

VIRGINIA:

At a regular meeting of the Amherst County Broadband Authority held at the Administration Building thereof on Tuesday, the 2ND day of February, 2010 at 10:00 a.m. at which the following members were present and absent:

BROADBAND AUTHORITY BOARD:

PRESENT: Mr. D. Kidd
Ms. C. Tucker
Mr. F. Campbell

ABSENT: Mr. C. Adams
Mr. R. Vandall

IN RE: APPROVAL OF AGENDA

On motion of Mr. Campbell and with the following vote, the Broadband Authority Board approved the following agenda for February 2, 2010.

AGENDA

Amherst County Broadband Authority

**Tuesday, February 2, 2010
10:00 a.m.**

**Amherst County Administration Building
School Board Meeting Room**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes from January 19, 2010
4. Press Release
5. Proposed Agreement with DigitalBridge Communications Corp
For Broadband Network Project
(Not ready at time – will be sent under separate cover)
6. Other Business
7. Adjourn

AYE: Mr. D. Kidd, Ms. C. Tucker and Mr. F. Campbell

NAY: None

ABSENT: Mr. C. Adams and Mr. R. Vandall

IN RE: APPROVAL OF MINUTES

On motion of Ms. Tucker and with the following vote, the Broadband Authority Board approved the minutes for January 19, 2010.

AYE: Mr. D. Kidd, Ms. C. Tucker and Mr. F. Campbell

NAY: None

ABSENT: Mr. C. Adams and Mr. R. Vandall

IN RE: PROPOSED AGREEMENT WITH DIGITALBRIDGE COMMUNICATIONS CORP FOR BROADBAND NETWORK PROJECT

Vice Chairman Kidd turned the floor over to Mr. Bryan David for discussion on the proposed agreement with DigitalBridge Communications Corp. Mr. David informed the Board that Mr. Horton of the Technical Advisory Committee was also present for any questions.

On motion of Mr. Tucker and with the following vote, the Broadband Authority Board approved the Broadband Agreement dated February 2, 2010 with DigitalBridge Communications, Inc. and authorized Mr. David, Mr. Gore and County Staff to implement the agreement in accordance with the provisions contained herein:

Amherst County Broadband Authority – DigitalBridge Communications

Broadband Agreement

THIS Broadband Agreement ("**Agreement**") dated _____, 2010 ("**Effective Date**") is entered into by the Amherst County Broadband Authority ("**Authority**") and DigitalBridge Communications, Inc. ("**DBC**") (collectively the "**Parties**").

Recitals

WHEREAS, access to affordable broadband is important for fostering economic development, improving educational opportunities, ensuring public safety, and enhancing the overall quality of life of the citizens of the County, and such access is extremely limited throughout the majority of the County; and

WHEREAS, since the private sector alone has not been able to fulfill this community need, and there is no indication that it will do so in the near future, the Amherst County Board of Supervisors formed the Authority to facilitate the provision of affordable broadband access to local businesses, local government, and the general public. The Authority was formed on April 21, 2009, and it is a public body, politic and corporate, and an instrumentality exercising public and essential governmental functions to provide for the public health and welfare in exercising its powers under the Virginia Wireless Service Authorities Act ("**Act**"), § 12.2-5431.1 of the Code of Virginia, as amended; and

WHEREAS, on November 4, 2009 the Authority issued a Request for Proposals No. 09-01 ("**RFP**") from qualified entities for the deployment, operation and maintenance of a broadband network that will provide residents and businesses in unserved and underserved portions of Amherst County ("**County**") as well as certain governmental agencies with affordable, high-speed data and Internet services ("**broadband**"); and

WHEREAS, In order to facilitate this coverage, the Authority sought to identify potential private or nonprofit entities that would be willing and able to partner with the Authority in the application process for the Federal Broadband Initiatives Program ("**BIP**") and/or the Broadband Technologies Opportunities Program ("**BTOP**"). These programs provide funding to eligible entities which include public bodies and private entities, for broadband infrastructure and other related expenses as appropriated under the American Recovery and Reinvestment Act of 2009 ("**ARRA**"); and

WHEREAS, after a thorough evaluation of each written proposal, and interviews with each firm, on January 14, 2010, the Authority selected DBC as the most qualified of the firms that responded to the RFP; and

WHEREAS, DBC successfully demonstrated to the Authority its experience in designing, implementing, operating, and maintaining rural scale broadband wireless networks, as well as expertise with the ARRA grant/loan application process; and

WHEREAS, On January 15, the National Telecommunications and Information Administration (“**NTIA**”) and the United States Department of Agriculture Rural Utility Service (“**RUS**”) issued the second and final Notice of Funds Availability (“**NOFAs**”) for broadband grants and loans under the ARRA; and

WHEREAS, the parties hereby formally enter into a public-private partnership for the purpose of applying for federal stimulus funds by the March 15, 2010 deadline established in the NOFA, with any such funds awarded to be applied to fulfill the Authority’s goals of providing high-speed broadband services to the citizens, businesses, community institutions, and governmental agencies throughout the County as set forth in the RFP and as described in DBC’s proposal.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises contained herein, the Parties agree as follows:

1. Term of Agreement.

The Term of this Agreement shall be for one (1) year (“**Term**”). However, if the federal stimulus application is successful or if alternative funding sources are identified or made available prior to the end of the Term, then the parties agree to extend the Agreement for an additional period of time as necessary to complete deployment of the broadband network, or as otherwise required by the terms of any federal grant or loan, or the terms of any other lending entity. The Parties may modify the Agreement at any time during the Term or any renewal term as provided in Section 6.

