



MASSACHUSETTS
TECHNOLOGY
COLLABORATIVE

**REQUEST FOR PROPOSALS FOR
FIELD DATA COLLECTION SERVICES
FOR USE IN DEVELOPMENT, PROCUREMENT AND CONSTRUCTION OF
WESTERN MASSACHUSETTS MIDDLE MILE BROADBAND NETWORK**

RFP No. (2011-MBI-02)

Massachusetts Technology Collaborative
Massachusetts Broadband Institute
75 North Drive
Westborough, MA 01581-3340
<http://www.masstech.org>

Procurement Team Leader:	Donna Baron
RFP Issued:	September 9, 2010
Questions from Proposers' due:	September 15, 2010
Answers to Proposers' Questions Posted:	September 22, 2010
Proposals due:	September 29, 2010
Notification of eligibility to perform Field Evaluation Tests:	October 6, 2010
Field Evaluation Tests for eligible Respondents:	October 7-15, 2010
Exemplar Report of Field Evaluation Test Results due:	October 20, 2010

INTRODUCTION

The Massachusetts Broadband Institute (the “MBI”) is a non-divisible component of the Massachusetts Technology Collaborative (“MTC”). MTC is issuing this request for proposals (“RFP”) to qualify and select contractors to perform field data collection services, as defined herein (“Field Data Collection Services”), for utility poles, guys, and other existing attachments located in western and north central Massachusetts and proposed to be used in connection with the development, procurement and construction of the *MassBroadband 123* network, a proposed 1,300 plus mile “middle mile” network in western and north central Massachusetts that will be built with over \$70 million of public funds. MTC acts as the contracting entity on behalf of the MBI. As such, MTC will be the contracting counter-party with the Field Data Collection contractor. But for purposes of this RFP (and except where the specific context warrants otherwise), the MBI and MTC are collectively referred to as the MBI.

This initiative provides an exciting opportunity for a firm with experience surveying utility poles and collecting data required for aerial fiber optic network construction to support the MBI in the development of a state-of-the-art network that will spur economic development throughout western and central Massachusetts. The network will carry commercial services, connect a significant number of public institutions, and bring broadband access to 123 communities in western and north central Massachusetts. Through this RFP, the MBI hopes to identify commercial firms that offer creative solutions for realization of the initiative, highlighting satisfactory completion of the project on time and within budget, in compliance with the terms of the MBI’s Federal Award as defined below.

The Field Data Collection Services will be performed on behalf of the MBI and the owner(s) of the utility poles (primarily Verizon, National Grid, Western Massachusetts Electric Company (“WMECO”), and may include municipal light companies) (the “Pole Owners”) under a contract with and paid for by the MBI. The requested Field Data Collection Services are necessary for the the MBI to finalize routes for the *MassBroadband 123* network and for the MBI and the Pole Owners to determine appropriate “make-ready” work, if any, associated with the anticipated pole attachments along those routes as part of the Pole Owners’ license application process. The Field Data Collection Services will also include receipt of preliminary information from the Pole Owners, confirmation of such preliminary information provided by the Pole Owners, recording of additional or corrected field data collected by the selected surveyor and and delivery thereof to the MBI and the Pole Owners in the format set forth in the Pole Data Form included in Exhibit A (Required Survey Data).

The *MassBroadband 123* network will involve attachment of new fiber optic cable to approximately 28,000 utility poles in between 112 and 124 Massachusetts cities and towns. Approximately 395 route miles are in National Grid territory and 398 route miles are in WMECO territory. (A map of the proposed route of the aerial network and spreadsheet listing route miles and estimated spans per town/city are included in Exhibits B and C).

PROJECT DESCRIPTION

The Massachusetts Technology Collaborative

MTC is an independent economic development agency chartered by the Commonwealth to serve as a catalyst for growing the state’s innovation economy. MTC brings together leaders from industry, academia, and government to advance technology-based solutions that lead to economic growth and a cleaner environment in Massachusetts. MTC energizes emerging markets in the high-tech sector by filling gaps in the marketplace, connecting key stakeholders, expanding broadband services, conducting critical economic analysis, and providing access to intellectual and financial capital.

The MBI is a division of MTC created by the Massachusetts legislature with a mandate to make affordable high-speed Internet access available to all homes, businesses, schools, libraries, public safety and medical facilities, government offices and other public places across the Commonwealth. The the MBI has been authorized to invest up to \$40 million of state bond funds in necessary and long-lived infrastructure assets—such as conduits, fiber-optic cable and wireless towers—according to a comprehensive broadband plan that the the MBI is designing and will execute.

In July, 2010, the MBI was awarded approximately \$45 million in federal stimulus funding for the construction of the *MassBroadband 123* network by the U.S. Department of Commerce (“DoC”) under its Broadband Technology Opportunities Program (the “Federal Award”, identified by Award No. NT10BIX5570070; CDFA No. 11.557) funded through the American Recovery and Reinvestment Act of

2009 (“ARRA”). ARRA, the DoC, and the terms of the Federal Award provide that such funding be conditioned on the construction of the *MassBroadband 123* network being substantially complete no later than two years from the award date and fully complete no later than three years after the award date. Any contractor selected under this procurement must agree to certain provisions mandated by ARRA, the DoC and the Federal Award. These provisions are set forth in Attachment H.

The *MassBroadband 123* network

The *MassBroadband 123* network will connect 123 communities and the 1,392 community anchor institutions (CAI) that serve them, including community colleges, public safety institutions, hospitals and libraries. It will also carry commercial services and bring broadband access to rural communities covering over one-third of the Commonwealth. When complete, the middle-mile fiber optic network will provide a number of resilient rings consisting of high-strand counts and slack loops spaced frequently throughout the network to facilitate easy interconnection for CAIs and last-mile providers. The network will provide diverse routing sufficient to meet public safety’s high availability requirements to multiple Internet Points of Presence (POP). The primary in-region POP is in Springfield and additional POPs are reached through fiber obtained as leases.

Working with the Massachusetts Department of Transportation, the MBI has already installed 55 miles of 288 strand-count fiber optic cable along the entire length of Interstate 91 (from the Connecticut border to the Vermont border). The fiber along I-91 is the first segment of the *MassBroadband 123* network.

Most of the *MassBroadband 123* network will consist of new fiber optic cables attached to utility poles. The MBI plans to construct about 1,000 miles of new fiber optic network in western and north central Massachusetts. The MBI anticipates that the aerial segments of the *MassBroadband 123* network will be constructed using Design-Build procurement under M.G.L c. 149A. The MBI is in the process of developing procurements to obtain the needed expertise and resources to satisfy fully the requirements of the Commonwealth’s procurement laws and meet the needs of the project. The MBI anticipates issuing procurements for an Owner’s Project Manager, a Preliminary Design and Engineering company (“Engineer”), and a Design-Builder. The MBI anticipates that, during the course of the performance of the Field Data Collection Services to be provided in response to this procurement, it may assign to the Owner’s Project Manager, the Engineer, or the Design-Builder the responsibility to administer the contract with the vendor selected.

Successful surveyors will not be eligible to serve as the Engineer for the Project. Selection for the Field Data Collection services will not disqualify a Respondent from serving under other procurements for the Project such as Owner’s Project Manager or Design-Builder.

FIELD DATA COLLECTION CONTRACTOR RESPONSIBILITIES AND REQUIREMENTS

Scope of Work

The Field Data Collection Services contractor(s) will be responsible for all field services to collect the required survey data using the form attached as Exhibit A, to present that data to the MBI and the Pole Owners in the required MSEXcel® format, to make the information available through a secure website, and to work with the MBI and the Pole Owners to make appropriate adjustments in the process and schedule as required. This includes:

1. Coordination meetings with the MBI and Pole Owners to discuss:
 - o content and format of existing pole data, if any, to be shared with contractor;
 - o content and format of data to be reported by contractor on a secure web site; and
 - o schedule/sequence of the field inspections of network segments by town.
2. Conduct field inspections and record observations regarding required information and data set forth on Exhibit A for each Pole.
3. Prepare and post required survey data on a secure website for the MBI and Pole Owners to access and use (Note that the data may be posted both in an interactive database/application and in the required MSEXcel® format, or in another format approved by the MBI with the tools needed to create MSEXcel® files which match the format in Exhibit A).

4. Possible resurvey to validate discrepant or missing data, or for quality assurance purposes.
5. Prepare and provide to the MBI and individual Pole Owners reports on Required Survey Data, progress, schedules/plans, and issues.
6. Supply all equipment, supplies and transportation needed for performance and delivery of the Field Data Collection Services. All costs associated with the work -- including the cost of resurveys, if any, to validate discrepant or missing data, for quality assurance purposes, but not including any resurvey for quality assurance purposes of poles previously surveyed by another contractor or "Additional Field Data Collection Services," if any -- must be included in unit prices in the proposal.
7. (Optional) Prepare preliminary pole loading analysis for each pole surveyed using the data collected in the Field Data Collection.

The Field Data Collection Services contractor's performance will be subject to review by the the MBI and Pole Owners following a first phase ("Phase 1") of the contract. Specifically, there will be a project checkpoint after completion of 1,500 poles in each major Pole Owner territory to provide an opportunity to refine the process. This first phase of the project will be used to evaluate procedures, make process improvements, and evaluate performance and data accuracy. Deficiencies in performance may require process changes and, in severe cases, could lead to contract termination.

Respondents are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants and Proposers for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Respondents should familiarize themselves with these provisions, including the certification requirement, and must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.

Timeline for performance

The selected surveyor(s) will be required to provide Field Data Collection Services for some or all of the segments of the *MassBroadband 123* network specified in Exhibit B during the period from October 25, 2010 through August 31, 2011 [the foregoing dates being subject to revision], in accordance with specific time schedules for each segment of the *MassBroadband 123* network to be set forth by the MBI and affected Pole Owners after consultation with the selected surveyor, which schedules may, from time to time, be revised. It is now anticipated that most, if not all, of the required Field Data Collection Services will be completed prior to August 31, 2011. Time is of the essence for the completion of the surveys, and thus the selected surveyor must be prepared to devote the personnel and resources required to complete the surveys within the established schedules for each segment and for the overall project. A kickoff meeting must be held 5 days from the date of contract execution. Phase 1 field inspections must be commenced 10 days from the date of contract execution.

The schedule for Field Data Collection will be determined by the MBI and Pole Owners with the objectives of meeting the completion targets for the *MassBroadband 123* network. Regular meetings will be held to review, and, if necessary, adjust schedules to meet these and other project objectives.

RFP SCHEDULE

RFP Issuance Date	September 9, 2010
Questions from Proposers' due	September 15, 2010 5:00 p.m.
Answers to Proposers' Questions Posted	September 22, 2010 5:00 p.m.
Proposals due	September 29, 2010 3:00 p.m.
Notification of eligibility to perform Field Evaluation Tests	October 6, 2010 3:00 p.m.
Field Evaluation Test for eligible Respondents	October 7-15, 2010
Exemplar Report of Field Evaluation Test Results due	October 20, 2010 5:00 p.m.

Questions regarding this RFP may be submitted to the address set forth on the cover page or by electronic mail to broadband@masstech.org. All questions must be received by 5:00 PM EST on September 15, 2010. Submission of questions by electronic mail is strongly encouraged. Please include

the RFP number on the envelope or in the subject heading. Responses to all questions received will be sent to potential Respondents on or before 5:00 pm on September 22, 2010.

PROPOSAL PROCESS AND REQUIREMENTS

Process

Contractors are required to submit a proposal that includes the information set forth in Section A below. The MBI will review and make a preliminary evaluation of the Proposals using the criteria set forth in Section B below. After its review, the MBI will notify those firms who meet the criteria of their eligibility to participate in a Field Evaluation Test described in Section C below and submit exemplar reports of the results of such test. The MBI will review the proposals and test results using the criteria set forth in Section D below. Selected Respondents will be notified by the MBI upon completion of its evaluation.

A. Proposal – Due September 29, 2010

Respondent must submit an unbound original, four (4) bound copies and one electronic (pdf) copy of the Complete Proposal. Faxed or electronic versions of the Complete Proposal received by the due date and time specified will be accepted, provided hard copies are received within two (2) business days.

Electronic responses should be sent to oconnor@masstech.org and copied to ticia@masstech.org. The Complete Proposal should be in the form of Attachment F and must include the following information:

1. Qualifications:
 - a. Respondent's experience in conducting utility pole inspections, including the largest prior project
 - b. Respondent's ability to field sufficient experienced staff to conduct the volume of inspections in the timeframes contemplated by this RFP
 - c. An example of data collected from up to five (5) poles surveyed on previous jobs
 - d. Respondent's ability to meet all requirements contained in the Special Terms and Conditions for Field Services included in Exhibit G.
 - e. Identify all prior experience working with or for the Pole Owners in Western Massachusetts, including information regarding recent data collection conducted by Respondent in the service region of the *MassBroadband 123* network, including identities of Pole Owners for whom such data were collected, municipalities involved and approximate number of poles.
 - f. Identify any current contracts to provide services to the Pole Owners
 - g. Identify other pole attachment survey work performed by the Respondent for attachers or utility companies
2. References:
 - a. At least 3 references, including at least 2 concerning work done involving field inspections of utility poles from projects of similar size and scope. The references must include a contact person, a full address, and a phone number.
3. Approach: Please describe as concisely as possible:
 - a. the methods and technology to be used to conduct the required Field Data Collection Services as well as the recording and reporting of the required survey data categories in Exhibit A (including online review capabilities, if any), specifying the level of accuracy produced;
 - b. the frequency and process by which they propose to make the data available to the MBI and Pole Owners. This process must include delivery of the specified format in Exhibit A, but may also include other facilities and mechanisms such as electronic mail, ftp, or online interactive databases and applications/websites;
 - c. the typical time from field data collection to the delivery of that data to the MBI and Pole Owners;

d. the safety program, including equipment and techniques, that will be implemented when providing the Field Data Collection Services, including compliance with applicable codes and requirements;

e. the quality control program for assuring the acceptable accuracy of the data provided from the Field Data Collection Services, including any testing, sampling, or other methods of assuring and verifying the quality and accuracy of the data (which program must incorporate a right by MBI and Pole Owners to validate data samples independently); and

f. if Respondent wishes to respond to the optional task to prepare a preliminary pole loading analysis, a proposed methodology for such loading analysis.

