premise" means a home, business, or other structure that is or may be served by the Project.
- 2.1.16 The "Project," as identified in Exhibit A, is the *Last Mile* networks, including equipment, element management system software, materials and other improvements to be designed by the Design Professional for which the Construction Management Firm and such other service providers as may be required and that the Owner consents to engage directly is or are to perform Work under their respective agreements with the Owner.
- 2.1.17 The "Project Schedule" is the document prepared or to be prepared and updated by the Design Professional listing all activities, time and sequence required to complete the Project as defined by Exhibit A.
- 2.1.18 "Property Owner" means an owner of homes, business and other Premises to which fiber of the Project may be attached to structures or through which fiber of the Project may pass aerially or below ground or where wireless Network equipment may be installed or constructed.
- 2.1.19 "Route Facility Owner" means any owner of poles, conduit, railroad structures and bridges to which fiber of the Project may be attached or through which fiber of the Project may pass, and includes but is not limited to Verizon, National Grid, Eversource, FairPoint Communications, and municipal light companies in a Town.
- 2.1.20 "Services" means the services provided by the Design Professional or by Consultants retained by the Design Professional for the Project.
- 2.1.21 A "Subcontractor" is a person or entity retained by a Construction Management Firm as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.
- 2.1.22 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.
- 2.1.23 A "Town" means any one of the 40 municipalities eligible for participation in the Project and listed in Exhibit A.



- 2.1.24 A "Unit" means a Premise as defined in section 2.1.15.
- 2.1.25 "Work" means the construction and services necessary or incidental to fulfill the Construction Management Firms' respective obligations for the Project in conformance with their respective agreements with the Owner.
- 2.1.26 "Worksite" means the aggregate geographical area of the Project location as identified in Exhibit A, or as further defined through the design process, where the Work is to be performed and, to the extent the Owner designates in writing existing buildings or portions thereof as potential or agreed-upon locations for Network equipment, such as buildings or designated portions thereof.
- 2.2 **STANDARD OF CARE.** The Design Professional shall furnish or provide the architectural, engineering and project management services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Program Overview and other relevant data defining the Project, which is attached as Exhibit A. The architectural, engineering and project management services shall include the Services described herein plus additional Services as may be authorized by the Owner in writing on terms to be agreed. Services shall be performed in accordance with the standard of professional skill and care required of a highly skilled design professional specializing in all relevant disciplines for a Project of similar size, scope, and complexity, during the time in which the Services are provided. The Design Professional shall revise and correct, at its own cost and expense, any of its work product that does not meet the standard of care or is in breach of an express obligation of the Design Professional under this Agreement.
- 2.3 **RELATIONSHIP OF THE PARTIES.** The Design Professional accepts a relationship of trust and confidence with the Owner for this Agreement and will cooperate and exercise the skill and judgment required above in furthering the interests of the Owner. The Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Owner and Design Professional agree to work together on the basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Owner and Design Professional shall endeavor to promote harmony and cooperation among all Project participants.

Neither the Design Professional nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless authorized in writing by the Owner.

- 2.3.1 The Design Professional shall not be responsible for the acts or omissions of the Owner, Towns, the Construction Management Firm(s), Subcontractors, agents or employees of any of them, or any other persons or entities performing work on the Project who are not under the direct or indirect control or authority of the Design Professional.
- 2.3.2 The Owner shall not be responsible for the acts or omissions of the Owner, Construction Management Firm(s), the Towns, contractors, agents or employees of any of them, or any other persons or entities performing work on the Project who are not under the direct or indirect control or authority of the Owner.

The Owner and the Design Professional shall perform their obligations with integrity, ensuring at a minimum that: (a) each avoids conflicts of interest and disclose any promptly to the other Party; and (b) each warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, Consultants, or others for whom they may be liable, to secure preferential treatment.



ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES

Subject to issuance by the Owner of a Work Order containing a Notice to Proceed with a specific task or set of services, the Design Professional shall provide the services described below. The Owner reserves the right to: authorize in a given Work Order less than all services of a particular type or for a particular Cluster or a particular Town; to group multiple tasks and parts of tasks together in a single Work Order; and/or to refrain from authorizing part or all of a given task.

3.1 PROJECT PLANNING AND SYSTEMS

3.1.1 **Project Plan.** The Design Professional shall, with input from the Owner, prepare, and submit to the Owner for approval, no later than 30 days after execution of this Agreement, a detailed Project Plan, using MicroSoft Project or equivalent software, for the Project. The Project Plan must identify major milestones with a completion date of December 31, 2020, and identify critical path items throughout the Project. After approval by the Owner, the Design Professional shall manage the implementation and evolution of the Project Plan, with frequent scheduling input from all members of the Project Team and their respective Subcontractors and Consultants throughout the duration of the Project. All services relating to the development of the Project Plan is billable as a Non-Town Specific task. All services relating to the on-going monitoring and updating of the Project Plan are billable as part of the General Project Management Services tasks.

3.1.1.1 **Key Principles.** The Project Plan must be consistent with the following Key Principles for the Project:

3.1.1.1.1 All procurements will be conducted in accordance with applicable Massachusetts laws governing the design and construction of public works projects.

3.1.1.1.2 The Owner will utilize a design-bid-build approach for each Network it constructs.

3.1.1.1.3 The Owner may approach the construction work by dividing it up into smaller groupings or Clusters of Towns that decide to participate in a design and construction process administered by the Owner. In rare instances, a single-town project may be released for bidding and construction. The size and composition of the Clusters could be based on the timing of Town decisions to make binding commitments to authorize a broadband project and other factors that create logical and manageable groupings.

3.1.1.1.4 The Owner will release a construction bid package for each cluster of towns or, if applicable, a single Town Network. Each construction bid package will incorporate a final design with precise specifications for all elements of the Work, including procurement and installation of equipment, materials and supplies (inside plant and outside plant).

3.1.1.1.5 The design of the *Last Mile* Network(s) will incorporate the relevant portions of the MBI *Last Mile* Program Policy Statement.



3.1.1.1.6 All designs must strive to maximize the cost-efficiency, long-term resiliency, stability, and sustainability of each of the *Last Mile* networks.

3.1.1.2 **Schedule.** The Project Plan shall include a detailed Project Schedule that specifies the timing, sequencing, interdependencies and contingencies of the design, licensing, permitting, approvals, notices to proceed and construction required to meet the time criteria set forth in section 3.1.1 and article 5. As schedules for Clusters are developed, the Cluster schedules shall roll up into the Project Schedule. The submission of the Project Plan must include all scheduling logic, durations and back-up, using acceptable scheduling software accessible to the Owner.

3.1.1.3 **Clusters**

The Design Professional shall include in the Project Plan an approach to sizing and composition of construction Clusters that reflects interests that include but are not limited to:

3.1.1.3.1 Reducing costs and barriers to competition among qualified construction companies (e.g. bonding capacity, staffing and subcontracting);

3.1.1.3.2 Addressing external constraints (e.g. ability of Route Facility Owners to process make ready applications and prosecute make ready work or material acquisition lead times);

3.1.1.3.3 Completing all Work within time frame for the Project; and

3.1.1.3.4 Sequencing construction activities across multiple Clusters.

Also as part of the Services in this section 3.1.1.3, the Design Professional will prepare and submit to the Owner for approval a project execution strategy including but not limited to:

3.1.1.3.5 Analyzing the Owner's construction Cluster strategy; and

3.1.1.3.6 Proposing alternative construction strategies.

3.1.2 **Develop, Implement and Maintain a System of Record.** The Design Professional shall prepare and submit to the Owner for approval a system of record ("SOR") that will be the authoritative source for and ensure the integrity and validity of all data collected, created and maintained during the Project.

3.1.2.1 The SOR must be usable as a means of collaboration between all stakeholders (*i.e.* information repository) to upload, manage, preserve, and disseminate Project content.

3.1.2.2 All project outputs will flow through the SOR. Data stored in the SOR will be used to support project management requirements, enabling the Owner to view progress, make decisions, evaluate options, and generate maps, charts and reports.

3.1.2.3 The Design Professional shall evaluate and recommend whether a secure cloud-based system could be used for both the SOR and could be configured for web-based accessibility, usability and administration.



Information must be able to be structured to allow or deny access on a Town-by-Town basis.

- 3.1.2.4 At the close of the Project, the Design Professional will turn over to the Owner or its designee(s) ownership and administration of the SOR and/or information repository and licenses to all software required to operate it. The SOR must remain operational and accessible to all users for one year after the close of the Project. The Design Professional shall export and deliver to the Owner all SOR data in a logical and organized format within that one-year period.

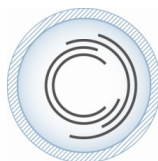
- 3.1.3 **Develop Technology and Product Roadmaps and Equipment Specifications.**
The Design Professional shall create and submit to the Owner for approval a ten (10) year network technology and vendor product evolution Roadmap identifying the differences between and among Active Ethernet, passive optical, and fixed wireless networks from selection, design, impacts and cost comparisons. The Roadmap shall outline potential vendors and products and the key features of each platform, including but not limited to hardware capacities, software specifications, environmental and management capabilities, equipment management software functionality for service configuration, surveillance, performance and administration. The Roadmap shall conclude with a recommendation on the selection of technology for a regional or single Town network – GPON, Active Ethernet, fixed wireless or a combination thereof.

Each Roadmap for a given technology and/or product shall

- 3.1.3.1 begin with an explanation of the current capabilities for that technology;
- 3.1.3.2 then describe the anticipated evolution for that technology, including a forecast of expected changes in performance (e.g. speed, features, and functionality) and reductions in costs (e.g. equipment cost, cost of service to subscribers, cost to operate);
- 3.1.3.3 include the limitations of that technology (e.g. insufficient capacity to or inability to support real-time traffic such as voice over IP or Broadcast video), elements that would affect consumer and/or carrier adoption, and the extent to which these limitations can be mitigated;
- 3.1.3.4 convey the market availability of next generation technologies (e.g. technologies that are in production by multiple manufacturers), and any market constraints that would affect their adoption in the western Massachusetts region; and
- 3.1.3.5 include forecasts (if any) of when the technology will reach 'end of life' within the next 10 years.

The Design Professional shall list assumptions that were made in developing forecasts.

Upon completion of all Roadmaps, the Design Professional will provide a detailed recommendation on the selection of qualified vendors and identify specifications for equipment to be deployed for the *Last Mile* network (e.g. FTTP or fixed wireless). This recommendation will include reasons why these vendors should be considered (e.g. pros and cons).



The Design Professional shall present the technology and product roadmaps (in Microsoft PowerPoint format and a separate narrative in Microsoft Word) to the Owner and provide a recommendations as to:

- 3.1.3.6 any advantages or disadvantages to deploying fixed wireless broadband networks in the Towns;
- 3.1.3.7 the most appropriate technologies to provide broadband services in the Towns.

The Owner will review and either approve or reject each recommendation. The approved recommendation will provide the foundation for the preliminary and final design phases.

