



**REQUEST FOR PROPOSAL
FIBER CONSTRUCTION**

April 2022
NEK RFP #2022-13

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1. Introduction

1.1. Overview of the Project

NEK Broadband has teamed with NRTC Broadband Solutions, Mission Broadband Inc. and Waitsfield and Champlain Valley Telecommunications (WCVT) to construct a Fiber to the Home (FTTH) network to portions of homes in the Northeast Kingdom area of Vermont. The long-term goals of the project are to construct over 2,500-2,700 miles of fiber optic network across northern Vermont to provide service to approximately 26,000 – 29,000 passings. This project will occur over the next five to seven years.

The initial construction phase will consist of approximately 227 miles of distribution fiber construction. Aerial strand and lash will be the primary method of construction and some underground construction will be required. NEK currently estimates that there may be upwards of 2 miles total of underground construction within this initial phase of the 227-mile project. The scope of work for this RFP will make broadband available to approximately 1,928 premises. NEK Broadband desires that the network be substantially constructed, spliced, tested and available to provide broadband services around the end of the year.

In addition to soliciting services for construction of the network, this RFP is seeking to find a firm that has sufficient inventory, or access to inventory, of the specific OSP components required to construct certain segments of the network as soon as possible. NEK Broadband currently has fiber and anchors, on hand and strand on order for the entire **project** and is seeking quotes from respondents to this RFP for the additional hardware required to construct a portion of the network segments outlined below as soon as possible.

NEK Broadband is in the process of establishing a warehouse and in the long term will order all hardware and maintain inventory for the network. There is an interim period where NEK Broadband has a need to begin construction as soon as possible and is seeking vendors with better lead times for the required components. Vendors who are able to have material on hand in by July would have four months to construct the network during prime construction time. Given the lead times on terminal tails and other splitter and splicing materials, NEK Broadband is willing to first have fiber and strand constructed and paid for before returning to splicing the network into place.

In addition to this RFP for the initial phase of construction of the network, NEK is also issuing an RFP (NEK RFP #2022-12) for materials and labor to construct ~9-mile segment of the network that is being partially funded by USDA grant dollars.

1.2 Objectives of the RFP

The primary objectives of this RFP are:

- 1.2.1 To select a Contractor to construct the 227-mile project.
- 1.2.2 To determine the cost and lead times for various OSP hardware and service components required for construction of the network;
- 1.2.3 To determine if and when responding vendors will have all of the material and resources available for construction of a 25- or 50-mile segment of the network to begin as soon as possible.

- 1.2.4 To sequence ordering of hardware and deployment of line crews in a manner that maximizes the efficiency and productivity of available resources for the construction project. For example, if materials and resources are available, the contractor may begin hanging fiber throughout the footprint before the hardware is available for splicing the cables together. A second crew would need to re-visit the various backbone and distribution segments of the network in order to splice and place splitters at a later time when that hardware became available.
- 1.2.5 To select qualified respondents for eligibility to provide future quotes. One of the primary goals of this RFP is to engage and retain a partner who has access to the materials and resources necessary to ramp up to a construction pace of 50 miles per month for the remainder of the 2500+ mile project. It is expected that it may take 3 to 5 months to ramp up to that pace of construction.
- 1.2.6 To obtain pricing proposals for a Corning Flex-Nap equivalent to the original design.

1.3 Project Background

NEK Broadband has hired NRTC Broadband Solutions, Mission Broadband. Inc. and WCVT to design and manage the construction of a rural fiber optic network, to provide high-speed broadband Internet access to currently unserved and underserved homes throughout the Northeast Kingdom. The selected Contractor(s) from this RFP will report to and primarily interface with the NRTC Broadband Solutions Project Manager and OSP Manager for issues or questions during construction. NRTC Broadband Solutions will also inspect the Contractors' work before approving invoice payment. NEK Broadband will provide materials and hardware to be installed and become a part of the fiber network for a portion of the network and seeks materials and hardware for a portion. NEK Broadband will not provide tools or labor necessary for the installation.

Bidders should be aware that the network is in the process of being designed and final prints are not available at this time. The bill of materials contained within the RUS worksheet is an estimate of the components that will be required to fulfill construction of the entire network. As the design work packets of the network are completed, they will be shared with the winning bidders and the quotes will be adjusted according to the RUS labor code responses. Design for the first 80 miles will be complete the beginning of June. Design for the remainder will be complete by the end of July.

The map of the area to be covered under this RFP is at the bottom of this RFP.

1.4 Corning Flex-Nap Option

NEK Broadband has been working with Corning on a version of Flex-Nap suited for rural broadband. Corning has completed a design for the largest of the five work packets in this RFP. The design is available to those with Flex-Nap experience submitting an intent to respond under a confidentiality agreement. We are asking any respondents with experience with Flex-Nap to please provide pricing for labor codes associated with the Flex-Nap product. Providing this information will weigh favorably on your application. Not providing this information will not disqualify a bidder. Though it will not be used in the current 5 OLT cabinet locations, NEK Broadband intends to use this information

to make a determination for all of the remaining 16 cabinet locations in our network that represent over 2,000 miles in construction. For question on how NEK Broadband's work with Corning please reach out to Shawn Cassidy at cassidys@corning.com.

1.5 Retainage

10% of each invoice total value will be withheld as a retainer until the work is successfully completed and accepted by NEK Broadband and NRTC Broadband Solutions. Items for invoice review will be done weekly on an RUS Code basis. The 10% retainer will be paid after the fiber has been installed, inspected, tested, and approved by NRTC Broadband Solutions and NEK Broadband on a work packet by work packet basis.