4. Team members and roles: Please describe:

a. the project management plan and staffing levels proposed by Respondent to implement the Field Data Collection Services on a timely and efficient basis;

b. the qualifications of staff assigned to the project;

c. the resumes and complete contact information of key project personnel and managers assigned to the project;

d. the typical number of poles surveyed per crew per day;

e. the minimum and maximum number of crews the Respondent is able to commit to this effort;

f. any limits on the number of surveys that the Respondent can complete per week and per month, indicating any differences depending upon time of year;

g. the number of people per crew;

h. the anticipated number of crews; and

i. the minimum qualifications or years of experience for the personnel that will be used to perform the work.

5. Cost Proposal. Cost proposals must follow the following guidelines and must use the Proposal Template included in Exhibit F:

a. Respondents are required to submit proposals on all of the surveys required.

b. Pricing should reflect the unit price per pole surveyed.

c. In some instances the MBI might assign a selected surveyor smaller sets of poles to be surveyed, for example, in order to verify field data collected directly by or on behalf of Pole Owners, or by another selected surveyor. If unit pricing depends on the total number of poles surveyed or the size of individual work requests, the Respondents should submit different prices depending on the number of poles surveyed.

d. In addition, the MBI might develop an alternate route to work around an environmental or permitting issue, to utilize poles that require less “make-ready” work or for other reasons. In such event, Field Data Collection Services may be required for alternative routes not currently specified in Exhibit B (“Additional Field Data Collection Services”). Respondents should include unit pricing per pole in the event the MBI requests any portion of a route to be resurveyed for an alternate route. If the unit pricing for any such survey of an alternate route(s) depends on the total number of poles for which such surveys are to be provided, the Respondent should specify the unit prices for varying quantities.

6. If Respondent wishes to respond to the optional task of preparing a preliminary pole loading analysis, provide a separate unit price for such loading analysis.

B. Preliminary Evaluation and Notification – By October 6, 2010

The MBI will review and evaluate the Proposals to identify highly-qualified companies. These preliminary proposals will be evaluated based on the following criteria:

- The level of Respondent's experience in conducting similar types of work, including the information provided on numbers of prior pole surveys performed and any experiences described with projects of similar size, scope, and timeframes, or information provided by Respondent on their largest prior project.
- The Respondent's work experiences with the Pole Owners, if any, and the Pole Owners satisfaction with that work.
- The Respondent's ability to field a sufficient number of experienced crews to complete the surveys in a timely fashion.
- Evaluation of Respondent's example data.
- The Respondent's ability to meet all requirements contained in the Special Terms and Conditions for Field Services in Exhibit H and the Respondent's Officers Certification in Exhibit E.
- The frequency, method, and timeliness by which the Respondent proposes to make the data available to MBI and the appropriate Pole Owner(s).
- The quality and understanding of the Respondent's exemplar report and reporting mechanisms proposed (e.g. website communication methods, online databases, etc.).
- The cost effectiveness and robustness of the Respondent's proposed Quality Assurance program.
- The Respondent's commitment to timely completion based on minimum and maximum number of crews and crew qualifications.
- Reasonableness of unit pricing models, budget and schedule.
- Optionally, Respondent's proposed approach to preliminary loading analysis or any other analysis Respondent proposed to provide MBI as part of the basic Field Data Collection Services at no additional charge to MBI.

Because the data collected will be used by the Pole Owners as well as the MBI, Pole Owners will provide input into the selection of the successful surveyor(s). Upon completion of its review and no later than October 6, 2010, the MBI will notify those Respondents that it deems eligible to participate in a Field Evaluation Test, as more fully set forth in Section C.

C. Field Evaluation Test: October 7-15, 2010

If notified of eligibility by the MBI, Respondents must provide Field Data Collection Services on 25 poles to be selected by WMECO and 25 poles selected by National Grid.

Following performance of the test, Respondents must submit an exemplar report including all of the Required Survey Data in Exhibit A using the methods and technology Respondent proposes to use on similar poles in the performance of the proposed work. Reports are due October 20, 2010.

D. Final Evaluation Criteria

The MBI's evaluation committee shall evaluate each Proposal that is properly submitted, and the performance in and results of the Field Evaluation Test, using the following criteria. After submission and review of the Complete Proposals, interviews may be requested.

- The criteria used in the preliminary evaluation.
- The Respondent's method(s) of data collection.

- The accuracy and completeness of the Respondent's results in the test survey and exemplar report.

While the order of these factors does not generally denote relative importance, the MBI acknowledges that selecting "best value" providers primarily requires a balanced combination of (1) reasonable rates and the availability of flat fees, blended rates and caps on fees, (2) strong experience and demonstrated expertise in providing the Field Data Collection Services requested herein, and (3) demonstrated ability to meet the timelines.

The MBI reserves the right to consider such other relevant factors as it deems appropriate in order to hire the "best value" provider of the services. The MBI may or may not seek additional information from Respondents prior to making a selection.

This procurement does not commit the MBI select any firm, award any work order, pay any costs incurred in preparing a response or participating in Field Evaluation Tests, or procure or contract for any services or supplies. The MBI reserves the right to accept or reject any or all submittals received, cancel or modify the terms of this procurement in part or in its entirety, or change the procurement guidelines, when it is in the best interests of the MBI to do so.

Master Agreement for Services

The MBI intends to enter into a Master Agreement for Services containing certain standard provisions as supplemented by a rider containing Special Terms and Conditions applicable to the Project by virtue of its sources of funding, required by Pole Owners or otherwise required by the MBI in recognition of the specific scope of services (collectively, the "Master Agreement"). A copy of the Master Agreement is available at Exhibit G. Respondents are required to specify any exceptions to the Master Agreement and provide counterproposal(s) with their response. Failure to identify exceptions and provide counterproposal(s) with a response shall constitute acceptance of the terms and conditions of the Master Agreement. Because the Master Agreement and form of Work Order included therein is a standard form of agreement that is widely used by all consultants to the MBI, Respondents are strongly encouraged to accept the terms as opposed to submitting exceptions. The MBI reserves the right to amend this procurement at any time in the sole exercise of its discretion, and reserves the right to amend the Master Agreement and/or Work Order without issuance of another procurement.

Other Provisions

General Information

- (a) The terms of 801 C.M.R. 21.00: Procurement of Commodities and Services is incorporated by reference into this RFP. The foregoing notwithstanding, MTC's Master Agreement (available at Exhibit G) incorporates the Commonwealth's Terms and Conditions and shall constitute the only contract requiring execution. Words used in this RFP shall have the meanings defined in 801 C.M.R. 21.00. Additional definitions may also be identified in this RFP. All terms, conditions, requirements, and procedures included in this RFP must be met for a Response to be determined responsive. If a Respondent fails to meet any material terms, conditions, requirements or procedures, its response may be deemed unresponsive and disqualified.
- (b) All responses, proposals, related documentation and information submitted in response to this RFP are subject to the Massachusetts Freedom of Information Law, M.G. L. c. 66, §10, and to M.G.L. c. 4, §7(26), regarding public access to such documents. Any statements reserving any confidentiality or privacy rights in submitted responses or otherwise inconsistent with these statutes will be void and disregarded. The foregoing notwithstanding, MTC has developed a set of procedures to deal with all documents submitted to it in response to this RFP, and those procedures are set forth in Exhibit D-1 hereto. By executing the Authorized Respondent's Signature and Acceptance Form, appended hereto as Exhibit D-2, Respondent acknowledges, understands and agrees to be bound by the procedures set forth in Exhibit D-1, and agrees that MTC shall not be liable under any circumstances for the subsequent disclosure of any materials submitted to it by Respondent pursuant to this RFP and/or in connection with any contract entered into between Respondent and MTC as a result of this RFP process.

- (c) Further, any selected Respondent must recognize that in the performance of the Master Agreement and any work orders issued thereunder it may become a holder of personal data (as defined in M.G.L. c. 66A) or other information deemed confidential by the Commonwealth. Respondent shall comply with the laws and regulations relating to confidentiality and privacy, including any rules or regulations of the MTC. Any questions concerning issues of confidentiality, the submission of materials to MTC, application of the procedures set forth in Exhibit D-1 or any other questions related to these matters, please contact Matthew L. Schemmel, Esq., at MTC.
- (d) It is the policy of MTC that contracts are awarded only to responsive and responsible Respondents. In order to qualify as responsive, the Respondent must respond to all requirements of the RFP in a complete and thorough manner. In order to qualify as responsible, the Respondent must demonstrate: (1) the availability of adequate resources and staffing to efficiently and expeditiously service MTC's needs; (2) the necessary experience, organization, qualifications, skills and facilities to provide the Field Data Collection Services set forth in this RFP; (3) a satisfactory record of performance in the provision of the Field Data Collection Services set forth in this RFP; (4) the ability and willingness to comply with the requirements of Federal and State law relative to equal employment opportunity. **ANY PROPOSAL DETERMINED TO BE NON-RESPONSIVE TO THIS RFP, INCLUDING INSTRUCTIONS GOVERNING THE SUBMISSION OF PROPOSALS, WILL BE DISQUALIFIED WITHOUT EVALUATION UNLESS THE EVALUATION COMMITTEE DETERMINES THAT THE NONCOMPLIANCE IS INSUBSTANTIAL.**
- (e) MTC makes no guarantee that any Field Data Consulting Services will be purchased pursuant to any Master Agreement entered into with Respondent as a result of this RFP.
- (f) Unless otherwise specified in this RFP, all communications, responses, and documentation must be in English, and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFP. Respondents should note that the procedures for handling information deemed sensitive by Respondent and submitted to MTC set forth in Exhibit D-1 apply only to hard copy documents, and are not applicable to information submitted by, among other methods, electronic mail, facsimile or verbally.
- (g) Respondents are prohibited from communicating directly with any employee of MTC except as specified in this RFP, and no other individual Commonwealth employee or representative is 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. The foregoing notwithstanding, Respondents who have questions concerning issues of confidentiality, the submission of materials to MTC, application of the procedures set forth in Exhibit D-1 or any other questions related to these matters, may contact Matthew L. Schemmel, Esq., at MTC.
- (h) The Procurement Team Leader may provide reasonable accommodations, including the provision of material in an alternative format, for qualified Respondents with disabilities or other hardships. Respondents requiring accommodations shall submit requests in writing, with supporting documentation justifying the accommodations, to the Procurement Team Leader. The Procurement Team Leader reserves the right to grant or reject any request for accommodations.
- (i) If a Respondent is unable to meet any of the specifications required in this RFP, the Respondent's response must include an alternative method for meeting such specification by identifying the specification, the proposed alternative and thoroughly describing how the alternative achieves substantially equivalent or better performance to the performance required in the RFP specification. MTC will determine if a proposed alternative method of performance achieves substantially equivalent or better performance.
- (j) Costs that are not specifically identified in the Respondent's response and/or not specifically accepted by MTC as part of the Master Agreement will not be compensated under any contract awarded pursuant to this RFP. MTC shall not be responsible for any costs or expenses incurred by Respondents in responding to this RFP.
- (k) The Respondent may not alter the RFP or its components except for those portions intended to collect the Respondent's response (Cost pages, etc.). Modifications to the body of this RFP, specifications, terms and conditions, or which change the intent of this RFP are prohibited. Any modifications other than where the Respondent is prompted for a response will disqualify the

response. The foregoing notwithstanding, proposed exceptions and/or counterproposals to the Master Agreement are permitted to be submitted with a Response.

- (l) Respondent's submitted Response shall be treated by MTC 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 rejection of the Response and/or of any resulting contract. The RFP evaluation committee will rule on any such matters and will determine appropriate action.
- (m) If MTC determines that it is necessary to revise any part of this RFP, or if additional data is necessary to clarify any of its provisions, a written message (electronic mail message acceptable) will be sent to the recipients of this RFP, as appropriate. MTC's RFP evaluation committee reserves the right to amend the RFP at any time prior to the deadline for submission of responses.
- (n) Submitted Responses must be valid in all respects for a minimum period of sixty (60) days after the deadline for submission.
- p) MTC's prior approval is required for any subcontracted services under any Master Agreement entered into as a result of this RFP. Selected Respondent is responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same requirements and are held to the same reimbursable cost standards as the selected Respondent.

Waiver Authority

MTC reserves the right, at its sole discretion, to waive minor irregularities in submittal requirements, to request modifications of the response, to accept or reject any or all responses received, and/or to cancel all or part of this RFP at any time prior to awards.

Disclaimer

This RFP does not commit MTC to award any funds, pay any costs incurred in preparing a response, or procure or contract for services or supplies. MTC reserves the right to accept or reject any or all responses received, negotiate with all qualified Respondents, cancel or modify the RFP in part or in its entirety, or change the response guidelines, when it is in its best interests.

