

## Counties of Amelia and Dinwiddie

### COMPREHENSIVE AGREEMENT FOR BROADBAND GRANT PROJECT IMPLEMENTATION and BROADBAND NETWORK OPERATION

#### Recitals.

This **Agreement** is made the Effective Date, by and among Wilkes Telephone Membership Corporation, a North Carolina cooperative organization (“WTMC”), RiverStreet Communications of Virginia, Inc., a Virginia corporation (“RSCVA”), RiverStreet Management Services, LLC, a North Carolina limited liability company (“RiverStreet”), North Carolina Wireless, LLC, a North Carolina limited liability company (“NCW”), Gamewood Technology Group, Inc., a Virginia corporation (“GTG”), Gamewood Telecom, Inc., a Virginia corporation (“GT”), which together with WTMC, RSCVA, RiverStreet, NCW, and GTG shall be referred to as the “Company”), the County of Dinwiddie, Virginia, a political subdivision of the Commonwealth of Virginia (“Dinwiddie”), and the County of Amelia, Virginia a political subdivision of the Commonwealth of Virginia (“Amelia”, and together with Dinwiddie, each may be referred to as a “County” and together may be referred to as the “Counties”).

**WHEREAS**, on March 8, 2018, the Tobacco Commission awarded Counties a Last Mile Broadband Grant (the “Tobacco Commission Grant”) in the amount of \$1,708,090 (such money being the “Tobacco Commission Grant Funds”);

**WHEREAS**, the Counties issued **PPEA Joint RFP-19-051719 (the “RFP”)**, which is attached hereto as **Exhibit A** pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, as revised, and the Virginia Public Procurement Act on May 7, 2019, and the Company responded with a **proposal dated June 10, 2019 (the “Proposal”)**, which is attached hereto as **Exhibit B**;

**WHEREAS**, the Company was selected by the Counties as the best proposal in response to the RFP;

**WHEREAS**, the Tobacco Commission, Dinwiddie, and the Company have entered into or will enter into an agreement with the Tobacco Commission (the “Tobacco Commission Grant Agreement”), a copy of which is attached hereto as **Exhibit C** and incorporated by reference herein; and

**NOW THEREFORE**, in consideration of the mutual benefits, promises, and undertakings, the sufficiency and receipt of which are acknowledged, the following terms and conditions are agreed to by the Parties to this Agreement:

#### **1. Order of Precedence and Incorporation by Reference.**

The following are made a part hereof as if the same were fully set forth herein, and if any discrepancies arise between the documents, they shall prevail in the following order: (1) this Agreement including the Recitals at the beginning of this Agreement, and any exhibits attached hereto (excluding Exhibits A, B, and C, each of which are hereby incorporated by reference herein, but given a lower order of precedence than this Agreement, except as set forth below), (2) the Tobacco Commission Grant Agreement (Exhibit C), except for where the Tobacco Commission Grant Agreement sets forth a more stringent requirement for the Company, in which case the provisions of the Tobacco Commission Grant Agreement shall govern as also set forth herein in Sections 6(c) and 17(b), (3) the RFP (Exhibit A), and (4) the Proposal (Exhibit B). This Agreement and Project are governed by the Virginia Public Procurement Act (the “Act”), the Public-Private Education Facilities and Infrastructure Act of 2002, as revised (“PPEA”), Dinwiddie’s Combined Guidelines for the PPEA and Public Private Transportation Act of 1995, as revised, Amelia’s Combined Guidelines for the Public-Private Education Facilities and Infrastructure Act of 2002, as revised, and the Purchasing Policies and Procedures of the Counties, as applicable. All terms and conditions of the Act and the aforementioned policies, procedures, and guidelines are hereby adopted and incorporated by reference herein.

## **2. Representations, Covenants, and Warranties of the Company.**

(a) *Achieving the Project Requirement: Grant Project Budget.* The Company represents, warrants, and covenants that the Company has the capability to, expects to, and will achieve the Project Requirement within the Company Grant Project Budget and its own funds, except to the extent that (i) one or more new Broadcast Sites are not built pursuant to the provisions of Section 8(b)(4) of this Agreement or (ii) the Counties discontinue the build-out of the Project pursuant to Section 10(b) and such action by the Counties is not based on any Default by the Company. The Company understands and agrees that although each County may, in its sole discretion, choose to appropriate funds to increase the Company Grant Project Budget, neither County shall have any obligation to do so.

(b) *Tobacco Commission Exhibits B and E.* The Company represents, warrants, and covenants that Exhibits B and E to the Tobacco Commission Grant Agreement truly and accurately represent the Company’s expectations about the Project in every respect.

(c) *State licenses and Registration.* The Company represents, covenants, and warrants that it is registered with the Virginia State Corporation Commission (with the understanding that (i) pursuant to Section 38, not all entities comprising the Company intend to be registered with the Virginia State Corporation Commission and (ii) only those entities comprising the Company that are registered with the Virginia State Corporation Commission will take action requiring such registration) and will keep such registration current. Furthermore, the Company represents, covenants, and warrants that any work performed in furtherance of the Project by the Company or any of its employees, agents, or subcontractors will be conducted in accordance with all applicable state standards, including all required contractor, occupational, or other licenses.

(d) *Financial Statements.* The Company represents and warrants that the financial statements provided to the Counties are true and accurate in every material respect.

(e) *Compliance with Applicable Law.* The Company represents, warrants, and covenants that it has and will conduct its business and work on the Project in accordance with all applicable federal, state, and local ordinances, laws and regulations, including, but not limited to, all rules and regulations of the FCC, all statutes, rules, regulations, and ordinances involving human health and safety, and all traffic laws and regulations.

(f) *Licenses.* The Company represents that as of the Effective Date it has all licenses for broadband spectrum from the FCC that are (i) necessary to operate all equipment that it will purchase with any County Grant Funds received by the Company pursuant to this Agreement and (ii) necessary to install and operate the Broadband Network and achieve the Project Requirement within the Company Grant Project Budget. The Company warrants and covenants that it will make best efforts to obtain and maintain any licenses reasonably necessary to operate the Broadband Network in each of the Counties for future time periods and obtain any other licenses required to (i) effectively operate the Broadband Network and (ii) maintain the service levels of already existing customers. Notwithstanding the foregoing language in this Section 2(f), expenses for licensed microwave links between Towers may be paid from the Company Grant Project Budget, with the understanding that, unless the Counties expressly agree otherwise in writing, no more than \$200,000 of the Company Grant Project Budget shall be spent on licensing of spectrum from the FCC, including, but not limited to, the Citizens Broadband Radio Service (CBRS), educational spectrum, and television white space (but not including licensed microwave backhaul links). The Company further understands and agrees that (i) the Counties and the Company may jointly elect for the Counties to own any spectrum purchased with the Company Grant Project Budget and (ii) upon a Company default and failure to cure under this Agreement all such licenses shall be transferred to the Counties, or to a third party designated by the Counties, unless otherwise expressly agreed to in writing by the Counties.

(g) *No Reliance on Statements of Counties.* The Company has obtained its own legal counsel and conducted its own research as to the business, potential Customers, marketing, and technical aspects of its own business, the Broadband Network, and the Project, and it has not relied on any statement made by the Counties or their employees, agents, officials, or Project managers in entering into this Agreement.

(h) *Dinwiddie County Public Safety Radio Project.* The Company understands that Dinwiddie plans on completing a public safety radio project and that Dinwiddie expects to build as few as zero (0) new Towers as part of that project, although Dinwiddie may, in its sole discretion, (i) build more than zero (0) new Towers as part of the public safety radio project or (ii) exercise its rights under Section 8(d) as set forth in further detail under Section 8(d) to collocate public safety equipment with Public Broadband Towers. The Company represents that it can achieve the Project Requirement as set forth within the Company Grant Project Budget and the Company's own funds even if Dinwiddie does not build any new Towers for its public safety radio project.

(i) If any representation of the Company is not true, or any warranty or covenant not fulfilled, such misrepresentation or unfulfilled warranty or covenant shall constitute a material and substantial breach of this Agreement.

### **3. Term of Agreement.**

The term of this Agreement shall be for five (5) years beginning on the Effective Date (the “Initial Term”) and each County may, in its sole discretion, extend this Agreement for up to two (2) additional terms of five (5) years (each, a “Renewal Term”). Regardless of whether it is an Initial Term or a Renewal Term, each five-year term may be referred to in this Agreement as a “Term.” The Agreement shall be extended to each Renewal Term automatically, unless a County provides written notice to the other Parties that it does not intend to renew this Agreement at least 180 days prior to the expiration of Initial Term. Notwithstanding any provision of this Section 3 to the contrary, none of the Company’s obligations pursuant to this Agreement shall expire until the Tobacco Commission Period (as defined below) has expired. Further, either County may elect to terminate or not renew the Agreement as provided herein, which shall not prevent the other County from continuing its relationship with the Company pursuant to this Agreement. In such event this Agreement shall otherwise remain in full force and effect with regard to the other County and the Company unless or until this Agreement is later terminated or not renewed.

### **4. Effective Date.**

This Agreement shall become effective upon the date of the signature of the last Party confirming this Agreement (the “Effective Date”).

### **5. Definitions.**

For the purposes of this Agreement, the following capitalized terms shall have the meanings set forth below. Unless otherwise stated in this Agreement, words not set forth below shall have the meaning apparent from their American English-language definition and the context within which they appear in this Agreement.

“Acceptable Use Policy” shall mean the policy attached as **Exhibit F** to this Agreement as the same may be revised from time to time.

“Act” shall mean the Virginia Public Procurement Act, which is codified at Section 2.2-4300 et seq. of the Code of Virginia, 1950, as amended.

“Amelia” shall have the meaning given to it in the Recitals to this Agreement.

“Applicable Law” shall mean all federal, state, and local laws, statutes, regulations, rules, and ordinances.

“Broadband Network” shall include all network related assets, equipment and infrastructure, whether owned by the Company, the Counties or other entity, which together comprise the system to be designed, maintained, and operated by the Company for the provision of Service to Customers in the Counties.

“Broadcast Point” shall mean any point from which an electromagnetic signal is broadcast through the air to provide Service, including points where Network Equipment is placed on Public Broadband Towers, Third-Party Vertical Assets, and any Vertical Assets owned by the Company. For the purposes of clarification, Customer Premise Equipment shall not be considered a Broadcast Point.

“Broadcast Site” shall mean any site containing a Broadcast Point.

“Broadcast Site Workflow” shall mean all work and expenditures of the Grant Project Budget related to a new Broadcast Point.

A “Change of Control Event” shall be deemed to have occurred upon (i) WMTC at any time owning less than a 100% direct or indirect interest in each of RSCVA, RiverStreet, NCW, GTG, and GT, (ii) WMTC owning less than a 100% direct or indirect interest in NCW at any time after February 14, 2020, (iii) the sale of substantially all the assets of any of RSCVA, RiverStreet, NCW, GTG, and GT, (iv) a merger event of WMTC, or (v) loss of status by WMTC as either (x) a non-profit under the Federal Tax Code (26 U.S.C.) or (y) loss of status as a cooperative corporation under North Carolina law.

The “Company” shall have the meaning given to it in the recitals. Each reference to Company herein shall refer to each of WTMC, RSCVA, RiverStreet, NCW, GTG, and GT separately and together.

“Company Grant Project Budget” shall mean the Grant Project Budget (which is \$3,416,180) minus the sum of (1) any costs incurred by the Counties related real estate and easement acquisition in connection with new Public Broadband Tower sites and (2) legal fees now owed or incurred in the future related to the Project. Outside legal fees for services provided to the Counties for the project and to be drawn from the Company Grant Project Budget shall not exceed \$50,000.00.

“Company’s Facilities” shall mean (i) equipment and personal property owned by the Company and located in either County, plus (ii) any assets owned by the Company paid for from the Company Grant Project Budget provided for in this Agreement or other public funds no matter where located.

“Comparable Services” shall mean wireless broadband internet access service packages offered by providers substantially similar to the Company to customers in similarly situated, predominantly rural markets. Comparable services shall not include special, promotional, or non-internet access services, or services that are not wireless broadband, such as dial-up or DSL, for example.

The “Coverage, Phasing, and Implementation Plan” shall be as described in Section 10 of this Agreement and shall include any amendments as set forth in Section 10. The first Coverage, Phasing, and Implementation Plan is attached to this Agreement and incorporated herein in **Exhibit I**.

“County” and “Counties” shall have the meaning given to them in the Recitals to this Agreement.

“County Grant Funds” shall have the meaning given to it in Section 7(a)(2) of this Agreement.

“Customer Premise Equipment” shall mean equipment installed on property owned or leased by a Customer (not including Micro-Pops) that allows a single building or single Customer (either business or household) and only that Customer to receive internet Service.

“Customers” shall mean citizens paying for the Services of the Company within the geographic boundaries of the Counties.

“Dark” and “Dark Day” shall have the meanings given to them by Section 23(b)(2) of this Agreement.

“Default” shall mean that the Company is in default of this Agreement, either under Section 23 of this Agreement or otherwise.

“Default Option” shall mean the option of each County set forth in Section 21(h) of this Agreement.

“Digital Inclusion Customers” shall mean households with a student eligible for free or reduced lunch. Digital Inclusion Customers shall include students who attend private or homeschools and whose household income levels would qualify them for free or reduced lunch. The Company may require the Counties to provide a mechanism for certifying that a Customer is a Digital Inclusion Customer, prior to providing a Digital Inclusion Customer with a reduced rate.

“Dinwiddie” shall have the meaning given to it in the Recitals to this Agreement.

“Disaster Contingency Plan” shall mean the plan attached to this Agreement as **Exhibit K**, which shall be amended from time to time.

“Effective Date” shall have the meaning given to it by Section 4 of this Agreement.

“FCC” shall mean the Federal Communications Commission.

“Force Majeure” shall include acts of God, floods, fires, hurricanes, lightning strikes, tornadoes, earthquakes or other severe weather conditions including but not limited to the inability or impracticability to work due to rain or snow which while not amounting to a flood nonetheless

limits the ability of a party to accomplish a goal or meet a deadline, acts of public enemy insurrection, war, riot, sabotage, act of terrorism, epidemic, strike, freight embargoes, trade wars including but not limited to the inability to trade with all vendors of a sovereign nation where the ability to trade with such vendors existed thirty (30) days before the Effective Date, supply shortages, preferred vendors ceasing business operations or running out of supply, concealed and unknown conditions below the surface of the ground differing materially from those ordinarily encountered and generally recognized as inherent in construction or broadband network construction work or which are not reflected on current maps or drawings of underground conditions, wrongful physical obstruction by any person at any installation site, national emergencies or failure of any common carrier or third party facility not affiliated with the Company.

The “Fund” shall have the meaning given to it in Section 17(e) of this Agreement.

“Funded Phase” shall have the meaning given to it in Section 10(a)(1).

“Grant Funds” shall include both Tobacco Commission Grant Funds and County Grant Funds.

