

AGENDA

Lapeer County Board of Commissioners

Broadband Internet Committee

September 28, 2023

10:30 AM

Meeting located in room 302 outside the county administrative office, subject to change.

1. CALL TO ORDER BY CHAIRMAN/VICE-CHAIR

- a) Roll Call
- b) Approval of Agenda
- c) Approval of Minutes from the September 8th, 2023 meeting

2. OLD BUSINESS

- a) Broadband Resolution
- b) Request for Information from ISPs about using a county “Middle-Mile” network

3. NEW BUSINESS

- a) Dig Once Policy

4. RECESS/ADJOURN

BROADBAND COMMITTEE

SEPTEMBER 7, 2023

***CONFERENCE ROOM 302 – ADMINISTRATION OFFICE, COUNTY COMPLEX
255 CLAY STREET, LAPEER, MI 48446***

Chairman William Hamilton called the meeting to order at approximately 4:04 p.m. in the Conference Room 302 in the Administration Office.

Members Present: Commissioners William Hamilton, Tom Kohlman, and Truman Mast; Moses Sanzo, Administrator/Controller; Jackie Arnold, CFO; and Joe Suma, Drain Commissioner.

Others: Doreen Clark, Administration Office Manager; Virtually: Mike Bartley, ASI; and Bruce Patterson, Entry Point.

ENTRY POINT PRESENTATION

Mr. Bruce Patterson of Entry Point gave a virtual presentation regarding the broadband project and discussion followed regarding the feedback and thoughts on the interim report. Discussion was held regarding the Middle Mile funding that was not granted to Lapeer County and the possible reasoning. He stated that he feels Lapeer County needs a strong relationship with the schools. He emphasized that if Lapeer County wants to proceed with the Broadband project, the main benefit to concentrate on is to use it to IMPROVE COUNTY OPERATIONS, especially assisting public safety entities that will benefit from it and have better connectivity rather than single path communications, and for ECONOMIC BENEFIT for outside of the County, we need to determine which ISP to partner with and prepare a timeline and revenue projections. He stated that the County has to go into this project with the economic benefits in mind and not to make revenue, as the County (a governmental agency) is not allowed to charge more than the cost to provide the service like private companies can, which could lead to liability issues.

Further questions and discussion followed and it was suggested to create an RFI to find out which potential ISP's may be interested in partnering with the County. Mr. Sanzo noted the following next steps needed for Broadband: 1) a Resolution stating Broadband is essential; 2) Need to create a countywide Broadband Policy; and 3) Determine the County's Broadband model.

Chairman Hamilton stated that he would draft a resolution for the next Broadband Committee meeting and an RFI.

Motion by Suma, supported by Sanzo, that a draft resolution in support of a Broadband project in Lapeer County as well as a draft RFI be prepared and brought to the next Broadband Committee meeting for further consideration. Motion carried unanimously.

Further questions and discussion followed.

ADJOURN

Motion by Mast, supported by Kohlman, to adjourn the meeting. Motion carried unanimously. 5:15 p.m.

William Hamilton, Chairman
Lapeer County Broadband Committee

Minutes prepared by: Doreen Clark, Office Manager

**LAPEER COUNTY
PROPOSED RESOLUTION
BROADBAND MIDDLE MILE PROJECT**

- WHEREAS,** Governor Whitmer, Lt. Governor Gilchrist, U.S. Senators Debbie Stabenow and Gary Peters, have gone on the record that high speed broadband is a top infrastructure priority; and,
- WHEREAS,** broadband is the only true future proof internet access technology available today, is an essential component of everyday life in the 21st century, and is defined as a minimum of 25 Mbps download and 3 Mbps upload; and,
- WHEREAS,** in Lapeer County alone 62% of households reported not having any connectivity to broadband at their homes; and,
- WHEREAS,** in Lapeer County, 77% of Broadband Survey respondents with internet access reported not having the minimum of 25mb download/3 mb upload speeds to be considered a broadband connection; and,
- WHEREAS,** in Lapeer County, 98% of Broadband Survey respondents with internet access reported not having the modern standard of 100mb download/20mb upload speeds to be considered a broadband connection; and,
- WHEREAS,** the COVID-19 pandemic has demonstrated the need for reliable high speed broadband internet access at homes and businesses; and,
- WHEREAS,** the digital divide is exacerbating the homework gap and learning for students without broadband access at home; and,
- WHEREAS,** educators are burdened with having to develop instruction for students both with and without high-speed broadband at home; and,
- WHEREAS,** lack of broadband access stifles entrepreneurship and attraction of both businesses and talent; and ,
- WHEREAS,** lack of broadband access negatively impacts economic development, property values, personal prosperity, education, health and safety and overall quality of life; and,
- WHEREAS,** farmers rely on high-speed broadband to monitor their crops, maintain their essential and costly equipment as well as tracking commodity prices, promoting agri-tourism and selling their products; and,
- WHEREAS,** having broadband access enables cost savings in many areas of personal commerce, yielding hundreds of thousands of dollars each year in overspending by those without broadband; and,
- WHEREAS,** communities without broadband have difficulty leveraging capabilities like TeleHealth, online banking, virtual meetings, working remotely and distance learning; and,

