

Ty Wessell, Chairman
NOTICE OF MEETING

A Special Session of the Leelanau County Board of Commissioners will be held on Wednesday, January 24, 2024, at 11:30 a.m. or immediately following the Committee of the Whole Meeting scheduled for 9:30 a.m., in the Commissioner Meeting Room, Leelanau County Government Center, Suttons Bay, Michigan

A live streaming of this meeting will be available for viewing via the following link –
https://www.youtube.com/channel/UCNQTglgcTedF2qB8floC1GQ?view_as=subscriber

There are two ways to provide public comment during the meeting – you can attend in-person, or email your comments prior to the meeting to clerk@leelanau.gov

(Please silence all electronic/cellular devices)

(Proceedings of the meeting are being recorded and are not the official record of the meeting, the formally approved/accepted written copy of the minutes will be the official record of the meeting.)

AMENDED AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE/PRIVATE PRAYER

ROLL CALL

PUBLIC COMMENT (3 minutes)

COMMISSIONER COMMENTS

Purpose of Meeting – Discussion/Potential Action:

1. Request to CONSIDER Contract with Legal Counsel to Represent Leelanau County in Potential Litigation Re: BATA Inter-Local Agreement Dispute with Grand Traverse County
2. Request to Approve DCS Proposal Per Legal Counsel's Draft Agreement FOR POINT BROADBAND PROJECT
3. Request to Authorize DCS to Continue Effort with Charter to Establish a Contract with Leelanau County
4. **Proclamation to Acknowledge Dick Grout French Legion of Honor Award**
5. POTENTIAL: Discuss Previous Request for Revised FOIA Appeal

PUBLIC COMMENT (5 minutes)

COMMISSIONER COMMENTS

ADJOURNMENT

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into this 15th day of August, 2023, between **GRAND TRAVERSE COUNTY** (“Grand Traverse”), **LEELANAU COUNTY** (“Leelanau”) and **BATA** (“BATA”), collectively, “the Parties.”

WHEREAS, this Interlocal Agreement is entered into pursuant to the Urban Cooperation Act of 1967, MCL 124.501, *et. seq.*;

WHEREAS, BATA was formed under the Public Transportation Authority Act, 1986 PA 196 (MCL 124.451 *et seq.*) by the filing of Articles of Incorporation; and

WHEREAS, on February 23, 2023, the BATA Board of Directors approved amended Articles of Incorporation and amended Bylaws and Rules of Procedure; and

WHEREAS, the parties desire to establish and define the rights, responsibilities, and obligations of the Parties regarding the composition of the BATA Board of Directors, including the number of members, membership eligibility, and the appointment of members, and intend that the BATA Articles of Incorporation and Bylaws and Rules of Procedure be further amended as necessary to be consistent with this Agreement as provided below.

THEREFORE, for and in consideration of the covenants contained herein, the parties mutually agree as follows:

1. **Political Subdivision Membership**. The Political Subdivision Members of BATA are Grand Traverse County and Leelanau County. No new Political Subdivision Members shall be permitted unless approved by resolution from the governing bodies of Grand Traverse County and Leelanau County.
2. **BATA Board Composition and Mission**. The BATA Board of Directors shall be composed of 7 members, comprised of 4 members appointed by majority vote of the Grand Traverse County Board of Commissioners, 2 members appointed by majority vote of the Leelanau County Board of Commissioners (collectively these 6 members appointed by the Grand Traverse County Board of Commissioners and the Leelanau County Board of Commissioners are the “County Representatives”), and 1 At-Large member appointed by a 2/3rds supermajority of the BATA Board (the “At-Large Representative”). Upon appointment, Board members shall exercise sound judgment and shall endeavor to make informed decisions that carry out the purposes of BATA as established in the BATA Articles of Incorporation.
3. **Board Appointments**.
 - a. Each County shall appoint a County Commissioner to serve as a member of the BATA Board for a term running concurrent with their elected term on the County Commission (the “Ex Officio Members”).

- b. All other members of the BATA Board shall be appointed for three-year terms. The members currently serving on the BATA Board shall continue serving until the term end date that was designated at the time of their initial appointments. For any member appointed or reappointed after the date of this Agreement, excluding the Ex Officio Members, the term shall end on September 30 of the third year of the members appointed term, even if the member has not served a full three years as of that date. The purpose of moving to a September 30 end date is to align with BATA's fiscal year.
 - c. The County Representatives appointed to the BATA Board by the Leelanau County Board of Commissioners and the Grand Traverse County Board of Commissioners shall be residents of their respective Counties.
 - d. Two of the County Representatives from Grand Traverse County must reside in the urban areas of the County, which are the areas within the jurisdictional boundaries of the proposed metropolitan planning organization (MPO), as shown on the attached **Exhibit A**. Of the remaining two, one must reside in a rural area (*i.e.*, an area outside of the boundaries depicted in **Exhibit A**).
 - e. The At-Large Representative may be a resident of either Grand Traverse County or Leelanau County.
 - f. In appointing the At-Large Representative, the BATA Board shall give consideration to the factors described in the attached **Exhibit B**.
 - g. Prior to making any appointment to BATA, the appointing County shall solicit input from the BATA Board regarding the types of expertise and experience that would be most useful to the BATA Board given its current composition, with reference to the factors described in the attached **Exhibit B**. The appointing County shall consider such input in making the appointment but shall not be constrained by it.
4. **Changes in Board Composition or Membership Eligibility.** For so long as this Agreement remains in effect, any change to the BATA Board composition as expressed in Section 2 or to BATA Board member eligibility as expressed in Section 3 requires the approval of a 2/3rds supermajority of the BATA Board and is contingent upon subsequent ratification by a majority of both the Grand Traverse County Board of Commissioners and the Leelanau County Board of Commissioners to be effective.
5. **Executive Director, Capital Improvements and At-Large.** For so long as this Agreement remains in effect, the following actions will require a 2/3rds supermajority of the BATA Board:

- a. The appointment or rescission of appointment without cause of the BATA Executive Director; and
- b. Approval or cancellation of capital improvement projects with a total project value of \$1,000,000.00 or more; and
- c. The appointment or rescission of appointment for the At-Large Representative.

