

## CONTRACT FOR EXPANSION OF BROADBAND SERVICE

**1. Parties.** This is a contract for services (“Contract”) between the Town of Chesterfield, New Hampshire (the “Town”), and Consolidated Communications Enterprise Services, Inc., a Delaware company with a mailing address of 121 S. 17th Street, Mattoon, IL, 61938 (“Consolidated”).

**2. Subject Matter.** This Contract is for the furnishing, construction, and installation of facilities and equipment to make available to all residential and business locations in the town a “Fiber to the Premises” network capable of delivering up to 1G of symmetrical Internet Access (the “Project”). The Town, through a Request for Proposal published in October 2018 (the “RFP”), has conducted a public procurement process to identify and enter into an agreement with a qualified private-sector entity to construct the network contemplated by the Project and to provide the Internet Access and other services to all Town residents and businesses. The Town has identified and selected Consolidated as the best candidate to construct the network and provide these services and, to that end, the Town has negotiated this Contract with Consolidated. Detailed services to be provided by Consolidated as part of the Project are described in Attachment A (the “Work”).

**3. Contract Term.** The period of Consolidated’s performance shall begin within 30 days of the Town securing Project funding. The Project will be completed within twenty-four (24) months of funding. This Contract and associated subscriber fees shall terminate immediately following the date of funding payoff as described in Attachment B; Bond Financing Details, Time shall be of the essence as to all dates and performance deadlines set forth in this Contract.

**4. Contribution; Payment Terms.** In consideration of the network construction services to be performed by Consolidated, and in consideration of Consolidated’s estimated \$2,500,000 investment in “Consolidated-Funded Facilities” outlined in Section 7 below, the Town agrees to pay Consolidated as a contribution to the cost of construction and in consideration for the Work to be performed, a sum equal to One Million Eight Hundred Thousand Dollars (\$1,800,000.00) (the “Contribution”). Payment of the Contribution shall be made to Consolidated in three (3) installments as follows: (i) the first installment of \$900,000.00 (representing 50% of the Contribution) shall be payable within thirty (30) days of receipt town funding sources; (ii) the second installment of \$450,000.00 (representing an additional 25% of the Contribution) shall be payable at 50% Project completion and (iii) the third installment of \$450,000.00 (representing the remaining 25% of the Contribution) following completion of the Project. Agreement between the Town’s and Consolidated’s Project managers will be sufficient to make the percent completion estimate. Written documentation signed by both is required. The amount of the Contribution has been established by the parties in anticipation of the orderly and continuous progress of the Project. Accordingly, Consolidated’s obligation to render the services for the amount of the Contribution will extend until the Work is completed in accordance with the scope of the Project outlined

hereunder; provided, that the scope of the Work does not change or is not delayed through no fault of Consolidated. In the event the scope of the work is modified or delayed through no fault of Consolidated, then the parties shall equitably adjust the Contribution using the Change Order process described in Attachment A. Consolidated is solely responsible for and has sufficient funds to complete any elements of the Project in excess of the Contribution from the Town.

**5. End User Infrastructure Fee.** The cost of the Project will be borne by a specially assessed subscriber fee payable on all end user bills associated with customers utilizing the fiber optic network for broadband data services. Users accessing the network for voice only services will not be assessed the fee. The fee will be used for the purpose of repayment of the Town's obligation relative to the broadband network, and Consolidated will remit all or a portion of the total fees received in amount equal to the Town's then-current principal and/or interest repayment obligation at least 30 days prior to each payment due date described in the Repayment Schedule. If there is insufficient funds from the collected infrastructure fees, then Consolidated will make up the difference out of its own funds. Should any payment by Consolidated be late (e.g., not received by the Town 30 days prior to the bond payment due date), interest shall accrue at 18% per annum from the date 30 days prior to the bond payment due date until the date the late payment is received by the Town and shall be paid by Consolidated to the Town on or before the next bond payment. The amount of the per-user fee will be calculated as follows: For each calculation period, the amount of the per-user fee will be calculated by adding the total required annual payments up to the end of the current year plus two years, subtracting from that amount the total collections made to the end of the current year, and dividing the difference by the projected average number of monthly subscribers utilizing the network for broadband services over the next two years. The fee will not exceed \$10 per month per broadband subscriber. The subscriber fee will be recalculated by December 31, 2023 and every two years thereafter. The setting of this fee requires the approval of the Board of Selectman and the information required for this calculation must be provided to the Town Administrator by December 31 of each year the fee is recalculated. If the Board of Selectman do not act on this information by January 10 of this cycle, then Consolidated may assume that the fee was accepted by the Board. The fee will be reset on bills as of February 1 of the following year with subscriber notifications delivered with no less than 30 days' notice. For clarity, Consolidated will be irrevocably entitled to assess the subscriber fee as described in this Section as long as this Contract remains in effect.