“Grant Project Budget” shall have the meaning given to it in Section 17(a) herein and shall be set out in more detail in **Exhibit M** to this Agreement.

“Indebtedness” means any amount owed by the Company to the Counties resulting from this Agreement, including, but not limited to the amount of any funds sought from the Tobacco Commission. “Indebtedness” shall also include the right of the Counties to exercise the Default Option set forth in Section 21(h).

“Initial Term” shall have the meaning given to it in Section 3 of this Agreement.

The “List of Public Facilities” shall be as set forth in **Exhibit G** to this Agreement as the same may be amended from time to time.

“Micro-pop” shall mean any Vertical Asset, the highest available attachment point of which is less than 120 feet above ground level. Notwithstanding the foregoing, any Vertical Asset for which (i) there is no intent to move its location or (ii) there is a plan to use a “white space” or similar propagation technology may be designated a Tower to be owned by a County instead of a Micro-pop in the Coverage, Phasing, and Implementation Plan by mutual agreement of the relevant County and the Company.

“Network Acceptance, Testing, and Compliance Plan” shall mean the plan set forth in **Exhibit J** to this Agreement as such is amended from time to time pursuant to this Agreement.

“Non-Standard Installation” shall mean any installation of Customer Premise Equipment other than a Standard Installation.

“Normal Business Hours” shall mean 8 a.m. to 5 p.m. on Mondays through Fridays, except holidays recognized by the Commonwealth of Virginia.

“Normal Operating Conditions” shall mean periods of time in which there exists neither extreme weather nor a Force Majeure.

“Network Equipment” shall mean the equipment that comprises the Broadband Network. Network Equipment shall include any Micro-pops designated in the Coverage, Phasing, and Implementation Plan as Company-owned Micro-pops.

“Parties” shall mean the Company and each of the Counties. Each of the Parties may be referred to individually as a “Party.”

“Penetration Rate” shall have the meaning given to it in Section 14(a) of this Agreement.

“Project” shall mean the work undertaken to accomplish the Project Requirement.

“Project Requirement” shall mean the establishment and ongoing provision by the Company by three (3) years from the Effective Date of the Tobacco Commission Grant Agreement (or in the case that an extension is granted by the Tobacco Commission by four (4) years from the Effective Date of the Tobacco Commission Grant Agreement) of high speed, reliable, affordable Internet service to 95% of the Target Census Blocks of each of the Counties which are Unserved or Underserved as of December 2017. For the purposes of this definition, high speed shall mean download speeds capable of at least 25 Mbps and upload speeds capable of at least 3 Mbps; reliable shall mean complying with the coverage and service levels set forth in Section 11; and affordable shall mean complying with the provisions of Section 16 relating to cost of services. In order for the Company to accomplish the Project Requirement, the Company must report its success in providing the aforesaid service to census blocks to the FCC. No change in FCC rules shall exempt the Company from providing download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps to 95% of the Target Census Blocks of each of the Counties which are Unserved or Underserved as of December 2017.

“Project Manager” or “PM” shall mean any employee, official, agent, or consultant of either County appointed by such County to manage the Company’s work on the Project.

“Proposal” shall have the meaning given to it in the Recitals to this Agreement.

“Public Broadband Tower” shall mean any Tower owned or leased by a County, or broadband authority established by Dinwiddie or Amelia, including new Public Broadband Towers that will be owned by a County as well as any other publicly owned Vertical Asset upon which the Company has been authorized to place any component of the Network Equipment by a valid action of a Board of Supervisors, after a public hearing or public hearings held pursuant to Va. Code Section 15.2-1800 et seq.

“Public Facilities” includes Vertical Assets as well as any other property owned or leased by any governmental entity, including, but not limited to, publicly-owned Vertical Assets.

“Renewal Term” shall have the meaning given to them in Section 3 of this Agreement.

“Requisition Form” shall mean a form in the form of **Exhibit H** with such modifications as may be requested by the Party to which the Requisition Form is submitted.

“RF Interference” shall be deemed to occur when radio waves emanating from a device or piece of equipment cause interference with other devices or equipment that use radio frequency waves, and such interference is not permitted by FCC Rules.

“RFP” shall have the meaning given to it in the Recitals to this Agreement.

“Quarter” shall mean January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Section 17(d) Indemnitees” shall have the meaning given to it in Section 17(d) of this Agreement.

“Secured Company’s Facilities” shall have the meaning given to it in Section 21(a) of this Agreement.

“Security Interest” shall mean any interest of the Counties or a broadband authority in any personal property or fixtures (including Micro-pops) of the Company which secures payment or performance of any obligation of the Company under this Agreement.

“Service Interruption” shall be deemed to occur if (i) there is complete loss of internet service to a Customer or (ii) a Customer’s speed of internet service is materially and demonstrably slower than that of the package purchased by the Customer. A Service Interruption shall not be deemed to have occurred if it is caused by one or more factors outside of the reasonable economic control of the Company.

“Services” shall include any internet services provided by the Company, including, but not limited to, all services required to be provided to the Counties by the Company in the deployment and operation for the benefit of Customers and potential Customers of (i) the Broadband Network, (ii) internet, (iii) customer support, and (iv) any other service required under this Agreement.

“Standard Installation” shall have the meaning given to it in Section 16(c) of this Agreement.

“Target Census Blocks” shall mean the populated census blocks of the Counties that are Unserved or Underserved as of December 2017 according to FCC Form 477 data. High level maps of the Target Census Blocks for each County are attached hereto as **Exhibit N**.

“Term” shall have the meaning given to it in Section 3 of this Agreement.

“Third-Party Tower” shall mean any Tower not owned by either (i) any of the Parties to this Agreement or (ii) any broadband authority created by Dinwiddie and/or Amelia.

“Third-Party Vertical Assets” shall mean any Vertical Assets not owned by either (i) any of the Parties to this Agreement or (ii) any broadband authority created by Dinwiddie and/or Amelia.

“Tobacco Bonds” shall have the meaning given to it in Section 17(d) of this Agreement.

“Tobacco Commission” shall mean the Virginia Tobacco Region Revitalization Commission, a body corporate and political subdivision of the Commonwealth of Virginia.

“Tobacco Commission Grant” shall have the meaning given to it in the Recitals to this Agreement.

“Tobacco Commission Grant Funds” shall have the meaning given to it in the Recitals to this Agreement.

“Tobacco Commission Grant Agreement” shall have the meaning given to it in the Recitals to this Agreement, and a copy of the Tobacco Commission Grant Agreement is attached hereto as **Exhibit C**.

“Tobacco Commission Period” shall mean the period of time from the Effective Date, until the Tobacco Commission has provided Dinwiddie with an unambiguous, express, irrevocable, written notice satisfactory to the County Administrators of Dinwiddie and Amelia in each of their sole discretions that (i) the Tobacco Commission Grant is being closed out and (ii) the Tobacco Commission will not take any action to recover funds from the Company or the Counties. The Parties understand that pursuant to the Grant Agreement, the Tobacco Commission will release its security interest upon the full compliance with and performance under the Grant Agreement, including without limitation all reporting requirements thereunder, once the Tobacco Commission has determined that the public purposes of the Grant have been satisfied.

“Tower” shall mean any Vertical Asset, the highest available attachment point of which is equal to or greater than 120 feet above ground level, or any other Vertical Asset expressly designated as a Tower in the Coverage, Phasing, and Implementation Plan.

“Underserved” shall describe residents in census blocks where internet download speeds of 25 Mbps and upload speeds of 3 Mbps are not available according to FCC Form 477 data as of December 2017. High level maps of the Underserved census blocks for each County are attached hereto as **Exhibit N**.

“Unserved” shall describe residents in census blocks where internet download speeds of 10 Mbps and upload speeds of 1 Mbps are not available according to FCC Form 477 data as of December 2017. High level maps of the Unserved census blocks for each County are attached hereto as **Exhibit N**.

“Vertical Asset” shall mean utility poles; water tanks; cell phone, radio, water, and other towers; and tall buildings (including steeples). Customer Premise Equipment shall not be considered a Vertical Asset for the purposes of this Agreement.

## **6. Obligations of the Company.**

(a) *Scope of Work: Project Implementation and Broadband Network Operation.* Except for the requirements expressly placed upon the Counties in Section 7 herein, the Company shall be solely responsible for furnishing all labor, equipment, and materials, and be solely responsible for performing all of its obligations pursuant to this Agreement, including, but not limited to:

- (1) The timely accomplishment of the Project Requirement within the Company Grant Project Budget in accordance with all the terms and conditions of this Agreement and the Tobacco Commission Grant Agreement;
- (2) The timely completion of each Funded Phase in the Coverage, Phasing, and Implementation Plan within the budget for such Funded Phase;
- (3) Turn-key provision of any new Public Broadband Towers and Micro-pops required for the Project, including, but not limited to, completing any and all necessary clearing, site-preparation, access road construction, fiber connections, electrical connections, shelters, and fence and security work; and
- (4) The constructing, equipping, and operating of the Broadband Network and providing high-speed Internet services to Customers in strict accordance with the Company’s obligations under this Agreement (including obligations of the Company that are incorporated in this Agreement by reference).

The Company’s expenses for (i) Broadband Network equipment, (ii) licensed microwave backhaul links, and (iii) materials, site preparation, and installation of new Public Broadband Towers and Micro-pops (including initial capital costs for clearing, site-preparation, access road construction, fiber connections, electrical connections, shelters, and fence and security work) may be paid from the Company Grant Project Budget. Notwithstanding anything in this Agreement to the contrary, the Company’s expenses for rent paid to co-locate on Third-Party Towers, recurring fiber connection bills associated with operating the Broadband Network, recurring electric bills associated with operating the Broadband Network, all costs of fiber installation (including, but not limited to materials, labor, and easements), and any ongoing operational costs of running the Broadband Network shall not be paid from the Company Grant Project Budget, but shall be paid by the Company with the Company’s own funds. Notwithstanding the above, the Counties, in their sole discretion, may choose to fund Third-Party Tower rent as a capital expense under the Company Grant Project Budget in cases where there are significant identifiable savings compared to new Vertical Asset installation and no significant benefit or advantage to Customers in constructing a new Vertical Asset to serve the same general area. Furthermore, unless the Counties expressly agree otherwise in writing, in no event shall the Company spend more than a total of \$200,000 of the Company Grant Project Budget on licensing spectrum from the FCC, including, but not limited to, the Citizens Broadband Radio Service (CBRS), educational spectrum, and

television white space (but not including licensed microwave backhaul links). The Company further understands and agrees that the Counties and the Company may jointly elect for the Counties to own any spectrum purchased with the Company Grant Project Budget.

Notwithstanding any provision of this Agreement to the contrary, if the Company Grant Project Budget is exhausted for either County prior to the completion of the Project Requirement in such County, the Company shall timely complete the Project Requirement with its own funds in such County.

(b) *Project Implementation.*

(i) The Company shall be responsible for commencing and completing the build-out of the Project according to the schedule set forth in the **Coverage, Phasing, and Implementation Plan**. For the Term of this Agreement, Company is authorized to and solely responsible for mounting, installing, operating, repairing, upgrading, replacing, maintaining, and removing Company's Facilities, which shall include all Network Equipment funded under this Agreement except as set out herein. A list of Company's Facilities that are (i) Secured Company's Facilities or (ii) to be placed on a publicly owned Vertical Asset, both in general and per each Public Facility shall be attached hereto as **Exhibit G** to the extent such facilities are known at the time of Agreement execution and shall thereafter be updated by the Company with each Requisition Form submitted and with each amendment to the Coverage, Phasing, and Implementation Plan. The Company shall not own: (i) any existing or future Towers and any associated equipment shelters installed with County or Grant Funds, (ii) any real property acquired by the Counties for the Project, or (iii) any utilities connections that could be reasonably necessary to connect other potential users to a Public Broadband Tower, except that the Company shall own any fiber, land, materials, or facilities paid for with the Company's own funds and not with the Company Grant Project Budget or other public funds.

(ii) Except as provided under the Default and termination provisions (Section 23) and Security Interest provisions (Section 21) herein, the Company shall hold and retain title to the Company's Facilities and each device and component thereof, and no portion of the Company's Facilities shall become a fixture unless the Company expressly agrees otherwise in writing. The Company shall have exclusive access to and use of all of Company's Facilities. However, the Company shall provide Counties with access required to perform any tests or studies permitted under the Agreement.

(iii) The Company shall participate in regular Project status meetings as set forth in Section 10(e). In addition, the Company shall provide weekly or monthly status updates to any Project Managers chosen by one or both Counties or according to any other reporting schedule established by the Project Managers or Counties not more frequently than weekly. Without limiting the Company's obligations under Section 12 relating to books and records, the Company shall coordinate with the PM and Counties to ensure compliance with the Tobacco Commission Grant Agreement and shall provide all necessary

information, records, and reports required by the Counties related to the Company's compliance with this Agreement and the Tobacco Commission Grant Agreement. Unless required otherwise by the Tobacco Commission, the Company shall be provided with advance notice of at least thirty (30) days before being required to provide any report or series of reports or amend any report or series of reports. Unless it is notified otherwise by the Counties, the Company agrees to coordinate its work directly and predominantly with the PM, which shall serve as the Counties' primary point of contact for the Project. Nothing herein shall prevent the Company from working more directly with County staff if deemed appropriate by the Counties. Nothing herein shall require the Counties to provide a third party Project Manager, however the Counties will each designate a "point person" to help coordinate the Project with the Company.

(c) *Tobacco Commission Grant Agreement Obligations.* The Company shall fulfill its obligations to the Tobacco Commission and Dinwiddie pursuant to the Tobacco Commission Grant Agreement, including, but not limited to those set forth in Section 17 of this Agreement. The Parties hereto agree that the Company has the responsibility for ensuring that the Broadband Project complies with the Tobacco Commission Grant Agreement and the requirements of this Agreement, and, except to the extent such non-compliance is the fault of the Counties' failure to fulfill their obligations herein or under the Tobacco Commission Grant Agreement, the Company agrees to indemnify the Counties in the event that the Tobacco Commission invokes a "clawback" or other penalty for violation of the Tobacco Commission Grant Agreement if such violation is caused by the Company's actions or inactions. In the event that there is a difference in the Company's obligations under the Tobacco Commission Grant Agreement and the Company's obligations under this Agreement, the requirement that is the more stringent on the Company shall control.

(d) *Network Coverage and Timing.* The Company shall deploy the Broadband Network in accordance with the Coverage, Phasing, and Implementation Plan and shall ensure compliance with the minimum coverage and timing requirements of the Tobacco Commission Grant Agreement and this Agreement.

Prior to the deadline for acceptance for a Broadcast Site set forth in the Coverage, Phasing, and Implementation Plan, the portion of the Broadband Network associated with such Broadcast Site shall be tested by the Company, and the Company shall provide written evidence reasonably satisfactory to the Counties that such Broadcast Site and the associated portion of the Broadband Network is in compliance with the Network Acceptance, Testing, and Compliance Plan.