6. **Removal of Board Members.**

- a. Leelanau and Grand Traverse each have the power, acting through their respective Boards of Commissioners, to remove the County Representatives it appointed to the BATA Board from the BATA Board pursuant to MCL 46.11(n).
- b. The BATA Board may remove the At-Large Representative from the BATA Board if, in the Board's opinion, such member is incompetent to execute properly the duties of the office or if, on charges and evidence, the Board is satisfied that the member is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, the member shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are presented to the BATA Board or the Chair of the BATA Board, notice of a hearing, with a copy of the charges, is delivered to the member, and a full opportunity is given the member to be heard, either in person or by counsel.
- c. Leelanau and Grand Traverse hereby agree not to remove any current County Representative to the BATA Board from the Board on the basis that such member voted in favor of the amendments to the BATA Articles of Incorporation and BATA Bylaws and Rules of Procedure that were adopted on February 23, 2023. To the extent not prohibited by law, all such County Representatives to the BATA Board are intended third-party beneficiaries of this Agreement with respect to the protection from removal provided by this subsection. If any Party attempts to remove any such member in breach of this subsection, that Party shall be in material breach of this Agreement and any non-breaching Party shall be entitled to terminate this Agreement immediately upon written notice to the other Parties.

7. **Dispute Resolution.** The Parties shall use reasonable efforts to resolve any dispute arising under this Agreement within thirty (30) days of the date of a notice from any party regarding a term of this Agreement. Each party may designate representatives to meet to address the dispute and will work cooperatively to schedule this meeting.

8. **Notices.** The Parties will send, by first class mail or via the email listed below (or the email for the successor individual holding the position), all correspondence and written notices required or permitted by this Agreement to the following addresses:
- a. BATA: Kelly Dunham
BATA Executive Director
3233 Cass Rd.
Traverse City, Michigan 49684
dunhamk@bata.net
 - b. Leelanau County: Deborah Allen
Leelanau County Administrator
8527 E. Government Center Dr.
Suttons Bay, Michigan 49682
dallen@leelanau.gov
 - c. Grand Traverse County: Nate Alger
County Administrator
Grand Traverse County
400 Boardman Ave., Traverse City, MI 49684
nalger@gtcountymi.gov
9. **Implementation.** The Parties agree to implement the necessary steps to amend the BATA Articles of Incorporation and BATA Bylaws and Rules of Procedure to be consistent with this Agreement.
10. **No Impact or Impairment of Law.** Nothing in this Agreement shall be construed as having any impact on or impairment of any Federal, State or local law, including but not limited to the Public Transportation Authority Act, and any statutory procedures for the removal of appointees by County Boards of Commissioners, except as expressly addressed in Section 6.c.
11. **Term and Termination.** This Agreement shall remain in effect for so long as BATA remains in existence and operation or until: (1) the Agreement is terminated as provided in Section 6.c; or (2) the Agreement is amended by a written document signed by all Parties, by and through their duly authorized representatives.
12. **Non-Discrimination.** The Parties agree that they will not discriminate against any employee or applicant for employment (with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment) because of race, color, age, sex, religion, national origin, height, weight, marital status, disability, political affiliation, familial status, veteran status, or other characteristic protected by law.

The Parties shall adhere to all applicable Federal, State and local laws, ordinances, rules and regulations and policies prohibiting discrimination, including, but not limited to, the following:

- A. The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
- B. The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
- C. Section 504 of the Federal Rehabilitation Act of 1973, P.L. 93-112, 87 Stat. 355, as amended, and regulations promulgated thereunder.
- D. The Americans with Disabilities Act of 1990, P.L. 101-336, 104 Stat 327 (42 USC §12101 *et seq.*), as amended, and regulations promulgated thereunder.

Breach of this section shall be regarded as a material breach of this Agreement.

- 13. **Waivers**. No failure or delay on the part of any of the Parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege. Moreover, and without limitation, nothing herein shall be construed to limit to any party the defense of governmental immunity.
- 14. **Third-Party Beneficiaries**. Other than as provided in Section 6.c., this Agreement is not intended to be a third-party beneficiary contract and confers no rights on anyone other than the Parties hereto.
- 15. **Invalid Provisions**. If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. It shall be considered to be deleted and the remainder of this Agreement shall not be affected thereby. Where the deletion of the invalid provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the provision was rendered invalid or unenforceable.
- 16. **Entire Agreement**. This Agreement is the complete and exclusive statement of the agreement between the Parties with respect to the subject matter thereof and supersedes all prior negotiations, representations, proposals, agreements, and other communications between the Parties either oral or written with respect to the subject matter thereof.
- 17. **Controlling Law**. This Agreement shall be governed in accordance with the laws of the State of Michigan applicable to contracts entered into and wholly to be performed within the State of Michigan.

