

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made as of the \_\_\_ day of May, 2022 (the “**Effective Date**”), by and between the Board of Supervisors of Botetourt County, Virginia, for itself and on behalf of Botetourt County, Virginia, including its officers, agents, employees, directors, supervisors, successors, and assigns, and the Economic Development Authority of Botetourt County, Virginia, including its officers, agents, employees, directors, supervisors, successors, and assigns (collectively, the “**County**”) and the Roanoke Valley Broadband Authority, a wireless authority formed and existing under Chapter 54.1 of Title 15.2 of the Code of Virginia, 1950, as amended, the Virginia Wireless Service Authorities Act §§ 15.2-5431.1 *et seq.* (the “**Act**”) (the “**Authority**”). The County and the Authority are collectively referred to herein as the “**Parties**” and each individually as a “**Party**.”

### RECITALS

A. The County is a political subdivision of the Commonwealth of Virginia, and is governed by its Board of Supervisors. The Economic Development Authority is a body politic and corporate and a political subdivision of the Commonwealth of Virginia. The Authority is a body politic and corporate and a political subdivision of the Commonwealth of Virginia pursuant to the provisions of the Virginia Wireless Service Authorities Act. The County is a member of the Authority.

B. The County submitted an application to the Governor’s Fast Track Funding program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for \$569,808 in funding (the “**CBRS Grant**”) to obtain and deploy one 3-Sector CBRS eNodeB fixed wireless internet node and deploy 250 Customer Premises Equipment (CPE) radios and network licenses (the “**CBRS Project**”). The County was awarded full funding for the CBRS Project, which is now known as Department of Housing and Community Development (DHCD) CARES Project #2020-055. In total, County obtained funding for 350 additional CPEs and 2 additional eNodeBs that were purchased on the County’s behalf by the Authority.

C. The Authority managed the implementation of the CBRS Project on behalf of the County. At the request of the County, the Authority halted acquisition and deployment of the CBRS fixed wireless internet node prior to full deployment. All tangible and intangible personal property, licenses, or contractual rights the Authority acquired by, through, or in consideration of the CBRS Grant funds are hereinafter listed on Exhibit 1 to Attachment A – Bill of Sale attached hereto and referred to as the “**Property**.”

D. Subject to the parties’ acceptance, execution and delivery of this Settlement Agreement, closeout and final payment for the CBRS Grant from DHCD is the responsibility of the County.

E. The County also submitted an application to the Governor’s Fast Track Funding program under the CARES Act for \$805,603.77 in funding (the “**Fiber Grant**”) to construct approximately 4.35 miles of 144+ count fiber optic cable (the “**Fiber Project**”). The County was awarded full funding for the Fiber Project, which is now known as DHCD CARES Project #2020-002. The fiber count was reduced by the parties from 144 to 96 due to nationwide fiber shortages.

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F. The Authority managed the construction of the Fiber Project on behalf of the County.

G. Subject to the parties' acceptance, execution and delivery of this Settlement Agreement Closeout and final payment for the Fiber Grant from DHCD is the responsibility of the County.

H. The Authority was not the grant applicant for the Projects nor does it have a contractual relationship with DHCD.

I. Without conceding liability or admitting any facts or defenses by the other parties, the Parties wish to settle and resolve the disputes regarding the CBRS and Fiber Grants (collectively the "Projects"), without incurring the inconveniences and costs associated with further proceedings.

