

**Request for Proposals**  
Broadband Network Operator  
Newton County Broadband Network

**RFP # 2024-02**

Deep East Texas Council of Governments  
1405 Kurth Drive  
Lufkin, TX 75904

**Responses and Questions Shall Be Submitted:**

**Email: [respond@detcog.gov](mailto:respond@detcog.gov)**

**RFP Issued: June 10, 2024**

**Mandatory Bidder's Conference: June 21, 2024, 2:00pm CST**

**Written Questions Due: June 28, 2024, 4:00pm CST**

**Answers to Questions Posted: July 2, 2024, 4:00pm CST**

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## 1. DEFINITIONS

“Access Agreement” means the written agreement between an Owner of Premises and Contractor pertaining to the connection of the Premises to the NBN, and Contractor a right of access and sufficient to enable the installation and maintenance of NBN and/or Contractor facilities on the Premises.

“Agreement” means this Agreement, any and all Exhibits and Attachments thereto, and any Addenda or written amendments to which the Parties may agree from time to time.

“Assets” means the dark fiber strands, wireless towers, shelters and equipment associated with the NBN and leased to Contractor under this Agreement, as specified in Exhibit A.

“Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may e, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise to provide internet or related services such as internet, voice, video, transport, dark fiber and related services.

“Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind for Contractor to a Party’s execution of its obligations under this Agreement, whether imposed by a governmental authority or a private entity.

“Customer Premises Equipment” (“CPE”) means Wireless Gateway, antenna and associated equipment and inside wiring located at a Premises that is necessary for the connection of a Premise to the NBN.

“Dark Fiber” means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated.

“Effective Date” means the date upon which this Agreement has been executed by the Parties.

“LMI Resident” is defined by Section 102(a)(20) of the HCDA as a person in a family or an individual with annual income equal to or less than HUD’s Section 8 Low Income Limit, which is generally 80 percent of an area’s median family income adjusted for household size. For the purposes of this agreement, a LMI resident is a resident that is in the NBN service area and meets the LMI income requirement.

“Maintenance” means work that must be performed upon or to the NBN, including Assets, to ensure the continuity of an acceptable signal transmitted through the fibers and wireless signals (in conformance with the manufacturer’s specifications), and capable of enabling Contractor to meet the Performance Metrics, or to ensure the safety and reliability of the Assets.

“Contractor” means the organization that is responsible for providing operations and maintenance for all services and assets on the NBN and providing all services on an ongoing basis to customers in northern Newton County over the NBN.

“NBN” means Newton County Broadband Network and includes fiber-optic cable, wireless assets, equipment, engineering designs, software, permits, licenses and any other assets paid for by the grant.

“Outside Plant” means physical aerial and underground fiber, structures, facilities, wireless towers, wireless cabinets and all related equipment owned or leased by Owner that is used to house or support the NBN.

“Premise” means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the NBN. In cases where a single structure may require multiple connections to serve separate customers within the structure, each connection to a Wireless Gateway will count as an individual Premise.

“Route” means the physical path traversed by the wireless or fiber infrastructure, specified as Assets in Exhibit A, as set forth in applicable maps and related documents that are made a part of this Agreement.

“Service” means any retail or wholesale communications service offered and provided using the NBN and the Assets, whether by Contractor or another Service Provider including internet access and potentially other services that the Contractor desires to offer.

“Subscriber” means a business, residential or community anchor customer of the NBN.

“Wireless Gateway” or “WG” means a device that is installed on a customer’s premises and provides wireless broadband services through the NBN.

## **2. INTRODUCTION**

### **2.1 Executive Summary**

The Deep East Texas Council of Governments and Economic Development District is a voluntary association of local governments in the 11-county region encompassing all of

Angelina, Houston, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler counties. We are one of the largest rural COGs in the nation.

To mitigate the broadband issues faced in Newton County, DETCOG was awarded a \$9 million grant in 2022 by the Texas General Land Office which will cover much of the northern part of Newton County with fixed-wireless internet service. The project will connect area towers to provide high-speed internet to homes and businesses, linked by approximately 95 miles of new fiber-optic backbone. When completed, the project will reach more than 2,700 households including approximately 6,700 residents. The network is referred to as the Newton County Broadband Network in this RFP, or “NBN.”

DETCOG (“Owner”) is issuing this Request for Proposals (“RFP”) to solicit responses from Contractors to operate, monitor, market, maintain, and extend the NBN.

Following the selection of a preferred Contractor, Owner will enter into agreement for network operations (“NOA”) with the preferred Contractor. Prospective Respondents should email [respond@detcog.gov](mailto:respond@detcog.gov) to request access to the electronic data room (“Data Room”), which will contain additional background documents.

## **2.2 Procurement Process Overview**

Owner is conducting an open, public, competitive procurement process to select a qualified Contractor to be the Network Operator for the term of the NOA. Respondents shall submit proposals which will be evaluated according to a combination of technical, business and cost criteria to determine Best Value<sup>3</sup> to Owner. Owner retains the right to enter into negotiations with one or more Respondents on any terms of the submitted proposals and select the final offer providing Best Value. All final offers are subject to reaching agreement on the NOA. The Technical Proposal shall include Respondent’s business qualifications, network service offerings, customer rate strategy, and an implementation and operations plan. Business qualifications and credentials will include the Respondent’s operational experience, financial capacity, marketing and sales experience, depth of network support team (e.g. tier 1, tier 2 engineers), call center operation, finance, and sales and marketing. In addition, the Technical Proposal will include references from other customers of the Respondent. The pricing proposal shall include the Respondent’s projected pricing for the base tier of internet service and the cost sharing rate that the Respondent will provide to Owner to support its ongoing financial commitments for renewal and replacement and related financial obligations in award of the grant.

## **2.3 Term**

The Term of the NOA will begin upon execution of the Agreement (“Effective Date”) and will terminate upon the tenth (10<sup>th</sup>) anniversary of the date that the Network Operator commences its performance obligations related to the operations and maintenance of the NBN and providing services to customers (“Commencement Date”). The NOA may be renewed beyond the initial term by agreement of both parties.

## **2.4 Overview of Owner**

The Deep East Texas Council of Governments and Economic Development District (“DETCOG”) is a voluntary association of local governments in the 11-county region encompassing all of Angelina, Houston, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler counties. Our regional broadband initiative also includes Jasper County. DETCOG is both a political subdivision of the State of Texas and a federally designated Economic Development District under the U.S Department of Commerce Economic Development Administration.

DETCOG was founded to facilitate planning, eliminate duplication, and promote economy and efficiency in the coordinated development of our region. While we are a governmental agency, we have no taxing or ordinance making authority. At 9,413 square miles, the DETCOG region is geographically larger than several states. Our 2020 population was 338,090.

DETCOG envisions a Deep East Texas region where all people have the necessary skills and opportunities to achieve their individual dreams; a Deep East Texas where people enjoy good health, safety and security, and a high standard of living. Owner assists its members' efforts to increase jobs and strengthen their local economies. Regional cooperation leads to stronger communities and more efficient use of resources. DETCOG provides the opportunity for local jurisdictions to work together to accomplish more than any individual member could accomplish on its own.

Broadband internet access is a fundamental need of Deep East Texans. Without it, our citizens lack a necessity that negatively impacts their work, education, health and safety. It impacts their ability to find and maintain jobs. It restricts their ability to educate effectively, limiting students' access to online and distance learning. And, it places their health and safety at risk during times of emergency.

DETCOG's core broadband objectives include:

- Improving broadband access conditions in northern Newton County and throughout the 12-county region
- Ensuring that end-user customers are being offered equitable and affordable broadband service by the Network Operator
- Promoting robust broadband access for essential state and local governmental services including, without limitation, public safety, health and education
- Promoting increased availability of broadband access and related services

## **2.5 Overview of the NBN**

To mitigate the broadband issues faced in Newton County, DETCOG ("Owner") was awarded a \$9 million grant in 2022 by the Texas General Land Office which will cover much of the northern part of Newton County with fixed-wireless internet service. The project will utilize CBRS wireless technology on existing wireless towers to provide high-speed internet to homes and businesses, linked by approximately 95 miles of new fiber-optic backbone cable. When completed, the project will reach more than 2,700 households including approximately 6,700 residents.

Residents will have access to wireless internet services utilizing CBRS ("Citizens Band Radio Service") and by way of wireless transmitters mounted on existing communications towers. Communication tower leases have been paid for as part of the grant. Residents will utilize a wireless radio at each home. Speeds will vary, but in many cases, will be significantly higher than what residents receive today. Low- and moderate-income residents will receive free wireless access equipment as part of the grant, eliminating a common barrier to affordability. This equipment is paid for through the grant.

Owner anticipates a 2-year construction schedule for the project, beginning with the highest priority areas of Newton County first to ensure that new access to internet services

are established quickly to those most impacted by disaster events. Owner is midway through engineering with construction expected to start in mid-2024.

Owner will utilize a bid/build construction methodology in compliance with State of Texas procurement rules. Owner will follow all established rules for environmental assessments, state historical preservation assessments and tribal consultations as part of the project during the engineering phase. Owner's desire is to select the network operator in advance of construction to minimize any interoperability issues with the selected operator's network and systems. This process will also allow for final incremental design adjustments to be made with input from the selected operator. It also allows the operator to have input into the construction of the network.

