

Broadband Infrastructure Grant Agreement

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This Broadband Infrastructure Grant Agreement is entered into by and between the Town of Amsterdam (hereinafter referred to as the “Grantor”) and Spectrum Northeast, LLC by its Manager, Charter Communications, Inc. (hereinafter referred to as “Grantee”) on _____, 2022 (“Effective Date”).

WHEREAS, the Grantor asserts that it has the requisite funding and authority to enter into and carry out its obligations under this Agreement with Grantee; and

WHEREAS, Grantor has determined that the broadband infrastructure buildout project described in the Scope of Work provided in Exhibit A of this Agreement (“Broadband Project”) is in the public interest.

- 1) **PURPOSE.** The purpose of this Broadband Infrastructure Grant Agreement (“Agreement”) is to implement the broadband infrastructure buildout project described in the Scope of Work at Exhibit A.
- 2) **TERM.** This Agreement shall automatically expire ninety days after Grantee receives Final Payment per the Milestone Payment Schedule in Exhibit A. No provision of this Agreement shall survive the expiration or termination of this Agreement unless expressly stated herein.
- 3) **FUNDING.** The Grantor agrees it will remit a total payment of \$17,100.00 to Grantee to fund the Broadband Project, subject to the payment schedule, terms and conditions provided in Exhibit A. Grantor represents that the Broadband Project falls within an appropriate use of state or federal funding (as may be applicable) and bears any and all risks associated with that determination.
- 4) **PROJECT DURATION.** Grantee shall commence performance of this Agreement as soon as practicable with the goal of completing the project no later than 1 year(s) from the last approved pole permit necessary to complete the entire Project Area, subject to Excusable Delay. Excusable Delay means a delay to the construction of the project that affects completion and is directly caused by (1) make-ready work that is not received by Spectrum within 45 days of Spectrum’s submission of a completed application for utility pole attachments; or (2) any delay in receiving governmental, regulatory and third party permits, licenses and approvals, despite Spectrum’s good faith efforts to secure timely approvals, or (3) pursuant to Section 11.
- 5) **OWNERSHIP OF PROJECT INFRASTRUCTURE AND PRICING.** Grantee shall retain all ownership interests and rights in the network, materials, equipment, supplies and facilities constructed and deployed in connection with the Scope of Work. Grantee reserves the right to modify the terms and conditions, data usage, speeds and pricing for any of Grantee’s services.
- 6) **DESIGN AUTHORITY.** Grantee, in its sole discretion, shall determine the optimal network design and configuration for the Resulting Network, as well as how to build it so as to fulfill its obligations under this Agreement.

- 7) **INDEPENDENT CONTRACTOR.** Both the Grantor and the Grantee agree that the Grantee shall act as an independent contractor in the performance of the Grantor's duties under this Agreement.
- 8) **NOTICE OF VIOLATION OR DEFAULT.**
- a) In the event the Grantor believes that the Grantee has not complied with the material terms of the Agreement, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
 - b) **Grantee's Right to Cure or Respond.** The Grantee shall have forty-five (45) days from the receipt of the Grantor's written notice: (A) to respond to the Grantor, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that the cure will be completed.
- 9) **INDEMNIFICATION.** Unless prohibited under applicable law, the Grantor and the Grantee agree to defend, indemnify and hold each other, and each other's lenders, parent companies, affiliates, officers, directors, agents and employees, harmless from and against any and all claims, losses, damages and liabilities (including, but not limited to, reasonable attorneys' fees and court costs) on account of any claim by a third party for bodily injury or property damage against the indemnified party to the extent caused by the negligent act or omission, or willful misconduct of, or breach of this Agreement by, the indemnifying party or the indemnifying party's employees, contractors, subcontractors or agents, in connection with the performance of their respective obligations under this Agreement.
- 10) **ENTIRE AGREEMENT.** This Agreement, and any attachments hereto, embodies the entire understanding and agreement of the Grantor and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Agreement are superseded by this Agreement.
- 11) **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.** In its operations under this Agreement, Grantor and Grantee shall comply with all applicable tribal, state and federal laws.
- 12) **FORCE MAJEURE.** Neither Grantor nor Grantee shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, material shortages, pandemics, strikes, freight embargoes, or unusually severe weather.