- 3.1.4 **Evaluate Material and Equipment Uniformity.** The Design Professional shall evaluate the extent to which the Project needs uniformity of OSP materials, OSP equipment and systems equipment across all Towns and/or regional networks. This is to be evaluated within applicable Laws that emphasize competitive procurements rather than proprietary specifications and with respect to projected operational efficiency. If requested by the Owner, the Design Professional will prepare a written justification for a proprietary specification.

3.2 ROUTE DEVELOPMENT

3.2.1 Route and Premise Evaluation

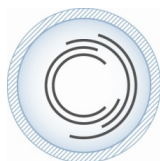
The Design Professional shall ride out each planned route and visit each premise to document the feasibility of the route and document any roadblocks and hurdles that may delay the construction of these routes. Evaluations will consist of the following:

For Projects that include FTTP:

- 3.2.1.1 Identify and recommend hut and/or Fiber Distribution Hub (“FDH”) location(s) per town
- 3.2.1.2 Conduct surveys in each town to identify existing utility infrastructure along all roads to support development of a route design
- 3.2.1.3 Identify the extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed
- 3.2.1.4 Conduct surveys in each town to collect information about each premise that will be served by the *Last Mile* networks to support development of a customer premise design. The surveys must include information as to driveway lengths, types of entry, entry locations, and any privately-owned poles

For Projects that include Fixed Wireless:

- 3.2.1.5 Identify fixed wireless equipment sites per town
- 3.2.1.6 Conduct new or verify existing wireless propagation studies by conducting site surveys in each town to collect information about proposed/planned wireless equipment sites (e.g. base station siting on utility poles, monopoles, municipal facilities, Department of Conservation



and Recreation fire towers, existing communications towers) and client stations located at customer premises

- 3.2.1.7 Conduct surveys in each town to identify existing utility infrastructure along backhaul paths, when fiber optic backhaul is required rather than fixed wireless backhaul
- 3.2.1.8 Identify extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed, when fiber optic backhaul is required rather than fixed wireless backhaul

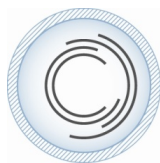
For all Projects:

- 3.2.1.9 Identify any permitting or construction challenges while conducting surveys to support development of design alternatives
- 3.2.1.10 Identify any Multiple Dwelling Units, Multiple Tenant Units, commercial properties and seasonal properties
- 3.2.1.11 Consider design implications of approved buildable land parcels. Most current data will be provided in consultation with Towns
- 3.2.1.12 Verify fiber egress points to support single and redundant connections to the **MassBroadband 123** network and regional inter-town connections, if applicable.

3.2.2 Development of Route Design Drawings. The Owner has provided in Exhibit A.1 the list of the 40 Towns that may be included in the Project and each Town's preliminary data, which includes for each Town an estimated Unit count, an estimated telephone pole counts, estimated route miles, square miles and the proposed technology to be deployed. Working with the Owner and the Towns and using the estimates in Exhibit A.1 and data collected through the route and premise evaluations conducted by the Design Professional, the Design Professional will prepare and submit to the Owner for approval Route Design Drawings for those Towns wishing a *Last Mile* network and authorized in writing by the Owner. The Design Professional shall identify the type of installation for fiber optic cable (*i.e.*, new or existing aerial, new or existing underground, dark fiber or overlash) in each Town, if applicable. The Design Professional shall consider and evaluate opportunities to leverage the **MassBroadband 123** network, including overlash, bifurcation of network spurs and use of dark fiber on the **MassBroadband 123** network, in consultation with the Owner. The *Last Mile* Route Design Drawings must be suitable for use by the Owner's Pole Data Collector in determining the pole data to be collected for pole application submittal for make ready work by the Route Facility Owners and for use in support of special permitting projects such as conservation commission hearings, historical society hearings, and MassDOT bridge attachment petitions.

3.2.3 Development of Preliminary Designs. The Owner shall provide to the Design Professional for each Town a written statement of baseline requirements for the Town's network. The Design Professional shall utilize these baseline requirements as a starting point in the development of preliminary designs for each Town. The Design Professional shall develop high-level designs and prepare estimated costs per Town based on these requirements. The Owner and Towns will have the ability to approve, reject or request modifications of the preliminary design based on budgetary restrictions. After this collaborative interaction, the Design Professional shall incorporate all modifications and develop one final version of the preliminary design and project budget that implements any approved modifications.

The preliminary design for the first Cluster approved under section 3.3 must be completed and submitted for approval no later than 90 days after execution of this Agreement.



Preliminary FTTP, fixed wireless, and hybrid designs will include but are not limited to the following:

General Requirements:

- 3.2.3.1 Network technology (*i.e.* Active Ethernet, GPON, and/or fixed wireless) and a listing of equipment to be installed;
- 3.2.3.2 Premise location maps;
- 3.2.3.3 Percentages of existing aerial, new aerial and underground;
- 3.2.3.4 Design Layer 1 (physical), Layer 2 (switching) and Layer 3 (routing) architecture that may utilize homogeneous network equipment with considerations around remote management;
- 3.2.3.5 Project budget spreadsheets (*e.g.* material and labor construction estimates including prevailing wage requirements);
- 3.2.3.6 Growth, redundancy and Owner-specified service level projections;
- 3.2.3.7 Network capacity plans that demonstrate support for the required data speeds (*i.e.* Internet);
- 3.2.3.8 An integration strategy for cloud based voice services;
- 3.2.3.9 Analysis of broadcast video services (*e.g.* IPTV) and/or analysis for support of video streaming technologies (linear, video-on-demand, in-home and out of home streaming); and
- 3.2.3.10 Opportunities to leverage the **MassBroadband 123** network, including overlashing, bifurcation of network spurs and use of dark fiber on the **MassBroadband 123** network based on determination during route design;

For Projects that include FTTP:

- 3.2.3.11 Physical topology (*i.e.* point-to-point, bus, star);
- 3.2.3.12 Potential hut or Fiber Distribution Hub ("FDH") location(s), including flood plain and elevation analyses;
- 3.2.3.13 Splitter placements (*i.e.* centralized, distributed, or central office split);
- 3.2.3.14 OSP feeder, distribution and drop cable schematics listing cable types and minimum strand counts;
- 3.2.3.15 Driveway lengths; and
- 3.2.3.16 Cable management recommendations (*e.g.* FDH, Fiber Access Terminals, splice closures, vaults, handholes, etc.);

For Projects that include Fixed Wireless:

- 3.2.3.17 Potential fixed wireless equipment sites; and



3.2.3.18 Fixed wireless propagation maps;

The Preliminary Design for each Town shall be subject to prior written approval of the Owner and Town before the Design Professional proceeds to Final Design for that Town.

3.2.4 Drafting of Conduit License Applications.

The Design Professional shall prepare and perform a quality check of Route Facility Owner conduit license applications for each of the Towns. Specifically, the Design Professional will:

- 3.2.4.1 Prepare and submit to the Owner complete and accurate initial conduit license applications to submit to the applicable utility;
- 3.2.4.2 Make edits or modifications to the draft application after review by the Owner and/or the Towns;
- 3.2.4.3 Resubmit to the Owner edited applications;
- 3.2.4.4 Provide design and engineering services for manhole surveys;
- 3.2.4.5 Provide design and engineering services for rod and rope surveys;
- 3.2.4.6 Provide detailed survey results to the Owner;
- 3.2.4.7 Submit any new alternative conduit and/or route designs to the Owner as required; and
- 3.2.4.8 Maintain applications in the SOR.

3.3 Development of Clusters.

In accordance with the principles and procedures established in the approved Project Plan, the Design Engineer shall identify and recommend the size and composition of proposed Clusters of Towns to be constructed together and submit the proposal(s) to the Owner for approval. Any proposal for Clusters shall explain the pros and cons of the Cluster composition and shall include a detailed schedule for completion of design, issuance of a Cluster bid package and estimated duration of construction of the Cluster.

Once a Cluster proposal has been approved, the Design Professional shall proceed to complete the coordination of the designs for all Towns in the Cluster and prepare Construction Bid packages in accordance with section 3.5.

3.4 Development of Final Designs.

The Design Professional shall create a detailed design for each Town based on the preliminary design for the Town approved by the Owner and the Town. These designs will include, but will not be limited to:

For Projects that include FTTP:

- 3.4.1 Fully developed, stamped GIS/CAD drawings detailing OSP cable construction with pole by pole detail, butterfly drawings, splice locations and splicing plans (fiber cable strand counts, cable management locations)
- 3.4.2 Finalized detailed hut construction plans including, but not limited to:
 - 3.4.2.1 Civil drawing requirements for hut location(s)



- 3.4.2.2 Fiber cable attachments and hut penetration locations
- 3.4.2.3 Infrastructure design including ladder tray, relay racks, vertical/horizontal wire management, patch panels, fiber trough, fiber modules/splice trays
- 3.4.2.4 Network design drawings, equipment specifications, port mapping documentation, and system configurations
- 3.4.2.5 Power requirements including commercial, backup and redundant systems
- 3.4.2.6 Grounding requirements
- 3.4.2.7 HVAC requirements
- 3.4.2.8 Floor plans
- 3.4.2.9 Rack elevations drawings
- 3.4.2.10 Environmental alarming (HVAC, temperature, security, site access, etc.)
- 3.4.3 Route definition (feeder, distribution and drop locations, construction types (aerial or underground, new or existing, multiple egress connections).

For Projects that include Fixed Wireless:

- 3.4.3.1 Fully developed, stamped GIS/CAD drawings detailing wireless equipment sites with pole, mast, or tower detail, and equipment specifications; and
- 3.4.3.2 Propagation maps that minimally show which base stations are serving which client stations with which fixed wireless technologies.

For all Projects:

- 3.4.3.3 Growth, redundancy and specified service levels projections;
- 3.4.3.4 Distance calculations (RF, optical and road miles); and
- 3.4.3.5 Verification that all necessary licenses or permits have been obtained or the status of those in process.

For any Town Network that is part of an approved Cluster, the Final Design shall be coordinated with the Final Designs of all Towns in the same Cluster.

3.5 Development of Construction Bid Packages.

For each approved Cluster and for each single Town Network approved by the Owner, upon issuance of a Work Order for such Cluster, the Design Professional shall prepare and submit construction bid packages that will be similar or equal in quality, level of development, detail and scope to the *RUS Form 515 Construction Contract* documents and suitable for lump sum bidding. Each construction bid package (collectively “Construction Documents”) will be issued for bidding by Construction Management Firms for the physical construction and equipment installation and configuration of the fiber optic network. The Design Professional will assist the Owner in responding to questions received during the bidding period and participate in the evaluation of qualifications of such Construction Management Firm bidders and their proposed Subcontractors. Construction Documents will include but are not limited to the following:



For Projects that include FTTP:

- 3.5.1 Fully developed, stamped GIS/CAD FTTP drawings with pole by pole detail;
- 3.5.2 Finalized detailed hut construction plans and specifications, utilizing modular construction where feasible, as outlined in section 3.4.2.