WHEREAS, broadband access can combat the isolation experienced by our seniors and those living alone by enabling them to stay connected to family and friends; and,

WHEREAS, broadband is an essential infrastructure that has heretofore been allowed to operate as an unregulated monopolistic utility resulting in a lack of competition; and,

WHEREAS, the broadband coverage data reported by the Federal Communication Commission (FCC) Form 477, is self-reported by incumbent service providers and aggregated to the census block level making the data unreliable and lacking in the granularity needed for accurate coverage inferences; and,

WHEREAS, special assessment districts are not allowed for communication infrastructure; and,

WHEREAS, wireless solutions are a line of site technology that cannot reach everyone; and,

WHEREAS, 5G is a wireless technology that only enhances existing internet service and requires high speed fiber optic cable towers every 328 feet; and,

WHEREAS, building large scale cell towers is prohibitively expensive and must be fed by fiber optic anyway; and,

WHEREAS, satellite isn't a viable solution due to low data limits, high lag times and diminished or dropped connectivity; and,

WHEREAS, data caps make true unlimited access to high-speed connectivity unaffordable; and,

WHEREAS, "Unlimited" data plans throttle speeds down to a crawl at unreasonably low use thresholds necessitating expensive data add-ons to maintain a level of connectivity with minimal lag time and buffering; and,

WHEREAS, incumbent internet service providers (ISPs) such as Verizon, Comcast, Charter, Frontier, SBC and AT&T not only lobby against measures supporting expansion of Michigan's high speed fiber network into less densely populated areas but also refuse to expand into or provide access to their high-speed fiber optic infrastructure in these under and un-served communities.

NOW, THEREFORE, BE IT RESOLVED, that the Lapeer County Board of Commissioners urges Governor Whitmer, Lt. Governor Gilchrist, Michigan's State Legislators and Michigan's Congressional Delegation to enact measures that will achieve affordable and reliable high-speed broadband access.

Tom Kohlman, Chairman
Lapeer County Board of Commissioners

I hereby certify that the foregoing Resolution was adopted by a majority vote at the regular meeting of the Board of Commissioners of the County of Lapeer, State of Michigan, on this ____ day of _____, 2023.

Theresa Spencer, County Clerk
Clerk of the Board



Lapeer County Board of Commissioners

255 Clay Street, Suite 301

Lapeer, Michigan 48446

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REQUEST FOR INFORMATION

RFI NO. XX-XXXX

INTERNET SERVICE PROVIDERS

Request for Information on Partnerships to Build a Broadband Middle-Mile Fiber Optic Infrastructure.

Issue Date: October XX, 2023

Due Date: November 30, 2023 by 4pm ET

RFI Background and Purpose

Lapeer County, Michigan, is actively exploring opportunities to improve broadband connectivity for its residents, businesses, and public entities. As part of our commitment to bridge the digital divide and enhance the quality of life in our community, we are seeking information from experienced Internet Service Providers (ISPs) interested in collaborating with us to leverage a County-owned Middle-Mile fiber optic infrastructure for the deployment of a robust last-mile fiber optic network within Lapeer County.

This Request for Information (RFI) aims to gauge the interest and capabilities of ISPs to partner with Lapeer County in delivering high-speed, reliable internet access to underserved areas within our jurisdiction. By leveraging a County owned Middle-Mile fiber optic infrastructure, we intend to extend broadband coverage to areas where residents, businesses, and public entities currently lack access to reliable internet services.