1.6 State of Vermont – Terms Supplement

The Parties agree to the terms in the State of Vermont Federal Terms Supplement hereto attached. The Parties agree to provisions 10, 11, 12, 14, 16, 18, 20, 22, 30, and 32.A of the State of Vermont Attachment C: Standard State Provisions for Contracts and Grants hereto attached. Notwithstanding anything in this Agreement to the contrary, in the case of any conflict or inconsistency between the specific provisions of this Agreement, relevant attachments, federal requirements or the Application, any conflict or inconsistency shall be resolved as follows: (a) State of Vermont Federal Terms Supplement; (b) State of Vermont Attachment C provisions identified; (c) this Agreement.

2. Contractor Qualifications

All Offerors must meet the following qualifications:

- ✓ The Contractor must be capable of constructing the entire network (set of fiber strands) as described in this RFP.
- ✓ The Contractor must have verifiable experience completing fiber-build projects of similar size, scope and complexity.
- ✓ The Contractor must be fluent in reading electronic prints and be able to do so on a laptop or tablet in the field. Prints will only be provided in an electronic format.
- ✓ The Contractor must be in good standing with the FCC and the State of Vermont.
 - Any bidder found to be in FCC red-light status will be immediately disqualified.
- ✓ The Contractor must provide OSHA qualified and capable personnel to install telecommunications equipment in the communications space of utility poles. Evidence of such training must be provided to NEK Broadband before a bid can be awarded.
- ✓ The Contractor shall perform directly and without subcontracting, not less than fifty-one percent (51%) of the construction of the project, to be calculated based on the total Contract price.
- ✓ The Contractor agrees to furnish a Contractor's Bond, with sureties acceptable to Owner, in a penal sum the greater of a) not less than one- and one-half times the contract value for services to be performed or b) Three Million dollars (\$3,000,000) unless expressly agreed to by NEK Broadband.

3. Administrative Issues

3.1. Availability of the RFP, Amendments, and Q&A

- ✓ The RFP will be posted publicly and sent to all known contractors.

- ✓ Amendments to the RFP will be provided to those expressing an intent to bid.

3.2. Inquiries about the RFP

All inquiries about the RFP should be emailed or submitted in writing to rfps@NEKBroadband.org:

NEK Broadband
[rfps@NEK Broadband.org](mailto:rfps@NEKBroadband.org)

4. Due Date for Contractor Proposals

DATE	EVENT
04/21/2022	RFP Issued for Bids
04/29/2022 5:00 PM	Intent to bid
05/04/2022 5:00 PM	Questions submitted via email
05/06/2022 5:00 PM	Questions compiled/answered and returned to all bidders
05/16/2022 5:00 PM	Final bids due by COB (5PM EST)

4.1 Intent to Bid

Vendors who intend to respond must send an email stating this intent to rfps@nek broadband.org no later than 5:00 PM on 4/29/2022. The Master Services Agreement is available to those submitting an intent to bid that has a signed confidentiality agreement attached. The Corning Flex-Nap design will be supplied to those expressing an intent to provide pricing on construction of the Corning Flex-Nap design that have signed a confidentiality agreement. The Confidentiality Agreement is Attachment C. NEK Broadband is a public governmental body subject to open meeting and right to know laws.

5. Proposal Submission and Format

5.1. Proposal Submission

Email an electronic copy of your proposal to:

rfps@NEKBroadband.org no later than the due date and time for receipt of proposals.

Late proposals will not be accepted.

Offerors will be notified within 3 business days acknowledging receipt of their proposal.

5.2. What to Submit: Mandatory Proposal Content

A. **Cover Letter**

Each Contractor submitting a proposal must provide a cover letter signed by an individual authorized and empowered to bind the Contractor to the provisions of this RFP and any Contract awarded pursuant to it. The cover letter should include the following:

- ✓ The legal name of the Contractor

- ✓ Business Address
- ✓ Primary Point of Contact (POC) (Authorized to Bind the Company)
- ✓ Primary POC Telephone Number
- ✓ Primary POC Email Address
- ✓ A statement that the entity is qualified, licensed, insured, and otherwise authorized to do business of the sort contemplated in the project.
- ✓ Company Federal Employer Identification Number (FEID)
- ✓ DUNS Number
- ✓ Submit projected crew size and count for project completion.

- ✓ State how many employees who will be working on the project reside in the Northeast Kingdom area of Vermont.

- ✓ Discuss Contractors experience with fiber construction using Corning Flex-Nap product.

B. Contractor Experience

On the cover letter, provide 3 references of completed or mostly completed projects of similar size, scope, and complexity to this project.

For each project reference, include the following:

- ✓ Project Title
- ✓ Location
- ✓ Contract Value
- ✓ Brief Description of the Project
- ✓ Primary POC
- ✓ Primary POC Telephone Number
- ✓ Primary POC Email Address

C. Bid Form

Provide pricing on the included Bid Form which is included as an attachment to this RFP. Complete all items based on the unit of measure and estimated quantities provided. This labor bid is for the 227 mile project. Also provide pricing on zero estimated quantity line items. Enter the labor cost for each unit of measurement. Enter the labor cost for each unit of measurement under a Flex-Nap material design. The estimated quantities required for the entire project are listed in the bid form. These quantities will be updated based on final construction sheets which will be available early to mid-June. Descriptions for the materials contained in each labor unit, which may consist of multiple material items, are on the 2nd tab on the bid form titled “NEK RUS Build-ups” and can also be found in the RUS Telecommunications Manuals.

