



**Request for Proposal
for
NEK Broadband
Communications Union District
Barton Electric Pole Inventory Services**

RFP #: NEK2022-14

Request for Intent to Respond: 12/09/2022

Questions Deadline: 12/09/2022 Proposal

Submission Deadline: 12/14/2022

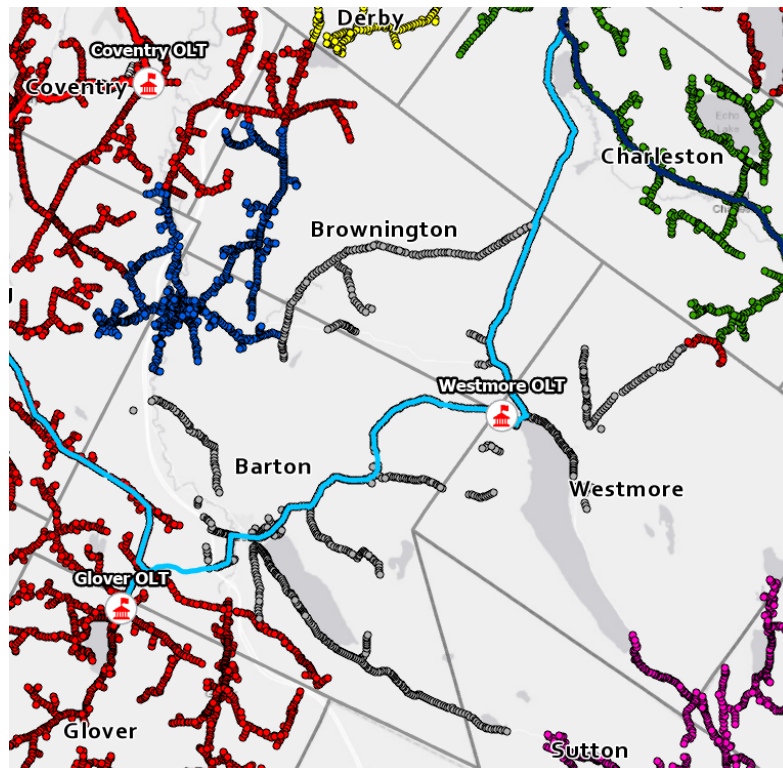
NEK Broadband Pole Inventory Services RFP

NEK Broadband (“NEK Broadband”) is issuing this Request for Proposals (“RFP”) to acquire Pole Inventory Services (“Services”) as a prelude to the make-ready, design, construction, and operation of a fiber-to-the-premises (“FTTP”), 100/100 Mbps, broadband network to its six member communities that are within the Barton Electric utility service territory. Those submitting a Proposal (“Vendor”) shall do so in accordance with this RFP.