The Design Professional must analyze, in consultation with the Owner, whether the procurement of Work to acquire and/or install a hut will require a building permit and/or will need to be the subject of a separate procurement (as, for example as a modular building) in order to comply with Laws.

For Projects that include fixed wireless:

- 3.5.3 Finalized detailed fixed wireless infrastructure construction plans and specifications, utilizing modular construction where feasible;

For all Projects:

- 3.5.4 Detailed network equipment specifications.
 - 3.5.4.1 Equipment specifications may identify approved vendors and models on an “or equal” basis.
 - 3.5.4.2 In the event the Design Professional recommends a sole source or proprietary specification for any equipment, or, in the course of construction recommends rejecting a Construction Management Firm’s proposed substitution as not “equal,” the Design Professional shall provide such written justification and other support for such recommendation as may be required to minimize the risk of or to defend a challenge by a prospective bidder, supplier or other interested party.
 - 3.5.4.3 The bid form shall require the bidder to state whether the bidder is a preferred vendor or Vendor Approved Reseller for OSP material and/or network equipment;
- 3.5.5 For any location that the Design Professional determines may meet a National Pollutant Discharge Elimination System (“NPDES”) notice threshold, the Construction package shall include the requirements the Construction Management Firm must meet to comply with the NPDES requirements;
- 3.5.6 For any location for which a special permit, such as those described in section 3.7.4, has been or is to be issued, all conditions and requirements to be met in order to comply with the special permit;
- 3.5.7 For any location requiring compliance with archeological, historic, or environmental requirements or connection to or crossing of bridges, highways or railroads as described in section 3.7.4, all conditions and requirements to be met on account of such conditions.
- 3.5.8 Test plan responsibilities, execution and documentation;
- 3.5.9 Detailed list of materials and inventory management requirements for all aspects of the project including active and passive hardware, software and licensing components;



- 3.5.10 Prevailing wage rates for applicable job classifications and prevailing wage compliance requirements; and
- 3.5.11 Qualifications required of bidders (and/or their subcontractors) for the physical construction and equipment installation and configuration of the fiber optic network.

Each set of Construction Documents shall be capable of being transmitted in electronic form and the Design Professional shall deliver at least one reproducible version of each set of Construction Documents to the Owner.

3.6 **Systems Integration and Commissioning.**

3.6.1 The Design Professional shall prepare and submit to the Owner for approval a systems integration and commissioning plan for a single town network or multiple regional networks. The plan shall list and schedule all tasks to be completed from the Access Layer up through the Distribution and Core to the Service layer and designating the person responsible for each. The approved systems integration and commissioning plan, or relevant portions thereof, shall be included in each set of Construction Documents. The following questions should be analyzed within the context of the guiding principle that the Project should be implemented on a design-bid-build basis and the Owner's determination, in consultation with the Design Professional, about the use of any proprietary specification(s):

- 3.6.1.1 How will systems integration and commissioning be completed from the Access layer up through the Distribution and Core to the Service layer?
- 3.6.1.2 What options exist to create the appropriate level of integration standardization and consistency across construction Clusters?
- 3.6.1.3 How and by whom will Network equipment installations be performed to ensure consistency and standardization of installations across construction Clusters? Should the professional service arm of a network equipment manufacturer be considered?
- 3.6.1.4 How should the Owner integrate Towns or groups of Towns that may be part of separate construction Clusters?
- 3.6.1.5 When is it critical to have a network operator(s) involved to assist with decisions regarding systems integration?

3.7 **General Engineering and Project Management Services** The Design Professional shall provide the following engineering and Project management Services:

- 3.7.1 General Engineering and Project Management Services -- Town Specific
 - 3.7.1.1 Prepare and manage detailed Town-by-Town Microsoft Project plans, or equivalent, detailing all tasks with start and end dates to be performed in each Town and identify major milestones and critical path items;
 - 3.7.1.2 Maintain the SOR, ensuring that data are current throughout the duration of the Project;
 - 3.7.1.3 Submit Town specific or Cluster based reports as specified in the approved Communications Plan;



- 3.7.1.4 Recommend when construction segments can be released to construction;
- 3.7.1.5 Review the Construction Management Firm's submittals, including shop drawings, product data, and samples, and making approvals of or recommendations about such submittals to the Owner.
- 3.7.1.6 In the event the Construction Management Firm requests approval to make a substitution for specified equipment and makes the required submittals to satisfy the Design Professional that the proposed substituted equipment appears to satisfy the "or equal" criteria, the Design Professional shall conduct such investigation as may be appropriate on an expedited basis, to enable the Design Professional to certify the suitability of the substituted equipment and element management system software to perform the functions necessary for the Project, including but not limited to the interoperability and compatibility between Project equipment and the **MassBroadband 123** Network, the appearance and performance of installations, all before approving the requested substitution. The Design Professional's review shall not extend to the Construction Management Firm's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by the Owner or Design Professional;
- 3.7.1.7 Review and recommend approval, rejection or modification of invoices from project vendors;
- 3.7.1.8 Respond to requests for information or clarification from the Construction Management Firm regarding the plans and specifications;
- 3.7.1.9 Ensure Construction Management Firms' compliance with the Construction Documents by performing the following:
 - 3.7.1.9.1 Update plans with red-lined information from Construction Management Firms;
 - 3.7.1.9.2 Conduct desktop assessments of red-lined plans, identifying and deviations from design plans;
 - 3.7.1.9.3 Manage version control;
 - 3.7.1.9.4 Prepare inspection checklists and developing inspection schedules;
 - 3.7.1.9.5 Lead, participate in and report on routine inspection of Construction Management Firms, ensuring proper construction methods and specifications for the project are being met;
 - 3.7.1.9.6 Identify and report on punch lists or otherwise, any unauthorized deviations from design plans or specifications;
 - 3.7.1.9.7 Develop punch lists that include photos and corrective actions to be taken which will be documented in the SOR; and



- 3.7.1.9.8 Prepare final as-built plans.
- 3.7.1.10 Track construction status for all active route segments per Town through completion of construction;
- 3.7.1.11 Design modifications approved by the Owner to the approved designs as a result of route adds, moves and/or changes;
- 3.7.1.12 Evaluate change requests, provide recommendations to the Owner and track all approved change requests made by project stakeholders;
 - 3.7.1.12.1 Permissible reasons for route adds, moves and/or changes may include but are not limited to, denial by Route Facility Owners of licenses for use of existing conduit or existing aerial route facilities, Town change requests, value engineering, denial of (or in order to avoid) special permitting and hut relocation;
- 3.7.1.13 Identify and recommend actions aimed at value engineering and other cost-saving opportunities;
- 3.7.1.14 Perform oversight on all aspects of acceptance testing in accordance with an approved Acceptance Test Plan;
- 3.7.1.15 Verify completion of all aspects of the build whether physical or virtual by any vendor or operator to ensure all work has been completed to specification;
- 3.7.1.16 Ensure the network and equipment can deliver the services requested by a Town (e.g. voice, data, video);
- 3.7.1.17 Ensure Construction Management Firms' obtaining and complying with all required construction permits such as building, excavation and electrical permits;
- 3.7.1.18 Direct and monitor Towns' progress in granting and/or securing rights of way and in securing rights of access from Property Owners;
- 3.7.1.19 Establish and implement closeout procedures by construction Cluster; and
- 3.7.1.20 Ensure that all final design plans, permits, etc. are stored in the SOR.

3.7.2 **General Engineering and Project Management Services -- Non-Town Specific**
 The Design Professional shall provide the following general engineering and Project management Services, to be tracked and quantified separately from the general engineering and Project Management Services in the preceding section 3.7.1:

- 3.7.2.1 Provide Project management and scheduling services, including coordinating, scheduling, and attending pre-construction and on-going construction meetings and maintaining and updating the overall Project Schedule as needed but at least every week;
- 3.7.2.2 Prepare and distribute electronic meeting minutes to the Owner within two days of any meeting;



- 3.7.2.3 Monitor and report progress and performance of all project vendors;
- 3.7.2.4 Submit reports as specified in the approved Communications Plan;
- 3.7.2.5 Prepare, maintain, update and report on the Project budget in coordination with the Owner and recommend adjustments for optimization, changes, or to address variances that arise during the project (e.g. design, materials, equipment, labor, administrative and legal);
- 3.7.2.6 Review, track, negotiate, recommend and update all requests for changes by any project vendor, including but not limited to changes in software or firmware code;
- 3.7.2.7 Create and enforce a safety assurance plan and a quality assurance plan for the Project;
- 3.7.2.8 Draft, subject to review and approval by the Owner, notices to and other correspondence with the Construction Management Firms;
- 3.7.2.9 Collaborate with the Owner and the operator of the **MassBroadband 123** network to discuss backhaul optimization of *Last Mile* networks;
- 3.7.2.10 "Establish and implement closeout procedures for the overall Project; and
- 3.7.2.11 Alert the Owner of potential critical path schedule slippage and upcoming milestones to keep the Project on track with regard to critical dates such as dates for pole applications and make ready estimates; material acquisition lead time delays; weather delays; permitting issues; and manpower or crew shortages.

3.7.3 **Standards & Procedural Manual Development.** The Design Professional will prepare and submit to the Owner for approval manuals for all Construction Management Firms and other Project vendors to follow. These manuals shall include the following:

Standards

- 3.7.3.1 Writing standards (conventions for design plan markups)
- 3.7.3.2 Document templates (splicing plan, equipment port mapping, change request form, etc.)
- 3.7.3.3 Naming conventions
- 3.7.3.4 Labeling standards
- 3.7.3.5 CAD and GIS data standards
- 3.7.3.6 Workmanship and installation standards, including incorporating all relevant ANSI/TIA/EIA and Telcordia SR-1421 standards

Plans and Procedures

- 3.7.3.7 Safety management plan



- 3.7.3.8 Quality management plan
- 3.7.3.9 Construction installation procedures
- 3.7.3.10 Technical operations manual, including Network service provisioning.

3.7.4 **Special Permitting Services.** The Design Professional shall perform the following permitting services:

3.7.4.1 Archaeological Permit Services, including:

3.7.4.1.1 Coordination and Consultation, including coordinating

3.7.4.1.1.1 With local historical commissions, historical district and the Massachusetts Historical Commission for any elements of the Work that require review under Section 106 of the National Historic Preservation Act of 1966, as amended; and

3.7.4.1.1.2 With members of the Project team(s) to utilize plans, photographs, and other materials that assist with the identification of below ground and visual impacts to cultural resources;

3.7.4.1.2 Applying for any permits required;

3.7.4.1.3 Archaeological Sensitivity Assessment, including review by a qualified archaeologist of any elements of the Work for potential ground disturbance. This review may be conducted as any combination of desktop survey, review of aerial photography, walk-over or drive-over survey, consultation with the Owner, Design Professional Consultants and/or Construction Management Firm or archaeological dig. Upon review completion, the Design Professional will compile the information, document findings, make recommendations regarding the potential effect of the Work on archaeological resources; and

3.7.4.1.4 Historic Architectural Assessment, including review by a qualified archaeologist of any elements of the Work for potential visual effects caused by alterations to properties or their immediate surroundings. This review may be conducted as any combination of desktop survey, review of aerial photography, walk-over/drive-over survey, or consultation with Design Engineer Consultants, the Owner and/or Construction Management Firm. Upon review completion, the Design Professional will compile the information, document findings, make recommendations regarding the potential impact of the new *Last Mile* networks construction on historical properties;

3.7.4.2 Environmental Permit Services, including:

3.7.4.2.1 Project Documentation and Administration, including:

3.7.4.2.1.1 Prepare meeting minutes;

3.7.4.2.1.2 Assess the extent, if any, to which the Project is subject to Federal Environmental Protection Agency ("EPA")



Construction General Permit requirements, to Massachusetts Environmental Policy Act (“MEPA”) or local conservation commission environmental compliance laws, regulations or by-laws. Pursuant to the Federal Clean Water Act, construction activities which disturb one acre or more are required to apply to the U.S. EPA for coverage under the NPDES General Permit for Storm Water Discharges from Construction Activities.