18. **Interpretation of Voting Thresholds.** All voting requirement thresholds provided in this Agreement shall be calculated based on the number of members that are: (1) appointed and serving at the time the vote occurs; and (2) eligible to vote on the matter in question.
19. **Construction of Agreement.** This Agreement will be deemed to have been jointly drafted the Parties. Any asserted ambiguity may not be construed against any party.
20. **Certification.** The individuals signing this Agreement on behalf of the Parties certify by their signature that they are authorized to sign this Agreement on behalf of the party for whom they are signing and by doing so does hereby bind the party to the terms of this Agreement.

GRAND TRAVERSE COUNTY

Rob Hentschel 7/21/23
 Rob Hentschel, Chair Date
 Grand Traverse County Board of Commissioners

BATA

Richard Cochran 8-10-2023
 Richard Cochran, Chair Date
 BATA Board of Directors

LEELANAU COUNTY

 Ty Wessell, Chair Date
 Leelanau County Board of Commissioners

APPROVED AS TO FORM FOR COUNTIES OF GRAND TRAVERSE
 AND LEELANAU;
 COHL, STOKER & TOSKEY, P.C.
 By: MATTIS D. NORDFJORD
 On: July 13, 2023

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18. **Interpretation of Voting Thresholds.** All voting requirement thresholds provided in this Agreement shall be calculated based on the number of members that are: (1) appointed and serving at the time the vote occurs; and (2) eligible to vote on the matter in question.
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20. **Certification.** The individuals signing this Agreement on behalf of the Parties certify by their signature that they are authorized to sign this Agreement on behalf of the party for whom they are signing and by doing so does hereby bind the party to the terms of this Agreement.

GRAND TRAVERSE COUNTY

Rob Hentschel 7/26/23
 Rob Hentschel, Chair Date
 Grand Traverse County Board of Commissioners

BATA

 Richard Cochrun, Chair Date
 BATA Board of Directors

LEELANAU COUNTY

Ty Wessell 8/15/23
 Ty Wessell, Chair Date
 Leelanau County Board of Commissioners

<p>APPROVED AS TO FORM FOR COUNTIES OF GRAND TRAVERSE AND LEELANAU: COHL, STOKER & TOSKEY, P.C. By: MATTIS D. NORDEFJORD On: July 13, 2023</p>
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Exhibit A
MPO Boundaries

Map 1: Census Urbanized Area



Table 1: MPA Commuter Patterns

<i>Civil Division</i>	<i>Percent of Workers Who Worked Outside of Civil Division</i>	<i>Percent of Commuters, Commute Time to Work 15 - 29 Minutes</i>
Acme Township	75.3%	43.8%
Blair Township	82.1%	59.8%
East Bay Charter Twp.	72.5%	52.9%
Garfield Charter Twp.	67.0%	41.1%
Green Lake Township	74.0%	51.0%
Long Lake Charter Twp.	88.4%	61.1%
Peninsula Township	70.1%	40.8%
City of Traverse City	43.4%	35.1%
Whitewater Township	80.1%	41.8%
Elmwood Charter Twp.	83.6%	58.9%
Bingham Township	89.2%	50.2%

US Census Bureau 2021 ACS Data

Exhibit B
Competencies, Traits, and Skills for Board members.

General Competencies and Traits Expected for all Board Members	Description
Integrity	<i>We expect board members to have the highest ethical standards, a commitment to sound financial stewardship, and an understanding of and adhere to the “duty of loyalty” from well-established public or private nonprofit corporation law.</i>
Sound judgment	<i>We expect board members to demonstrate objectivity, adhering to the “duty of care” when deliberating and making decisions on behalf of the organization.</i>
Commitment to the organization’s mission, values and vision	<i>We expect board members to understand and support our purpose, goals, culture, and operating philosophy. Board members champion our organization through proactive communication and representation in the community.</i>
Willingness to devote sufficient time to Board work	<i>We expect board members to understand and commit to their duties as outlined in the Board Roles and Responsibilities Policy and By-laws.</i>
Leadership	<i>Board members have demonstrated leadership in other community activities and are willing to consider leadership roles in board activities and committees.</i>
Strong community ties	<i>Board members are reflective of the communities/populations we serve and are generally respected community members.</i>
Strong communication skills	<i>Board members have demonstrated abilities to listen and speak, effectively practicing the art of “appreciative inquiry” at meetings and events. Members consistently demonstrate respectful and productive communication habits.</i>
Support for meaningful diversity on the Board	<i>Board members support diversity of thought, race, ethnicity, gender, socio-economic status, age, and other indicators reflective of our communities.</i>
Consensus-building	<i>Board members are expected to work toward consensus, using debate and discussion to build a culture of mission-based decision-making.</i>
Visionary	<i>Board members demonstrate vision for the role of public transit, and promote the growth and progress of BATA’s region.</i>
Systems Thinking	<i>Board members are expected to have some experience in complex systems, with an understanding of how to consider long-term or wide-ranging ramifications in their deliberations and decision-making, as well as an understanding of effective collaboration with other organizations.</i>