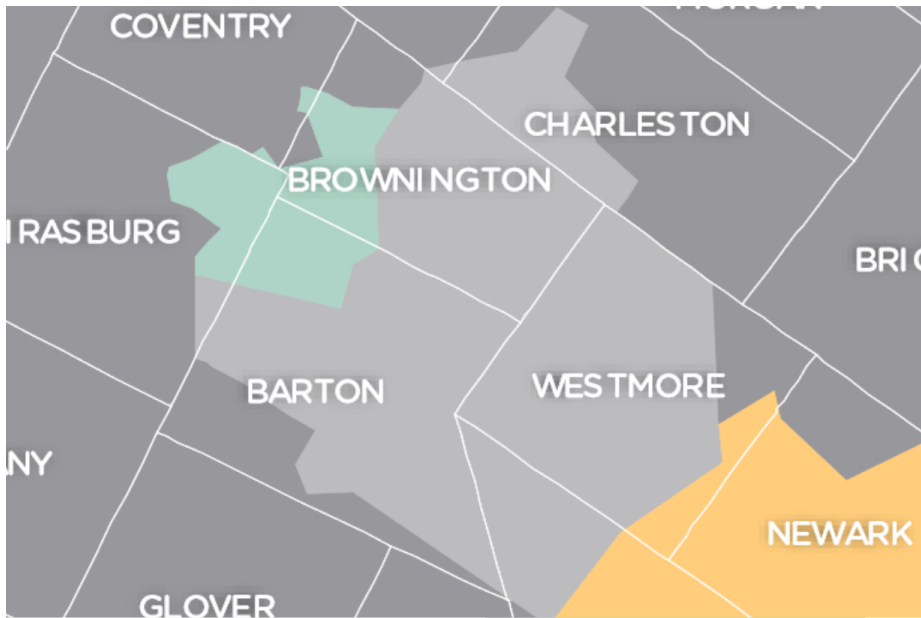
I. Introduction

NEK Broadband is a Communications Union District (CUD), a municipal organization established in May, 2020. NEK Broadband is comprised of 56 communities in the Northeast Kingdom with approximately 2,500-2,800 miles of planned fiber construction. Most of the NEK Broadband District already has pole data provided by Vermont Electric Cooperative, Green Mountain Power and all of the municipal electric utilities except for Barton Electric municipal power utility department.

The needed pole inventory covers all the poles in the Barton Electric district - EXCEPT the poles depicted in gray in the map below within the Barton Electric territory in the following Vermont towns: Barton, Brownington, Charleston, Sutton, Irasburg, Westmore.



The following map shows the Barton Electric territory in grey in these towns:



2. RFP Instructions and Procedures

A) **Submissions** - Proposal must be received via email at rfps@nekbroadband.org. For consideration for initial work under a contract Vendors must respond to this RFP no later than 5:00 PM ET on December 14, 2022. Email subject lines should reference the RFP name and number.

B) **Questions and Inquiries** - Any questions or inquiries regarding this RFP must be submitted in writing to NEK Broadband – rfps@nekbroadband.org. The deadline for submitting questions is December 9, seven days after the announcement of this RFP. Responses to all questions and inquiries shall be emailed to all who submitted questions/inquiries or an intent to respond will be sent as quickly as reasonable. The source of the questions/inquiries will not be identified. Other than such inquiries, Vendors are prohibited from contacting any person or institution involved in the selection process concerning this RFP. Shape files of existing poles will be sent to those that submit an intent to respond.

C) **Addenda and updates** - Any addenda and updates to this RFP shall be posted at nekbroadband.org. Each Vendor is responsible for checking the website prior to submission of any Proposal to ensure that it has complied with all addenda and updates to this RFP.

D) **Cancellation and/or rejection** - NEK Broadband reserves the right to cancel this RFP, in whole or in part, at any time. NEK Broadband may reject any or all Proposals received in response to this RFP in its sole discretion. NEK Broadband makes no guarantee or commitment to purchase, license or procure any goods or services resulting from this RFP.

E) **Costs and Expenses** - Each Vendor is responsible for its own costs and expenses involved in the preparation and submission of its Proposal, and any supplemental information requested by NEK Broadband shall not reimburse any such costs or expenses.

F) **Contract Template and State of Vermont Grant Conditions** - State and Federal funds will be used to support this work. The following clause will be incorporated into vendor contracts:

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.

A template services contract is attached as Exhibit A. If you prefer to use your own template then a copy of the template contract must be submitted with the RFP response. The referenced State and Federal attachments are included as Exhibit B.

G) **Notification** - NEK Broadband will notify Vendor of their selection for negotiation to become the contractor under the provisions of an Agreement to be negotiated after selection. NEK Broadband will attempt to make its selection within fourteen days of receipt of final proposals, but shall have full discretion to make its decision earlier or later.

H) **Public Information** – NEK Broadband is a municipal organization that must conduct its business subject to existing laws and regulations. Accordingly, the following principles will apply to the Proposal, negotiations, final Agreement and Work Order(s): The names of all Vendors submitting Proposals may be announced publicly, but the Proposals and individual negotiations with Vendors will not be made public. Any Agreement and Work Order negotiated with a Vendor, excluding business confidential material as agreed to by the Parties, will be made public after execution.

l) **Intellectual Property Rights** - All work performed shall be “work for hire” and shall be owned exclusively by NEK Broadband and the Vendor shall not obtain or retain any rights or licenses from any work produced under the Agreement or Work Order, unless otherwise agreed to by the parties in writing. This includes all data obtained in fulfillment of service performance. Nor shall the Vendor provide the data to a third party in any form (digital, hard copy, etc.) or format except as permitted by NEK Broadband in writing.

