

BUSINESS SUBSIDY AGREEMENT

Dated as of September 9, 2020

between

Town of Boulder Junction

and

CenturyTel of Northern Wisconsin, LLC d/b/a CenturyLink

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BUSINESS SUBSIDY AGREEMENT

THIS BUSINESS SUBSIDY AGREEMENT, made as of the 9th day of September, 2020, between the TOWN OF BOULDER JUNCTION, Wisconsin (as more particularly defined herein, the “Town”), and CenturyTel of Northern Wisconsin, LLC d/b/a CenturyLink (as more particularly defined herein, the “Company”),

WITNESSETH:

WHEREAS, the Company is arranging for the construction and installation of a “fiber-to-the-user” broadband communications network and related facilities (as more fully described herein, the “Project Facilities”) within the jurisdiction of the Town;

WHEREAS, the Town has passed Resolution No. 2019-R-08 on November 14, 2019 supporting a two-year phased plan to provide high speed broadband services to the entire town and commits to funding that is not to exceed \$3,800,000 (Phase 1 not to exceed \$1,466,282) with Company contributions and PSC Grants in 2020 and in 2021 to fund the remaining project costs, a copy of which is attached as Exhibit A; and

WHEREAS, the Town believes that the development and construction of a certain Project (as defined herein), and fulfillment of this Agreement are vital and are in the best interests of the Town, will result in preservation and enhancement of the tax base, provide employment opportunities and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the Company has received a Fiscal Year 2020 Broadband Expansion Grant for Phase 1 from the State of Wisconsin to provide financing with respect to the Project Facilities (as more particularly described herein, the “Broadband Expansion Grant”), pursuant to that certain Grant Agreement dated as of _____, by and between the Company and the State of Wisconsin (the “Grant Agreement”);

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Article I and any other capitalized terms defined in the recitals and succeeding Articles of this Agreement shall, for all purposes of this Agreement and of any agreement supplemental hereto, have the meanings herein specified, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

“Affiliate” means a person who is directly controlling or controlled by or under direct or common control with the Company; “control” means the power to direct management and policies, directly or indirectly, whether through ownership, by contract, or otherwise.

“Agreement” means this Business Subsidy Agreement.

“Authorized Company Representative” means any person at the time designated to act on behalf of the Company.

“Broadband Expansion Grant” means the Wisconsin Broadband Expansion Grant in the amount of \$1,624,094 from the State of Wisconsin pursuant to the 2020 Grant Agreement and will include future grant agreements to complete phase 2 of the project facilities.

“Broadband Services” means telecommunication services, including internet access, streaming television and video services, and telephone to be provided by the Company through the Project Facilities.

“Certificate” means a certification in writing required or permitted by the provisions of the Grant Agreement signed and delivered to the Town or other proper person or persons.

“Company” means CenturyTel of Northern Wisconsin, LLC d/b/a CenturyLink.

“Completion Date” means the date of completion of the Project Facilities or any portion thereof, established as provided in Section 3.04.

“Default” means default by the Company in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Agreement, exclusive of any notice or period of grace required for a default to constitute an “Event of Default” as described in Section 7.01 of this Agreement.

“Event of Default” means an Event of Default described in Section 7.01 of this Agreement which has not been cured.

“Grant Agreement” has the meaning given such term in the Recitals.

“Permitted Encumbrances” As of any particular time: (i) liens for taxes and assessments not then delinquent, (ii) any mechanic's, laborer's, materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, (iii) utility, access, and other easements and rights-of-way, restrictions, and exceptions existing as of the date hereof, (iv) such minor defects, irregularities, encumbrances, easements, rights-of-way, and clouds on title as normally exist with respect to similar property and do not in the aggregate materially impair the property affected thereby for the purposes for which it was acquired, and (v) building, zoning, and subdivision laws.

“Project” means the Project described in Attachment A – Project Scope.

“Project Budget” means the total sources and uses for the Project as set forth on Attachment A – Project Scope.

“Project Costs” means those costs of the Project set forth in Attachment A – Project Scope under the Project Budget. Town will rely upon the State of Wisconsin to audit those costs which are directly attributable to activities identified in Attachment A – Project Scope, however, Town may initiate its own audit provided that the audit does not duplicate an audit conducted by the State of Wisconsin.

“Project Facilities” means all properties and assets, real and personal and tangible and intangible, of the Company now or hereafter existing, used for or pertaining to the System owned or operated by the Company to provide video, voice and data services to customers in the Service Area.

“Request for Payment” means documents drafted by Company and submitted to Town for payments of the Subsidy.

“Service Area” the geographic service area of the System as further described in Attachment A - Project Scope.

“Subsidy” means the amount of support from the Town described in this agreement.

“System” means the “fiber-to-the-user” broadband communications network and related facilities to be owned and operated by the Company to provide Broadband Services in the Service Area.

“Town” means, the Town of Boulder Junction, Wisconsin its successors and assigns.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, pandemics, public emergencies, delays from vendors for equipment or materials, fire or other casualty to the Project Facilities, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Town in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Company’s obtaining of permits or governmental approvals necessary to enable construction of the Project Facilities by the dates such construction is required under Section 3.01 of this Agreement, unless (a) the Company has timely filed any application and materials required by the applicable governmental

unit for such permit or approvals, and (b) the delay is beyond the reasonable control of the Company.

Section 1.02 Characteristics of Certificate. Every certificate with respect to compliance with a condition or covenant provided for in the this Agreement, shall include: (i) a statement that the person or persons making such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (ii) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iii) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Section 1.03 Description of Project Facilities. The Subsidy will be applied to finance a portion of the Project Costs, which will include sufficient Project Facilities to provide Broadband Services in the areas depicted in Attachment A – Project Scope.