LIST OF EXHIBITS

Exhibit A	Pole Data Form
Exhibit B	Map of the proposed route of the aerial network
Exhibit C	Spreadsheet listing route miles and estimated spans per town/city
Exhibit D-1	MTC Policy and Procedures for Submission of Sensitive Information
Exhibit D-2	Authorized Respondent's Signature and Acceptance Form
Exhibit E	Officer's Certificate
Exhibit F	Template for Proposal
Exhibit G	Master Agreement and Special Terms and Conditions for Field Data Collection Services

EXHIBIT A

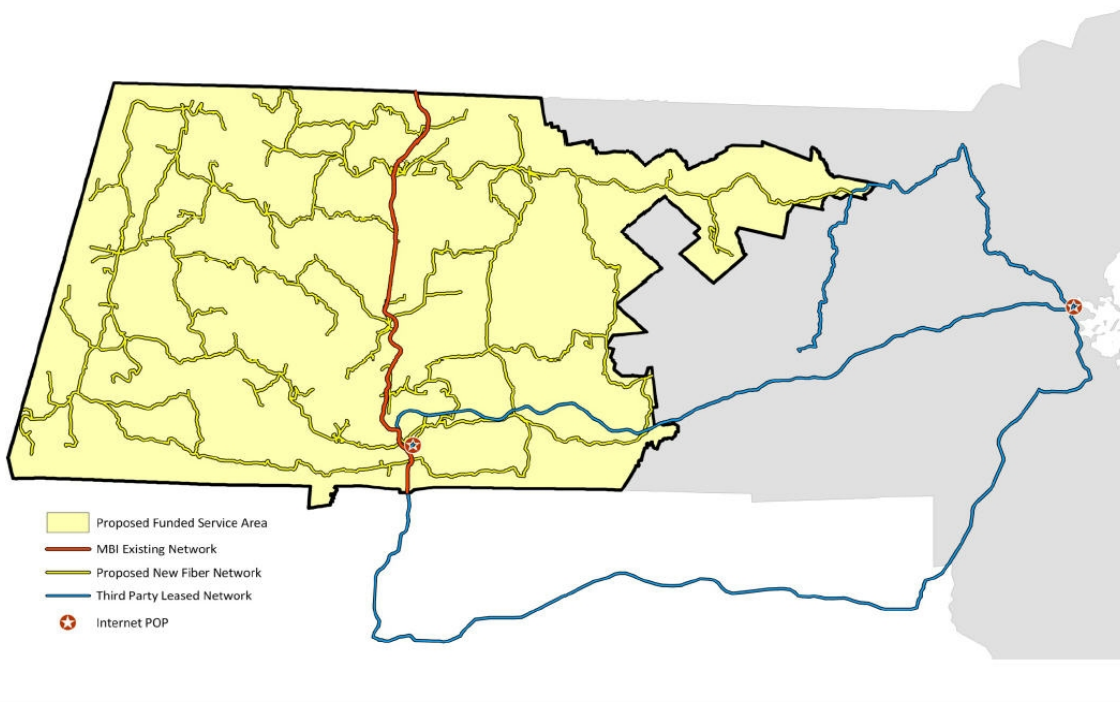
Pole Data Form

This document is available as a separate MSEXCEL® workbook.

EXHIBIT B
MASSBROADBAND 123 NETWORK DETAILS & MAPS

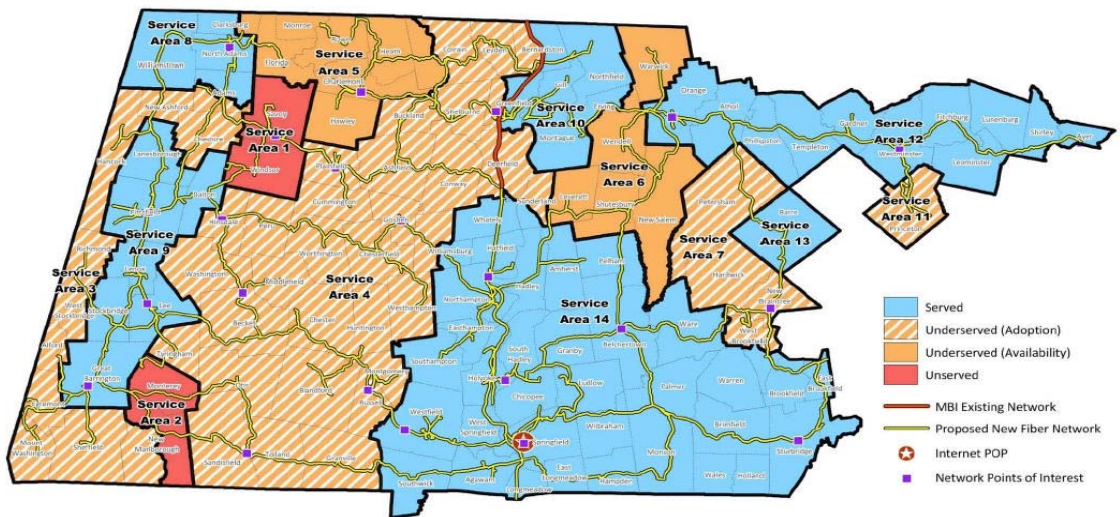
Network Maps – MassBroadband 123

Total Proposed Network



Network Maps – MassBroadband 123

Individual Service Areas, Proposed Network, and Points of Interconnection



Network Maps – MassBroadband 123
Individual Service Areas, Proposed Network, and Points of Interconnection

Network Maps – MassBroadband 123

Individual Service Areas and Proposed Network

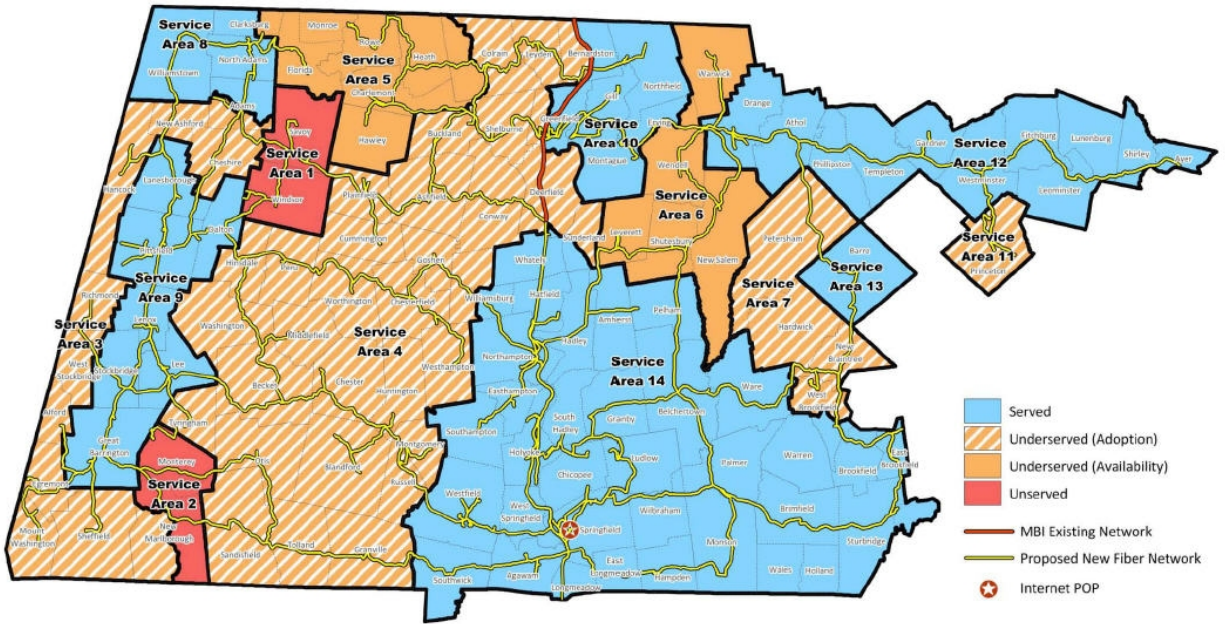


EXHIBIT C
Spreadsheet listing route miles and estimated spans per town/city

See attached.

Utilities Database of MassBroadband 123 Proposed Service Area

County	Municipality	Maintenance Responsibility	Power Distribution Provider (Service Area)	Route Miles for Existing Pole	Number of spans per mile based on 150' spans
HAMPDEN	CHESTER	SPLIT	Chester Municipal Electric Light Department	8.37	295
HAMPDEN	CHICOPEE	SPLIT	Chicopee Electric Light Department	5.06	178
WORCESTER	FITCHBURG	SPLIT	Fitchburg Gas and Electric Light Co./ Unitol Corporation	6.38	225
WORCESTER	LUNENBURG	VZ	Fitchburg Gas and Electric Light Co./ Unitol Corporation	1.92	68
MIDDLESEX	GROTON	GROTON MUNICIPAL	Groton Electric Light Department	0	0
HAMPDEN	HOLYOKE	SPLIT	Holyoke Gas & Electric Department	12.02	423
BERKSHIRE	ADAMS	VZ	National Grid - MassElectric (Baystate West)	9.41	331
BERKSHIRE	ALFORD	NGRID	National Grid - MassElectric (Baystate West)	0.97	34
WORCESTER	ATHOL	SPLIT	National Grid - MassElectric (Baystate West)	7.64	269
MIDDLESEX	AYER	VZ	National Grid - MassElectric (Baystate West)	2.85	100
WORCESTER	BARRE	NGRID	National Grid - MassElectric (Baystate West)	9.03	318
HAMPSHIRE	BELCHERTOWN	VZ	National Grid - MassElectric (Baystate West)	17.10	602
HAMPDEN	BRIMFIELD	SPLIT	National Grid - MassElectric (Baystate West)	8.78	309
WORCESTER	BROOKFIELD	VZ	National Grid - MassElectric (Baystate West)	2.38	84
FRANKLIN	CHARLEMONT	NGRID	National Grid - MassElectric (Baystate West)	14.03	494
WORCESTER	CHARLTON	VZ	National Grid - MassElectric (Baystate West)	0.65	23
BERKSHIRE	CHESHIRE	SPLIT	National Grid - MassElectric (Baystate West)	8.27	291
BERKSHIRE	CLARKSBURG	NGRID	National Grid - MassElectric (Baystate West)	0.41	14
WORCESTER	EAST BROOKFIELD	VZ	National Grid - MassElectric (Baystate West)	7.12	251
HAMPDEN	EAST LONGMEADOW	VZ	National Grid - MassElectric (Baystate West)	3.89	137
BERKSHIRE	EGREMONT	NGRID	National Grid - MassElectric (Baystate West)	7.2	253
BERKSHIRE	FLORIDA	NGRID	National Grid - MassElectric (Baystate West)	4.44	156
WORCESTER	GARDNER	NGRID	National Grid - MassElectric (Baystate West)	5.58	196
HAMPSHIRE	GOSHEN	SPLIT	National Grid - MassElectric (Baystate West)	4.25	150
HAMPSHIRE	GRANBY	?	National Grid - MassElectric (Baystate West)	9.4	331
BERKSHIRE	GREAT BARRINGTON	NGRID	National Grid - MassElectric (Baystate West)	16.41	578
HAMPDEN	HAMPDEN	VZ	National Grid - MassElectric (Baystate West)	5.17	182
WORCESTER	HARDWICK	NGRID	National Grid - MassElectric (Baystate West)	1.11	39
FRANKLIN	HAWLEY	VZ	National Grid - MassElectric (Baystate West)	1.47	52
FRANKLIN	HEATH	VZ	National Grid - MassElectric (Baystate West)	9.90	348
HAMPDEN	HOLLAND	NGRID	National Grid - MassElectric (Baystate West)	0	0
BERKSHIRE	LENOX	VZ	National Grid - MassElectric (Baystate West)	10.01	352
WORCESTER	LEOMINSTER	NGRID	National Grid - MassElectric (Baystate West)	4.62	163
FRANKLIN	MONROE	NGRID	National Grid - MassElectric (Baystate West)	0.39	14
HAMPDEN	MONSON	WMECO	National Grid - MassElectric (Baystate West)	10.5	370
BERKSHIRE	MONTEREY	NGRID	National Grid - MassElectric (Baystate West)	12.55	442
BERKSHIRE	MOUNT WASHINGTON	NGRID	National Grid - MassElectric (Baystate West)	4.85	171
WORCESTER	NEW BRAINTREE	NGRID	National Grid - MassElectric (Baystate West)	10.4	366
BERKSHIRE	NEW MARLBOROUGH	NGRID	National Grid - MassElectric (Baystate West)	6.64	234
FRANKLIN	NEW SALEM	NGRID	National Grid - MassElectric (Baystate West)	10.57	372
BERKSHIRE	NORTH ADAMS	NGRID	National Grid - MassElectric (Baystate West)	11.48	404
HAMPSHIRE	NORTHAMPTON	SPLIT	National Grid - MassElectric (Baystate West)	15.32	539
FRANKLIN	ORANGE	VZ	National Grid - MassElectric (Baystate West)	14.41	507
HAMPDEN	PALMER	NGRID	National Grid - MassElectric (Baystate West)	11.04	389
WORCESTER	PETERSHAM	NGRID	National Grid - MassElectric (Baystate West)	8.17	288
WORCESTER	PHILLIPSTON	VZ	National Grid - MassElectric (Baystate West)	3.06	108
FRANKLIN	ROWE	NGRID	National Grid - MassElectric (Baystate West)	7.4	260
BERKSHIRE	SHEFFIELD	VZ	National Grid - MassElectric (Baystate West)	5.44	191
MIDDLESEX	SHIRLEY	VZ	National Grid - MassElectric (Baystate West)	3.11	109
FRANKLIN	SHUTESBURY	SPLIT	National Grid - MassElectric (Baystate West)	6.05	213
BERKSHIRE	STOCKBRIDGE	VZ	National Grid - MassElectric (Baystate West)	9.37	330
WORCESTER	STURBRIDGE	VZ	National Grid - MassElectric (Baystate West)	8.64	304
HAMPDEN	WALES	NGRID	National Grid - MassElectric (Baystate West)	0	0