3. Selection Criteria

This RFP is designed to enable NEK Broadband to determine which Vendor will best satisfy the organization’s requirements and ability to enter into a satisfactory Agreement. NEK Broadband reserves the right to select the best value for the performance of the Services, which may not necessarily be the lowest price bidder.

Each Vendor will be evaluated against the same set of criteria, which shall include:

1. Experience, key personnel, and references
2. Methodology, technology, accuracy, completeness and quality of response.
3. Proposed data and data format.
4. Price and basis for price.
5. Schedule / time frame to complete the scope of work.
6. Acceptance of terms and conditions.

The primary focus is pole location information (lat long provided in a GIS shape file) as quickly as possible in order to complete the design for the area. Assessing pole number information at the same time is of benefit but not mandatory to the project at this time.

4. Proposal Format

A. Proposals shall be submitted using the following format:

- a. Company name, address, point of contact with email and phone number
- b. Experience, Qualifications and Accomplishments
- c. Key Personnel
- d. References with email and phone number
- e. Price, with breakdown and assumptions, for Services

- B. Vendor shall show the basis on which prices were determined for the Services, e.g., cost per pole, cost per mile, etc.
- C. Vendor shall outline the steps and time to complete the schedule.
- D. Proposed subcontractor information (if any)
- E. Assumptions and exclusions
- F. Miscellaneous information
- G. Relationships and conflicts of interest (if any) - Describe any relationship between the company and subcontractor, or any parent, subsidiary or related company, or any director or officer of any of them, with NEK Broadband, or members of its Board.
- H. Resumes of key personnel

5. Statement of Work

- (a) Provide latitude and longitude location geospatial data information for all poles in the Barton Electric service territory for which NEK Broadband does not already have information. All poles includes Consolidated Communications, Inc. only poles that are not part of the Barton Electric plant. This work may be performed by field collection, LIDAR, existing LIDAR information, or other. A shape file of known poles will be sent to any Vendor submitting an intent to respond.
- (b) Each of the following are optional and must be priced separately from the location information; multiple optional tasks may be priced together. NEK Broadband may not elect to have any of the following tasks performed.
 - (i) provide pole number information for all poles including NEK Broadband supplied pole location data
 - (ii) make ready work estimate
 - (iii) whether on/off road (where off road means not reachable with a standard bucket truck)
 - (iv) additional information to be identified by Vendor
 - (v) photographs
- (c) All work shall be done in accordance with the following:
 1. Data must be supplied in (1) file for import into Arc GIS and (2) excel or .csv file.
 2. Provide documentation/description of any known missing poles, concerns, or aberrations.
 3. Be conducted according to the VT Utility Pole Data Standard:
<https://vcgi.vermont.gov/document/vermont-utility-pole-gis-data-standard>

4. Describe the collection methodology including the equipment to be used and the standards for collection.
5. Supply predicted accuracy. Assert that predicted accuracy will be correct for at least 90% of the poles. The following attributes shall be collected in addition to the attributes in the VT Utility Pole Data Standards.

CONSULTING AGREEMENT

This Services Agreement (the “Agreement”) is by and between **NEK Community Broadband**, a Vermont communications union district (“**CUD**”), having its principal place of business at PO Box 4012, St. Johnsbury, VT 05819 (“**NEK Broadband**”) and _____ (the “**Consultant**”). This Agreement is entered into as of the date signed by NEK Broadband (the “**Effective Date**”).

Background

- A. Consultant is, and has been, a (((limited liability company/sole proprietor/corporation)))) in the business of _____ services. If Consultant is not a sole proprietor, then Consultant’s DUNS number is _____. Consultant desires to provide the services of its business to NEK Broadband.
- B. NEK Broadband has a need for such services and desires to enter into an agreement with Consultant on the terms and conditions set forth below.

