

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) entered into on September , 2021, by and between **RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC.**, located at 1400 River Street, Wilkesboro, North Carolina, 28697 ("RiverStreet"), and the **COUNTY OF PITTSYLVANIA, VIRGINIA**, located at 1 Center Street, Chatham, Virginia 24531 ("County"); (collectively referred to as the "Parties"), for the purpose of establishing and achieving various goals and objectives relating to the project contemplated by the Parties.

WHEREAS, there are approximately 8,500 County households in U.S. Census blocks that are unable to receive broadband service at speeds equal to or greater than twenty-five (25) download and three (3) megabits per second (Mbps) upload speeds and are therefore classified by the Federal Communications Commission (“FCC”) as unserved; and

WHEREAS, RiverStreet proactively sought and was awarded FCC grants to construct and provide fiber to the home (“FTTH”) service to all unserved households in the County (“Project”); and

WHEREAS, the County and School Board received significant funding through the American Rescue Plan Act (“ARPA”) that may be used to improve broadband infrastructure; and

WHEREAS, the Commonwealth of Virginia has designated state-level ARPA funds to further incentivize communities to expand broadband service; and

WHEREAS, RiverStreet has identified over \$75,000,000 of needs to provide nearly 12,000 County homes with FTTH; and

WHEREAS, the RiverStreet and County partnership will include a Revenue Sharing Agreement which will allow the County to reinvest funds earned to build additional service; and

WHEREAS, the Pittsylvania County Board of Supervisors and the Pittsylvania County School Board desire to supplement the Project with \$12,000,000 of ARPA funding; and

WHEREAS, the Parties are desirous to enter into this MOU to set forth the working arrangements that both Parties agree shall be necessary to pursue their efforts to bring the Project to fruition.

WITNESSETH

1. MISSION

The Project is intended to provide the areas of the County that are identified by the FCC as “unserved” with access to FIFTH broadband to meet the future needs of residents and businesses

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David M. Smitherman, County Administrator
david.smitherman@pittgov.org

in those areas of the County.

2. PURPOSE AND SCOPE

The Parties intend for this MOU to outline the structure for any binding contracts which the Parties may enter in the future related to the Project.

3. OBJECTIVES

The Parties agree to work together to attempt to secure funding and establish policies and procedures that will promote and sustain a market for broadband availability and intend to work toward delivering a product and/or services that meet or exceed business and industry standards; in which the Parties endeavor to provide access to 100 Mbps symmetrical broadband service

4. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

The Parties agree to work together in good faith and collaboratively to bring the Project to successful completion. This MOU does not create any legal or equitable obligations or rights on the part of either Party and no such obligations or rights shall exist unless and until such time as the Parties may enter into a written agreement signed by both Parties.

5. SERVICES COOPERATION

The goal of the Project is to provide the following services in the areas of the County contemplated in the Project, which services include, but are not necessarily limited to:

Broadband Internet access services.

- **Phase 1 (beginning after MOU execution):** The Parties will work together to apply for Virginia Telecommunication Initiative (“VATI”) grant(s). The Parties anticipate that VATI guidelines will require contributions by RiverStreet and the County as matching funds to secure a FY2022 VATI Grant through the Virginia DHCD. DHCD funding shall not exceed eighty percent (80%) of Project costs. The Parties’ VATI Grant Application may be a part of a regional application made together with other Virginia counties. The total budget for the Project is expected to be \$75,696,532. The County agrees to provide a minimum match of \$16,528,939 in funding for the Project. RiverStreet agrees to provide a minimum match of \$19,657,064 in funding for the Project. The amount of the VATI Grant to be requested for the Project will be at least \$39,510,529, and the total number of homes projected to be passed by the Project shall be at least 11,985.
- **Phase 2 (beginning after Phase 1):** RiverStreet will work with the County to continue Project planning and the Parties will seek additional Federal, State, and local funding to expand the availability of broadband service in the County.

6. TIMELINE

The above outlined scope and objective shall be contingent on the Parties’ ability to obtain the necessary funding required for the Project, as described in any applicable grant or business loan application. Responsibilities about commencement and completion of the Project will be

established in any future agreement between the Parties and may coincide with the period specified in connection with any grants awarded in connection with the Project.