The bid form also has a section to enter pricing and lead times for the components required to construct a 25- or 50-mile segment of the network. Please note that all required MST’s are AFL Titan MST’s. Bidders may either (a) bid labor only; (b) bid

materials by RUS Code in the Cookbook; or (c) bid materials by the Material BOM in the Cookbook.

Pricing for labor and material for drop construction is not part of this Request for Proposal.

Vendors are also asked to provide pricing for vegetation management and tree trimming on a per unit basis as well as costs for performing make-ready work on poles owned by Consolidated Communications. The bottom of the bid form has a section for entering Make Ready and Tree Trimming costs.

** Please note the tree trimming and make ready costs are option in the response.*

***Note: Quantities included in the bid form are estimates for unit pricing only. Actual quantities will vary.**

6. Evaluation Criteria

Evaluation and scoring of responses will be based primarily on price and the respondents' availability of the materials and resources required to complete the project on time. The following additional criteria will be considered during the evaluation process:

- (1) Respondents with employees who will be working on the project who live within the Northeast Kingdom area of Vermont will receive additional points.
- (2) Respondents who bid on NEK RFP 2022-12 will receive additional points.
- (3) Respondents to this RFP will receive additional points on NEK RFP 2022-12.
- (4) Respondents with Flex-NAP experience providing pricing for a Flex-NAP construction will receive additional points.

7. Insurance

At all times during the term of its contract, each Contractor shall maintain, in full-force and effect, the insurance as listed in the State of Vermont contract terms. All insurances shall be issued by insurers and for policy limits acceptable to NEK Broadband. Successful Contractors must provide certificates of insurance or other evidence that the required insurance has been procured and is in force. In the event of cancellation, non-renewal, or material modification affecting the certificate holder, thirty (30) days prior written notice will be given to NEK Broadband detailing the material changes to the insurance coverage limits.

The Contractor will be responsible for the payment of all deductibles or retentions under the policies of insurance purchased and maintained by it pursuant to the Contract. To the extent permitted by law all or any part of any required insurance coverage may be provided under an approved plan. Contractor's insurer shall waive rights of subrogation.

Any Subcontractors utilized on the project shall carry in full force and effect commercial general liability, pollution liability, automobile liability, workers compensation, and employer liability insurance that complies with all terms of this section.

7.1. Hold Harmless and Indemnification

The Contractor shall defend, indemnify, and hold harmless NEK Broadband and its directors, officers, employees, agents, consultants, members, affiliates, attorneys, subcontractors and customers from and against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to or result from any act or omission of Contractor or its affiliates during the bid process or the work to be performed. Contractor's defense and indemnity obligations shall include the duty to reimburse any reasonable attorney's fees and expenses incurred by NEK Broadband for legal action to enforce Contractor's indemnity obligations or other provisions of this Agreement. Upon Contract award, the Contractor will also be required to sign a separate Hold Harmless Agreement which shall contain language of equal or more broad scope as set out herein and a Non-Disclosure Agreement as part of the definitive agreement.

7.2. Additional Insured Endorsement

The Contractor shall cause the commercial liability coverage required by the Contract to include (1) NEK Broadband (to include its board, officers, directors and subsidiaries) its lender(s), the Architect and Mission Broadband as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) NEK Broadband as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall provide an additional insured endorsement from the Contractor's General Liability Insurance naming NEK Broadband and Mission Broadband as additional insured under a policy that cannot be cancelled absent forty-five (45) days' notice to the additional insureds.

8. Incurred Costs to Propose

NEK Broadband and Mission Broadband are not liable or responsible for any costs incurred by any Contractor in the preparation of proposals or related matters arising out of the same. All costs associated with responding to this RFP are incurred by the Contractor at its own cost.

9. Revisions to RFP

9.1. Errors and Omissions in a Contractor Proposal

A Contractor may revise a proposal on its own initiative at any time before the deadline for submission.

9.2. Errors and Omissions in the RFP

If a Contractor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the Contractor should immediately notify NEK Broadband of the error and request clarification of the RFP language. Should the RFP be amended, copies of the amended RFP will be provided to each selected Contractor receiving the RFP.

9.3. Objections to RFP Terms

Should a Contractor object on any ground to any provision or legal requirement set forth in this RFP, the Contractor must set forth with specificity the grounds for the objection, which is to be submitted as part of the Contractor's proposal. The failure of a Contractor to object in this manner shall constitute a complete and irrevocable waiver of such objection and the right to object. However, such objections may become a differentiating factor during the bid evaluation process.

9.4. Acceptance of RFP/Proposal

The contents of this RFP and the Contractor's proposal will become a portion of the contractual obligations and the definitive agreement if a contract award ensues. Failure of the Contractor to accept these obligations will result in cancellation of the award. NEK Broadband has final and complete discretion as to acceptance or non-acceptance of any proposal, for any reason.

A. No Waiver of RFP Provisions

No waiver by NEK Broadband of any provision of this RFP shall be implied from any failure by NEK Broadband to recognize or act on account of any failure by a Contractor to observe any provision of this RFP.