The County seeks comment from last-mile providers who may be able to benefit from these types of networks. It also seeks to identify areas in which a public private partnership likely is required to spur the availability of required services. In areas requiring a public-private partnership, the County seeks to identify potential private partners with which it can work together to analyze the options for bringing service. By issuing this RFI, the County seeks to provide broadly the opportunity for companies to identify their interest in working creatively with Lapeer County, Michigan.

The County of Lapeer, Michigan ("County") issues this Request for Information (RFI) to gauge the interest of for-profit and non-profit entities in forming a public-private partnership (PPP) with the County to make Gigabit per second-class bandwidth available to all Lapeer County homes and businesses. This initiative aims to enhance the broadband connectivity of the County's residents, businesses, and anchor institutions by expanding the range, quality, and market availability of broadband and data transport services.

The County intends to identify one or more potential partners to enable or directly provide high-capacity broadband services over fiber to end users within the County. The County believes there is market potential to meet the County's goals related to broadband connectivity and looks forward to responses that consider a variety of business models to share technological and operational responsibilities and financial risk with the County in innovative ways.

We seek highly innovative responses that maximize efficiency of the investment while providing reliable and high-quality services. Respondents may work together with other respondents on a joint response and/or be an incumbent service provider and/or competitive providers, nonprofit organizations, public cooperatives, or nontraditional providers.

The County will review responses based on the respondents' experience, ability to address the County's goals, approach to responsibility and risk sharing, and other factors. Following the evaluation, the County intends to work with top candidates to better understand their response and request additional information. If there is sufficient market interest through the RFI responses and other County outreach, the County intends to propose to the Board of Commissioners that they move forward with negotiations to establish a PPP. It is not the County's intent to issue a subsequent RFI, though it reserves the right to do so.

Who Should Respond to This RFI

This Request-For-Information is directed to two categories of respondents:

1. Last-mile broadband service providers. Lapeer County seeks information from broadband service providers who offer internet services to users, including residential and business users. In particular, the County is looking for responses from providers who service customers in Michigan or those who may be interested in developing operations to serve Michigan customers.
2. The County seeks information from private investment funds or other businesses that make investments and develop broadband infrastructures, including but not limited to those who do so through public-private partnerships.

County Vision

Lapeer County's vision is to provide a world-class community telecommunications infrastructure for the 21st century and beyond, facilitated by constructing a County Middle Mile fiber optic infrastructure. Lapeer County's residents have expressed overall support for telecommunications service, including High-speed internet. Broadband can enable communities, otherwise at a disadvantage, to participate on a more equal footing in the emerging global economy. The internet can enable many types of businesses to locate anywhere—if there is enough bandwidth at an affordable price. High-tech firms and other companies that rely on high connection speeds will go where they can flourish. Residential rental property owners understand that many of their potential tenants require high-speed broadband for entertainment and to stay connected to their school and work. In addition, Broadband-enabled communities generally have better quality of life, improved job creation and retention, and higher property values.

We acknowledge that high-speed broadband is a critical service for quality of life, on par with roads, water, sewer, and electricity. Every home, business, nonprofit organization, government entity, and place of education should have the opportunity to connect affordably, easily, and

securely. We intend to empower the community and Lapeer County businesses to be network economy producers, not just consumers of network information and data services. Further, we intend to provide our stakeholders with the broadband capacity, affordability, and local, regional, and national connectivity they need to compete in the global marketplace.

To reach these goals, we seek to work with a successful respondent(s) to deliver:

Increased competition: This partnership will further the competitive landscape within the County for broadband product offerings.

Countywide access: The partnership will provide the infrastructure to enable Lapeer County homes, business, and public or private institution the opportunity to access affordable, fiber-based, high-speed broadband connection to the Internet.

Net-Neutrality: The partnership, along with the goal of delivering broadband service, will deliver competitive unfettered data offering that does not impose caps or usage limits on one use of data over another. All application providers (data, voice, video, cloud services) are equally able to provide their services, and the consumer's access to advanced data opens the marketplace.

Future-oriented: The partnership will accommodate and assume ever- changing technology and consider ways to evolve services to meet Lapeer County's future needs in addition to today's needs.

Consumer Privacy: The partnership will prioritize the importance of consumer privacy with accountability measures and a description of how the successful respondent(s) will provide and ensure privacy for consumers.

Symmetrical services: A range of broadband offers should be offered including 1Gbps service, symmetrical services, and preferably without contract requirements.