**6. Project Management, Reporting and Compliance.** Consolidated will assign a Project Manager to oversee construction of the network and act as a primary point of contact with the Town during the construction phase. The Project Manager will provide the town quarterly updates through the initial construction of the network. These reports will include service addresses where the new network is available, maps of service availability and documents outlining progress to the initial implementation timeline.

**7. Network Ownership [and Security Interest].** It is anticipated that the Contribution will be used to furnish, construct, and install fiber facilities from

Consolidated-designated termination points to “drop-points” within town, state or private rights of way (such facilities, the “Town-Funded Network”) and that Consolidated will fund the construction of “drops” from each drop-point to the served premises and will provide the equipment necessary to “light” and provide service over the network (such drops and equipment, the “Consolidated-Funded Facilities”). As to the Town-Funded Network, the parties desire that the Town maintain appropriate rights as to such Network so that the Town can ensure Consolidated’s remittance of fees in an amount sufficient to satisfy the Town’s funding repayment obligations and operation of the network as committed in this Contract. Therefore, the parties agree that the Town-Funded Network will be owned and/or encumbered as follows:

(a) The Town will retain ownership of and title to the Town Funded Network during the term of this Contract, but the Town hereby grants Consolidated an exclusive, indefeasible right to use the facilities comprising such Network (an “IRU”) for the purposes described and subject to the terms and conditions set forth in this Contract. Such IRU does not convey any legal title to any real or personal property, including, without limitation, the fibers or the cable constituting the Town-Funded Network.

(b) At the end of the Contract term, being the date of funding payoff as described in the Repayment Schedule, the above-described IRU will terminate and title to the Town-Funded Network will immediately transfer to Consolidated. If requested by Consolidated at such time, the Town will immediately execute any assignments or other documents reasonably necessary to document and effect such transfer of title.

(c) For clarity, while the Town will retain ownership of the Town-Funded Network during the Contract term, Consolidated will retain sole ownership of any Consolidated-Funded Facilities and all other Consolidated facilities not acquired with the Contribution funds. Notwithstanding anything in this Contract to the contrary, the Town will only retain ownership of the Town-Funded Network, being that portion of the proposed network constructed with the Contribution funds.

**8. Franchise and Access to Network.** Contemporaneous with the execution of this Contract, the parties will, if necessary, enter into a franchise or other right-of-way occupancy agreement for Consolidated’s placement of the system in the Town’s right-of-way, including in any right-of-way or easement granted pursuant to the terms of Attachment A (the “Franchise Agreement”). The parties will also negotiate additional revisions to the standard Franchise Agreement in good faith to ensure that the terms of the Franchise Agreement are consistent with the terms of this Contract and permit Consolidated to engage in all construction activities contemplated in the Project description with minimum permitting and other regulatory costs to Consolidated. Notwithstanding anything in such Franchise Agreement to the contrary, Consolidated shall have access at all times to the Town-Funded Network for the purposes of installing,

maintaining, and troubleshooting Consolidated's services and equipment and for splicing purposes, and, to the extent necessary, the Town will allow Consolidated's personnel and agents reasonable direct ingress and egress to Town property at such times as may be required to install, test, and repair the Town-Funded Network and/or the Consolidated-Funded Facilities (collectively, the "Network Assets"). Consolidated personnel and agents will, while on Town property, comply with all industry standard rules, regulations, and procedures and other requirements communicated to Consolidated by the Town, including security requirements, and where required by governmental regulations as disclosed by the Town, receipt of satisfactory governmental clearances.

**9. Subscriber Connections.** As set forth above, it is anticipated that Consolidated will fund the construction of all facilities from an appropriate drop-point on the Town-Funded Network to each applicable subscriber premises. Consolidated shall only be required to install these facilities as and when the applicable premises owner requests services from Consolidated and permits Consolidated access to the premises owner's property. Following a premises owner's request for service, Consolidated will enter into an agreement for services with the owner and will thereafter furnish and install the necessary facilities in coordination with the owner. Monthly service fees will be equal to those charged to subscribers in other portions of New Hampshire. In each instance where a premises owner requests service and executes the applicable agreement for services, Consolidated will install the facilities to an appropriate demarcation point at the owner's premises and will furnish the customer premises equipment ("CPE") needed for the owner to receive the services. For clarity, all facilities installed from the drop-point and all CPE shall be Consolidated-Funded Facilities as defined above unless Consolidated's internal records conclusively demonstrate that such facilities or CPE were acquired or constructed with Contribution funds.