3.7.4.2.1.3 Document and track environmental aspects of project areas;

3.7.4.2.1.4 Communicate conditions imposed by conservation commissions to Construction Management Firms and other members of the Project team;

3.7.4.2.1.5 Coordinate follow-on consultations; and

3.7.4.2.1.6 Create close-out documentation for all environmental permitting activities conducted during the Project.

3.7.4.2.2 Ongoing Consultations with:

3.7.4.2.2.1 Federal agencies (e.g. US Environmental Protection Agency, US Army Corps of Engineers);

3.7.4.2.2.2 State agencies (e.g. Department of Environmental Protection, the Natural Heritage and Endangered Species Program, the Department of Conservation and Recreation); and

3.7.4.2.2.3 Local conservation commissions.

3.7.4.2.3 Permitting Support

3.7.4.2.3.1 Conduct field surveys utilizing qualified environmental scientist;

3.7.4.2.3.2 Conduct wetlands delineation;

3.7.4.2.3.3 Utilize a qualified environmental scientist to review construction plans to determine the potential for wetland or endangered species impact;

3.7.4.2.3.4 Support design conversations and suggest specific construction techniques to mitigate impacts where required by Laws;

3.7.4.2.3.5 Complete the documents necessary to obtain necessary permits;

3.7.4.2.3.6 Represent the Owner in permit hearings with conservation commissions;



- 3.7.4.2.3.7 Apply for any permits required and file permits with the Registry of Deeds if needed;
- 3.7.4.2.3.8 Present mitigations and/or species protection plans to the Natural Heritage and Endangered Species Program (NHESP);
- 3.7.4.2.3.9 Assist the Owner in Implement non-construction related mitigation actions approved by the NHESP, per the species protection plan.

3.7.4.3 Railroad Crossing and Access Permit Services

3.7.4.3.1 Railroad Crossing Engineering

- 3.7.4.3.1.1 Develop a preliminary design plan for each fiber optic cable crossing that is certified and approved by a Professional Engineer who has done all the necessary structural analysis and calculations;
- 3.7.4.3.1.2 Submit a preliminary design plan for each fiber-optic cable crossing of the railroad tracks to the applicable rail company that demonstrates that the proposed crossing meets railroad vertical clearance and horizontal span requirements;
- 3.7.4.3.1.3 Obtain approval for the preliminary design plan from railroad company's engineering department.

3.7.4.3.2 Railroad Crossing Documentation and Administration

- 3.7.4.3.2.1 Receive notification from the Owner that it has received a railroad crossing license for the crossing and filing the license in the System of Record;
- 3.7.4.3.2.2 Coordinate between Construction Management Firm and railroad company to schedule the crossing work;
- 3.7.4.3.2.3 Ensure that the Construction Management Firm has submitted proof of railroad protective liability insurance to railroad company and/or other insurance coverage required by the railroad company;
- 3.7.4.3.2.4 Ensure that the Construction Management Firm has executed all required standard railroad services and construction agreements;
- 3.7.4.3.2.5 Coordinate with railroad company's railroad flagging and inspection representative to supervise the work.

3.7.4.4 Highway Access Permit and Bridge Attachment Services

3.7.4.4.1 Bridge Attachment Engineering

- 3.7.4.4.1.1 Develop a preliminary design plan for the conduit attachment that is certified and approved by a



Massachusetts Licensed Professional Engineer that has done all the necessary structural analysis, installation method determination, clearance calculations, restoration planning and other calculations;

- 3.7.4.4.1.2 Ensure that design is in accordance with the latest edition of the American Association of State Highway and Transportation Officials Load & Resistance Factor Design - Bridge Design Specifications and the MassHighway Bridge Manual;
- 3.7.4.4.1.3 Submit a preliminary design plan for the conduit attachment to the MassDOT that indicates the proposed attachment meets MassDOT requirements;
- 3.7.4.4.1.4 Obtain approval for the preliminary design plan from MassDOT's engineering department.

3.7.4.4.2 Highway Access Engineering: Work with the Owner to develop and submit traffic plans to the MassDOT

3.7.4.4.3 Documentation and Administration

- 3.7.4.4.3.1 Support the Owner in its application to the MassDOT to establish a license agreement for the attachment;
- 3.7.4.4.3.2 Receive notification from the Owner that it has received a bridge attachment and highway access permit and file the permit in the System of Record;
- 3.7.4.4.3.3 Coordinate between the Construction Management Firm and MassDOT to schedule the work; and
- 3.7.4.4.3.4 Coordinate with MassDOT representative to supervise the work.

3.7.5 **Acceptance Test Plan.** The Design Professional shall prepare and submit to the Owner for approval and, after approval, administer a detailed Acceptance Test Plan ("ATP") for all aspects of the Project. The ATP will outline all testing procedures to be completed by the Design Professional and/or Construction Management Firms, specifying which firm is responsible for implementing each procedure, and shall include but shall not be limited to:

For Projects including FTTP:

- 3.7.5.1 OSP installation inspections
 - 3.7.5.1.1 Prepare and use installation inspection checklists that list tasks that will verify whether the Construction Management Firm has followed all applicable installation standards outlined in the approved Standards and Procedural Manuals;
 - 3.7.5.1.2 Track and be accountable for performing such inspections;
 - 3.7.5.1.3 Document such inspections in the SOR;



- 3.7.5.1.4 Prepare tracer wire test specifications, including, when applicable, listing the procedures for testing of each tracer wire on underground fiber to verify end-to-end electrical continuity.
- 3.7.5.2 Develop optical performance, power, signal quality, and maintenance specifications
 - 3.7.5.2.1 Prepare and implement inspection guidelines and performing oversight.
 - 3.7.5.2.2 Prepare standardized forms for final acceptance test result documents specifying the types of tests. These tests will be documented in the SOR. Summary data will also be required at a Town by Town level, including:
 - 3.7.5.2.2.1 Tier 1 Optical Loss Test (OLT) and Light Source and Power Meter (LSPM) tests of link attenuation and polarity checks
 - 3.7.5.2.2.2 Tier 2 Optical Time Domain Reflectometer (OTDR) testing will be performed at different stages throughout the project such as prior to installation to test for cable length, defects, splices, abnormalities and loss value as well as upon completion of a fiber span. Testing should include continuity uniformity tests, splice loss test and optical length measurement;
 - 3.7.5.2.2.3 Loss budget calculations to determine if the systems were installed correctly and if the combined loss of all installed components is within allowable limits. Loss budget should include fiber optic connectors, fiber splices, and the fiber cable; and
 - 3.7.5.2.2.4 Fiber characterization (when required), to record Polarization Mode Dispersion (PMD) and Chromatic Dispersion (CD) on the entire span.
 - 3.7.5.2.3 Set specifications and calibration requirements for testing equipment.
 - 3.7.5.2.4 Develop network performance specifications which should consist of the following:
 - 3.7.5.2.4.1 Component level test;
 - 3.7.5.2.4.2 Link level test;
 - 3.7.5.2.4.3 System level test; and
 - 3.7.5.2.4.4 Original Equipment Manufacturer test.
 - 3.7.5.2.5 Develop at least the following additional inspection checklists, which should include inspection of any applicable room or site modifications, grounding systems, electrical work, HVAC systems, relay racks, cable and wiring, labeling, and general suitability for network operations and maintenance activities, as applicable:



- 3.7.5.2.5.1 Fiber construction checklist;
 - 3.7.5.2.5.2 Hut construction checklist;
 - 3.7.5.2.5.3 Electronics configuration checklist; and
 - 3.7.5.2.5.4 Customer premise construction checklist.
- 3.7.5.2.6 The ATP shall include all corrective action steps and/or punch list procedures for any items found not to be within specification, including:
- 3.7.5.2.6.1 Deviation policy;
 - 3.7.5.2.6.2 Anomaly tracking; and
 - 3.7.5.2.6.3 Maximum number of re-burns.

For Projects including Fixed Wireless:

- 3.7.5.3 Fixed wireless infrastructure inspections
 - 3.7.5.3.1 Prepare an installation inspection checklist that lists tasks which can verify that contractors have followed all applicable installation standards such as ANSI/EIA/TIA and Telcordia outlined in the approved Standards and Procedures Manuals and Construction Documents; and
 - 3.7.5.3.2 Track and be accountable for performing these inspections.
- 3.7.5.4 Develop fixed wireless system performance, coverage, signal quality, and equipment maintenance specifications;
 - 3.7.5.4.1 Provide inspection guidelines and oversight.
 - 3.7.5.4.2 Standardize final acceptance test result documents specifying the types of tests. These tests will be documented in the SOR. Summary data will also be required at a Town by Town level;
- 3.7.5.5 Develop test equipment specifications and calibration requirements;
- 3.7.5.6 Develop network performance specifications which should consist of the following:
 - 3.7.5.6.1 Component level test;
 - 3.7.5.6.2 Link level test; and
 - 3.7.5.6.3 System level test;
- 3.7.5.7 Develop and execute the inspection checklists, which shall include:
 - 3.7.5.7.1 The inspection of: any applicable room or site modifications, grounding systems, electrical work, HVAC systems, relay



racks, cable and wiring, labeling, and general suitability for network operations and maintenance activities, applicable:

3.7.5.7.2 An inspection checklist shall be created that includes:

- Fixed wireless infrastructure construction checklist;
- Electronics configuration checklist; and
- Customer premise construction checklist;

3.7.5.8 The ATP should include all corrective action steps and/or punch list procedures for any items found not to be within specification.

Development of the ATP shall be billable as one of the Non-Town Specific tasks.