Participation in the Affordability Connectivity Program (ACP): A key requirement that respondents should acknowledge and outline any other affordability programs they plan to offer in conjunction with ACP, including plans if the ACP is retired.

One of our key priorities is that *all* members of the community have access to these new fiber-based broadband services. Our goal is to have all properties in the County with a marketable service within 4 years from agreement execution, ideally before the end of 2027.

We understand that ubiquitous access may seem implausible for some providers, and we are prepared to work with the successful respondent(s) to make this an attainable goal. Respondents that believe this goal to be a barrier to their ability to successfully partner with the County should clearly articulate their reasoning and offer options.

Project Need

- The County of Lapeer seeks a successful respondent(s) to operate fast, affordable broadband Internet and data services via a PPP and/or privately constructed fiber optics to meet the County's broadband goals. County officials have prioritized pursuing the development of Middle-Mile fiber infrastructure. Serve growing demand for affordable, reliable, and sophisticated broadband technology; and
- Support a thriving business environment.

The County will consider a range of construction, operation, and ownership models for the Middle-Mile. The County and the selected successful respondent(s) will collaboratively determine the most mutually beneficial partnership structure, which may include cost-sharing, infrastructure leasing, and profit-sharing arrangements. The County is prepared to consider various business models, which could include, but are not limited to, the following scenarios:

- Lease County-owned fiber backbone infrastructure for privately-owned distribution and lateral infrastructure to provide services.
- Lease County-owned conduit infrastructure for privately-owned distribution and lateral infrastructure to provide services.
- Contract with the County to manage and provide services on a fiber network built, owned, and operated by the County.

The County will also consider any combination of these models as well as alternative suggestions proposed by respondents.

Project Goals

Respondents to this RFI should indicate whether and how their responses serve the County's goals:

1. Provide the infrastructure to every Lapeer County home, business, public facility, and private institution to enable residents, workers, and visitors the opportunity to access affordable, high-speed broadband connections to the Internet and other networks.
2. Respond to the needs of Lapeer County's communities, residents and businesses, non-profits, and organizations.
3. Offer unique services and speeds not currently provided in the County (e.g., gigabit per second (Gbps) speeds, symmetrical services, services that continue operating when commercial power fails, service level agreements, and direct connectivity between locations on the network, if requested
4. If proposing any advanced wireless services, share how they would add value to the fiber system.
5. Consider ways for the County and the successful respondent(s) to share financial and operational risks.

6. Respond to the needs of the businesses connected to the fiber network.
7. In addition to ACP participation, provide high-speed, cost-effective services for price-sensitive customers that may include flexible pricing plans that assist with narrowing the digital divide and ensure access to all County residents.
8. Provide stakeholders with the broadband capacity, affordability, and local, regional, and national connectivity they need to compete successfully in the global marketplace.

For the network to have the intended economic and quality-of-life impacts, we consider both cost and availability of service to be important. We encourage responses that address both to maximize adoption of service. Respondents should also include their appraisal of the Lapeer County, Michigan internet service market and anticipated metrics for success to support their proposed business model. They should also indicate how their proposed business model differentiates from what is already available to Lapeer County, Michigan in terms of availability, capabilities, price, etc.

RFI Response Requirements

The County of Lapeer requests the following information—in concise and clear detail—from respondents. **All responses must adhere to the following response requirements and page requirements.** All responses must follow the exact order below and use the appropriate response headers. Start a new page for each response header. All responses must adhere to 1" margins and use 12-point Calibri font. Failure to follow these instructions may result in rejection of the response.

1. **Cover Letter:** Please include company name, address of corporate headquarters, address of nearest local office, contact name for response, and that person's contact information (address, phone, cell, email, other). Keep response to one (1) page.
2. **Business Model Summary:** Summarize the business model you intend to use for the partnership. This should be a concise explanation of the key components of your business model, including but not limited to the division of network and operations responsibility and ownership. Keep response to no more than two (2) pages.
3. **Affirmation:** Affirm that you are interested in this partnership and address the core project goals and requirements listed above. If you cannot meet any of those requirements, indicate the requirements to which you take exception, and provide an explanation of the exceptions. Keep response to no more than two (2) pages.
4. **Experience:** Provide a statement of experience discussing your firm's past performance, capabilities, and qualifications. Identify other networks your firm has designed, built, maintained, or operated; include the levels of broadband speed, availability, and adoption among different categories of end users and unique capabilities or attributes. Discuss partnerships with other service providers, government, or nonprofit entities you have undertaken, particularly any involving dark fiber leasing. Describe the nature of the projects and your firm's role. For entities currently providing communication services in or near Lapeer County, describe your current service footprint in the County, including a description of the type of infrastructure and services you currently offer and the technology platform(s) used. Explain how your firm is a suitable respondent for this project. Keep response to no more than two (2) pages.