**10. System Extension.** Cable extensions from the public right of way to a subscriber premise shall be provided to any subscriber who is located within one hundred fifty (150) feet of aerial feeder cable at no charge. A charge of fifty five cents (\$0.55 per foot) will be assessed for any installation in excess of the standard installation footage.

**11. Network Operation.** Consolidated warrants that it will operate and maintain the broadband network within commercially reasonable standards of service. This in no way guarantees any specific level of service, uptime or reliability. However, the network shall be capable of offering Internet download speeds consistent with the RFP and defined within its guidelines. However, use of the Network Assets is subject in all cases to Consolidated's Internet Terms & Conditions, Internet Acceptable Use Policy, and all other applicable terms, conditions, and policies located at <https://www.consolidated.com/support/terms-policies> (collectively, the "Consolidated Terms"), and Consolidated reserves its right to restrict or terminate a subscriber's use of any Consolidated service in accordance with the Consolidated Terms. At all times, Consolidated will be responsible for all maintenance costs associated with the entire network.

**12. Subscriber Data Management and Privacy.** Consolidated will not block, throttle or otherwise impede any lawful traffic and shall manage end user data and privacy in accordance with policies established and published at the above link containing the Consolidated Terms. These policies include Consolidated’s Broadband Management Policies, Open Internet Information FAQs, and Privacy Policy, all available at the above link. The Network Assets and subscriber data shall be managed by Consolidated in the same manner as Consolidated manages its network and subscriber data generally for all residents of the state of New Hampshire.

Independent of changes over time of Consolidated’s posted Internet Terms and Conditions, Consolidated will

- 1) Never block, throttle, impede, or cap any lawful internet traffic for locations in the Town of Chesterfield.
- 2) Maintain monthly Broadband service fees for locations in the Town of Chesterfield, in line with those of Urban areas in their nationwide network.
- 3) Operate the Town of Chesterfield network within the guidelines of “net neutrality”. An exception to this may be if a Broadband wholesaler to Consolidated does not follow these guidelines.

**13. Free Service to Public Buildings.** Consolidated shall provide three (3) outlets of basic Internet service at locations to be designated by the Town at no charge to the Town for the Internet services excluding school facilities, provided that the buildings are within the Town limits and such property locations are within 150 feet from the feeder cable of the system. If the property locations are beyond 150’, the Town may elect to receive such service by paying for the necessary line extension beyond 150’ at the rate for system extensions set forth above.

The Internet service provided pursuant to this Section shall not be used for commercial or resale purposes and such outlets shall not be located in areas open to the public, other than the Town Public Library. The Town shall take reasonable precautions to prevent any use of the network that result in the inappropriate use thereof under the Consolidated Terms or applicable law or any loss or damage to the Network Assets. The Town shall hold the Consolidated harmless for any and all liability or claims arising out of the provision and use of services provided to the Town hereunder.

**14. Liability, Insurance, and Performance Bond.** The Town shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of, or in any way in connection with the broadband network build, operation or maintenance. Consolidated hereby agrees to defend, indemnify and hold harmless the Town and their respective agents and officers (collectively the “Indemnities”) from and against any and all such liability, other than that caused by negligence or willful misconduct by the Indemnities.

In support of the foregoing, Consolidated shall, for the term of this Contract, maintain a policy of commercial liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of New Hampshire, covering use and activity contemplated by this Contract with combined single limits of no less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. Consolidated shall also maintain motor vehicle insurance meeting the requirements of New Hampshire law and covering every vehicle and driver involved in performing the Work and providing Consolidated 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 \$100,000.00 each accident. Consolidated will name the Town and its applicable designees, as additional insureds for under the foregoing policies. Consolidated will also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of New Hampshire where applicable. Certificates of Insurance evidencing the foregoing coverage shall be provided to the Town upon request.

