

Mass Tech Collaborative Grant Designation:

No. 2015-MBI-01

BROADBAND PLANNING ASSISTANCE GRANT AGREEMENT

dated as of August 4, 2015

between

Town of Middlefield

as Grantee

and

THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE

as Grantor

BROADBAND PLANNING ASSISTANCE GRANT AGREEMENT

THIS BROADBAND PLANNING ASSISTANCE GRANT AGREEMENT (the "Agreement,") dated as of August 4, 2015 ("Effective Date"), by and between Town of Middlefield ("Grantee,") a town existing under the Jaws of the Commonwealth of Massachusetts, and **MASSACHUSETTS TECHNOLOGY PARK CORPORATION d/b/a Massachusetts Technology Collaborative**, an independent public instrumentality of the Commonwealth of Massachusetts, established, organized, and existing pursuant to Chapter 40J of the Massachusetts General Laws and doing business as the Massachusetts Technology Collaborative, together with its successors and assigns, ("Mass Tech").

WHEREAS, the Grantee has applied to Mass Tech for financial assistance (the "Application") to obtain grant funding for planning and other preliminary assistance to be procured by the Grantee with a view to possible participation by the Grantee in a subsequent project providing infrastructure for last mile broadband service at the Broadband Grant Speed, as defined herein, in the Town of Middlefield (the "Town") as described in the Application, and any revisions thereto, all as approved in writing by Mass Tech and set forth in Schedule 1, hereinafter "Schedule 1");

WHEREAS, Mass Tech is willing to extend financial assistance in the form of a grant (the "Grant") to the Grantee on the terms and conditions stated herein; and

WHEREAS, the Grantee is willing to fulfill its obligations to Mass Tech on the terms stated herein.

THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - DEFINITIONS

The terms defined herein include both the plural and the singular.

"Application" shall have the meaning as defined in the first recital hereof.

"Disbursement" or "Disbursements" shall mean a payment or payments made by Mass Tech pursuant to this Agreement.

"Schedule 1" shall have the meaning as defined in the first recital hereof.

ARTICLE II - REPRESENTATIONS AND WARRANTIES OF THE GRANTEE

Recognizing that Mass Tech is relying hereon, the Grantee hereby represents and warrants, as of the date of this Agreement, as follows:

- (a) *Eligibility.* The Grantee is eligible to obtain the financial assistance from Mass Tech contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Grantee of this Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and do not violate any provision of law or any charter, articles of incorporation, organizational documents or bylaws of the Grantee or result in a breach of, or constitute a default under, any agreement or other instrument to which the Grantee is a party or by which it may be bound. The Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.

- (c) *Compliance with Laws.* The Grantee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws").
- (d) *Information Submitted with Application.* All information, reports, and other documents and data submitted to Mass Tech in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects.
- (e) *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations and written documents that it has submitted to Mass Tech in connection with this Grant.
- (f) *Grantee's Address.* Grantee's address is as set forth in Schedule 1.

ARTICLE III - THE GRANT

3.1 Grant Amount and Expiration Date

- (a) *Grant Amount.* Mass Tech agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, a Grant, in the maximum amount specified in Schedule 1 hereto.
- (b) *Expiration Date.* The Grant, and the obligation of Mass Tech to disburse the Grant, or any portion thereof, shall expire no later than one (1) year from the date hereof (the "Expiration Date.") No portion of the Grant will be disbursed by Mass Tech to the Grantee after the Expiration Date. Mass Tech, in its sole discretion, may approve extensions of the Expiration Date, provided that the Grantee notifies Mass Tech, in writing at least sixty (60) days prior to the Expiration Date, of the reasons and need for an extension, together with a suggested, revised Expiration Date.

3.2 Purpose

The Grant has been made solely to finance the professional services specifically described in the Schedule 1 to or for the benefit of the Town(s).

ARTICLE IV - CONDITIONS OF FUNDING

4.1 General Conditions

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to Mass Tech in its discretion):

- (a) *Executed Grant Agreement.* Mass Tech shall receive duly executed originals of this Agreement;
- (b) *Authorizations.* Mass Tech shall have received evidence satisfactory to it that all documents and proceedings of the Grantee necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect.