5. **Technical and Operations:** At a high level, summarize the technological and operational approach you would use for this project.
 - a. How would you use technology to meet the County's goals? Keep response to one (1) page.
 - b. What approach would you use to interconnect with the Internet and other public networks? Keep response to one (1) page.
 - c. How would you perform network management? Keep response to one (1) page.
 - d. Under what scenarios would you require route diversity or other special features in the County fiber? At what sort of facility (or facilities) would you place network electronics? Keep response to one (1) page.
 - e. Provide a High-level network design utilizing the County's backbone. Keep response to one (1) page.
6. **Business Structure:** Summarize the business approach you would use for the project. How would your business plan help to meet the County's goals? What are the key assumptions? What are your main areas of risk, and how can the County help reduce the risks? What are the County's main areas of risk, and how can you help reduce the risks? Keep response to no more than three (3) pages.
7. **Countywide Access:** Explain how your business plan and schedule for network construction and service implementation will support the County's vision of ubiquitous access to Gigabit per second-class broadband infrastructure. Keep response to one (1) page.
8. **Competitive Marketplace:** Explain how your business structure and partnership plan will create a competitive local broadband marketplace, consistent with the county's vision and goals for the partnership. Keep response to one (1) page.
9. **Affordability:** Explain how your business structure and partnership plan will meet the County's goals for affordable services. The County is interested in affordable internet services for both residents and the business community and will look to the partner to propose solutions that meet these goals. Keep response to one (1) page.
10. **Future-oriented:** Explain how your business model prioritizes a future-oriented approach, your ideas for positioning Lapeer County to be ready for the digital future, and how your technologies are best suited to support changes to internet services in the future. Keep response to one (1) page.
11. **Net-neutrality:** Describe your business' commitment to net neutrality and how it relates to the way you provide internet services. Keep response to one (1) page.
12. **Consumer privacy:** Describe your ability to provide secure network service or infrastructure that complies with public safety and other security and privacy regulations and requirements. Also, please describe how you will protect the privacy of network users—an extremely important issue for providers today. Keep response to a maximum of two (2) pages.
13. **Financing and Funding:** What would be your approach to financing the project? Please explain your vision as it relates to further County investment; lease or purchasing of existing fiber infrastructure; and other arrangements that may be part of a PPP. Keep response to two (2) pages.

Because the RFI is an initial procurement step and is subject to open records laws, we are not asking at this time to provide detailed, proprietary information. If the County moves forward in discussions with a respondent, we would expect to see detailed cost information about how the project would be financed (capital and operations) and guaranteed.

14. **Schedule:** Describe your proposed schedule for implementing service. Offer a timeline with key milestones. Would you be able to begin service before the entire network is constructed? Are there areas of the County you would recommend be constructed first? Keep response to two (2) pages (one page for response, one page for schedule).
15. **Pricing:** Provide your approach to pricing the proposed services. For managed services, please describe factors impacting non-recurring costs (estimated fiber path distances, equipment redundancy, etc.); recurring costs for varying capacity levels; and any key technical assumptions upon which prices are based. For dark fiber offerings, please describe desired pricing models. Keep response to two (2) pages.
16. **Local Participation and Economic Vitality:** Provide a statement of how your proposed participation would help the County's economic vitality goals. Describe your interests and plans to hire local contractors and providers in the Lapeer County, and how your participation would help local job creation. Describe your relationships with local businesses in the County, if any, as well as your interest and plans to engage them in this project. Keep response to no more than three (3) pages.
17. **Visitor and Employee Experience:** The County is interested in the opportunity for Lapeer County visitors and those that choose to work in Lapeer County to also experience improved broadband offerings. These could come through advanced wireless offerings and other "on-net" services that could be offered. Please describe your ideas and approach, if any, for furthering these ideas. Keep response to no more than two (2) pages.
18. **County Support Needs:** Please describe, if any, support that the County can consider to better support the respondent(s) ability to meet the County's broadband goals. Include examples that your business has experienced from other municipalities, if any, that have worked well in a public-private partnership. Keep response to one (1) page.