Additional Competencies or Skill Sets that may be <u>considered individually</u> for a well-rounded board team	Description
Financial Acuity	<i>An understanding of and experience with financial and accounting principles.</i>
Organizational Performance Acuity	<i>An understanding of and experience with the fundamentals of performance metrics, LEAN, accountability systems, or similar principles.</i>
Marketing and Communications Acuity	<i>An understanding of and experience with media, marketing, and effective communication approaches.</i>
Group Facilitation skills	<i>An understanding and experience with getting every voice heard in an objective, productive and non-threatening manner. This is particularly important for those who aspire to chair the Board.</i>
Experience on other public board(s)	<i>An understanding of the unique needs, roles and characteristics of a public service organization.</i>
Thought leader in the community	<i>An ability to positively influence others in the community – those who will speak on our behalf and get others to support the organization.</i>
Executive experience	<i>An understanding of, and some experience with the challenges of leadership in a complex organization.</i>
Public Transit Knowledge and/or Transportation Experience	<i>A base of knowledge about and experience with transportation systems in general and public transit specifically.</i>
Geographic Diversity	<i>An even distribution of geographical differences across our jurisdiction: cities and villages, suburban townships, and rural townships.</i>

In addition, the BATA Board will strive to maintain membership that will allow the Board to be comprised of at least one representative of each of the following:

- City of Traverse City
- BATA rider or rider representative
- Multi-modal transportation representative (e.g., TART, Norte, or Groundworks)
- Urban township representative (*i.e.*, Garfield, East Bay, Acme, Elmwood)
- Rural township representative

PROJECT MANAGEMENT SERVICES AGREEMENT

FOR

**LEELANAU COUNTY RURAL BROADBAND PROJECT TO
PROVIDE HIGH-SPEED BROADBAND INTERNET THROUGH
A FIBER TO THE HOME (FTTH) PASSIVE OPTICAL
NETWORK (PON) TO RURAL HOMES AND BUSINESSES IN
THE COUNTY LACKING ACCESS TO HIGH-SPEED
BROADBAND INTERNET SERVICES**

BETWEEN

COUNTY OF LEELANAU

AND

DCS TECHNOLOGY DESIGN, LLC

TABLE OF CONTENTS

1.	Agreement Period and Termination.....	2
2.	Purpose of Agreement.....	2
3.	Services to be Performed by the Project Manager	2
4.	Project Team and Standards of Conduct.....	2
5.	Compensation	3
6.	Billing and Method of Payment.....	3
7.	Title to Records and Documents Pertaining to Activities Performed under this Agreement	3
8.	Confidentiality Requirements.....	3
9.	Compliance with the Law.....	4
10.	Nondiscrimination	4
11.	Independent Contractor.....	4
12.	Indemnification and Hold Harmless	4
13.	Liability Insurance.....	5
14.	Notices	5
15.	Waivers	5
16.	Amendment or Modification	5
17.	Assignment or Subcontracting.....	6
18.	Applicable Law and Venue	6
19.	Purpose of Titles.....	6
20.	Complete Agreement.....	6
21.	Survival Clause.....	6
22.	Invalid/Unenforceable Provisions	6
23.	Certification of Authority to Sign Agreement.....	6

EXHIBIT A – Project Manager’s December 1, 2023 Proposal

EXHIBIT B - Leelanau County’s Board Policy on Insurance Requirements

**PROJECT MANAGEMENT SERVICES AGREEMENT
FOR
LEELANAU COUNTY RURAL BROADBAND PROJECT TO PROVIDE HIGH-SPEED
BROADBAND INTERNET THROUGH A FIBER TO THE HOME (FTTH) PASSIVE
OPTICAL NETWORK (PON) TO RURAL HOMES AND BUSINESSES IN THE
COUNTY LACKING ACCESS TO HIGH-SPEED BROADBAND
INTERNET SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2023, by and between the **COUNTY OF LEELANAU**, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as the “County”) and **DCS TECHNOLOGY DESIGN, LLC**, with offices at 801 McKinley Rd., Chelsea, MI 48118 (hereinafter referred to as the “Project Manager”).

RECITALS:

WHEREAS, the County has determined that there is a need for the expansion and implementation of high-speed broadband services to rural residents and businesses within the County (hereinafter referred to as the “Project”); and

WHEREAS, the County, with a combination of both County and American Rescue Plan Act (ARPA) funds, is ready to have the Project move forward with the construction of new rural Leelanau County Broadband Fiber projects; and

WHEREAS, before proceeding with the Project, the County has determined that there is a need to obtain the professional services of an individual or entity with experience in construction of rural high-speed Broadband Fiber projects to serve as the Project Manager for the Project; and

WHEREAS, the Project Manager, who, pursuant to a Consultant Services Agreements entered into with the County in 2021 and 2022, has conducted and submitted to the County the findings of a Leelanau Rural Broadband Inventory Survey and assisted the County with the development of an outline of a County-wide strategy for planning the expansion and implementation of high-speed broadband services to all County residents and businesses and is staffed with personnel knowledgeable and experienced with the type of services required by the County, has submitted a proposal to the County, dated December 1, 2023, for the provision of the Project Management services the County requires for the Project (hereinafter referred to as the Proposal”); and

WHEREAS, the County accepts the Project Manager’s proposal, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED**, as follows:

1. Agreement Period and Termination. The term of this Agreement shall commence on January 1, 2024 and, unless this Agreement is prematurely terminated as authorized in this Agreement, shall continue through the Project's construction phase, which shall be completed by December 31, 2024. **It is understood that time is of the essence in the completion of the Project.**

It is understood and agreed by the parties hereto that all obligations of the Project Manager set forth in this Agreement, which extend beyond the completion date of the Project, shall survive said completion and remain in full force and effect for the time set for the performance of said obligations.