**TERMS OF SETTLEMENT**

In consideration of the mutual covenants and promises set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals listed above are incorporated herein as part of this Agreement.
2. Property Transfer. At Closing, the Authority will convey all of the Property to the County. Transfer shall be by a Bill of Transfer and Sale in substantially the form set forth in **Attachment A** (the "Bill of Sale"). The Authority shall provide, simultaneously therewith, all manuals, certificates, licenses, and other documentation relating to ownership or title to the Property, to the County. The Authority shall be responsible for any registration of such transfer that must occur with any other person or governmental authority; provided, however, that the County shall not unreasonably withhold or delay commercially reasonable assistance with such registrations and transfers.
3. Return of Disallowed Funds for CBRS Project. Upon the County furnishing documentation that funds have been disallowed by DHCD or other Virginia state agency, the Authority will, in compromise of claims the County might have for return of the funds that DHCD has or might disallow for the CBRS Project, Pay \$85,469 to the County at Closing (the "CBRS Payment").
4. Return of Disallowed Funds for Fiber Project. Upon the County furnishing documentation that funds have been disallowed by DHCD or other Virginia state agency, the Authority will, in compromise of claims the County might have for return of funds that DHCD has or might disallow for the Fiber Project, pay \$124,531 to the County at Closing (the "Fiber Payment").
5. Documentation of Fiber Project. With this Agreement the Authority has delivered to the County a disc containing as built drawings of the Fiber Project including all passes,

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electronically in a single layer print or polygon shape file. The Authority will deliver the same information to the County at Closing in a shape file. County will provide a written receipt acknowledging the file has been received.

6. Closing. The Authority shall deliver the Payment and the Bill of Sale to the County within fourteen (14) days after the Effective Date. The County shall, within fourteen (14) days after delivery of the Payment and the Bill of Sale, verify that all of the Property for which the Authority has claimed reimbursement from the County has been delivered. The County shall provide the Authority written verification that all of the Property has been delivered, or provide the Authority a list of all items that are listed on Exhibit 1 to Attachment A – Bill of Sale that have not been delivered. If the Authority does not provide such property within fourteen (14) days thereafter, the County may pursue all remedies at law or in equity, including enforcement of this clause, to obtain such identified items or the value thereof. The County will, within fourteen (14) days of delivery, provide documentation to the Authority that disallowed funds described in sections 3 and 4 have been returned to the appropriate Virginia state agency.

7. County Release. Effective upon Closing, the County, its officers, directors, employees, staff, members, board of supervisors, successors, assigns, representatives, partners, designees, board members, members, shareholders, divisions, affiliates, subsidiaries, parent companies or organizations or divisions or political divisions, owners, sureties, insurers, agents, and shareholders (collectively, the “**County Releasors**”) hereby release and forever discharge the Authority and its officers, directors, employees, staff, members, successors, assigns, representatives, partners, designees, affiliates, subsidiaries, owners, sureties, insurers, agents, and shareholders (collectively, the “**Authority Releasees**”) from any and all claims, actions, causes of action, torts, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages (whether compensatory damages, punitive damages, exemplary damages, statutory damages, damages based on strict liability, negligence, fraud, contract, financial losses, injury, or loss due to fear or annoyance), demands, agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees, and losses whatsoever, whether in law or equity, whether based on any federal law, state law, common law right of action, or otherwise, whether foreseen or unforeseen, whether matured or un-matured, whether known or unknown, whether accrued or not accrued, whether claimed to have or may have against the Authority Releasees related to the Projects, except as expressly set forth in this Agreement.

8. Authority’s Release. Effective upon Closing, the Authority Releasees hereby release and forever discharge the County Releasors from any and all claims, actions, causes of action, torts, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages (whether compensatory damages, punitive damages, exemplary damages, statutory damages, damages based on strict liability, negligence, fraud, contract, financial losses, injury, or loss due to fear or annoyance), demands, agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees, and losses whatsoever, whether in law or equity, whether based on any federal law, state law, common law right of action, or otherwise, whether foreseen or unforeseen, whether matured or unmatured, whether known or unknown, whether accrued or not accrued, whether claimed to have or may have against the County Releasors related to the Projects except as expressly set forth in this Agreement.

9. No Representations. Except for the representations specifically made in this Agreement, in executing this Agreement, it is understood and expressly agreed that the Parties relied solely on their own independent analysis of the facts and claims at issue and their own judgment, belief, and knowledge of the nature, extent, and duration of damages, expenses, and losses, if any, and that they have not relied on any representations made by the other party. The Parties expressly accept and assume the risks that their independent analysis of the facts and claims at issue and their own judgment, belief, and knowledge on which they rely in executing this Agreement may prove to be inaccurate or different and expressly agree that the terms of this Agreement shall be in all respects effective and not subject to termination or rescission by any such inaccuracy or difference. This Agreement is made and entered into by each of the Parties of their own volition and each of the Parties warrants that this Agreement was made and entered into free of any duress, coercion, or undue influence from any source. All Parties have executed this Agreement voluntarily, after having obtained advice of counsel, and with a full and free understanding of its terms.