Section 1.04 Additional Provisions as to Interpretation. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; and the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not any particular Article, Section or subdivision hereof.

Section 1.05 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of Wisconsin.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 Representations by the Town. The Town makes the following representations as the basis for its undertakings herein:

- (a) The Town is a political subdivision of the State of Wisconsin.
- (b) The execution and delivery of this Agreement, the performance of all covenants and agreements of the Town contained in this Agreement are fully authorized and have been duly and validly authorized by resolutions of the Board, duly adopted at a meeting of the Board duly called and held, by the requisite vote of its members.
- (c) The Town has agreed to commit the Subsidy to fund the Project Facilities as provided in this Agreement.
- (d) There is no litigation pending or, to the best of its knowledge, threatened against the Town relating to the Project, or the pledge of tax abatements and the levy of taxes for the payment of the Project and the interest thereon, this Agreement or questioning the powers or authority of the Town under the Abatement Law, or questioning the corporate existence or

boundaries of the Town or the title of any of the present officers of the Town to their respective offices.

(e) The execution, delivery and performance of this Agreement does not violate any agreement or any court order or judgment in any litigation to which the Town is a party or by which it is bound.

(f) No board member of the Town and no other elected or appointed official who is authorized to take part in the making of this Agreement, is directly or indirectly interested in this Agreement, the Project Facilities, or any contract, agreement or job hereby contemplated to be entered into or undertaken for completion of the Project Facilities.

Section 2.02 Representations, Warranties and Covenants by the Company. The Company makes the following representations and covenants:

(a) The Company is a Delaware corporation, in good standing and is authorized to conduct business in the State of Wisconsin, and the Company has full power and authority to undertake its actions and responsibilities as contemplated by this Agreement.

(b) The Company shall own, maintain and operate the Project Facilities from the date hereof until such time that replacement technology solution that provides similar or improved services becomes commercially available at no additional cost or expense to Town or a minimum time period of ten (10) years, whichever occurs first.

(c) The execution and delivery of this Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the Company is a party or by which it is bound, or violate any law, regulation or order of the United States or the State of Wisconsin or political subdivision thereof, or any court order or judgment in any proceeding to which the Company is or was a party or by which it is bound.

(d) The Subsidy together with the funds to be contributed to the Project Facilities by the Company and Wisconsin Broadband Expansion Grant will be sufficient to pay all costs to be incurred by the Company in order to complete the Project Facilities in accordance with the terms and conditions of this Agreement and Grant Agreement.

(e) There is no litigation pending, or to the best of its knowledge threatened, against the Company affecting its ability to carry out the terms of this Agreement.

(f) To the best of the Company's knowledge and belief, no commissioner or other officer or employee of the Town is directly or indirectly interested in this Agreement, the Project Facilities or any contract, agreement or job hereby contemplated to be entered into or undertaken.

ARTICLE III

COMPLETION OF PROJECT

Section 3.01 Agreement to Construct the Project Facilities. The Company agrees that it will proceed with all reasonable dispatch to install and construct the Project Facilities in accordance with the requirements of the State of Wisconsin as provided in the Grant Agreement and Attachment A – Project Scope. Such construction and installation shall be substantially completed as defined in Attachment A – Project Scope; provided, however, if the progress of acquisition, construction and installation is delayed at any time by Unavoidable Delays, then the Completion Date may be extended for such reasonable time as may be mutually agreed to in writing by and among the Company, the State of Wisconsin and the Town. If the Company desires to make any material change in the construction plans for the Project Facilities or any component thereof, except in accordance with the Grant Agreement and as described herein, the Company shall submit the proposed change to the Town for its approval contemporaneously with submission to State of Wisconsin pursuant to the Grant Agreement. No changes shall be made which would delete from the Project Facilities any essential characteristics of the System, and after such changes, the Project Facilities shall continue to constitute a System to provide Broadband Services to customers within the Service Area.

Section 3.02 Request for Payments. The Town hereby authorizes the use of the Subsidy to pay the Company for the Town’s portion of the Project Costs upon project completion and satisfaction of the conditions set forth in this Section. The obligation of the Town to transfer the proceeds of the Subsidy to the Company shall be subject to the conditions precedent that (i) the Company shall be in compliance with the terms and conditions of this Agreement and (ii) the Town and the Company shall have received all of the following (the “Disbursement Conditions”):

- (a) Executed counterparts of this Agreement;
- (b) An executed copy of the Grant Agreement;
- (c) A Certificate signed by the Authorized Company Representative stating the Project Facilities have been completed; and
- (d) The Wisconsin Public Service Commission reviews the project.

The Town shall disburse payment to Company based on Payment and Acceptance definition in Attachment A – Project Scope. The proceeds of the Subsidy shall be payable to the Company via electronic funds transfer between the parties’ banking institutions. If the Disbursement Conditions are not met by December 31, 2021, any undisbursed portion of the Subsidy shall be retained by the Town.

Section 3.03 Obligation to Cooperate in Furnishing Documents to the Town. The Company agrees to cooperate in furnishing to the Town the documents referred to in Section 3.02 hereof and any other provision of this Agreement requiring additional documentation.

Section 3.04 Completion Date. The Completion Date for the Project Facilities shall be the date on which all of the Disbursement Conditions have been satisfied.

Section 3.05 Title to the Project Facilities. The Town acknowledges and agrees that as between the Town and the Company, the Company or an Affiliate will hold title to or an interest in the Project Facilities and the Company or an Affiliate shall be entitled to sole and exclusive possession thereof and neither the Town nor any holder of the Town debt shall be entitled to or have a security interest in the Project Facilities or in the Company's or any Affiliate's title thereto or interest therein. Transfer of title to an Affiliate of Company shall not relieve Company of its obligations under the Agreement.