Notwithstanding any other provision in this Agreement to the contrary, the County may terminate this Agreement, with or without cause, upon five (5) calendar days' prior written notice to the Project Manager. In the event this Agreement is prematurely terminated without cause (i.e. for reasons other than the Project Manager's breach of the terms of this Agreement) as set forth herein, the Project Manager shall be compensated for services completed as of the effective date of termination in accordance with Sections 5, 6 and Exhibit A.

2. Purpose of Agreement. The purpose of this Agreement is to obtain the project manager services the County requires for the Project.

3. Services to be Performed by the Project Manager. The services to be performed and the reports and items to be provided to the County by the Project Manager pursuant to this Agreement shall be as set forth in the Project Overview and Scope Outline sections on pages 2-3 of the Project Manager's December 1, 2023 Proposal, excluding the proposed segment of work for the "four (4) Western Townships, ISP," which shall be negotiated at a later date. A copy of the Project Manager's Proposal is attached to this Agreement, labeled Exhibit A, and is incorporated by reference into this Agreement and made a part hereof. In the event a conflict between the terms set forth in this Agreement and the attached Proposal, the County, in its sole discretion, shall determine which of the conflicting provisions shall take precedence and prevail.

4. Project Team and Standards of Conduct. It is expressly understood and agreed that the lead professional that the Project Manager shall assign to the Project shall be Chris Scharrer, RCDD/NTS/OSP/WD. The Project Manager shall also provide such other professionals as may be required for the Project after providing the County with notice of such assignments and their qualifications. In the event there are any changes in the Project Manager's personnel assigned to the Project, the Project Manager shall provide the County with prior written notice identifying the person being replaced and the name, experience and qualifications of his/her replacement which must be equal to or greater than the person being replaced. Any person assigned to the Project and/or a replacement must be reported to the County before he/she commences any work required by this Agreement.

It is understood and agreed that for the purposes of this Agreement, any members of the Project Manager's team that are not the Project Manager's employees, shall be considered to be subcontractors of the Project Manager and that the Project Manager shall be solely responsible for compensating its subcontractors for work they may perform

on the Project. The County shall not make any payments to Project Manager's subcontractors. It is understood that the total of all sums paid by the County to the Project Manager shall not exceed the sum stated in this Agreement's Section 5.

In providing services under this Agreement, the Project Manager, its employees and subcontractors shall perform said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Failure to meet such standards shall be a material breach of this Agreement.

5. Compensation. It is understood and agreed that the combined total of all fees and expenses that the Project Manager may invoice/bill to the County for the performance of all services and providing all reports, products and materials required by this Agreement and the sum that the County shall pay Project Manager therefore may be up to but shall not exceed the sum of NINETY-SIX THOUSAND AND NO/100 DOLLARS (\$96,000.00).

6. Billing and Method of Payment. The County shall pay the Project Manager the compensation authorized in Section 5 in accordance with the Fee Proposal section on page 4 of the Project Manager's Proposal and pursuant to an invoice/bill setting forth such billing information as the County may require. It is understood and agreed that the total sum that may be invoiced to and/or paid by the County shall not exceed the sum stated in Section 5 of this Agreement.

The County, upon confirmation that the tasks for which it has been invoiced/billed has been completed, shall process and pay the invoice in accordance with the County's procedure for processing and payment of Accounts Payable.

7. Title to Records and Documents Pertaining to Activities Performed Under this Agreement. The County, with the exception of the Project Manager's personnel and financial records, shall have the sole and exclusive right, title and ownership to any and all records, documents, papers, reports, charts, maps, graphics or manuscripts, GIS files and raw data prepared for or pertaining specifically to the services to be performed under this Agreement. Upon completion or termination of this Agreement, all such materials shall be turned over to the County by the Project Manager. The Project Manager may retain reproducible copies of all such materials, but may not obtain any copyright, title or interest therein.

8. Confidentiality Requirements. No reports, information, documents, or any other materials given by the County to or prepared by Project Manager under this Agreement shall be made available to any individual or organization, other than the County, by Project Manager without the County's prior written approval. Information from a GIS or the output of a GIS, shall not, in any way, be transmitted, distributed, or sold to any third party, without the express written consent of the Leelanau County Board of Commissioners. It is understood and agreed that the Project Manager shall retain exclusive ownership of its proprietary process and methods, and that the County shall not disclose to any third party the process or methods employed by the Project Manager in developing the final product, unless such disclosure is required by law or court order.

9. Compliance with the Law. The Project Manager shall provide all the services to be performed under this Agreement in complete compliance with all applicable Federal, State and local laws, ordinances, rules and regulations.

10. Nondiscrimination. The Project Manager, as required by law, shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, gender identity, gender expression or disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status or political affiliation.

The Project Manager shall adhere to all applicable Federal, State and local laws, ordinances, rules and regulations and policies prohibiting discrimination.

Breach of this Section 10 shall be regarded as a material breach of this Agreement.

11. Independent Contractor. It is expressly understood and agreed that the Project Manager is an independent contractor. The employees, servants, agents, or subcontractors of the Project Manager shall in no way be deemed to be and shall not hold themselves out as the employees, servants or agents of the County and shall not be entitled to any fringe benefits of the County, such as, but not limited to, health and accident insurance, life insurance, longevity, or paid sick or vacation leave.