B. Ownership and Disclosure of Proposals

Proposals submitted in response to this competitive procurement shall become the property of NEK Broadband. NEK Broadband will share all proposals with its internal staff and Mission Broadband staff for the purposes of evaluating each proposal. All proposals received shall remain confidential, except for any information NEK Broadband is legally required to disclose. The Contractor must submit the revised proposal in the same manner as the original was submitted.

10. Contingencies

This RFP may not be considered as a Contract to purchase goods or services but is a Request for Proposal in accordance with the Terms and Conditions herein and will not necessarily give rise to a contract. However, RFP responses should be as detailed and complete as possible to facilitate the formation of a contract based on the RFP response(s) that are pursued, should NEK Broadband decide to do so. Contractors must submit a complete proposal package. Failure to do so will disqualify your RFP response submittal. Contractors must submit RFP responses by the due date and time as specified herein. Late proposals will not be accepted. Contractors will be considered nonresponsive if the above requirements are not submitted as requested.

11. Termination

11.1. Termination for Cause

NEK Broadband may terminate the whole or any part of the RFP or any agreement reached with a successful bidder, by written notice of default to Contractor, in any one of the following circumstances, which shall be expanded in the definitive agreement:

- ✓ If the Contractor fails to perform any duties or obligations within the time specified herein or any written extension thereof granted by NEK Broadband;

- ✓ If the Contractor so fails to make progress as to endanger performance of this Agreement in accordance with its terms;
- ✓ If the Contractor fails to comply with any of the material terms and conditions of this Agreement. Such termination shall become effective if the Contractor does not cure such failure within a period of ten (10) days after written notice of default by NEK Broadband;
- ✓ If the other party is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for, or against the other under any provision of the Federal Bankruptcy Act or any amendment thereof.
- ✓ Failure to follow federal, state, and local laws regarding safe work practices

Upon termination, NEK Broadband may procure, upon such terms as it shall deem appropriate, services like those so terminated. The contractor shall continue performance of this Agreement to the extent not terminated.

11.2. Termination for Convenience

This RFP or any definitive agreement may be terminated by NEK Broadband for any reason or no reason, whether extended beyond the initial term, by giving the other party written notice thirty (30) days in advance. Contractor shall be paid for work performed through termination, as well as reasonable demobilization fees.

11.3. Force Majeure

In no event shall NEK Broadband be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that NEK Broadband shall use reasonable efforts which are consistent with accepted practices in the utility industry to resume performance as soon as possible. In no event shall the Contractor be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Contractor shall use reasonable efforts which are consistent with accepted practices in the utility industry to resume performance as soon as possible.

12. Safety and Labor Expectations

For applicants to the NEK Broadband fiber construction RFP, preference will be given for employers who can demonstrate that the workforce performing the contract will meet the following criteria:

- High standards of safety training, certification, and/or licensure for all relevant workers, for example, OSHA 10, OSHA 30, confined space, traffic control, or other training, as relevant depending on title and work, and exemplary workplace safety practices;
- Professional certifications and/or in-house training to ensure that deployment is done at a high standard;

- Include workforce from the Northeast Kingdom based workforce that supports job pipelines for traditionally marginalized communities;
- Relevant work will be performed by a directly employed workforce or employer has policies and/or practices to ensure that any employees of contractors used meet the criteria as described above;
- No recent violations of Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and Vermont Labor and Employment Laws.

NEK Broadband expects the winning bidder to provide reports on the commitments made in the bidder's proposal. At a minimum, the information provided shall include all of the following:

1. The total number of workers disaggregated by job title performing relevant work;
2. A description of safety training, certification, and/or licensure requirements for all relevant workers and copies of policies and procedures related to safety standards;
3. Information on the Professional certifications and/or in-house training in place to ensure deployment is done at a high standard;
4. Documentation of a Northeast Kingdom based workforce that supports job pipelines for traditionally marginalized communities;
5. A description of any open investigations against the recipient for violations of the Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and Vermont Labor and Employment Laws within the last two years;
6. A statement of whether any of the relevant work has been performed by contracted companies, and if so, the above information for each of the companies that has performed relevant work as well.

13. Contractor Responsibilities

It shall be the responsibility of the selected Contractor to provide the configuration and system quantities to all locations stated herein. NEK Broadband and Mission Broadband are not responsible for any omission, failure to detect any requirement, or any other condition required to complete the Scope of Work (SOW).

The awarded Contractor shall:

- ✓ Meet with representatives of NEK Broadband, Mission Broadband and NRTC OSP Manager to exchange information, agree on details of equipment arrangements, and installation interfaces for the cabling project.
- ✓ Coordinate and conduct all make-ready work on Consolidated poles if approved and selected to do such.
- ✓ Have sufficient resources to complete the SOW within the allotted timeframe.
- ✓ Furnish all labor, supervision, quality control, tooling, and miscellaneous consumables for the cabling system installed for NEK Broadband.