NOTWITHSTANDING ANY OF THE FOREGOING, HOWEVER, OR ANYTHING ELSE IN THIS CONTRACT TO THE CONTRARY, CONSOLIDATED SHALL NOT BE LIABLE TO THE TOWN 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 CONTRACT OR CONSOLIDATED'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), AND THE TOWN AGREES THAT ALL CLAIMS FOR THE FOREGOING ARE HEREBY SPECIFICALLY WAIVED.

ADDITIONALLY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT, CONSOLIDATED MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE NETWORK 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. Default and Termination.** A default under this Contract shall occur if (a) a party materially breaches this contract, (b) such breach is not excused by any provision of this Contract, and (c) such breach continues un-remedied for a period of thirty (30) days following receipt of written notice from the non-breaching party. If the breach by its nature cannot be cured within thirty (30) 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 within sixty (60) days beyond the thirty (30) days cure period.

Upon the occurrence of a default, the non-breaching party shall have the right, subject to the express limitations contained in this Contract but without otherwise limiting the terminating party's rights in law or equity, to terminate this Contract. Additionally, where Consolidated is the party in default, the Town will have the right to terminate the IRU and thereby reclaim the exclusive right to use the Town-Funded Network, including the right to lease, sell, transfer, convey, hypothecate, mortgage, or otherwise alienate such Network.

The parties also agree that Consolidated will be deemed to be in default under this Contract if it fails remit amounts at least equal to the Town's principal and/or interest repayment obligation then currently due and payable as set forth in the Repayment Schedule by the applicable due date and fails to cure such default within fifteen (15) business days of receipt of written notice from the Town (a "Payment Default") and that, to the extent permitted by applicable law, Consolidated will be deemed to be in default if it commences a bankruptcy action with respect to itself or its operations, has such an action commenced against it that is not dismissed within ninety (90) days, or makes a general assignment for the benefit of its creditors or has a receiver or similar official appointed for it or for all or any substantial part of its assets (an "Insolvency Default").

Where Consolidated is the party in default, including as a result of a Payment Default or Insolvency Default, the Town will have the right, without limiting its other rights with respect to such default under this Contract, to terminate the IRU and thereby reclaim the exclusive right to use the Town-Funded Network, including the right to grant an IRU to and/or lease such Network to a third party to serve as a successor operator. The Town reserves the right to negotiate for Consolidated to serve as the successor operator under a successor network IRU or lease arrangement with different payment or other terms as determined to be necessary by the Town in its sole discretion. However, if the Town terminates the IRU under this Section and elects to operate the Town-Funded Network itself or to engage a successor operator, Consolidated will cooperate with Town and/or successor operator as reasonably requested by the Town to effect the orderly transition of operation from Consolidated to the Town or successor operator as appropriate. Upon termination of the IRU, Consolidated shall also remove any Consolidated-Funded Facilities from Town-owned or -operated property within ninety (90) days of IRU termination (excluding, to the extent applicable, any "drops" from the Town-Funded Network to the end user premises which, at Consolidated's election and subject to applicable laws, may remain in place). Notwithstanding the foregoing, though, Consolidated will not be required to remove such Consolidated-Funded Facilities from Town-owned or -operated property if continued placement of such Facilities is permitted by the Franchise Agreement and such Franchise Agreement has not been terminated in accordance with its terms.

**16. Removal of Legacy Infrastructure.** Consolidated will endeavor to remove legacy copper infrastructure from all right of way as soon as is practicable and upon approval of applicable regulatory agencies. This decommissioning will come at no cost to the town. End user drops will be removed upon replacement of fiber cables unless

subscriber services also require the use of copper facilities. A status report regarding the removal of legacy facilities will be provided to the town Select Board bi-annually along with bond remittance.

**17. Force Majeure.** Notwithstanding any other provision of this Contract, neither the Town nor Consolidated will be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting 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”). However, 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.

**18. Eminent Domain.** Should any portion of the Network Assets or any other interest belonging to the Town or to Consolidated with respect to this Contract 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 Network Assets in anticipation of an imminent Taking, the interests of Town and Consolidated in the affected portion will be severed. The Town and Consolidated each may claim and receive the portion of the total award attributable to its interest in the Network Assets, and the Town and Consolidated each may claim damages payable on account of the Taking and the relocation or re-routing expenses relating to the Network Assets.

**19. Assignment and Survivorship.** 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 Contract 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, Consolidated may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Contract without consent of the Town to an affiliate or to a purchaser of substantially all of Consolidated’s assets or to a successor by merger or similar corporate transaction, so long as Consolidated remains liable for all of its obligations under this Contract prior to the assignment date and assignee is liable for all of its obligations under this Contract from and after the assignment date.

