

# Agreement Between Sertex, LLC and Customer

This **AGREEMENT** is made as of the date of the last signature below.

**BETWEEN**

Sertex, LLC (“Sertex”)  
22 Center Parkway,  
Plainfield, CT 06374

**AND**

Town of Colchester (“Customer”)  
127 Norwich Avenue  
Colchester, CT 06415

**FOR** the following **PROJECT**:

New Senior Center and IT Upgrade to Town Hall (“Project”)  
In Colchester, Connecticut

**Sertex** and **Customer** agree as follows:

1. Capitalized terms used but not defined in this Agreement shall have the same meanings as assigned to them in the Sertex Standard Terms and Conditions.
2. The documents listed below (collectively, the “Contract Documents”) are hereby incorporated by reference into this Agreement:
  - Exhibit 1 – Sertex Standard Terms and Conditions
  - Exhibit 2 – Sertex Pricing Proposal Dated 3/5/2024 – Rev1 - \$ 21,789.82
3. In consideration for the payments to be made by **Customer** to **Sertex** under this Agreement, **Sertex** hereby agrees to perform the Work in conformity with the Contract Documents.
4. **Customer** hereby agrees to pay **Sertex** for the Work all such amounts as may become payable under the provisions of the Contract Documents at the times and in the manner prescribed by the Contract Documents.
5. The Contract Price for the Work is
  - Lump Sum with a fixed price per Sertex Proposal.
  - Unit Price in accordance with the Schedule of Unit Prices and Estimated Quantities presented in Exhibit \_\_\_\_\_.
  - Time & Materials.
  - Other per the payment provisions specified in Exhibit \_\_\_\_\_.
6. **Sertex** shall commence the Work upon upon execution of this Agreement or, if requested by **Customer**, upon **Customer**’s request that **Sertex** proceed, whichever is later. Subject to adjustments to the Contract Time as provided in the Contract Documents, **Sertex** shall achieve Substantial Completion:

\_\_\_\_\_ On or Before: \_\_\_\_\_

\_\_\_\_\_ Within \_\_\_\_\_ day(s) after Customer requests Sertex proceed with the Work.

X  in accordance with a schedule to be mutually agreed-to between Customer and Sertex

7. The undersigned signatures for Sertex and Customer is in full compliance with the authority granted by its organizational documents and its votes or resolutions, which authority has not been amended, modified or rescinded as of the date hereof.
8. All notices required under the Contract Documents shall be made in accordance with the applicable notice provisions of the Terms and Conditions to the applicable party's authorized representatives, as set forth below (unless otherwise amended in writing in compliance with such notice provisions):

<b>Sertex</b>	<b>Customer</b>
Contact: Shawn Harmon	Contact:
Address: 22 Center Parkway, Plainfield, CT 06374	Address: 127 Norwich Avenue, Colchester, CT 06415
Phone Number: 860-317-1006	Phone Number:
Email Address: sharmon@sertexllc.com	Email Address:
CC Email Address: n/a	CC Email Address:

**Sertex, LLC ("Sertex")**

**Town of Colchester ("Customer")**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Shawn Harmon

Name:

Title: Vice President

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# **SERTEX, LLC**

## **STANDARD TERMS AND CONDITIONS**

### **1. DEFINITIONS**

For purposes of these Standard Terms and Conditions (hereinafter referred to as “Terms and Conditions”) and as used in the Agreement incorporating these Terms and Conditions, the following commonly used terms, wherever used with initial capitalization, whether in the singular or the plural, are defined as follows:

1.1. “Agreement” means the form of agreement document executed by Sertex and the Customer setting out, among other things, the parties, Contract Price, and the term. Where no such form of agreement document is entered into, the Agreement shall be the purchase order issued to Sertex by the Customer which refers expressly to these Terms and Conditions.

1.2. “Contract Price” is set forth in the Contract Documents, or if not expressly set forth therein, shall mean the total amount to be paid by the Customer to Sertex under the Agreement.