Section 3.06 Employees, Subcontractors and Agents. Each party may engage subcontractors and agents that meet its standards for the type of services that are needed to complete the project. Neither party will contractually commit the other party to payment for services rendered by its subcontractor or agent. Each party will be responsible for ensuring that their employee, subcontractor, or agent has been appropriately vetted and carries the appropriate liability insurance for the services rendered. Under no circumstance will an employee, subcontractor or agent be considered an employee of the other party. Each party will be responsible for providing appropriate oversight to its respective employees, subcontractors, and agents engaged on the project.

Section 3.07 Payment to Suppliers. Company will be solely responsible to reimburse and pay suppliers for any equipment, leases, or services that Company obtains to complete Project Facilities.

ARTICLE IV

PROJECT FACILITIES

Section 4.01 Use of Project Facilities. The Company will use the Project Facilities only in furtherance of its lawful purposes and will cause the Project Facilities to be used and operated as a facility for providing Broadband Services in the Service Area. As further provided in Section 5.05, the Company may make changes in the Project Facilities at any time; provided that no changes will be made which would delete from the Project Facilities any essential characteristics of the Project Facilities as they currently exist nor which would materially or adversely affect the total operating unity and efficiency or capacity of the Project Facilities to provide Broadband Services within the boundaries of the Service Area.

The Company will not use or permit any person to use the Project Facilities for any use or purpose in violation of the laws of the United States, the State of Wisconsin, the Franchise Agreement, the Grant Agreement, or any ordinance of the Town, and agrees to comply with all the orders, rules, regulations and requirements of the officers or boards of the Town, the State or any other governmental authority having jurisdiction over the Project Facilities. The Company shall have the right to contest by appropriate legal proceedings, without cost or expense to the Town, the validity of any law, ordinance, order, rule, regulation or requirement of the nature herein referred to.

Section 4.02 Maintenance and Possession of Project Facilities by the Company. The Company will keep or cause to be kept the Project Facilities in good repair and good operating condition at its own cost, making such repairs and replacements as are necessary in the judgment

of the Company. The Company shall not sell, lease, or otherwise dispose of the Project Facilities (other than disposal of obsolete or worn Project Facilities in the ordinary course of the Company's operations) without the Town's prior written approval.

Section 4.03 Liens. The Company will pay or cause to be paid all other charges arising from the construction, installation and operation of the Project Facilities which, if unpaid, would become a lien on the Project Facilities and will not permit any lien or encumbrance except Permitted Encumbrances to be established or to remain unsatisfied against the Project Facilities, including any mechanics' liens; provided, however, the Company may in good faith contest any mechanics' or other liens filed or established against the Project Facilities, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 4.04 Taxes and Other Governmental Charges. The Company will pay or cause to be paid, as the same respectively become due, any taxes, special assessments, license fees and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the operations at the Project Facilities, or any improvements, equipment or related property installed or brought by the Company therein or thereon, or this Agreement or the interest of the Town therein. The Company may, at its expense, in good faith contest any such taxes, assessments, license fees and other governmental charges and, in the event of any such contest, may permit the taxes, assessments, license fees or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Town shall notify the Company that by nonpayment of any such items, the Project Facilities or any part thereof, or the revenue therefrom, will be subject to loss or forfeiture, in which event such taxes, assessments, license fees or charges shall be paid promptly.

Section 4.05 Alterations to Project Facilities. The Company shall continue to have the privilege from time to time at its cost and expense, of remodeling and of making additions, modifications, alterations, improvements and changes (hereinafter collectively referred to as "alterations") in or to the Project Facilities as it, in its discretion, may deem to be desirable for its uses and purposes, subject, however, to the following:

- (a) All alterations shall become a part of the Project Facilities;
- (b) The alterations shall not impair the structural strength, utility or market value thereof or significantly alter the character or purpose or detract from the value or operating efficiency of the Project Facilities; and
- (c) The alterations shall not impair the revenue producing capacity of the Project Facilities,

All work in connection with any alterations shall be done promptly and in good workmanlike manner and in compliance with the building and zoning laws of the governmental subdivisions wherein the Project Facilities are situated, and with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and shall not violate the provisions of any

policy of insurance covering the Project Facilities; and the work shall be prosecuted with reasonable dispatch, Unavoidable Delays excepted.

Section 4.06 Installation of Equipment. The Company may at any time and from time to time, in its sole discretion and at its own expense, install items of movable machinery, equipment or other property in or upon the Project Facilities in addition to that acquired from the proceeds of the Subsidy. All such items shall remain the sole property of the Company, in which the Town shall have no interest, and may be modified or removed by the Company at any time while such items are not needed for the continuance of the operation of the Project Facilities, provided that the Company shall repair and restore any and all damage to the Project Facilities resulting from the installation, modification or removal of any such items. Nothing in this Agreement shall prevent the Company from purchasing items to be installed pursuant to this Section 4.06 under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any other part of the Project Facilities.

Section 4.07 Removal of Project Equipment. If no Event of Default has occurred and then exists, the Company shall have the right to remove Project Equipment from the Project Facilities, as follows:

(a) The Company shall have the privilege from time to time of substituting equipment and related property for any Project Equipment, provided that the effect of such substitution shall not be to impair the character or revenue producing significance of the Project Facilities.

(b) The Company shall also have the privilege of removing any Project Equipment without substitution therefor, provided that such removal shall not impair the character or revenue producing significance or value of the Project Facilities.

In the event any removal of equipment under this Section causes damage to buildings or road right-of-ways, the Company shall restore or repair such damage at its expense.

Section 4.08 Reserved.