(e) *Security Interest and Default Option.* As a condition precedent to any obligations of the Counties pursuant to this Agreement, the Company shall grant Amelia and Dinwiddie the security interest(s) described in Section 21 and otherwise comply with the requirements of Section 21. The Company furthermore grants the Counties the Default Option described in Section 21(h) of this Agreement.

(f) *Repayment of Tobacco Commission Grant Funds.* If (i) the Tobacco Commission requires repayment by the Company or either or both of the Counties of all or any portion of the Tobacco Commission Grant Funds to the Tobacco Commission pursuant to the Tobacco Commission Grant Agreement, (ii) such requirement for repayment was caused by the Company's failure to fulfill its representations, covenants, warranties, or obligations herein or under the Tobacco Commission Grant Agreement, and (iii) the Company fails to repay the Tobacco Commission within ten (10) business days after written demand, each of Dinwiddie and Amelia shall solely at their option, (i) draw upon the Security pursuant to Section 21 or (ii) exercise the Default Option described in Section 21(h) of this Agreement.

(g) *Plans and Specifications.* The Company shall provide the Counties with the plans and specifications for the Broadband Network prior to any installation under this Agreement, including any upgrades or enhancements; provided that the provision of such plans and specifications shall not be required for routine operations, maintenance and repairs, such as replacement of antennas to increase performance or mitigate RF Interference. Any review or comment by Counties shall in no way relieve the Company of any duties or obligations set forth in this Agreement or limit Company's ability to provide the Services in accordance with applicable law. The Company shall make reasonable efforts to address and accommodate any concerns expressed by either of the Counties; provided that such concern must be expressed by a County in writing to the Company within thirty (30) calendar days of the Company's submission of such plans or specifications to the Counties. Should the Company reasonably object in writing to any change requested by the Counties, and the Counties insist on the change being made, then the Company shall not be liable to the Counties in any way for damages incurred as a result of such change.

(h) *Intellectual Property.* The Company shall comply with the provisions of Section 9(g) of this Agreement.

(i) *Fiber Construction and Revenue Sharing.* The Company shall comply with the provisions of Section 14.

(j) *Pricing.* The Company shall comply with the requirements of Section 16.

(k) *Company Leases with Third Parties.* Notwithstanding any provision in this Agreement to the contrary, Company is solely responsible for securing all access and co-location rights, as necessary, to all required Third Party Towers and other assets identified in the Project Coverage, Phasing, and Implementation Plan that are not owned by the Counties. Further, the Company is responsible for all costs associated with the access to and use of such third party assets, unless otherwise agreed to by the Counties in writing. Except as allowed for by a County in its sole discretion pursuant to Section 6(a), in no event shall leases for Third-Party Towers be paid for with funds from the Company Grant Project Budget.

(l) *Company's Facilities; Non-Interference.* Company shall comply with the requirements for Section 13 related to the Company's Facilities and non-interference.

(m) *Work Standards.* The Company agrees to conduct its business in full conformity with Applicable Law and the highest standards of human safety. Company shall use commercially reasonable efforts to notify affected residents, property owners, and businesses prior to commencement of work that can be reasonably anticipated to adversely affect the quiet enjoyment of their property. Company acknowledges that the Counties have not made warranties or representations regarding the fitness, safety, or suitability of any Public Broadband Towers for the installation of Company's Facilities, and that any performance of work or costs incurred by Company or provision of Services contemplated under this Agreement by Company is at Company's sole risk.

(n) *Payment of Taxes.* Subject to all provisions of this Agreement, Company shall pay all taxes, assessments, and fees applicable to Company for the installation and operation of the Broadband Network. Company shall pay any and all taxes, assessments, and fees, which may be levied against Company by either of the Counties or other governmental entity.

(o) *Compliance with Law and Inspection of the Company's Facilities.* Company shall comply with all applicable federal, state and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of the Broadband Network within the Counties. The Counties shall have the right, but not the responsibility, to inspect all construction or installation work performed pursuant to this Agreement and to conduct any tests it deems necessary to ensure compliance with the terms of this Agreement, including all applicable federal, state and local building and engineering codes. The Company shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that the Broadband Network is installed in a safe manner and pursuant to the terms of this Agreement and Applicable Law.

(p) *Independent Contractor.* Company shall act as and be an independent contractor and not an agent or employee of the Counties. Company shall operate the Broadband Network as the Company determines in its sole discretion provided that such operation shall at all times be in accordance with the requirements of this Agreement. The Company shall pay all monthly (or other periodical) electric and fiber bills related to the Company's use of the Public Facilities.

(q) *Customer Service Requirements and Change in Service Levels Requirements.* Company shall comply with the customer service requirements and other standards and requirements set forth in Sections 11 and 12.

(r) *Assignment and Transfer.* The Company may not make any assignment or transfer (including by a Change of Control Event) of this Agreement in whole or in part, except for in conformance with the provisions of Section 20.

(s) *Insurance, Bonding, and Indemnification.*

- (i) The Company shall maintain the insurance and bonding required of it by Section 22 of this Agreement and agrees to each of the various indemnification provisions set forth in this Agreement.
- (ii) Company agrees to indemnify, defend, and hold harmless each of Dinwiddie and Amelia and each of their respective officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Company or any services of any kind or nature furnished by the Company, provided that such liability is not attributable to the sole negligence of the Counties.

(t) The Company shall notify Counties of active and intended frequencies to be used so that proper notification may be provided to future and prospective tenants and users of Public Facilities and other facilities that are or may fall under Counties' control. Such frequencies shall be set out in **Exhibit E**, which exhibit is hereby incorporated herein. The Company shall be responsible for keeping **Exhibit E** updated at all times and providing copies of such updates to the Counties in writing.

(u) *Company Agreement on Limits of Lease of Public Broadband Towers.* Company agrees that: (i) Company's rights to use Public Broadband Towers pursuant to this Agreement do not constitute a direct or indirect ownership interest in said Public Broadband Towers; (ii) none of the Public Broadband Towers that the Company may be given the right to use pursuant to this Agreement are within the exclusive use or control of the Company; and (iii) the Counties may impose reasonable restrictions on the installation, maintenance, or use of any of Company's Facilities wherever situated consistent with this Agreement, such as restrictions necessary to accomplish public safety objectives or to preserve a historic district, site, building, or other structure. Notwithstanding any provision of this Agreement to the contrary, for the avoidance of doubt, in the event of a conflict between any public safety facility or device and the Broadband Network, the Company's lease shall be limited so as not to conflict with public safety uses.

(v) *Marketing and Administration.* The Company will be responsible for all aspects of marketing and administering the operations of the Broadband Network, including but not limited to, soliciting Broadband Network subscribers, administering subscriber accounts, and handling all delinquent payment and collections matters.

(w) The Company will promote the open and interconnected nature of the public Internet allowing Customers to access the lawful Internet content of their choice while subject to reasonable restrictions. Such policies shall be established in Company's **Acceptable Use Policy**, which will be revised from time to time by Company and attached as **Exhibit F** and is incorporated herein by reference.

(x) *Permits.* The Company is responsible for obtaining all applicable permits, licenses, and authorizations as are required for the Company to comply with all applicable local, state and federal laws, regulations and ordinances relating to Company's responsibilities under this Agreement. Provided that the Company has complied with all filing procedures, deadlines and other applicable permitting or licensing requirements, the Company shall not be responsible for any delays arising from the permitting, approval, inspection, or zoning process; and during any such delay, the Counties shall extend all milestones, standards, and deadlines (with respect to the area impacted by the delay) established in the Coverage, Phasing, and Implementation Plan.

(y) *Vertical Asset Maintenance.* The Company shall be responsible for maintaining the Vertical Assets owned by it. The Company and the Counties may choose to negotiate and enter into a future agreement for Vertical Asset maintenance of publicly owned Vertical Assets, although nothing herein shall obligate them to do so.

(z) *Zoning.* The Company shall comply with Section 18 of this Agreement.

(aa) The Company shall comply by all provisions of this Agreement, regardless of whether or not such provision is mentioned in this Section 6.

## **7. Obligations of Dinwiddie and Amelia.**

(a) *Obligations of Dinwiddie and Amelia to the Company.*

(i) Acquisition of Land for and Construction of Public Broadband Towers in Dinwiddie and Amelia. The Counties shall acquire land for the Public Broadband Towers subject to (x) the conditions precedent in and (y) further detail set forth in Section 8(c). Subject to (A) future appropriations (as set forth in Section 34 herein), (B) approval by the relevant County of the Funded Phase of the Coverage, Phasing, and Implementation Plan covering such expenditure (as set forth in Section 10(c) and 10(d) herein), (C) the execution by the Company of all documents necessary to satisfy Section 21, and (D) the Company's compliance with this Agreement in all material respects, each of which shall be a condition precedent to funding pursuant to this Section 7(a), on a reimbursement basis, the Counties shall provide the Company with funding from the Company Grant Project Budget for the construction of Public Broadband Towers and Micro-pops on a reimbursement basis within forty five (45) days from the receipt of Requisition Forms (which shall include receipts or other documents definitively showing that such funds have been spent by the Company) by the relevant County in a form acceptable to such County.

(ii) Funding of County Grant Funds. Subject to (A) future appropriations (as set forth in Section 34 herein), (B) approval by the relevant County of the

Funded Phase of the Coverage, Phasing, and Implementation Plan covering such expenditure (as set forth in Section 10(c) and 10(d) herein), (C) the execution by the Company of all documents necessary to satisfy Section 21, and (D) the Company's compliance with this Agreement in all material respects, each of which shall be a condition precedent to funding pursuant to this Section 7(a), on a reimbursement basis, the Counties shall provide the Company with the amount of the Company Grant Project Budget (x) to complete construction and installation of any and all new Public Broadband Towers and new Micro-pops in a Funded Phase of the Coverage, Phasing, and Implementation Plan, including, but not limited to, completing any and all necessary clearing, site-preparation, access road construction, fiber connections, electrical connections, shelters, and fence and security work, and (y) to purchase and install the Network Equipment as listed in the Coverage, Phasing, and Implementation Plan, and within forty five (45) days from the receipt of Requisition Forms (which shall include receipts or other documents definitively showing that such funds have been spent by the Company) by the relevant County in a form acceptable to such County, such County shall provide those funds to the Company as a grant (the "County Grant Funds").

At no time shall the County Grant Funds for either County exceed the least of the following three amounts: (i) the funds appropriated by the Board of Supervisors of such County for the Dinwiddie-Amelia Broadband Project, (ii) the amount specifically set forth as County Grant Funds for Network Equipment in a Funded Phase of the Coverage, Phasing, and Implementation Plan, and (iii) the amount remaining in the Company Grant Project Budget.

- (iii) Leases to Use the Public Facilities for Broadband Network. The Parties have identified, or will in the future identify, certain existing Public Facilities to be utilized in the Project. The List of Public Facilities is set out in **Exhibit G**, which is attached hereto and incorporated herein, and may be amended throughout the term of this Agreement as agreed to by the Parties, and may be expanded to identify any additional Public Facilities designated as such by the Counties. Any facilities not listed in **Exhibit G** shall be deemed to be neither Public Facilities nor Public Broadband Towers for the purposes of this Agreement.

Subject to the prior approval of the Board of Supervisors of each of Dinwiddie and Amelia (individually for each Public Broadband Tower) and all Applicable Law, including, but not limited to, § 15.2-1800 et seq. of the Code of Virginia, as applicable, regulations, and ordinances, Dinwiddie and Amelia agree to hold a public hearing (or public hearings) to consider granting to the Company a non-exclusive lease to use the Public Facilities

(together with any appropriate amount of associated shelter space) located in Dinwiddie or Amelia subject to any current agreements that such County has extended to other parties and that have been provided to Company on or prior to the Effective Date. In the event that the requisite approvals are not obtained through no fault of the Company, the Company shall not be deemed to be in Default of this Agreement to the extent that the denial of such approval directly causes the Company to fail to meet its obligations pursuant to this Agreement.

Dinwiddie and Amelia each agree to provide the Company copies of all such agreements currently existing with other parties, and any entered into during the Term (and any Renewal Terms if applicable) of this Agreement. Dinwiddie and Amelia also agree to provide the Company with information regarding operating frequencies, antennae configuration and any information necessary (except for any proprietary information) for the Company to ensure its compliance with the non-interference provisions of this Agreement.

This Agreement does not confer any rights other than those expressly provided herein and does not authorize the Company to occupy and use the public rights-of-way or other Public Facilities for any purposes other than as provided herein. Furthermore, the Company understands that its lease is limited by Section 6(u) and all other applicable terms and conditions in this Agreement.

- (iv) Non-interference. Dinwiddie shall abide by the provisions of Section 13(c) and 13(e).
- (v) Marketing Cooperation. Pursuant to Section 6(v), the Company will be responsible for all aspects of marketing and administering the operations of the Broadband Network, including but not limited to, soliciting Broadband Network subscribers, administering subscriber accounts, and handling all delinquent payment and collections matters. The Counties may choose to cooperate, as determined by the Counties, each in their sole discretion, in marketing, advertising, and promotional plans, schedules, and materials regarding the Broadband Network.
- (vi) County Assistance to Company. Subject to applicable law, including, but not limited to conformity with zoning rules and regulations, each County agrees to use reasonable efforts to assist Company in obtaining all necessary permissions or permits required to facilitate (i) the installation and maintenance of Company's Facilities, and (ii) Company's provisioning of Services requiring the use of rights-of-way that may be controlled by a County or the Commonwealth. The Company is solely responsible for

obtaining all required third party agreements as set out herein. For the avoidance of doubt, nothing in this Agreement shall require or prohibit the use of eminent domain powers in any way by either of the Counties.

- (vii) Consideration of Amendments. The Counties shall consider any amendments to this Agreement proposed by the Company, especially if the provisions of this Agreement threaten the economic viability of the Company. Notwithstanding the foregoing, the Counties may, in each in their sole discretion, reject any such amendment and hold the Company responsible for performing its obligations under this Agreement.
- (viii) Creation of Broadband Advisory Committee. Upon the request of the Company each County's Board of Supervisors may create a broadband advisory committee. Any meetings of such an advisory committee shall be open to the public and in conformance with the requirements of the Virginia Freedom of Information Act (Sections 2.2-4300, *et seq.* of the Code of Virginia).
- (ix) Subject to applicable law, Dinwiddie shall make available for the project three (3) unconstructed towers as described in the RFP, which towers shall be available for installation in Dinwiddie.