3.7.6 **Town-Specific Turnover Packages.** The Design Professional shall prepare and submit to the Owner for approval robust turnover packages for delivery to each Town upon completion of construction and inspection. The Design Professional shall prepare each element of the turnover package unless otherwise directed by the Owner. Each turnover package shall include, but may not be limited to:

3.7.6.1 Town manual to be prepared by the Owner with such assistance and content from the Design Professional as the Owner may request;

3.7.6.2 Technical Equipment Manual (manufacturer supplied owner's manuals and product cut sheets)

3.7.6.3 Technical Operations Manual (network service provisioning guidelines)

3.7.6.4 Final As-Built plans (in all required formats)

3.7.6.5 Route Facility licenses

3.7.6.6 Applicable permits

3.7.6.7 GIS data if applicable

3.7.6.8 Warranties for material and equipment

3.7.6.9 Software licenses

3.7.6.10 Test results

3.7.6.11 Inspection reports

3.7.6.12 Asset listing in Excel format (make, model, serial numbers) and proof of transfer of equipment to the Town or other person designated by the Owner

3.7.6.13 Final financial report (prepared by the Owner)

3.7.6.14 BOM for OSP restoration kit, including a material list, ordering information, date-coded issues for material with expiration dates (e.g., adhesives, sealing compounds) and instructions



3.7.6.15 Sparing recommendation

The Design Professional shall submit to the Owner for approval a template for the turnover package at least sixty (60) days before the scheduled completion of construction for the first Cluster and make any required changes at least thirty (30) days before such completion.

The Design Professional shall prepare a draft of each Cluster's and each Town's Turnover Package no less than fourteen (14) days before completion of that Cluster's or Town's construction and shall make any changes reasonably requested by the Town and/or Owner.

3.8 Develop Communications Management Plan

The Design Professional shall prepare and submit to the Owner for approval an overall communications management plan for the interaction between all stakeholders, including but not limited to the Owner, Design Professional, Towns, Construction Management Firms and any other Project vendors not under contract to one of the foregoing. The communications management plan shall establish effective and timely delivery methods and should include but is not limited to the following:

- 3.8.1 Communication Type – Reports, presentations, reviews and meetings, announcements
- 3.8.2 Communication Purpose – Project status, project review, Project submittals, team meetings, risk assessment
- 3.8.3 Delivery Method – Email, meeting, conference call
- 3.8.4 Frequency – Daily, weekly, monthly, quarterly
- 3.8.5 Audience – Program Manager, project team, executive team, construction team, Town

The Design Professional shall provide a detailed description of how it will comply with the reporting requirements for this project. Reports shall be linked and maintained in the System of Record. The table below lists reports required. The Owner may, in its discretion, add, remove, or modify any or all reporting requirements

Table 3.8

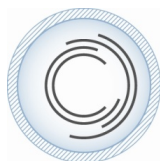
Report Title	Frequency	Description
Design status reports	Bi-Weekly	Provide MBI a report on progress with route, preliminary and final design effort
Route and premise evaluation status report	Weekly	Provide MBI a report on progress with route and premise evaluations and site visits
Project budget status report	Monthly	Provide MBI/MassTech a project budget report
Change Management status report	Monthly	Provide MBI a report on progress with changes, status of request, impact analysis (budget/schedule)
Safety inspection status report	Monthly	Provide MBI a report of ongoing safety inspections
Construction status report	Weekly	Provide MBI a report on construction firm progress per town/cluster
Project health status report	Bi-Weekly	Provide MBI a dashboard listing of overall project health regarding time/budget
Quality Management status report	Monthly	Provide MBI a report on construction and equipment vendor work quality and/or design deviations
Design Engineer team status report	Monthly	Provide MBI a report on staffing and engineering teams' progress (e.g. Lab, Design, Engineering, PM, Permitting)

Creation of the Communications Management Plan and report templates are billable as part of this task. The on-going reporting will be included in compensation for the General Project Management Services tasks.



3.9 OTHER RESPONSIBILITIES OF THE DESIGN PROFESSIONAL

- 3.9.1 **HAZARDOUS MATERIAL** A Hazardous Material is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, the Design Professional shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement. However, the Design Professional shall immediately notify the Owner in writing of any actual knowledge of the Design Professional or its Consultants of the presence of any hazardous materials or toxic substances on or affecting the Worksite.
- 3.9.2 Except as otherwise provided in this Agreement, the Design Professional shall grant an appropriate intellectual property license to use design documents prepared by the Design Professional to those retained by the Owner, the Construction Management Firm, Towns or their permitted assigns to perform Work for the Project.
- 3.9.3 **QUALIFICATIONS** The Design Professional warrants and represents that the Design Professional and its Consultants are and will remain through the Project duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.
- 3.9.4 **CONSULTANTS** The Design Professional shall not engage the services of any Consultant without first obtaining the Owner's written approval, which approval shall not be unreasonably withheld. Such approval by the Owner shall not be deemed to create any contractual relationship between the Owner and any such Consultant, except that the Owner shall be considered the intended beneficiary of the performance of their services. Except for the waivers required under section 7.3.2, the Design Professional shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Owner. The Design Professional shall bind its Consultants in the same manner as the Design Professional is bound to the Owner under this Agreement.
- 3.9.5 **DESIGN PROFESSIONAL'S REPRESENTATIVE** The Design Professional's representative is _____, who shall possess full authority to receive and act on instructions from the Owner. If the Design Professional changes its representative or their authority, the Design Professional shall immediately notify the Owner in writing.
- 3.9.6 **KEY PROJECT PERSONNEL** The key Project personnel whom the Design Professional shall assign are as set forth in Exhibit C, including the percentage of time to be devoted by each to the Design Professional's Services. Such personnel shall not be changed without the written approval of the Owner, which approval shall not be unreasonably withheld.
- 3.9.7 **ON-SITE PRESENCE** The Design Professional shall have appropriate staff, designated in Exhibit C, to use the workspace provided by the Owner in accordance with section 4.3. The roles of the persons so assigned may vary depending on the stage of the Project, as described in Exhibit C. The Design Professional acknowledges that the purpose of such office space is to facilitate integration between the Design Professional and the Owner's Project team and enhance communication and coordination between them.
- 3.9.8 **ROYALTIES, PENALTIES, AND COPYRIGHTS** The Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or



copyrighted materials, methods, or systems selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional shall defend, indemnify, and hold the Owner, the Construction Management Firm, and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

- 3.9.9 CONFIDENTIALITY The Design Professional shall treat as confidential and not disclose to third parties, except as necessary for the performance of this Agreement or as required by law, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods, routes, design systems and the like that are so identified in writing and disclosed to the Design Professional or which the Design Professional acquires in performing the Services required by this Agreement. The Design Professional shall include the same obligation in all agreements with Consultants. The Owner shall treat as confidential information all design systems that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Design Professional shall each specify those items to be treated as confidential and shall mark them as "Confidential."

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION PROVIDED BY OWNER

- 4.1.1 To the extent the Owner has obtained the information identified below, the Owner shall provide them to the Design Professional in a timely manner. This information is made available for context only and the Owner makes no warranty as to its completeness or accuracy:

4.1.1.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations, all as set forth in Exhibit A;

- 4.1.2 The Owner shall promptly report to the Design Professional errors, inconsistencies, and omissions it discovers in the Final Design and Construction Documents; however, nothing in this subsection shall relieve the Design Professional of responsibility for its own errors, inconsistencies, and omissions.

- 4.1.3 Approvals by the Owner shall not be deemed to be an assumption of responsibility by the Owner for any error, inconsistency, or omission in the drawings and specifications or other documents prepared by the Design Professional, its employees, agents, or consultants. The Owner shall provide all approvals required under this Agreement in a timely manner.

- 4.2 OWNER'S REPRESENTATIVE. The Owner's representative is [REDACTED]. The Representative shall be fully acquainted with the Project; agrees to furnish the information and services required of the Owner pursuant to section 4.1 in a timely manner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or their authority, the Owner shall immediately notify the Design Professional in writing.

- 4.3 OFFICE SPACE.



The Owner will provide Westborough, MA office space for the Design Professional in accordance with the approved Project Plan. Each workspace or cubicle will include a telephone, internet access and power. The Design Professional personnel designated to occupy the office space will be granted standard work-day building and office access.

The Design Professional shall have reasonable access to Premises at reasonable times, but only to the extent the Owner itself has such access. The Design Professional may seek additional access only after receiving express permission of the Owner to do so. If the Owner gives such permission, the Design Professional shall promptly document all its actions to obtain such additional access and all access obtained as a result of such actions.

ARTICLE 5 TIME

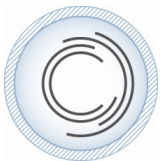
- 5.1 **TIME FOR SERVICES.** Time is of the essence. The Design Professional shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner. Unless otherwise agreed, all Services must be complete by December 31, 2020. If completion of all Services is not achieved within this time through no fault of the Design Professional, the Design Professional's compensation for Services not then performed shall be equitably adjusted.
- 5.2 **DELAYS BY DESIGN PROFESSIONAL.** If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of the Design Professional which violates its standard of care or by a breach of an express obligation under this Agreement, the Design Professional shall compensate the Owner for and indemnify it against all damages that may accrue as a result of such delay, except as otherwise provided in section 5.4. In addition, the Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide written notice to the Design Professional of such delay within a reasonable time after the Owner first recognizes the delay.
- 5.3 **DELAYS BY OWNER.** If the Design Professional is delayed in the performance of its Services by any act or omission of the Owner, or by changes ordered by the Owner which are due to causes beyond the Design Professional's control, or by a delay authorized by the Owner pending dispute resolution, then the time allotted in the Project Schedule for the Design Professional's Services shall be extended for the period of such delay or the Owner shall authorize the Design Professional to work overtime to make up such lost time, and the Design Professional's compensation for Services performed after the Design Professional's notice of delay shall be equitably adjusted. The Design Professional shall provide prompt written notice to the Owner of such delay after the Design Professional first recognizes such delay.
- 5.4 **LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** – intentionally omitted

ARTICLE 6 COMPENSATION AND PAYMENTS

6.1 COMPENSATION

The Owner shall compensate the Design Professional on the following basis:

- 6.1.1 The total compensation shall not exceed the Not-to-Exceed ("NTE") Price stated in Exhibit B, as the same may be further adjusted in accordance with this Article 6. The Owner shall pay the Design Professional the following components, up to the NTE Price as so adjusted:
- 6.1.2 For Town-Specific Services as described in sections 3.2.3, 3.2.1, 3.2.2, 3.2.4, 3.5, 3.7.1 and 3.7.6 (each section a Town-Specific Task), performed with respect to the design and construction for a given Town, the sum of the products of the actual



number of Units in the Town-Specific Pricing Matrix in Exhibit B for that Town times that Unit's respective Unit Price stated in that Matrix. **[This wording may change for the Services in section 3.7.1 depending on the pricing narrative provisions accepted.]**

6.1.2.1 If and when the Owner notifies the Design Professional in writing that the Owner has determined that a Town is no longer eligible to participate in the Project, the NTE Price shall be adjusted downward by subtracting that portion of the total price shown on the Town-Specific Pricing Matrix for that Town for services not then performed.

6.1.2.2 Town-Specific Services performed under a Town-Specific Task shall be billable monthly upon the completion of the respective task for a Town during that month.