Section 4.09 Insurance. The Company shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

(a) Insurance against loss and/or damage to the Project Facilities under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) builder's risk during construction, fire and extended coverage in an amount not less than the full insurable replacement value of the Project Facilities. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise. The term "full insurable replacement value" shall mean the actual replacement cost of the Project Facilities (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment. All policies evidencing insurance required by this subparagraph (a) with respect to the Project Facilities shall

be carried in the names of the Company and include the Town as loss payee as its interests may appear.

(b) Comprehensive general public liability insurance, including personal Injury liability, and, if the Company owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000, for public liability not arising from ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Town as an additional insured.

(c) Business interruption insurance covering actual losses in gross operating earnings of the Company resulting directly from necessary interruption of business caused by damage to or destruction resulting from: fire and lightning; accident to a fired-pressure vessel or machinery; and other perils, including windstorm and hail, explosion, civil commotion, aircraft and vehicles, sprinkler leakage, smoke, vandalism and malicious mischief, and accident, to real or personal property constituting part of the Project Facilities, less charges and expenses which do not necessarily continue during the interruption of business, for such length of time as may be required with the exercise of due diligence and dispatch to rebuild, repair or replace such properties as have been damaged or destroyed, with limits equal to at least the sum of 12 months' operating expenses of the Project Facilities.

(d) Such other insurance, including workers' compensation insurance respecting all employees of the Company, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Company may be self-insured with respect to all or any part of its liability for workers' compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Company which are authorized under the laws of Wisconsin to assume the risks covered thereby. The Company will deposit annually with the Town a Certificate that states the insurance the Company carries for the Project Facilities is in force and effect.

Section 4.10 Damage or Destruction. The Company agrees to notify the Town immediately in the case of damage to the Project Facilities exceeding \$1,000,000 in amount to, or destruction of, the Project Facilities or any portion thereof resulting from fire or other casualty. In the event that any such damage or destruction does not exceed \$1,000,000, the Company shall forthwith repair, reconstruct and restore the Project Facilities to substantially the same or an improved condition or value as existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Company will apply the net proceeds of any insurance relating to such damage received by the Company to the payment or reimbursement of the costs thereof. Net proceeds of any insurance relating to such damage up to \$1,000,000 shall be paid directly to the Company and any amounts in excess thereof shall be deposited with the Town, subject to the liens of any outstanding debt.

In the event the Project Facilities or any portion thereof is destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$1,000,000, then the Company shall

within 90 days after such damage or destruction elect one of the following two options by written notice of such election to the Town:

(a) Option A - Repair and Restoration. The Company may elect to repair, reconstruct and restore the damaged Project Facilities. In such event, the Company shall proceed forthwith to repair, reconstruct and restore the damaged or destroyed Project Facilities to substantially the same condition or value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Company will apply the net proceeds of any insurance relating to such damage or destruction received by the Company from the Town to the payment or reimbursement of the costs thereof. So long as no Default exists, any net proceeds of insurance relating to such damage or destruction received by the Town shall be released from time to time by the Town to the Company upon the receipt of:

(i) Certificate of the Authorized Company Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such net proceeds, together with any other moneys legally available for such purposes, will be sufficient to complete such repair, reconstruction and restoration.

The Company shall complete the repair, reconstruction and restoration of the Project Facilities, whether or not the net proceeds of insurance received by the Company for such purposes are sufficient to pay for the same. Net proceeds not required for the repair, reconstruction and restoration of the Project Facilities will be proportionately shared between Town and Company based on their contributions to project.

(b) Option B – Return of Net Proceeds. In the event that the Company shall determine that it is not practical or desirable to rebuild, repair or restore the Project Facilities, the Company shall deliver any net proceeds received by the Company to the Town in an amount not to exceed the total Subsidy amount.

Section 4.11 Condemnation. If the Project Facilities or any material portion thereof is condemned or taken for any public or quasi-public use and title thereto vests in the party condemning or taking the same, the Company, subject to the liens of any outstanding debt, hereby irrevocably assigns to the Town all of its right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter referred to as an “award”), payable in connection with any such condemnation or taking. In the event of any such condemnation or taking which results in the Project Facilities becoming unavailable for use by more than twenty-five percent (25%) of the Services Area for a period of sixty (60) consecutive days, the Company shall, within ninety (90) days after the date on which the Net Proceeds are finally determined, elect to use the net proceeds of the award made in connection with such condemnation or taking for additions, repairs and improvements to the Project Facilities. In such event, so long as no Default exists, the Company shall have the right to receive such net proceeds from the Town from time to time upon receipt by the Town of a Certificate of an Authorized Company Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repairs and improvements and stating that such net proceeds, together with any of the moneys legally available for such purposes, will be sufficient to complete such repairs and improvements. The Company agrees to apply any such net proceeds so received solely to the purposes specified in such

Certificate. Net proceeds not required for the repairs and improvements may be used for such purpose(s) as the Company determines.

ARTICLE V

SPECIAL COVENANTS

Section 5.01 No Warranty of Condition or Suitability; Indemnification. The Town makes no warranty, either express or implied, as to the design or capacity of the Project Facilities, as to the suitability for operation of the Project Facilities, or that they will be suitable for the Company's purposes or needs. The Company releases the Town from, agree that the Town shall not be liable for, and agree to hold the Town, its Board, and its officers, employees and agents, harmless against, any claim, cause of action, suit or liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, except for such claims, actions, damages, liabilities, losses or other costs or expenses resulting from the gross negligence or willful misconduct of the Town, its employees or officials.