References: Provide a minimum of three (3) references, including contact information, from previous contracts or partnerships. Keep response to two (2) pages.

Administrative Information and Requirements

RFI Official Contact: Upon release of this RFI, all vendor communications should be directed to the RFI Coordinator listed below. Unauthorized contact regarding this RFI with other County employees may result in disqualification. Any oral communication will be considered unofficial and non-binding of the County. Vendors should rely only on written statements issued by the RFI Coordinator:

Questions Regarding This RFI: Vendors who request clarification of the RFI's requirements may submit questions to the RFI Coordinator Lapeer County Administration by 5 p.m. (EST) October 31, 2023. An email attachment must be sent to administration@LapeerCounty.org.

Response Preparation: Please prepare RFI response as a PDF. All responses must adhere to instructions under Section: RFI Response Requirements.

Response Submission: The County will only accept electronic submissions in response to this RFI. Electronic submissions are required to be considered as a potential successful respondent. To submit your response please send to administration@LapeerCounty.org.

The submission deadline is at 5:00pm (EST) November 30, 2023.

Mutual Non-Disclosure Agreement: Respondents must complete and attach two signed copies of the Mutual Non-Disclosure Agreement.

Presentations

At its discretion, the County may request that vendors and other parties that provide a timely response to this RFI make an individual and personal presentation to better explain information or solutions identified in the RFI. These presentations, if requested by the County, shall be held at a time and place of mutual convenience.

Appendix

Mutual Non-Disclosure Agreement

Please provide two signed copies of the following Mutual Non-Disclosure Agreement.

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement"), effective as of the ____ day of _____ 2023, is between Lapeer County, (the "County"), and _____ ("Vendor"). The County and Vendor may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Vendor and the County are involved in telecommunications-related design projects (the "Purpose"); and

WHEREAS, in the course of negotiations or communications, each Party may disclose to and/or receive from the other Party certain information belonging to the disclosing Party or its affiliates (collectively, the "Discloser") that includes trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including insurance policies and social security numbers ("Confidential Information");

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Records maintained by the County are subject to public disclosure pursuant to the Freedom of Information Act ("FOIA"). Certain confidential business records are exempt. If Vendor provides to the County documents that include trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including insurance policies or social security numbers, Vendor shall segregate any documents including such information from other documents provided to the County and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as confidential pursuant to FOIA.

The Party receiving Confidential Information (the "Recipient") (i) shall use such Confidential Information only for the Purpose; (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its, and its affiliates', employees and agents who need to know such Confidential Information to carry out the Purpose and who are not direct competitors of the Discloser (and require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein);

(iv) shall not disclose such Confidential Information to any other Party without prior written approval of Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any subsequent disclosure or use of

such Confidential Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use. The Recipient shall immediately notify the Discloser upon the discovery of any loss or unauthorized disclosure or use of the Confidential Information of the Discloser.

The restrictions on use and disclosure of Confidential Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked and provided to Recipient within thirty (30) days following the oral disclosure; except that any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser, including but not limited to business or technical information not generally known to the public, such as patents, copyrights, trademarks and trade secrets, as well as all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.

The restrictions on the use or disclosure of Confidential Information shall not apply to any information:

- Which is independently developed by the Recipient as evidenced by documentation in such Party's possession; or
- Which is lawfully received from another source free of restriction and without breach of this Agreement by the Recipient; or
- After it has become generally available to the public without breach of this Agreement by the Recipient; or
- Which at the time of disclosure to the Recipient was known to the Recipient free of restriction as evidenced by documentation in such Party's possession; or
- Which the Discloser agrees in writing is free of such restrictions.

All Confidential Information shall remain the exclusive property of the Discloser, and no license under any intellectual property right is either granted or implied by this Agreement or the conveying of Confidential Information to Recipient hereunder. Discloser makes no representations, warranties, assurances, guarantees or inducements of any kind, and with respect to the non- infringement of any intellectual property rights, or other rights of third persons or of Discloser.

Neither this Agreement nor the disclosure or receipt of Confidential Information hereunder shall constitute or imply any promise or intention by either Party to enter into any transaction or business relationship, nor is it an inducement for either Party or its affiliated companies to spend funds or resources or purchase or provide products or services, nor is it any commitment by either Party or its affiliated companies with respect to the present or future marketing of any product or service. No such agreement will be binding unless and until stated in a separate writing signed by authorized representatives of both Parties.