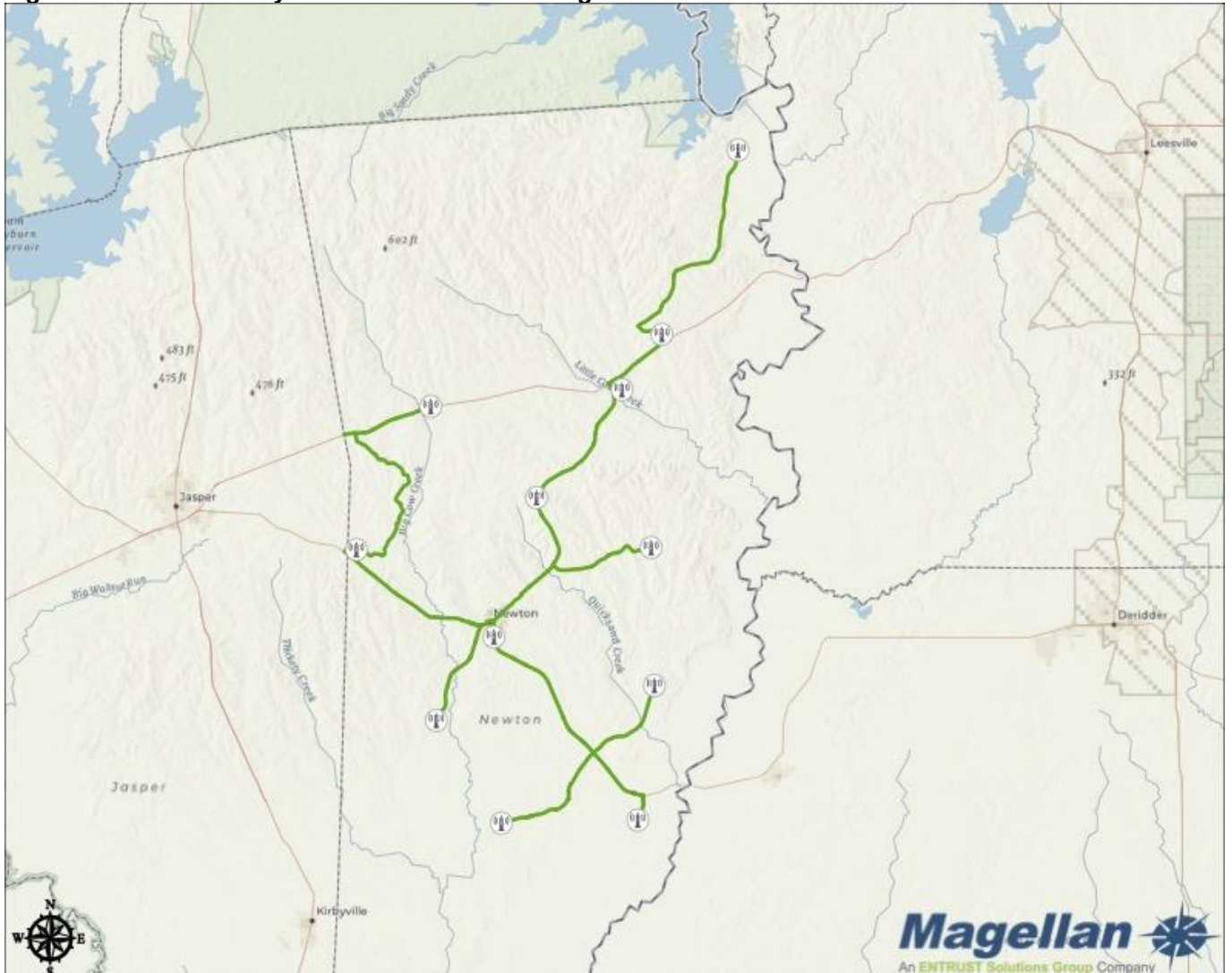
This project provides the most feasible way to expand broadband access and improve affordability in Newton County, for the following reasons.

- It creates the most economically viable approach to deploy broadband infrastructure to meet the needs of Newton County. This project achieves the same goals of expanding wireline broadband access for less than \$10 million. An equivalent project providing wired broadband services would cost between \$21 and \$30 million to serve the same population.
- It enables the quickest route to meaningful improvements to the communities that need them the most. By deploying wireless internet access using existing towers, the project minimizes construction time and brings services to residents most impacted by disasters quickly and efficiently. It also allows Owner to prioritize highly impacted communities at a granular level and deliver services significantly more rapidly than if a wired network would be constructed.
- It positively impacts access, affordability and adoption. By furnishing low- and moderate-income residents with free wireless equipment to access the service, it directly lowers a key barrier to affordability. Owner also intends to establish "lifeline" programs, similar to those provided by existing broadband providers that establishes discounted pricing for services to these residents.

Owner is also applying for additional funding from GLO and other sources to continue the deployment of network that will serve disaster-impacted areas within its region, as well as unserved and underserved communities. Any network operator selected by Owner in this RFP does not guarantee selection on other Owner projects.



**Figure 1: Newton County Broadband Network Design**



### **3. NETWORK OPERATOR SERVICES AND RESPONSIBILITIES**

#### **3.1 Overview**

Owner seeks to select a single Respondent to operate, maintain, market, sell and extend the NBN to provide high-speed, wireless and fiber broadband services to homes, businesses and community anchor organizations.

Operator shall not be the recipient of any grant funds under this RFP or associated network operations agreement.

Key responsibilities include:

- The Network Operator shall be responsible for the operation and maintenance of the NBN and assume all duties with running a commercial broadband business, including all outside plant, inside plant, equipment, facilities and access.
- Network Operator shall provide real time access to certain records, maintain accurate and up-to-date network documentation, and submit periodic reports about the NBN.
- The Network Operator shall maintain a complete audit trail of all financial and non-financial transactions arising from or in connection with operations and maintenance of the NBN.
- The Network Operator shall prepare a network operations plan for Owner's review and shall periodically update the plan.
- The Network Operator shall prepare a network implementation plan for Owner's review. The implementation plan will provide a step-by-step approach to implementation and final turn-up of the network to place it in ready-for-service status.
- The Network Operator and Owner will mutually and regularly consult with each other to coordinate the approval, financing and construction of expansions of the network that may be funded by Owner and/or the operator.
- The Network Operator is solely and fully responsible for the marketing, provisioning, and support of all services to customers and shall comply with all regulatory requirements, applicable laws, applicable standards, acceptable use policies, authorizations, and specified performance requirements.
- The Network Operator shall provide high-speed, reliable internet services to homes, businesses, community anchor organizations and other potential users of the network.
- Except for certain allowable costs permitted by grant regulations, the Network Operator is responsible for the ongoing costs of operating and maintaining the NBN.

- Owner is responsible for all capital expenses for the network as funded by the grant, including fiber and wireless design and construction, permitting, equipment, capital leases and related costs.
- Owner will procure the services of one or more construction prime contractors that are responsible for the construction of the fiber and wireless infrastructure, including home installations. Network Operator will work with Owner to ensure that the contractor(s) selected are able to meet the essential requirements of the project.
- Owner is responsible for installing services to each LMI Resident. The grant provides funding to cover the equipment and installation costs of connecting 1,416 LMI Residents. The grant provides for the costs of materials, equipment and labor to connect each LMI household.
- Households that do not have an LMI Resident will have no access costs paid for by the grant. The Network Operator is responsible for paying the costs of connecting non-LMI Residents, including materials, equipment and labor.
- The Network Operator is responsible for providing total counts of LMI Households served to support Owner's reporting requirements.
- The grant provides no funding for the monthly service charges to residents, whether they are LMI Households or non-LMI Households
- Network Operator shall provide a performance bond ("Performance Bond") in a penal sum equal to two million dollars ("two million") that shall remain in place for the Term of the Agreement.
- The Network Operator shall make reasonable payments to Owner to support its ongoing renewal and replacement costs, related obligations associated with the NBN.
- Network Operator shall operate and maintain a NOC that monitors the NBN twenty-four (24) hours a day, seven (7) days a week and that is staffed with trained and qualified personnel. Network operations center will provide frontline customer service and support, technical support, network monitoring and maintenance, reporting and other functions commensurate with running an ISP.
- The Network Operator shall meet or exceed commercially reasonable Service Level Agreement performance standards for broadband internet services, including proactive notification of outages, outage management, standard and emergency maintenance and quality monitoring of key metrics such as availability, packet loss and latency. Network performance metrics will be defined through the testing process to determine speed, availability, packet loss and latency.
- The Network Operator shall establish and comply with written policies and procedures for ensuring the physical and cybersecurity of the NBN such as maintaining and following a Written Information Security Program ("ISP"), a Cybersecurity Policy for the Network that includes an information security plan and an incident response plan, that is compliant with NIST Cybersecurity Framework or similar industry cybersecurity framework.
- The Network Operator shall be responsible for ensuring that the NBN is in full compliance with all applicable federal (FCC, FTC and other agencies), state, and

local laws, including the terms and conditions of the grant from the Texas General Land Office used to provide the capital for the NBN.

#### 4. RFP PROCESS

##### 4.1 Response and Submission Instructions

Respondents shall read this RFP carefully and conform to its requirements. Failure to comply with the requirements of this RFP may serve as grounds for rejection of a proposal. Bids received after the time set for the bid opening shall be returned to the bidder unopened.

- a. All proposals must be submitted as set forth below and in writing, on 8 ½ x 11 paper (including all required submissions).
- b. 6 bound copies of the proposal shall be provided in the envelope/box.
- c. 1 USB thumb drive including a final pdf copy of the proposal and Microsoft Excel file containing the project financial model.
- d. The envelope/box shall be marked with the number and name of the RFP as follows:
  - RFP 2024-02 – Broadband Network Operator
- e. Required Submissions - All Proposals must include the items listed below:
  - RFP Cover Sheet (Attachment A);
  - RFP Response including a Technical Proposal, which shall be organized by the categories as described in Section 4 below;
  - Authorized Application Signature and Acceptance Form (Attachment B). By executing the Authorized Respondent's Signature and Acceptance Form and submitting a response to this RFP, Respondents certify that they (1) are in compliance with the terms, conditions and specifications contained in this RFP, (2) acknowledge and understand the procedures for handling materials submitted to the Owner, (3) agree to be bound by those procedures, and (4) agree that Owner shall not be liable under any circumstances for the disclosure of any materials submitted to Owner pursuant to this RFP or upon the Respondent's selection.
  - Officer's Certificate (Attachment C); and
  - Microsoft Excel format of the Respondent's Financial Model that details the Respondent's financial plan for the NBN, including but not limited to, revenues, operating and maintenance costs, and proposed capital investments funded by the Network Operator over the duration of the term. Further information is provided in Section 4.2.2 below. The Microsoft Excel file shall be included on the respondent's thumb drive with the sealed bid.
  - **Proposals must be delivered by mail, courier service, or hand delivery to:**
    - Deep East Texas Council of Governments
    - 1405 Kurth Drive, Lufkin, TX 75904

## 4.2 RFP Timeframe

The proposal process will proceed according to the following schedule. The target dates are subject to change.