(b) *Obligations of Amelia to Dinwiddie*

- (i) Amelia shall retain all books, records, and other documents relative to this Agreement and the construction, equipping and operation of the Broadband Network for the Term of this Agreement (including any Renewal Terms, if any), and for five (5) years after expiration of this Agreement. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; correspondence; documents relating to the design, equipping, and operation of the Broadband Network. Such records shall be made available to Dinwiddie upon five (5) working days' notice.
- (ii) Amelia agrees to reimburse Dinwiddie for the portion of any "clawback" initiated by the Tobacco Commission expended for the primary purpose of the Project in Amelia with the understanding that Dinwiddie shall be responsible for the portion of any "clawback" initiated by the Tobacco Commission expended for the primary purpose of the Project in Dinwiddie; provided, however that this Section 7(b)(ii) shall not prevent either County

from exercising any of its rights to recover any such "clawback" from the Company.

- (iii) Without limiting the foregoing, should the Tobacco Commission for any reason require the return of any of its grant funding that was paid by Dinwiddie to Amelia, Amelia shall repay such sum to Dinwiddie within fifteen (15) business days, together with any interest and penalties owed thereon.
- (iv) Provide any Requisition Forms required by Dinwiddie, along with any other supporting documentation required by Dinwiddie.

(c) *Obligations of Dinwiddie to Amelia*

- (i) Upon receiving a completed Requisition Form from Amelia, such form being attached hereto as **Exhibit H** and incorporated herein by reference, along with any other supporting documentation required by Dinwiddie, Dinwiddie shall apply to the Tobacco Commission for reimbursement. In no event shall Dinwiddie be required to reimburse Amelia more than the actual amount of money received from the Tobacco Commission for the purpose of reimbursing Amelia's expenses.
- (ii) Dinwiddie shall retain all books, records, and other documents relative to this Agreement and the construction, equipping and operation of the Broadband Network for the Term of this Agreement (including any Renewal Terms, if applicable), and for five (5) years after expiration of this Agreement. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; correspondence; documents relating to the design, equipping, and operation of the Broadband Network. Such records shall be made available to Amelia upon five (5) working days' notice.

(d) *No Other Obligations of Dinwiddie or Amelia.*

Except for those obligations expressly listed in this Section 7, neither Dinwiddie nor Amelia shall have any other obligations to any Party arising from the transactions contemplated by this Agreement. Furthermore, notwithstanding any provision of this Agreement including, but not limited to this Section 7, neither Dinwiddie nor Amelia shall be liable to perform any action that is not directly related to an item set forth in the funding section of the Coverage, Phasing, and Implementation Plan or owe any monetary damages to any other party for any dispute arising from

the relationship between the Parties to this Agreement. For the purposes of clarity, and not in limitation of the foregoing, neither Dinwiddie nor Amelia shall in any way be liable to the Company for failure to meet deadlines in the Coverage, Phasing, and Implementation Plan, and the Company's sole recourse in the event that Dinwiddie or Amelia is late on a deadline in the Coverage, Phasing, and Implementation Plan shall be that to the extent that any deadline of the Company is dependent on either County timely meeting its obligation under the Coverage, Phasing, and Implementation Plan, that deadline of the Company shall be extended by the same number of days as such County is late on meeting its goal pursuant to the Coverage, Phasing, and Implementation Plan.

## **8. Vertical Assets.**

### **(a) *Lease of Space on Public Broadband Towers.***

(1) When possible, the Company will locate the Network Equipment on Third-Party Vertical Assets or already-existing Public Facilities based on availability and technological feasibility. The Counties may refuse to fund building new Public Facilities in areas that can be served with existing Vertical Assets.

(2) Subject to the requirements of the Tobacco Commission Grant Agreement and Applicable Law, including, but not limited to, approval by the Board of Supervisors for the Counties after public hearings held pursuant to Virginia Code Section 15.2-1800 et seq., the Counties will grant a non-exclusive lease on each of the Public Broadband Towers listed in the funding section of the Coverage, Phasing, and Implementation Plan to be used for the Broadband Network to the Company at significantly subsidized rates as long as the Company is in compliance with this Agreement. Micro-pops furnished and installed by the Company pursuant to this Agreement shall be owned by the Company, subject to a security interest to be held by the Counties consistent with Section 23 herein and such Micro-pops shall be designated as Company-owned Micro-pops in the Coverage, Phasing, and Implementation Plan.

(A) The monthly cost to the Company to locate on the Public Broadband Towers within a County shall be the greater of:

(i) the lesser of (x) five percent (5%) of the Company's monthly revenue in such County and (y) \$200 per month for each Public Broadband Tower in such County used by the Company; and

(ii) the sum of money that a County is owed pursuant to the revenue sharing provisions of Section 14(a).

The co-location cost on any other Public Facilities shall be determined on a case-by-case basis.

In no event shall the Company owe any amount to a County pursuant to Section 8(a)(2)(A)(i) for any month in which the Company has revenue from Customers of less than \$4,000 per month within such County.

- (B) The Company in each case shall pay any amounts owed to the Counties pursuant to this Section 8 and based on each six-month period from the anniversary of the Effective Date, such payment to be made within thirty (30) days of the end of each such period. The amount owed pursuant to Section 8(a)(2)(A)(i) shall be pro-rated based on the number of days that the Company used each leased Public Facility. No pro-ration shall be made for the amount owed pursuant to Section 8(a)(2)(A)(ii). Failure by the Company to timely pay such amount shall result in a ten percent (10%) late penalty and one percent (1%) interest per month that the payment is late.
- (C) Notwithstanding any provision of this Section 8(a) to the contrary, if there is (i) a transfer, assignment, or Change of Control Event for which consent is not granted pursuant to Section 20 of this Agreement or (ii) a material breach of this Agreement by the Company that goes uncured for thirty (30) days after written notice is provided to the Company by either County of the breach, either County (or both Counties) may immediately set new rates for leasing or licensing space on the Public Facilities in their sole discretion.
- (D) Neither County shall have any obligation to lease the Public Broadband Towers to the Company after the date of the termination of this Agreement, although the Company and either or both Counties may agree to continue a leasing or licensing arrangement.
- (E) If a lease is granted to the Company after the public hearing(s) to be held in accordance with Virginia Code Section 15.2-1800 et seq., the Company shall have access to such Public Facility at all times, except when impracticable for the maintenance of sites, Towers, or Micro-pops; provided, however, that the Company shall not have access to other radio frequency systems, including, but not limited to third party wireless equipment and public safety equipment.

(b) *Siting of New Broadcast Sites.*

(1) In the preparation of each version of the Coverage, Phasing, and Implementation Plan, the Company shall choose the locations where the Company wants new Broadcast Sites to be located and provide the Counties written notice of the GPS location of the proposed new Broadcast Sites and which new Broadcast Sites need fiber connection or electrical connection.

(2) The Counties may either approve or deny the location for any given new Broadcast Site; provided that such an approval shall not be unreasonably denied. Examples of reasonable basis for denial include, but are not limited to, (i) if there is one or more alternative, more cost effective site (including Third-Party Vertical Assets or a then-existing or planned public safety tower), (ii) if Network Equipment is incompatible with or causes interference for a pre-existing

tenant, (iii) if the Network Equipment may interfere with public safety equipment, (iv) the area to be served is already substantially served by incumbent broadband internet providers, (v) citizen opposition to the siting of the new Vertical Asset, (vi) if the proposed location is deemed too expensive by the County, (vii) Board of Supervisors approval to acquire the property is not obtained pursuant to Virginia Code Section 15.2-1800 et seq., (viii) acquisition by the County of land rights for the Tower is too expensive or otherwise not possible, or (ix) County zoning approval is denied. Nothing in this Section 8(b) shall prevent a County from denying funding for a new Broadcast Site in its sole discretion pursuant to Section 10.

(3) In the event of denial by a County of the siting of a new Broadcast Site, the applicable County shall propose a new site for each new Broadcast Site in question. The new site shall be subject to the approval of the Company, which approval shall not be unreasonably denied. Examples of reasonable basis for denial include, but are not limited to, material elevation or topography changes that materially affect coverage area.

(4) If the Company and applicable County fail to reach an agreement for the site of a new Broadcast Site, then the Company shall be released from its obligation to provide Service to the area that would be exclusively served by such tower, and the County may remove any funds reasonably related to such new Broadcast Site from the Company Grant Project Budget.

(c) *Acquisition of Land Rights.* The applicable County will acquire ownership of or access rights to the land for the new Public Broadband Tower sites for such new Broadcast Site listed in the funding section of the Coverage, Phasing, and Implementation Plan, subject to the following conditions precedent: (i) the availability of funds appropriated for the Dinwiddie-Amelia Broadband Project pursuant to Section 34 of this Agreement, (ii) the ability of such County to acquire a fee simple ownership or leasehold interest of at least twenty five (25) years in the land for the price listed in the funding phase of the Coverage, Phasing, and Implementation Plan, and (iii) each of the reasonable basis for denial listed in Section 8(b)(2) of this Agreement. The funds for any cost related to such land acquisitions shall come out of the Company Grant Project Budget. The Company shall be responsible for acquiring land rights for Company-owned Micro-pops.

(d) *Technical Specifications for and Structural Design of New Public Broadband Towers.* The Company shall provide the relevant County with technical specifications and structural design of the towers as needed for the Broadband Network upon each submission of the proposed Coverage, Phasing, and Implementation Plan. The Counties may upgrade specifications for the new Public Broadband Towers, subject to the approval of the Company, which approval shall not be unreasonably denied or delayed. If the Counties upgrade the specifications solely for the purpose of adding additional users to the Tower, such as public safety or additional wireless service providers, then the costs of any upgrade shall be borne by the relevant County and shall not come out of the Company Grant Project Budget. An example of an upgrade to be provided for from the Company Grant Project Budget would include, but not be limited to, upgrading to a free-standing tower to better fit on a site with limited space in order to avoid land acquisition or site work.

- (e) *Furnishing and Installation of (i) New Public Broadband Towers and (ii) Micro-pops.*

The Counties shall fulfill their obligations pursuant to Section 7(a)(i) regarding the funding of Public Broadband Tower construction. The Counties shall at all times own the new Public Broadband Towers and, unless otherwise agreed upon in writing, the Company shall own the new Micro-pops. The Counties shall be responsible for any necessary land acquisition for new Public Broadband Towers as set further forth in and subject to the conditions precedent in Section 8(c), The Company shall be solely responsible for all other aspects of building new Public Broadband Towers and Micro-pops, including, but not limited to, completing any and all necessary clearing, site-preparation, access road construction, fiber connections, electrical connections, shelters, and fence and security work, and Tower and Micro-pop installation and construction for any and all new (i) Public Broadband Towers and (ii) Micro-pops. All such work shall be performed by the Company in accordance with the prices, schedule, and other details set forth in the Coverage, Phasing, and Implementation Plan.

- (f) *Provisions for Moving Micro-pops.*

The Company shall provide the Counties with prior written notice of at least thirty (30) days prior to changing the location of a Company-owned Micro-pop. No Company-owned Micro-pop that is purchased in part or whole with funds from either County shall be removed from its home County without express written permission of the County Administrator for such County.

- (g) *Funding for New Public Broadband Towers and Micro-pops*

Funding for new Network Equipment will be provided pursuant to Section 7(a)(ii) of this Agreement. Any funding beyond what is available in the Company Grant Project Budget must be provided by the Company at its own expense.

## **9. Network Equipment.**

(a) *Acquisition of and Payment for Customer Premise Equipment.* Customer Premise Equipment shall be purchased by the Company with its own funds or by the Customer, but not with (i) any funds from the Company Grant Project Budget or (ii) other public funds. Customer Premise Equipment shall be owned by the Company, which shall in turn lease or sell such Customer Premise Equipment to the Customers.

(b) *Plans and Specifications.* The Company shall provide detailed plans and specifications for the Broadband Network and Network Equipment as part of the funding section of the Coverage, Phasing, and Implementation Plan, prior to any installation, including any upgrades or enhancements.

(c) *Funding for Network Equipment.* Funding for new Network Equipment will be provided pursuant to Section 7(a)(ii) of this Agreement. Any funding beyond what is available in the Company Grant Project Budget must be provided by the Company at its own expense.

(d) *Ownership of Network Equipment and Security Interest.* The Company shall own the Network Equipment subject to the Security Interest set forth in Section 21 of this Agreement; provided, however, that a County may, in its sole discretion, designate itself or another public entity (such as a broadband authority), as the owner of any microwave backhaul equipment (and associated licensed links) to be paid for with the Company Grant Project Budget or other public funds if a County plans to use such microwave backhaul equipment as part of a public safety radio project.

(e) *Installation, Testing, Configuration, and Maintenance.* The Company shall be solely responsible for the installation, testing, and configuration of the Network Equipment. The Company shall install, configure, test, and maintain the Network Equipment in a good and workmanlike manner and in accordance with all applicable federal, state, and local laws, ordinances, and regulations. The Company shall install Network Equipment that has the capacity to operate for approximately six (6) hours without electricity. Recharging of these units shall be addressed in the Disaster Contingency Plan.

(f) *Upgrades and Replacements.* The Company shall, at its own expense, keep the Broadband Network updated in order to take advantage of technology improvements and in order to ensure that its service offerings are competitive in the rural wireless broadband consumer marketplace. When reasonable, the Company shall upgrade its system speeds as necessary to compete with similarly situated wireless broadband service providers in the portions of the wireless broadband market served by Company in the Counties, and to ensure that its end users have competitive product offerings. Furthermore, the Company shall make upgrades to the Broadband Network so that the Broadband Network will be at parity with other Comparable Services and with the upgrades performed in other comparable localities in which Company operates wireless broadband internet access networks.

(g) *Intellectual Property.* The Company shall obtain for its own behalf, and, to the extent reasonably possible, that of the Counties (including for the operation of the Broadband Network by the Counties and their licensees or assignees, in the event that this Agreement is terminated or not continued), all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind used in order to provide the Services to be provided by the Broadband Network during the Term and any Renewal Terms and the Company shall pay all royalties and license fees. For any liability incurred during the Term and any Renewal Terms, the Company shall hold and save the Counties, and each of their officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any patent or intellectual property rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of this Agreement or the provision of Services by the Broadband Network. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the work,

the Company has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, the Company shall promptly advise the Counties, in which case the Counties may direct that some other invention, process, technique, article, or appliance be used. Should the Company have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the Counties, the Counties may immediately terminate the Company's rights under this Agreement and the Counties may exercise the Default Option.