4.2 Conditions to Disbursements

The obligations of Mass Tech to approve any Disbursement of the Grant is subject to the satisfaction of each of the following conditions precedent on or before the date of such Disbursement (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to Mass Tech in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such Disbursement as though made on and as of such date.
- (b) *Requests for Disbursement and Supporting Documentation.* All Disbursements shall either be provided on a reimbursement basis if authorized by Mass Tech in its sole discretion, supported by documentation, including, but not limited to, paid third-party invoices and receipts, or based on unpaid third-party invoices for eligible grant purposes to be paid from the current Disbursement. All requests for a Disbursement must be made using the form attached as Attachment 1.
- (c) *Compliance with Agreement.* That Grantee is in material compliance with this Agreement.
- (d) *Payment Terms.* Mass Tech shall make any approved Disbursement meeting the requirements of this Agreement within forty-five (45) days after receipt of a properly documented Request for Disbursement, unless Mass Tech should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of this Agreement.

ARTICLE V - AFFIRMATIVE COVENANTS

5.1 Generally

Unless otherwise agreed to in writing by Mass Tech, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article V

5.2 Use of Disbursements

- (a) The Grantee shall expend the Grant funds only for approved purposes as set forth in Schedule 1 in accordance with this Agreement. The Grant shall not be expended to cover any costs incurred prior to the date of receipt by Mass Tech of the Application except for costs specifically listed in Schedule 1, if any.

5.3 Allowable charges for the above costs consist of:

Charges for professional services provided and reasonable and customary expenses incurred by Grantee's consultants or consultants identified in Schedule 1 and engaged for Grantee's benefit by its delegated agent, at the actual cost paid for Project services which shall not exceed the amount set forth in the Project Budget; and

- 2. Such other types of costs as may be set forth explicitly in Schedule 1.

5.4 Impermissible charges

- (a) Salaries, benefits or payroll costs for employees of the Grantee; and

- (b) If the Grantee has designated a Municipal Light Plant Cooperative as its agent to engage the professionals providing the services identified in Schedule 1, charges of the Cooperative for the salaries or hourly compensation and benefits of its employees are not permissible charges under the Grant.

5.5 Unused and Disallowed Disbursements

- (a) The Grantee shall return to Mass Tech forthwith all or any disbursed portion of the Grant not expended by the Grantee for the purposes set forth in Schedule 1.
- (b) The Grantee shall reimburse Mass Tech for any disbursed funds whose original expenditure has been disallowed by a Mass Tech compliance review. Disallowances shall be satisfied, as directed by Mass Tech, by either administrative offset against requests for Disbursements or repaying the disallowed amount directly to Mass Tech.

5.6 Financial Books

The Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, third-party invoices, receipts, timesheets, and bills of sale, adequate to identify the purposes for which and the manner in which Grant and other funds were expended. The Grantee shall maintain all such records and copies of forms or financial reports for seven (7) years from the date the Grantee submits its final report.

5.7 Financial Audits

Mass Tech Collaborative will have the right to audit Grantee's or its other agents' records to confirm the use of the Grant proceeds at any time from the Effective Date until seven (7) years after the final Grant payment (the "Retention Period"). If such audit reveals that any portion of the Grant was utilized for purposes not permitted hereunder, then Grantee shall refund to Mass Tech Collaborative the amount determined by such audit within thirty (30) days of Grantee's receipt of such audit and demand. Grantee shall maintain books, records, and other compilations of data pertaining to the Grant payments made for the entire Retention Period.

5.8 Final Report

The Grantee shall provide Mass Tech with a final report which will be due no more than sixty (60) days after completion of the activities in Schedule 1, or upon the expiration date if earlier, summarizing the results of the planning process and, if requested by Mass Tech, copies of any work product of the Grantee's consultants. The report must include which, if any, option or options for broadband the Grantee is considering as of the date of the final report, from among the following:

- 1 Fiber to the Premises (FTTP) using Mass Tech's design and engineering specifications and construction procured and managed by Mass Tech
- 2 Fiber to the Premises (FTTP) using an independent design and engineering specifications and construction independent of Mass Tech's design and construction process
- 3 Fiber to an end point short of each premise (attach a description of the proposed project)
- 4 Wireless
- 5 Other — (attach a description of the proposed project)

5.9 Obligations with Respect to Procuring Planning Services

- (a) *Procurement Requirements.* The Grantee shall conduct all procurements for professional services to be paid, in whole or in part, with Grant proceeds, regardless of whether by sealed bids or by negotiation, in a manner that provides maximum open and free competition and otherwise complies with all applicable laws and regulations.
- (b) *General insurance Requirements.* The Grantee shall require that ad service providers engaged to perform any part of the activities in Schedule 1 take out, maintain and document the existence of professional errors and omissions insurance and commercial general liability insurance in amounts satisfactory to Mass Tech. The Grantee shall be named as an additional insured on the service provider's commercial general liability insurance.