**RFP Issued: June 10, 2024**

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**Answers to Questions Posted: July 2, 2024, 4:00pm CST**

**Responses Due: July 10, 2024, 4:00pm CST**

## 4.3 Questions

Questions regarding this RFP must be submitted in writing by electronic mail by the due date above respond@detcog.gov.

## 4.4 Mandatory Bidder's Conference

A mandatory bidder's videoconference will be held at 2:00pm CST on June 21. All potential Respondents interested in participating in the bidder's videoconference will use the following link:

<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>

Meeting ID: 254 132 463 203

Passcode: osgG5b

## 4.5 Financial Package with Executed NDA

Owner has prepared a pro-forma financial package to provide respondents with a forecasting tool to determine the revenues and costs generated by the NBN. The intent of this financial package is to give respondents an understanding of the key financial drivers in the project and to convey financial information that may be used by respondents to develop their response and propose retail internet rates, costs and cost sharing with Owner.

Respondents will be required to sign and return the Non-Disclosure Agreement provided at Attachment F herein prior to receiving the Financial Package. The Financial Package will be emailed to respondent's point of contact once the fully executed Non-Disclosure Agreement has been signed by both parties. Executed NDA's should be returned by email to respond@detcog.gov.

## 4.6 All Other Communication Prohibited

Respondents are prohibited from communicating directly with any employee of Owner or its consultants, including but not limited to the RFP evaluation team, regarding this procurement, except as specifically provided for in this RFP. No other individual Owner employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFP. Respondents may contact the contact person for this RFP in the event this RFP is incomplete, or the respondent is having trouble obtaining any required attachments electronically through the Data Room.

## 5. INFORMATION REQUIRED OF RESPONDENTS

### 5.1 Technical Proposal

#### 5.1.1 Business Qualifications

- a. Executive Summary. Respondents shall provide a summary of their

organization and their proposed technical, financial, and operational approach. In the executive summary, Respondent shall indicate the basic components of its Proposal. This summary should be a maximum of five (3) pages in length.

- b. Corporate Organization. Respondents shall provide a corporate organizational chart that clearly identifies the corporate entity that will hold the contract with Owner, its parent, intermediary, and affiliate corporate entities, if applicable. If the contracting entity is a Special Purpose Entity (“SPE”), Respondents shall provide corporate organizational charts for all entities holding an interest in the SPE.
- c. Company History. Respondents shall provide an overview of Respondent’s history, organizational structure, the number of full-time employees, the number of full-time outside contractors utilized, and a description of its current operations.
- d. Operational Experience. Respondents shall provide information that demonstrates the Respondent’s experience in providing services over large wireless and fiber, serving businesses, residential customers, and governmental institutions. Respondent shall describe its experience in providing network operations for wireless and fiber broadband networks with similar size, scope, and characteristics as the NBN.
- e. Operational Structure and Capacity. Respondent shall describe infrastructure and resources that Respondent proposes to make operational to perform the network service functions and services that it proposes to provide in response to this RFP. Respondent shall describe how the services will be provided, whether by internal or external contracted resources, the number of customer service employees, the hours that customer service will be available, and the location of such resources. Respondent should also clearly identify the extent to which internal or contracted resources will need to be expanded or augmented to take on the new responsibility of network operations.
- f. Key Personnel. Respondents shall provide detailed resumes indicating overall experience, professional registrations and certifications, and any specific experience relevant to the nature and scope of the Network Operator obligation for each of the key personnel of the Respondent and of the proposed team for delivering the services.
- g. Diversity and Inclusion. Respondent shall provide a description of its diversity and inclusion programs. Include a description of the participation of women, minorities, veterans, and persons with disabilities in Respondent’s work force, Ownership, executive leadership and management as well as any specific diversity programs or initiatives for staffing the Network NOC or Customer Service Center. Also include any program or initiative to maximize opportunities for the use of use of Minority Owned Business Enterprises (“MBEs”), Women Owned Business Enterprises (“WBEs”), Veteran-Owned Business Enterprises (“VBEs”), and Service Disabled Veteran Business Enterprises (“SDVBEs”), as consultants, contractors, sub consultants, subcontractors, and suppliers in connection with the operation of the Network.
- h. Financial Capacity. Respondents shall demonstrate their financial capacity to take on the project through financial statements, lending references,

letters of credit or similar documentation. Provide as much information as possible for Owner support respondent's financial strength and capabilities.

- i. Network Operations and Customer Service Center. Respondents shall provide a description of its Network Operations Center ("NOC") and customer service center. The description of the NOC and customer service center shall include whether each is operated in-house or contracted, the location, the number of employees, the current hours of operation, and the number of end-users served. Respondents shall provide detailed description of functions and capabilities of the NOC that the Operator proposes to use in support of the NBN.
- j. Marketing and Sales Experience. Respondents shall provide a description of its sales and marketing resources and experience in selling and marketing wireless residential and business broadband services include in the description the number of full-time salespersons employed, the number of years the Respondent has been selling and marketing services, the approximate number of retail broadband customers and the methods of marketing and selling used by the Respondent. Respondent shall provide copies of its existing service plans with current rates, services offered and options for the market it serves. A rate card or similar is satisfactory.
- k. Compliance. Respondents shall provide a description of its compliance policies and practices to ensure compliance with state and federal regulatory requirements. Respondents shall provide its most recent FCC filings, if any, such as Form 477, Form 499a, and CPNI Certification. Respondent shall state whether it has been the subject of any governmental inquiry or enforcement action, has knowledge of the issuance or proposed issuance of any notice by any governmental authority of its violation or any alleged violation of any law or order, or has been the subject of any adverse order or other governmental action related to its compliance with law. If so, Respondent shall provide an exhibit with its response providing complete information relevant to such matter.
- l. Cybersecurity. Respondents shall provide a description of the cybersecurity practices it follows, such as the NIST Cybersecurity Framework, ISO 27001 or SOC 2. Respondents shall explain their proposed cybersecurity program and plan for protecting the NBN from malicious cyber-attacks and ransomware. Respondent shall explain the cybersecurity standards or frameworks it proposes to implement on the Commencement Date.
- m. References. Respondents shall provide reference letters from three (3) organizations for which the Respondent has provided services similar to those described in this RFP. If the Respondent owns the network(s) that it operates and would therefore be unable to provide such reference letters, Respondent shall alternately provide references from three (3) of its largest customers. All reference letters must include a contact name, address, telephone number, and email address.

### 5.1.2 Services

- a. Retail Broadband Services. Respondents shall describe the methods it will use to market and sell the following services, including how the Respondent would pursue new market opportunities:
- i) Residential internet. Respondents shall describe the methods it will use to market and sell internet services to households in the Northern Newton County region. Explain how Respondent will serve low- and moderate-income households at rates that support growing access and adoption. Explain how Respondent plans on tiering services, from the base package up through higher-speed packages.
  - ii) Business internet. Respondents shall describe the methods it will use to market and sell internet services to businesses in the Northern Newton County region. Provide anticipated rate plans for service.
  - iii) Wholesale services. Respondents shall describe the methods it will use to market and sell wholesale services in the region. Provide anticipated rate plans for service.
  - iv) Other value-added services. In addition to internet service, Respondents are encouraged to list any other value-added services that they will provide along with their internet services.
  - v) Quality of Service. Explain the Respondent's proposed method of providing quality of service levels guaranteed as part of their internet services.
  - vi) Provisioning and Installation. Explain the Respondent's proposed method of providing provisioning and installation timeframes as part of the Respondent's retail services to customers.
  - vii) Repair and Maintenance. Explain the Respondent's proposed method of providing repair and maintenance as part of their retail service offerings.
  - viii) Requests for Service. Explain the Respondent's proposed method of establishing a standard policy for responding to requests for service within a reasonable period of time.
- b. Repairs, Outages and Performance Criteria. Respondents shall explain their proposed criteria for and methods of performance for operating the NBN which includes criteria and methods of performance for i) the Owner Core Network and ii) Owner customer connections. The proposed criteria and performance methods should address KPIs and SLAs to manage latency, packet loss, congestion, etc. Explain the Respondent's proposed methods and technology of tracking and reporting performance results.
- c. Providing Affordable Service. As outlined above, one of Owner's primary objectives is to ensure the delivery of affordable broadband service to Northern Newton County. Respondents shall explain their proposed methods for helping to ensure that end-user customers using the NBN are being provided affordable broadband.



- d. Reporting Requirements. Respondents shall explain their proposed methods for sharing and verifying data with Owner. Owner will request periodic reports from the Network Operator to support the grant. This may include active subscriber counts, capital expenditures, plant in service and other financial aspects of the NBN.

### **5.1.3 Implementation and Operations Plan**

As part of the Respondent's Technical Proposal, the Respondent shall submit a Proposed Implementation and Operations Plan addressing how the Respondent shall assume responsibility for operating the NBN and providing services to customers. Once a preferred Respondent is selected, the plan provisions shall be negotiated and agreed to between the preferred Respondent and Owner.