1.3. “Contract Time” is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

1.4. “Contract Documents” are enumerated in the Agreement and consist of the Agreement, these Terms and Conditions, drawings, specifications, addenda issued by Customer prior to execution of the Contract, and any Modifications issued after execution of the Contract per Section 12.

1.5. “Contract” is formed by the Contract Documents. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Sertex and Customer.

1.6. “Customer” is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Customer shall designate in writing in the Agreement a representative who shall have express authority to bind the Customer with respect to all matters requiring the Customer’s approval or authorization.

1.7. “Project” is the total construction and services of which the Work performed under the Contract Documents may be the whole or a part.

1.8. “Sertex” is Sertex, LLC d/b/a Sertex Broadband Solutions as the party furnishing the Work to the Customer, and, if authorized by the Customer, Sertex’s successors and assigns.

1.9. “Substantial Completion” shall have the meaning set forth in Section 9.1.

1.10. “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by Sertex to fulfill its obligations. The Work may constitute the whole or a part of the Project.

## **2. SERTEX'S RESPONSIBILITIES**

2.1. Execution of this Contract by Sertex is its representation that Sertex is duly qualified and lawfully registered and licensed, as required, to perform the Work and that Sertex is a duly organized and validly existing LLC and is qualified to do business and is in good standing in the Commonwealth of Massachusetts, with full power and authority to consummate the transactions contemplated hereby.

2.2. Sertex shall furnish and, its scope of work shall include, all the supervision, coordination, labor, materials, tools, equipment, services (the "Work"), as more specifically described in the Contract Documents. The Work shall include all work expressly stated in the Contract Documents, all incidental work necessary for Sertex to perform its Work. Sertex shall complete the Work in a good and workmanlike manner.

2.3. Sertex shall coordinate all construction and related activities to facilitate timely execution of the Work.

2.4. Sertex shall perform the Work during regular daytime working hours, unless specified differently within Contract Documents. Otherwise, overtime work is a change in the Work requiring an increase to the Contract Price.

2.5. Sertex shall perform the Work in accordance with the Contract Documents and, to the extent applicable and not inconsistent with the terms of this Contract, in conformance with standard industry practices.

2.6. Sertex shall keep the location of the Project free from all accumulation of waste materials, debris and rubbish and shall, at the completion of the Work, remove from the premises all Sertex's and its subcontractors', if any, equipment, implements, or property and leave the location of the Project clean.

2.7. Any disturbance of the existing roadways, culverts or drainage areas associated with such roadways reasonably required to perform the Work shall be filled and compacted and restored to their original condition by Sertex

2.8. Sertex shall provide project reports at least weekly to the Customer's authorized representative.

2.9. Changes in the Work shall be performed only pursuant to a Change Order under Section 12 of this Contract.

## **3. CONTRACT DOCUMENTS**

The "Contract Documents" shall consist of: the Agreement including any Exhibits therein, these Terms and Conditions, the drawings, specifications, , and any other construction related documents provided by Customer to Sertex,, and any Modifications to the Contract Documents per Section 12.

#### **4. ORDER OF PRECEDENCE**

Except as otherwise set forth herein, in the event of inconsistency between provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. this Agreement with Exhibits incorporated therein
- B. these Standard Terms and Conditions
- C. specifications, drawings, and any other construction documents provided in RFP

Notwithstanding the foregoing, in the event of a conflict with documents with the same order of priority (including documents referenced therein), or in the event of a conflict pertaining to the order of precedence or other conflict with Contract Documents, the Customer shall have the right to determine which provision applies. Sertex shall request the Customer's determination promptly upon becoming aware of such conflict.

#### **5. CONSTRUCTION SCHEDULE**

Unless otherwise stated in the Contract Documents, the parties shall mutually agree on a schedule for the construction of the Work. All actions, activities, consents, approvals and other undertakings of the parties set forth in this Contract shall be performed in a timely manner consistent with standard industry practices.

#### **6. CONTRACT PRICE**

6.1 Customer shall pay Sertex the Contract Price for the Work per the Contract Documents.

6.2 Any tax of any kind that is now or may be imposed by Federal or State governments, or any subdivision thereof affecting the sale or contract is included in the Contract Price and shall be paid by Sertex.