7. TERM

This MOU shall remain in effect, subject to the termination provisions in this MOU, up until the Parties mutually determine whether they are able to move forward with the Project.

If the Parties are successful in securing sufficient grant funding that they are both willing to move forward with the Project, then they agree to use good faith efforts to negotiate, execute and deliver a formal contract regarding the Project (“Project Agreement”). The Parties contemplate that a Project Agreement will contain terms and conditions, representations, warranties, covenants, and other provisions that are customary in-service arrangements of the sort contemplated in this MOU. If the Parties are unable to agree on the terms and conditions of a Project Agreement within sixty (60) days of receiving notice of the award of such grant funding, then either Party may give notice of the termination of this MOU. In that event, the Parties shall have no further obligations to each other under this MOU, except for any obligations which are specifically provided to survive a termination of this MOU. This MOU does not create any legal or equitable obligations or legal rights.

8. AMENDMENT OR CANCELLATION OF THIS MOU

This MOU may be amended or modified at any time in writing by mutual agreement of both Parties. In addition, this MOU may be cancelled by either Party without cause on sixty (60) days advance written notice. This MOU may be terminated for cause, where cause for termination may include, but is not limited to, a material breach of any of the provisions contained herein, upon delivery of written notice of such termination to the other Party.

9. GENERAL PROVISIONS

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this MOU in accordance with the provisions of the law and regulations that govern their activities. Nothing in this MOU is intended to negate or otherwise render ineffective any such provisions or operating procedures. The Parties assume full responsibility for their performance under the terms of this MOU.

If at any time either Party is unable to perform its duties or responsibilities under this MOU consistent with such Party's statutory and regulatory mandates, the affected Party shall immediately provide written notice of such to the other Party and, if possible, establish a date for such performance.

10. LIMITATION OF LIABILITY

No rights or limitation of rights shall arise or be assumed between the Parties because of the terms of this MOU.

11. NOTICE

Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph, or to such address as one may have furnished to the other in writing.

survive a termination of this MOU. This MOU does not create any legal or equitable obligations or legal rights.

12. GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

13. SEVERABILITY CLAUSE

If any provision of this MOU shall be deemed to be severable or invalid, and if any term, condition, phrase, or portion of this MOU shall be determined to be unlawful or otherwise unenforceable, the remainder of the MOU shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties. If a court should find that any provision of this MOU to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed, and enforced as so limited.

14. ASSIGNMENT

Neither Party may assign this MOU without the prior written consent of the non-assigning Party, whose approval shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing, RiverStreet shall have the right to assign this MOU without the County's consent to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with RiverStreet, or to any entity into which RiverStreet may have merged or consolidated or which purchases all or substantially all of the assets of RiverStreet.

15. ENTIRE UNDERSTANDING

This MOU reflects the entire understanding and agreement of the Parties pertaining to all matters contemplated hereunder.

16. AUTHORIZATION AND EXECUTION

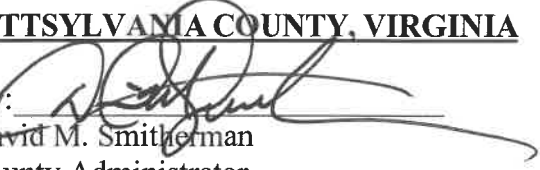
The signing of this MOU does not constitute a formal undertaking, and as such it simply reflects the intentions of the Parties to undertake preliminary efforts to achieve the goals and objectives stated in this MOU.

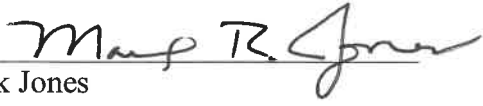
IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC.

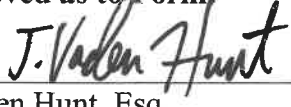
By: _____
Gregory S. Coltrain
VP, Business Development

PITTSYLVANIA COUNTY, VIRGINIA

By: 
David M. Smitherman
County Administrator

By: 
Mark Jones
School Superintendent

Approved as to Form:



J. Vaden Hunt, Esq.
Pittsylvania County Attorney