#### **Implementation and Operations Plan Requirements**

At a minimum, the Respondent must address the following core implementation requirements as part of Respondent's Proposal in coordination with Owner:

- Implementation staffing and project management team
- Integration and transition of Operation Support Systems (OSS) and Business Support Systems (BSS) Systems
- Equipment integration, testing and certification
- Service fulfillment and provisioning
- Field operations
- Sales and marketing
- Customer service
- Network engineering
- Quality management

## **6. EVALUATION CRITERIA**

### **6.1 General**

Owner shall evaluate each Proposal that it deems complete and responsive to the RFP. As part of the selection process, Owner may invite Respondents to answer questions regarding their Application in person or in writing, participate in an interview, and submit clarifying or supplemental information. In its sole discretion, Owner may also choose to enter into negotiations with one or more Respondents and then ask the Respondent(s) to submit a best and final offer.

The goal of this RFP is to select and enter into the NOA with the Respondent that will provide the Best Value. Owner reserves the right to consider such other relevant factors as it deems appropriate in order to obtain the Best Value.

Proposal Evaluation Categories	Maximum Points	Points Awarded
<b>Technical Proposal</b>	30	
<b>Business Qualifications</b>	40	
<b>Implementation Plan</b>	20	
<b>Pricing Proposal</b>	10	
<b>Total Points</b>	100	

**7. GENERAL CONDITIONS**

**7.1 General Information**

- a. If a Response fails to meet any material terms, conditions, requirements or procedures, it may be deemed unresponsive and disqualified. Owner reserves the right to waive omissions or irregularities that it determines to be not material.
- b. This RFP, as may be amended from time to time by Owner, does not commit Owner to select any firm(s), award any contracts for services pursuant to this RFP, or pay any costs incurred in responding to this RFP. Owner reserves the right, in its sole discretion, to withdraw the RFP, to engage in preliminary discussions with prospective Respondents, to accept or reject any or all Responses received, to request supplemental or clarifying information, to negotiate with any or all qualified Respondents, and to request modifications to Proposals in accordance with negotiations. Owner reserves the unqualified right to waive any informality, deviations, mistakes, and matters of form rather than substance.
- c. On matters related solely to this RFP that arise prior to an award decision by Owner, Respondents shall limit communications with Owner to the Procurement Team Leader and such other individuals as Owner may designate from time to time. No other Owner employee, consultant, or representative is permitted to be contacted or authorized to provide any information or respond to any questions or inquiries concerning this RFP. Respondents may contact the Procurement Team Leader for this RFP in the event this RFP is incomplete.
- d. Respondent’s Proposal shall be treated by Owner as an accurate statement of Respondent’s capabilities and experience. Should any statement asserted by Respondent prove to be inaccurate or inconsistent with the foregoing, such inaccuracy or inconsistency shall constitute sufficient cause for Owner in its sole discretion to reject the Proposal and/or terminate of any resulting Agreement.
- e. Costs that are not specifically identified in the Respondent’s response and/or not specifically accepted by Owner as part of the NOA will not be compensated under any contract awarded pursuant to this RFP.
- f. Subcontractors are required to meet the same requirements and are held to the same reimbursable cost standards the selected Respondent. Subcontractors and subsidiaries shall be identified in the Proposal.
- g. Submitted responses must be valid in all respects for a minimum period of one hundred eighty (180) days after the deadline for submission.

**Attachment A: Proposal Cover Sheet**

Name of Respondent			
Mailing Address	City/Town	State	Zip Code
Telephone	Fax	Web Address	
Primary Contact for Clarification		Primary Contact E-mail Address	
Authorized Signatory		Authorized Signatory E-mail Address	
Legal Status/Jurisdiction		Respondents DUNS No.	

**Attachment B: Authorized Respondent's Signature and Acceptance Form**

The undersigned is a duly authorized representative of the Respondent listed below. The Respondent has read and understands the RFP requirements. The Respondent acknowledges that all of the terms and conditions of the RFP are mandatory, and that Respondent's response is compliant with such requirements. The Respondent specifically acknowledges the application of the procedures regarding disclosure of confidential information and specifically agrees that it shall be bound by those procedures.

The Respondent understands that, if selected by Owner, the Respondent and Owner will execute a Network Operating Agreement specifying the mutual requirements of participation.

Respondent agrees that the entire bid response will remain valid for a minimum of one hundred and eighty (180) days from receipt by Owner.

I certify that Respondent is in compliance with all corporate filing requirements and State tax laws.

I further certify that the statements made in this response to the RFP, including all attachments and exhibits, are true and correct to the best of my knowledge.

Respondent: \_\_\_\_\_  
(Printed Name of Respondent)

By: \_\_\_\_\_ (Signature of Authorized  
Representative)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Attachment C: Officer's Certificate

The following questions must be answered by the Respondent.

1. Is your organization in compliance with of all its obligations under all bank lending and other credit (e.g., equipment leases) arrangements and has it been in compliance with these requirements during the past 12 months?  
Yes  No
2. During the past 5 years has your organization filed for bankruptcy or has any Principal (more than 5% stockholder or other type of Ownership) or officer been an officer or Principal of another firm that filed for or been the subject of any bankruptcy or insolvency proceeding?  
Yes  No
3. Has your organization complied with all of its obligations to federal, state and local taxing authorities over the past three years?  
Yes  No
4. Has your organization been a named party (either voluntarily or involuntarily) in any legal proceedings, administrative proceedings or arbitrations initiated by a local, state or federal governmental body within the past 5 years that resulted in your organization being sanctioned or ordered to pay fines or penalties in excess of \$10,000?  
Yes  No
5. Has your organization or any officer or Principal been convicted in any criminal proceeding (other than minor traffic and other non-felony offenses) during the past 7 years or currently the subject of any similar criminal proceeding?  
Yes  No
6. Has your organization been terminated or failed to complete work within the past 5 years on a project funded in whole or in part with public funds (local, state or federal).  
Yes  No

**Attachment D: Pricing Proposal**

**Retail Monthly Cost to Consumer**

It is Owner’s goal to ensure that retail residential pricing is as competitive as possible while simultaneously ensuring sufficient cash flow to support the network’s renewal and replacement requirements over time. Therefore, this pricing proposal has two components that will be scored in the bid. Based on the information provided in this RFP, respondent will provide their expected retail price for the lowest tier of internet service on the network, per month. This should be inclusive of any taxes and fees and represent the final price that the provider will collect from the consumer each month for the lowest speed tier internet service offering.

Respondent’s lowest tier internet service price: \_\_\_\_\_/Month

**Cost Share Fee**

The second component of the pricing proposal is the cost share fee that the respondent will pay to Owner to support its ongoing financial obligations for renewal and replacement of network facilities, equipment and other depreciable assets. As recipient and Owner of the network, Owner will need to support ongoing renewal and replacement each year. The Cost Share Rate is the percentage of gross revenues that the respondent will provide to Owner each month to support these financial obligations.

Respondent’s cost share fee \_\_\_\_\_% of Gross Revenues

**Attachment E: Certification**

The undersigned, \_\_\_\_\_ (Name), hereby certifies that I am a duly authorized representative of \_\_\_\_\_ (Organization name) and that all of the foregoing answers and all statements contained in any explanation are complete, true and correct. Providing false or misleading information or failure to provide all required information will be considered grounds for disqualification. I attest to the accuracy of all information contained in this proposal and verify that the information submitted is in fact complete, accurate and true.

Signed and sworn under the penalties of perjury.

Dated at: \_\_\_\_\_

(Location)

This \_\_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Printed or Typed)

Title/Position: \_\_\_\_\_

## Attachment F: Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT BETWEEN  
DEEP EAST TEXAS COUNCIL OF GOVERNMENTS AND \_\_\_\_\_

Effective Date: \_\_\_\_\_, 2024

### 1. Parties

In order to protect Confidential Information which may be disclosed between them, Deep East Texas Council of Governments (“DETCOG”) and \_\_\_\_\_ (“Company”) agree that:

under the terms of this AGREEMENT, Confidential Information will be disclosed by DETCOG and Company (the “Parties”); and

a party disclosing Confidential Information under this AGREEMENT is referred to herein as the Disclosing Party or Discloser, and a party receiving Confidential Information under this AGREEMENT is referred to herein as the Receiving Party or Recipient.

### 2. Scope of Disclosure

As used in this AGREEMENT, the term "Confidential Information" shall mean any and all information that is or has been disclosed to a Recipient by the Disclosing Party on or after the Effective Date which (a) relates to the business, technological or other confidential and proprietary information of the Disclosing Party; and (b) the Disclosing Party designates as proprietary or confidential at the time disclosure is made or which, by the nature of information or the circumstances surrounding such disclosure should, in good faith, be treated by the Recipient as confidential and/or proprietary.

The Confidential Information disclosed under this AGREEMENT shall include the pro-forma financial package referenced in DETCOG RFP No. 2024-02 which provides respondents with a forecasting tool to determine the revenues and costs generated by the DETCOG network.

The Confidential Information disclosed under this AGREEMENT may include, without limitation, business outlooks, revenue, pricing, trade secrets, computer programs, software (including, without limitation, code, software output, screen displays, file hierarchies and user interfaces), formulas, data, inventions, techniques, know-how, specifications, drawings, product designs, product plans, services, strategies, third party confidential information, and corporate and personnel statistics.

### 3. Use of Confidential Information

Confidential Information disclosed under this AGREEMENT shall be used only for the purpose of allowing the Parties to evaluate the potential for a mutually beneficial business relationship between the Parties (the “Purpose”).

### 4. Employee Access and Control of Information

The Receiving Party shall restrict disclosure to those employees, Affiliates and contract personnel with a need to know in connection with the Purpose and under an obligation to hold such Confidential Information in confidence under terms and conditions at least as restrictive as the terms and conditions of this AGREEMENT.

### 5. Affiliates

The Parties recognize that each of them may be part of an organization of multiple legal entities in



several jurisdictions, and that it may be necessary or appropriate for each Party to provide Confidential Information to its Affiliates. For purposes of this AGREEMENT, the term "Affiliate" shall mean any entity which directly or indirectly controls, is controlled by, or is under common control with a Party to this AGREEMENT. "Control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the share or interests entitled to vote for the directors thereof, or the equivalent, for so long as such entitlement exists, or equivalent power over management thereof.