#### **10. Coverage, Phasing, and Implementation Plan.**

(a) *Required Contents of Coverage, Phasing, and Implementation Plan.* The Company shall provide a detailed Coverage, Phasing, and Implementation Plan that includes phasing of the Project. The Coverage, Phasing, and Implementation Plan shall include two different sections, the funding section and the planning section, each of which shall be clearly labeled, and which are outlined as follows:

(1) The funding section shall include each phase of the project within a County for which funding is being sought from or has been approved by such County (each, a "Funded Phase") and shall address all (i) Broadcast Site Workflows included within a Funded Phase and (ii) any expenditures from the Company Grant Project Budget that are contemplated as part of a Funded Phase. Any item of cost for a Funded Phase to be paid for from the Company Grant Project Budget as part of a Funded Phase covered by the Coverage, Phasing, and Implementation Plan shall be listed in the funding section, together with a detailed timeline showing binding deadlines and pricing for the completion of all key milestones for which the Company is responsible in the completion of the Funded Phase. For example, if money is to be expended related to a new Broadcast Site for a Funded Phase of the Coverage, Phasing, and Implementation Plan, then for this Broadcast Site Workflow, the Coverage, Phasing, and Implementation Plan needs to show the dates by which (and costs for which) (i) land rights are to be acquired (if applicable) or a lease is to be signed with a third party Vertical Asset owner, (ii) site preparation for the Tower is to be completed, (iii) Tower installation is completed, (iv) all Network Equipment is to be fully installed on the Tower, (v) the date by which the Tower will provide all Customers Service from the Tower, (vi) an estimated coverage map of the coverage to be provided by a new Broadcast Site, and (vii) a date for final network acceptance pursuant to the Network Acceptance, Testing, and Compliance Plan. The Company's failure to meet any deadlines set forth in the funding section of the Coverage, Phasing, and Implementation Plan shall, except to the extent caused by a Force Majeure, be deemed a material breach of this Agreement. Unless expressly agreed upon by the Parties, caused by a Force Majeure (but only to the extent caused by a Force Majeure), or otherwise expressly noted in the Coverage, Phasing, and Implementation Plan, all prices given in the funding section of the Coverage, Phasing, and Implementation Plan for a Funded Phase for obligations of the Company are binding upon the Company, and the Company shall have a legal obligation to complete the tasks set forth in the Coverage, Phasing, and Implementation Plan for the prices quoted therein. Prices quoted in the Coverage, Phasing, and Implementation Plan may include contingency, but if contingency amounts are not spent, such amounts would remain in the Company Grant Project Budget. Notwithstanding any provision of this Agreement to the contrary,

no item of cost that is (i) not related to a Funded Phase or (ii) not expressly listed in the Coverage, Phasing, and Implementation Plan shall be paid for from (x) the Company Grant Project Budget or (y) other public funds. To the extent that either County is primarily and directly responsible for a delay in the Coverage, Phasing, and Implementation Plan, the Company shall not be liable to either County for such delay, and such obligation of the Company shall be delayed by the same number of days as the delay is primarily and directly caused by a County.

(2) The planning section of the Coverage, Phasing, and Implementation Plan shall include such information as is reasonably required by the Counties, but shall at a minimum include: (i) a plan for timely achieving the Project Requirement within the Company Grant Project Budget and any additional funds to be provided by the Company, including future proposed phases of the Project and the time at which a proposal to update the Coverage, Phasing, and Implementation Plan to fund such each phase shall be presented to the relevant County, (ii) a list of projected new Broadcast Sites and a statement of whether the Network Equipment for each of the projected new Broadcast Sites are Towers or Micro-pops, and to be leased from a third party, leased from the Counties, or furnished and installed by the Company as part of the Project, (iii) a map showing the estimated coverage to be provided by the Broadband Network once complete, (iv) a detailed expenditure-by-expenditure estimate of all costs necessary to complete the Project, including a contingency for possible cost overruns (provided, that, although the Counties may consider funding part of such contingency at their sole discretion, funding such contingency shall be the responsibility of the Company), and (v) a phasing plan showing projected dates for preparing each Broadcast Site to provide Service to potential Customers, including (A) acquiring land rights, (B) site preparation, (C) furnishing and installing the Tower or Micro-pop or placing Third-Party Vertical Assets under lease as applicable, (D) installing Network Equipment, and (E) providing Service to Customers.

(b) Notwithstanding any provision of this Agreement to the contrary, if at any time, either County becomes dissatisfied or wishes to discontinue further expenses for the build out of the Broadband Network, such County may do so; provided, however, the Company's expenses would be reimbursable, but only to the extent allowed for pursuant to Section 35. Notwithstanding any provision of this Agreement to the contrary, in no event shall either County owe any money or otherwise be liable to the Company (or any other party) for items of cost not expressly listed in a Funded Phase of the Coverage, Phasing, and Implementation Plan.

(c) *First Coverage, Phasing, and Implementation Plan.* The Company shall conduct at least four (4) town hall meetings in Dinwiddie (two at night and two at day) and two (2) town hall meetings in Amelia (one at day and one at night), open a website to allow all potential Customers in the Counties to express their interest in receiving Service, and conduct a demand study by November 15, 2019. A preliminary proposal for the first Coverage, Phasing, and Implementation Plan shall be due to each of the Counties by December 13, 2019. The Company shall submit the final proposal for the first Coverage, Phasing, and Implementation Plan to each County by February 14, 2020.

(d) *Amendments to Coverage, Phasing, and Implementation Plan.* By the dates set forth in the planning section of the Coverage, Implementation, and Phasing Plan, the Company shall provide to each County an updated Coverage, Phasing, and Implementation Plan to include the proposed new Funded Phase. Each update of the Coverage, Phasing, and Implementation Plan shall contain the same level of detail as required or provided for the first Coverage, Phasing, and Implementation Plan. Each proposed Funded Phase and its updated Coverage, Phasing, and Implementation Plan must be approved by each County for any related expenditures in such County to be made, which approval may be denied by either County in its sole discretion. In the event of final denial by either or both of the Counties of a proposed Funded Phase, the obligations of the Company with respect to such denied Funded Phase under this Agreement shall end; provided that such proposed Funded Phase (i) is within the Company Grant Project Budget, (ii) is designed so as to meet the objective of accomplishing the Project Requirement within the Company Grant Project Budget, and (iii) is otherwise in compliance with and in furtherance of the Company's responsibilities under this Agreement. Nothing in this Section 10(d) shall prevent a County from (i) offering a preliminary denial of a proposed Funded Phase or suggesting modifications to such proposed Funded Phase or (ii) designating the County or other public entity as the owner of any microwave backhaul equipment if the County plans to have multiple users on a Tower.

(e) *Status Meetings and Project Manager.* The Company and the Counties shall participate in regular Project status meetings as requested by the Counties (including the Project Manager for either or both Counties) or the Company (including its officer in charge of the project), but in no event shall such meetings be required more often than on a weekly basis. Although the provision of the Coverage, Phasing, and Implementation Plan is the sole responsibility of the Company, the Company shall cooperate with any Project Manager chosen by either County to assist the Company in the preparation of the Coverage, Phasing, and Implementation Plan.

## **11. Service Levels, Network Acceptance, and Compliance.**

(a) *Minimum Speed and Coverage Requirements.* Minimum internet download speeds of 25 Mbps and minimum upload speeds of 3 Mbps shall be available and, upon request, consistently and adequately delivered to all of applicant Customers in at least 95% of the Target Census Blocks Dinwiddie and Amelia. Notwithstanding any provision to the contrary in this Section 11(a), the minimum speed and coverage requirements of this section shall not apply to circumstances where a Non-Standard Installation is required to overcome physical limitations of a customer location, although the Company shall still make its best efforts to provide the fastest possible speeds up to at least 25/3 to such Customers. When a Non-Standard Installation would be required (whether the Customer elects to proceed or not), the Company must note the location and approximate cost of the required Customer Premise Equipment and report that information to the County upon request.

In cases requiring a Non-Standard Installation where Customer Premise Equipment to connect a customer would cost less than \$3,000 more than the cost of a Standard Installation, the

Company shall make such Customer Premise Equipment available, subject to Company's right to review and approve Customer's credit worthiness, to the Customer by offering (i) to undertake the installation of the Customer Premise Equipment for the Customer and (ii) requiring the Customer to enter into a contract not to exceed two years (unless the Customer agrees to a longer time period) under which the Customer repays the Company for the sum by which the cost of the Customer Premise Equipment exceeds the cost of Standard Installation together with interest, not to exceed five percent (5%) on an annualized basis. Any amounts received by Company for financing Customer Premises Equipment shall not be considered Company revenue for the purposes of Sections 8 and 14.

(b) *Network Acceptance, Testing, and Compliance Plan.* A detailed Network Acceptance, Testing, and Compliance Plan is attached as **Exhibit J** to this Agreement. The Company shall comply with the Network Acceptance, Testing, and Compliance Plan.

(c) *No Decrease in Service Level and Reliability.* Once the Company establishes service levels for any Customer, group of Customers, residence, business, address, or geographic area within the Counties, (1) the Company shall not materially decrease service levels, except with the express written consent of the County Administrator for the affected County, and (2) the Company shall provide reliable service, meaning that for any given Quarter, at least ninety-five percent (95%) of Customers shall receive the minimum speed of their selected package or better at least ninety-five percent (95%) of the time.

## **12. Customer Service Standards, Customer Bills, Privacy Protection, and Customer-Related Records.**

(a) *Office and Telephone Standards.* Beginning no later than one (1) year after the Effective Date, the Company shall maintain local offices in each of Dinwiddie and Amelia Counties, which will be open to Customers from 9 a.m. until 5 p.m. Monday through Friday. The Company is permitted to co-locate with an existing business to allow for a more efficient and cost-effective entry into developing a local presence. Beginning on the date when the first Customer is provided with Service in either County, the Company shall also maintain a local or toll-free telephone access line, which will be available to Customers between the hours of 8 a.m. and 5 p.m. Under Normal Operating Conditions, telephone answer time by a customer representative or automated answering device, including wait time, shall not exceed thirty (30) seconds from when the connection is made. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(b) *Installations, Outages, and Service Calls.* Under normal operating conditions, each of the following standards shall be met by the Company no less than ninety five percent (95%) of the time as measured on a quarterly basis.

(1) In the absence of a Force Majeure or circumstances beyond the control of the Company, Standard Installations shall be performed within seven (7) business days after an order has been placed, unless the Customer requests a longer period or fails to cooperate with the Company. Non-Standard Installations shall be performed within fifteen (15) business days after

an order has been placed, unless the Customer requests a longer period or fails to cooperate with the Company.

(2) Under Normal Operating Conditions, the Company will begin repairs on service outages and service interruptions promptly and in no event later than twenty-four (24) hours after the outage becomes known.

(c) *Reduction in Charges for Service Interruption.*

(i) Residential Accounts.

If Company has not restored service within 48 hours of being notified of Service Interruption by Customer, Company shall refund the Customer a daily pro-rated cost of the account for each day the Customer was offline.

(ii) Small Business Accounts.

If Company has not restored service within 24 hours of being notified of Service Interruption by Customer, Company shall refund the Customer a daily pro-rated cost of the account for each day the Customer was offline.

No credits will be given if the Service Interruption is caused by any action taken with respect to the Company's equipment by someone other than Company's employees, servants, agents, contractors, and representatives. If Customer availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available. For the purposes of clarity, unless otherwise agreed with the Customer, the Company shall not be responsible for servicing equipment owned by Customers other than Customer Premise Equipment and the power sources for Customer Premise Equipment.

(d) *Customer Appointment Windows.* The "appointment window" alternatives for installations, service calls, and other installation activities will either be at a specific time or, at maximum, a four-hour time block during Normal Business Hours. The Company may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the Customer. The Company may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment absent wet weather or other weather issues which would degrade the integrity of the installation. If the Company's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the Customer.

(e) *Provision of Annual Information to Customers.* The Company shall provide written information on each of the following areas at the time of installation of service, at least annually to all Customers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for services and conditions of subscription to internet and other services;

- (3) Installation and service maintenance policies;
- (4) Instructions on how to connect to the internet; and
- (5) Billing and complaint procedures, including the Company's office hours, telephone number, and address of the Company's office.

(f) *Company Office.* The Company shall maintain an office conveniently located to Customers for, at minimum, the payment of bills, delivery and return of Customer Premise Equipment, requests for installation, disconnection, and reinstatement of Service, addressing of Customer and potential Customer inquiries, and receipt of Customer complaints.

(g) *Privacy Protection.* The Company shall comply with all applicable federal and state privacy laws.

(h) *Operational Records.* Upon written request by a County based on credible complaints that this Section 12 has been violated, the Company shall maintain the records required to compute all operational and Customer service compliance measures outlined in this Section 12 to demonstrate that the measures are being met. Upon reasonable written notice to the Company of no less than five (5) business days, the County shall have the right to inspect the Company's books and records pertaining to Company's provision of Services in the Counties during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Agreement. Such notice shall specifically reference the section and subsection (if applicable) of this Agreement that is under review, so that the Company may organize the necessary books and records for appropriate access by the County(ies). The Company shall not be required to maintain any books and records for the purposes of complying with this Section 12 longer than the current year plus three (3) years. Nothing in this Section 12 shall be construed to limit the Company's duties with respect to records set forth in Section 17 of this Agreement.

Books and records required to be maintained by the Company upon written request by a County based on credible complaints that this Section 12 has been violated shall include without limitation:

(1) Records of all written complaints for a period of one (1) year after receipt by the Company. The term "complaint" as used herein refers to written complaints about any aspect of the Company's Broadband Network or related operations. Complaints recorded shall be limited to items within Company's control and that require a corrective measure on the part of the Company;

(2) Records of known (i) outages and (ii) Service Interruptions for a period of one (1) year after occurrence, or upon written request of the County, indicating date, duration, and the number of Customers affected, and cause (if known);

(3) Records of service calls for repair and maintenance for a period of one (1) year after resolution by the Company, indicating the date and time service was required, and date and time

service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

(4) Records of installations/reconnections for a period of one (1) year after the request was fulfilled by the Company, indicating the date of request, and the date and time service was provided;

(5) Records of requests for Service from potential new Customers for a period of five (5) years after the request is made.

### **13. Interference, Frequencies, and FCC Licensing.**

(a) *Company's Physical Interference.* Company shall inspect, construct, and maintain the Broadband Network in a manner that will not cause unreasonable physical interference to the Counties or any tenants or licensees of any Public Facilities or facilities owned by third-parties, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, water towers, or other Public Facilities, except to the extent contemplated by a permit or other applicable license.

(b) *Company's Duties.* The Company shall operate the Broadband Network in a manner that will not cause RF Interference to the Counties, public safety agencies or any tenants or licensees of Public Facilities or facilities owned by third-parties. The Company shall provide documentation showing that the Network Acceptance, Testing, and Compliance Plan has been satisfied for each new Broadcast Site as set forth in the Coverage, Phasing, and Implementation Plan. As a part of the Network Acceptance, Testing, and Compliance Plan, the Company shall conduct any tests or studies necessary to identify and avoid RF Interference. Such tests shall be conducted by the Company on an ongoing basis as needed. Each County reserves the right to conduct similar tests or studies at its own expense at any time, but subject to the Company's reasonable requirements, such as time of day, or similar considerations, so as to avoid or minimize any disruption with the operation of the Broadband Network. All operations by Company shall be in compliance with all FCC requirements and Applicable Law. As provided herein, each County is required to disclose to the Company all County operations collocated with Broadcast Sites and the existence of any leasing or licensing agreements with third parties for the use of Public Broadband Towers.