Utilities Database of MassBroadband 123 Proposed Service Area

County	Municipality	Maintenance Responsibility	Power Distribution Provider (Service Area)	Route Miles for Existing Pole	Number of spans per mile based on 150' spans
HAMPSHIRE	WARE	NGRID	National Grid - MassElectric (Baystate West)	9.53	335
WORCESTER	WARREN	NGRID	National Grid - MassElectric (Baystate West)	0	0
FRANKLIN	WARWICK	VZ	National Grid - MassElectric (Baystate West)	6.22	219
FRANKLIN	WENDELL	VZ	National Grid - MassElectric (Baystate West)	8.4	296
WORCESTER	WEST BROOKFIELD	NGRID	National Grid - MassElectric (Baystate West)	7.83	276
BERKSHIRE	WEST STOCKBRIDGE	NGRID	National Grid - MassElectric (Baystate West)	2.75	97
WORCESTER	WESTMINSTER	VZ	National Grid - MassElectric (Baystate West)	9.07	319
HAMPDEN	WILBRAHAM	VZ	National Grid - MassElectric (Baystate West)	5.07	178
HAMPSHIRE	WILLIAMSBURG	SPLIT	National Grid - MassElectric (Baystate West)	5.66	199
BERKSHIRE	WILLIAMSTOWN	VZ	National Grid - MassElectric (Baystate West)	8.56	301
HAMPSHIRE	AMHERST	SPLIT	Northeast Utilities - WMECO (Northern Division)	5.47	193
FRANKLIN	ASHFIELD	VZ	Northeast Utilities - WMECO (Northern Division)	12.32	434
BERKSHIRE	BECKET	WMECO	Northeast Utilities - WMECO (Northern Division)	17.96	632
FRANKLIN	BERNARDSTON	VZ	Northeast Utilities - WMECO (Northern Division)	6.72	237
HAMPDEN	BLANDFORD	SPLIT	Northeast Utilities - WMECO (Northern Division)	7.27	256
FRANKLIN	BUCKLAND	VZ	Northeast Utilities - WMECO (Northern Division)	6.56	231
HAMPSHIRE	CHESTERFIELD	VZ	Northeast Utilities - WMECO (Northern Division)	10.57	372
FRANKLIN	COLRAIN	SPLIT	Northeast Utilities - WMECO (Northern Division)	13.10	461
FRANKLIN	CONWAY	WMECO	Northeast Utilities - WMECO (Northern Division)	5.84	206
HAMPSHIRE	CUMMINGTON	VZ	Northeast Utilities - WMECO (Northern Division)	2.10	74
BERKSHIRE	DALTON	WMECO	Northeast Utilities - WMECO (Northern Division)	6.82	240
FRANKLIN	DEERFIELD	VZ	Northeast Utilities - WMECO (Northern Division)	2.02	71
HAMPSHIRE	EASTHAMPTON	SPLIT	Northeast Utilities - WMECO (Northern Division)	4.39	155
FRANKLIN	GILL	WMECO	Northeast Utilities - WMECO (Northern Division)	7.77	274
FRANKLIN	GREENFIELD	SPLIT	Northeast Utilities - WMECO (Northern Division)	12.20	429
HAMPSHIRE	HADLEY	VZ	Northeast Utilities - WMECO (Northern Division)	7.19	253
HAMPSHIRE	HATFIELD	VZ	Northeast Utilities - WMECO (Northern Division)	2.68	94
BERKSHIRE	HINSDALE	WMECO	Northeast Utilities - WMECO (Northern Division)	7.53	265
HAMPSHIRE	HUNTINGTON	SPLIT	Northeast Utilities - WMECO (Northern Division)	4.98	175
BERKSHIRE	LANESBOROUGH	WMECO	Northeast Utilities - WMECO (Northern Division)	11.2	394
BERKSHIRE	LEE	VZ	Northeast Utilities - WMECO (Northern Division)	13.68	482
FRANKLIN	LEVERETT	SPLIT	Northeast Utilities - WMECO (Northern Division)	7.22	254
FRANKLIN	LEYDEN	VZ	Northeast Utilities - WMECO (Northern Division)	7.04	248
HAMPSHIRE	MIDDLEFIELD	WMECO	Northeast Utilities - WMECO (Northern Division)	3.74	132
FRANKLIN	MONTAGUE	WMECO	Northeast Utilities - WMECO (Northern Division)	7.71	271
HAMPDEN	MONTGOMERY	WMECO	Northeast Utilities - WMECO (Northern Division)	3.92	138
BERKSHIRE	NEW ASHFORD	WMECO	Northeast Utilities - WMECO (Northern Division)	3.39	119
FRANKLIN	NORTHFIELD	WMECO	Northeast Utilities - WMECO (Northern Division)	3.38	119
BERKSHIRE	OTIS	VZ	Northeast Utilities - WMECO (Northern Division)	8.99	316
HAMPSHIRE	PELHAM	WMECO	Northeast Utilities - WMECO (Northern Division)	6.27	221
BERKSHIRE	PERU	WMECO	Northeast Utilities - WMECO (Northern Division)	5.00	176
BERKSHIRE	PITTSFIELD	SPLIT	Northeast Utilities - WMECO (Northern Division)	19.68	693
HAMPSHIRE	PLAINFIELD	VZ	Northeast Utilities - WMECO (Northern Division)	11.99	422
BERKSHIRE	RICHMOND	SPLIT	Northeast Utilities - WMECO (Northern Division)	3.08	108
BERKSHIRE	SANDSFIELD	SPLIT	Northeast Utilities - WMECO (Northern Division)	11.29	397
BERKSHIRE	SAVOY	WMECO	Northeast Utilities - WMECO (Northern Division)	12.10	426
FRANKLIN	SHELburne	SPLIT	Northeast Utilities - WMECO (Northern Division)	11.23	395
HAMPSHIRE	SOUTHAMPTON	WMECO	Northeast Utilities - WMECO (Northern Division)	3.05	107
FRANKLIN	SUNDERLAND	WMECO	Northeast Utilities - WMECO (Northern Division)	0	0
HAMPDEN	TOLLAND	WMECO	Northeast Utilities - WMECO (Northern Division)	5.49	193
BERKSHIRE	TYRINGHAM	VZ	Northeast Utilities - WMECO (Northern Division)	5.04	177
BERKSHIRE	WASHINGTON	WMECO	Northeast Utilities - WMECO (Northern Division)	5.87	207
HAMPSHIRE	WESTHAMPTON	NGRID	Northeast Utilities - WMECO (Northern Division)	4.98	175

Utilities Database of MassBroadband 123 Proposed Service Area

County	Municipality	Maintenance Responsibility	Power Distribution Provider (Service Area)	Route Miles for Existing Pole	Number of spans per mile based on 150' spans
FRANKLIN	WHATELY	VZ	Northeast Utilities - WMECO (Northern Division)	0.36	13
BERKSHIRE	WINDSOR	WMECO	Northeast Utilities - WMECO (Northern Division)	10.22	360
HAMPSHIRE	WORTHINGTON	VZ	Northeast Utilities - WMECO (Northern Division)	8.43	297
HAMPDEN	AGAWAM	WMECO	Northeast Utilities - WMECO (Southern Division)	5.66	199
HAMPDEN	GRANVILLE	WMECO	Northeast Utilities - WMECO (Southern Division)	8.75	308
HAMPDEN	LONGMEADOW	SPLIT	Northeast Utilities - WMECO (Southern Division)	0.61	21
HAMPDEN	LUDLOW	VZ	Northeast Utilities - WMECO (Southern Division)	5.12	180
HAMPDEN	SOUTHWICK	VZ	Northeast Utilities - WMECO (Southern Division)	7.71	271
HAMPDEN	SPRINGFIELD	SPLIT	Northeast Utilities - WMECO (Southern Division)	14.44	508
HAMPDEN	WEST SPRINGFIELD	SPLIT	Northeast Utilities - WMECO (Southern Division)	3.79	133
WORCESTER	PRINCETON	PRINCETON MUNICIPAL	Princeton Municipal Light Department	9.37	330
HAMPDEN	RUSSELL	SPLIT	Russell Municipal Light Department	8.07	284
HAMPSHIRE	SOUTH HADLEY	SPLIT	South Hadley Electric Light Department	2.32	82
WORCESTER	TEMPLETON	TEMPLETON MUNICIPAL	Templeton Municipal Light & Water Plant	5.83	205
HAMPDEN	WESTFIELD	SPLIT	Westfield Gas & Electric Department	14.76	520
FRANKLIN	ERVING	WMECO	<i>WMECO - Northern Division / National Grid - Baystate West</i>	9.4	331
BERKSHIRE	HANCOCK	WMECO	<i>WMECO - Northern Division / National Grid - Baystate West</i>	4.56	161

EXHIBIT D-1**THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE POLICY AND PROCEDURES
REGARDING SUBMISSION OF “SENSITIVE INFORMATION”**

The Massachusetts Technology Collaborative, the John Adams Innovation Institute, the Massachusetts Broadband Institute and the Massachusetts e-Health Institute (collectively referred to herein as “MTC”) are subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the “Public Records Act”), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, “public records” include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the “Submitting Party”) is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, “public records” do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC’s enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the “Trade Secrets Exemption”).

IT IS MTC’S EXPECTATION AND BELIEF THAT THE OVERWHELMING PERCENTAGE OF DOCUMENTS IT RECEIVES FROM A SUBMITTING PARTY DOES NOT CONTAIN ANY INFORMATION THAT WOULD WARRANT AN ASSERTION BY MTC OF AN EXEMPTION FROM THE PUBLIC RECORDS ACT. SUBMITTING PARTIES SHOULD THEREFORE TAKE CARE IN DETERMINING WHICH DOCUMENTS THEY SUBMIT TO MTC, AND SHOULD ASSUME THAT ALL DOCUMENTS SUBMITTED TO MTC ARE SUBJECT TO PUBLIC DISCLOSURE WITHOUT ANY PRIOR NOTICE TO THE SUBMITTING PARTY AND WITHOUT RESORT TO ANY FORMAL PUBLIC RECORDS REQUEST.

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party’s initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC’s General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents’ disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party’s responsibility and obligation to provide detailed explanations for each such document.
2. At the time of the Submitting Party’s initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as “Sensitive Information.” It is the Submitting Party’s responsibility and obligation to ensure that all such documents are sufficiently identified as “Sensitive Information,” and Submitting Party’s designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

INFORMATION SUBMITTED TO MTC IN ANY FORM OTHER THAN A HARD COPY DOCUMENT WILL NOT BE SUBJECT TO THE PROCEDURES SET FORTH IN THIS POLICY. FOR EXAMPLE, INFORMATION SUBMITTED BY E-MAIL, FACSIMILE

AND/OR VERBALLY WILL NOT BE SUBJECT TO THESE PROCEDURES AND MAY BE DISCLOSED AT ANY TIME WITHOUT NOTICE TO THE SUBMITTING PARTY.

3. Documents that are not accompanied by the written notification to MTC's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.
4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.
5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information" in strict accordance with this Policy, the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and, if not already submitted, that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

THE GENERAL COUNSEL IS THE SOLE AUTHORITY WITHIN MTC FOR MAKING DETERMINATIONS ON THE APPLICABILITY AND/OR ASSERTION OF AN EXEMPTION TO THE PUBLIC RECORDS ACT. NO EMPLOYEE OF MTC OTHER THAN THE GENERAL COUNSEL HAS ANY AUTHORITY TO ADDRESS ISSUES CONCERNING THE STATUS OF "SENSITIVE INFORMATION" OR TO BIND MTC IN ANY MANNER CONCERNING MTC'S TREATMENT AND DISCLOSURE OF SUCH DOCUMENTS.

FURTHERMORE, THE POTENTIAL APPLICABILITY OF AN EXEMPTION TO THE DISCLOSURE OF DOCUMENTS DESIGNATED BY THE SUBMITTING PARTY AS "SENSITIVE INFORMATION" SHALL NOT REQUIRE MTC TO ASSERT SUCH AN EXEMPTION. MTC'S GENERAL COUNSEL RETAINS THE SOLE DISCRETION AND AUTHORITY TO ASSERT AN EXEMPTION, AND HE MAY DECLINE TO EXERT SUCH AN EXEMPTION IF, WITHIN HIS DISCRETION, THE PUBLIC INTEREST IS SERVED BY THE DISCLOSURE OF ANY DOCUMENTS SUBMITTED BY THE SUBMITTING PARTY.

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.
10. In the event the requesting party pursues a review of MTC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.
11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

THE SUBMITTING PARTY'S SUBMISSION OF DOCUMENTATION TO MTC SHALL REQUIRE A SIGNED CERTIFICATION THAT SUBMITTING PARTY ACKNOWLEDGES, UNDERSTANDS AND AGREES WITH THE APPLICABILITY OF THE FOREGOING PROCEDURES TO ANY DOCUMENTS SUBMITTED TO MTC BY SUBMITTING PARTY AT ANY TIME, INCLUDING BUT NOT LIMITED TO THE ACKNOWLEDGEMENTS SET FORTH HEREIN, AND THAT SUBMITTING PARTY SHALL BE BOUND BY THESE PROCEDURES.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.

Exhibit D-2**MASSACHUSETTS TECHNOLOGY COLLABORATIVE****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 sensitive information as set forth in Attachment A of the RFP, and specifically agrees that it shall be bound by those procedures.