Each Party agrees (both as the Disclosing Party and Receiving Party hereunder) that:

- a) the Receiving Party may disclose Confidential Information to an Affiliate, but only to the extent that such Affiliate has a need to know such Confidential Information in order to carry out the Purpose;
- b) disclosure by or to an Affiliate of a Party hereto shall be a disclosure, subject to the terms of this AGREEMENT, by or to that Party, as applicable; and
- c) each Party guarantees the observance and proper performance by all of its Affiliates who are receiving Confidential Information, of the terms and conditions of this AGREEMENT.

#### 6. Duration of Protection

Recipient shall have a duty to protect Confidential Information of the Disclosing Party for a period of five (5) years from the date of receipt.

#### 7. Duty to Protect

Recipient shall protect the Confidential Information disclosed to it by or on behalf of the Discloser from any use, distribution or disclosure, except as permitted herein. Recipient will use the same degree of care to prevent the unauthorized use, dissemination, or publication of the Confidential Information as it uses to protect its own confidential or proprietary information of a similar nature, but in no event less than a reasonable degree of care.

#### 8. Excluded Information

This AGREEMENT imposes no obligation upon a Recipient with respect to Confidential Information which:

- a) was in the Recipient's possession before receipt from the Discloser;
- b) is or becomes a matter of public knowledge through no fault of the Recipient, but only after, and to the extent that, the Confidential Information becomes a matter of public knowledge;
- c) is disclosed without restriction to the Recipient by a third party having a bona fide right to disclose same;
- d) is independently developed by the Recipient; or
- e) is required to be disclosed pursuant to any law, regulation or legal order, provided that the Recipient has promptly notified the Discloser upon learning of the possibility that disclosure could be required under such law, regulation or legal order and has given Discloser a reasonable opportunity to contest or limit the scope of such required disclosure and has cooperated with the Discloser toward this end.

#### 9. Rights and Obligations

- a) The rights and obligations of the Parties with respect to Confidential Information shall be defined exclusively by the terms of this AGREEMENT. All Confidential Information shall remain the sole property of the Disclosing Party which originally disclosed such Confidential Information. All Confidential Information is provided "AS IS", and specifically without any warranty, express, implied or otherwise, regarding its accuracy or performance. Neither Party makes any representation or warranty or assurance with respect to the non-infringement of trademarks, patents, copyrights, mask work protection rights or any other intellectual property rights

or other rights of third parties.

Neither Party acquires any intellectual property rights of the other Party under this AGREEMENT except the limited right to use set forth in Paragraph 3 above.

f) The Parties do not intend that any agency or partnership relationship be created between them by this AGREEMENT.

g) Upon written request of Discloser, Recipient will return to Discloser all Confidential Information received under this AGREEMENT; provided, however, that Recipient may retain one archival copy for use only in resolving a dispute concerning this AGREEMENT.

10. Compliance with Laws

Each Party will comply with all applicable federal, state and local statutes, rules and regulations, including, but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time.

11. Notice

Any notice or other communication made or given by either Party in connection with this AGREEMENT shall be sent via facsimile (with confirmation) or by registered or certified mail, postage prepaid, return receipt requested, or by courier service addressed to the other Party at its address set forth below:

To DETCOG: Deep East Texas Council of Government  
Attn: Executive Director  
1405 Kurth Drive  
Lufkin, Texas 75904  
Email: LHunt@detcog.gov

To Company: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
(Mailing Address)  
Email: \_\_\_\_\_

12. Assignment

This AGREEMENT will be binding on the Parties hereto and their respective successors. Neither Party may assign this AGREEMENT without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

13. Amendments

All additions or modifications to this AGREEMENT must be made in writing and must be signed by an authorized representative of each Party.

14. Controlling Law

This AGREEMENT shall be governed in all respects solely and exclusively by the laws of the State of Texas, without regard to conflict of law principles.

15. Expiration of Agreement

a) This AGREEMENT expires 180 days after the Effective Date which is entered on Page 1, but in any event, the duty to protect Confidential Information shall continue through the period specified in Paragraph 6.

b) This AGREEMENT may be terminated by either Party by giving thirty (30) days notice in writing

to the other Party; however, the duty to protect Confidential Information shall continue through the date specified in Paragraph 6.

16. Injunctive Relief

The Parties agree that any unauthorized use of any of the Confidential Information in violation of this AGREEMENT disclosed by a Disclosing Party may cause such Disclosing Party irreparable injury for which it may have no adequate remedy at law. Accordingly, the Disclosing Party shall be entitled to seek immediate injunctive relief prohibiting any violation of this AGREEMENT, in addition to any other rights and remedies available to such Disclosing Party.

17. Attorneys' Fees

In the event any Party should bring any action to enforce or protect any of its rights under this AGREEMENT, the prevailing Party shall be entitled to recover, in addition to its damages, its reasonable attorneys' fees, costs and expenses incurred in connection therewith including any appeal or enforcement of any judgment obtained in any such action or proceeding. This Paragraph 17 is intended to be severable from other sections or provisions of this AGREEMENT, and shall survive any judgment or order entered in any action or proceeding, and shall not be deemed merged into any judgment or order.

18. Counterparts; PDF Delivery

This AGREEMENT may be executed in one or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the AGREEMENT when a duly authorized representative of each Party has signed a counterpart. Each Party agrees that the delivery of the AGREEMENT by email (PDF format) shall have the same force and effect as delivery of original signatures and that each Party may use such PDF signatures as evidence of the execution and delivery of the AGREEMENT by all Parties to the same extent that an original signature could be used.

19. Miscellaneous

This AGREEMENT constitutes the entire understanding and agreement among the Parties hereto as to the Confidential Information, and supersedes all prior discussions between them relating thereto. The failure or delay of any Party to enforce at any time any provision of this AGREEMENT shall not constitute a waiver of such Party's right thereafter to enforce each and every provision of this AGREEMENT. If any of the provisions of this AGREEMENT are determined to be illegal, unenforceable or invalid by any court of competent jurisdiction, the remaining terms, conditions or provisions hereof shall remain in full force and effect. In the event of any inconsistency between this AGREEMENT and the confidentiality provisions of any other contract entered into by the Parties, the document with the most protective terms for confidentiality shall prevail.

By signing below, the Signatory affirms that he/she is legally authorized to act on behalf of the named Party.

DEEP EAST TEXAS COUNCIL OF  
GOVERNMENTS

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Signatory's Name)

\_\_\_\_\_  
(Printed Signatory's Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Attachment G: Non-Collusion Affidavit**

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

The undersigned bidder or agent further affirms that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or item of value on account of the undersigned winning this bid. OATH AND AFFIRMATION I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID ARE TRUE AND CORRECT.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ (Name of Organization)

\_\_\_\_\_ (Title of Person Signing)

\_\_\_\_\_ (Signature)

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_) )\_ss

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Notary Public Signature

My Commission Expires: \_\_\_\_\_

**Attachment H: Sample Agreement for Network Operation Services**

**SAMPLE AGREEMENT FOR NETWORK OPERATION SERVICES (DRAFT)**

This agreement for network operation services (“Agreement”) is entered into on \_\_\_\_\_ by and between the Deep East Texas Council of Governments, \_\_\_\_\_, with its principal offices at \_\_\_\_\_ (hereinafter called “Owner”) and \_\_\_\_\_, a \_\_\_\_\_, with its principal offices \_\_\_\_\_ (hereinafter called “Contractor”).

**RECITALS**

1. Owner desires to design and build the NBN in a manner that effectively enables the provision of high-capacity broadband and other services and capabilities to residents, businesses, community anchors and other users of broadband in Northern Newton County.
2. Owner desires to enter into a non-exclusive agreement with Contractor to provide network operation services, and to that end Owner has negotiated this Agreement with Contractor.
3. To effect the purposes set forth above, Owner desires to allow the Contractor to operate and maintain NBN-related assets, including dark fiber, wireless towers, wireless equipment, facilities and related equipment.
4. Contractor desires to provide such services, to activate, operate and maintain the NBN on a nondiscriminatory basis, and to provide broadband services and capabilities to the residents, businesses and other users in northern Newton County as further set forth in, and subject to the provisions of this Agreement.
5. This project was funded under the 2016 Floods State Mitigation Competition by the Texas General Land Office. As a requirement of this funding, Owner is responsible to connect LMI residents to the NBN. Contractor will work with Owner to ensure such requirements are met as further described in this agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Owner and Contractor agree as follows:

**1. Table of Exhibits Made Part of This Agreement**

- Exhibit A: Listed Assets
- Exhibit B: Lease Fees
- Exhibit C: Network Maps and Buildout
- Exhibit D: Performance Metrics
- Exhibit E: Maintenance of Assets

**2. Definitions**

**2.1** “Access Agreement” means the written agreement between an owner of Premises and Contractor pertaining to the connection of the Premises to the NBN, and Contractor a right of access and sufficient to enable the installation and maintenance of NBN and/or Contractor facilities on the Premises.