5.10 Compliance with Laws

The Grantee will comply with all applicable federal, state and local statutes, regulations, codes, by-laws, ordinances and other requirements that govern the Application, the Project, procurements conducted for services to be paid, in whole or in part, with Grant proceeds, and use of Grant funds for this Grant, as well as the provisions contained herein. Grantee acknowledges that all Mass Tech employees are subject to the Massachusetts Conflict of Interest statute, located at Massachusetts General Laws Chapter 268A. No Grant funds may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.

5.11 Nondiscrimination

The Grantee agrees to comply with all applicable Federal and State statutes, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, or for exercising any rights afforded by law.

ARTICLE VI - TERMINATION, SUSPENSION AND OTHER REMEDIES

6.1 Termination of the Grant by Mass Tech

- (a) *Termination of the Grant by Mass Tech.* Mass Tech, in its sole discretion, may terminate the Grant, in whole or in part:
 - (i) if Mass Tech does not receive this Agreement, duly executed on behalf of the Grantee, within thirty (30) days from the date hereof;

if all conditions to the Grant, and all conditions to disbursement stated herein are not satisfied within one hundred twenty (120) days from the date hereof,

if the Grantee has materially breached any term of this Agreement;
 - (iv) if any representation or warranty made by the Grantee in the Application, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made;

- (v) if the Grantee fails to expend, or fails to provide Mass Tech with evidence satisfactory to Mass Tech that it has spent, Grant funds in accordance with Schedule 1 and Generally Accepted Accounting Principles, and the Request(s) for Disbursement submitted to Mass Tech prior to the disbursement of funds;
 - (vi) if a court having proper jurisdiction shall enter a decree or order for relief with respect to the Grantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (A) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official or (B) ordering the winding up or liquidation of its affairs; or the Grantee shall commence a voluntary case under any applicable bankruptcy insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
 - (vii) upon the dissolution or liquidation of the Grantee, or upon the filing for dissolution or liquidation by the Grantee; or
 - (viii) in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate Mass Tech action inconsistent with performing its obligations under this Agreement.
- (b) *Notice of Termination.* Mass Tech shall provide the Grantee with written notice of termination of the Grant as provided in Section 7.2 hereof, setting forth the reason(s) for termination. The termination of the Grant shall be effective as of the date of receipt of such notice of termination by the Grantee.

6.2 Effect of Termination of the Grant

Upon termination of the Grant pursuant to Section 6.1 hereof: (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant, (2) the Grantee shall cancel as many outstanding obligations as possible; and seek to mitigate the costs of any outstanding obligations, and (3) any undisbursed portion of the Grant not required for the Project shall not be available for disbursement by Mass Tech and any disbursed portion of the Grant not required by the Grantee for completion of the Project shall be immediately returned to Mass Tech.

6.3 Failure to Document Grant Expenditures and Misappropriation

- (a) Upon a determination by Mass Tech that the Grantee did not document Grant expenditures for allowable costs, as required in the Generally Accepted Accounting Principles, or that the Grantee did not utilize the Grant in the manner and exclusively for the Project as approved by Mass Tech, Mass Tech may, in its sole discretion:

Disallow all or a part of the expenditures and disbursements of the Grant and require the Grantee to deposit such funds into a separate account to be applied toward other approved Project purposes or to reimburse Mass Tech;

Terminate the Grant; and/or

Take any other action Mass Tech determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.

- (b) If any representation or warranty made by the Grantee in the Application, this Agreement, any certification, or other supporting documentation thereunder shall prove to be incorrect in any material respect at the time made, Mass Tech may, in its sole discretion:

- Require the Grantee to reimburse Mass Tech for all or any part of the Grant;
- (ii) Terminate the Grant; and/or
- (iii) Take any other action Mass Tech determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.

ARTICLE VII - MISCELLANEOUS

7.1 Insurance

Grantee 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, if the Grantee's Schedule 1 includes professional services of any kind, errors and omissions liability insurance shall be provided by the professionals performing such services.