Each Party agrees not to announce or disclose to any other person (other than persons described in Section 1(iii), above) the Confidential Information or the nature of any discussions concerning the Purpose without first securing the prior written approval of the other Party. All Confidential Information furnished hereunder shall be returned or destroyed upon written request or upon Recipient's determination that it

no longer has a need for such Confidential Information, except that Recipient's legal counsel may retain one copy in counsel's files solely to provide a record of such Confidential Information for archival purposes.

The restrictions on use and disclosure of Confidential Information disclosed hereunder shall survive for a period of three (3) years from the date of last disclosure of any such Confidential Information (except in the case of software, for an indefinite period). Either Party may terminate this Agreement upon thirty (30) days advance written notice to the other.

All notices or communications required or permitted as a part of this Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

- | actually received,
- upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the Party,
- upon receipt by sender of proof of email receipt, or
- if not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the Party may have designated by notice or Agreement amendment to the other Party.

The consequences of failure to receive a notice due to improper notification by the intended Recipient of a new address will be borne by the intended Recipient. The addresses of the Parties to this Agreement are as follows:

This Agreement shall not be construed to limit either Party's right to independently develop or acquire products or services without use of the other Party's Confidential Information.

The restrictions on disclosure of Confidential Information under this Agreement shall not preclude Recipient, on the advice of counsel, from complying with applicable law, regulation, other governmental requirement, or other demand under lawful process, including a discovery request in a civil litigation, if Recipient first gives Discloser notice of the required disclosure and cooperates with Discloser, at Discloser's expense, in seeking reasonable protective arrangements. In no event shall Recipient be required to take any action which, on the advice of Recipient's counsel, could result in the imposition of any sanctions or other penalties by a court or government body.

Neither Party has any obligation to disclose Confidential Information to the other. Either Party may, at any time: (i) cease giving Confidential Information to the other Party without any liability, or (ii) request in writing return of Confidential Information previously disclosed.

Recipient acknowledges that Confidential Information provided under this Agreement may be subject to U.S. export laws or regulations. Recipient shall not use, distribute, transfer, or transmit Confidential Information (even if incorporated into products, software, or other information) except in compliance with such laws and regulations. If requested, Recipient shall sign written assurances and other export-related documents as may be required to comply with such laws or regulations.

Each Party agrees that all its obligations undertaken herein as Recipient shall survive and continue after any termination of this Agreement, subject to Section 8 above.

No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed by duly authorized representatives of each Party.

Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties. This Agreement may not be assigned by one Party without the other Party's prior written consent.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect to the greatest extent permitted by law.

No forbearance, failure or delay in exercising any right, power or privilege is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege. This Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, legal and personal representatives, successors, and assigns, as the case may be.

This Agreement shall be governed by the laws of the State of Michigan, U.S.A., without regard to its conflicts of law principles. Each Party acknowledges and agrees that a breach by it or one of its affiliates, employees, or representatives of any of the covenants set forth in this Agreement will cause irreparable injury to the other Party and its business for which damages, even if available, will not constitute an adequate remedy. Accordingly, each Party, for itself and its affiliates, employees, and representatives, agrees that the other Party, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) by a court of competent jurisdiction to enforce the covenants and agreements contained herein.

Any judicial proceeding brought by or against any of the Parties on any dispute arising out of this Agreement or any matter related hereto shall be brought exclusively in the state district court sitting in Lapeer County, Michigan, and by execution and delivery of this Agreement, each of the Parties accepts for itself the exclusive jurisdiction and venue of the aforesaid court as trial courts. Each Party expressly waives any objection (including, without limitation, objections based on *forum non conveniens*) which any Party may have now or hereafter to the laying of venue or to the jurisdiction of any such suit, action, or proceeding, and irrevocably submits generally and unconditionally to the jurisdiction of any such court in any such suit, action, or proceeding. Each Party agrees that its attorneys shall accept service of process.

This Agreement constitutes the entire understanding between the Parties as to the treatment of Confidential Information disclosed for the Purpose and merges all prior discussion between them relating thereto. Each Party has read this Agreement, understands it and agrees to be bound by its terms and conditions. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the Parties. Signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

RFP Respondent (Vendor) Signature

Date

Lapeer County Administration Signature

Date