6.3 If for any reason there is a deviation from the Contract Documents that will cause an increase the Contract Price, Sertex shall provide advance notice to Customer for the increase in accordance with Section 12. Customer's approval for a Change Order shall not be unreasonably withheld.

#### **7. PAYMENT**

7.1 Sertex shall use a form to request payment from Customer that is mutually agreeable to both parties. Per the Contract Documents, Sertex shall provide its certified payment application to Customer for completed Work and any Changes to the Work completed during the previous month, or for a time interval mutually agreeable to both parties.

7.2 Customer shall review Sertex's invoice and within ten (10) business days of receipt, inform Sertex in writing whether the invoice is accepted in whole, rejected in whole, or rejected in part along with the reasons for the same. Invoices may be rejected in whole or part for reasons expressly limited to:

- 7.2.1 the Work invoiced reasonably was deemed unacceptable to Customer based upon on the contract documents;

7.2.2 failure of Sertex to make payments to its subcontractors or suppliers for labor, materials or equipment;

7.2.3 damage caused by Sertex; or

7.2.4 Sertex repeated failure to carry out the Work in accordance with the Contract Documents.

7.3 Subject to Section 7.2, Customer shall pay the approved amount so stated on a Sertex invoice within thirty (30) days of Customer's receipt of the invoice.

7.4 Payments due and unpaid thirty (30) days of Customer's receipt of the invoice shall bear interest from the date payment was due at 1.5%.

7.5 Unless such longer period is required by law, Sertex shall maintain for a period of two (2) years after final payment under this Contract, all accounting books, documents, papers and records that are pertinent to the Work and Changes to the Work.

## **8. PERMITS AND OTHER GOVERNMENTAL APPROVALS**

Customer shall obtain and pay for all rights-of-way, utility and special permits and associated fees. The parties understand that there are no rights-of-way, utility, special permits, environmental controls or permits (including any permit from the Conservation Commission or Department of Public Works) required from either the Town for the Work. If it is determined that any permit or other permission is required from a governmental authority or other agency with jurisdiction over the Work, Sertex shall submit a Change Order Request in accordance with section 12.3.

## **9. WARRANTIES**

9.1 **Substantial Completion.** Substantial Completion is the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the Work is ready for installation of the cabling in the conduit system except for minor incomplete or unsatisfactory Work items that do not materially impair the usefulness of the Work required by the Contract Documents. Partial use or occupancy shall not result in the work being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion..

9.2 Sertex warrants that the Work shall comply with Section 1.2 shall be free from material defects, errors, and omissions in construction and workmanship, and shall remain in good condition and shall be free from any operational fault or defect for a period of one (1) year from the date of Substantial Completion.

9.3 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Customer, or shall be transferable to the Customer, and shall commence at Substantial Completion.

9.4 If Customer notifies Sertex of any defects in the Work that are in breach of its

warranties in Section 9.2, Sertex shall promptly correct the defects in the Work. Should Sertex neglect to commence correcting such defects within three (3) days from the date of receipt of such notice from Customer, or if Sertex having commenced, fails to prosecute such correction with diligence, Customer may employ other persons to correct the same, and all direct costs of making said corrections shall be paid by Sertex.

9.5 If Sertex fails to commence correction of such defects in the Work within thirty (30) days of receipt of notice of the defects from Customer, Customer may, without prejudice to other remedies the Customer may have, correct such defects itself. In such case, Customer shall issue an appropriate Change Order to Sertex deducting from the payments then due or thereafter due to Sertex for the reasonable direct cost of correcting such defects. If the payments then due or thereafter due to Sertex are not sufficient to cover such amounts, then Sertex shall pay the difference to Customer.

## **10. CUSTOMER RIGHTS & RESPONSIBILITIES**

10.1 Customer shall provide Sertex with reasonable promptness all necessary information required to allow Sertex to successfully complete the Work.

10.2 Provided reasonable notice is provided to Sertex and, provided inspections are conducted in a manner that does not unreasonably delay or interfere with the Work, Customer has the right to inspect the Work at reasonable times during construction and installation.