Terms and Conditions

1. Term. The term of this Agreement shall be the length of time set forth on each attached Statement of Work (the “**Term**”). Either party may terminate this Agreement upon thirty (30) days’ written notice to the other party.
2. Consulting Services. Consultant agrees to perform the services described in the Statement of Work (the “**Services**”).
3. Performance. Consultant agrees to perform the Services in a professional manner. NEK Broadband agrees that neither NEK Broadband, nor NEK Broadband’s agents or representatives, shall have any right to control or direct the details, manner or means by which Consultant accomplishes the completion of the Services. Consultant agrees to complete the Services by the end of the Term, but Consultant shall have no obligation to work any particular hours or number of hours.
4. Terms of Payment. NEK Broadband agrees to pay Consultant as set forth in the Statement of Work. Consultant shall submit monthly invoices to NEK Broadband, and NEK Broadband agrees to pay such invoices within thirty days of receipt of invoice.
5. Expenses. Consultant shall pay all of Consultant’s expenses paid or incurred by Consultant unless otherwise agreed in writing. NEK Broadband agrees that it will reimburse Consultant for mileage incurred in providing the Services, at the standard IRS rate. NEK Broadband also agrees to reimburse Consultant for expenses set forth on the Statement of Work.
9. Delegation. Consultant reserves the right to assign any tasks within the scope of the Services to qualified employees of Consultant or other qualified subcontractors hired by Consultant. Such employees or subcontractors shall be under the complete direction and control

of Consultant. Consultant shall require all such employees and subcontractors to be bound by all of the applicable provisions of this Agreement.

10. Conflict of Interest. Consultant shall disclose to NEK Broadband any real or potential conflicts of interests that it may have in the performance of its duties or obligations under this Agreement and Consultant further represents and warrants that no such conflict of interest shall interfere with or otherwise cause any disadvantage to NEK Broadband. Additionally, in the event that NEK Broadband determines in its reasonable discretion that any such conflict of interest (whether or not disclosed by Consultant) may prejudice or otherwise disadvantage NEK Broadband's interests, and that such conflict of interest cannot be reasonably and sufficiently mitigated, then NEK Broadband modify the Statement of Work with the goal of eliminating the conflict of interest and/or terminate this Agreement pursuant to paragraph 1 above.

10. Insurance Coverage. Consultant shall obtain all insurance necessary to conduct its business, including workers' compensation insurance. Consultant shall provide certificates of insurance and comply with the provisions set forth in the Statement of Work.

11. Taxes. Consultant shall comply with all tax laws applicable to Consultant's business. Consultant acknowledges that Consultant will not be treated as NEK Broadband's employee with respect to the Services.

12. Other Work. Subject to the terms and conditions of this Agreement, Consultant retains the right to contract for similar services with other individuals and businesses.

13. Notice. Any notice regarding this Agreement shall be in writing to the address and email address noted below:

For Notices to NEK Broadband: **NEK Community Broadband**
P.O. Box 4012
Saint Johnsbury, VT 05819
Attn: Executive Director
Email for Notices: director@nekbroadband.org

For Notices to Consultant: NAME
ADDRESS
ADDRESS
ATTN: PERSON NAME
Email for Notices:
Phone Number:

14. 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.

15. Miscellaneous. This Agreement is the entire agreement and understanding between the parties relating to the subject matter hereof. This Agreement may be amended only in a written document signed by both parties. The failure of one party to insist on strict performance by the other party on any term of this Agreement shall not be construed as a waiver for any future occasion. This Agreement shall be governed by the laws of the State of Vermont, without application of conflicts of law. This Agreement shall bind and inure to the benefit of the NEK Broadband's successors and assigns.

CONSULTANT

Date: _____

NEK Community Broadband

By: _____
Duly Authorized Signature

Date: _____

STATEMENT OF WORK

This Statement of Work is attached to and incorporated into the Consulting Agreement dated _____ (the "Agreement") and entered into by and between NEK Broadband, and _____ (the "Consultant"). Any capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement.

Term	The Term of this Agreement shall be approximately "X" months/years, with the option to renew.
Start Date	, 2021
End Date	, 20
Services	Consultant shall provide the following Services under this Statement of Work:
Compensation	\$ _____ per hour worked, billed in 15-minute intervals.
Reimbursable Expenses	Mileage at the standard IRS rate, Other expenses as approved
Insurance Requirements	In accordance with State of Vermont Supplemental Terms – see paragraph 14 of the Agreement.
Other Terms	

CONSULTANT

Date: _____

By: _____
Duly Authorized Signature

Date: _____

**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)