6.1.3 **[This wording may change depending on the pricing narrative provisions accepted.]** For each category of the Non-Town-Specific Services as described in sections 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.2.4, 3.3, 3.6, 3.7.2, 3.7.3, 3.7.4 and each subdivision thereof, 3.7.5 and 3.8 (each section and subdivision a "Non-Town-Specific Task"), the documented costs actually incurred by the Design Professional, subject to the not-to-exceed total in the Non-Town-Specific Services Pricing Matrix for the respective category. The cost payable for the labor of the Design Professional and its approved Consultants shall be the hourly rate stated in the Level of Effort Non Town Matrix in Exhibit B.

6.1.3.1 Costs reimbursable for a Non-Town-Specific Task are billable in the Design Professional's next monthly invoice following costs being incurred. In the case of costs incurred to a Consultant of the Design Professional or another third party vendor, the Design Professional's invoice must be accompanied by a complete copy of the Consultant's or third party vendor's invoice to the Design Professional and other documentation to support other costs, such as invoices, expense reports, receipts..

6.1.4 **[This wording may change depending on the pricing narrative provisions accepted.]** The Unit Prices and hourly rates specified in the pricing template will not change, except as described in Exhibit B. If the quantity of Units actually performed for a given task exceeds the assumed quantity of units for that task as stated in Exhibit B without fault of the Design Professional in accordance with the variables and contingencies identified in the Pricing Narrative approved by the Owner, the Design Professional shall be entitled to a change order increasing the units stated in Exhibit and increasing the corresponding Not-to-Exceed pricing accordingly.

6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

The Design Professional shall be compensated for services beyond the scope in Article 3 on a lump sum or cost reimbursable basis, as the Parties may agree by change order.

6.3 PAYMENTS

6.3.1 The Design Professional shall submit to the Owner for its approval monthly applications for payment for Services and Reimbursable costs, if any, with reasonable supporting detail. Each invoice for payment prior to final payment shall be accompanied by a Design Engineer Progress Payment Release in the form attached as Exhibit D-1 and a Design Consultant and Subcontractor Progress Payment Release in the form attached as Exhibit D-2, executed respectively by the



Design Professional and each Consultant and other third party vendor of the Design Professional that has provided services through the date of the invoice. The Design Professional's invoice for final payment shall be accompanied by a Design Engineer's Final Payment Certificate and Release in the form attached as Exhibit E-1 executed by the Design Professional and a Final Design Consultant and Subcontractor Release in the form attached as Exhibit E-2 executed by each Consultant and other third party vendor of the Design Professional that has provided Services on the Project. The Design Professional shall be responsible each month for obtaining such forms from each Consultant and third party vendor whose Services are invoiced under that month's invoice, or who gives notice of identification under Mass. G.L. Chapter 254. It shall be a strict condition precedent to payment to the Design Professional of the Design Professional's invoice that the Design Professional deliver to Owner the applicable form for the Design Professional and each Consultant or other lienor claiming under the Design Professional, as defined in Mass. G.L. Chapter 254.

- 6.3.2 The Owner shall pay approved amounts no later than forty-five (45) Days after the Design Professional has submitted its fully documented applications for payment in an acceptable format. Upon receipt of payment from the Owner, the Design Professional shall promptly make payment to its Consultants and third party vendors as appropriate.
- 6.3.3 Prior to final payment to the Design Professional, the Design Professional shall furnish evidence satisfactory to the Owner that there are no claims, obligations, or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by the Design Professional for compensation for its Services.
- 6.3.4 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from the Design Professional's Services, the Design Professional shall reimburse, indemnify and hold harmless the Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by the Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided the Owner is making payments or has made payments to the Design Professional in accordance with the terms of this Agreement. In addition, in the event any of the Design Professional's consultants or third party vendors files or records documents to assert a lien under Mass. G.L. Chapter 254, within fourteen (14) days of notice thereof by the Owner, the Design Professional shall cause such lien to be dissolved or discharged by recording a lien dissolution bond or otherwise.
- 6.3.5 Should the Design Professional or its Consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.
- 6.3.6 The Design Professional's expense records shall be maintained for a period of at least six (6) years after final payment under this Agreement, in reasonable detail, in accordance with generally accepted accounting principles and otherwise in accordance with Mass. G.L. ch. 30 Section 39R. Such records shall be available to the Owner and its designees at mutually convenient times.
- 6.3.7 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the rate of three percentage points over the rediscount rate then charged by



the Federal Reserve Bank of Boston from the date payment is due to the date on which the Owner makes payment.

ARTICLE 7 INDEMNITY AND INSURANCE

7.1 INDEMNITY

7.1.1 To the fullest extent permitted by law, the Design Professional shall indemnify and hold harmless the Owner, the Owner's officers, directors, members, consultants, agents, and employees, the Construction Management Firm and Subcontractors (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, for bodily injury, sickness, or death, and property damage that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions or breach of an express obligation of the Design Professional, the Design Professional's Consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

7.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design Professional, anyone directly or indirectly employed by the Design Professional or anyone for whose acts the Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design Professional under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

7.2 INSURANCE

7.2.1 Before commencing its Services and as a condition precedent to payment, the Design Professional at its own expense shall purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by the Design Professional or by any of its Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Design Professional may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Design Professional shall provide to the Owner certificates of insurance and endorsements evidencing compliance with the requirements of this Section 7.2. The endorsements for Commercial General Liability, Automobile and any umbrella or excess policies that name the Owner as an additional, primary insured on a non-contributory basis. The certificates shall show a special coverage or provisions required by this Agreement. The Design Professional shall also provide the Owner with complete copies of all policies required by this Agreement promptly upon the Owner's request, including all endorsements and amendments.

7.2.2 The Design Professional at its own expense shall purchase and maintain in effect all insurance coverage required under the subsection immediately above and described in this subsection with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which are reasonably satisfactory to the Owner:

7.2.2.1 Workers' Compensation and Employers' Liability Insurance in accordance with Laws and wherever the Design Professional's Services are being performed. Employers' Liability coverage shall be written with at least the following limits of liability:



- a. \$1,000,000 bodily injury per accident.
- b. \$1,000,000 bodily injury by disease policy limit.
- c. \$1,000,000 bodily injury by disease per employee.

7.2.2.2 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in Subsection 7.1.1, with at least the following limits of liability:

- a. \$1,000,000 per occurrence.
- b. \$2,000,000 general aggregate.
- c. \$2,000,000 products/completed operations aggregate.
- d. \$1,000,000 personal and advertising injury limit.

7.2.2.3 Business Automobile Liability Insurance \$1,000,000 per occurrence.

7.2.3 The Design Professional shall require its Consultants to maintain Business General Liability and Business Automobile Liability coverage with a company satisfactory to the Owner and with limits acceptable to the Owner.

7.2.4 PROFESSIONAL LIABILITY INSURANCE The Design Professional shall maintain Professional Liability Insurance with a company satisfactory to the Owner, whose approval shall not be unreasonably withheld, for claims arising from the negligent performance of Services under this Agreement, which shall be either (designate one only):

Practice Policy

Project Specific Coverage

written for not less than \$2,000,000 per claim and in the aggregate with a deductible not to exceed \$2,000,000. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by the Design Professional for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for six (6) year(s) following final payment to the Design Professional. The deductible shall be paid by the Design Professional.

7.2.5 Consultants retained by the Design Professional for this Project shall maintain Professional Liability Insurance with a company and for such amounts as are satisfactory to the Owner for claims arising from the negligent performance of its Services, which shall be either (designate one only):

Practice Policy

Project Specific Coverage.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all services performed by the consultants for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for six (6) year(s) following final payment to the Design Professional. Deductibles shall be paid by the Design Professional.

7.2.6 The Design Professional shall furnish to the Owner certificates of insurance evidencing the required coverages listed in this section, a copy of its Professional



Liability policy and, promptly upon Owner's request, copies of any or all other policies required hereunder. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. The Design Professional and its Professional Liability insurance carrier shall notify the Owner within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. The Owner shall have the right to notify directly the Design Professional's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for six (6) year(s) following final payment to the Design Professional.

7.3 PROPERTY INSURANCE

- 7.3.1 Each party shall purchase and maintain such property insurance as it may deem necessary to protect itself against damage to or loss of its own property.
- 7.3.2 If and to the extent required under any contract for construction of any part of the Project, the Owner and Design Professional waive all rights against each other and the applicable Construction Management Firm, its Subcontractors and Subsubcontractors, for loss or damage to the extent covered by property insurance, except such rights as they may have to the proceeds of such insurance. The Owner and the Design Professional shall require similar waivers, on the same condition, from all of their Consultants retained for the Project.

ARTICLE 8 TERMINATION

- 8.1 **TERMINATION BY EITHER PARTY.** Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon fourteen (14) Days from receipt. Such notice shall include a detailed explanation of why such breach or other failure constitutes a violation of this Agreement. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.
- 8.2 **TERMINATION BY OWNER FOR CONVENIENCE.** Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Design Professional. If this Agreement is terminated pursuant to this section, the Design Professional may recover from the Owner payment for Services performed to the date of termination, in accordance with this Agreement, and any proven loss, cost, or expense in connection with the Services, including those resulting from the termination. Under no circumstances shall the Owner be liable for the cost of or profit on Services not performed.

ARTICLE 9 DISPUTE RESOLUTION

- 9.1 **CONTINUANCE OF SERVICES AND PAYMENT.** Unless otherwise agreed in writing, the Design Professional shall continue to perform its Services during any dispute resolution process or proceeding. If the Design Professional continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.
- 9.2 **DIRECT DISCUSSIONS.** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, the senior



executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

- 9.3 **MEDIATION.** If direct discussions pursuant to section 9.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.
- 9.4 **BINDING DISPUTE RESOLUTION.** If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration at the sole election of the Owner, using any of the following rules:

the current Construction Industry Arbitration Rules of the AAA and administered by the AAA; or
the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS.

Unless the Owner elects otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

Absent such election, Litigation in either the state or federal court having jurisdiction of the matter in Suffolk County, Massachusetts.

- 9.4.1 **COSTS** The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.
- 9.4.2 **VENUE** The venue of any binding dispute resolution procedure shall be in Suffolk County, Massachusetts, unless the Parties agree on a different mutually convenient location.
- 9.4.3 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.



- 9.4.4 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.
- 9.5 **MULTIPARTY PROCEEDINGS.** The Owner and Design Professional agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.
- 9.6 **LIEN RIGHTS.** Nothing in this article shall limit any rights or remedies not expressly waived by the Design Professional that the Design Professional may have under lien laws.