- ✓ Install, terminate, and test all NEK Broadband furnished fiber strands at each location according to the Product and Services Specifications.
- ✓ Attend the mandatory pre-construction meetings. All new contractors added after the bid is awarded are required to attend an NRTC Broadband Solutions onboarding meeting prior to any field work.
- ✓ Install all cable and material in accordance with the Product and Services Specifications, including NEK Broadband specifications, NRTC Broadband Solutions specifications, manufacturer's recommendations and best industry practices.
- ✓ Test (100%) all cables, splices, terminations, and hardware for defects in installation and to verify plant performance under installed conditions. Tests shall be conducted according to FOA and NEK Broadband standards and specifications (including the use of a minimum 300m launch reel). Fiber will be tested by contractor before it leaves the warehouse.
- ✓ Supply documentation acceptable to NEK Broadband and Mission Broadband of testing and footage of each cable and splice.
- ✓ Vegetation Management:
 - Identify the areas that need trimming during make ready;
 - Coordinate the staffing and oversight of tree trimmers for the sake of hanging fiber;
 - Adhere to all VT laws regarding the notification of tree trimming.
- ✓ Abide by and remain responsible for compliance with all Federal, State, and local regulations.
- ✓ Provide mandatory weekly invoices submitted to NRTC Broadband Solutions Project Manager and OSP Manager, aged no more than three weeks.
- ✓ Maintains a 48-hour customer complaint response.
- ✓ Label, bond, and ground all applicable equipment and installations to NESC and NEK Broadband specifications.
- ✓ When crops are planted only small ATVs and small trailers are permitted in the fields for construction purposes, trucks are prohibited. Prior approval to enter shall be required.

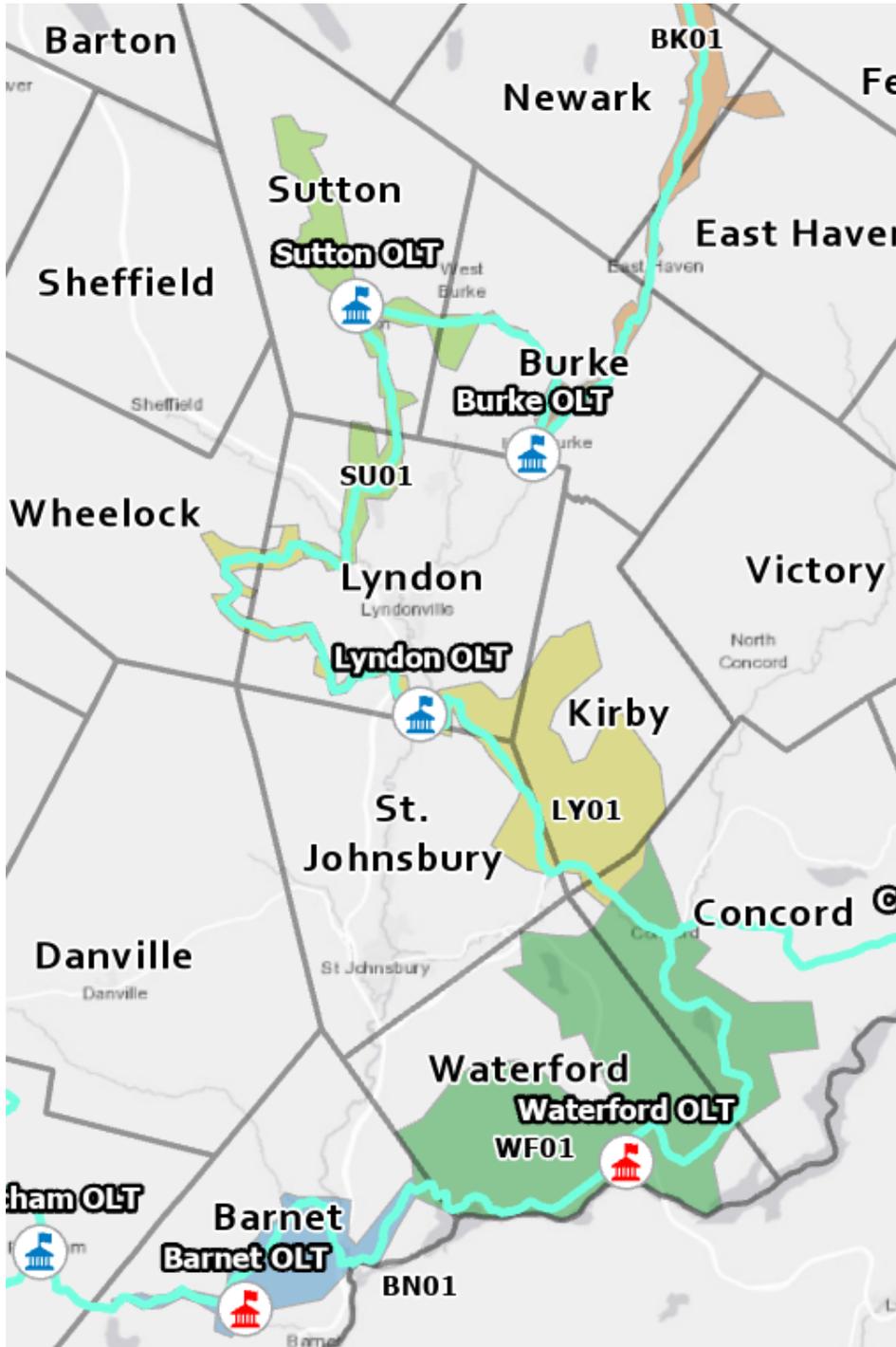
13. Attachments

- ✓ NRTC Broadband Solutions Contractor Safety Requirements Program rev 4
- ✓ RUS Cookbook with Bid Sheet (RUS Labor Code and Material BOM)
- ✓ Confidentiality Agreement
- ✓ State of Vermont Contract Terms