The Company further agrees to indemnify and hold harmless the Town, its officers and employees, against any and all losses, claims, damages or liability to which the Town, its officers and employees, may become subject under any law in connection with the Subsidy and the carrying out of the transactions contemplated by this Agreement, except to the extent such losses, claims, damages or liabilities are caused by (directly or indirectly) the gross negligence or willful misconduct of the Town, its officers or its employees. The Town agrees, at the request and expense of the Company, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses which may be available to the Town. The provisions of this Section shall survive the payment any Town debt used to fund Project Facilities.

Section 5.02 Change in Control. During the term of this Agreement, Company shall promptly notify Town of any material change in ownership, either in whole or part of the Company. Town reserves the right to terminate agreement based on material change of ownership.

Section 5.03 Records and Inspection. During the term of this Agreement, Company shall maintain copies of federal, state, municipal and other licenses and permits obtained by the Company relating to the operation of the Project Facilities and all other documents, reports and records required by any provision of this Agreement or by law relating to the Project Facilities. The Town shall have the right to inspect all such materials, except any materials made private or confidential by federal or state law or regulation, and the Project Facilities at all reasonable times and to make such copies and extracts as it may desire. At the written request of the Town, the Company shall furnish to the Town, at the Company's expense, a copy of any such materials which are required by the Town in the performance of its duties under this Agreement.

Section 5.04 Assignments. Except as otherwise provided in Sections 5.02 and 6.03 hereof, the interest and obligation of the Company under this Agreement are non-assignable and shall not be assigned except to any Affiliate of the Company or to a trustee in bankruptcy or similar

officer pursuant to the Bankruptcy Code or similar law. Transfer of title to an Affiliate of Company shall not relieve Company of its obligations under the Agreement.

Section 5.05 Broadband Expansion Grant. Company shall promptly notify Town if Company is in non-compliance with Broadband Expansion Grant contract, receives notification of termination, or if the contract is suspended for any reason. Town reserves right to terminate Attachment A – Project Scope if Broadband Expansion Grant is terminated.

Section 5.06 Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the Company and Town shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be governed by the laws of the State of Wisconsin.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01 Events of Default. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever used in this Agreement, anyone or more of the following events:

- (a) If the Company sells or otherwise disposes of the Project Facilities; or
- (b) If the Company shall default in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in this Agreement on the part of the Company to be performed, and such Default shall have continued for a period of sixty (60) days after written notice specifying such Default and requiring the same to be remedied shall have been given to the Company by the Town, or such longer period of time as may be reasonable necessary to remedy such Default; or
- (c) If any representation or warranty of the Company made herein or in any report, certificate or financial statement provided by the Company in connection with this Agreement shall prove to be false or misleading in any material respect; or
- (d) If the Company file a petition in voluntary bankruptcy, for the composition of its affairs or for its reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or consents in writing to the appointment of a trustee or receiver for itself or for the whole or any substantial part of its property; or

(e) If a court of competent jurisdiction shall enter an order, judgment or decree declaring the Company an insolvent, or adjudging the Company bankrupt, or appointing a trustee or receiver of the Company or of the whole or any substantial part of the property of the Company under any applicable law or statute of the United States of America or any State thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof.

The provisions of this Section are subject to the following limitations: (1) If by reason of force majeure the Company is unable in whole or in part to carry out its agreements contained herein, the Company shall not be deemed in default during the continuance of such disability. The term "force majeure" as used herein includes but is not limited to the following: acts of God; strikes, lockouts or other employee disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Wisconsin or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics, pandemics or other public health emergencies; landslides; lightning; earthquakes; fires; hurricanes, storms; floods; washouts; droughts; arrests; civil disturbances; explosions, breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company; and (2) If the Default can be remedied but not within a period of sixty (60) days after notice and if the Company has taken all action reasonably possible to remedy such Default within such sixty (60) day period, the Default shall not become an Event of Default for so long as the Company shall diligently proceed to remedy such Default and taking into account any directions or limitations of time reasonably requested by the Town. The Company agrees, however, to use its best efforts to remedy with all reasonable dispatch any cause or causes preventing the Company from carrying out its agreements.

Section 6.02 Remedies on Default. Whenever any Event of Default shall have happened and be subsisting, the Town may take whatever action in law or in equity which appears necessary or desirable to collect the payments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement in accordance with the provisions hereof.

Section 6.03 Remedies Cumulative, Delay Not to Constitute Waiver. No remedy conferred upon or reserved to the Town, or a receiver by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power, and any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Town, or a receiver to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to a particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notices. All notices, certificates, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered personally or mailed by either certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

To the Town

Town of Boulder Junction

PO Box 616
5392 Park Street
Boulder Junction, WI 54512
Email: clerk@townofboulderjunction.org

With a copy to

Contact information to be provided later

To the Company

Ted M. Hankins
CenturyLink
100 CenturyLink Drive
Monroe, LA 71203
Phone: (318) 388-9416
Email: ted.hankins@centurylink.com

With a copy to:

Jason Topp
Assistant General Counsel
200 South 5th Street, Room 2200
Minneapolis, MN 55402
Attention: Jason Topp

The Company and the Town, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

Section 7.02 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Town, the Company and their respective successors, heirs and assigns.

Section 7.03 Amendments, Changes and Modifications. This Agreement and Attachment A - Project Scope may not be effectively amended, changed, modified, altered, or terminated except in writing by the Town and the Company.

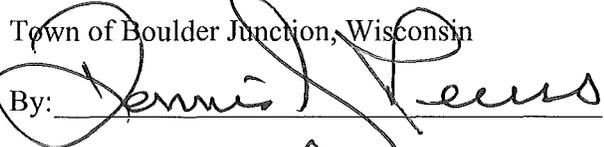
Section 7.04 Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.