The Respondent understands that, if selected by MTC, the Respondent and MTC will execute written agreements specifying the mutual requirements of participation. The undersigned (*please check one*):

- has specified exceptions and counterproposals to the terms and conditions of the Master Agreement;
 agrees to the terms and conditions set forth therein; or
 is already a signatory to a Master Agreement with MTC.

The undersigned acknowledges and agrees that the failure to submit exceptions and counterproposals with this Response shall be deemed a waiver and the Master Agreement shall not be subject to further negotiation.

Respondent agrees that the entire bid response will remain valid for sixty (60) days from receipt by MTC.

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: _____

EXHIBIT E
OFFICER'S CERTIFICATE

- 1) Is your organization in compliance with 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) Is your organization current in all of its obligations to federal, state and local taxing authorities?
Yes No
- 4) Is your organization a party in any litigation proceeding or threatened litigation which could result in a material adverse effect on the organization?
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 5 years or currently the subject of any similar criminal proceeding?
Yes No
- 6) Is your organization involved in any material dispute with any federal, state or local regulatory authority or been involved in any such material dispute during the past five years?
Yes No
- 7) (a) Are your organization's financial statements audited? and,
Yes No
(b) If so, have you received a "going concern" opinion from such audit firm during the past three years?
Yes No
- 8) Are more than 25% of your revenues derived from any single customer?
Yes No
- 9) Did your organization have positive net income in each of the two most recent fiscal years?
Yes No
- 10) Do your organization's tangible current assets (current assets less goodwill) exceed its current liabilities?
Yes No

If you have answered 'Yes' to questions 2, 4, 5, 6, 7(b), or 8, please explain.

If you have answered 'No' to questions 1, 3, 7(a), 9, or 10, please explain.

Attach additional sheets if necessary.

Certification

The undersigned, _____, hereby certifies that I am a
(Name and Title)

duly authorized representative of _____
(Company 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 decertification. I attest to the accuracy of all information contained in this application and verify that the information submitted is in fact complete, accurate and true. The undersigned acknowledges that the information provided in this Exhibit E is not confidential or "sensitive information" (as that term is defined in Exhibit D-1, and is a public record.

Signed and sworn under the penalties of perjury

Dated at: _____
(location)

This _____ day of _____, 2010

By: _____
(Signature)

Name: _____
(Printed or Typed)

Title/Position: _____

EXHIBIT F
TEMPLATE FOR PROPOSAL

Respondent's Legal Business Name			
Mailing Address		City/Town, State Zip Code	
Telephone	Fax	Web Address	
Legal Status and Jurisdiction (e.g., a Massachusetts corporation)		DUNS Number	
Primary Contact Full Name/Title			
Primary Contact Telephone Number		Contact e-mail address	

1. Describe Respondent's experience in conducting utility pole inspections

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2. Describe Respondent's ability to field sufficient experienced staff to conduct the volume of inspections in the timeframes contemplated by this RFP

--

3. Identify all prior experience working with or for the Pole Owners, including information regarding recent data collection conducted by Respondent in the service region of the *MassBroadband 123* network, including identities of Pole Owners for whom such data were collected, municipalities involved and approximate number of poles.

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4. Identify any current contracts to provide services to the Pole Owners.

--

5. Identify other pole attachment survey work performed by the Respondent for attachers or utility companies other than the Pole Owners.

--

Approach: Please describe the following information as concisely as possible.

1. The methods and technology to be used to conduct the required Field Data Collection as well as the recording and reporting of the required survey data categories in Exhibit A (including online review capabilities, if any), specifying the level of accuracy produced.

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2. The frequency and process by which Respondent proposes to make the data available to the MBI and Pole Owners. This process must include delivery of the specified format in Exhibit A, but may also include other facilities and mechanisms such as email, ftp, or online interactive databases and applications/websites.

--

3. The typical time from field data collection to the delivery of that data to the MBI and Pole Owners.

4. The methodology for pole loading analysis (if Respondent opts to provide such services).

Team members and roles: In the box below, please describe:

1. the project management plan and staffing levels proposed by Respondent to implement the Field Data Collection Services on a timely and efficient basis.
2. the qualifications of staff assigned to the project;
3. the typical number of poles surveyed per crew per day;
4. the minimum and maximum number of crews the Respondent is able to commit to this effort;
5. any limits on the number of surveys that the Respondent can complete per week and per month, indicating any differences depending upon time of year;
6. the number or people per crew;
7. the anticipated number of crews
8. the minimum qualifications or years of experience for the personnel that will be used to perform the work.

Attachments: Responses must include the following attachments:

- Complete contact information for at least 3 references, at least 2 of whom required services involving field inspections of utility poles for projects of similar size and scope to the *MassBroadband 123* Project. The references must include a contact person, a full address, and a phone number.
- An example of data collected from up to five (5) poles surveyed on previous jobs.
- Fully executed Authorized Respondent's Signature and Acceptance Form (Exhibit D-2).
- A draft copy of the Officers Certification Form (Exhibit E).
- A Statement that Respondent is able to meet all requirements contained in the Special Terms and Conditions for Field Services set forth in Exhibit G.
- A copy of Respondent's safety program, including equipment and techniques that will be implemented when providing the Field Data Collection Services, including compliance with applicable codes and requirements.
- A copy of Respondent's quality control program for assuring the acceptable accuracy of the data provided from the Field Data Collection Services, including any testing, sampling, or other methods of assuring and verifying the quality and accuracy of the data (which program must incorporate a right by MBI and Pole Owners to validate data samples independently).
- The resumes and complete contact information of key project personnel and managers assigned to the project.

Cost Proposal.

The following Unit Prices shall apply:

Title	Unit Price
Per pole price if all poles are surveyed once	
Per pole price if the total number of poles is between [] and []	
Per pole price if the total number of poles is between [] and []	
Per pole price if the total number of poles is between [] and []	
Per pole price if the number of poles released for work at one time is between [] and []	
Per pole price if the number of poles released for work at one time is between [] and []	
Optional: Per pole price for preparation of preliminary pole loading analysis	

Hourly Rate Schedule

In the event work is requested by change order to be provided on a time and material basis, the following hourly rates shall apply:

Title	Rate/Hr.

The Respondent confirms that it has read and understood the Proposal Package.

Respondent's name: _____

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G
Master Agreement and Work Order, including Special Terms and Conditions for
Field Data Collection Work Order for *MassBroadband 123* Project

RESPONDENT MUST REVIEW THE ATTACHED MASTER AGREEMENT AND PROVIDE EXCEPTIONS TO THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AS PART OF ITS RESPONSE TO THIS RFP.

MASSACHUSETTS TECHNOLOGY COLLABORATIVE

75 NORTH DRIVE
WESTBOROUGH, MASSACHUSETTS 01581

MASTER AGREEMENT FOR SERVICES

This MASTER AGREEMENT FOR SERVICES (as amended from time to time, the "Agreement") is made and entered into as of Insert Date (the "Effective Date") by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative, an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 75 North Drive, Westborough, Massachusetts, 01581, and Insert Firm Name., Insert legal status and jurisdiction (e.g., a Massachusetts corporation), with a "principal place of business" OR "residing" at (Insert Full Legal Address), ("Contractor").

Whereas, MTC desires to retain Contractor to render certain services to MTC and Contractor desires to be so retained by MTC and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Certain Definitions:** The following capitalized terms have the following meanings for purposes of this Agreement:
 - a) "Agreement" means this Master Agreement for Services, including all work orders entered into hereunder and attached hereto and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of this Agreement.
 - b) "Applicable Third Party" means any Applicant, any Recipient, or any third party to which MTC is under an obligation to keep the information in question confidential or any Applicant, Contractor Grantee, Recipient or Respondent other than MTC who will directly benefit from the services provided hereunder.
 - c) "Applicant" means any Person who has sought funding or other financial support from, or has submitted one or more proposals for projects to, MTC in connection with any of MTC's programs or initiatives as in effect from time to time, including any former Applicant.
 - d) "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
 - e) "Contractor" means any Person providing the services contemplated hereunder.
 - f) "General Counsel" means MTC's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to MTC as MTC's Executive Director may designate.
 - g) "Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
 - h) "Grantee" means any Person who has received funding or any other type of support from MTC pursuant to any of MTC's programs or initiatives as in effect from time to time, including any former Grantees (also referred to herein as Recipient).
 - i) "MTC" means the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
 - j) "Person" means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.

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- k) "Project Personnel" means, with respect to each project hereunder, the employees or other personnel of each party responsible for such project.
 - l) "Public Records Act" means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto.
 - m) "Recipient" means any Person who has received funding or any other type of support from MTC pursuant to any of MTC's programs or initiatives as in effect from time to time, including any former Recipients (also referred to herein as Grantee).
 - n) "Respondent" means any Person who has submitted one or more proposals in response to a request for such proposals made by MTC, including any former Respondents.
 - o) "Sensitive Information" means any confidential, proprietary or otherwise sensitive information concerning the organization, business, operations, financial condition, capitalization, finances, employees, activities, existing or prospective technology, plans or prospects of MTC or any Applicable Third Party. "Sensitive Information" includes, without limitation, MTC's or any Applicable Third Party's trade secrets or any commercial or financial information regarding the operation or the current or prospective competitive position of MTC or of any Applicable Third Party; internal policies and methods of doing business; databases and analytical models; personnel records; products, inventions, designs, know-how, techniques, methods, systems, processes, procedures, prototypes, chemicals, biologics, software programs, works of authorship and other developments; actual or prospective customers, vendors, suppliers, licensors, licensees, investors, strategic or financial partners, products or services; and business plans, projects, proposals and contractual arrangements (including the terms of this Agreement); in each case regardless of whether such Sensitive Information is in oral form or in the form of Written Materials.
 - p) "Written Materials" means any and all documentary materials or data relating to any matter within the scope of the business or mission of MTC or concerning any of its dealings or affairs, or relating to any Applicable Third Parties under MTC's programs, regardless of the physical form or characteristics of such documentary materials or data. "Written Materials" include, without limitation, notes, memoranda, letters, reports, documents, files, lists, records, drawings, sketches, specifications, software programs, and other documentation and other materials of any nature and in any format, including data stored on computers, floppy disks c/d roms or other electronic media.
2. **Scope of Services:** MTC hereby retains Contractor to provide services to MTC during the term of this Agreement, and Contractor hereby accepts such engagement. Contractor represents itself as competent and qualified to accomplish the specific requirements of this Agreement to the satisfaction of MTC and in accordance with the terms and conditions of this Agreement and acknowledges that MTC is relying upon such representation in entering into this Agreement. This Agreement shall apply to all services provided from time to time by Contractor to MTC during the term specified in Section 4. Each service request shall be in writing and shall be attached to this Agreement as a separate work order, substantially in the form of Attachment A, specifying the start date and duration of the service request, the services to be performed, any deliverables to be furnished by Contractor and payment terms, and shall be signed by a duly authorized officer or employee of each of the parties. Each work order shall reference this Agreement and will be numbered sequentially. In the event of any conflict between the terms and conditions set forth in this Agreement and any provision(s) set forth in any work order or other attachment hereto, the terms of this Agreement shall control unless and until amended in accordance with Section 19 hereof.
3. **Payment:** MTC shall compensate Contractor as set forth in the attached work order(s). Payments hereunder will generally be made by MTC within forty-five (45) days following receipt of a reasonably detailed invoice from Contractor evidencing that payment is due hereunder. Contractor's invoices will include such information as is set forth on the relevant work order or as otherwise requested by MTC.
4. **Term of the Agreement:** This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect until December 31, 2012, or until

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Contractor has completed all services specified in the attached work order(s), whichever is later, unless terminated sooner under the provisions of Section 8.

5. **Project Personnel:** The relevant Project Personnel shall be set forth on the applicable work order. Unless otherwise agreed by the parties, each party will use all reasonable efforts to maintain the same personnel on its project team unless replacement is necessitated by the resignation, extended illness, incapacity or death of specific Project Personnel. Either party may request the removal or replacement of any individual(s) from the other party's project team but shall not do so on frivolous or vexatious grounds. Such a request shall include the reasons for the requested change. If such a request is based on reasonable grounds then each party shall use all reasonable efforts to replace the relevant individual promptly.
6. **Timely Performance:** Contractor acknowledges that expeditious completion of Contractor's services and the expeditious delivery of related deliverables is of the utmost importance to MTC.
7. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed in the applicable work order at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a party may provide by notice to the party pursuant to this Section 7), and shall be effective (i) if dispatched by facsimile or telecopier and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.
8. **Termination or Suspension:**
 - a) Procedures: This Agreement will terminate on the date specified in Section 4, unless amended in accordance with Section 19 to extend the term hereof, or unless earlier terminated or suspended as provided in this Section 8(a).
 - i) *Immediate Termination or Suspension - Bankruptcy, Fraud or Material Breach:* This Agreement shall terminate automatically, without further action by either party, in the event of a bankruptcy, receivership or insolvency filing by or against Contractor or the commission by either party of any action constituting fraud on the part of such party in its dealings with the other party or with the Commonwealth. This Agreement shall terminate (or, at the election of the notifying party, the provisions of Section 2 and/or 3 and the related provisions of any work orders shall be suspended) immediately upon receipt by a party of written notice of termination (or suspension) from the other party in the event of such party's material breach of the provisions of this Agreement. The notice shall identify the relevant Section(s) of this Agreement breached by the other party and the nature of such breach. If a party notified of suspension hereunder cures the breach referenced in the notice to the reasonable satisfaction of the notifying party within fourteen (14) days (or such greater or lesser number of days as is specified by the notifying party in said notice) of receipt of such notice, this Agreement shall automatically be reinstated and shall be in full force and effect as if the notice had not been issued; if not, this Agreement shall thereupon automatically terminate, without further action by either party, on such date.
 - ii) *Cure Period for Breach of Contract:* In the event Contractor breaches any of its representations, warranties or covenants or any other provision of this Agreement, MTC may, at its option and in lieu of or after declaring this Agreement immediately suspended or terminated under the immediately preceding clause, provide Contractor with written notice of the opportunity to cure such breach. If Contractor cures the particular breach within fifteen (15) days (or such greater or lesser number of days as is specified by MTC in said notice) of the receipt by Contractor of such notice, this Agreement shall continue in full force and effect as if the notice had not been issued. If Contractor fails to cure such breach within such cure period, this Agreement shall thereupon automatically terminate.