Additionally, Consolidated agrees that should it desire, during the term of this Contract, to cease its business operations in Chesterfield or to sell its network in Chesterfield to a third party purchaser (other than an affiliate, purchaser a substantially all of Consolidated’s assets, or a successor-by-merger), Consolidated will first offer to sell its



interest in the Town-Funded Network to the Town and will negotiate in good faith for the transfer of such interest to the Town.

**20. Entire Agreement; Amendment.** This Contract represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the Town and Consolidated.

**21. Severability.** Nothing contained in this Contract 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 Contract and any law, such law shall prevail; provided, however, that in such event, the provisions of this Contract 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 Contract 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 Contract on one hundred 180 days' notice.

**22. Books and Records; Project Audit.** Consolidated will maintain accurate books and records concerning the Project until final completion of the Project and for two (2) years thereafter and will make those books and records available to the Town, its agents, officers and employees during Consolidated's normal business hours upon reasonable request. The Town shall have the right, upon reasonable notice, to conduct or cause to be conducted, audits, including field inspections, during such time to ensure that Consolidated is in compliance with this Contract. Such audits and field inspections will be solely at the Town's expense.

**23. Attachments.** This Contract includes the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be performed
  - Exhibit 1 – Map and list of the Project area within Chesterfield
  - Exhibit 2 – Work Locations / Address List within Chesterfield
- Attachment B – Bond Financing Details

**24. Notices.** Any legal notice applicable under this Contract shall be given in writing, and shall be effective and deemed to be properly given or served, if in writing and delivered personally, by courier or by registered mail to the following addresses.

Notices to Consolidated shall be delivered to:

Consolidated Communications  
Vice President – Product Management  
Consolidated Communications

121. S. 17<sup>th</sup> Street  
Mattoon, IL 61938

With a copies to:

Consolidated Communications  
Attn: Contract Manager  
121 S. 17th Street  
Mattoon, IL 61938

Consolidated Communications  
Attn: General Counsel  
350 S. Loop 336  
Conroe, TX 77304

Notices to the Town shall be delivered to:

Town of Chesterfield  
Attn: Town Select Board  
470 Route 63  
P.O Box 175  
Chesterfield, NH 03443

**25. Governing Law.** This Contract shall be governed by the laws of the State of New Hampshire, without regard to conflict of law principles.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

Consolidated Communications Enterprise    Town of Chesterfield  
Services, Inc.

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

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

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

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

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

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

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

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

## ATTACHMENT A

### SPECIFICATIONS OF THE WORK TO BE PERFORMED

#### 1. Introduction

It is the intent of the parties that Consolidated provide Fiber to the Premise broadband access to the Town of in accordance with the specifications set forth herein. Consolidated anticipates that a total of 2,026 locations (each a "Location"), further described in Exhibit 2 to this Attachment A, will receive access to the Fiber to the Premise network as a result of this Project.

#### 2. Project Description

Consolidated shall construct a Fiber to the Premise data network capable of delivering 1G of symmetrical speeds. The "Work" is defined as the labor, materials and services to be performed by Consolidated as part of the Project, as described in herein.

#### 3. Service Requirement

Upon completion of the Project, Consolidated shall offer Fiber based Internet access to all residential and business premises within the Town limits.

#### 4. Project Plan

Consolidated shall supply all of the labor and materials required to construct the network infrastructure. Consolidated will purchase and supply all of the labor and materials to install and activate equipment to enable Consolidated High-Speed Internet Service in each location.

A current map is attached hereto as Exhibit 1 to this Attachment A and additional location detail of sites to be included within the scope of this Work are shown in Exhibit 2 to this Attachment A.

#### 5. Project Managers

The parties identify the following Project Managers who shall be empowered to act for their respective organization in all matters relating to the technical administration of services to be provided (unless otherwise indicated herein):

For Consolidated: Jeff McIver  
Name/email/phone: [JeffMcIver@consolidated.com](mailto:JeffMcIver@consolidated.com) / 603-703-3613

For the Town: Chris Lord  
Name/email/phone: [RoadAgent@nhchesterfield.com](mailto:RoadAgent@nhchesterfield.com) / 603-256-6629  
and  
Brad Roscoe  
[baroscoe@gmail.com](mailto:baroscoe@gmail.com) / 603-256-8530

## **6. Permitting**

Consolidated shall obtain, at its sole cost, all necessary permits and governmental approvals necessary for the construction, use and repair and maintenance of the Project. The Town hereby authorizes and permits Consolidated to perform the Work and to access Town property and use Town rights-of-way in connection therewith. Furthermore, during the term of this Contract, Town will work in good faith to provide to Consolidated all rights-of-way and easements reasonably necessary or desirable for use and access to properties owned by Town for purposes of allowing Consolidated to perform the Work.