- 2.2** “Agreement” means this Agreement, any and all Exhibits and Attachments thereto, and any Addenda or written amendments to which the Parties may agree from time to time.
- 2.3** “Assets” means the dark fiber strands, wireless towers, shelters and equipment associated with the NBN and leased to Contractor under this Agreement, as specified in Exhibit A.
- 2.4** “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise to provide internet or related services such as internet, voice, video, transport, dark fiber and related services.
- 2.5** “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind for Contractor to a Party’s execution of its obligations under this Agreement, whether imposed by a governmental authority or a private entity.
- 2.6** “Customer Premises Equipment” (“CPE”) means Wireless Gateway, antenna and associated equipment and inside wiring located at a Premises that is necessary for the connection of a Premise to the NBN.
- 2.7** “Dark Fiber” means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated.
- 2.8** “Effective Date” means the date upon which this Agreement has been executed by the Parties.
- 2.9** “LMI Resident” is defined by Section 102(a)(20) of the HCDA as a person in a family or an individual with annual income equal to or less than HUD’s Section 8 Low Income Limit, which is generally 80 percent of an area’s median family income adjusted for household size. For the purposes of this agreement, a LMI resident is a resident that is in the NBN service area and meets the LMI income requirement.
- 2.10** “Maintenance” means work that must be performed upon or to the NBN, including Assets, to ensure the continuity of an acceptable signal transmitted through the fibers and wireless signals (in conformance with the manufacturer’s specifications), and capable of enabling Contractor to meet the Performance Metrics, or to ensure the safety and reliability of the Assets.
- 2.11** “Contractor” means the organization that is responsible for providing operations and maintenance for all services and assets on the NBN and providing all services on an ongoing basis to customers in northern Newton County over the NBN.
- 2.12** “NBN” means Newton County Broadband Network and includes fiber-optic cable, wireless assets, equipment, engineering designs, software, permits, licenses and any other assets paid for by the 2016 grant.

**2.13** “Outside Plant” means physical aerial and underground fiber, structures, facilities, wireless towers, wireless cabinets and all related equipment owned or leased by Owner that is used to house or support the NBN.

**2.14** “Premise” means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the NBN. In cases where a single structure may require multiple connections to serve separate customers within the structure, each connection to a Wireless Gateway will count as an individual Premise.

**2.15** “Route” means the physical path traversed by the wireless or fiber infrastructure, specified as Assets in Exhibit A, as set forth in applicable maps and related documents that are made a part of this Agreement.

**2.16** “Service” means any retail or wholesale communications service offered and provided using the NBN and the Assets, whether by Contractor or another Service Provider including internet access and potentially other services that the Contractor desires to offer.

**2.17** “Subscriber” means a business, residential or community anchor customer of the NBN.

**2.18** “Wireless Gateway” or “WG” means a device that is installed on a customer’s premises and provides wireless broadband services through the NBN.

### **3. Term and Termination**

#### **3.1 Term**

This Agreement shall continue for a term of ten (10) years from the Effective Date, (“Term”), unless terminated sooner under the provisions of this Agreement, in accordance with Section 11. Upon mutual written agreement no less than six (6) months prior to expiration, the Parties may renew this Agreement for two (2) consecutive five (5) year extensions (each, a “Renewal Term”).

#### **3.2 Termination**

**3.2.1 Material Breach.** Either Party may terminate this Agreement in the event of a material breach of this Agreement by the other Party, consistent with and subject to the procedures and remedies for breach set forth in this agreement.

### **4. Owner’s Obligations**

#### **4.1 Network Construction, Renewal and Replacement**

The NBN is a \$9 million project funded in 2022 by the Texas General Land Office and will cover much northern Newton County with fixed-wireless internet services. The project will connect area towers to provide internet access to homes and businesses, linked by approximately 85 miles of backbone fiber. When completed, the project will reach more than 2,700 households including approximately 6,700 residents. Owner will be responsible for the following activities related to the engineering and construction of the NBN. To date, engineering design has been completed and Owner will procure the service of one or more construction prime contractors to build the network. Owner’s responsibilities include:



1. Engineering design
2. Environmental approvals
3. Permitting
4. Construction Procurement
5. Construction Management
6. Equipment Procurement
7. Home and other Premise Installations for LMI residents
8. Grant contract administration and compliance
9. Providing a sinking fund renewal and replacement

## **4.2 Use of Assets**

Upon the Effective Date, Owner grants to Contractor for the Term the non-exclusive right to use the Assets specified in Exhibit A, as it may be amended from time to time, for the purposes set forth in this Agreement.

### **4.2.1 Title**

Legal title in the Assets and the NBN is, and shall continue to be, held by Owner, and nothing in this Agreement shall convey any legal title to real or personal property, nor shall it create any security interest for Contractor's or any other person's benefit.

### **4.2.2 Sale or Abandonment of Assets**

In the event Owner, assigns, otherwise transfers title in, or abandons the Assets prior to the expiration of the Term, Contractor's right to use the Assets during the Term shall not be affected, and any such sale shall explicitly be made subject to and conditioned upon the continuation of the Lease granted by this Agreement (including associated payment obligations of Contractor).

## **4.3 Construction**

### **4.3.1 Determination of Scope**

The NBN shall be constructed in phases. The scope and timing of each phase of NBN construction shall be determined by Owner and Contractor. The Parties will work together to develop criteria for identifying areas that may have strongest demand, greatest economic need, highest density, greatest potential for expeditious buildout, or other indicia of likely success. Owner and Contractor shall endeavor to build out first to areas that rank highest on these or other criteria to which the parties may agree.

### **4.3.2 Access to NBN**

Owner shall provide Contractor with access to NBN plant and facilities for installation, maintenance and troubleshooting of Contractor's services and equipment. Owner shall allow Contractor's personnel or its agents reasonable direct ingress and egress to NBN property within which Assets have been placed, including fiber plant and enclosure facilities, wireless equipment and facilities, towers and related infrastructure and shall permit Contractor's personnel or its agents to access such property at such times as may be required to install, test and repair Contractor's equipment. Contractor personnel and its agents shall, while on such property, comply with all industry standard rules, regulations, and procedures, and other requirements

communicated to Contractor by Owner including security requirements and, where required by government regulations as disclosed by Owner, receipt of satisfactory governmental clearances.

## 5. Contractor's Service Obligations

As Network Operator of the NBN, and as may be more fully described elsewhere in this Agreement, Contractor shall, at its expense:

- A. Operate, monitor, maintain as needed all equipment necessary to support normal function of the NBN to ensure delivery of wireless internet and other services to customers;
- B. Provide routine and emergency maintenance on all physical fiber and wireless assets of the NBN;
- C. Offer and provide internet services to any customer in the NBN service area that requests service and where the particular service can be made available;
- D. Market, advertise and sell services in the Northern Newton County service area;
- E. Maintain, repair and upgrade NBN equipment;
- F. Provide routine maintenance and repair for all NBN Assets;
- G. These services shall be provided for all backbone, distribution, access, CPE and facilities owned by Owner, collectively the NBN.

### 5.1 Premises Construction, Installation, and Equipment

Contractor shall maintain any and all Customer Premises Equipment (such as cabling and Wireless Gateways) as necessary to connect the Premises to the NBN and deliver Services.

**5.1.1 Business locations.** Contractor will be responsible for any and all equipment, wiring and construction necessary to connect units from the connection panel in the telecommunications room or demarcation point within the business premises.

**5.1.2 Non-LMI Residents.** For customers that are not LMI Residents, Contractor will be responsible for the purchase and installation of any and all equipment, wiring and construction necessary to connect Premises to the NBN.

**5.1.3 LMI Residents -** For the duration of Owner's grant contract # \_\_\_\_\_, Owner will be responsible for the purchase and installation of any and all equipment, wiring and construction to connect Premises on the NBN. Once installation is complete, Contractor is responsible to manage these connections as part of this agreement.

**5.1.4 Authorization.** Contractor shall acquire from the Premises owner all necessary licenses, permits, permission to enter, occupy and perform work on Premises. Contractor accepts all risks associated with such activity.

### 5.2 Network Operations

**5.2.1 Network Operations.** Contractor shall install, configure, operate, monitor, maintain, and upgrade as needed all equipment necessary to activate the NBN and to operate NBN, subject to Owner's maintenance and repair obligations as outlined in Exhibit E.

**5.2.2 Provisioning.** Contractor shall manage provisioning of new customers on the NBN.

**5.2.3 Tech Support.** Contractor shall provide tech support at all levels to customers of the NBN.

**5.2.4 Engineering.** Contractor shall provide ongoing engineering services to ensure high-quality broadband services continue to be delivered to customers of the NBN.

**5.2.5 Routine and Emergency Maintenance.** Contractor shall provide ongoing maintenance of the NBN. Contractor shall use industry best practice for emergency maintenance activities to ensure downtime is limited for customers of the NBN.

**5.2.6 Capacity Planning.** Contractor shall employ the necessary systems to monitor and plan for capacity upgrades on the NBN.

### **5.3 Retail and Wholesale Services**

#### **5.3.1 Retail and Wholesale Services**

Contractor shall offer and provide residential and business broadband internet access service via the NBN. Contractor will develop tiered broadband (and other service) packages and provide standard rate cards for services.

#### **5.3.2 Additional Services**

Contractor may opt to make other services available over the NBN which may include voice, video, security and related services, either through its own efforts or those of its affiliates, unrelated Service Providers, or partnerships.

#### **5.3.3 Authorization to Provide Services**

Contractor shall obtain and maintain throughout the Term at its expense all necessary Authorizations to the provision of internet access, voice, video and any other Services offered by Contractor, and shall comply with all applicable laws and regulations to the provision of such Services.

### **5.4 Performance Metrics and Standards**

Contractor shall meet the performance metrics and standards set forth in Exhibit D.

### **5.5 Retail Service Fees**

Retail Service Fees shall be set by the Contractor with input from Owner on final pricing plans for internet and related services.

### **5.6 Customer Service**

#### **5.6.1 Subscriber Relationship**

Contractor shall be responsible for all aspects of the customer relationship involving

Subscribers to retail Services provided by Contractor as set forth in this subsection.

**5.6.1.1 Subscriber Customer Support.** Contractor shall be responsible for receiving, servicing, and resolving directly all requests for support from Contractor's Subscribers, including but not limited to technical, billing, and sales and marketing inquiries. Under no circumstances shall Contractor direct any Subscriber to contact Owner for customer support.

**5.6.1.2 Billing/Collections.** Contractor shall be responsible for all invoicing, billing and collection activities relating to its Subscribers.

**5.6.1.3 Sales/Marketing.** Except as otherwise provided in this Agreement, Contractor shall be responsible for any and all sales and marketing activities relating to Contractor, including but not limited to pricing of services, description of services, and promotional activities.