7.2 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Receipt of all such communications shall be deemed to have occurred when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

<u>Mass Tech</u>	<u>Grantee</u>
See Schedule 1	See Schedule 1
<u>With a copy to:</u>	<u>With a copy to:</u>
See Schedule 1	See Schedule 1

7.3 No Waiver

No failure or forbearance on the part of Mass Tech to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by Mass Tech of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. Conditions, covenants, duties and obligations contained in this Agreement may be waived only by written agreement between the parties.

7.4 Governing Law

This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The Grantee agrees to bring any Federal or State legal proceedings arising under this Grant in which the Commonwealth or Mass Tech

Collaborative is a party in a court of competent jurisdiction within *the* Commonwealth of Massachusetts. This Section shall not be construed to limit any other legal rights of the parties.

7.5 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Grantee and Mass Tech and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of Mass Tech.

7.6 Complete Agreement; Waivers and Amendments

All conditions, covenants, duties and obligations contained in the Agreement may be amended only through a written amendment signed by the Grantee and Mass Tech Collaborative unless otherwise specified in this Agreement. The parties understand and agree that this Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein. Mass Tech Collaborative's Sensitive Information Policy and Procedures is attached and incorporated into this Agreement.

7.7 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

7.8 Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

7.9 Schedules, Attachments, and Counterparts

Each Schedule and Attachment hereto and referred to herein is each an integral part of this Agreement. Moreover, this Agreement may be executed in several counterparts, each of which shall be deemed to be an original.

7.10 Authority of Representatives of Mass Tech

In the case of any consent, approval or waiver from Mass Tech that is required under this Agreement, such consent, approval or waiver must be in writing and signed by an authorized Mass Tech representative to be effective. As used in this Section, "authorized Mass Tech representative" means the Administrator of Mass Tech, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

7.11 No Third Party Beneficiary

This Agreement is exclusively between Mass Tech and the Grantee, and does not nor is intended to create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds disbursed by Mass Tech to the Grantee are intended to finance the professional services procured by the Grantee. Any approvals given by Mass Tech to the Grantee are solely for the benefit of Mass Tech. Mass Tech is not obligated to disburse grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or

shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Grant Agreement between Mass Tech and the Grantee.

7.12 Term

This Agreement shall remain in effect until one of the following events has occurred:

- (a) One year from the date of this Agreement; or
- (b) This Agreement has been terminated pursuant to the provisions of Article VI - hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Town of Middlefield

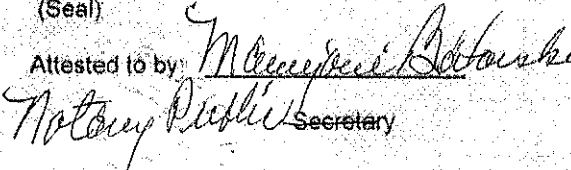
By: 

Name: Alan Vint

Title: Chairman, Board of Selectman

(Seal)

Attested to by:


Notary Public Secretary

My Commission Expires Oct. 13, 2017

MASSACHUSETTS TECHNOLOGY PARK
CORPORATION, d/b/a Massachusetts
Technology Collaborative

By: 

Philip F. Holahan
Deputy Executive Director
& General Counsel

11/18/15

SCHEDULE I
[Article references are to Agreement]

Article II - Representations and Warranties

1. Paragraph (f) Grantee's address:

Town of Middlefield
188 Skyline Trail
Middlefield, MA 01243

Article III - The Grant

2. The amount of the Grant is \$5000.00.
3. The Grant is to fund the following types of professional services:

Service Type	Estimated Amount to be incurred	Amount previously incurred
Consulting services to evaluate technical specifications and costs for last mile options and solutions.	\$5,000	

Article IV - Conditions of Funding

1. Per agreement.

Additional Conditions: N/A

Article VII - Miscellaneous

1. Section 7.2 Grantee's address for purposes of notification:

Town of Middlefield
188 Skyline Trail
Middlefield, MA 01243

Copy to: Town of Middlefield
188 Skyline Trail
Middlefield, MA 01243

2. Section 7.2 Mass Tech's address for purposes of notifications:

MassTech
Mass Broadband Institute
75 North Drive
Westborough, MA 01581
Attention: Elizabeth A. Copeland
Fax: (508) 898-9226

Copy to: MassTech
Mass Broadband Institute
75 North Drive
Westborough, MA 01581

3. Project Administrator for Mass Tech: Sean Cunningham
4. Project Manager for Mass Tech: Elizabeth A. Copeland
5. Project Manager for Grantee: Stephen E. Harris