10.3 Customer's authorized representative shall inspect all Work delivered by Sertex. If inspection results fail to indicate the Work for which such inspection was performed meets the specifications and requirements of such Work, Customer may require Sertex to perform corrective Work.

10.4 Customer shall review all test results and shall accept same if such indicates the Work, for which such testing was performed, meets the specifications and requirements of such Work. If test results fail to indicate the Work for which such testing was performed meets the specifications and requirements of such Work, Customer may require Sertex to perform repeat testing.

10.5 Customer shall accept in writing all Work for which testing has been performed and which has been accepted by Customer, and for which inspection by Customer has resulted in the Work being deemed acceptable.

10.6 After Substantial Completion, the Customer shall promptly provide Sertex with a punch list for any incomplete or unaccepted items.

## **11. CONCEALED AND UNKNOWN CONDITIONS**

11.1 Sertex represents that it has examined the scope of the Work in the Contract Documents and has become generally familiar with the local conditions related to the Work. Sertex is familiar with the fact that there are existing underground utilities including telephone and electricity, and existing water and sewage disposal lines at the location where the Work will be performed and will make appropriate accommodations in performing the Work to avoid damage to such installations.

11.2 If Sertex encounters conditions that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown

physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, Sertex shall promptly provide notice to Customer before conditions are disturbed and in no event later than fourteen (14) days after Sertex becomes aware the conditions. To the extent these conditions that are of such a nature as to cause an increase or decrease in the cost of the Work, Customer shall issue a Change Order with a cost and time adjustment per Section 12.

## **12. CHANGES IN THE WORK**

12.1. By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Customer, without invalidating the Contract, may order changes in the work within the general scope of the contract consisting of additions, deletions, or other revisions, with the Contract Price and Contract Time being adjusted accordingly in writing.

12.2. Sertex shall have no obligation to comply with oral changes to the work received from Customer unless Sertex deems that such changes will not impact the cost, time to perform, or the integrity of the Work. If Sertex believes that any oral change request may involve a change in the cost, time to perform, or the integrity of the Work, Sertex shall require that the change be given by Customer in writing and shall comply with the provisions set forth in the Contract Documents.

12.3. If a Change Order is requested by Sertex, Sertex shall submit a Change Order Request to Customer's authorized representative in accordance with the Contract Documents. A Change Order Request shall include a statement of the change to the Work along with the estimated cost for the change in the Work. Any requests for time extensions shall be accompanied by a statement explaining the impact to the completion of the Work. The pricing for changes to the Work shall be in accordance with the unit prices set forth in the Contract Documents, to the extent applicable, or mutual acceptance of a properly itemized and supported lump sum including a mark-up for Sertex's overhead and profit.

12.4. Customer shall respond to accept, reject in whole, or reject in part Sertex's Change Order Request promptly, but in no event, not more than five (5) business days from receipt of the Change Order Request.

12.5. No change in the Work shall be effective unless Customer has approved the change, in writing through the issuance of a Change Order, which shall clearly define any increase, decrease, or no change in compensation and the time period, or unless Customer's prior approval would detrimentally affect Sertex's work operations.

12.6. Unless Customer gives prior approval, Sertex shall not suspend performance of this Contract pending the review and negotiation of any Change Order Request. The unit prices contained in this Contract shall constitute the basis for the pricing of all changes under this Contract, and the deliverables shall remain unchanged until and unless the parties mutually agree to a Change Order in writing.

12.7. If Customer and Sertex are unable to reach agreement for pricing of a change, or time for performance of changed work, Sertex shall make a claim in the manner provided in Section 14.0, Claims.

## **13. DELAY AND EXTENSIONS OF TIME**



13.1 **Force Majeure.** To the extent a delay in the performance of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, strikes, lock-outs or other general labor disputes (not involving Sertex), governmental agencies, governmental orders, unavoidable accidents or circumstances, an act or neglect by Customer or an employee or agent of Customer, Acts of God, or other causes beyond Sertex's control, the time for Sertex's performance of the Work shall be extended for a reasonable time.