The Project Manager shall be responsible for the supervision of its personnel and for paying all compensation due its personnel for services they have performed under this Agreement and for withholding and payment of all applicable taxes, including, but not limited to, income and social security taxes to the proper Federal, State and local governments. The Project Manager shall carry workers' compensation insurance coverage and pay unemployment compensation coverage for its personnel, as required by law.

12. Indemnification and Hold Harmless. The Project Manager shall, at its own expense, protect, defend, indemnify, save and hold harmless the County, its elected and appointed officers, employees, and agents from all claims, damages, lawsuits, costs and expenses, including, but not limited to, all costs from administrative proceedings, court costs and attorney fees, that the County and its elected and appointed officers, employees, and agents may incur as a result of any breach of this Agreement, violation of Federal or State laws and/or rules or regulations, or negligent acts or omissions of the Project Manager or any of its employees, agents or subcontractors that may arise out of this Agreement.

Pursuant to Act No. 165 of the Michigan Public Acts of 1966 (MCL 691.991), as amended, the responsibility for indemnification set forth in this Section 12 shall be limited to the degree of fault of the Project Manager, or its officers, employees, agents or subcontractors.

The Project Manager's indemnification responsibilities under this section shall include the sum of damages, costs and expenses which are in excess of the sum of damages, costs and expenses which are paid out on behalf of or reimbursed to the County, its officers, employees, servants and agents by the insurance coverage obtained and/or maintained by the Project Manager.

13. Liability Insurance. The Project Manager at all times during the term of this Agreement shall maintain insurance that meet the requirements of the Leelanau County Board of Commissioners' Policy on "Insurance Requirements." A copy of said Board Policy is attached to this Agreement labeled Exhibit B. The attached Exhibit B is incorporated by reference into this Agreement and made a part hereof.

14. Notices. Any notice required to be given pursuant to the terms and conditions set forth in this Agreement shall be in writing and shall be sent by first class mail to the County at:

Deborah Allen, Leelanau County Administrator
Leelanau County Government Center
8527 E. Government Center Dr., Suite 101
Suttons Bay, MI 49682

and to the Project Manager:

Chris Scharrer, Lead Technology Architect and Managing Member
DCS Technology Design, LLC
801 McKinley Rd.
Chelsea, MI 48118

15. Waivers. No failure or delay on the part of either of the parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

In no event shall the making by the County of any payment due to the Project Manager constitute or be construed as a waiver by County of any breach of a provision of this Agreement, or any default which may then exist, on the part of the Project Manager, and the making of any such payment by the County while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the County in respect to such breach or default.

16. Amendment or Modification. All modifications, amendments or waivers of any provision of this Agreement or the services to be performed hereunder, shall be made only by the mutual consent of the parties hereto set forth in writing and signed by the authorized representatives of both parties.

17. **Assignment or Subcontracting.** The Project Manager shall not assign, subcontract or otherwise transfer its duties and/or obligations under this Agreement, without the prior written consent of the County.

18. **Applicable Law and Venue.** This Agreement shall in all respects be governed by and construed according to the laws of the State of Michigan, without regard to any Michigan choice of law rules that would apply the law of any other jurisdiction to the extent not inconsistent with or pre-empted by federal law.

The County and the Project Manager acknowledge and agree that in the event any legal or equitable action arises out of or is in any way related to or regarding this Agreement such action shall be in a Michigan Court whose jurisdiction and venue is established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules. In the event an action is brought in or moved to a Federal Court, the venue for such action shall be the Federal Judicial District of Michigan, Western District, Southern Division.

19. **Purpose of Titles.** The titles of the sections set forth in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

20. **Complete Agreement.** This Agreement, and the attached Exhibits A and B, contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

21. **Survival Clause.** All rights, duties and responsibilities of any party that either expressly or by their nature, extend into the future, including, but not limited to confidentiality, indemnification, waivers, and applicable law and venue provisions, shall extend beyond and survive the end of the term or termination of this Agreement.

22. **Invalid/Unenforceable Provisions.** If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Where the deletion of the invalid or unenforceable clause or provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable.

23. **Certification of Authority to Sign Agreement.** The people signing on behalf of the parties to this Agreement certify by their signatures that they are duly authorized to sign this Agreement on behalf of said parties and that this Agreement has been authorized by said parties.

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY SIGNED THIS PROJECT MANAGEMENT SERVICES AGREEMENT FOR LEELANAU COUNTY RURAL HIGH-SPEED BROADBAND PROJECT IN THE SPACES AND ON THE DATES PROVIDED BELOW.

COUNTY OF LEELANAU

By: _____
Ty Wessell, Chairman
County Board of Commissioners

Date

DCS TECHNOLOGY DESIGN, LLC

By: _____
(Signature)

Date

Name: _____
(Print or Type)

Title: _____
(Print or Type)

**APPROVED AS TO FORM FOR COUNTY OF LEELANAU:
COHL, STOKER & TOSKEY, P.C.
By: JENNIFER L. BLISS
On: January 22, 2024**

N:\Client\Leelanau\Agreements\DCS Technology Design\2024\2024 Project Mgmt Svs Agr w DCS Technology Design for High Speed Broadband Svcs v2.docx Leelanau Co. #21-020E