## **7. Consolidated's Representations and Warranties**

Consolidated represents and warrants to the Town as follows:

- i. Consolidated has sufficient qualified, experienced personnel to administer and conduct the Work in a prompt, skillful and competent manner.
- ii. Consolidated is able to obtain and furnish the labor, materials, and equipment required to complete the Work.
- iii. Consolidated's execution of this Contract and the performance thereof is within the corporate powers of Consolidated and has been duly authorized by all requisite corporate action.
- iv. Consolidated is duly registered to do business in the State of New Hampshire.

## **8. The Work**

Consolidated agrees to furnish all items necessary to perform all of its Work within the scope of the Work, all in good workmanlike manner and in strict accordance with this Contract.

## **9. Safety**

A. Consolidated shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- i. all employees on the Work and all other persons who may be affected thereby;
- ii. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off-the site, under the care; custody or control of Consolidated or any of its subcontractors; and
- iii. other property at the site or adjacent thereto, including trees, shrubs; lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

B. Consolidated shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

C. Consolidated shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

D. When the use or storage of hazardous materials or equipment is necessary for the execution of the Work, Consolidated shall: (1) exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel; and (2) give the Town notice, in writing, seven (7) days in advance of the planned activity of Consolidated's intent to store and/ or use hazardous materials or equipment on the Project site.

## **10. Final Completion**

Consolidated shall notify as to Final Completion and the Town shall accept the Final Completion of the Work for the respective phase only when all Work has been completed in accordance with this Contract and Consolidated has offered services to the public. Bond repayment guarantees will remain in full force until such time as no payments remain.

## **11. Operation of the Project**

Except as set forth in this Contract:

A. the operations and management of the Project, including, but not limited to, marketing, pricing and expansion of services shall be Consolidated's sole responsibility; and

B. the Town shall not have any managerial rights or other rights to control, whether by ownership or otherwise, Consolidated or the Project.

C. Consolidated's Project Manager will keep the Town's Project Manager up to date on the project as it progresses. Placement of large components on utility poles will be done to minimize the aesthetic impact on the area and the Town's Project Manager should be consulted as necessary for location options in areas that have high visual appeal, such as in front of homes.

## **12. Ownership of the Network; Proprietary Rights**

Except as expressly set forth in the Contract, Consolidated will have sole ownership and operating rights of all telecommunications facilities and assets furnished, constructed or installed by Consolidated in connection with the Project including, but not limited to, all cable and conduit, fixtures, cable, telecommunications equipment and any and all other assets purchased, leased or used in connection with the Project. Any drawings, specifications or other documents prepared by Consolidated under this Agreement shall be the property of Consolidated and Consolidated shall be deemed the author of such

documents and retain all common law, statutory and other rights thereto unless Consolidated defaults such that the ownership of the Town-Funded Network becomes the property of the Town, in which instance Consolidated shall transfer any such drawings, specifications or other documents prepared by Consolidated under this Agreement relating to the Town-Funded Network to the Town within thirty (30) days of such default.

### **13. Repair and Maintenance**

Consolidated agrees that it shall be responsible (at its own cost) for all necessary repair and maintenance of the Project that is not otherwise caused by the negligent acts or omissions of the Town or its agents or representatives.

### **14. Consolidated Warranty; Correction of Work**

Consolidated warrants and represents that each of its employees, independent contractors or agents assigned to perform services hereunder shall have training, background and skills reasonably commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned. Consolidated hereby warrants its Work against all defects of materials and/or workmanship and agrees to correct, repair, or replace promptly any Work that is defective or does not conform to the requirements of this Contract.

### **15. Suspension of the Contract**

A. Suspension by Consolidated. Without limiting its termination rights under the Contract, Consolidated will have the right to suspend its performance under the Contract without liability, in whole or in part, with respect to any Work to be performed if the Town has not made the initial payment by the start of the Work for each respective Zone.