13.2 Claims relating to time shall be made in accordance with applicable provisions of Section 12.

13.3 This Section 13 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

13.4 In the event delays to the performance of the Work are encountered for any reason, Sertex shall provide prompt notice to Customer after Sertex first recognizes the causes of the delay. The Customer and Sertex agree to undertake reasonable steps to mitigate the effects of any delays.

## **14. CLAIMS**

14.1. Claims by either Sertex and Customer shall be initiated by written notice to the other within twenty-one (21) days of the event giving rise to a claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

14.2. Pending final resolution of a Claim, except as otherwise agreed in writing, Sertex shall proceed diligently with performance of the Contract and the Customer shall continue to make payments in accordance with the Contract Documents.

14.3 Sertex and Customer waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

(a) damages incurred by the Customer for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

(b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 20.

## **15. INSURANCE**

15.1. Prior to commencement of the Work, and at all times during the performance of the Work, Sertex shall secure and maintain insurance coverage in form and amounts set forth in the following paragraphs from companies lawfully approved to do business in the state where the Work is performed, and provide Customer with an insurance certificate upon Customer's reasonable request.

15.2. In addition, Sertex shall notify Customer within ten (10) business days of any restrictive

amendments, material change, or impairment in coverage to any insurance policies and provide Customer with the appropriate documentation or endorsements evidencing such material change.

15.3. No insurance coverage shall be subject to cancellation or non-renewal without at least thirty (30) days prior written notice forwarded by registered or certified mail to the Customer's authorized representative.

15.4. All coverage secured by Sertex shall be on a "Per Occurrence" basis.

15.5. Customer shall be listed as an additional insured for general liability, protection and indemnity, excess liability, and automobile liability coverages required under this Agreement.

15.6. Insurance coverage provided for under this Contract shall be written for not less than the limits of liability described in the following paragraphs or such limits as may be required by law.

- a) Workers' compensation and employer's liability insurance covering all employees of Sertex, so long as they are engaged in the work covered by this contract. Workers' compensation insurance in amounts required by applicable law and employer's liability insurance with a limit of at least one million dollars (\$1,000,000.00) per occurrence.
- b) Commercial General Liability Insurance which shall provide not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) per project aggregate, providing coverage for claims for: (1) bodily injury, sickness, or disease, including death at any time resulting therefrom, sustained by any person; and (2) damage to or destruction of property, including loss of use thereof. Such insurance shall (i) include contractual liability coverage, (ii) completed operations coverage; (iii) not be subject to any of the special property damage liability exclusions commonly referred to as XCV exclusions; and (iv) be extended by the addition of the so-called "broad Form Property Damage Endorsement"
- c) An excess/umbrella policy in an amount not less than one million dollars (\$9,000,000), which may be utilized to cover any or all insurance coverages required herein
- d) Automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles and equipment, with coverage of not less than one million dollars (\$1,000,000).

## **16. INDEPENDENT CONTRACTOR**

16.1 Nothing in this Contract shall be deemed to make Sertex or its employees, agents or representatives of Sertex, into an agent, representative, or employee of Customer.

16.2 Sertex shall at all times be an independent contractor and shall have sole responsibility for and control over the details and means for performing the Work.

16.3 Anything in this Contract that may appear to give Customer the right to direct Sertex as to the details of the performance of the Work or to exercise any measure of control over Sertex shall be construed to mean only that Sertex shall follow the preferences of Customer in achieving the results of the Work.

## **17. CONFIDENTIAL INFORMATION AND OWNERSHIP OF DOCUMENTS**

17.1 Confidential Information, including but not limited to design criteria, performance specifications, and other information obtained by Sertex from Customer, and working drawings or specifications and network maps prepared by Sertex shall be held in confidence by Sertex, and shall not be used by Sertex for any purposes other than for the performance of the Work or as authorized in writing by Customer.