EXHIBIT A

PROJECT MANAGER'S DECEMBER 1, 2023 PROPOSAL



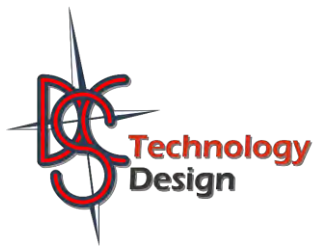
Leelanau County

8257 E Government Center Drive, Suite 101
Suttons Bay, Michigan 49682

Project Management Services
Rural Broadband

December 1st, 2023





February 8th, 2022

Leelanau County Board of Commissioners
Deb Allen, County Administrator
8257 E Government Center Drive, Suite 101
Suttons Bay, Michigan 49682

RE: Project Management Services – Rural Broadband

Thank you for the opportunity to offer the attached proposal for Project Management services for the ongoing construction of Broadband Fiber projects in Leelanau County. We had all hoped to be seeing these projects concluded by the end of 2023, but we also know what obstacles we have faced in obtaining that goal. Point Broadband has had a couple of setbacks but is now moving forward with a schedule to complete their commitment in 2024. One goal of this proposal will be to help Point meet that commitment earlier in the year than later.

We also expected to have the remaining four western townships under some type of agreement and well underway by this time as well. Although we don't have the firm commitment yet, we appear to be only weeks away from having a plan in place that will also see the western townships completed in 2024. With this proposal, we will strive to make sure that the ISPs' commitments are met completely, and that we continue to work with the Board of Commissioners and the community to address all issues professionally and expeditiously. We genuinely appreciate this opportunity, and hope that this proposal, and the work associated with it exceeds your expectations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CS', is written in a cursive style.

Chris Scharrer, RCDD/NTS/OSP – CTS-D
Founder and CEO
DCS Technology Design, LLC



Project Overview

The current contract is set to expire December 31st, 2023, which provided project management services for seven townships (Elmwood, Solon, Bingham, Centerville, Suttons Bay, Leland, and Leelanau) and portions of Cleveland and Kasson townships for the oversight of Point Broadband activities relative to these areas. The current DCS contract also covered coordination and planning for Broadband services to Glen Arbor, Empire, and the remainder of Kasson and Cleveland Townships, however, contract negotiations with potential ISPs and project management of these areas were not included. Generally, the scope of the contract has been followed, but as you know, the duration of the work that Point Broadband is performing is being extended into 2024. And the coordination and planning for the western townships has probably gone beyond what we anticipated, but my commitment to the County and the Project has been my top priority.

Moving into 2024, I think the scope is still pretty clear, and DCS has demonstrated that we will stay committed to this project for the duration and do “whatever it takes” to serve the residents of this county. We must get an ISP engaged for the western townships and continue to guide and oversee Point Broadband to reach all 3100+ unserved homes in their service area. We currently have a commitment from Point to complete the unserved portions of their project by June of 2024, but realistically, I believe we need to maintain oversight of their activities as they continue to build into existing service areas as they have planned, while making sure that all unserved homes get priority. We also need to get a funding plan in place, and I believe we are very close to an agreement with Charter Communications that will fill almost all of the remaining unserved gaps throughout the western townships. We have separate discussions going on currently with the Sleeping Bear National Parks to reach about 15 locations, that are being set aside from the Charter scope due to their remote locations and extremely high costs.

As this project has shown, it is difficult to predict what challenges we will face in 2024, but we know we have a goal to get the Point Broadband portion done by June, and to have a project plan in motion for the western townships with a schedule yet to be determined.



Scope Outline

- Work with County Legal Team on all legal issues
- In coordination with the ISPs, continue to update and enforce a master workplan/schedule of work to be performed.
- Work with the ISPs on coordination and cost saving initiatives with other county interests, potential suppliers, or authorities.
- Continue working with the established budget/schedule of values for the County and ARPA contributions to the project. Develop any SOV requirements for the Western Townships
- Independently perform verification of work as needed: including field verification of progress throughout the duration of the project to assure all unserved locations are completed.
- Receive/review invoices for accuracy before county authorizes payment. Present reviewed invoices to county administration with recommendations for payment
- Attend meeting, as required, including public meetings that may occur outside normal work hours.
- Provide status updates as needed to the county's administrator, commissioners, and township supervisors (based on specific District and Township activities), and LIFT Committee leadership.
- Collaborate with County IT/GIS to create, maintain and regularly update a user friendly, interactive map of the buildout by vendors, schedule/work in progress/completed work for the County's website.
- As locations are completed, update GIS records in coordination with Leelanau County GIS personnel, to be posted on the public information web site.
- Provide a final written report at the conclusion of the project.



Fee Proposal

As this project has shown, it is difficult to predict what challenges we will face in 2024, but we know we have a goal to get the Point Broadband portion done by June, and to have a project plan in motion for the western townships with a schedule yet to be determined. Our current contract excluded travel and lodging, and assumed we would use our local resources for certain inspection requirements while conducting all other business virtually. We still have the local resources and will continue to be virtual for most of our activities, but as we have been doing, I will personally travel and be available to be there in person when needed. Our travel clause in the current contract is being eliminated.

For the 2024 calendar year, the proposal is for a fixed fee of \$156,000.00 total, broken down as follows.

Project Segment	Duration	Cost
7 Eastern Townships, Point Broadband	6-12 Months	\$96,000.00
4 Western Townships, ISP TBD (likely Charter Communications)	12 Months	\$60,000.00
DCS Principal Travel Expenses (reimbursable based on IRS guidelines) See below		
Proposed Fixed Fee		\$156,000.00

This would be invoiced monthly, starting January 1st at \$13,000 per month, with any remaining months due in full for either respective project if completed earlier in 2024. That means that if we can get Point Broadband to complete their work by June of 2024, (6 months into 2024), DCS can invoice for the remaining \$48,000 (lump sum) for that portion of the contract. The western townships would still have a balance of \$30,000 to continue monthly (\$5,000) until they are completed.