2. Effective Date.

This Agreement shall become effective and binding upon the authorized execution by both Parties.

3. Federal Stimulus Application.

DBC agrees to apply for federal funds through the BIP and/or the BTOP, as the Authority and DBC determine appropriate.

- (i) DBC shall be responsible for meeting all applicable BIP or BTOP application deadlines and requirements pursuant to the applicable NOFA.
- (ii) DBC shall be responsible for meeting all requirements set forth in any grant or loan award, including, but not limited to all federal reporting, procurement, employment standards and other requirements.
- (iii) The Authority agrees to assist DBC in preparing the application by providing information on the location of publicly-owned buildings, communications towers, land or other assets that may be utilized by DBC. The Authority further agrees to solicit support for the project from relevant business, community and government leaders and entities, and provide that information to DBC, and to otherwise provide assistance as set out in the RFP.

4. DBC as Wireless Broadband Provider and Operator of Network

If this project is funded as contemplated in this Agreement, DBC agrees that it will operate as a fourth-generation broadband wireless operator providing both fixed and mobile services in the County, and DBC shall be responsible for designing, implementing, and operating the broadband network, as well as marketing, sales, customer account billing and collections, customer service, and all other tasks related to the operation and maintenance of the network.

5. Incorporation of RFP conditions and DBC proposal

This Agreement shall consist of this written Agreement, the proposal submitted by DBC, the RFP, including all general, special or other conditions contained therein, and any addendum to same, all of which shall be referred to collectively as the “**Contract Documents**”. In the event of any conflict between any of the Contract Documents, the terms and conditions this document will control, followed by the RFP,

and then DBC's proposal, in that order of priority, unless otherwise expressly agreed to in writing by all parties thereto. Notwithstanding the above, any federal grant or loan application or award may include terms, conditions, obligations and duties that add to, preempt or conflict with any contract provisions agreed to by the parties; and in such event, the federal requirements shall control. The parties may choose to amend any contracts in writing to reflect such additional requirements or federal preemption.

6. Prior Agreements and Amendments.

The Contract Documents constitute the entire Agreement between the Parties. Except as set forth herein there are no other promises, representations, or understandings between the Parties of any kind or nature whatsoever. Modifications to this Agreement shall be valid only if provided in a separate writing signed by an authorized representative of each Party.

7. Description of Project.

The project contemplated by this Agreement and consistent with the federal BIP/BTOP program, as applicable, is described in **Exhibit A** (attached).

8. Network Acceptable Use Policy.

DBC shall promote the open and interconnected nature of the public Internet allowing users to access the lawful Internet content of their choice while subject to reasonable restrictions.

9. Recitals.

The Recitals are hereby incorporated into this Agreement by reference.

10. Non-Performance.

DBC's or Authority's failure to perform any obligations under this Agreement shall be excused if and to the extent such non-performance is caused by: (i) the wrongful or tortious actions of the other Party; or (ii) the failure of the other Party to perform its obligations under this Agreement.

11. Notice.

Any notice, request, instruction, or other document to be given hereunder by a Party pursuant to this Agreement shall be in writing and shall be deemed to have been given when received if given in person or by courier or a courier service; on the date of transmission if sent by facsimile, email, or other wire transmission; or, three (3) business days after being deposited in the US mail, certified or registered mail postage prepaid.

If to Authority:

Amherst County Broadband Authority

c/o C. Lee Linticum

County Administrator

Office of the County Administrator

P.O. Box 390

153 Washington Street

Amherst, Virginia 24521

If to DBC:

DigitalBridge Communications Corp.

c/o William F. Wallace

Executive Vice President

44675 Cape Court; Suite 130

Ashburn, VA 20147

12. Headings.

The headings of sections throughout this Agreement are intended solely to facilitate reading. Such captions shall not affect the meaning or interpretation of this Agreement.

13. Severability.

If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.

14. Governing Law and Venue.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Virginia. Any action brought relating to the interpretation or enforcement of this Agreement shall be brought in the courts of Amherst County, Virginia, unless otherwise required by law.

15. Legal Authority.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of DBC and Authority, respectively.

[signature page to follow]

IN WITNESS WHEREOF the Parties acknowledge and accept the terms conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

Amherst County Broadband Authority

By: _____
Title: Chairman

DigitalBridge Communications, Inc.

By: _____

Type: _____

Title: _____

EXHIBIT A

(Exhibit to include project technology, deployment timeline, budget and funding sources, coverage goals, etc.)

AYE: Mr. D. Kidd, Ms. C. Tucker and Mr. F. Campbell

NAY: None

ABSENT: Mr. C. Adams and Mr. R. Vandall

IN RE: OTHER BUSINESS

There was no other business on hand.

Mr. David informed the Board that he would be back for the 1st meeting in March for an update.

IN RE: ADJOURNMENT

On motion of Ms. Tucker, seconded by Mr. Campbell and with the following vote, the Broadband Authority Board adjourned.

AYE: Mr. D. Kidd, Ms. C. Tucker and Mr. F. Campbell

NAY: None

ABSENT: Mr. C. Adams and Mr. R. Vandall

Donald W. Kidd, Vice-Chairman
Amherst County Broadband Authority Board

C. Lee Lintecum, Secretary