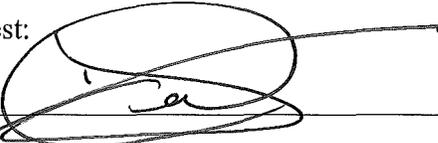
Section 7.05 Severability. In case any section or provision of this Agreement, or in case any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable by reason of any law, or actions thereunder, such illegality or invalidity or inoperability shall not affect this remainder thereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Agreement, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability or any application thereof affect any legal and valid and operable application therefor from time to time, and each such section, provision, covenant, stipulation, obligation, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 7.06 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Town and the Company have caused this Agreement to be duly executed in their respective names, all as of the date first above written.

Town of Boulder Junction, Wisconsin
By: 
Dennis Reuss, Chairman

Attest: 
By: 
Daniel Driscoll, Clerk/Treasurer

CenturyTel of Northern Wisconsin, LLC d/b/a
CenturyLink

By: Ray Hunter
Its: 9/3/20

EXHIBIT A

RESOLUTION NO. 2019-R-08

APPROVED: Nov 14 2019

STATE OF WISCONSIN
TOWN OF BOULDER JUNCTION
VILAS COUNTY

RESOLUTION NO. 2019-R-08

**RESOLUTION IN SUPPORT OF COMMITMENT OF FUNDING FOR THE 2020/2021 (ENTIRE TOWN)
BOULDER JUNCTION HIGHSPEED BROADBAND EXPANSION PROJECT**

AT A SPECIAL MEETING OF THE TOWN BOARD OF BOULDER JUNCTION, WISCONSIN, HELD ON NOVEMBER 14, 2019, A RESOLUTION IN SUPPORT OF COMMITMENT OF FUNDING FOR THE 2020/2021(ENTIRE TOWN) BOULDER JUNCTION HIGHSPEED BROADBAND EXPANSION PROJECT;

WHEREAS, the Town of Boulder Junction has conducted eight(8) public information meetings during 2019 concerning the expansion of Highspeed Broadband within the Town of Boulder Junction;

WHEREAS, an advisory vote of the Electors of the Town of Boulder Junction was held on November 14, 2019, and a majority of the Electors voted in favor of proceeding with the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project;

WHEREAS, the Town of Boulder Junction has been certified as a Telecommuter Forward! Community;

WHEREAS, the Town Board of Boulder Junction recognizes the importance of providing Highspeed Broadband access to those parts of the Town that are most in need of assistance;

WHEREAS, the Town Board of Boulder Junction understands that Highspeed Broadband service will diversify the Town's economy, offer a new home for high tech businesses, encourage young families to settle in the Town, stabilize and secure the future of its local elementary and high schools, and allow the full utilization of Tele-Health/Tele-Medicine and Tele-Education services;

WHEREAS, the Town Board of Boulder Junction desires to file an application for Fiscal Year (FY) 2020 Broadband Expansion Grant with the Wisconsin Public Service Commission in connection with the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project;

WHEREAS, the Town Board of Boulder Junction desires to enter into a Public-Private Partnership with CenturyLink in order to accomplish the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project;

WHEREAS, the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project contemplates the following use of funds:

EXHIBIT A

RESOLUTION NO. 2019-R-08 – Page 2

APPROVED: 12/14/2019

TOTAL PROJECT COST	TOWN OF BOULDER JUNCTION CONTRIBUTION (Not to Exceed)	CENTURY LINK CONTRIBUTION	PSC GRANT
\$7,500,000.00	\$3,800,000.00	\$1,200,000.00	2020 – \$1,250,000.00 2021 – \$1,250,000.00

WHEREAS, the Town Board of Boulder Junction desires to commit to the funding for the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project hereinabove described;

NOW, THEREFORE, BE IT RESOLVED, that this resolution adopted by a 2/3 majority roll call vote of the entire membership of the Town Board with a quorum present, hereby resolves that it supports the commitment of funding hereinabove described for the 2020/2021 (Entire Town) Boulder Junction Highspeed Broadband Expansion Project.

Passed on the 14th day of November, 2019
By the Town Board of the Town of Boulder Junction

Roll Call Vote 3 YES 0 NO (2/3 required)


Dennis Reuss, Chairman


Laura Bertch, Supervisor


James Galloway, Supervisor

Attest: 
Daniel Driscoll, Clerk/Treasurer

Posted at: Community Center and town website; www.townofboulderjunction.org

ATTACHMENT A –PROJECT SCOPE FISCAL YEAR 2020/Phase 1

The scope of this project for Fiscal Year 2020 is that set forth in the Application of the Company for the #1 – Boulder Junction Wisconsin Broadband Expansion Grant 5-BF-2020 identified as PSC REF#:381338 which is herein incorporated into this Agreement. The discussion below summarizes and emphasizes specific elements of the Project Scope.

Summary:

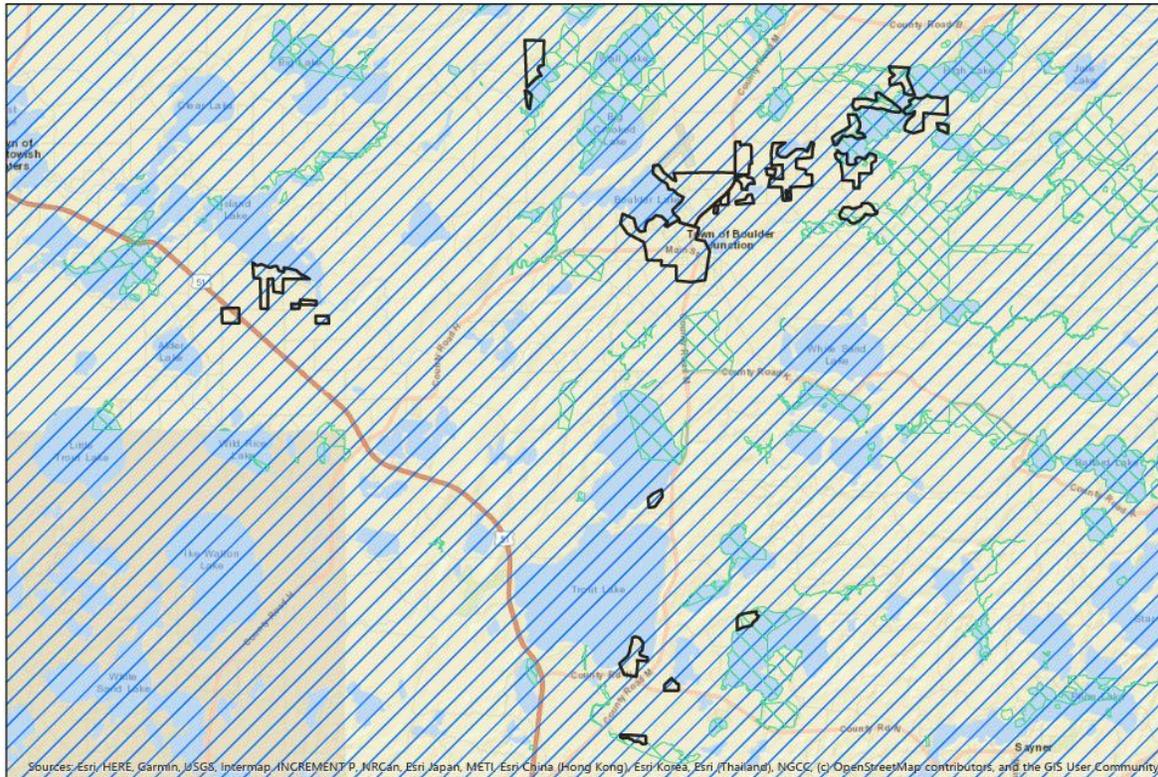
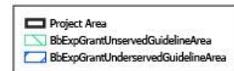
This build will provide 1GE FTTP services to the Boulder Junction, North Village, Fishtrap Lake, High Lake, Rush Lake, South Trout Lake, South end of Island Lake, and Northern end of Little Crooked Lake. In total, this build will provide these services to at least 745 customers or living units. Company will provide the “fiber-to-the-user” broadband communications network and related facilities to be owned and operated by the Company to provide Broadband Services in the Service Area.

Project Location Areas:

The map below provides an illustration of the project area as identified in Attachment 1 of Grant 5-BF-2020. Both parties agree that the actual project area depicted may need to be adjusted slightly to meet the minimum number of customers identified in the summary and/or accommodate installation efficiencies. For avoidance of doubt, Company may not remove any project area without written consent of Town.



Boulder Junction Wisconsin Project



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community
Broadband Expansion Grant Unserved and Underserved Guidelines Areas Downloaded from <https://psc.wi.gov/Documents/broadband/BbExpGrantEligibilityFY2020.zip>

jgbarlo
12/14/2019

Specific Deliverables:

1. The Company shall build the broadband communications facility described in grant application and summary above.
2. The Company shall provide the Town with timely Project Status Reports describing the progress on Project.
3. The Company shall comply with all applicable federal, state, and municipal laws, codes, and regulations for the work performed under this project.
4. The Company shall be solely responsible for applying and obtaining all construction permits, rights of way, and easements needed for construction regardless of land ownership.
5. The Company shall provide copies of all status reports and notices sent or received from the Wisconsin PSC concerning this project.
6. The Company shall utilize a new ordering and account management process that will allow customers to order, pay and manage their account 100% online. The customer will be able to pre-order service 45 days before the estimated construction date. This is an all in one service and support model using a dedicated team. The customer will receive a pre-construction postcard 60 days before launch, based on pre order capable address that are provided to Company. The Company shall provide customer service, including troubleshooting, to any subscriber of broadband services that Company provides as a result of this project. The Company will utilize its new ordering and account management process along with a chat function to knowledgeable staff on this project to be used by property owner/customers for duration of project. The Company will request that the property owner communicate property maps, and other items for this project.
7. Town shall provide Company with address list of property owners who are interested in receiving service drops on their property.
8. Company shall place service drops along driveways on private property or for businesses using the same path as other utilities.
9. Company shall be solely responsible for prompt repair/restore of any damage done to public right of way and private property as a result of construction activities associated with this project.

Private Property Owner

Each property owner will have the option to participate in this project to bring fiber services to their business/residence as follows:

1. Company shall obtain property owners' consent for construction of service drop on property owner's property. Property owners have the option to decline to be provided service and the option to prohibit construction on their private property independent of Town's engagement of Company on this project.
2. The property owner may provide Company with map showing additional information on the location of any underground items (irrigation, wiring, etc.). The Company will attempt to avoid underground facilities when underground fiber is installed, following One-Call locate procedures. Property owner may also mark approximate building location of where fiber coil is to be placed.
3. Company shall notify Diggers Hotline to obtain a locate request of public utilities on private property.
4. Company is solely responsible for repair/restore of any damage done to private property as a result of installing fiber for this project. Town shall have no responsibility for repair/restore to private property.
5. Property Owner/Tenant will work with Company, independently of Town, to schedule technician to install the optical network terminal (ONT) device needed to turn on services using the fiber. Company shall provide Property Owner/Tenant with any requirements for the ONT installation and ongoing use. If the property owner does not identify to Town their interest in obtaining services by due date, and then later decides that he/she wants service, the property owner shall notify Company directly of their interest.
6. Company shall determine when to install service when installation does not interfere with Company's obligations under this agreement. If the project is open, Company will provide service drops regardless of drop length to all property owners/tenants who have placed an order for service without any additional cost to the Town or property owner/tenant. If the project is closed, the Company will follow its process and procedures for drops.