(c) *Counties' Duties.* Subsequent to the installation of Company's Network Equipment, each County shall, to the extent practicable without limiting such County's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Company's Broadcast Sites. The Counties shall also inform any new tenants of Public Broadband Towers on which Company's Network Equipment has been installed of the existence and location of such facilities, and shall obligate each new tenant to operate and install the Network Equipment in compliance with all applicable FCC regulations, and to not cause RF Interference or physical interference with Company's Broadcast Sites.

(d) *Third Party Radio Frequency Interference.* Neither the Counties nor the Company shall be liable to each other for RF Interference caused by any third party, provided that the foregoing provisions shall not affect the Company's rights regarding the procedure for resolving RF Interference in this Agreement. Each County shall exercise commercially reasonable efforts to assist in the resolution of any dispute regarding RF Interference caused by the activities of any occupant of Public Broadband Towers.

(e) *FCC Licensing.* The Company shall (i) obtain for its own behalf or (ii) assist the Counties (including the public schools for each respective County) in acquiring for the benefit of the respective public entity all FCC licenses reasonably necessary to operate the Broadband Network. Furthermore, the Company shall make best efforts to acquire from the FCC a license to operate a broadband network in each of the Counties. If the Company fails to acquire such license or a renewal of the same from the FCC, then Company shall immediately notify the Counties. The Company shall hold and save the Counties, and each of their officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any FCC license or regulation in connection with the installation and operation of the Broadband Network. If the Company has or acquires information that the operation of the Broadband Network will be in any way impacted by FCC licensing rules, the Company shall immediately advise the Counties of the same, in which case the Counties may direct that some other wavelength be used, or elect not to proceed further with the build out of the Project. Should the Company have or acquire information that the operation of the Broadband Network will be in any way impacted by FCC licensing rules and fails to inform the Counties, the Company shall be in Default of this Agreement.

Upon request by the Company, the Counties shall cooperate with the Company and encourage their respective public school boards to cooperate with the Company in its efforts to obtain a license for Educational Broadband Services, 2.5 GHz spectrum on behalf of the school boards and/or Counties.

#### **14. Revenue Sharing and Fiber Investment by the Company.**

(a) *Revenue Sharing.* In consideration of the significant investment of public funds in the Project, the Company agrees to share a percentage of the Company's gross revenue from operating in each of the Counties as follows:

- (1) If the Penetration Rate is 0-29.9%, then 0% of the Company's gross revenues in the County shall be due to such County;
- (2) If the Penetration Rate is 30-44.9%, then 10% of the Company's gross revenues in the County shall be due to such County;
- (3) If the Penetration Rate is 45-64.9%, then 13% of the Company's gross revenues in the County shall be due to such County; and
- (4) If the Penetration Rate is 65% or higher, then 16.5% of the Company's gross revenues in the County shall be due to such County.

Penetration Rate for any given six month period, in accordance with Section 8, for which payment is made pursuant to Section 8(a)(2)(B) shall mean the percentage of residential households taking service as compared to those who can actually receive service (“Serviceable Households”). For the purposes of this definition only, a Customer taking a service at a level of speeds in the “Up to 25/3” tier will be counted as a Customer regardless of actual speeds provisioned. All Serviceable Households shall be counted as a location for purposes of the penetration rate calculation. The Company will provide mapping of such Serviceable Households in the applicable blocks as defined in the “Project Requirement”.

The Penetration Rate shall be calculated for each County individually, and the rate at which each County shares revenue pursuant to this Section 14(a) shall be solely determined by the Penetration Rate in that County without regard to what the Penetration Rate may be in the other County.

(b) *Fiber Investment.* The Company shall invest at least \$1,000,000 in fiber in the Counties. The Company shall make best efforts to allocate fiber investments as equitably as possible among the Counties on a 60% allocation to Dinwiddie and 40% allocation to Amelia basis. The Counties recognize and agree that construction, proximity, and location of assets will be significant factors in determining exactly where the Company’s capital contribution is placed. Some fiber runs may be built as an “express route” versus others that may be a “distribution route” , and the manner in which each would be constructed is at the sole discretion of the Company. At least one third of such investment in each County shall be made by the first annual anniversary of the Effective Date, two thirds of such investment by the second annual anniversary of the Effective Date, and all of such investment shall be made in each County by the third annual anniversary of the Effective Date. The Company reserves the right to allocate the fiber investment contribution set forth in this Section 14(b) to best serve the needed areas in the Counties, including, but not limited to, Citizens Broadband Radio Service (CBRS) or other FCC frequency licensing, fiber-optic construction, fixed wireless Infrastructure, and Tower construction.

## **15. Disaster Contingency Plan**

(a) *Creation of Disaster Contingency Plan.* The Disaster Contingency Plan, a copy of which is attached hereto as **Exhibit K**, shall provide plans by which the Company plans on dealing with different natural or man-made disasters, including, but not necessarily limited to, wind, derechos, floods, fires, hurricanes, tornadoes, and winter storms, including ice storms. Any amendments to the Disaster Contingency Plan must be approved by the Counties, which approval shall not be unreasonably withheld or denied. Among other things, the Disaster Contingency Plan must require the Company to install and maintain Network Equipment that has the capacity to operate for six (6) hours without electricity. For the purposes of clarification, and without limiting or expanding the definition of Network Equipment, the Company need not include Customer Premise Equipment in the Disaster Contingency Plan.

(b) *Disaster Contingency Plan Binding Upon the Company.* The Company shall be required to abide in all respects with the Disaster Contingency Plan.

(c) *Updates and Amendments to Disaster Contingency Plan.* Upon each update of the Coverage, Phasing, and Implementation Plan, the Disaster Contingency Plan shall be reviewed by the Company, revised as necessary, and resubmitted for approval to the Counties, which approval shall not be unreasonably denied or delayed.

(d) *Counties' Optional Participation in Disaster Contingency Plan.* The Company may form a working group with either or both Counties to determine ways in which the Broadband Network can be used to support the Counties' public health, welfare, safety, and law enforcement efforts during natural or man-made disasters or emergencies. At the discretion of the respective Counties, the Counties may provide alternative energy sources to the Company to ensure that the Broadband Network stays operational during an emergency.

## **16. Cost of Services.**

(a) *Required Packages and Pricing.* The Company shall offer its standard package with 25 Mbps download speeds and 3 Mbps upload speeds at no more than \$45.00 per month for residences and no more than \$45.00 per month for small offices (which shall be defined as offices with usage rates that are comparable to residential usage rates). Packages for enterprises (that are not small offices) shall be quoted on an individual basis by the Company. The Company shall provide that each of these plans shall allow for unlimited data up to 20,000 gigabytes per month at these speeds without "throttling" or slowing speeds. The Company shall offer its standard package at a rate of no more than \$35.75 per month to Digital Inclusion Customers in the Counties.

If an account is listed as a business (other than a small office, as defined above), applicable business rates will apply.

(b) *No Minimum Contract Period.* Customers with Standard Installations shall not be required to be obligated by any minimum contract period. The Company may require Customers with Non-Standard Installations to agree to different arrangements.

(c) *Installation Costs.* Each Standard Installation package shall be installed by the Company at no cost to the Customer. A "Standard Installation" is defined as an installation that is mounted on the Customer's house or structure receiving service using a "j-pole" attached to the demarcation unit, involves one entry point into the house from the wall, and uses up to 100 feet of cable. The Company shall make available to potential Customers all costs associated with installations other than Standard Installations, which shall be referred to herein as "Non-Standard Installations" for Customer approval prior to installation.

(d) *Customer Premise Equipment Rental.* Customer Premise Equipment shall be provided at no cost to Customers with Standard Installations. The Company may work out alternate arrangements with Customers who have Non-Standard Installations.

## **17. Tobacco Commission Compliance.**

(a) *The Grant Project Budget.* The **Grant Project Budget**, which may only be amended with the written approval of the Parties and the Tobacco Commission (if required) is set forth in **Exhibit M** which is attached hereto and incorporated herein (the “Grant Project Budget”). The total Grant Project Budget is up to \$3,416,180.00 if the Counties continue to provide funding to build out the Broadband Network towards achieving the Project Requirement, or as otherwise determined by the Counties. \$1,708,090.00 of the Grant Project Budget is expected to be reimbursed by the Tobacco Commission if the full Grant Project Budget is spent. Subject to Section 7 of this Agreement, Dinwiddie may provide matching funds of up to \$1,024,854.00. Subject to Section 7 herein, Amelia may provide matching funds in the amount of \$683,236.00. Only eligible costs, as defined by the Tobacco Commission Grant Agreement and Tobacco Commission policies shall be reimbursable to the Party incurring such costs. It is understood by all parties that the Grant Project Budget envisions (i) up to \$2,049,708 from the Tobacco Commission and Dinwiddie being spent on the Project in Dinwiddie and (ii) up to \$1,366,472 from the Tobacco Commission and Amelia being spent on the Project in Amelia.

(b) *Compliance with Tobacco Commission Grant Agreement and Indemnification.* Each of the Counties and the Company shall in all respects comply with the Tobacco Commission Grant Agreement; provided, however, that there shall be no recourse against a County for non-compliance with the Tobacco Commission Grant Agreement, except as allowed for pursuant to Section 7(d) above. Notwithstanding any provision of this Agreement to the contrary, in the event that there is a difference in the Company’s obligations under the Tobacco Commission Grant Agreement and the Company’s obligations under this Agreement, the requirement that is the more stringent on the Company shall control. As set forth in further detail in Section 6(f) of this Agreement, the Company shall indemnify the Counties for any “clawback” or penalty of any type imposed by the Tobacco Commission, unless the Counties are responsible for such non-compliance with the Tobacco Commission Grant Agreement.

(c) *Thirty Day Notice.* The Company recognizes that the Tobacco Commission is requiring a thirty (30) day public notice and comment period, and that the Tobacco Commission may impose additional conditions on the Project depending on comments received. The Company agrees to abide by any such conditions.

(d) *Parties’ Relationship.* The Company shall provide written notice to all vendors, contractors, and any other party retained to work on the Project that neither the Tobacco Commission, Dinwiddie, Amelia, any broadband authority, nor the Commonwealth (the “Public Parties”) shall be liable for the Project or any payment failure or other obligation related thereto. Such written notice shall provide that by accepting work on the Project, all such vendors, contractors and other parties release and relinquish the Public Parties from any claim which might otherwise be asserted, and that each party accepting such work thereby indemnifies and holds the Public Parties, and their members, employees and agents, harmless against any and all such obligations; and further that if any action is brought against the Public Parties, or their members, employees or agents, the party accepting such work shall be liable for all legal expenses and other costs related to such action. The Company is and will be acting as an independent contractor in

the performance of this Project, and agrees to be responsible, where found liable and to the extent not covered by insurance or specified by statute, for the payment of any claim for loss, personal injury, death, property damage, or otherwise arising out of any act or omission of its members, employees, or agents in connection with the performance of the Project.

The Company shall at all times protect, indemnify and hold the Public Parties, the Issuer (as defined in the Tobacco Commission Grant Agreement), and the owners of the Tobacco Bonds (as defined in the Tobacco Commission Grant Agreement), and each of their respective members, directors, officers, employees, attorneys and agents (the "Section 17(d) Indemnitees"), harmless against any and all liability, losses, damages, costs, expenses, penalties, taxes, causes of action, suits, claims, demands, and judgements of any nature arising from or in connection with any misrepresentation, breach of warranty, noncompliance, or Default by or on behalf of the Company under this Agreement, including, without limitation, all claims or liability (including all claims of and liability to the Internal Revenue Service) resulting from, arising out of, or in connection with the loss of the excludability from gross income of the interest on all or any portion of the Tobacco Bonds that may be occasioned by any cause whatsoever pertaining to such misrepresentation, breach, noncompliance, or Default, such indemnification to include the reasonable costs and expenses of defending any Section 17(d) Indemnitee or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by any Section 17(d) Indemnitee in connection therewith.

(e) *Tobacco Commission Recordkeeping.* The Company shall maintain proper books of record and account with respect to the Tobacco Commission Grant and the Project in which accurate and timely entries shall be made in accordance with generally accepted accounting principles, consistently applied, during the Tobacco Commission Period. Any funds received from the Counties or any broadband authority (including funds passed through from the Tobacco Commission) shall be held by the Company in a separate and segregated account (the "Fund") and the Fund shall reflect all activity of the Grant Funds received for the Project, itemized by category of expenses in the same manner as in the Grant Project Budget. The Company shall retain all invoices from goods purchased and services performed, receipts, vouchers, reporting forms, or other evidence of the actual payment of costs related to the Project. All books of record and account and all records of receipts and expenditures with respect to (i) the Project, (ii) any item of cost with respect to the Coverage, Phasing, and Implementation Plan, (iii) all requests for payment or reimbursement from the Counties, and (iv) all supporting information for (A) annual reports described in Section 17(e)(1) below and (B) final reports described in Section 17(e)(1) below submitted to or by Dinwiddie to the Tobacco Commission shall be retained for at least three (3) years after the later of the completion of the Project or the expiration of the Tobacco Commission Period. The Counties shall have the right at reasonable times from time to time to inspect and make copies of the books and records of the Company and the Fund.

(1) *Reports.* Upon request by either County, the Company shall submit to each County financial and narrative reports reflecting activity in the Fund and progress made toward the completion of the Project in both Counties on a quarterly and annual basis in such form as may be reasonably requested by the Counties. Quarterly and annual narrative reports shall, among other

things, indicate the progress made toward achieving the goals of the Grant. The Company shall cooperate with the Counties in Dinwiddie's annual submission of the annual report required pursuant to Section 9 of the Tobacco Commission Grant Agreement, the final report required pursuant to Section 10 of the Tobacco Commission Grant Agreement, and any interim reports required pursuant to Section 11 of the Tobacco Commission Grant Agreement. Annual reports shall be due from the Company as requested by Dinwiddie and the Tobacco Commission until the Project is complete. The Commission reserves the right to request additional information to supplement the information provided in the Grant Reporting Form or the annual narrative reports, including but not limited to, the Company's audited financial statements.

(2) *Security Interest of Tobacco Commission; No Sale or Encumbrance of Broadband Network.* Until the Tobacco Commission has determined that the public purposes of the Tobacco Commission Grant have been satisfied, none of the assets or property acquired, constructed, improved, equipped, and/or furnished as part of the Project shall be leased, sold, exchanged, disposed of, hypothecated, mortgaged, or encumbered without the prior written approval of the Executive Director of the Tobacco Commission. In the event such assets or property is leased, sold, exchanged, disposed of, hypothecated, mortgaged, or encumbered without the prior written approval of the Executive Director of the Tobacco Commission, the Company shall be in Default, and the Commission may assert its interest in the assets or property to recover the Commission's share of the value of such assets or property and/or recover from the Company, unless otherwise prohibited by law.