Clarifications & Assumptions

1. All public interface expenses (website, mailings, contact phone numbers, etc.,) shall be the responsibility of Leelanau County.
2. Proposal includes vehicle, travel and other associated expense for field verification work as needed.
3. The proposal does not include additional printing, mailing or other costs that may be associated with any type of information campaign.
4. Proposal includes travel limited to within Leelanau County. Additional travel at the request of Leelanau County Administrator may be invoiced at T&M rates TBD.
5. Proposal includes all software licensing as outlined in the proposal (ArcGIS, Project, OneDrive, etc.) Additional software requirements (if requested by the County) shall be provided at County expense.

EXHIBIT B

LEELANAU COUNTY'S BOARD POLICY ON INSURANCE REQUIREMENTS

**LEELANAU COUNTY
BOARD POLICY**

GENERAL SUBJECT:	Administration/General (County Administrator)	Policy No.	13
SPECIFIC SUBJECT:	Insurance Requirements Policy	Adopted:	04/17/1990
		Revised:	02/15/1994
		Revised:	05/21/2013
		Revised:	12/19/2017

APPLIES TO: All Leelanau County Employees and Elected Officials.

PURPOSE: The Leelanau County Board of Commissioners hereby establishes a policy on insurance requirements for contractors, vendors, individuals, and/or organizations receiving monies from Leelanau County. The purpose of these requirements is to assure that the parties referenced above are accepting appropriate responsibility for insuring their own operations, and that they are not unduly exposing Leelanau County taxpayers to liability and/or loss.

The Contractor, and any and all of their subcontractors, shall not commence any work until they have met the insurance requirements outlined in this policy. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to Leelanau County and have a minimum A.M. Best Company (www.ambest.com) Insurance Report rating of not less than A or A- (Excellent).

1. Workers' Compensation Insurance: The Contractor shall procure and maintain during the life of the contract, Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan. Workers' Compensation and Employers' Liability Insurance are required if the party hires one or more persons or currently has employees. If a party currently does not have any employees, and is a sole proprietor, an affidavit must be filed with the County Clerk stating that the party currently has no employees and will not hire any while working for Leelanau County as a contractor or a subcontractor, etc. If a party currently does not have any employees and is incorporated (Inc.) or a limited liability corporation (LLC), they must file a Notice of Exclusion, WC-337, with the State of Michigan and then provide a copy of the State-approved document to the County Clerk.

2. Contractor's Tools & Equipment: The Contractor shall be responsible for insuring all its tools, equipment and materials which it may leave at the Project's work site. The County shall not be responsible for any loss or damage to the Contractor's tools, equipment and materials.
3. Professional Liability (Errors and Omissions) Insurance: [For contracts for professional services, e.g., Architect, Engineers, Doctors, Dentist, etc.] The Contractor shall possess Professional Liability Insurance (errors and omissions) with limits of not less than \$1,000,000.00 per occurrence or claim. If the Professional Liability Insurance is on a claims-made basis, the Contractor shall purchase extended reporting period "tail" coverage for a minimum of three (3) years after termination of the Agreement.
4. Commercial General Liability Insurance: The Contractor shall procure and maintain during the life of their contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury, and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse, and Underground (XCU) Exclusions, if applicable.
5. Motor Vehicle Liability: The Contractor shall procure and maintain during the life of their contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability not less than \$1,000,000.00 per occurrence combined single limit, Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
6. Deductibles: The Contractor shall be responsible for paying all deductibles in its insurance coverages.
7. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating that the following shall be **Additional Insureds**: Leelanau County, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. The Contractor's insurance coverages shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, regardless of whether said other available coverage be primary, contributing or excess.
8. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to the office of the Leelanau County Administrator.

9. Owners' and Contractors' Protective Liability: [For Contracts for Construction or Large Repair or Maintenance Projects such as road work, sewer work or building projects] The Contractor shall procure and maintain during the life of the contract, a separate Owners' and Contractors' Protective Liability Policy with limits of liability not less than \$1,000,000.00 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury, and Property Damage. Leelanau County shall be "Named Insured" on said coverage. Thirty (30) day Notice of Cancellation shall apply to this policy.

10. Proof of Insurance Coverage: The Contractor shall provide Leelanau County at the time that the contracts are returned by him/her for execution, A "Certificate of Liability Insurance," on Accord Form #25, with the necessary coverages included, as listed below:
 - a. Certificate of Insurance for Workers' Compensation Insurance;
 - b. Certificate of Insurance for Commercial General Liability Insurance;
 - c. Certificate of Insurance for Vehicle Liability Insurance;
 - d. Certificate of Insurance for Professional Liability Insurance on Projects where such insurance is required.
 - e. Original Policy, or original Binder pending issuance of policy, for Owners' & Contractors' Protective Liability Insurance, where such insurance is required.
 - f. If so requested, Certified Copies of all policies mentioned above will be furnished.

11. If any of the above coverages expire during the term of the contract, the Contractor shall deliver renewal certificates and/or policies to the Leelanau County Administrator at least ten (10) days prior to the expiration date.

Failure to comply with these insurance requirements could result in the termination of a contract or delay in receipt of funds. Questions regarding the scope of applicability of this policy may be directed to the Leelanau County Administrator.