10. Agreement Drafting. All Parties have participated in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by the Parties. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The terms and provision of this Agreement shall be strictly construed given their plain meaning.

11. Not an Admission. The Parties represent and warrant that this is a compromise settlement of disputed claims, and that this Agreement shall not be construed to be an admission of liability or of any fact by the Parties, and that such liability has been and is strictly denied.

12. No Recital. The Parties agree that the terms of this Agreement are contractual and not mere recitals and that the Agreement constitutes the entire agreement between the Parties with regard to its subject matter.

13. Binding Effect and Execution. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective legal representatives, successors and assigns and shall be for the benefit of all the Parties. This Agreement may be executed in any number of counterparts, each of which shall be included and incorporated into the original. Further, the Parties may circulate the same for execution via facsimile or other electronic means. Thus, facsimile and electronic signatures are deemed originals and shall be binding upon the Parties.

14. No Waiver or Change Unless in Writing. No waiver of any provision in this Agreement shall be valid unless the same is in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision of this Agreement will be deemed a waiver of any other provision of this Agreement. This Agreement shall not be modified or amended except by a writing signed by all Parties hereto.

15. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Unless the Parties otherwise agree in writing, the

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exclusive venue and jurisdiction for any disputes regarding this Agreement shall be in Botetourt County, Virginia. If any of the provisions of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding upon the Parties.

16. No Other Actions. The County and the Authority represent and warrant that they have not filed any lien, arbitration, action, or lawsuit against any of the other Parties with respect to any claims arising from the Project other than their claims referenced in this Agreement.

17. Additional Documents. The Parties agree to cooperate fully and execute any and all supplementary documents, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

18. Proper Parties. The Parties expressly acknowledge, represent, and warrant that they are the proper and duly authorized parties to execute this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

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**BOARD OF SUPERVISORS OF BOTETOURT  
COUNTY, VIRGINIA, FOR BOTETOURT COUNTY,  
VIRGINIA,**

SIGNATURE: Richard E. Bailey  
NAME: Richard E. Bailey  
TITLE: Chairman Botetourt Co. BOS  
DATE: 6/28/22

**ECONOMIC DEVELOPMENT AUTHORITY OF  
BOTETOURT COUNTY, VIRGINIA,**

SIGNATURE: John F. Kilby  
NAME: John F. Kilby  
TITLE: Chair  
DATE: 6-17-22

**ROANOKE VALLEY BROADBAND AUTHORITY,**

SIGNATURE: Michael T. McEvoy  
NAME: Michael T. McEvoy  
TITLE: Chair  
DATE: 6/28/2022

**Bill of Sale**

KNOW ALL PERSONS BY THESE PRESENTS that the Roanoke Valley Broadband Authority (the "Authority"), for and in consideration of the sum of \$10, cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby bargain, sell, assign, transfer, and deliver unto Botetourt County, Virginia (the "County"), all my right, title, and interest in and to the personal property listed in **Exhibit 1** and defined in the Settlement Agreement dated xxxx as the "Property".

TO HAVE AND TO HOLD unto the said Botetourt County, Virginia, its successors and assigns, forever. And the Authority hereby covenants with Botetourt County, Virginia, that it is the lawful owner of the Property; that the Property is free and clear from all claims, liens, and encumbrances; that the Authority has good and marketable title to the Property; that the Authority has the right and authority to sell and transfer the Property; that the Authority will warrant and defend the County against any claims or demands of all persons; and that that the Authority will execute such further assurances as may be necessary or appropriate to effectuate transfer of the Property.

IN WITNESS WHEREOF, I have hereunto set my sign and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**ROANOKE VALLEY BROADBAND AUTHORITY,**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_