Master Agreement for Services

- iii) *Termination Without Cause:* MTC may terminate the Agreement without cause at any time upon provision of written notice to Contractor at least seven (7) calendar days before the effective date of such termination.
 - iv) *Change of Law:* MTC may terminate this Agreement at any time upon provision of written notice to Contractor in the event of the loss of availability of sufficient funding for the purposes of this Agreement, or in the event of an unforeseen public emergency or change of law mandating action by MTC which is inconsistent with performing its obligations under this Agreement or rendering further performance by MTC of its obligations hereunder impracticable or impossible.
- b) Obligations in Event of Termination: Survival: Upon termination of this Agreement, the parties shall have the following obligations:
- i) *Deliverables:* Contractor shall deliver to MTC all written and tangible work product identified as deliverables in the applicable work order(s) for which services have been performed and payment has been made, and all other property of MTC or any Applicable Third Parties, and all copies thereof in the direct or indirect possession or control of Contractor, up to and including the date of termination.
 - ii) *Payment:* Contractor shall be paid for all requested and authorized services and deliverables described in the applicable work order(s) and performed up to and including the date of termination.
 - iii) Sections 7 and Sections 9 through 23 of this Agreement shall survive termination of this Agreement.
9. **Contractor's Representations, Warranties and Certifications:** As of the date of this Agreement, and as of each date on which a work order is entered into by the parties, Contractor hereby represents, warrants and certifies under the pains and penalties of perjury as follows:
- a) Contractor is duly authorized to enter into this Agreement (including all work orders hereunder), and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.
 - b) Contractor and all Project Personnel of Contractor are fully capable and qualified to perform the described service(s) and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform such obligations.
 - c) Contractor and its Project Personnel are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable to or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in Sections 9(d), 9(e), 14, 16 and 17.
 - d) Contractor and its employees are independent contractors of MTC, and not employees, partners or joint-venturers of MTC. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature, including social security and other social welfare taxes or contributions, that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to Worker's Compensation, M.G.L. c.152.
 - e) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental

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handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.

- f) The Contractor represents and warrants that all personnel supplied under this Agreement are eligible to work in the United States at the time of execution of this Agreement and that Contractor has a continuing obligation to ensure such status for the duration of the Agreement.

10. Indemnification and Insurance:

- a) To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Commonwealth, MTC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MTC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Contractor under this Agreement, or (ii) any negligent acts or omissions or reckless or intentional misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees or subcontractors.
- b) Contractor shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities under this Agreement, including, but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance. At MTC's request, Contractor will provide MTC with copies of the certificates of insurance evidencing such coverage.

11. Ownership of Intellectual Property:

- a) Definitions:

Custom Work Product. The term "Custom Work Product" shall mean all work items newly created by Contractor expressly on behalf of MTC under this Agreement. Custom Work Product does not include any Contractor Property.

Deliverables: The term "Deliverables" shall mean deliverables as defined in a mutually agreed Scope of Work. Deliverables may contain Custom Work Product, Contractor Property or both.

Contractor Property: The term "Contractor Property" shall mean all pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Contractor or provided by Contractor and any trade secrets, know-how, methodologies and processes related to Contractor's products or services, all of which shall remain the sole and exclusive property of Contractor.

- b) License Grant: Subject to the terms of this Agreement, Contractor grants to MTC a royalty free, non-exclusive, non-transferable, perpetual license to use the Contractor Property contained in the Deliverables provided hereunder for purposes of this Agreement.
- c) Ownership: Custom Work Product provided by Contractor pursuant to this Agreement shall be done on a "work made for hire" basis under the Copyright Act. To the extent any such Custom Work Product shall not be deemed "work for hire" under any applicable law, Contractor hereby assigns, transfers and conveys to MTC any and all right, title and interest it may have in and to such Custom Work Product.

12. **Nonsolicitation and Noninterference:** During the term of this Agreement and for a period of one year after the termination, Contractor shall not, directly or indirectly, either for itself or on behalf of or through any other Person:
 - a) recruit, solicit, entice or persuade (or attempt to recruit, solicit, entice or persuade) any Person who is (or at any time during the year prior to termination of this Agreement was) an employee, consultant, contractor, vendor or supplier of MTC to leave the services of MTC for any reason;
 - b) hire (or attempt to hire) any Person who is (or at any time during the year prior to termination of this Agreement was) an employee of MTC;
 - c) interfere with (or attempt to interfere with) MTC's relations or arrangements with any Person who is (or at any time during the year prior to the termination of this Agreement was) an employee, or a consultant, Applicant, Contractor, Grantee Recipient, Respondent, customer, vendor, supplier or contractor of MTC.
13. **Assignment by Contractor; Subcontracting:** MTC may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of MTC's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of MTC, nor shall Contractor subcontract any services to anyone without the prior written consent of MTC.
14. **Conflicts of Interest:** Contractor acknowledges the application of the Massachusetts Conflict of Interest Law (M.G.L. c.268A) to the subject matter of this Agreement and that Contractor's personnel, and Contractor's subcontractor's personnel, if any, may be considered "state employees" and thus may be subject to the provisions of such law. Contractor represents and warrants that it is, and agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law. Contractor further agrees to provide MTC with the information listed in Attachment C hereto and to disclose all financial interests in the subject matter of this Agreement held by either Contractor or Contractor's other clients. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of MTC to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s)he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof.
15. **Record Keeping, Audit, and Inspection of Records:** Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as is specified by MTC (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MTC, the Commonwealth and their respective duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to MTC the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.

16. **Confidentiality; Publicity:**

- a) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement.
- b) Contractor has read and agrees to comply with, and will cause its agents, officers, directors, employees and subcontractors to comply with, the provisions of this Section 16 and MTC's written policies concerning confidentiality, as set forth in Attachments C-1 and C-2 hereto and as communicated by MTC's Executive Director or General Counsel to Contractor from time to time. Contractor acknowledges that during the term of this Agreement it may receive, have access to or create Sensitive Information which is not generally known by the public, nor as a matter of course disseminated by MTC, published on MTC's website or disclosed by MTC pursuant to the requirements of any Governmental Authority. Contractor agrees, for itself and for its agents, officers, directors, employees and subcontractors, as follows:
 - i. not at any time, whether during or after the termination of this Agreement, to divulge, disclose or reveal to any Person any such Sensitive Information, whether or not such information is produced by Contractor's own efforts, except (A) as specifically required in connection with the fulfillment of Contractor's obligations hereunder, or (B) as otherwise directed by the General Counsel in connection with a disclosure request under the Public Records Act, a request for discovery, subpoena, court or administrative order or other compulsory legal process, disclosure requirement or request relating to such Sensitive Information;
 - ii. not at any time, whether during or after the termination of this Agreement, use any Sensitive Information for Contractor's direct or indirect financial or other benefit or for the benefit of any Person related to or affiliated with Contractor or with whom Contractor is now or hereafter associated, other than MTC, nor will Contractor use or attempt to use any Sensitive Information in any manner which could reasonably be expected to injure or cause loss, whether directly or indirectly, to MTC or any Applicable Third Party;
 - iii. in the event that Contractor (or any of its agents, officers, directors employees or subcontractors) is questioned about Sensitive Information by anyone who is not known by Contractor to be authorized to receive or have access to such Sensitive Information, or is asked to provide Sensitive Information to any such Person, Contractor agrees to promptly notify the General Counsel and respond to the inquiror in accordance with the General Counsel's instructions; and
 - iv. not at any time, whether during or after the termination of this Agreement, reproduce any Written Materials containing Sensitive Information except to the extent necessary to perform Contractor's obligations under this Agreement, nor make or use (or permit its employees or agents to use) any Written Materials other than in connection with the performance of Contractors' obligations under this Agreement and for the benefit of MTC, it being understood and agreed that all Written Materials are, shall be and shall remain the sole and exclusive property of MTC, and immediately upon the termination of the Agreement for any reason, Contractor shall deliver all copies of MTC's Written Materials and all other property of MTC in its direct or indirect possession or control to MTC, at its main office. In addition Contractor shall, upon the termination of the Agreement, delete all Written Materials and Sensitive Information, held by Contractor as data stored on computers, floppy disks c/d roms or other electronic media.
- c) Contractor shall collaborate with MTC's Communications Director to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which MTC is concerned or discussed.

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- d) Contractor's obligations under Section 16(b) shall not apply to any information that Contractor can demonstrate, through written records (i) is or has become available to the public (including, without limitation, any information filed with any Governmental Authority and available to the public) other than as the result of unauthorized disclosure by Contractor or any of its agents, officers, directors, employees or subcontractors in breach hereof, (ii) was known by Contractor prior to or other than through disclosure of such information by MTC to Contractor (including disclosure to Contractor while previously serving as an employee of or consultant to MTC) and was learned or ascertained by Contractor from Persons who are not associated or connected with this Agreement and who rightfully possessed such information and were not themselves in a confidential relationship with MTC, any Applicable Third Party or Contractor with respect to such information, (iii) Contractor is compelled to disclose by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, or any other compulsory administrative or legal process, provided that Contractor provides prior written notice of such disclosure to the General Counsel, (iv) is disclosed by Contractor in connection with any judicial or other proceeding involving Contractor and MTC relating to this Agreement or (v) is disclosed with the written consent of the General Counsel.

17. **Public Records:**

- a) *General Statement.* As a public entity, MTC is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by MTC are subject to public disclosure unless they are specifically exempted. Contractor has read and agrees to comply with, and will cause its agents, officers, directors, employees and subcontractors to comply with, MTC's written policies concerning the Public Records Law and other legal disclosure requirements, as set forth in Attachments C-1 and C-2 hereto and as communicated by MTC's Executive Director or General Counsel to Contractor from time to time. MTC's policies shall not be construed as a contractual undertaking of any kind, and Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to MTC pursuant to this Agreement may be deemed not to qualify for a public records exemption.
- b) *Treatment of Sensitive Information.* By signing this Agreement, Contractor acknowledges, understands and agrees that the procedures set forth in Attachments C-1 and C-2 are applicable to any documents submitted by Contractor to MTC and/or to Contractor by MTC, including but not limited to any acknowledgements set forth therein, and that Contractor shall be bound by these procedures.

18. **Choice of Law and Forum; Equitable Relief:** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state or federal court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such party, generally, exclusively and unconditionally, the jurisdiction of said courts. This Section 18 shall not be construed to limit any other legal rights of the parties. Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to MTC. Therefore, in addition to any other remedy that may be available to MTC, MTC will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.

19. **Amendments and Waivers:** MTC may amend Attachment B and Attachment C (without any action by Contractor) to reflect changes in law or MTC policies and shall promptly deliver any and all such amendments to Contractor in the manner provided in Section 7. Except as provided in the immediately preceding sentence, no amendment to or modification of this Agreement (including any work order), and no waiver of any provision hereof, shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by MTC of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or

Master Agreement for Services

indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

- 20. **Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

- 21. **Binding Effect; Benefit; Entire Agreement and Attachments:** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and no Person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. Furthermore, neither Contractor's nor any of its subcontractors' provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with MTC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules and attachments thereto) are hereby incorporated into this Agreement by reference:
 - a) Attachment A –Form of Work Order, and all work orders entered into in accordance with the terms of this Agreement and attached hereto.
 - b) Attachment B-1 – MTC's Policy and Procedures Regarding Submission of Sensitive Information
 - c) Attachment B-2 -- MTC Policy and Procedures for Holding Parties in Possession of Sensitive Information
 - d) Attachment C – Consultant/Contractor Mandatory Disclosure Form

- 22. **Headings:** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

- 23. **Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

**The Massachusetts Technology Park Corporation
d/b/a Massachusetts Technology Collaborative**

Insert Contractor's full legal name

By: _____

By: _____

Name: Mitchell Adams

Name: _____

Title: Executive Director

Title: _____

Federal Tax ID No.: _____

ATTACHMENT A

Form of Work Order

This Work Order is subject to the terms and conditions of the Agreement for Services (as amended from time to time, the "Agreement") dated _____ between Massachusetts Technology Collaborative and _____. Capitalized terms used and not otherwise defined in this Work Order shall have the meanings ascribed to such terms in the Agreement. In the event of any conflict between this Work Order and the Agreement, the Agreement shall govern.

Whereas, on March 25, 2010, MTC, on behalf of the Massachusetts Broadband Institute ("MBI"), applied for an award of funding from the U.S. Department of Commerce ("DOC") under the American Recovery and Reinvestment Act for broadband planning and mapping activities as described in MTC's application (as revised, the "ARRA Application");

Whereas, on July 1, 2010, DOC awarded MTC Forty-Five Million Four Hundred Forty-Five Thousand Four Hundred Forty-Four Dollars (\$45,445,444) (Award No. NT10BIX5570070; CDFA No. 11.557) (the "ARRA Award") to support the *MassBroadband 123 Project* (the "Project");

Whereas, MBI wishes to retain the services of Contractor to assist MBI with the completion of the *MassBroadband 123 Project*, as more fully set forth herein, which procurement of services is subject to Special Terms and Conditions set forth in Attachment 1; and

Whereas MTC's Board of Directors OR Executive Director has authorized the procurement of Services and Deliverables to be provided by Contractor hereunder on _____, 20__.