Entire Area



Entire Area with Backbone



**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on

file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D

ADDITIONAL ASSURANCES FOR RECIPIENTS OF FEDERAL FUNDS

- 1. Background.** Grantees that are the recipients of awards derived from federal funds are required to establish and maintain effective internal control over the federal award to provide reasonable assurance that the Grantee is managing the federal award in compliance with federal statutes, regulations and the terms and conditions of the award. These internal controls must comply with the guidance contained in the *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States and the *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In addition, awards related to expanding broadband infrastructure must comply with certain restrictions as described in the *Interim Treasury Guidelines for the State and Local Fiscal Recovery Funds* ("Interim Final Rule").
- 2. Confirmation of Financial and Monitoring Controls.** In addition to the procedures detailed in the Agreement, Grantee must establish financial and monitoring controls compliant with the Uniform Guidance (2 C.F.R. § 200, *et. seq.*), for which Grantee can administer individually or contract with a third party to administer. Recipient shall provide the Vermont Community Broadband Board with a memo detailing these controls within ten (10) days of the execution of the grant agreement.
- 3.** If Grantee contracts with a third party to administer financial and monitoring controls, the third party must have experience in administering grants subject to the Uniform Guidance (such as the Regional Planning Commission or Local Development District). Grantee shall provide the Vermont Community Broadband Board with a memo detailing this arrangement within ten (10) days of the execution of the grant agreement.

In the absence of controls compliant with the Uniform Guidance or a third-party monitoring and compliance agreement, within 90 days of execution of the Agreement, Grantee shall formally establish financial and monitoring controls consistent with the Uniform Guidance and provide the Vermont Community Broadband Board with a memo detailing these controls upon adoption.

- 4. Broadband Infrastructure Funded with State Fiscal Recovery Funds.** Grantee warrants that the Project is targeting an unserved or underserved location and that upon completion, reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. But for certain exemptions detailed in the Interim Final Rule, any service less than 25/3 Mbps will qualify end users as unserved or underserved.
- 5. Warranty.** Grantee warrants that the facts and estimates provided in its Application are true and accurate.
- 6. Payment to Subcontractors.** Grantee agrees to timely pay all amounts due to its subcontractors consistent with Section 19 of Attachment C – Standard State Provisions for Contracts and Grants. The Project or any part thereof shall not be encumbered by a mechanics lien or other encumbrance resulting from Grantee's non-payment of obligations due and payable.

(End of Attachment)

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into this ___th day of _____ 2022, (the “Effective Date”) by and between _____, a _____ corporation with a principal place of business at _____ (“_____”) and NEK Community Broadband with a principal place of business at 4 South Main Street, Suite 16 Hardwick VT 05843-0712 (“NEK Broadband”), a body politic and corporate formed under Title 30 V.S.A. Chapter 82 as a Communications Union District for the purpose of delivering communications services and the operation of a communications plant (each a “Party” and collectively the “Parties”).

WHEREAS, the Parties anticipate the need for either Party to disclose to the other Party information and materials concerning the disclosing party and its business activities in connection with a possible business arrangement between the Parties (the “Proposed Transaction”).

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

1. Certain Definitions.

- 1.1 “**Confidential Information**” means any proprietary information, data, information or materials (whether in oral, written, electronic or any other form) of Disclosing Party disclosed to the Recipient or its Representatives in connection with the Proposed Transaction (including, without limitation, that relating to Disclosing Party’s business, finances, products, intellectual property, services, technology, business plans, proprietary promotional and marketing activities, business affairs, clients, customers and prospects, third-party information the Disclosing Party is required by law or by a third party to keep confidential) which is marked as “confidential”, “proprietary” or with a similar legend, or, which, based on their nature and the circumstances of disclosure, should reasonably be considered confidential. In addition, the term “Confidential Information” shall be deemed to include any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to the Recipient or its Representatives pursuant hereto.
- 1.2 “**Definitive Agreement**” has the meaning ascribed thereto in Section 4 below.
- 1.3 “**Disclosing Party**” shall mean the Party disclosing Confidential Information to the Recipient or its Representatives.
- 1.4 “**Party**” means either Google Fiber or NEK Broadband, and “**Parties**” means NEK Broadband and Google Fiber.
- 1.5 “**Proposed Transaction**” has the meaning ascribed thereto in the Preamble above.
- 1.6 “**Recipient**” shall mean the Party receiving the Confidential Information from the Disclosing Party.
- 1.7 “**Representatives**” has the meaning ascribed thereto in Section 2 below.