ARTICLE 10 MISCELLANEOUS

- 10.1 **OWNERSHIP OF TANGIBLE DOCUMENTS.** The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided, or procured by the Design Professional or by consultants retained by the Design Professional and distributed to the Owner for this Project, upon the making of final payment to the Design Professional or in the event of termination under article 8, upon payment for all sums due to the Design Professional under sections 8.1 and 8.2.
- 10.1.1 **COPYRIGHT** The Parties agree that the Owner shall obtain ownership of the copyright of all Documents and all intellectual property and other rights in written or electronic deliverables and work product of the Design Professional. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by section 10.1 and the payment of the fee reflecting the agreed value of the copyright set forth below: \$100.00. Such fee shall be deemed paid by virtue of the first payment made by the Owner to the Design Professional for Phase 1 Services. The Design Professional shall execute and furnish all assignments or other documents reasonably required by the Owner to effectuate such ownership.
- 10.1.2 **USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to article 8, the Owner shall have the right to use, to reproduce, and to make derivative works of all written or electronic deliverables and work product of the Design Professional Construction Documents to complete the Project or a given Cluster, regardless of whether there has been a transfer of copyright under subsection 10.1.1, provided payment for the Construction Documents or other written or electronic deliverables and work product of the Design Professional at issue has been made pursuant to section 10.1.
- 10.1.3 **OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT** After completion of the Project, the Owner and/or Towns may reuse, reproduce, or make derivative works from the Construction Documents and other written or electronic deliverables and work product of the Design Professional solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner's or Town's use of the Documents without the Design Professional's involvement or on other projects is at the Owner's sole risk, except for the Design Professional's indemnification obligations pursuant to Section 3.9.8, and the Owner shall defend, indemnify, and hold harmless the Design Professional and its consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use by the Owner; provided however that the duty to defend, indemnify, and hold harmless hereunder shall not apply to use by a Town.



- 10.1.4 DESIGN PROFESSIONAL'S USE OF DOCUMENTS Where the Design Professional has transferred its copyright interest in the Documents under subsection 10.1.1, the Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.
- 10.1.5 The Design Professional shall obtain from its Consultants rights and rights of use that correspond to the rights given by the Design Professional to the Owner and Towns in this Agreement and the Design Professional shall provide evidence that such rights have been secured.
- 10.2 EXTENT OF AGREEMENT. Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design Professional and not for the benefit of any third party.
- 10.3 DOCUMENTS IN ELECTRONIC FORM. If the Owner requires that the Owner, Design Professional, and Construction Management Firm exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design Professional shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Such specifications shall be included in the Construction Documents. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.
- 10.4 ASSIGNMENT. Except as to the assignment of proceeds, the Design Professional shall not assign its interest in this Agreement without the written consent of the Owner. The Owner may, without consent of the Design Professional, assign its rights under this agreement to a wholly owned subsidiary company or instrumentality, to one or more Towns or municipal light plants established by one or more Towns, or to a cooperative of such municipal light plants
- 10.5 GOVERNING LAW AND VENUE. This Agreement shall be governed by the law in effect at the location of the Project. The venue for any dispute resolution proceeding, unless the Parties agree otherwise, shall be in Suffolk County, Massachusetts and, if in court, in the Business Litigation Session of Suffolk Superior Court.
- 10.6 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 10.7 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.
- 10.8 TITLES. The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 10.9 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its



terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

10.10 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

OWNER: Massachusetts Technology Park Corporation,
d/b/a Massachusetts Technology Collaborative

BY: _____ NAME: _____ TITLE: _____

DESIGN PROFESSIONAL: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

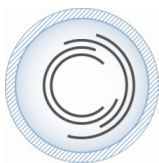
END OF AGREEMENT



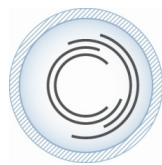
EXHIBIT A PROGRAM OVERVIEW

1. List of Towns and Preliminary Data

County	Municipality	Maintenance Responsibility	Power Distribution Provider (Service Area)	Estimated Unit Count*	Estimated Number of Poles	Estimated Route Miles for Existing Poles per town	Square Miles	Proposed Technology to be Deployed
BERKSHIRE	ALFORD	NGRID	NGrid - MassElectric (Baystate West)	357	730	21	11.5	GPON
FRANKLIN	ASHFIELD	VZ	Eversource Energy (Northern Division)	934	1743	77	40.3	GPON
BERKSHIRE	BECKET	EVERSOURCE	Eversource Energy (Northern Division)	1862	3560	119	47.8	GPON
HAMPDEN	BLANDFORD	SPLIT	Eversource Energy (Northern Division)	612	1385	55	53.6	GPON
FRANKLIN	CHARLEMONT	NGRID	NGrid - MassElectric (Baystate West)	671	1783	52	26.4	GPON
HAMPSHIRE	CHESTERFIELD	VZ	Eversource Energy (Northern Division)	618	1320	47	31.3	GPON
FRANKLIN	COLRAIN	SPLIT	Eversource Energy (Northern Division)	908	1802	74	43.4	GPON
HAMPSHIRE	CUMMINGTON	VZ	Eversource Energy (Northern Division)	533	1275	49	21.3	GPON
BERKSHIRE	EGREMONT	NGRID	NGrid - MassElectric (Baystate West)	1034	1837	47	18.9	GPON
BERKSHIRE	FLORIDA	NGRID	NGrid - MassElectric (Baystate West)	383	1108	36	24.6	GPON
HAMPSHIRE	GOSHEN	SPLIT	NGrid - MassElectric (Baystate West)	636	1324	35	17.7	GPON & AE
BERKSHIRE	HANCOCK	EVERSOURCE	Eversource (Northern Division)/Ngrid (Baystate West)	755	758	30	35.8	GPON
FRANKLIN	HAWLEY	VZ	NGrid - MassElectric (Baystate West)	218	833	28	30.9	WIRELESS
FRANKLIN	HEATH	VZ	NGrid - MassElectric (Baystate West)	403	1563	49	24.9	GPON
FRANKLIN	LEYDEN	VZ	Eversource Energy (Northern Division)	350	817	34	18	GPON & AE
HAMPSHIRE	MIDDLEFIELD	EVERSOURCE	Eversource Energy (Northern Division)	287	781	33	24.2	WIRELESS
FRANKLIN	MONROE	NGRID	NGrid - MassElectric (Baystate West)	88	260	13	10.8	GPON
BERKSHIRE	MONTEREY	NGRID	NGrid - MassElectric (Baystate West)	994	1900	55	27.4	GPON
HAMPDEN	MONTGOMERY	EVERSOURCE	Eversource Energy (Northern Division)	372	722	27	15.2	GPON
BERKSHIRE	NEW ASHFORD	EVERSOURCE	Eversource Energy (Northern Division)	114	228	12	13.48	GPON
WORCESTER	NEW BRAINTREE	NGRID	NGrid - MassElectric (Baystate West)	400	1510	49	20.9	GPON
BERKSHIRE	NEW MARLBOROUGH	NGRID	NGrid - MassElectric (Baystate West)	1116	2818	88	47.9	GPON
FRANKLIN	NEW SALEM	NGRID	NGrid - MassElectric (Baystate West)	472	1289	37	58.6	GPON
BERKSHIRE	OTIS	VZ	Eversource Energy (Northern Division)	1751	2421	80	38	GPON
BERKSHIRE	PERU	EVERSOURCE	Eversource Energy (Northern Division)	433	971	33	36	GPON
WORCESTER	PETERSHAM	NGRID	NGrid - MassElectric (Baystate West)	713	1561	50	68.3	GPON
HAMPSHIRE	PLAINFIELD	VZ	Eversource Energy (Northern Division)	361	979	41	21.3	GPON & AE
WORCESTER	PRINCETON	PRINCETON MUNICIPAL	Princeton Municipal Light Department	1394	2373	74	35.8	GPON & AE
FRANKLIN	ROWE	NGRID	NGrid - MassElectric (Baystate West)	249	942	29	24	GPON
BERKSHIRE	ROYALSTON	VZ	NGrid - MassElectric (Baystate West)	673	2000	62	42.5	WIRELESS
BERKSHIRE	SANDISFIELD	SPLIT	Eversource Energy (Northern Division)	766	1762	70	53	GPON
BERKSHIRE	SAVOY	EVERSOURCE	Eversource Energy (Northern Division)	388	735	34	36	HYBRID
FRANKLIN	SHUTESBURY	SPLIT	NGrid - MassElectric (Baystate West)	881	1350	37	27.2	GPON & AE
HAMPDEN	TOLLAND	EVERSOURCE	Eversource Energy (Northern Division)	566	868	38	32.8	GPON
BERKSHIRE	TYRINGHAM	VZ	Eversource Energy (Northern Division)	338	750	22	18.9	GPON
FRANKLIN	WARWICK	VZ	NGrid - MassElectric (Baystate West)	399	1570	47	37.7	WIRELESS
BERKSHIRE	WASHINGTON	EVERSOURCE	Eversource Energy (Northern Division)	269	562	26	38.8	GPON
FRANKLIN	WENDELL	VZ	NGrid - MassElectric (Baystate West)	471	1150	43	32.2	GPON & AE
BERKSHIRE	WINDSOR	EVERSOURCE	Eversource Energy (Northern Division)	510	1310	55	35.2	GPON
HAMPSHIRE	WORTHINGTON	VZ	Eversource Energy (Northern Division)	698	1623	61	32.1	GPON



County	Municipality	Maintenance Responsibility	Power Distribution Provider (Service Area)	Estimated Unit Count*	Estimated Number of Poles	Estimated Route Miles for Existing Poles per town	Square Miles	Proposed Technology to be Deployed
			TOTALS	24123	54273	1869	1264.68	



2. Description of Project:

Of the Towns and cities included in the **MassBroadband 123** network, 83 are served or will soon be served to varying degrees by an incumbent or new broadband provider but the remaining 40 Towns in the **MassBroadband 123** footprint are low density, rural areas that do not have an incumbent cable broadband provider and are referred to as “unserved.” The Mass Tech Collaborative is addressing the last mile challenge with the goal of making high-speed Internet available to unserved residents and businesses within the 40 unserved Towns.

The Commonwealth has responded to the last mile challenge with a \$50 Million appropriation of state capital funding (Chapter 257 of the Acts of 2014) enacted in August of 2014 to support the build-out of *Last Mile* infrastructure in western Massachusetts. Of these funds, up to \$40 million has been allocated for the unserved Towns. Mass Tech Collaborative’s main objective is to develop solutions to offer broadband access for households and businesses that maximize the impact of limited public resources, leverage other sources of funding (to the extent necessary and appropriate), and promote economic growth in the region.

Most of the *Last Mile* Networks will constitute the installation of new fiber optic cables attached to existing utility poles. Mass Tech Collaborative plans to oversee the construction of up to 1869 miles of new fiber optic cabling in western Massachusetts with approximately 24,123 homes being passed based upon current desk top Town model estimates. Mass Tech Collaborative anticipates that the *Last Mile* network may consist of multiple Fiber-to-the-Premises Gigabit-capable Passive Optical Network (GPON), Active Ethernet (AE) and fixed wireless networks or a combination thereof. Some of the towns will likely form public-private partnerships and therefore the aggregate number of route miles and homes passed from all MBI-manage projects will be reduced accordingly.

The foregoing information is made available by the Owner for context only. The Owner makes no representation or warranty as to the completeness:

3.