17.2 Sertex agrees not to disclose any such Confidential Information to anyone except employees and consultants of Sertex to whom disclosure is necessary for the purposes of this Contract, and who have agreed to be bound by the obligations of confidentiality and restrictions on use hereunder, or as required by applicable law.

17.3 Sertex shall cause its employees, agents and consultants to whom it makes disclosure of such Confidential Information to observe the obligations of confidentiality and restrictions on use in accordance with this Contract.

17.4 All such documents furnished by Customer to Sertex, and documents prepared by Sertex, shall immediately become the property of Customer; and upon completion of the Work, or earlier upon termination of this Contract, or when requested by Customer, Sertex shall return to Customer all such documents including any copies thereof.

## **18. PUBLICITY**

18.1 Neither party shall publish or use any advertising, sales promotions, or other publicity materials that use the other party's name, logo, trademarks, or service marks without the prior written approval of the other party.

18.2 Each party shall have the right to review and approve any publicity material, press releases, or other public statements by the other that refer to such party or that describe any aspect of this Contract or which relate to the Work. Each party agrees not to issue any such publicity, press releases, or public statements without the prior written approval of the other party, except as is required by applicable law.

## **19. COMPLIANCE WITH LAWS**

19.1 Sertex shall comply with all local, municipal, state, federal and governmental laws, orders, ordinances, codes, and regulations applicable to Sertex's performance of the Work including, without limitation, any regulations in force because of the Covid 19 pandemic regarding reporting, recordkeeping supervision or conditions on site.

19.2 Sertex shall not apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this Contract or the performance thereof without Customer's prior written approval.

## **20. TERMINATION**

20.1 Sertex Termination for Cause. Sertex may terminate the Contract for cause if the

Customer fails to certify payment as provided in Section 7 for a period of 30 days through no fault of Sertex, or if the Customer fails to make payment as provided in Section 7 for a period of 30 days, or Work is stopped for a period of 60 consecutive days through no act or fault of Sertex, Sertex may, upon seven (7) additional days' notice to the Customer, terminate the Contract and recover from the Customer payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

20.2 Customer Termination for Cause. The Customer may terminate the Contract for cause if Sertex repeatedly refuses or fails to supply enough properly skilled workers or proper materials; or fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Sertex and the subcontractors; or repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or otherwise is guilty of substantial a material breach of a provision of the Contract Documents; or Sertex is adjudged bankrupt or has made a general assignment for the benefit of its creditors; or a receiver has been appointed of Sertex's property; or Sertex has assigned the Contract, without the prior written consent of the Customer, then Customer may upon seven (7) additional days' notice to Sertex, terminate the Contract. When the Customer terminates the Contract for one of the reasons stated in Section 20.2, Sertex shall not be entitled to receive further payment until the Work is finished. And if the unpaid balance of the Contract Price exceeds costs of finishing the Work, such excess shall be paid to Sertex for any amounts Sertex is due for Work Sertex performed. If such Customer's costs and damages exceed the unpaid balance, Sertex shall pay the difference to the Customer.

20.3 Termination by the Customer for Convenience. The Customer may, at any time, terminate the Contract for the Customer's convenience and without cause. The Customer shall pay Sertex for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows: reasonable overhead on Work not executed which overhead shall not exceed 10% of the total Contract Price.

## **21. DISPUTE RESOLUTION**

All claims and disputes arising out of or relating to this Contract, or breach thereof, shall be subject to arbitration in Berkshire County, Massachusetts in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **22. SERTEX'S EMPLOYEES**

To the fullest extent allowed by law, or for a period of two (2) years from the date of Substantial Completion, whichever is longer, Customer shall not: (a) attempt to induce, invite, or solicit the hiring of any technically trained employee of Sertex, or (b) cooperate with a competitor of Sertex in an attempt to induce, invite, or solicit the hiring of any technically trained employee of Sertex by the competitor.

## **23. ASSIGNMENT**

Except as set forth herein, Sertex shall not assign or otherwise transfer its obligations under this Contract or any interest herein without the express written consent of Customer; provided that Sertex may transfer or assign this Contract or its interest herein with Customer's consent, which consent may

not be unreasonably withheld or delayed. Sertex must request such consent at least thirty (30) days prior to the date of transfer or assignment.