- 2. Access to Confidential Information.** Recipient may share Confidential Information with those of its personnel, agents and authorized representatives, including directors, officers, consultants, employees, agents, members, attorneys, and advisors who have a need to know such Confidential Information (its “Representatives”) for the purpose of evaluating the Proposed Transaction, so long as each such Representative has been informed of the confidential nature of the Confidential Information and agrees to comply with the requirements of this Agreement, whether by way of an express confidentiality agreement or implied by his or her professional duties. Recipient may also share Confidential Information with Recipient or personnel for purposes beyond a need-to-know basis for purposes of marketing to Disclosing Party other products and services, so long as such personnel meet the requirements of the preceding sentence.
- 3. Obligation of Confidentiality.** The Recipient of the Confidential Information recognizes and acknowledges the competitive value and confidential and proprietary nature of the Confidential Information and the damage that could result to the Disclosing Party if information contained therein were disclosed to any third party. Each Party shall protect the Confidential Information furnished to it by or on behalf of the other Party or its Representatives and all analyses, compilations, forecasts, studies and other material prepared by the other Party or its Representatives containing or based in whole or in part on any such Confidential Information furnished by or on behalf of either Party or any of its Representatives by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination, publication of, or access to, the Confidential Information as it uses to protect its own confidential information.
- 4. Use of Confidential Information.** The Party receiving the Confidential Information agrees that it shall be used solely for the purpose of evaluating the Proposed Transaction and agrees that it shall not exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the other Party, which consent may be withheld in the Disclosing Party’s sole discretion. However, if the Parties proceed with the Proposed Transaction and execute a definitive agreement relating thereto (the “Definitive Agreement”), then Recipient may additionally copy and use the Confidential Information for the purpose of and to the extent necessary to exercise its rights and/or fulfill its obligations under the Definitive Agreement. The Recipient also agrees that it shall not disclose any of the Confidential Information, in whole or in part, to any third party without the prior written consent of the other Party in each instance, which consent may be withheld in the Disclosing Party's sole discretion; provided, however, that any such information may be disclosed to Representatives of the Recipient who need to know such information for the purpose of evaluating the Proposed Transaction and who agree to be bound by the non-disclosure terms of this Agreement. Each agrees to be legally responsible for any improper disclosure or use of such information by any of its Representatives and to identify to the other Party promptly upon request the identities of any Representatives to whom such information has been disclosed.
- 5. Additional Measures.** In addition, if the Disclosing Party requests that the Recipient employ particularized or specific reasonable measures against disclosure with respect to the specified Confidential Information, the Recipient shall, by accepting the Confidential

Information, be bound by such measures, provided that the Disclosing Party makes such request in writing on or before the date the Confidential Information is provided and identifies with specificity the Confidential Information that is to be subject to such specific reasonable measures, so long as such measures do not conflict with Section 7 Public Agency.

6. Ownership of Confidential Information. Confidential Information shall remain the property of the Disclosing Party notwithstanding disclosure hereunder. Disclosure of Confidential Information hereunder shall not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information or in any patents or patent applications.

7. Public Agency and Vermont Open Meeting Law. The parties acknowledge and agree to the following:

7.1 NEK Broadband is a “public agency” and subject to the Vermont Open Meeting law, 1 V.S.A. §§ 310-314, and the Access to Public Records law, 1 V.S.A. §§ 315-320. As a public agency, its board’s and committees’ meetings are open to the public unless there is statutory justification for entering into an executive session, 1 V.S.A. § 313. Any records in their possession must be disclosed to the public upon request unless the document is exempt from the disclosure requirement. Such exemptions include, but are not limited to, protections for “trade secrets . . . which gives its user or owner an opportunity to obtain business advantage over competitors” and records related to the “negotiation of contracts”. 1 V.S.A. § 317. Should a request be made for disclosure of Confidential Information from a Party (the “Responding Party”), the Responding Party shall provide notice of such request to the other Party (the “Non-Responding Party”). If the Non-Responding Party claims or asserts that a particular document falls under any of the exemptions, that Non-Responding Party shall provide the Responding Party with sufficient information to demonstrate its compliance therewith within two (2) days’ of notice of the request.

7.2 As a joint action entity on behalf of its municipal members created under statute by the Vermont Legislature, 30 V.S.A § 3053, NEK Broadband exists for the benefit of its municipal members and the residents of those communities. Because they are public agencies, the Parties may need to communicate essential information about the project to a member, a member’s governing body or a member’s voters. In the case Confidential Information is provided to a member’s staff, that Party shall require that those entities use the same level of care that the Party must use with regard to the Confidential Information. In the case that essential project information needs to be provided to a member’s governing body or a member’s voters, and such information includes Confidential Information, that Party shall use reasonable commercial efforts to remove identifying references to the other Party when providing the essential project information or shall only discuss such information in an executive session.

7.3 The project that is being contemplated by this Agreement may require that NEK Broadband and/or their members obtain regulatory approval for its implementation. If such approval is necessary, a Party and its members must provide sufficient information to regulators and parties intervening in the regulatory proceedings to allow the regulators to make positive findings on the project and issue any necessary approvals. If the information

provided to regulators or intervenors contains Confidential Information, the Party and its members shall use reasonable commercial efforts to obtain a protective order to prevent the public disclosure of the Confidential Information. The Non-Responding Party agree to provide the Responding Party and its members with sufficient supporting information to justify the issuance of a protective order.

- 8. Compelled Disclosure.** In the event that the Party receiving Confidential Information and/or its Representatives are requested in any proceeding or required by law, court order or regulation (including any rule of a stock exchange on which the stock of a Party is listed) to disclose any Confidential Information, other than those situations described in Section 5 above, the Party receiving the request shall provide the Disclosing Party prompt notice of such request or requirement so that the Disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the Recipient or its Representatives are nonetheless compelled to disclose such Confidential Information, the Recipient or its Representatives, as the case may be, may disclose such portion of the Confidential Information which it is advised by counsel is legally required in such proceeding; provided, however, that the Recipient provide the Disclosing Party written notice of the information to be disclosed as far in advance of disclosure as is practicable and uses its best efforts to obtain assurances that confidential treatment shall be accorded to such information.
- 9. Non-Circumvention.** The Parties agree that they shall use the Confidential Information only as it relates directly to the Proposed Transaction, and that neither a Party nor its Representatives shall knowingly, as a result of knowledge or information obtained from the Confidential Information or otherwise in connection with the Proposed Transaction, divert or attempt to divert any business, customer, supplier, licensee or opportunity of the other Party or encourage any person to cease doing business with the other Party. In consideration of Disclosing Party's disclosure of its Confidential Information, the Recipient shall not attempt in any manner to commercially exploit Disclosing Party's Confidential Information.
- 10. Return or Destruction.** Each Party shall, upon the written request of a Disclosing Party, (a) promptly return to the Disclosing Party or destroy all Confidential Information received or developed pursuant to this Agreement (and all copies and reproductions thereof, including those in the custody and control of Representatives), and (b) provide Disclosing Party with a written confirmation of such return and destruction, signed by an authorized officer of the Recipient.
- 11. Retention of Copies.** Recipient may retain copies of Confidential Information as reasonably required to comply with legal, regulatory or audit requirements or its internal records retention policies and procedures. Such retained Confidential Information shall remain subject to this Agreement.
- 12. Term.** This Agreement shall be effective from the Effective Date and shall continue until written notice of termination is provided by either party or after five (5) years, whichever is earlier. All provisions of this Agreement relating to Confidential Information disclosed pursuant to this Agreement prior to termination shall survive the termination of this Agreement or the return or destruction of the Confidential Information.