EXHIBIT B: Pricing Matrices

Summary Sheet

[insert based on terms of award]

Level of Effort Task Based

[insert based on terms of award]

Staffing and Level of Effort Task Based Price Matrix

[insert based on terms of award]

Town-Specific Services Price Matrix

[insert based on terms of award]

Non-Town Specific Task-Based Price Matrix

[insert based on terms of award]



Pricing Narrative

[insert based on terms of award]

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EXHIBIT C: Key Project Personnel

[Insert based on terms of award]

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EXHIBIT D: Progress Payment
Release Forms

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EXHIBIT D-1
Design Engineer Progress Payment Release

PROJECT: Massachusetts Broadband Institute Last Mile Network
OWNER: Massachusetts Technology Collaborative
DESIGN ENGINEER: *****

Date: _____ Period covered by application for payment:

Amount Requested: _____

The undersigned warrants, represents and guarantees:

- A. That the Amount Requested constitutes the entire value of all work billed ("work") which term shall include without limitation labor, materials and equipment furnished and all other services which would entitle any person to any lien by, through or under the undersigned with respect to the Project through the date hereof;
- B. That no work covered by such Amount Requested will have been acquired subject to any agreement under which any interest therein or an encumbrance thereon is retained by the seller or any other person. Without limiting any other undertaking or agreement, the undersigned agrees to indemnify, defend and hold harmless Owner and its lender(s) from and against all claims, damages, losses and expenses (including attorneys' fees and costs of defense) resulting from any mechanic's lien asserted against the Project arising from work performed by, through, on behalf of or under contract with the undersigned, except that such obligation with respect to liens arising from services, labor, materials or equipment covered by the Amount Requested is expressly conditioned upon payment of such amounts by Owner. Without limiting any other undertaking or agreement, the undersigned agrees, upon request of Owner, to promptly obtain a bond discharging any asserted mechanic's lien by a design consultant, Subcontractor or supplier of Design Engineer pursuant to applicable law;
- C. The undersigned hereby certifies to Owner that all laborers, mechanics and others providing labor or services by or through the undersigned have been paid all wages due them and that all taxes, insurances, fringes, contributions and assessments required by law or by contract that are a function of wages have been paid in full up to the date hereof, and that the undersigned is in compliance with all federal, state, and local wage hour and tax laws, including but not limited to FICA, FUTA, SUTA and Worker's Compensation laws, up to the date hereof;
- D. The undersigned hereby represents and warrants that all consultants, subcontractors, suppliers and equipment providers of the undersigned have been paid in full all amounts due to them up to the date of this Certification, and that all amounts that become due to any consultant, subcontractor, supplier or equipment provider as the result of the payment of the Amount Requested shall be paid forthwith to such consultants, subcontractors, suppliers and equipment providers, excluding only the value of any Pending Changes and Disputed Claims submitted in accordance with the Agreement.



Signed under the penalties of perjury and executed as a sealed instrument this _____ day of _____, 20__.

By: _____

Title: _____

Printed Name: _____

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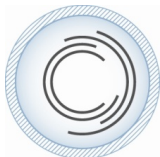
Exhibit D-2
Design Consultant and Subcontractor Progress Payment Release

PROJECT: Massachusetts Broadband Institute Last Mile Network
OWNER: Massachusetts Technology Collaborative ("Project Owner")
DESIGN ENGINEER: *****
DESIGN CONSULTANT, SUBCONTRACTOR or SUPPLIER: [insert name *****]
("Subcontractor")

Current Contract Amount: \$ _____
Amount Previously Paid: \$ _____
Total Amount Approved and Paid to Date: \$ _____
Total Amount of Pending Changes
(Subject to Owner Approval) \$ _____
Total Amount of Disputed Claims \$ _____

In consideration of the payment of [\$ insert amount *****] made by Design Engineer to Subcontractor representing full and final payment due Subcontractor for all labor and/or materials and related services provided upon or concerning the above-referenced Project by Subcontractor, or anyone claiming by, through or under Subcontractor through and including [insert last day of billing period/last work *****] and excluding any right to applicable retainage and also excluding the value of any Pending Changes and Disputed Claims submitted in accordance with the Subcontract (hereinafter "Payment") Subcontractor hereby:

1. CERTIFIES to Design Engineer that the Payment represents payment in full for all labor, materials, and other items furnished in connection with improvements to real property or any other work performed for the Project through and including [insert last day of billing period/work *****] less any applicable retainage.
2. WAIVES, releases, relinquishes and dissolves all rights to any surety bond and/or claims arising thereunder, for all labor, materials or other items supplied in connection with improvements to real property or any other work performed through and including [insert last day of billing period/last work *****] and waives, releases, relinquishes and dissolves all past or present claims, defenses, actions, causes of action, demands, sums of money, debts, accounts, demands, obligations, rights, damages and costs whatsoever in law and/or in equity which it now has or may have had from the beginning of the world to date regarding payment for work and/or labor and/or material and/or service provided on or related to the Project by Subcontractor or any of its subcontractors, suppliers or agents through and including [insert last day of billing period/last work *****], excluding any right to applicable retainage only.
3. AGREES TO INDEMNIFY, defend, and save harmless the Project Owner and Design Engineer from all claims and demands, and all expenses incurred, including attorneys' fees and costs of defense, for or on account of or in any way arising out of the work of the undersigned or others claiming by, through or under Subcontractor, for payment of any labor performed or material or equipment furnished in connection with improvements to real property or any other work performed or any other work performed on land for the Project.
4. CERTIFIES to the Project Owner and Design Engineer that all laborers, trade subcontractors, materialmen and others providing services, machinery, equipment, insurance and/or supplies and all taxes and contributions of any other descriptive title in connection with the work furnished for and through the undersigned up to the date hereof have been paid in full.
5. REPRESENTS AND WARRANTS that no other person or entity has any prior interest in the claims, demands, allegations or causes of action arising on its behalf on account of the work; that the undersigned has a sole right and authority to execute this final release and to have received the sums specified herein; and that the



undersigned has not sold, assigned, transferred, conveyed, or otherwise disposed of the claims, demands or rights released hereby.

Signed as a sealed instrument this _____ day of _____ 20__.

[insert SUBCONTRACTOR name ***]**

By _____

Printed Name: _____

State of _____
County of _____

Subscribed and sworn to before me this _____ day of _____ 20__, having produced _____ as identification.

Notary Public

My commission expires: _____

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EXHIBIT E: Final Release and Lien Waiver Forms

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Exhibit E-1

Design Engineer's Final Payment Certificate and Release

Whereas, pursuant to a Contract agreement dated _____, 2016 by and between Massachusetts Technology Collaborative ("Owner") and ***** hereinafter called the Design Engineer, for the design and project management of *Massachusetts Broadband Institute Last Mile Network*, the Design Engineer acknowledges that upon receipt of the sum of _____ dollars (\$ _____) from the Owner as final payment and payment in full of all monies due or to become due to the Design Engineer from the Owner in connection with the aforementioned Contract and, in consideration of receipt of said sum, releases the Owner and its affiliates, agents, representatives, employees, successors and assigns of and from all claims and demands in any way arising out of contract, written, oral or implied or work done or materials furnished by or through the undersigned in connection with such Project and acknowledges full performance by the Owner of all obligations under all said Contract.

The Design Engineer certifies that all charges for labor, materials, equipment, services, and of every other nature in connection with his Contract have been paid in full, and that there remains no charge by any Design Engineer, vendor or individual furnishing services, labor, materials, equipment or services in connection with his Contract for which a lien has been or could be filed.

The Design Engineer hereby further declares and agrees that in the event that any lien or other claim has been or should be brought against the Owner, a town or any private building or premises for the improvement of which the Design Engineer has provided services, in connection with the work of the Design Engineer, the Design Engineer will protect the Owner, its successors and assigns, and defend any suit or action brought against them by reason of any lien or other form of claim or action arising out of the aforementioned Contract and hold them harmless and indemnified therefrom.

Signed and sealed by the Design Engineer (if a corporation, by its duly authorized officer and with corporate seal) this ____ day of _____ 20__.

By: _____
Printed Name and Title:

State of _____
County of _____

Subscribed and sworn to before me this _____ day of _____ 20__, having produced _____ as identification.

Notary Public

My Commission Expires:



Exhibit E-2

Final Design Consultant and Subcontractor Release

PROJECT: Massachusetts Broadband Institute Last Mile Network
OWNER: Massachusetts Technology Collaborative ("Project Owner")
DESIGN ENGINEER: *****
DESIGN CONSULTANT, SUBCONTRACTOR OR SUPPLIER: _____
("Subcontractor")

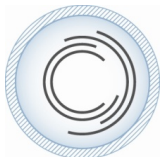
In consideration for payment in the amount of _____ (\$ _____) for services, work and/or labor and/or material provided on or related to the above referenced Project by Subcontractor or any of its subcontractors, suppliers or agents, Subcontractor and all of its past, present and future trustees, representatives, administrators, attorneys, agents, employees, predecessors and assigns and successors, hereby:

- 1. CERTIFIES to Owner and Design Engineer that Subcontractor has received the sum of \$ _____ representing payment in full for all services, labor, materials, and other items furnished in connection with improvements to real property or any other work performed for the above-referenced Project through and including the date hereof.
2. WAIVES, relinquishes and dissolves all rights to any (i) lien (including, without limitation, liens under the mechanic's lien law of any state wherein the Project may lie) upon the property, real estate, buildings, or improvement comprising the above-referenced Project; (ii) surety bond, for all services, labor, materials or other items supplied in connection with improvements to real property or any other work performed or any other work performed up to the date hereof; and (iii) all past or present claims, defenses, actions, causes of action, demands, obligations, rights, damages and costs whatsoever which it now has or may have had from the beginning of the world to date regarding payment for work and/or labor and/or material provided on or related to the above referenced Project by Subcontractor or any of its subcontractors, suppliers or agents.
3. AGREES TO INDEMNIFY, defend, and save harmless the Project Owner and Design Engineer from all liens, claims and demands, and all expenses incurred, including attorneys' fees and costs of defense, for or on account of or in any way arising out of the work of the undersigned or others claiming by, through or under Subcontractor, for payment of any services or labor performed or material or equipment furnished in connection with improvements to real property or any other work performed or any other work performed on land for the above-referenced Project.
4. CERTIFIES to the Project Owner and Design Engineer that all laborers, trade subcontractors, materialmen and others providing services, machinery, equipment, insurance and/or supplies and all taxes and contributions of any other descriptive title in connection with the work furnished for and through the undersigned up to the date hereof have been paid in full.
5. REPRESENTS AND WARRANTS that no other person or entity has any prior interest in the claims, demands, allegations or causes of action arising on its behalf on account of the work; that the undersigned has a sole right and authority to execute this final release and to have received the sums specified herein; and that the undersigned has not sold, assigned, transferred, conveyed, or otherwise disposed of the claims, demands or rights released hereby.

Executed as a sealed instrument this _____ day of _____, 20__.

Subcontractor Name

By _____
(Authorized Officer)



Printed Name: _____

State of: _____

(Date)

Then personally appeared before me the above-named _____, who being duly sworn and having produced _____ as identification, did say that he/she is the _____ of _____ that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and that said instrument was acknowledged to be the free act and deed of said corporation.

Notary Public
My commission expires

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