

# ROANOKE VALLEY BROADBAND AUTHORITY

601 S. Jefferson Street, Suite 110, Roanoke, VA 24011

**Frank M. Smith, II, President & CEO**

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## **BOARD MEMBERS:**

*Bob Cowell, City of Roanoke  
Gary Larrowe, Botetourt County  
Mike McEvoy, Citizen  
Daniel R. O'Donnell, Roanoke County  
James Taliaferro, II, City of Salem  
Dr. Scott Midkiff, Virginia Tech  
Keith Perry, Carilion*

## **DRAFT MINUTES**

A special called meeting of the Roanoke Valley Broadband Authority was held virtually on December 14, 2020 at 3:30 p.m. A video recording of the meeting is available.

### **1. CALL TO ORDER, WELCOME AND ROLL CALL**

Chairman McEvoy called the meeting to order at 3:35 p.m. and welcomed those in attendance. Wayne Strickland, Secretary to the Broadband Authority, called the roll and reported that a quorum was present.

Roanoke Valley Broadband Authority Board Members: *Present:* Gary Larrowe, Botetourt County; Mike McEvoy, Citizen; Dan O'Donnell, Roanoke County, Dr. Scott Midkiff, Virginia Tech; and Keith Perry, Carilion.

### **OTHERS IN ATTENDANCE**

Broadband Authority Staff: Frank Smith

Roanoke Valley-Alleghany Regional Commission Staff: Matt Miller and Wayne Strickland.

Others: Sam Darby, Glenn Feldmann Darby & Goodlatte; Derrick Williams, Cox.

**2. Contract Change Order and Agreements**

Frank Smith described that because of CARES Act funding, the project previously contracted in Botetourt County requires a change to be approved by the board. The change is for a contract extension on Phase II, and because the approximate amount of \$806,000 is more than 25% of the original contract, board approval is required. Recommended approval also includes a reimbursement and hold harmless agreement which will protect the Authority, as well as Botetourt County.

Gary Larowe made a motion to approve the agreement and resolution to approve the change order. After a brief discussion, Mr. Larowe withdrew his motion. Mr. O'Donnell made a new motion to authorize the hold harmless agreement and approve the contract change order resolution. Mr. Larowe provided the second to the motion. The motion passed 5-0, by a roll call vote.

**Member & Vote**

- Mr. Cowell – absent
- Mr. Larowe – Yes
- Mr. McEvoy – Yes
- Mr. O'Donnell – Yes
- Mr. Taliaferro – absent
- Mr. Keith Perry-Yes
- Dr. Scott Midkiff-Yes

**3. Other Business**

none

**4. Adjournment**

The meeting was adjourned at 3:48 p.m.

Submitted by:

Wayne G. Strickland  
Secretary to the Roanoke Valley Broadband Authority

## REIMBURSEMENT AND HOLD HARMLESS AGREEMENT

This Reimbursement and Hold Harmless Agreement is dated as of December \_\_\_, 2020, by and between the Roanoke Valley Broadband Authority (the “Broadband Authority”), a broadband 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”) and Botetourt County, Virginia (the “County”), a Virginia county.

### WITNESSETH:

WHEREAS, heretofore the Broadband Authority has undertaken to assist the County in the extension of its fiber facility from the Greenfield Training and Education Center in Botetourt County, Virginia (the “Original Project”); and,

WHEREAS, the County has procured certain funds under the CARES Act to provide for a 4.35 mile extension to the fiber facility terminating near the intersection of Route 630/Blacksburg Road and Route 672 Etzler Road (the “Extension Project”); and,

WHEREAS, the Board of Directors of the Broadband Authority has approved a change order to the original contract for the additional amount of \$835,000 to finance the Extension Project.

NOW THEREFORE, the parties agree as follows:

1. The County will reimburse and hold the Broadband Authority harmless from any claim based upon the untimely application of the CARES Act funds and specifically, if due to weather, construction, onsite or any other condition, the Extension Project is not completed in time to be funded with CARES Act funds.
2. The Broadband Authority agrees to provide the highest professional standards to its procurement and its contracting so that the CARES Act funds will have a reasonable opportunity to be correctly employed.
3. Ultimately the Original Project and the Extension Project will become part of the Broadband Authority’s fiber system and will be assets of the Broadband Authority.
4. Any notices or requests required to be given hereunder shall be deemed given if sent by registered or certified mail, postage prepaid, addressed (a) if to Roanoke Valley Broadband Authority, to 601 S. Jefferson, Suite 110, Roanoke, Virginia 24011 (Attention: President and CEO), with a copy to Glenn, Feldmann Darby & Goodlatte at 37 Campbell Avenue, S.W., Roanoke, Virginia 24011, Roanoke, Virginia, (b) if to the County, to Botetourt County, Virginia, 1 West Main Street, #1, Fincastle, Virginia 24090 (Attention: County Administrator) with a copy to Michael Lockaby, Esq., Guynn, Waddell, Carroll and Lockaby, P.C., 415 S. College Street,

Salem, Virginia 24153. Any party may designate any other address for notices or requests by giving notice under this paragraph.

5. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

6. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement.

7. This Agreement may be executed in counterparts each of which shall be an original and all of which together shall constitute but one and the same instrument. Facsimile and electronic signatures may substitute for and have the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed in their respective names as of the date first above written.

ROANOKE VALLEY BROADBAND  
AUTHORITY

By: \_\_\_\_\_  
Frank M. Smith, II, President and CEO

BOTETOURT COUNTY, VIRGINIA

By: \_\_\_\_\_  
Gary Larrowe, County Administrator

RESOLUTION  
OF THE BOARD OF THE  
ROANOKE VALLEY BROADBAND AUTHORITY

Approving a Change Order to a Construction Contract

WHEREAS, the Roanoke Valley Broadband Authority (the “Authority”), an authority formed and existing in accordance with the provisions of Chapter 54.1 of Title 15.2 of the Code of Virginia, 1950, as amended, the Virginia Wireless Service Authorities Act (the “Act”), issued and advertised its Request for Proposals for the extension of its broadband system located in Botetourt County, Virginia (the “Original Project”); and,

WHEREAS the proposals received in response to the Request for Proposals were evaluated, vendors were selected and ranked, and discussions with and evaluations of such vendors’ proposals resulted in the Authority’s entering into a contract (the “Original Contract”) with LIT Communities in cooperation with TPRC Broadband LLC (“LIT/TPRC”) for the Original Project; and

WHEREAS, the Authority has the opportunity now, due to the availability of additional CARES Act funding, to contract for the continuation of the Original Project with an additional fiber project over a 4.35 mile section of Botetourt County terminating near the intersection of Route 630/Blacksburg Road and Route 672 Etzler Road (the “Extension Project”); and,

WHEREAS, the Executive Director has recommended to the Board that in light of the positive experience the Authority has had with LIT/TPRC and that firm’s familiarity with the Original Project, that the Board consider a change order to the Original Contract to provide for the Extension Project; and

WHEREAS, Virginia Code Section 2.2-4309 provides that while contracts may be modified during performance, no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the governing body of the Authority; and,

WHEREAS, the amount of construction costs anticipated for the Extension Project is approximately \$835,000, which is more than the statutory limit of the greater of \$50,000 or 25% of the price of the Original Contract, and requires the advance written approval of the governing body of the Authority; and,

WHEREAS, the Members of the Board of the Authority have carefully considered the benefits to the Authority of modifying the Original Contract rather than go through a request for proposal or a competitive bid process, and have taken into account the positive experience the

Authority has had with LIT/TPRC, as well as the efficiencies to be gained from having LIT/TPRC continue the work.

NOW THEREFORE, be it resolved by the Members of the Board of the Roanoke Valley Broadband Authority that after consideration of the terms, conditions and benefits thereof, the Members of the Board of Directors of the Roanoke Valley Broadband Authority do hereby approve the change order to the Original Contract in an amount estimated to be \$835,000 to provide for the construction of the Extension Project, as presented to this meeting; and

AND BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized and directed to negotiate change orders to the Original Contract consistent with this resolution, to negotiate for terms beneficial to the Authority, including, but not limited to, (a) a pause in the construction of the Extension Project on December 30, 2020, in case the CARES Act funding is no longer available and (b) a satisfactory reimbursement and hold harmless agreement with Botetourt County to cover any obligations related to the CARES Act finding and to take all such further action as may be necessary or desirable in connection with and that are in conformity with the purposes and intent of this resolution.

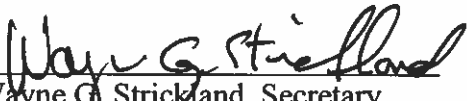
This resolution shall take effect immediately.

Directors absent 2  
Votes For 5  
Votes Against 0  
Abstentions 0

CERTIFICATION

The undersigned secretary of the Roanoke Valley Broadband Authority does hereby certify that the foregoing is a true, complete and correct Resolution adopted by a vote of a majority of the Members of the Roanoke Valley Broadband Authority, present at a special meeting of the Members of the Roanoke Valley Broadband Authority duly called and held December 14, 2020 at which a quorum was present and acting throughout, and that the same has not been amended or rescinded and is in full force and effect as of the date of this certification, December \_\_, 2020.

(SEAL)

  
Wayne G. Strickland, Secretary,  
Roanoke Valley Broadband Authority