Now therefore, pursuant to the terms and conditions of the Agreement and this Work Order, MTC and Contractor agree as follows:

1. Services: Contractor will perform the following services related to ***[Insert brief description of services/project]***, as more fully set forth in Attachment 2 hereto (the "Services").
2. Location: Contractor will provide the Services at Contractor's premises or such other premises as MTC and Contractor may deem appropriate.
3. Deliverable(s): Contractor will provide the following deliverables: ***[Insert brief description of the deliverables and any specifications they should meet]***, as more fully set forth in Attachment 2 hereto (the "Deliverables").
4. Term of Work Order: This Work Order will become effective as of _____. Unless otherwise expressly agreed by MTC in writing, Contractor shall complete the Services and provide the Deliverables described above on or before _____.
5. Payment Schedule/Milestone Schedule:
 - a) ***[Insert either:*** Contractor will be paid for the Services and Deliverables on a time and materials basis at Contractor's now-current rates as set forth in Attachment 2, plus reasonable out-of-pocket expenses related to performance of Contractor's obligations hereunder, as follows: ***-OR-*** In consideration of Contractor's delivery of the Services and Deliverables, MTC shall pay Contractor a fixed fee equal to \$_____, plus reasonable out-of-pocket expenses related to performance of Contractor's obligations hereunder, for the Services and the Deliverables.] Notwithstanding the foregoing, MTC and Contractor agree that the total fees for the services provided by Contractor shall not exceed \$_____, including expenses. The fee amounts shall be the sole and complete compensation for services performed by Contractor under this Work Order, including contingencies, direct and indirect expenses except as provided above, return and profit.
 - b) ***[Insert payment or milestone schedule, e.g.,*** Unless otherwise agreed in writing by Contractor and MTC, Contractor shall perform the services in accordance with the following schedule:]

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<u>Completion Date</u>	<u>Task</u>

- c) Contractor shall invoice MTC no more frequently than monthly nor less frequently than quarterly. Payments hereunder will be made by MTC within forty-five (45) days following receipt of reasonably detailed invoices from Contractor. Contractor's invoice shall be in a format consistent with the tasks set forth in Attachment 2. Invoices shall provide reasonable documentation to provide evidence of costs incurred, including:
- i. Staff charges: for each employee, the name, title, number of hours worked and hourly rate; and
 - ii. Direct charges: all direct costs shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as requested by MTC.

6. Project Personnel:

For Contractor:
For MTC:

7. Contractor hereby represents and warrants that, as of the date of this Work Order, all of the representations, warranties and certifications of Contractor set forth in the Agreement are true and correct and Contractor is in compliance with all of Contractor's obligations under the Agreement and each other Work Order between MTC and Contractor.

**Massachusetts Technology Park Corporation
d/b/a Massachusetts Technology Collaborative**

[Insert Contractor's Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 1
Special Terms and Conditions for
Field Data Collection Services Contracts for *MassBroadband 123* Project

If this Attachment is attached to a Work Order issued under a Master Agreement between MTC and the Contractor, it shall be deemed an Amendment to such Master Agreement and the signatures of the parties on such Work Order shall be signatures to this Attachment; in the event of a conflict between this Amendment and the Agreement, this Amendment shall govern.

1. All work to which this Attachment applies shall be performed in accordance with Financial Assistance Award made by the United States Department of Commerce ("DoC") to the Owner, Award Number NT10BIX5570070 (the "Grant"), and all the documents referenced in the Grant as governing, conditioning or otherwise requiring compliance on the part of MTC.
2. The Grant awarded to MTC is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."
3. If this contract exceeds \$100,000, it is subject to 31 U.S.C. § 1352, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The Contractor shall, and shall require all subcontractors whose subcontract exceeds \$1000,000 to, submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by MTC.
4. The DoC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
5. *No Subaward and/or Contract to a Federal Agency*
 - a) Neither the Contractor, nor any of its subcontractors shall sub-grant or sub-contract any part of the project to any agency or employee of DoC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
 - b) Requests for approval of such action must be submitted to MTC for submission to the Federal Program Officer who shall review and make recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify MTC in writing of the final determination.
6. *Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.*
 - a) The Grant requires MTC to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
 - b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.
 - c) The Contractor must maintain a current registration in the Federal Government's Central Contractor Registration (www.ccr.gov) at all times under final payment hereunder. A Dun and Bradstreet Universal Numbering System (DUNS) Number (www.dnb.com) is one of the

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requirements for registration in the Central Contractor Registration. The Contractor shall update its registration as needed and shall promptly submit verification of registration to MTC.

- d) The Recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

7. *Use of American Iron, Steel, and Manufactured Goods under Section 1605 of the Recovery Act.*

- a) Except to the extent exempted by 74 FR 125 ¶ 31410, none of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--
 - i. applying subsection (a) would be inconsistent with the public interest;
 - ii. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- d) This award term shall be applied in a manner consistent with United States obligations under international agreements.
- e) Award Term.-- The award term required by 2 CFR Part 176, Subpart B is set out in full as Recovery Act Award Terms -Addendum to Award Term A.2 below.

8. *Wage Rate Requirements under Section 1606 of the Recovery Act.*

- a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
- b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

9. *Single Audit Requirements: Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards; Recipient Responsibilities for Informing Sub-Recipients.*

- a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215, subpart 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-I 02 Common Rules provisions,

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Recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

- b) For Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a Recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.
- d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the Recipient SEFA described above. This information is needed to allow the Recipient to monitor sub-recipient expenditure of Recovery Act funds properly, and to allow oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

10. *Limitation on Expenditures Relating to Certain Activities.*

Pursuant to section 1604 of the Recovery Act, expenses related to any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool are not eligible expenses under this award and will not be reimbursed.

11. *Use of the American Recovery and Reinvestment Act Logo on Construction Signs.*

All projects which are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The agency awarding funds will provide additional instructions regarding specifications.

12. *Section 1511 Certification.*

Pursuant to section 1511 of the Recovery Act, with respect to funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive a disbursement of infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

13. *Quick Start Activities.*

Pursuant to section 1602 of the Recovery Act, in using funds made available in this Act for infrastructure investment, Recipient shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the award of funds. Recipients shall in lieu of "within 120 days of enactment of this Act" as provided in section 1602 also use grant funds in a manner that maximizes job creation and economic benefit.

14. *Section 1515 Access of Offices of Inspector General to Certain Records and Employees.*

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Access. With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized--

- a) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
- b) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

15. *Civil Rights Compliance*

The Contractor and all of its subcontractors must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age discrimination Act of 1975 (prohibiting age discrimination in the provision of services).

16. *Referral of False Claims to Department of Commerce Inspector General.*

The Contractor and all of its subcontractors shall promptly refer to the Department of Commerce Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Referrals can be made online at <http://www.oig.doc.gov/oig/hotline/000016.html> or by calling 1-800-424-5197.

17. *Dispute Resolution*

If a dispute arises between the parties related to this Agreement, the parties agree to use the following procedures to resolve the dispute:

- a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting;
- b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in Section (a) above;
- c) Arbitration. If the parties fail to resolve the dispute through mediation, or are unable to convene mediation within 60 days of first attempting to do so, then, at MTC's sole election, MTC may file a demand for arbitration by the American Arbitration Association in its office serving Boston, Massachusetts, in accordance with the rules for Construction Industry Arbitration Rules in effect on the date of the Agreement providing the most expedited procedures available. Except to the extent MTC elects arbitration as the method of dispute resolution for a given dispute, all disputes shall be resolved by litigation in a court serving Middlesex County, Massachusetts, except that, if suit is filed in state court and is not removed to federal court, the parties shall use all reasonable efforts to obtain acceptance of such law suit in the Business Law Session of the Massachusetts Superior Courts.
 - i. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.
 - ii. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration

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by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

- iii. All arbitration hearings shall take place in Boston, Massachusetts, except to the extent required to be conducted in another jurisdiction in order to obtain evidence that cannot be obtained in Massachusetts.
 - iv. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
 - v. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
 - vi. Consolidation Or Joinder MTC, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
 - vii. MTC, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- d) Venue: Any suit by either party arising under this Agreement shall be brought only in a court of competent jurisdiction a court serving Suffolk County, Massachusetts, and, if in state court, the parties shall endeavor to obtain assignment to the Business Litigation Session of the Suffolk Superior Court. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.
- e) This provision on dispute resolution provisions shall survive termination of this Agreement.

18. Safety

- a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. The Contractor shall furnish, upon MTC's request, a copy of a Safety, Loss Prevention and Security Plan to MTC within five (5) calendar days following execution of the Agreement and shall comply with its Plan and all safety laws, codes, regulations and order of any governmental authorities having jurisdiction of any part of the Project Site. The Contractor and its Subcontractors shall provide barriers, barricades, fences, flagmen, fire prevention and other measures and all other safeguards necessary for the protection of health and safety of the route of the Project, and any materials, supplies and equipment, whether on or off the route of the Project and whether installed or not, adjacent properties and all Contractor personnel and other persons, and other non-Contractor materials, equipment and supplies on or immediately adjacent to the route of the Project.
- b) The Contractor shall exercise reasonable care to avoid damaging the facilities of MTC attached to Utility Poles or of any facilities of any Pole Owner, and shall make an immediate report to MTC of the occurrence of any such damage caused by the Contractor's employees, agents or subcontractors.
- c) Contractor shall exercise reasonable care to avoid damaging the facilities of Licensor and of others attached to Licensor's Utility Poles, and shall make an immediate report of damage caused by Contractor to the owner of facilities so damaged.

19. Indemnification

The Contractor shall indemnify, protect and save harmless MTC and all Pole Owners (collectively the "Indemnitees" and each an "Indemnitee") from and against any and all claims, demands, causes of

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actions and costs, including reasonable attorneys' fees, for damages to the property of the Indemnitees and other persons and injury or death to the Contractor's or any other person's employees or other persons, including but not limited to, payments under any Workers Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the negligence or intentional misconduct of the Contractor as it relates to the services provided by the Contractor under this Agreement or by any act or omission of the Contractor's employees, agents or contractors on or in the vicinity of any Utility Poles or premises. The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of the Indemnitee seeking to enforce these provisions. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Contractor and one or more Indemnitees, their agents, employees or contractors, but in such case the amount of the claim for which each party is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of the respective party.

20. Insurance

- a) The Contractor shall obtain and maintain at its sole expense all insurance required by law and as may be required by MTC under the terms of this Agreement. The insurance required hereunder shall be provided at the sole expense of the Contractor or its Subcontractor, as the case may be, and shall be in full force and effect for the full term of this Agreement between MTC and the Contractor or for such longer period as otherwise required under this Agreement.
- b) All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to MTC. MTC and each Pole Owner shall be added as additional insureds on a primary, non-contributory basis on all policies except for Workers' Compensation and Professional Errors and Omissions and shall provide MTC evidence of such status on an ISO form acceptable to MTC.
- c) The Contractor and its Subcontractors shall submit to MTC original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Agreement. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Contractor shall submit updated certificates to MTC prior to the expiration of any of the policies referenced in the certificates so that MTC shall at all times possess certificates indicating current coverage. Failure by the Contractor to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Agreement and shall be just cause for termination of the services of the Contractor under this Agreement.
- d) Termination, cancellation, or material modification of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to MTC at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- e) The Contractor shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Subcontractor hired in connection with the services to be provided under this Agreement shall obtain and maintain all insurance required by law and as may be required by MTC under the terms of this Agreement.
- f) The Contractor or any of its Subcontractors, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Agreement. MTC shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- g) Workers' Compensation. Commercial General Liability. Automobile Liability, and Valuable Papers. The Contractor shall purchase and maintain at its own expense during the life of this Agreement, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:
 - i. Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against MTC.

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- ii. Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate, with \$5,000,000 aggregate umbrella/excess liability coverage. The Contractor shall maintain such insurance in full force and effect for a minimum period of one year after final payment of amounts earned under this Agreement and shall continue to provide evidence of such coverage to MTC. MTC shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against MTC.
- iii. Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
 - a. \$ 1,000,000 Each Person for Bodily Injury;
 - b. \$ 1,000,000 Each Accident for Bodily Injury; and
 - c. \$ 1,000,000 Each Accident for Property Damage.
- iv. Valuable Papers and Electronic Data Processing and Security insurance in an amount sufficient to assure the restoration of the Attachment Database and any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Agreement or by the Agreement between MTC and the Engineer in the event of loss or destruction while in the custody of the Contractor until the final fee payment is made or all data is turned over to MTC, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.
- h) Professional Liability. The Contractor shall maintain professional liability insurance covering errors and omissions and negligent acts of the Contractor and of any person or entity for whose performance of professional services the Contractor is legally liable at all times while services are being performed under this Agreement. Certificates of professional liability insurance evidencing such coverage shall be provided to MTC on or before the effective date of this Agreement and for a period of at least six years after the final payment to the Contractor under this Agreement. The certificates shall indicate a retroactive date that is no later than the effective date of this Agreement and a limit of not less than \$2,000,000.
- i) Liability of the Contractor. Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Agreement. Without limitation, the Contractor shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Agreement.
- j) Waiver of Subrogation. To the extent damages are covered by property insurance, MTC and the Contractor waive all rights against each other and against the Owner's Project Manager, design-builder, subcontractors, other contractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Design-Build Agreement or other agreement for construction. MTC shall require of the design-builder, subcontractors, other contractors, consultants, Subcontractors, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- k) The obligation of the Contractor to purchase and maintain insurance, together with all obligations and liabilities of the Contractor arising in connection with any indemnification or reimbursement agreement set forth herein, shall survive the termination of this Agreement.