**5.6.1.4 Bad Debts.** Contractor shall be responsible for any and all bad debts associated with its Subscribers.

## **5.6.2 Service Provider Relationship**

Contractor shall be responsible for all aspects of the customer relationship involving the provision of services by Contractor to other Service Providers for wholesale services, as set forth in this subsection. Contractor is permitted to resell wholesale services to other Service Providers utilizing the NBN to the extent allowed by law.

**5.6.2.1 Service Provider Support.** Contractor shall be responsible for receiving, servicing, and resolving directly all requests for support from Service Providers, including but not limited to technical, billing and sales and marketing inquiries. Under no circumstances shall Contractor direct any Service Provider to contact Owner for customer support, unless Contractor has first notified and obtained Owner's consent for such contact.

**5.6.2.2 Billing / Collections.** Contractor shall be responsible for all invoicing, billing and collection activities related to Service Providers.

**5.6.2.3 Sales / Marketing.** Except as otherwise provided in this Agreement, Contractor shall be responsible for any and all sales and marketing activities related to Contractor services for Service Providers, including but not limited to pricing of services, description of services, and promotional activities.

**5.6.2.4 Bad Debts.** Contractor shall be responsible for any and all bad debts associated with Service Providers.

## **6. Fees**

As consideration for the operations of the NBN described in this Agreement, Contractor shall pay Owner compensation as described in this Section and as specifically set forth in Exhibit B. Compensation shall be invoiced by Owner on a quarterly basis, and payment shall be due within thirty (30) days of Contractor's receipt of such invoice.

## **7. Reporting**

On at least a quarterly basis, Contractor shall provide to Owner a written report including at least

the following information:

- 7.1** A list of Subscribers activated by Contractor or a contracted Service Provider during the previous quarter, by month, including physical address and broken down between LMI Subscribers and non-LMI Subscribers.
- 7.2** A list of Subscribers deactivated by Contractor or a contracted Service Provider during the previous quarter, by month, including physical address and broken down between LMI Subscribers and non-LMI Subscribers.
- 7.3** A net Subscriber count, as of the last day of each month in the reported quarter, and cumulatively, as of the last day of the reported quarter, and broken down between LMI Subscribers and non-LMI Subscribers.

## **8. Community Engagement**

In furtherance of the mission of expanding broadband in Northern Newton County, the Parties agree to undertake certain activities designed to engage and educate the public as to construction timelines and phases, and the benefits and capabilities of the NBN. Such activities shall include, but shall not be limited to, the following:

### **8.1 Pre-Sales Status**

To provide residents and businesses in Northern Newton County information regarding the status of pre-sales construction thresholds for particular neighborhoods or phases, Contractor will promptly make available complete and up-to-date information concerning pre-sales levels, by neighborhood and/or phase, as may be appropriate, on a public website.

### **8.2 Education**

In furtherance of its mission to expand broadband deployment and use in Northern Newton County, Owner will work with Contractor to educate residents and businesses about construction phases and pre-sale threshold for construction.

## **9. Default and Remedies**

### **9.1 Default**

A Default under this Agreement shall occur if (a) a Party materially breaches this Agreement, (b) such breach is not excused by any provision of this Agreement, and (c) such breach continues un-remedied for a period of sixty (60) days following receipt of written notice from the non-breaching Party. If the breach by its nature cannot be cured within sixty (60) days and the breaching Party within that time has commenced its cure, there shall be no Default as long as the Party diligently continues such cure to completion.

### **9.2 Remedies**

Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to terminate this Agreement, including the Lease for which it provides. Nothing in this Agreement shall preclude either Party from also pursuing other available remedies, including damages, injunctive relief, and costs (including reasonable attorney's fees). Section 9.3 shall not be construed as prohibiting Contractor from

obtaining injunctive relief.

### **9.3 Equitable Relief**

In the event of a breach or threatened breach by Contractor of any provision of the Agreement, Contractor recognizes the substantial and immediate harm that a breach or threatened breach will impose upon Owner, and further recognizes that in such event monetary damages will be inadequate to fully protect the Owner. Accordingly, in the event of a breach or threatened breach of this Agreement, Contractor consents to Owner's entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting Contractor and enforcing Owner's rights hereunder and preventing Contractor from further breaching any of its obligations set forth herein. Contractor expressly waives any requirement based on a state, rule of procedure, or other source, that Owner post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting Contractor Owner from pursuing any other remedies available to Owner at law or in equity for such breach or threatened breach, including the recovery of damages from Contractor.

### **9.4 Arbitration**

Upon the mutual consent of the Parties, any dispute concerning performance under this Agreement may be submitted for resolution via binding arbitration conducted under the applicable rules and processes of the American Arbitration Association. Upon the mutual consent of the Parties, any dispute concerning performance under this Agreement may be submitted for resolution through nonbinding mediation, in a forum and according to procedures jointly agreed by the Parties.

### **9.5 Performance Bond or Letter of Credit (Fiduciary Bond)**

Within 30 days following the Effective Date, Contractor shall cause the issuance of, and make available for redemption by Owner, as described in this subsection, a performance bond or irrevocable letter of credit, to the satisfaction of Owner, in the amount of two million dollars (\$2,000,000), which shall remain effective and updated throughout the Term. Contractor shall immediately provide a copy of all related documents, and any updates to such documents made during the Term, to Owner. Owner shall have the right to redeem and collect on all or a portion of the bond or letter of credit in the event of a Default by Contractor, upon presentation to the issuing bank or surety of a demand for payment accompanied by a certificate of default. The bond or letter of credit may be drawn upon to the extent necessary to effect a cure of Contractor's breach and/or to mitigate or offset damages cause thereby.

## **10. Confidentiality**

### **10.1 Non-Disclosure of this Agreement.**

Neither Party may disclose the existence of or terms of this Agreement to the public until both Parties agree upon a time and manner for a formal publicity statement. All sharing of information concerning this Agreement shall be only with those individuals deemed necessary to carry out the terms of this Agreement, except as required for disclosures required by law, or to incorporate requirements of this agreement into its own agreements with Customers and/or Service Providers.

### **10.2 Confidential Information**

If either Party provides or has provided confidential or proprietary information (“Confidential Information”) designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. Except as provided in the preceding subsection, this Agreement and its terms shall not be deemed the Confidential Information of both Parties. All Confidential Information, unless otherwise specified in writing Contractor, shall remain the property of the disclosing Party and shall be used by the receiving Party only for the intended purposes set forth in this Agreement. Except as otherwise required by law, after the receiving Party’s need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writing Contractors reflecting Contractor Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing Contractor by the disclosing Party.

### **10.3 Exceptions**

The foregoing provisions of this section shall not apply to (i) any required disclosures to any government authority, (ii) disclosures required under the Freedom of Information Act and applicable state or local government open records laws, (iii) any Confidential Information or any provisions of this Agreement which becomes publicly available, other than through the Party claiming this exception, or is required to be disclosed by law, (iv) Confidential Information that is independently developed by the receiving Party without breach of any obligation of confidentiality; (v) Confidential Information that becomes available to the Party claiming this exception without restriction from an unrelated third party, or becomes relevant to the settlement of any dispute or enforcement or defense of either Party’s rights under this Agreement, provided that appropriate protective measures shall be taken to preserve the confidentiality of such Confidential Information to the extent permissible in accordance with such settlement or enforcement process; (vi) disclosures of this Agreement to any proposed permitted assignee provided that each such proposed assignee agrees to be bound by confidentiality obligations no less stringent than those set forth herein; or (vii) disclosures by either Party of the general physical route of the NBN or Assets for marketing Contractor and sales-related purposes.

### **10.4 Survival**

The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

## **11. Intellectual Property**

Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions, patents, trade secrets or other intellectual property now or later owned or controlled by Contractor or Owner, and nothing in this Agreement shall be construed as granting Contractor any right, title or interest in the other Party’s trademarks, trade names, service marks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other party without prior written permission.

## **12. Taxes**

Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

### **13. Insurance**

During the term of this Agreement, each Party shall maintain a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Texas, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, with Five Million Dollars (\$5,000,000.00) umbrella coverage. Each Party shall maintain motor vehicle insurance meeting Contractor the requirements of Texas law and covering every vehicle and driver involved in providing the services, in the following amounts: (1) bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident; (2) property damage liability with a limit of \$100,000 each accident. Each Party shall name the other Party, including its officers, employees, and agents, as Additional Insureds for the said purpose and use of this Agreement. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Texas where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to either Party upon the other Party's request.

### **14. Warranties and Disclaimers**

#### **14.1 LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION AS APPLICABLE, ECONOMIC LOSS OR LOST BUSINESS OR PROFITS, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, ARISING IN ANY MANNER OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), ALL CLAIMS FOR WHICH ARE HEREBY SPECIFICALLY WAIVED.

#### **14.2 Representations and Warranties; Disclaimers**

By execution of this Agreement, each Party represents and warrants to the other that:

(a) the Party is duly organized, validly existing Contractor and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a party, or (iv) any instrument to which such Party is or may be bound or to which any of its material properties or assets is subject; (d) the Party's execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting Contractor the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that



could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

#### **14.3 General Disclaimer**

GENERAL DISCLAIMER. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, Owner AND CONTRACTOR MAKE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF ITS FIBERS OR ASSETS, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

#### **15. Assignment**

Except as otherwise provided herein, neither Party may assign, sell, transfer, delegate or in any other manner dispose of any of its rights, privileges or obligations under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any attempt to make any such assignment, sale, transfer, delegation or disposition without any such prior written consent of the other Party shall be null and void. Notwithstanding the foregoing, either Party may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without consent of the other Party to an affiliate of such Party, so long as the assignor remains liable for all of its obligations under this Agreement prior to the assignment date and assignee is liable for all of its obligations under this Agreement from and after the assignment date.