- 13) **LIMITATION OF LIABILITY.** SUBJECT TO THE FOLLOWING SENTENCE, NEITHER GRANTEE NOR GRANTOR SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO, AND SHALL NOT LIMIT: (a) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, OR (b) DAMAGES ATTRIBUTABLE TO CRIMINAL MISCONDUCT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY.
- 14) **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the benefit of the Parties only and nothing contained herein will be deemed to give any third party any intended or incidental claim or right of action that does not otherwise exist without regard to this Agreement, against either Party.
- 15) **GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Missouri, without regard to the rules of conflict of laws thereof. The Parties agree that any dispute involving this Agreement shall be heard only in the Circuit Court of St. Louis County, Missouri or the Federal District Court for the Eastern District of Missouri.
- 16) **NOTICE.** Any notice required under this Agreement shall be provided via US Mail and Email to the following addresses:
- GRANTEE:
Charter Communications, Inc.
Attn: Kevin Egan, Government Affairs
20 Century Hill Drive
Latham, NY 12110
- Charter Communications
RVP, Field Operations
6005 Fair Lakes Road
East Syracuse, NY 13057
- GRANTOR:
Town of Amsterdam
Town Supervisor
283 Manny's Corners Road
Amsterdam, NY 12010
- 17) **SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency,

commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

- 18) **MODIFICATION.** No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate resolution or order by the Grantor, as required by applicable law.
- 19) **TERMINATION.** Grantor may terminate this Agreement for material breach by Grantee that Grantee fails to cure within thirty (30) days of receipt of notice of such breach from the Grantor. Grantee may terminate this Agreement upon thirty (30) days written notice to Grantor. Upon termination by Grantee, Grantee shall remit the pro rata amount of funding for the portion of the Project Area not yet built to Grantor through the date of Termination.
- 20) **NO WAIVER OF RIGHTS.** Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantor or Grantee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Broadband Infrastructure Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For Grantor: Town of Amsterdam

By: _____

Name: _____

Title: Town Supervisor

Date: _____

For Grantee: Spectrum Northeast, LLC By: Charter Communications, Inc., its Manager

By: _____

Name: Mark Leibowitz

Title: AVP, Field Operations

Date: _____

**Spectrum Northeast, LLC
By Charter Communications, Inc. its Manager**

**Exhibit A
Scope of Work**

The following project description will define the scope of work to be completed in accordance with the Agreement. Grantee will install a high speed broadband network capable of providing at least 25/3 Mbps speeds to the following Project Area:

Project area – Town of Amsterdam addresses along Touareuna Road between specific to the address range below.

Address Range - 779 Touareuna Road Amsterdam NY 12010
 to 1591 Touareuna Road Amsterdam NY 1201

FUNDING:

Grantor shall be obligated to pay a total of \$17,100.00 per the Milestone Payment Schedule. Grantee shall not be obligated to construct and install the Broadband Project within the Project Area until it receives payment.

MILESTONE PAYMENT SCHEDULE		
Milestone	Percentage (%)	Amount
Contract Execution	50%	\$8,550.00
Within fifteen (15) business days from the date of Written Notice by Grantee of Activation of the Project Area	50%	\$8,550.00
Total Grantor Payment	100%	\$17,100.00

The term “Activation” as used herein is defined as the capability of an address to receive broadband service from the Resulting Network.

The Parties acknowledge that this Scope of Work and Grantee's cost estimates are preliminary in nature, and are subject to revision based on archeological findings or other factors identified during final engineering, including but not limited to changes in route or construction materials or techniques, and/or changes to the Scope of Work mutually agreed upon by the Parties or necessitated

by circumstances causing Excusable Delay. The Parties further agree to promptly meet and discuss in good faith appropriate modifications to this Scope of Work upon the request of either Party.

PAYMENT INSTRUCTIONS:

To transfer funds:

Bank Address for ACH
US Bank
7th and Washington
St. Louis, MO 63101

Account Title: Charter Communications Operations LLC
Account Number: 152319781067
Routing Number: 081000210
SWIFT: USBKUS44STL

To send a check, mail to:

Attn: Sundry Billing, Grants
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