Project Budget:

Section 3.2.3 and 3.2.4 of Grant 5-BF-2020 provides detail information on the project costs and funding sources. The following table is a summary of that information:

Description	Total Cost	State Grant	CenturyLink Funding	Partnership Funding
Electronics (Inside Plant)	\$786,000	\$351,395	\$117,354	\$317,251
Fiber (Outside Plant)	\$1,909,400	\$853,632	\$285,082	\$770,686
Serving Area Interface	\$225,000	\$100,591	\$33,594	\$90,815
Pedestal	\$325,000	\$145,297	\$48,524	\$131,179
Drop	\$387,365	\$173,179	\$57,835	\$156,351
Total Construction Cost	\$3,632,765	\$1,624,094	\$542,389	\$1,466,282

The Town does not make any warranty, either express or implied, that the Partnership Funding will be sufficient to pay all Project Costs which will be incurred by Company. In the event the State Grant, CenturyLink Funding and Partnership Funding is insufficient to pay the Project Costs in full, the Company agrees to pay the remaining Project Costs.

Schedule:

Company has revised the summary schedule in Section 3.2.2.f of Grant 5-BF-2020 with additional detail as follows:

Activity	Estimated Dates
Planning Package for the build	By May 15-22
Detailed Engineering and Permitting	By June 15
Contract Administration/ Bid terms	By July 15
Contractor/ Bid Response	By August 15
Award Bid, Contractor order Materials	
Materials arrive	October 1 – 15
Start of Directional boring/conduit/fiber	October 1 -15

Additional items:

1. Depending on weather, Company may not be able to directionally bore in December, January, February, and March.
2. Project areas are likely to be completed over a 3 to 4-week period, turn up areas as they are completed.
3. Total project build is estimated to be 6-7 months.

Company shall provide fiber-based service to business and residential units as quickly as practical and to complete the fiber-based services to all property owner/tenants who have placed an order for service in the project area by 12/31/2021. Service shall be introduced in each area as soon as commercially reasonable and shall not be delayed until the end of the entire project.

Project Status Reports:

Company shall provide quarterly project status updates to Town’s Project Manager in a format that both parties mutually agree to. The project status shall include, but not limited to:

1. Overall project health (red, yellow, green)
2. Narrative description of the work recently completed or in progress. This would track completion of the planning work, completion of the detailed engineering (“blueprints necessary for construction), construction permit approval, materials ordering or delivery, completion of equipment placement, completion of splicing, delivery of commercial power, completion of testing and turn -up of service availability (appearance of the new available inventory in sales support systems).
3. Financial Budget including spend-to-date.
4. Risks.

The Company shall provide Town a copy of all status reports that it provides to the Wisconsin PSC as required under the Broadband Expansion Grant agreement within 3 business days of sending the reports.

Marketing Broadband:

As identified in 3.2.4.b of Grant 5-BF-2020, both parties acknowledge that they each have responsibilities to market the broadband services so that the Town’s stakeholders can receive the benefits of this project.

1. Town’s responsibilities include:
 - A. Communication, awareness, and information dissemination to property owners and other Town stakeholders.
 - B. Use Town’s website to obtain interest in FTTP and communication same to Company.
 - C. Create marketing campaign to solicit funding, pledges, and donations to be used to offset the Town’s financial commitment.
 - D. Add CenturyLink website link to the Town’s website.
 - E. Work with Town Chamber of Commerce, and other Town organizations and associations to disseminate information on project and enrollment
 - F. Establish Town Broadband mailbox for project to be used by town residents during project
2. Company’s responsibilities include:
 - A. Establishing service plans and communicating to potential subscribers
 - B. Customer subscriptions, service, invoicing subscribers (billing and collections)
 - C. Prepare marketing literature to be used by Town/Town Chamber of Commerce to disseminate information
 - D. Jointly participate in Community events to disseminate information to town property owners and residents

Term and Termination:

This Project Scope will become effective from contract signing date below and shall expire when project is completed unless mutually terminated by both parties.

Town may terminate this project by providing thirty (30) days written notice to Company. Town will pay Company for its prorated portion of services completed unless termination is the result of breach of contract by Company or Broadband Expansion Grant termination.

If all of the property owner/tenants who have placed an order for service with the Company do not receive the fiber Broadband Services as defined in the project scope agreement by December 31, 2021, then the Company will be considered to have breached the contract and will forfeit the entire Partnership Funding of \$1,466,282 from the Town.

Payment and Acceptance:

As identified in Section 3.2.4.b of Grant 5-BF-2020, Company will initially fund their build-out and invoice the Town for its contribution identified under “Partnership Funding” in the Project Budget above. Payments will be based as follows:

1. Town will reimburse Company based on following schedule:
 - a. Town will reimburse Company at the completion of the project based on its invoice to the Town for its amount of contribution.
 - b. Total of all payments will not exceed \$1,466,282.00 when this project is complete.
2. No Business Subsidy funds will be issued without a Request for Payment.
3. Only costs associated with this project may be included on the Request for Payment.
4. All Request for Payments shall provide sufficient detail and documentation so that Town is able to validate the cost of materials or services provided support the Request for Payment amounts.
5. Payment will be within thirty (30) days after receipt of Request for Payment and sufficient documentation is provided by Company.

The Company is responsible for reimbursement to the Town for any disbursed payments that are determined by either the Wisconsin PSC or Town to have been misused or misappropriated.