#### **16. Agreement Binding; Assignees**

This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns. In the case of any assignment, sale, transfer or disposition requiring the other Party's consent or as permitted under this Agreement, the assignee, purchaser or transferee shall execute and deliver a written agreement reasonably acceptable to the non-assigning Party in which the assignee, purchaser or transferee agrees to be bound by all of the terms and conditions of this Agreement to the extent of the rights and obligations assigned, sold or transferred.

#### **17. Relationship of the Parties**

This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between Owner and Contractor, and neither party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other party, unless expressly assumed in writing Contractor. Each party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing Contractor by the other party. Owner and Contractor, in performing any of their obligations hereunder, shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

#### **18. Indemnification**

To the extent permitted by law, and specifically, subject to the provisions of the Texas Local

Government Tort Claims Act, Texas Code Annotated, Courts and Judicial Proceedings Article, Section 5-301 *et seq.*, provided that funds have been appropriated, each Party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns (“Indemnitor”) agrees to indemnify, defend, protect and hold the other Party and its directors, officers, directors, employees, agents, successors, and assigns (“Indemnified Persons”) harmless from and against any claims, suits, actions or damages brought or asserted by a third party of any kind or character (collectively “Claims”) and from and against any liability, losses, fines, judgments, costs and expenses (including reasonable attorney, accountant and expert fees) arising out of any claims incurred by any Indemnified Persons (a) because of the death of any person, or any injuries or damage received or sustained by any persons or property, which in whole or in part arise on account of the negligent acts or omissions or willful misconduct of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement, including any material violation by Indemnitor of any law or permit applicable thereto; (b) under the Workers’ Compensation laws asserted by any other person providing goods or services for or on behalf of any of the foregoing in connection with this Agreement; or (c) arising out of, caused by, related to, or based upon, a contractual or other relationship between such claiming party and the Indemnitor, as it relates to the use of Assets.

## **19. Exceptions**

An Indemnitor’s obligations under this section shall not apply to any Claims to the extent caused by negligent acts or omissions or willful misconduct by a person claiming indemnification.

## **20. Severability**

Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect, except to the extent the affected provision is a material provision which negates the contemplated benefits of the transaction, in which event the parties shall negotiate in good faith for alternatives to achieve the contemplated consideration, or the adversely impacted Party shall have the right to terminate this Agreement on one hundred eighty (180) day’s notice.

## **21. Force Majeure**

### **21.1 Force Majeure Events**

Notwithstanding any other provision of this Agreement, neither Grantor nor Grantee shall be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting Contractor from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism (including cyberterrorism), or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes (“Force Majeure Event”).

### **21.2 Response to Force Majeure Events**

A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

### **21.3 Suspension Pending Force Majeure**

The deadline by when a Party must perform an obligation under this Agreement, other than payment of money, shall be postponed by the period of time by which the Party's ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

### **21.4 Eminent Domain**

Should any portion of the Assets or any other interest belonging to Owner or to Contractor with respect to this Agreement be acquired by condemnation, eminent domain, nationalization or expropriation (each of which, a "Taking") by any government authority or other person possessing such power, then each Party will be excused from performance of its obligations to the extent of the taking, as provided in this Section. In the proceeding for any Taking or an involuntary discontinuance of the use of the Assets in anticipation of an imminent Taking, the interests of City and Contractor in the affected portion will be severed. Owner and Contractor each may claim and receive the portion of the total award attributable to its interest in the Assets, and Owner and Contractor each may claim damages payable on account of the Taking and the relocation or re-routing Contractor expenses relating Contractor to the Assets.

## **22. Notices**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing Contractor, (b) delivered by facsimile transmission with confirmation of delivery, electronic mail with confirmation of delivery receipt, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to Owner:

With a copy to:

If to Contractor:

With a copy to:

## **23. Choice of Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to any conflicts of law provision that would affix jurisdiction in another State.

## **24. Headings**

Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

## **25. Waiver**

Any right or remedy provided for in this Agreement shall not preclude the exercise of any other

right or remedy under this Agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.

## **26. Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. This Agreement also may be executed via counterpart facsimiles on (a) the telecopy or facsimile by each Party of a signed signature page thereof to the other Party, with return receipt by telecopy or facsimile requested and received, and (b) the Parties' agreement that they will each concurrently post, by next business day courier, a fully executed original counterpart of the Agreement to the other Party.

### **EXHIBIT A LISTED ASSETS**

**(Final list of assets to be provided once construction is complete and equipment is installed)**

### **EXHIBIT B**

#### **Fees**

In consideration of the use of NBN by Owner to Contractor, Contractor agrees to pay Owner during the Term of this agreement a quarterly fee as follows.

### **EXHIBIT C**

#### **Network Maps**

**(To be generated once final construction is complete)**

## EXHIBIT D

### SAMPLE PERFORMANCE METRICS (DRAFT)

**(Final performance metrics to be determined on network commissioning and acceptance testing)**

Performance metrics for Contractor:

A. Contractor network performance: Upon successful testing Contractor of network by Owner, in the event Contractor, as either a service provider or network Contractor, suffers a network outage outside of events defined as Force Majeure, or scheduled network maintenance, or resulting Contractor from Owner's non-performance of its obligations under this Agreement, then Contractor will adhere to the following credit schedule:

98.0% to 98.9% uptime: 15% of monthly fees paid returned to customers

97.0% to 97.9% uptime: 30% of monthly fees paid returned to customers

96.0% to 96.9% uptime: 40% of monthly fees paid returned to customers

Below 96%: 50% of monthly feels paid returned to customers

B. Contractor support performance: Contractor will strive to answer all inbound customer phone calls within 90 seconds, and all inbound emails within 24 hours. Telephone support will be "no-hold", meaning all connected customers will reach an agent immediately, without encountering a phone tree.

## EXHIBIT E

### MAINTENANCE OF ASSETS

#### 1. Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair of the NBN (“**Scheduled Maintenance**”) will be performed by or under the direction of Contractor as necessary to keep the NBN in good operating condition. Scheduled Maintenance will commence upon the Effective Date, and includes: (i) inspection of the NBN and other Assets on a regularly scheduled basis, which shall be no less than once each calendar quarter; (ii) appropriate routine preventative maintenance on the NBN, minimally in accordance with industry standards; (iii) performance of all required cable locates and membership in a state or regional one-call (call-before-you-dig) center for all locations along the Route; (iv) maintenance of an inventory of all spares and inventory at strategic locations to facilitate timely restoration along the Routes; and (v) non-routine maintenance, repair and replacement of the NBN and other Assets as needed.

(b) Unscheduled Maintenance. Non-routine maintenance and repair of the NBN which is not included as Scheduled Maintenance (“**Unscheduled Maintenance**”) will be performed by or under the direction of Contractor. Unscheduled Maintenance will commence upon the Effective Date, as provided in the Agreement. Unscheduled Maintenance shall consist of Unscheduled Maintenance in response to: (i) notification by Contractor or any third party of any failure, interruption or impairment in the operation of the NBN, or any event imminently likely to cause the failure, interruption or impairment in the operation of the NBN; or (ii) any potential service-affecting Contractor situation to prevent any failure, interruption or impairment in the operation of the NBN, each to the extent same is not included in the definition of Scheduled Maintenance.

#### 2. Response.

Contractor’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Contractor will have its first maintenance employee (or contracted agent) at the site requiring emergency Unscheduled Maintenance activity within four (4) hours after the time Contractor becomes aware of an event requiring Unscheduled Maintenance due to an emergency situation.

#### 3. Cooperation and Coordination.

(a) The Parties each shall use the escalation list of the other Party, as updated from time to time by the applicable Party pursuant to the escalation list or other notice provision, to report and seek immediate initial redress of exceptions noted in the performance of a Party in meeting Contractor maintenance service objectives and regarding all other aspects applicable to NBN operations. The notice list numbers are 24 hour, 7 day per week emergency notification numbers.

(b) In performing its services under this Exhibit, Contractor will take workmanlike care to prevent impairment to the signal continuity and performance of the NBN. In addition, Contractor will reasonably cooperate with Owner in sharing information and analyzing the disturbances regarding the NBN. In the event that any Scheduled Maintenance or Unscheduled Maintenance requires a services interruption or reconfiguration involving the NBN, then Contractor shall make such personnel of Contractor available as may be necessary in order to accomplish such maintenance.

(c) Contractor will use commercially reasonable efforts to notify Owner at least ten days prior to the date of any Scheduled Maintenance that may result in an outage or degradation in the use of NBN, and as soon as possible, but in no event later than eight (8) hours after becoming aware of the need for Unscheduled Maintenance. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Contractor will use commercially reasonable efforts to notify Owner at its earliest opportunity,

but in no event less than forty-eight hours after cancellation, and will comply with the above provisions for any re-scheduled activity.

4. Facilities.

(a) It is Contractor's intention, and Contractor represents and warrants, that maintenance work performed on the NBN will not normally result in interruptions or defects. Scheduled Maintenance which is reasonably expected to produce an outage for customers of the NBN in any material respect generally will be scheduled after midnight and before 5:00 a.m. local time. Major system work, such as fiber splicing, equipment upgrades and wireless antenna replacements will be scheduled for Scheduled Maintenance weekends as mutually agreed by Contractor and Owner.

5. Restoration.

(a) Contractor will respond to any interruption of service or a failure of the NBN as quickly as possible, but in no event later than four (4) hours after Contractor became actually aware of the failure or interruption, in accordance with the procedures set forth herein. Contractor shall address the problem by working diligently to enable restored service as soon as technically practical and commercially reasonable, in accordance with the procedures set forth herein. In order to accomplish such objective, Contractor acknowledges that such repairs may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Unscheduled Maintenance, Contractor will commence its planning for permanent repair, and thereafter promptly shall notify Owner of such plans, and shall use commercially reasonable efforts to implement such permanent repair as soon as possible thereafter.

6. Escalation List – To be exchanged between parties 30 days prior to activation of the NBN for service.