## **24. ELECTRONIC NOTICE**

All notices required under the Contract Documents shall be in writing delivered by hand, sent by mail or courier, or sent via email to the party's authorized representative under the Contract Documents.

## **25. GOVERNING LAWS**

The rights and obligations of the parties hereto shall be construed and interpreted in accordance with the substantive law of the State in which the work is performed.

## **26. HEADINGS.**

All section headings contained in these terms and conditions are for reference purposes only and shall not have any binding legal purpose or effect.

## **27. MULTIPLE COUNTERPARTS**

This Contract may be executed in two counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Contract or the terms hereof to produce or account for more than one of such counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

## **28. ELECTRONIC SIGNATURES**

28.1 Electronic, facsimile, or “.pdf” signatures to execute this Contract or on writings related to this Contract shall be legal and binding and shall have the same full force and effect as if an original.

28.2 Sertex and Customer (i) intend to be bound by any electronic, facsimile, or “.pdf” signatures to this Contract or on writings related to this Contract, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Contract or on writings related to this Contract based upon the foregoing forms of signature.

## **29. SEVERABILITY**

If any provision of this Contract is held invalid, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

## **30. INDEMNIFICATION**

30.1 To the fullest extent permitted by law, Sertex shall indemnify and hold harmless Customer, its officers, employees, agents, and representatives (the “Indemnitees”) from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible

property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of Sertex, Sertex's subcontractors, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 30.

30.2 In claims against any person or entity indemnified under this Section 30 by an employee of Sertex, Sertex's subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 30 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Sertex or Sertex' subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

### **31. SUBCONTRACTORS.**

Sertex shall not engage any other company, subcontractor or individual to perform any obligation hereunder, without the prior written consent of the Customer.

### **32. MECHANICS LIENS.**

Provided the Customer has fulfilled its payment obligations under the Contract Documents, Sertex shall defend and indemnify Customer from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of Sertex's subcontractor, supplier, laborer, or materialmen. Upon receipt of notice of a lien claim or other claim for payment, Customer shall notify Sertex. If required by Customer, and if approved by the applicable court, Sertex may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

Upon completion of the Work, Sertex shall produce to Customer a full and complete release from all persons who have furnished labor in connection with the Work and Sertex shall execute any and all affidavits that Customer may reasonably require to further evidence the release or waiver of any liens which could attach to the subject property in accordance with Massachusetts law.