B. Suspension by the Town. Without limiting its termination rights under the Contract, if (i) Consolidated is adjudged a bankrupt, or (ii) it makes a general assignment for the benefit of its creditors, or (iii) a receiver is appointed on account of its insolvency, or (iv) it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or (v) it fails to make prompt payment to subcontractors or for materials or labor, or (vi) it persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or (vii) it otherwise is guilty of a substantial violation of a provision of this Contract, then the Town may, without prejudice to any right or remedy and after giving Consolidated thirty (30) days written notice, given in the manner required by the Contract, do one or more of the following: (a) supply labor, materials or equipment on the Town's behalf to complete the Work, (b) expel Consolidated from the Project and complete or arrange for the completion of the Work in such manner as the Town sees fit, or (c) suspend the Contract, in whole or in part, and withhold any further payments to Consolidated until Consolidated's Work hereunder shall be wholly finished and approved.

**16. Claims; Extra or Changed Work**

Without invalidating this Contract, the Town may by written order (a “Change Order”) agreed upon by both parties, make additions to, deletions from, or otherwise change the Work, with the Contribution amount and time for completion of the Project being equitably adjusted for such changes. If Consolidated is delayed at any time in the progress of the Work by changes ordered in the Work or by actions of the Town the time for completion of the Project shall be equitably extended by Change Order.

**17. Documentation**

The Town shall provide Consolidated with all plans, drawings, surveys, deeds and other documents reasonably necessary to perform the Work and shall notify Consolidated in writing of any special criteria or other requirements related to the Work that are not specified in this Contract (“Town Documentation”). The Town acknowledges that Consolidated may rely on deeds, plats, maps and other information filed with Town or otherwise publicly available to Consolidated (“Public Information”) and that Consolidated may rely on Public Information in rendering the Work. Consolidated shall not be responsible for errors or omissions or additional costs or expenses arising out of its reliance on Town Documentation or Public Information.

**18. Limitation of Liability**

Consolidated’s entire liability to the Town with respect to this Contract shall be limited to the amount of the Contribution. In no event shall either party be liable to the other party or its subsidiaries, affiliates, employees or agents for any indirect, incidental, consequential, special, or lost profits claim or demand of any nature or kind arising out of or in connection with this Contract.