(f) *Additional Grant Sources.* Notwithstanding any provision of this Agreement to the contrary, the Counties shall have the right, but not the obligation, to apply to the Tobacco Commission or other sources of grant funding to obtain additional grant funding to cover any and all eligible expenses as a result of (i) the Project or (ii) related work, and the Company recognizes that it shall have no right to any such increased grant funds, unless approved by the Counties in accordance with the Grant Agreement.

## **18. Zoning.**

The Company shall be responsible for ensuring that all of Company's Facilities and all Broadcast Sites are in compliance with all zoning rules and regulations of the County in which they are to be constructed. Questions about zoning should be directed to the zoning administrators for the respective Counties.

## **19. Annual Financial Statements.**

Each year while this Agreement is in effect, within 150 days of the end of the Company's fiscal year, the Company shall present to the Counties a copy of the Company's audited financial statements.

## **20. Change of Control and Transfers.**

(a) *Assignments and Transfers by the Company.* Notwithstanding any provision of this Agreement to the contrary, neither (i) an assignment or a transfer of this Agreement in whole or in part nor (ii) a Change of Control Event shall occur without the prior express written consent of the County Administrator of each of the Counties. It is agreed that because of the unique nature, character, and corporate structure of the Company, the rights of the Counties pursuant to this Section are unique. Therefore, the Parties agree that no adequate remedy exists at law if this Section is breached by any of WMTC, RSCVA, NCW, GTG, and GT, and it would be difficult to determine the amount of damages resulting therefrom, and that such breach would cause irreparable injury to each of the Counties. Therefore, each County shall be entitled to injunctive relief to prevent or restrain any breach of this Section, regardless of whether or not any consent is granted by the other County.

(b) *Assignment or Transfer by the Counties to Broadband Authority.* To the extent permitted by applicable law, notwithstanding any provision of this Agreement to the contrary, each of the Counties may assign any or all of their benefits, rights, or obligations pursuant to this Agreement to a regional or local broadband authority; provided however, that neither County shall assign or transfer the obligations that it owes to the other County pursuant to this Agreement unless both Counties agree in writing.

## **21. Security Interest.**

(a) *Grant of Security Interest.* The Company hereby grants to the Counties a security interest in all of the Company's Facilities that are purchased with any funds provided by the Tobacco Commission or Counties (the "Secured Company's Facilities"). Such security interest shall include the proceeds of the Secured Company's Facilities to include any proceeds of insurance against fire or physical damage, whether or not such policy shall contain an endorsement in favor of the Counties. The Company shall at all times maintain a current list of all of the Company's Facilities subject to such security interest and provide an updated list to each of the Counties annually or upon a reasonable request.

(b) *Secured Indebtedness.* The security interests in the Secured Company's Facilities granted in this Agreement are granted to the Counties in recognition that but for the Counties' funding, the Company would not be able to develop the Project and therefore accelerate its business growth on such a scale, to secure the performance of the Company's obligations being funded with public funds, including the Company's obligations to the Tobacco Commission under the Tobacco Commission Grant Agreement as well as (a) the payment and performance of all indebtedness, obligations, and liabilities now or hereafter owing by the Company under the Agreement, including any applicable interest, fees, and penalties; (b) all reasonable expenditures by the Counties for taxes, insurance, maintenance, and preservation of the Company's Facilities, and all reasonable costs and expenses incurred by the Counties in the collection and enforcement of any provision of this Agreement, including, without limitation, reasonable attorneys' fees; and (c) all reasonable expenses of the Counties, including, without limitation, reasonable attorneys' fees, incident to the enforcement of all obligations of the Company by any action or participation

in, or in connection with a case or proceeding under, the Federal Bankruptcy Code, or any successor statute thereto.

(c) *Location of the Secured Company's Facilities.* With each Requisition Form, the Company will indicate to the Counties the intended location of each item of the Secured Company's Facilities. Unless otherwise agreed to by the relevant County Administrator, all of the Secured Company's Facilities shall be located in one of the Counties. The Company may change the location of or move the Secured Company's Facilities freely within each County; provided, however, that no change in the location of the Secured Company's Facilities shall be made unless the Company has given the Counties thirty (30) days' prior written notice of such change. Written approval of the County Administrator for the County in which an asset within the Secured Company's Facilities would have otherwise been located is required before the Company may locate any of the Secured Company's Facilities outside of the geographic boundaries of the Counties.

(d) *No Prior Encumbrances or Prior Financing Statements.* The Company has not previously assigned, encumbered or mortgaged any of the Secured Company's Facilities (other than encumbrances and liens which have been terminated), and the Secured Company's Facilities are not, and shall not be upon future acquisition, subject to a prior security interest or lien in favor of any person. The Company shall defend the Secured Company's Facilities against all claims and demands of all persons at any time claiming any interest therein.

No financing statement describing the Secured Company's Facilities or any part thereof, or covering any proceeds of the Secured Company's Facilities, is on file in any public office except those in favor of the Counties created in accordance with this Agreement.

(e) *Financing Statements.* The Company will take any and all action necessary from time to time, without notice from the Counties, to perfect and keep perfected the Counties' security interests in the Secured Company's Facilities. Should the Company fail to do so, upon request by the Counties, the Company shall execute financing statements and continuation statements in form reasonably satisfactory to the Counties, and the Company will reimburse the Counties for all reasonable expenses incurred from time to time in the filing of financing statements, continuation statements and termination statements and in verifying the status of filing records in appropriate public filing offices (with such verification to be limited to once a year unless a Default has occurred). In such event, the Company agrees that the Counties may file a carbon, photographic copy or other reproduction of any financing statement or continuation statement.

(f) *Disposition of Facilities.* If no Default shall have occurred and be continuing beyond any applicable cure period, the Company may sell or otherwise dispose of the Secured Company's Facilities in the ordinary course of business, but only with the prior written consent of the Counties, which consent may be denied in the sole discretion of each County. Upon such sale or other disposition, the Counties shall execute and deliver to the Company, or to such other person or persons as the Company shall reasonably designate, all termination statements and similar documents prepared by the Company which the Company shall reasonably request to evidence the

release of the lien and security interest created hereunder with respect to any such of the Secured Company's Facilities.

(g) *Remedies Upon Default; Attorney-in-Fact.* Upon any Default and at any time thereafter, the Counties, at their option, may proceed to enforce payment of the Indebtedness and exercise any and all of the rights and remedies provided by the Uniform Commercial Code, as well as all other rights and remedies possessed by the Counties. The Counties will give the Company reasonable notice of the time and place of any public sale of the Secured Company's Facilities or any part thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of the Company at least five (5) days before the time of the sale or disposition, but nothing contained herein shall be construed to mean that any other notice of a shorter period of time does not constitute reasonable notice for the sale of the Secured Company's Facilities, or any part thereof. Expenses of retaking, holding, preparing for sale, selling or the like shall include, without limitation, the Counties' reasonable attorneys' fees. Upon a Default, the Company shall upon request by the Counties assemble the Secured Company's Facilities or any designated part thereof and make it available to the Counties at such place as is designated by the Counties.

The Company hereby irrevocably constitutes and appoints the Counties as its true and lawful attorney-in-fact (with full power of substitution), and without the necessity of any further act or action on the part of the Company, upon the occurrence of a Default (i) to take any and all action with respect to the Secured Company's Facilities in the name and on behalf of the Company, and (ii) to execute and deliver in the name and on behalf of the Company any and all financing statements, assignments of vehicle titles and liens and other documents, which either County determines are necessary or desirable to perfect or otherwise protect and preserve the security interests granted hereunder and/or to convert the Secured Company's Facilities into cash, all at the sole cost and expense of the Company. The rights and powers granted the Counties by this appointment include, without limitation, the right and power to execute loss claims and other applications for payment of benefits under any insurance policy in the name of the Company, to receive all moneys and endorse drafts, checks, and other instruments for the payment of any proceeds of any insurance or in order to collect any return of unearned premiums, and to change any and all insurance coverages, terms, amounts, or insurers. The Counties shall not be obligated to do any of the acts or exercise any of the powers hereinabove authorized, but, if the Counties elect to do any such act or exercise any such power, it shall not be accountable for more than it actually receives as a result of such exercise of power and in any event the Counties shall not be responsible to the Company except for loss or damage resulting from its willful misconduct or gross negligence. The Company hereby ratifies and approves all acts of its attorney-in-fact hereby appointed. This power of attorney is coupled with an interest and shall be irrevocable so long as this Agreement remains in effect or any of the Indebtedness secured hereby shall remain unpaid.

(h) *Remedies; Default Option; Attorney-in-Fact.* Notwithstanding any provision of this Agreement to the contrary, the Company furthermore hereby grants each County jointly and severally an option (the "Default Option") to purchase some or all of the Secured Company's

Facilities for one dollar (\$1.00); provided that the Default Option may only be exercised if the Company is in Default and reasonable notice has been provided to the Company of such Default. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of the Company at least five (5) days before the time of the exercise of the Default Option, but nothing contained herein shall be construed to mean that any other notice of a shorter period of time does not constitute reasonable notice for the exercise of the Default Option of all of the Secured Company's Facilities, or any part thereof. The Company hereby irrevocably constitutes and appoints each of the Counties as its true and lawful attorney-in-fact (with full power of substitution), and without the necessity of any further act or action on the part of the Company, upon the occurrence of a Default with respect to the Secured Company's Facilities to draft, approve, and execute any and all documents necessary to effectuate a County's exercise of the Default Option. For the purposes of clarification and without limiting the Counties' rights under this Agreement, any facilities or infrastructure provided solely from the Company's own capital are exempt from the security interest provisions because such facilities or infrastructure would fall outside the definition of Company's Secured Facilities because they were not funded with funds provided by the Tobacco Commission or Counties.

(i) *Sunset of Security Interest Provision.* The respective rights and obligations of the Parties pursuant to this Section 21 shall expire at the end of the Tobacco Commission Period.

## **22. Insurance and Bonding.**

(a) *Insurance.* The Company and any subcontractors shall maintain their insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. If any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*.

### **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three (3) or more employees, to include the employer. If the Company fails to notify the Counties of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract, then the Company shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products, and completed operations coverage. The "County of Dinwiddie, VA, its

officers, agents, and employees”, the “County of Amelia, VA, its officers, agents, and employees” shall be named as additional insured on a primary basis and so endorsed on the policy. Such additional insured status shall be primary without participation by Counties’ respective insurers.

4. Automobile Liability - \$1,000,000 per occurrence.
5. Umbrella Liability - \$1,000,000 per occurrence.
6. Fire/Casualty Insurance - The Company’s Facilities shall be insured from fire or other casualty at their replacement cost.

The insurance policies provided for herein shall name the Counties and each of their officers, agents, attorneys, employees, officers, boards, commissions, and councils as additional insureds, and shall be primary to any insurance or self-insurance carried by the County.

FAILURE TO COMPLY WITH THE ABOVE INSURANCE REQUIREMENTS  
WILL BE CONSIDERED GROUNDS FOR CANCELLATION OF CONTRACT.

(b) *Bonding.*

(i) Prior to beginning the construction of any Public Broadband Tower and as a condition precedent to submitting any Requisition Form for a Public Broadband Tower, the Company shall deliver to the Administration Office of each County properly executed Standard Performance and Labor and Material Payment Bonds, each in the sum of the amount of the tower construction, with the County of Dinwiddie, Virginia or the County of Amelia, Virginia, as relevant, as obligee. The bond premium shall be paid by the Company. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia and should be written on a form suitable to County. The Company shall require the attorney-in-fact, who executed the required bonds on behalf of the surety company, to affix thereto a certified and current copy of the power of attorney. Notwithstanding any provision of this Agreement to the contrary, no payment shall be due and payable to the Company, even if the Company’s obligations have been performed in whole or in part, until the bonds have been delivered to and approved by the County. Any such bonds shall be released by the relevant County upon final completion and acceptance of the work done by Company on such Public Broadband Tower (including all related clearing, site-preparation, access road construction, fiber connections, electrical connections, shelters, and fence and security work) by the County.

(ii) Unless otherwise agreed to by the Counties, the Company shall provide the Counties with bonds, bank letters of credit or other form of surety acceptable to the Counties in an amount sufficient to remove (i) the Company’s Facilities from the Public Broadband Towers and (ii) Company-owned Micro-pops in the event that either became abandoned by the Company.

### **23. Default, Termination, and Remedies.**

(a) *General.* This Agreement shall not be terminated by the Counties unless a Default (as set out below) has occurred and the applicable, if any, notice provisions and cure period are followed. Nothing in this Section shall prevent the Counties from withholding any or all future funding pursuant to Sections 10 and 34 or otherwise. Furthermore, nothing in this Section shall prevent the Counties from exercising (i) the Default Option under Section 21(h) or (ii) their right to discontinue further expenses for the build out of the Broadband Network pursuant to Sections 10(b) and 35.

(b) The occurrence of any one or more of the following events constitutes a Default and breach of this Agreement by Company:

(1) *Failure to Complete Network or Abide by Coverage, Phasing, and Implementation Plan Milestones.* The failure by the Company to achieve the (i) Network Acceptance, Testing, and Compliance Plan, (ii) fully comply with all deadlines in accordance with the funding section of the Coverage, Phasing, and Implementation Plan (and Network Acceptance, Testing, and Compliance Plan), and (iii) submit proposals for future phases in accordance with the deadlines set forth the planning section of the Coverage, Phasing, and Implementation Plan shall constitute a Default of this Agreement. The time for completion will be extended (i) to the extent that a delay is caused by a Force Majeure and (ii) if each point of failure by the Company to achieve the Network Acceptance, Testing, and Compliance Plan and each deadline in accordance with the Coverage, Phasing, and Implementation Plan (and Network Test Plan) is directly and primarily caused by fault of a local government entity. In the event that the Company commits a Default, as described in this paragraph, and does not cure such Default within thirty (30) days after a Default notice is delivered to Company, after taking into account any applicable extensions, then each County shall be entitled to exercise its rights to terminate this Agreement due to the Default and/or exercise all other remedies available to the it under this Agreement, at law or in equity, including but not limited to the Default Option set forth in Section 21(h).

(2) *Network Outage.* Network outages shall constitute a Default of the Agreement as set out in this paragraph. In the event that, after network acceptance of some or all of the Broadband Network pursuant to the Network Acceptance, Testing, and Compliance Plan, more than twenty percent (20%) of the receiving/transmitting nodes in the then-existing Broadband Network fail to connect willing Customers to the internet for an entire calendar day, the Broadband Network will be considered “Dark” and that day will be considered a “Dark Day”, provided that such day will not be considered a Dark Day if the failure to satisfy the above test was caused by the Counties, providers of telecommunications, electricity, or third parties (other than subcontractors of Company) not under the control of the Company or by a Force Majeure. If the Broadband Network is continuously Dark for a period of three (3) or more days, then this shall constitute a Default, and each County may send a notice of termination, which shall be effective upon thirty (30) days from receipt by the Company if such Default has not been cured by the Broadband Network operating without any Dark Days for ten (10) days continuously. If the Company does cure the Default by the Broadband Network operating without any Dark Days for

ten (10) days continuously prior to the end of such thirty (30) day period then the termination shall not be effective and the Default shall be cured. If Company is unable to cure the Default within said thirty (30) days by the Broadband Network operating without any Dark Days for ten (10) days continuously, then each County shall be entitled to exercise its rights to terminate this Agreement due to the Default and/or exercise all other remedies available to the it under this Agreement, at law or in equity, including but not limited to the Default Option set forth in Section 21(h).