21. *Standard of Care*

The Contractor shall perform the services with the level and degree of skill and care exercised by similarly situated members of the Contractor's profession on projects of substantial scale and complexity nationally.

22. *Non-Waiver*

Neither MTC's review, approval, acceptance or payment for services under this Agreement, nor the failure of MTC to require performance by the other of any provision of this Agreement, shall operate as a waiver of any rights under this Agreement, and the Contractor shall be and remain liable to MTC for all damages incurred by MTC as the result of the Contractor's failure to perform in accordance with the terms and conditions of this Agreement. The rights and remedies of MTC provided for under this Agreement are in addition to any other rights or remedies provided by law. MTC may assert a right to recover damages by any appropriate means, either during or after performance of this Agreement.

ATTACHMENT B-1
THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE
POLICY AND PROCEDURES REGARDING SUBMISSION OF "SENSITIVE INFORMATION"

The Massachusetts Technology Collaborative, the Massachusetts Renewable Energy Trust which it administers, and John Adams Innovation Institute (collectively referred to herein as "MTC") is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the "Public Records Act"), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the "Submitting Party") is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC's enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the "Trade Secrets Exemption").

IT IS MTC'S EXPECTATION AND BELIEF THAT THE OVERWHELMING PERCENTAGE OF DOCUMENTS IT RECEIVES FROM A SUBMITTING PARTY DOES NOT CONTAIN ANY INFORMATION THAT WOULD WARRANT AN ASSERTION BY MTC OF AN EXEMPTION FROM THE PUBLIC RECORDS ACT. SUBMITTING PARTIES SHOULD THEREFORE TAKE CARE IN DETERMINING WHICH DOCUMENTS THEY SUBMIT TO MTC, AND SHOULD ASSUME THAT ALL DOCUMENTS SUBMITTED TO MTC ARE SUBJECT TO PUBLIC DISCLOSURE WITHOUT ANY PRIOR NOTICE TO THE SUBMITTING PARTY AND WITHOUT RESORT TO ANY FORMAL PUBLIC RECORDS REQUEST.

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

2. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC's General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility and obligation to provide detailed explanations for each such document.
2. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Sensitive Information." It is the Submitting Party's responsibility and obligation to ensure that all such documents are sufficiently identified as "Sensitive Information," and Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

INFORMATION SUBMITTED TO MTC IN ANY FORM OTHER THAN A HARD COPY DOCUMENT WILL NOT BE SUBJECT TO THE PROCEDURES SET FORTH IN THIS POLICY. FOR EXAMPLE, INFORMATION SUBMITTED BY E-MAIL, FACSIMILE AND/OR VERBALLY WILL NOT BE SUBJECT TO THESE PROCEDURES AND MAY BE DISCLOSED AT ANY TIME WITHOUT NOTICE TO THE SUBMITTING PARTY.

3. Documents that are not accompanied by the written notification to MTC's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial

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submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.

4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.
5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information" in strict accordance with this Policy, the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and, if not already submitted, that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

THE GENERAL COUNSEL IS THE SOLE AUTHORITY WITHIN MTC FOR MAKING DETERMINATIONS ON THE APPLICABILITY AND/OR ASSERTION OF AN EXEMPTION TO THE PUBLIC RECORDS ACT. NO EMPLOYEE OF MTC OTHER THAN THE GENERAL COUNSEL HAS ANY AUTHORITY TO ADDRESS ISSUES CONCERNING THE STATUS OF "SENSITIVE INFORMATION" OR TO BIND MTC IN ANY MANNER CONCERNING MTC'S TREATMENT AND DISCLOSURE OF SUCH DOCUMENTS.

FURTHERMORE, THE POTENTIAL APPLICABILITY OF AN EXEMPTION TO THE DISCLOSURE OF DOCUMENTS DESIGNATED BY THE SUBMITTING PARTY AS "SENSITIVE INFORMATION" SHALL NOT REQUIRE MTC TO ASSERT SUCH AN EXEMPTION. MTC'S GENERAL COUNSEL RETAINS THE SOLE DISCRETION AND AUTHORITY TO ASSERT AN EXEMPTION, AND HE MAY DECLINE TO EXERT SUCH AN EXEMPTION IF, WITHIN HIS DISCRETION, THE PUBLIC INTEREST IS SERVED BY THE DISCLOSURE OF ANY DOCUMENTS SUBMITTED BY THE SUBMITTING PARTY.

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.

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10. In the event the requesting party pursues a review of MTC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.
11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

THE SUBMITTING PARTY'S SUBMISSION OF DOCUMENTATION TO MTC SHALL REQUIRE A SIGNED CERTIFICATION THAT SUBMITTING PARTY ACKNOWLEDGES, UNDERSTANDS AND AGREES WITH THE APPLICABILITY OF THE FOREGOING PROCEDURES TO ANY DOCUMENTS SUBMITTED TO MTC BY SUBMITTING PARTY AT ANY TIME, INCLUDING BUT NOT LIMITED TO THE ACKNOWLEDGEMENTS SET FORTH HEREIN, AND THAT SUBMITTING PARTY SHALL BE BOUND BY THESE PROCEDURES.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.

ATTACHMENT B-2

MTC POLICY AND PROCEDURES FOR HOLDING PARTIES IN POSSESSION OF SENSITIVE INFORMATION

From time to time, consultants, contractors, grantees, as well as other third parties interacting with MTC (collectively, the "Holding Party") may receive, have access to or create confidential, proprietary or otherwise sensitive information regarding MTC, its activities, its employees and/or third parties, such as applicants, consultants, grantees, recipients or respondents under MTC programs, which information is not generally known by or disseminated to the public as a matter of course. Information of this nature is sometimes referred to in this Agreement as "Sensitive Information." MTC expects all Holding Parties to maintain the highest degree of professionalism, integrity and propriety with respect to Sensitive Information at all times. In addition, the Massachusetts Conflict of Interest Statute, M.G.L. Chapter 268A, prohibits current and former state employees (defined in the statute to include regular full-time and part-time employees, elected or appointed officials and independent contractors) from improperly disclosing certain categories of Sensitive Information or using it to further their personal interests, and the Massachusetts Fair Information Practices Act, M.G.L. Chapter 66A, contains numerous legal requirements aimed at protecting "personal data" from improper disclosure.

MTC's policy regarding a Holding Party's possession of Sensitive Information has two key elements:

1. Holding Parties should not request or accept any more Sensitive Information -- whether of a business or personal nature -- than is reasonably necessary under the circumstances; and
2. In the absence of a specific legal requirement compelling disclosure of Sensitive Information in a particular instance, all Holding Parties are expected to take appropriate measures to safeguard such information from improper use and disclosure.

Because the relevant legal requirements and the nature and scope of the information in question can create uncertainty, **HOLDING PARTIES ARE URGED TO CONFER WITH MTC'S GENERAL COUNSEL IF THEY HAVE ANY QUESTIONS ABOUT CONFIDENTIALITY, THE SCOPE OR PROPER TREATMENT OF SENSITIVE INFORMATION, OR MTC'S POLICIES OR PROCEDURES WITH RESPECT TO SUCH TOPICS.** Holding Parties shall not substitute their own judgment for that of MTC's General Counsel in deciding whether particular information is innocuous data or Sensitive Information that should be handled with care, or the advisability or sufficiency of safeguards with respect to particular types of information. **FAILURE TO COMPLY WITH THE POLICIES AND PROCEDURES RELATING TO SENSITIVE INFORMATION AND MTC'S OBLIGATIONS PURSUANT TO THE PUBLIC RECORDS ACT AND OTHER LEGAL DISCLOSURE REQUIREMENTS CAN RESULT IN IMMEDIATE TERMINATION OF THIS AGREEMENT, AND/OR POTENTIAL LEGAL LIABILITY.**

IT SHOULD BE NOTED THAT THE OBLIGATIONS UNDER THESE POLICIES CONTINUE EVEN AFTER MTC'S RELATIONSHIP WITH A PARTICULAR APPLICANT, RECIPIENT OR OTHER THIRD PARTY ENDS OR THIS AGREEMENT TERMINATES.

In the absence of a specific legal requirement necessitating disclosure of particular information in a specific instance, Holding Parties are expected to protect Sensitive Information from improper use and disclosure at all times. The following are examples of the kinds of protective procedures that should be followed:

- **Limited Communication to MTC Personnel:** Sensitive Information should not be communicated to other MTC employees or consultants, except to the extent that they need to know the information to fulfill their MTC mission-related responsibilities and their knowledge of the information is not likely to result in misuse or a conflict of interest.
- **Limited Communication to Non-MTC Personnel:** Sensitive Information should not be communicated to anyone outside MTC, including family members, except to the extent outside parties need to know the information in order to provide necessary services to MTC, its Holding Parties or as otherwise directed by the General Counsel to comply with legal requirements necessitating disclosure, such as proper requests under the Public Records Act.

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- **Notification of Confidentiality:** When Sensitive Information is communicated to any person outside MTC, the individual receiving such information should be informed of its sensitive nature and the need to safeguard such information from improper use and disclosure. When Sensitive Information is communicated to parties inside MTC, the procedures set forth in Attachment C-1 are applicable. MTC may require that Holding Parties execute a confidentiality agreement that has either been provided or approved by the General Counsel before Sensitive Information is disclosed to them.
- **MTC Use Only:** Sensitive Information should only be used for MTC purposes. Under no circumstances may a present or former Holding Party "trade on" such information or otherwise use it, directly or indirectly, for personal gain or for the benefit of any party other than the owner of such information.
- **Prevention of Eavesdropping, Unauthorized Viewing, etc.:** Sensitive matters should not be discussed in restaurants, on public transportation or in other public places or in locations, such as hallways, elevators and building lobbies, where unauthorized individuals could overhear the discussion. Similarly, Sensitive Information should not be exchanged or discussed via cordless or cellular phones or similar "non-secure" communication lines. Speaker phones can amplify conversations and should be used with care when discussing Sensitive Information. Common sense precautions should also be taken with respect to Sensitive Information in written form, such as stamping or marking such documents "CONFIDENTIAL" to flag them for special handling, limiting access to files to those with an MTC-related "need to know," locking documents that contain Sensitive Information in desk drawers or file cabinets when you are away from your desk, carefully limiting the circumstances in which (and exercising appropriate care when) such materials leave MTC's office, delivering sensitive materials to others in sealed envelopes, and limiting the addressees and "cc's" of letters, memoranda, emails and other communications containing Sensitive Information to those individuals who reasonably need to see such communications. Data stored on personal computers, and floppy disks, c/d roms and other electronic media containing Sensitive Information, should be properly secured to keep them from being accessed by unauthorized individuals. Documents containing Sensitive Information that are sent to printers should be picked up promptly.
- **Communications With the Public; Compulsory Legal Process:** All contacts with the media and all speeches or other oral or written public statements made on behalf of MTC, or concerning its activities, applicants or recipients, must be cleared in advance by MTC's Communications Director. In speeches and statements *not* made on behalf of MTC, proper care should be taken to avoid any implication that MTC endorses the views expressed. All disclosure requests under the Public Records Act or in the form of requests for discovery, subpoenas, court or administrative orders or the like must also be referred to the General Counsel for appropriate handling.

QUESTIONS CONCERNING WHETHER A GIVEN TYPE OF INFORMATION OR DOCUMENT IN A HOLDING PARTY'S POSSESSION IS A "PUBLIC RECORD," AND THUS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT, OR IS COVERED BY AN AVAILABLE EXEMPTION, SHOULD BE DIRECTED TO MTC'S GENERAL COUNSEL. NO OTHER MTC EMPLOYEE IS AUTHORIZED TO MAKE SUCH ASSESSMENTS OR TO PROVIDE ANY GUIDANCE TO A HOLDING PARTY CONCERNING POTENTIAL DISCLOSURE OF ANY INFORMATION PROVIDED TO OR IN POSSESSION OF A HOLDING PARTY.

IN ADDITION, ALL COMMUNICATIONS SEEKING INSPECTION OR OTHER DISCLOSURE OF MATERIALS IN A HOLDING PARTY'S POSSESSION UNDER THE PUBLIC RECORDS ACT MUST BE REFERRED PROMPTLY TO THE GENERAL COUNSEL. SIMILARLY, ALL SUBPOENAS AND OTHER LEGAL PROCESS DOCUMENTS REQUESTING OR SEEKING TO COMPEL DISCLOSURE OF MATERIALS IN A HOLDING PARTY'S POSSESSION MUST BE DELIVERED OR PROMPTLY FORWARDED TO THE GENERAL COUNSEL UPON RECEIPT.

ATTACHMENT D

CONSULTANT/CONTRACTOR MANDATORY DISCLOSURE FORM

Additional Income Disclosure. The following represent any contracts, grants with, or other income from the Commonwealth, including any political subdivision or public authority, in effect at the time of execution of this Agreement. Enter N/A if none. Attach additional sheets as necessary.

Disclosure of Persons with Financial Interest. The following individuals have a financial interest in the Agreement and/or more than one percent (1%) interest in the capital stock of Consultant/Contractor. Enter N/A if none. Attach additional sheets as necessary.

Conflict of Interest. Consultant/Contractor acknowledges that the individuals performing services under this Agreement may be considered "state employees" subject to the provisions of the Massachusetts Conflict of Interest Law, M.G.L. c.268A, and certifies that these individuals are familiar with the restrictions imposed thereon.

Key Personnel. Attach a resume for all key personnel to be assigned to the performance of this Agreement.

The information submitted herein is certified by Consultant/Contractor to be accurate and signed under the pains and penalty of perjury.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____