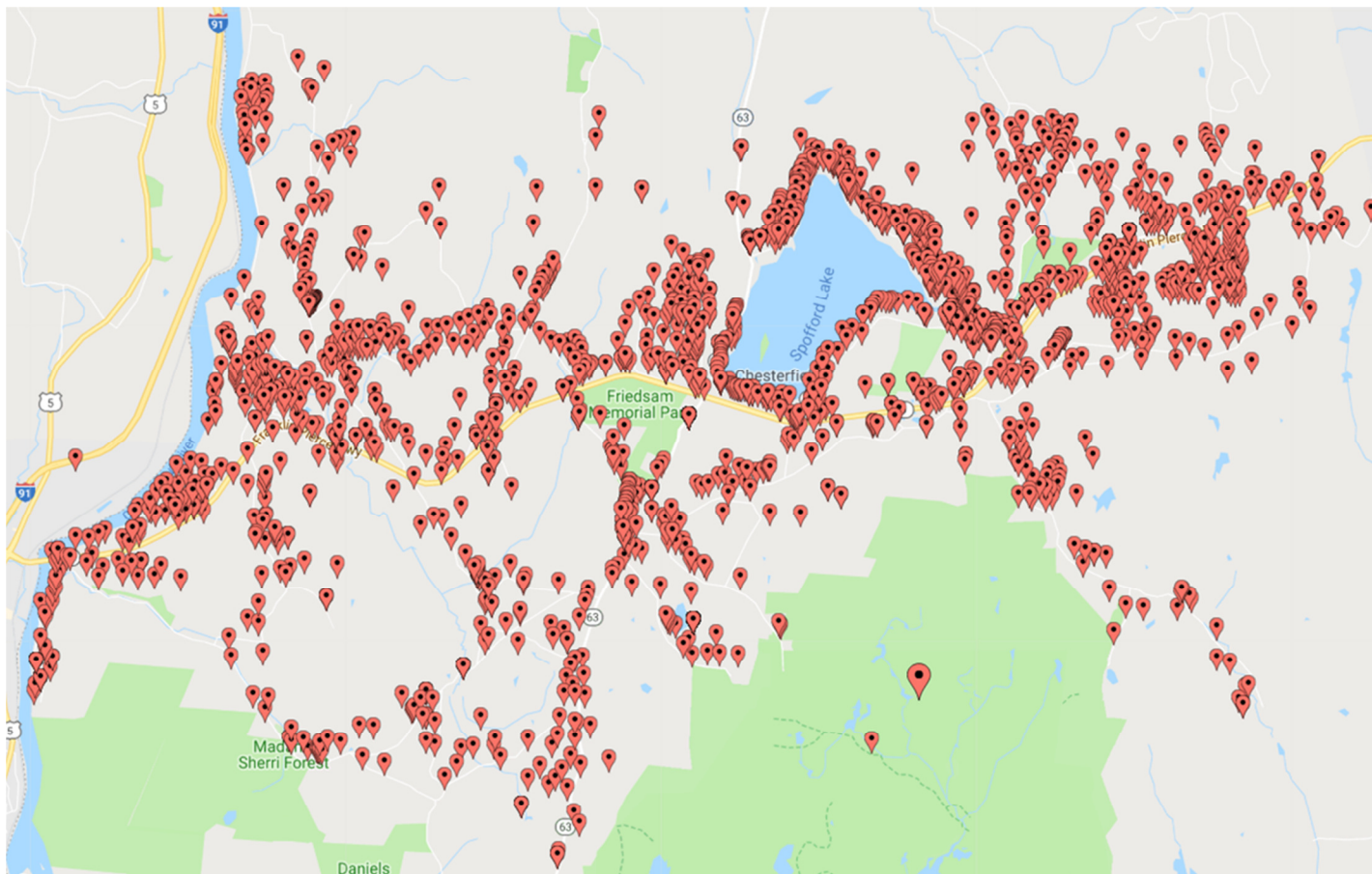
**19. Late Performance Penalty**

Should Consolidated fail to complete the Town-Funded Network within 2 years and 30 days of the date when the Town provided written notice to Consolidated that the Town has received Project funding and that the Project Work may proceed, Consolidated shall pay a \$1,000.00 per day penalty for such day that the Town-Funded Network Work remains uncompleted.

//////// Exhibits Follow //////////



**Exhibit 1 to Attachment A**  
**Fiber to the Premise Locations**  
**Town Of Chesterfield**



**Exhibit 2 to Attachment A**  
Work Locations / Address List

<b>Full Street</b>	<b>Service City</b>	<b>Service State</b>	<b>Service Zipcode</b>
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**Attachment B**  
Bond Financing Details

The Town of Chesterfield will work with the New Hampshire Bond Bank (NHBB) to acquire financing for this project. The Town will apply for a Bond Anticipation Note (BAN) for the entire \$1.8M amount. This note will be kept until sufficient taxable bonds can be sold by the NHBB to offset the Principal of the BAN. These taxable bonds will be acquired at future sales of the NHBB (the first being January 2020) until the principal of the BAN has been paid off. At this point, all financing will be in the form of 20 year taxable bonds at fixed interest rates. The Town will work with the NHBB to insure that this process proceeds as fast as possible and at the lowest interest rates that can be obtained in this process. Once the BAN has been fully converted to Bonds, the bond payment schedule may be attached to this agreement by amendment with signatures of both parties. It is hoped that no more than a single Bond thru the NHBB will be required.

Consolidated will be responsible for all Interest and Principal payments for both the BAN and the taxable bonds as stated in the agreement. Forty-five (45) days prior to payments becoming due to the Town (for the BAN), the Town will notify Consolidated of the projected payments due. Consolidated will forward that sum to the Town within 30 days. Once the BAN has been fully converted to Bonds and the payment schedule attached to this agreement, the forty-five (45) day notice from the Town will no longer be required and Consolidated will forward funds thirty (30) days prior to Bond payments being due as in the schedule.

Below is a sample table showing important dates and when Interest and Principal payments will be due.

Date	Bond Anticipation Note (BAN)	Bond 1		Bond 2 (if needed)		Comments
	Interest	Interest	Principal	Interest	Principal	
6/2019						Take out BAN
2/2020	Yes	no	no			Initiate Bond 1 Pay BAN
7/2020	yes	yes	no	no	no	Initiate Bond 2 for balance if needed Pay off rest of BAN
2/2021	no	yes	yes	yes	no	
7/2021	no	yes	no	yes	yes	
2/2022	no	yes	yes	yes	no	
7/2022	no	yes	no	yes	yes	
2/2023	no	yes	yes	yes	no	
7/2023	no	yes	no	yes	yes	
...	...	...	...	...	...	