EXHIBIT 2

**CONSTRUCTION ESTIMATE**

**TO:** Town of Colchester  
 127 Norwich Ave  
 Colchester, CT 06415  
 Attention: Ryan DeLMastro

**DATE:** 3/5/2024

**REF:** REV1 - Town Hall - Senior Center Fiber Optic Cable Connection

**PREPARED BY:** Shawn Harmon

CODE	DESCRIPTION	PART NUMBER	UM	QTY	UNIT	EXTENSION
<b>Installation of 1EA - 1.25" SDR 13.5 Direct-Bury Innerduct, 24X36 Handhole            12 Strand Singlemode Fiber Optic Cable            Town Hall IT Room to Senior Center Utility Area            Pricing does not include electronics, to be provided by Novus Insight</b>						<i>Prevailing Wage: NO</i>
103	Underground Fiber Design - Up to 1,000 ft	E-3	LF	0	\$ 2,960.00	\$ -
402	Project Manager	L-2	HR	8	\$ 159.00	\$ 1,272.00
301	Trench, Place, & Backfill HDPE Conduit (<1.5")	U-1	LF	120	\$ 26.00	\$ 3,120.00
302	4" Loam & Seed	U-2	SY	50	\$ 8.90	\$ 445.00
303	Remove & Replace Asphalt	U-3	SF-IN	360	\$ 3.58	\$ 1,288.80
305	Install 24" x 36" Polymer Concrete HH w/ Tier15 Cover	U-5	EA	1	\$ 1,670.00	\$ 1,670.00
307	Processed Gravel Fill	U-7	CY	10	\$ 69.00	\$ 690.00
315	Building Core	U-14	EA	1	\$ 650.00	\$ 650.00
203	Underground Installation in Existing Conduit	C-3	LF	500	\$ 1.50	\$ 750.00
205	Indoor Cable / Innerduct Placement	C-5	LF	150	\$ 4.75	\$ 712.50
206	Rod & Rope Existing Conduit	C-6	LF	400	\$ 2.30	\$ 920.00
209	Install Patch Panel	C-9	EA	2	\$ 280.00	\$ 560.00
210	Fusion Splice Fiber	C-10	EA	24	\$ 17.50	\$ 420.00
211	Testing	C-11	Fiber	12	\$ 27.00	\$ 324.00
417	2 Man Underground Crew with Tools and Equipment ( Labor to Install 2" Schedule 80 PVC Conduit in Parking Lot area - <b>Installed at 4" Depth</b> to be completed before contractor backfills to grade the parking lot of the Senior Center )	L-17	HR	12	\$ 280.00	\$ 3,360.00
1001	ALTOS® Loose Tube, Gel-Free Cable, 12 F, Single-mode (OS2)	012EU4-T4701D20	LF	750	\$ 0.41	\$ 305.01
6001	Closet Connector Housing (CCH), 1 rack unit, accepts up to 2 CCH panels, cassettes or modules; comes with blank panels and hardware to strain-relieve cables internally or externally	CCH-01U	EA	2	\$ 264.83	\$ 529.66
8002	Closet Connector Housing (CCH) Pigtail Cassette, loaded with CCH panel and factory-terminated pigtails, 12 F, LC Duplex, SM/UPC, single fiber splicing	CCH-CS12-A9-P00RE	EA	2	\$ 498.60	\$ 997.20
8005	Splice Protection, Heat-Shrink Fusion Splice Protectors, 60 mm long, package of 50	2806031-01	EA	1	\$ 75.64	\$ 75.64
9014	24" x 36" Polymer Concrete HH w/ Tier 15 Cover	24X36 HH POLY	EA	1	\$ 1,500.00	\$ 1,500.00
9011	2" RGS Riser	RGS	EA	1	\$ 200.00	\$ 200.00
	<b>2" Schedule 80 PVC Conduit &amp; Fittings</b>	MAT	LF	400	\$ 5.00	\$ 2,000.00
<b>NOTE:</b> Pricing does not include any permits if required by the Town/Public Works.						
<b>TOTAL ENGINEERING &amp; CONSTRUCTION</b>						<b>\$ 21,789.82</b>
	1% CRCOG Administration Fee	CRCOG FEE	LS	0	\$ 217.90	\$ -
<b>TOTAL PROJECT</b>						<b>\$ 21,789.82</b>



## PROPOSAL

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### EXHIBIT 1

**DATED:** 03/28/24

**TO:** Town of Colchester

**PAGE:** 1 of 1

**REF:** New Senior Center and IT Upgrade to Town Hall

#### TERMS & CONDITIONS

- 1 The work covered by this proposal shall be performed as promptly as possible subject to the delays caused by carriers, strikes, lockouts, fires and other causes beyond our control.
- 2 All material and labor is warranted against defects of workmanship and material for a period of One Year (1) from date of installation. Warranty is limited to replacement or repair of defects. All other warranties are disclaimed.
- 3 Unless otherwise stated, this price is based upon all work being performed during regular working hours. An additional charge shall be rendered for overtime work.
- 4 No provision has been made for Performance or Payment Bonds in this proposal unless otherwise stated.
- 5 Payment terms are Net 30 days. A 1.5% interest charge shall be applied to all payments received over after 30 days.
- 6 Tax not included. Any tax of any kind that is now or may be imposed by Federal or State governments, or any subdivision thereof affecting the sale or contract, shall be added to the prices and charged to and paid by the owner.
- 7 Shipping and freight charges are included in this proposal.
- 8 The prices quoted in this proposal are valid for 60 days from the date shown.
- 9 Information Required of The Owner - Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.