(3) *Failure to Maintain Service Levels and Pricing.* Company's repeated and substantial failures to maintain performance standards and service levels as set out in the Network Acceptance, Testing, and Compliance Plan and Section 11 of this Agreement shall constitute a Default of the Agreement. In the event Company commits such a Default, and does not cure such Default within thirty (30) days after a Default notice is delivered to the Company, then each County shall be entitled to exercise its rights to terminate this Agreement due to the Default and/or exercise all other remedies available to it under this Agreement, at law or in equity, including but not limited to the Default Option set forth in Section 21(h).

(c) *Assignment Defaults; Remedies.* The following shall constitute a Default of the Agreement for which each of Counties, upon written notice to Company, may terminate the Agreement: (i) the making by the Company of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against the Company of a petition to have the Company adjudged a bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy unless the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or a receiver to take possession of substantially all Secured Company's Facilities or of Company's interest in this Agreement, where possession is not restored to Company within thirty (30) days; (iv) the attachment, execution or other judicial seizure of substantially all Secured Company's Facilities or of Company's interest in this Agreement, where that seizure is not discharged within thirty (30) days; or (v) a transfer or assignment by the Company in violation of Section 20 herein.

(d) *Other Defaults; Remedies.* The Company's material failure to observe or perform any of the substantial covenants, conditions or provisions of this Agreement, or of any exhibits hereto, required herein to be observed or performed by Company shall constitute a Default of this Agreement. In the event the Company commits such a Default (for which there is no other specific remedy provision herein), and does not cure such Default within thirty (30) days after a Default notice is delivered to the Company, then each County shall be entitled to exercise its rights to terminate this Agreement due to the Default and/or exercise all other remedies available to it under this Agreement, at law or in equity, including the Default Option set forth in Section 21(h).

(e) *Default or Termination in One County Applicable to Both Counties.* A Default in one County shall constitute a Default in both Counties. If the Agreement is terminated by either County, within ninety (90) days of receiving actual notice of the termination by any other County, any other County may, in its sole discretion also terminate this Agreement due to the Default and/or exercise all other remedies available to it under this Agreement, at law or in equity, including but not limited to the Default Option set forth in Section 21(h).

(f) *Default by Counties; Remedies.* The Company has no right, except as provided in this paragraph, to terminate this Agreement or take action against the Counties as a result of Default by the Counties. Notwithstanding anything in this Agreement to the contrary, in the event that one or more of the Counties' material failure to observe or perform any of the substantial covenants, conditions or provisions of this Agreement, or of any attachments hereto, required herein to be observed or performed by Counties and Counties' failure to cure such Default within thirty (30) days after a Default notice is delivered to the Counties, then Company's sole recourse against the Counties shall be as set forth in Section 7(d).

(g) *Dispute Resolution.* In the event of a dispute between the Parties, the Parties are encouraged, but not required to attempt to achieve amicable resolution through informal discussions or mediation.

(h) *Effect of Termination.* In the event of termination of this Agreement, the Company's right to use and occupy Public Broadband Towers shall be revoked, and the Company may not claim any further rights or privileges pursuant to this Agreement.

(1) Unless the Counties exercise their rights to assume ownership of the Secured Company's Facilities pursuant to the Default Option set forth herein at Section 21(h), the Company shall, within a reasonable time but not to exceed sixty (60) days, remove all of the Secured Company's Facilities located on Public Facilities.

(2) Unless provided otherwise under the terms set out in this Agreement, including, but not limited to Section 21(h), any facilities the Company fails to remove within sixty (60) days of termination shall be considered abandoned and, at the option of the Counties, the Company's interest shall pass to the Counties and the Counties shall be entitled to any bonds described in Section 22(b)(ii).

(3) At the discretion of each County and to the extent contractually possible, the Company shall assign to the Counties all leasehold interests held in accordance with Section 6(k) of this Agreement.

(4) The Counties may freely assume and assign the title to any abandoned facilities and any leasehold interests of the Company assigned hereunder.

(5) To the extent that title has passed to the Counties or rights have been assigned to the Counties hereunder, the Counties may assign and assume such facilities to (i) a new provider selected through a competitive process, (ii) to one or more broadband authorities, or (iii) as may otherwise be allowed by law.

(i) *Default Public Broadband Tower Pricing.* If a Default by the Company has occurred and the applicable, if any, notice provisions and cure period are followed by a County, notwithstanding any provision of this Agreement to the contrary, either County may, in lieu of

terminating this Agreement, disregard the limits on the rent of Public Broadband Towers set forth in Section 8 and set the rent for the Public Broadband Towers at its sole discretion.

**24. Notices.** Any notices required shall be in writing, unless otherwise permitted hereunder, and shall be deemed received five (5) days after mailing of same in the U.S. Mail, first class, with postage prepaid at the addresses set forth below or upon actual receipt:

Notice to Company shall

be made to:

Jody R. Call  
Chief Technology Officer  
Wilkes Communications | RiverStreet Networks  
1400 River St.  
Wilkesboro, NC 28697  
(336) 973-6186  
jodycall@myriverstreet.net

Notice to Dinwiddie County shall

be made to:

W. Kevin Massengill  
County Administrator  
P. O. Drawer 70  
Dinwiddie, Virginia 23841  
(804) 469-4500  
accounting@dinwiddieva.us

with a copy to:

Tyler C. Southall, Esq.  
County Attorney  
P.O. Drawer 70  
Dinwiddie, Virginia 23841  
(804) 469-4500  
tsouthall@dinwiddieva.us

Notice to Amelia County shall

be made to:

A. Taylor Harvie, III  
County Administrator  
P.O. Box A  
Amelia, Virginia 23002  
(804) 561-3039  
Taylor.harvie@ameliacova.com

with a copy to:

Jeff Gore, Esq.  
Hefty Wiley & Gore, P.C.  
100 West Franklin Street, Suite 300  
Richmond, Virginia 23220  
(804) 780-3143  
jeff@heftywiley.com

Although email may be used for informal communications regarding this Agreement, any notice required to be sent pursuant to this Agreement shall be sent by first class U.S. Mail.

**25. Public Documents.**

Unless specifically exempted pursuant to the Virginia Freedom of Information Act (Virginia Code Section 2.2-3700 *et eq.*, as amended), all reports, documents, financial data and

other information provided to the Counties shall be public records. Subject to the Virginia Freedom of Information Act, the Counties shall protect the confidentiality of information if (i) the Company invokes the protections of Virginia Code Section 2.2-4343(F) prior to or upon submission of the data or other materials, (ii) the data or other materials to be protected is clearly marked "CONFIDENTIAL" on each page, and (iii) the reasons why the protection from public disclosure are provided in writing to the relevant government entity.

**26. Survival.**

The rights and remedies available to the Company and the Counties for any breach that takes place during the Initial Term or any Renewal Term (if the Agreement is renewed into any Renewal Term) shall survive any expiration or termination of this Agreement.

**27. No Waiver of Sovereign Immunity.**

Notwithstanding any provision of this Agreement to the contrary, no provision of this Agreement shall be construed to be a waiver of the sovereign immunity (or any other immunity, governmental or otherwise) of the Tobacco Commission or the Counties.

**28. Entire Agreement.**

Together with the exhibits referenced in this Agreement and any exhibits to those exhibits, this Agreement expresses the entire understanding between the parties with respect to this matter, and no amendment, waiver, or modification of this Agreement shall be made unless (i) expressly set forth in writing and signed by the same officers as have signed this Agreement or (ii) a mechanism in this Agreement allows for an exhibit to this Agreement, such as the Coverage, Phasing, and Implementation Plan to be amended.

**29. Litigation Expenses and Attorney's Fees.**

In the event of any enforcement action or litigation arising out of any Default or dispute related to this Agreement, the Company shall pay each Parties' respective attorney's fees, expert witness costs and cost of suit, unless the Company substantially prevails on the merits of the case, in which case each Party shall bear its own respective attorney's fees, expert witness costs, and cost of suit.

**30. Consultation with Attorneys.**

Each Party recognizes that (i) it has consulted with its own attorney and (ii) taken part in the negotiation and drafting of this Agreement. Hefty, Wiley & Gore, PC in addition to serving as the Amelia County Attorney has provided legal representation to both Counties in a dual representation.

**31. No Third Party Beneficiaries.**

The provisions of this Agreement are for the sole benefit of the Parties and their permitted assigns and transferees, and they shall not be construed as conferring any rights to any third party (including any third party beneficiary rights).

**32. Counterparts.**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or as an attachment to an email, and any such signature shall have the same legal effect as an original.

**33. Severability.**

If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

**34. Future Appropriations.**

Notwithstanding any provision of this Agreement to the contrary, the respective obligations of the Counties are subject to future appropriations for such purposes by the Boards of Supervisors of the respective Counties.

**35. Termination of Build-Out for Convenience of Counties.**

Notwithstanding any provision in this agreement to the contrary, pursuant to Section 10(b), each of the Counties may in their sole discretion terminate further build-out of the Project as set forth below:

- (a) Either County may terminate the build-out of the Project under this Agreement at any time without cause, in whole or in part, upon giving the Company notice of such termination. Upon such termination, the Company shall immediately cease work on the build-out of the Broadband Network and Vertical Assets and remove from the project site all of its labor forces, subcontractors, and such of its materials as the Counties elect not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Company shall take such steps as any of the Counties may require in order to assign to a County the Company's interest in all subcontracts and purchase orders designated by County. After all such steps have been taken to the County's satisfaction, the Company shall receive as full compensation for termination and assignment the following from any County that terminates the build out with respect to such County:

- (1) All amounts then otherwise due under the terms of this Agreement as of the latest request for payment,
- (2) Amounts due for work performed subsequent to the latest request for payment through the date of termination, and
- (3) Reasonable compensation for the actual cost of demobilization incurred by the Company as a direct result of such termination. The Company shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, neither County shall have any further obligations to the Company of any nature.

(b) Notwithstanding any provision of this Agreement to the contrary, in no event shall any County owe any money or otherwise be liable to the Company (or any other party) for items of cost not expressly listed in a Funded Phase of the Coverage, Phasing, and Implementation Plan.

(c) For the purpose of clarification, this Section 35 only applies to further build out of the Project and does not affect or in any way alter the parties' obligations for portions of the Project that have already been completed.

### **36. Force Majeure.**

No party shall be obligated to perform its obligations under this Agreement to the extent that the non-performance of such obligations is directly caused by a Force Majeure. As soon as practicable after the party whose performance will be effected realizes the existence of the Force Majeure, such party shall provide written notice to each other party of (i) the existence of the Force Majeure, (ii) how such Force Majeure prevents the performance of the notifying party's obligations under this Agreement, and (iii) a proposed remedy to the Force Majeure situation. The notifying party shall undertake all reasonable efforts to perform its obligations under the Force Majeure circumstances.

### **37. Other Broadband Projects Not Precluded.**

(a) For the purpose of clarification and without in any way limiting the rights of the Counties, or any broadband authorities, nothing in this Agreement shall be interpreted to prevent any County or local or regional broadband authority from undertaking or providing funding for the establishment, enhancement, or expansion of broadband internet or similar services in or around the Counties, including with partners other than the Company.

(b) Furthermore, the Company may provide broadband internet or similar services outside of the Counties; provided, however, that (i) the Company shall only remove assets paid for by the Grant Project Budget or other public funds with the express written consent of the relevant County Administrator and (ii) virtually all work done with the Grant Project Budget or other public

funds, including but not limited to work done by employees and vehicles funded with Grant Project Funds or other public funds shall be in the Counties, unless express written consent of the relevant County Administrator(s) is/are obtained.

**38. References to Company.**

Notwithstanding any provision of this Agreement to the contrary, each reference to the Company shall apply to each of WTMC, RSCVA, RiverStreet, NCW, GTG, and GT. The obligations and liabilities agreed to by the Company pursuant to this Agreement shall be joint and several obligations and liabilities of each of WTMC, RSCVA, RiverStreet, NCW, GTG, and GT. For the purposes of clarification, and without in any way limiting the obligations of any of WTMC, RSCVA, RiverStreet, NCW, GTG, and GT to guarantee and be liable for the obligations of the Company pursuant to this Agreement, only those entities which are licensed with the Virginia State Corporation Commission shall engage in activity which would require licensure with the Virginia State Corporation Commission pursuant to this Agreement.

**39. Miscellaneous.**

This Agreement shall be governed by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Dinwiddie, Virginia, or the Circuit Court of the County of Amelia, Virginia (depending on where the dispute arises) or the Circuit Court for the City of Richmond, Virginia (if the dispute is deemed by a County need to be adjudicated in Richmond because of the Tobacco Commission Grant Agreement), and such litigation shall be brought only in such courts. All pronouns used herein shall refer to every gender. Headings or titles in this Agreement are only for convenience and shall have no meaning or effect upon the interpretation of the provisions of this Agreement. This Agreement is the entire agreement between the parties and may not be amended or modified, except by writing, signed by each party. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provision were not included therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last Party to sign below:

County of Dinwiddie, Virginia

By: [Signature]  
W. Kevin Massengill  
County Administrator

Date: 9/24/19

County of Amelia, Virginia

By: [Signature]  
A. Taylor Harvie, III  
County Administrator

Date: 9/25/19

Approved as to form:

[Signature]  
Legal Counsel for County of Dinwiddie

Approved as to form:

[Signature]  
Legal Counsel for County of Amelia

Wilkes Telephone Membership Corporation

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

RiverStreet Communications of Virginia, Inc.

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

RiverStreet Management Services, LLC

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

Gamewood Technology Group, Inc.

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

Gamewood Telecom, Inc.

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

North Carolina Wireless, LLC

By: [Signature]  
Person: JODY R. CALL  
Title: CTO  
Date: 10/8/19

## **EXHIBITS**

- A. PPEA Joint RFP-19-051719
- B. Proposal of the Company dated June 9, 2019
- C. Tobacco Region Revitalization Commission Grant Agreement
- D. List of Company's Facilities
- E. List of Frequencies to Be Used by Company
- F. Acceptable Use Policy
- G. List of Public Facilities
- H. Requisition Form
- I. Coverage, Phasing, and Implementation Plan
- J. Network Acceptance, Testing, and Compliance Plan
- K. Disaster Contingency Plan
- L. Reserved
- M. Grant Project Budget
- N. Census Block Maps