- 13. Exceptions.** Neither Party nor its Representatives shall have any obligation hereunder with respect to any information in the Confidential Information to the extent that the Recipient can demonstrate that such information (a) has been made public other than by acts by itself or its Representatives in violation of this Agreement, (b) becomes available to the Recipient on a non-confidential basis from a source that is not prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation, or (c) was not clearly identified by the Disclosing Party as “Confidential Information.” For (a) and (b), this exception shall only apply if the entire piece of information satisfies the standard described in (a) or (b), respectively.
- 14. No Representations or Warranties.** Neither party makes any representation or warranty as to the accuracy or completeness of the Confidential Information. Only the representations and warranties, if any, set forth in a Definitive Agreement, when, as and if it is executed and delivered (and subject to the restrictions and conditions specified therein) shall have any legal effect. No license under any patents, copyrights, mask work rights, trademarks or other proprietary rights is granted by the disclosure of or access to Confidential Information under this Agreement. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS”, WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO A WARRANTY THAT IT IS ACCURATE OR COMPLETE OR A WARRANTY AGAINST INFRINGEMENT.
- 15. Equitable Relief.** The Parties agree that financial damages would not be a sufficient remedy for any breach of this Agreement by the other Party or its Representatives, and that, in addition to all other remedies, the Disclosing Party shall be entitled, as a matter of right and without the need to prove irreparable injury, to specific performance and injunctive or other equitable relief as a remedy for any such breach, and further waives, and agrees to use its best efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy. The Parties agree to be legally responsible for any breach of this Agreement by any of their Representatives. Each Party further agrees to pay the costs and expenses, including attorney fees, of the other Party if a court of competent jurisdiction determines that a Party or its Representatives has breached this Agreement.
- 16. Amendment; Waiver; Assignment.** No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder. No provision of this Agreement may be waived or amended or any consent given except by a writing signed by a duly authorized representative of the Party, which specifically refers to this Agreement and the provision so amended or for which such waiver or consent is given. No request or proposal to amend, modify or waive any provisions of this Agreement shall be made or solicited except in a non-public and confidential manner. This Agreement may not be assigned by either Party without the written consent of the other Party, and any attempt to assign or transfer this Agreement or any interest herein (including, without limitation, rights and duties of performance) without such consent is void and without effect. Subject to the foregoing, this Agreement and each

and every provision hereof shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

17. Independent Development. Nothing in this Agreement will be construed to preclude Recipient from developing, using, marketing, licensing and/or selling any independently developed product, service, technology, software or data processing information and/or material that is similar to the Confidential Information disclosed under this Agreement, provided Recipient has not done so in breach of this Agreement.

18. Notices. All notices required or permitted by this Agreement shall be deemed to have been given when actually delivered (i) by hand, (ii) by a national overnight courier service (e.g., FedEx) or (iii) by certified mail, return receipt requested, postage prepaid and addressed as below. All notices shall also be immediately provided through email to the addresses listed below.

If to NEK Broadband
NEK Broadband
4 South Main Street, Suite 16
Hardwick VT 05843-0712

Attn: Christa Shute
Email: director@nekbroadband.org

If to _____ :

Attn: Legal
Email:

with a copy (which shall not constitute notice) to:
Montroll, Oettinger & Barquist, P.C.
126 College Street, Suite 400
P.O. Box 1045
Burlington, VT 05402
amontroll@mblawoffice.com

with a copy (which shall not constitute notice) to:

Attn: _____
Email:

19. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

20. Governing Law; Venue. This Agreement shall be construed according to the laws (other than the laws on conflicts of laws) of the State of Vermont. Each Party agrees to accept the non-exclusive jurisdiction of the courts of the State of Vermont, and those of the United States of America situated in the State of Vermont, for the adjudication of any dispute arising out of this Agreement. Each Party irrevocably: (1) agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in any Vermont or United States federal court located in the State of Vermont; (2) consents to the jurisdiction of each such court in any such suit, action, or legal proceeding; (3) waives any objection which it may have to the laying of venue of any such suit, action, or legal proceeding in any of such courts; and (4) agrees that Vermont is the most convenient forum for litigation of any such suit, action, or legal proceeding.

21. Counterparts. This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) shall be equally as effective as delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first above written.

NEK Community Broadband

Company:

By: _____

By: _____

Name: Christa Shute
Title: NEK Broadband

Name:
Title: