February 8, 2022

Memorandum #2022-19

TO: Southside Network Authority

BY: Steven H. DeBerry, Executive Director

RE: Southside Network Authority Meeting – February 11, 2022

A meeting of the Southside Network Authority (SNA) will be held on Friday, February 11, 2022, beginning at 2:00 PM in Board Room A, The Regional Building, 723 Woodlake Drive, Chesapeake, VA. 23320. The agenda and related material are attached.

SHD/ka

Attachment

**SNA Voting Members:**
- Susan Vitale, CH
- Andria McClellan, NO
- Daniel Jones, PO
- Albert Moor, SU
- Rosemary Wilson, VB

**SNA Alternate Members:**
- Scott Fairholm, CH
- Catheryn Whitesell, NO
- Angel Jones, PO
- Regina Chandler, SU
- Peter Wallace, VB

**Copy:**
- Mike Lockaby, Guynn, Waddell, Carroll & Lockaby, P.C.
- Southside Network Authority Jurisdictions’ Chief Administrative Officers
- Southside Network Authority Jurisdictions’ Chief Information Officers
- Southside Network Authority Jurisdictions’ Legal Representatives
1. **Call to Order**

2. **Approval/Modification of Agenda**

3. **Public Comments**

   Members of the public are invited to address the Southside Network Authority (SNA). Each comment is limited to three minutes.

4. **Submitted Public Comments**

   There were no submitted public comments since the last SNA meeting. Any new written public comments received after the preparation of this agenda will be distributed at the meeting.

5. **Meeting Minutes (Attachment 5)**

   Attached for the SNA’s consideration are the minutes from the December 10, 2021, SNA Meeting.

   **Action Requested:** SNA Board should take action to approve the minutes for the December 10, 2022, Board Meeting.

6. **Fiscal Year (FY) General and Administrative (G&A) Budget (Attachment 6)**

   The purpose of this agenda item is to present the draft FY23 G&A Budget for planning purposes. The Executive Director will provide an overview of the proposed budget (Attachment 6) and how it will be adjusted to align with the construction and P3 contract actions that will begin in a few weeks.

   **Action Requested:** Approve FY 23 G&A Budget.
7. **Project Participation Agreement and Distribution of Shares (Attachment 7)**

Staff developed a Project Participation Agreement in concert with the five member cities that will serve to implement the approved cost-sharing model and governance model and includes issues such as initial offering/shares, in-kind contributions, grants, revenue and distribution, strategic plan, and establishment of a Project Committee. All SNA member City Councils have approved the Agreement as well as funding for the construction contract.

*Action Requested: The SNA Board should take action to adopt the Project Participation Agreement and distribution of shares purchases by each Member City and assign members to the Project Committee.*

8. **Regional Connectivity Ring - Proposed Next Steps (Attachment 8)**

During the SNA Board Meeting held on November 12, 2021, the Board adopted two resolutions. Resolution 2021-01 directed the SNA Executive Director (ED) to enter the Detail Phase of negotiations with Global Technical Systems (GTS) regarding a possible public-private partnership to operate and market the SNA Regional Connectivity Ring. SNA staff has been in communication with GTS and will begin negotiations in March. Resolution 2021-02 directed the SNA ED to award SNA-IFB-2021-01 upon approval of funding from the five member cities. As of January 25th, all cities voted to approve the SNA Cost Sharing and Project Participation Agreement and allocated funds for the project. Accordingly, SNA staff will provide a construction contract for signature to Cox, the lowest cost, responsive bidder on February 14th or 15th. Cox has 10 days to accept the terms of the contract. If we are unable to come to terms, we anticipate providing a construction contract to Danella for signature as the second lowest, responsive bidder. Additionally, we will award Phase II of the original contract to CTC to complete the 100% design and perform construction oversight as the SNA’s engineering partner.

*Action Requested: The SNA Board should take action to approve Phase II final design and contract oversight contract (Not to Exceed $918,000) to CTC.*

9. **Old/New Business**

10. **Adjournment**
The December 10, 2021 meeting of the Southside Network Authority (SNA) was called to order by Chair Susan Vitale at 2:04 PM. Chair Vitale thanked everyone for their attendance at the meeting and requested Mr. Robert Crum, HRPDC Executive Director, call the roll to determine Authority members’ attendance.

**Southside Network Authority Voting Members in Attendance:**
Susan Vitale, Chair, CH
Andria McClellan, Vice-Chair, NO*
Peter Wallace, Alternate VB

*Indicates late arrival or early departure

**Other Participants:**
Steven DeBerry, SNA Executive Director
Robert Crum, HRPDC Executive Director
Regina Chandler, Alternate SU
Scott Fairholm, Alternate CH

Matthew DeHaven, CTC Technology & Energy
Mike Lockaby, Guynn, Waddell, Carroll & Lockaby, PC
Kevin Rotty, PFM

**Approval of the Agenda**
Chair Vitale called for a motion to approve the agenda. Ms. Catheryn Whitesell Moved to approve the agenda as presented; seconded by Mr. Daniel Jones. The Motion Carried.

**Public Comments**
Chair Vitale invited members of the public to address the Southside Network Authority. There were no public comments.

**Submitted Public Comments**
There were no submitted comments.

**Approval of the Minutes**
Chair Vitale called for a motion to approve the Minutes of the November 12, 2021 meeting of the Southside Network Authority. Ms. Whitesell Moved to approve the minutes; seconded by Mr. Jones. The Motion Carried.
Regional Connectivity Ring Project Update – Proposed Next Steps

Mr. Steven DeBerry, SNA Executive Director, provided a project update and status report on the Regional Connectivity Ring (RCR). Mr. DeBerry reminded Authority members that at the November 12, 2021 meeting, the Board decided to work with the five Southside cities to finance and award a construction and maintenance contract for the RCR as well as enter into negotiations with one of the four proposers regarding a Public-Private Partnership (P3) that would operate, maintain and commercialize the RCR. Resolutions 2021-01 and 2021-02 were adopted at the last meeting.

Resolution 2021-02 directed the SNA Executive Director to negotiate bid extensions for construction and maintenance from the top two bidders (Cox and Danella) to ensure they are willing to extend their bids through January 15, 2022. Mr. DeBerry reported that both bidders agreed to extend their bids, including all material costs. This resolution also authorized the award of this contract upon securing funding from the five Southside member cities. He noted that he is working on a Phase II contract with CTC for construction oversight. A draft scope of work is being developed with a target date of approval set for January 14, 2022.

Resolution 2021-01 directed Mr. DeBerry to enter the detail phase of negotiations with Global Technical Systems (GTS) regarding a possible P3 to operate and market the RCR. Mr. DeBerry noted that he would need input from the Board about specific deal points, and once those points are clarified, negotiations with GTS can begin. More information about this would be forthcoming in the closed session.

Mr. DeBerry asked Mr. Lockaby to continue the presentation in order to provide a brief update on the project participation agreement. Mr. Lockaby noted the agreement follows the model laid out during the November meeting, and he has been meeting with the various city attorneys to get their comments and feedback on the agreement. He hopes to continue the conversations over the next few weeks and have another draft available. Noting the very tight timeline, Mr. Lockaby stated the goal is to have the agreement ready to present to city councils in January.

Mr. Lockaby said there are some very specific questions that he needs answered by the Board in order for him to appropriately draft the agreement. The first question relates to the “color of money” or where the money comes from. Mr. Lockaby reminded the Board members that there are challenges with funding the RCR with monies received by the cities from the American Rescue Plan Act (ARPA). ARPA money will probably add time and extra labor costs due to the need to execute change orders for a project labor agreement. Mr. Lockaby noted that it is better if the funding can be general fund monies so the SNA does not have to deal with ARPA labor issues and significant, additional red tape.

Mr. Jones inquired as to the amount of time it would add to the January 15th deadline if the funding was something other than cash/general fund monies. Mr. Lockaby stated that it should not have any impact on the January 15 timeline, but it would be the construction timeline that would be potentially lengthened.

Chair Vitale asked how long that timeline could be. Mr. DeHaven noted that they are trying to do as much of the engineering and environmental assessment work in parallel as possible to mitigate those challenges and get the approvals necessary before it has any impact; however,
that impact could be anywhere between no impact and six months, or more in some cases. Mr. Lockaby stressed to not let the type of money (e.g., ARPA, cash/general fund) delay getting the agreement done.

The second question posed by Mr. Lockaby was a request from the City of Portsmouth as it relates to the shares model where each of the cities has the opportunity to buy up to one-fifth of the total shares of the RCR in the first round, and then in a second round, a locality is able to buy more shares in the project. Mr. Lockaby noted that “shares” means how much of the project a particular locality owns and how much power a locality has over how the project works. Portsmouth has stated that it is a possibility that it may wish to come into the project with less than a 20% share with the understanding that it would have less voting power over the future of the project.

Portsmouth also has questions about the free access to the fiber in the ring. Mr. Lockaby explained that the way the agreement is currently structured, each of the cities that buys in at at least 20% gets automatic free access to six strands. Portsmouth’s position is that of the entire 119 miles of the RCR, only about eight or nine miles of the ring actually pass through the City. Their thought is that they would like to have the six free strands despite not having the full buy-in. As far as it relates to voting control over the project and the share of the revenue of the project, they would fluctuate with the shares as it would with any other locality, but they would get six strands free of charge. Mr. Lockaby asked for direction from the Board as to how they would like him to respond.

Ms. Whitesell noted that in prior discussion with the budget staffs, the buy-in and control would be proportionate. If a locality needs more strands later, they would need to buy in. As clarification, Chair Vitale inquired if the intention was to have the strand’s cost and control aligned with the percentage of share that was purchased. Therefore, if Portsmouth wanted to have full six strands under that model, they would be able to buy in with less than 20%, for example four strands, and if the City wants to have the full six strands, they have to purchase those in addition.

**Ms. McClellan arrives.**

Mr. Lockaby said it would not be the number of strands; it would be that the price would be inversely proportional to the number of shares bought to the 20%. For example, if 10% were bought instead of 20%, the City would pay half of the rate that is being asked on the market. Mr. Lockaby noted there would need to be some other arrangement, whether it was for four free strands rather than six, or whether Portsmouth would get all six free as a special case due to the City being relatively small in terms of the length of the fiber that would run through Portsmouth. Mr. Lockaby asked for input from Portsmouth’s representatives.

Mr. Jones noted that if a locality buys in at 20%, then it would have an equal share of voting power, revenues, etc. However, if it is less than the 20%, then the municipality would still be contributing but would basically be a customer. He did not understand the point.

Ms. Whitesell said that idea was that a locality would not get full access to the ring but would get proportionately lower access for its contribution. If a city needed more than that over time, it
would come in as a customer at that level. If another city needed more than their initial allocation of shares, they would buy additional strands.

Mr. DeBerry said he thinks there may be other options. This project began more than four years ago and it is all about a regional play in terms of continuity, economic development, etc. There are additional opportunities for further discussion. Hypothetically, if Portsmouth were to contribute $3.5 million, perhaps the Board may determine that level of contribution is a full voting member, but you will not get a full share of revenue. The main concern now is that in January, the SNA wants to have enough money to make a construction award. Mr. DeBerry believes the bigger picture can be worked through, but currently the SNA has a contract bid for $18 million in which there is exceptional material cost, labor cost, etc. that will not be there if delayed.

Mr. Jones stated there was a special crossing test that was identified within Portsmouth’s boundaries. Mr. DeHaven concurred and noted those crossings were identified and there is special pricing associated with those types of situations. Mr. Jones noted that there will be excess capacity that is basically “just there” – it is not visible, it is attached to the bridge – so in essence, that special crossing is going to be at no cost. It will allow the SNA access across that route because that conduit is already there. There will not be a million-dollar cost to attach new conduit to that bridge.

Mr. DeHaven concurred and noted that the cost estimates generated did anticipate that. He stated that he thought Mr. Jones was inferring that one could look at that scenario as an in-kind contribution. Mr. Jones replied affirmatively. Mr. DeHaven said that it would be legitimate contribution in that sense, but clarified that was not included in the number CTC generated because they anticipated that crossing being supported in just that way.

Mr. Lockaby noted the agreement does call for an ability to take into account in-kind contributions and provides for a consulting engineer to provide for how the SNA would account for that in a way to keep it non-political. He also stated there are potential issues with the Wireless Service Authorities Act that the SNA would need to be careful with in terms of pulling through existing conduit.

Ms. Swieringa, Portsmouth Assistant City Attorney, acknowledged that it sounds as if there might be a solution to the access issue. Having options where, if contributing less than 20%, the City could choose to have six strands and pay the inverse proportion or have free access to less than six strands; that is something in which Portsmouth would be interested. Mr. Lockaby said that in drafting the agreement, such an option could be added.

Chair Vitale and Mr. Moor asked for more clarification between the two options as there does not appear to be any difference between the two. Ms. Swieringa noted, that as the agreement stands now, if Portsmouth contributes 10%, the City will have half as many voting rights and half as much share in the profits and costs. The City would then have to pay 50% of the cost to access six strands on the RCR. She is proposing to add an option to still have 50% voting rights, still have 50% share in profits and costs, but Portsmouth would have free access to half (three) of the strands. A reduced number of strands is Portsmouth’s preference.
Mr. Lockaby noted the Roanoke Valley Broadband Authority and others have a term sheet, which is a set of guidelines that the board of directors has set, for how much they will normally lease dark fiber. If someone wants a one strand, you may pay more; if you want 30 strands, there may be a bulk discount. Per his conversations with Mr. DeHaven, Mr. Lockaby noted that a locality would not likely need more than six strands in the foreseeable future/next decade. Hence, six strands were the decided-upon amount that each locality would get for free for contributing 20%.

Mr. Jones noted that whether it is fewer pairs of strands or it is the same pricing but having the annual recurring payment or term sheet, Portsmouth is, in a sense, half a customer, but also half of the SNA. The City will be voting on items and paying on items and it becomes a complicated issue.

Ms. McClellan illustrated a similar arrangement with Hampton Roads Transit (HRT). She inquired if Portsmouth is resource-constrained and wants to pay for what it needs, but not pay for any extra? Ms. Swieringa replied affirmatively.

Mr. Fairholm inquired about the “recurring costs” that have been mentioned. Mr. Jones noted that as the agreement stands today, Portsmouth would have to pay half of what the remaining two strands would be even though they do not need them.

Ms. McClellan asked everyone to be mindful that the SNA is still in Phase I and the Board is setting precedent for future expansion. Mr. Fairholm noted that while understanding the precedent-setting components of the arrangement, at the last meeting it was mentioned that the Board would deal with this project one way, but as the RCR started to grow, investments in future projects would be considered separately.

Chair Vitale asked if the Board was willing to allow there to be another option within the agreement that permits a locality to purchase a certain number of strands – either two, four or six – and allows the locality proportionate control and revenue.

Mr. Moor suggested that option should have a floor to it because the SNA needs a certain amount of funding to start construction; $3.6 should be the floor. Mr. Wallace agreed.

In summary, Chair Vitale stated that language could be added to the cost share model that a locality could have a reduced share, but that also means 1) reduced control and reduced revenue; 2) reduced strands (that can be done in pairs); and 3) a floor for buy-in.

Ms. McClellan noted that if $18 million is the cost for construction, suggested buy-in is 2.5 shares, but the floor would be one share. Mr. Jones noted that if the floor is the contract price, that, in essence, is a full share. That makes everything previously discussed mute because each city still must buy a full share. Mr. Lockaby noted that $1.8 million is half of a share of the construction costs.

Mr. Moor stated questions still remain on the work and the operating costs. He asked what the constants may be. Mr. DeHaven noted the predominant costs for dark fiber networks is actually in the location. Repairs are secondary and stated if location is done well in the beginning, it minimizes actual damages that may occur later. There are costs built into the estimates.
Moor asked if there was a proportionate share in that or is it the same for everyone? Mr. Lockaby stated that as it is currently structured, that goes into the annual budget, and if the annual budget sees a loss, then there is an availability fee; if the annual budget sees a surplus, then there is a distribution which happens quarterly.

Mr. DeBerry noted it is important to keep the Board’s “eye on the prize.” He continued noting that the ask for each city is $5 million. However, if it is decided to split this amount, you still have an $18 million construction bid. There will most likely be change orders. If the SNA does not come to an agreement with Cox, then Danella’s bid would require the entire $5 million from each city. The SNA needs $18 million for it to safely sign the contract. Some of this may be able to be taken care of at a later date, but it is Mr. DeBerry’s opinion that the Board should not move away from the $5 million initially stated. If the Board moves away from that figure, it may mean that the SNA will need a bond or some other financing avenue.

For illustrative purposes, Ms. McClellan noted there are 25 shares and each city is expected to initially purchase five shares at $1 million each or $5 million total. Portsmouth may only be in a position to purchase two or three shares as opposed to five. The Board will then need to determine how to make up the remainder. Not all cities are going to be able to do all $5 million immediately, but with that comes reduced revenue, reduced control, reduced strands. The SNA Board will then need to determine if there are any cities that want to pay for more.

Chair Vitale noted that if no city wants to purchase the extra shares, the SNA will need to get the shares filled. That may require financing at that point. Mr. Lockaby stated there is room in the agreement for this provision, but it is hopefully a last resort. However, if the SNA needs to borrow money to fill the gap, then the agreement would allow it to do so.

Chair Vitale called for a motion to solidify the next steps in drafting the agreement.

Mr. Moor Moved that:

- The Authority board would plan for a $25 million initial valuation of the fiber project that would equate to 25 shares at $1 million per share
- The floor for each locality to buy in would be at two shares or $2 million
- For those localities who purchase less than the five shares, they would have a reduced voting share on the board, reduced revenue and access to fewer strands in proportion to the amount less than the 20% purchased

Seconded by Ms. McClellan.

Roll Call Vote:

Ms. Vitale        Yes
Ms. McClellan     Yes
Mr. Jones         Yes
Mr. Moor          Yes
Mr. Wallace       Yes

The Motion Carried.

Southside Network Authority Summary Minutes – December 10, 2021 – Page 6
Attachment 5
Mr. Lockaby commented that it is extremely important that the localities provide him with comments from their city attorneys so that the agreement can move forward toward completion and can be presented to City Councils and the SNA for adoption in January.

Mr. Crum stated that the SNA does not want to lose its momentum in this race – a race that Hampton Roads is currently losing. Henrico County is being identified by international experts as a global internet hub because they have tapped into the subsea cables in Virginia Beach; the fourth largest data center has been constructed in the County; and they are beginning to aggressively market for this opportunity. Ms. McClellan agreed with Mr. Crum but noted her concern with the supply chain and human supply chain and Hampton Roads’ ability to get this work done.

Mr. Jones asked that when this agreement is presented to the respective City Councils, does it trigger a public notice or public hearing? Ms. Whitesell responded that would depend on each locality’s budget process and whether it would require an adjustment to their operating budget. She suggested that Authority members discuss this with their respective budget staffs.

Mr. DeBerry reviewed the expectations for the January 14, 2022 meeting:

- Approve Phase II contract with CTC for construction oversight
- Award/present contract to Cox for $18 million
- Begin talks with GTS in late December/early January on the P3 aspect of this project

Mr. Moor asked if the individual cities need to execute the agreement by January 14th, noting that his locality needs to approve a resolution. Mr. Lockaby advised that the Authority should wait to make a formal contract until after it is sure it has the funding from the localities. Mr. Moor also asked if a resolution would be needed from the cities. Mr. Lockaby replied affirmatively that the cities generally need an authorizing resolution for the city manager or mayor to sign the contract or participation agreement. Ideally, these resolutions should be done by January 14th.

Chair Vitale asked for confirmation that the contract agreements expire on January 15, 2022. Mr. Lockaby confirmed and noted that the Authority would need to request another extension.

Ms. McClellan requested model language for the resolutions. Mr. Lockaby stated that he would be able to circulate the language to the city attorneys’ offices by close of business, Monday, December 13, 2021.

Ms. McClellan asked if there is anything the Authority needs to be cognizant of as the 2022 General Assembly heads into session – are there any risks anticipated, and should the localities be advocating on any specific items? Mr. Crum noted that broadband is part of the HRPDC Legislative Priorities package, and he and Ms. McClellan will be meeting with the Hampton Roads General Assembly Caucus on these needs. Several members expressed that the Authority members should continue to find alternate sources of funding for broadband projects. Ms. McClellan inquired if there are provisions in the contractual paperwork for something such as a true-up. Mr. Lockaby answered affirmatively.
Chair Vitale suggested if cities need or desire a briefing for a council work session, to please let Mr. DeBerry or Mr. Lockaby know as they will provide a briefing to council if requested.

Closed Session

Chair Vitale called for a closed session and asked Mr. Lockaby to provide the language for the motion. Mr. Jones asked that city staff be allowed to participate in the closed session.

Move to convene a closed session pursuant to subsection A.28 of § 2.2-3711 of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity; pursuant to subsection A.33 of § 2.2-3711 for the purpose of discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6; pursuant to subsection A.29 of § 2.2-3711 for the purpose of discussion of the award of a public contracting involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in open session would adversely affect the bargaining position or negotiating strategy of the public body; and pursuant to subsection A.6 of § 2.2-3711 for the purpose of discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected. This closed session will deal specifically with a confidential briefing regarding the dual-path strategy and financial considerations involved in construction and delivery of the Southside Regional Connectivity Ring, and more specifically, with the deal points for the public-private partnership detail phase of discussions.

Ms. McClellan Moved to proceed in to closed session; seconded by Mr. Jones. The Motion Carried.

The Authority proceeded into closed session.

Return to Open Session

Ms. McClellan departs

The Authority reconvened into open session. Mr. Lockaby read the following motion into the record:

Move to reconvene in open session and to certify by roll call vote, pursuant to subsection D of § 2.2-3712 of the Code of Virginia, that (i) only public business matters lawfully exempted from the open meeting requirements of the Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed session was convened were heard, discussed, or considered in the closed session.

Mr. Jones Moved to certify that only public business matters lawfully exempted from open meeting requirements as identified in the motion were heard, discussed or considered in the closed session; seconded by Ms. Whitesell.
Roll Call Vote:

Ms. Vitale       Yes
Ms. Whitesell    Yes
Mr. Jones        Yes
Mr. Moor         Yes
Mr. Wallace      Yes

The Motion Carried.

Old/New Business

There was no old or new business

Adjournment

With no further business to come before the Southside Network Authority, the meeting adjourned at 4:20 PM.
### Southside Network Authority
### FY2023 Budget (Proposed)

<table>
<thead>
<tr>
<th><strong>Budget Item</strong></th>
<th><strong>$</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Director Salary</td>
<td>$140,000</td>
</tr>
<tr>
<td>MOU with HRPDC</td>
<td>38,000</td>
</tr>
<tr>
<td>Legal Counsel</td>
<td>100,000</td>
</tr>
<tr>
<td>Misc. (Travel/Supplies)</td>
<td>2,500</td>
</tr>
<tr>
<td>SNA Liability Insurance</td>
<td>3,000</td>
</tr>
<tr>
<td>Municipal Financial Advisor</td>
<td>50,000</td>
</tr>
<tr>
<td>Audit</td>
<td>15,000</td>
</tr>
<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$348,500.00</strong></td>
</tr>
</tbody>
</table>
PROJECT PARTICIPATION AGREEMENT

Southside Regional Fiber Connectivity Ring

This project participation agreement (“Agreement”) is entered as of the 1st day of February, 2022, by and between the Southside Network Authority, a body politic and corporate and a political subdivision of the Commonwealth, whose address is 723 Woodlake Drive, Chesapeake, Virginia 23320 (the “Authority”), the City of Chesapeake, Virginia, a municipal corporation of the Commonwealth, whose address is 306 Cedar Road, Chesapeake, Virginia 23322, the City of Norfolk, Virginia, a municipal corporation of the Commonwealth, whose address is 810 Union Street, Norfolk, Virginia 23510, the City of Portsmouth, Virginia, a municipal corporation of the Commonwealth, whose address is 801 Crawford Street, Portsmouth, Virginia 23704, the City of Suffolk, Virginia, a municipal corporation of the Commonwealth, whose address is 442 West Washington Street, Suffolk, Virginia 23434, and the City of Virginia Beach, Virginia, a municipal corporation of the Commonwealth, whose address is 2401 Courthouse Drive, Virginia Beach, Virginia 23456.

Recitals:

WHEREAS, the Authority was formed by the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach (the “Member Jurisdictions”) under the provisions of the Virginia Wireless Service Authorities Act, Code of Virginia, Chapter 54.1 of Title 15.2 (the “Act”) for the purpose of providing or facilitating the provision of qualifying communications services, as provided in the Act and the Articles of Incorporation of the Authority; and

WHEREAS, the initial project is as described in Appendix A and as let in SNA-IFB-2021-01, as constructed in accordance with such contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof; and
WHEREAS, the Authority and its Member Jurisdictions wish to set forth their mutual agreements as to the manner of carrying out such activities.

ARTICLE I
Definitions

“Act” means the Virginia Wireless Service Authorities Act, Code of Virginia, Chapter 54.1 of Title 15.2.

“Annual Budget” has the meaning given to it in Section 3.2.

“Applicable Laws” means all applicable laws, judgments, decrees, injunctions, writs, and orders of any court, arbitrator, or governmental agency or authority and all rules, regulations, orders, interpretations, licenses, and permits of any federal or state governmental body, instrumentality, agency, or authority. A requirement to comply with an Applicable Law shall not prevent the Authority from challenging or disputing, in good faith, the interpretation or applicability of any Applicable Law.

“Asset Management Plan” or “AMP” means the running inventory of the purchase price, depreciation status, and probable replacement cost, and long-term planned replacement schedule of the Project’s durable capital as set forth in Section 3.3.B.

“Authority” means the Southside Network Authority.

“Board” means the Board of Directors of the Southside Network Authority.

“Bonds” means revenue bonds issued by the Authority in accordance with the Act or other Applicable Laws.

“Capital Improvement Program” or “CIP” means the annually-adopted plan of capital improvements necessary to carry out the goals of the Asset Management Plan and the Strategic Plan as set out in Section 5.1. The CIP shall include estimates of costs of facilities and life-cycle maintenance.

Attachment 7
costs and the means of financing them for the next ensuing five Fiscal Years as set forth in Section 3.3.A.

“Capital Reserve Fund” or “Sinking Fund” has the meaning given to it in Section 2.6.C.

“Code of Virginia” means the Code of Virginia, 1950, as amended, or successor provisions of law.

“Commonwealth” means the Commonwealth of Virginia.

“Consulting Engineer” means an engineer or firm of independent consulting engineers of recognized standing and experienced in the field of broadband and fiber optic engineering and registered to do business in the Commonwealth.

“Executive Director” means the chief administrative officer of the Authority, or, if none, the chair of the Board.

“Fiscal Year” means the period beginning on July 1 of one year, and ending on June 30 of the next.

“Initial Offering” has the meaning given to it in Section 2.3.

“In-Kind Contribution” means any real or personal property, including tangible or intangible property or transferrable permits or other rights, that the Board accepts in lieu of a cash payment for Shares under Section 2.3.B.

“Notes” means short-term obligations of the Authority, including notes issued in anticipation of the receipt of revenue, grants, or the proceeds of long-term Obligations.

“Obligations” means the Notes, Bonds, or other indebtedness of the Authority.

“Participating Member” or “Participant” means a member of the Authority that has purchased Shares in the Project under Section 2.3.
“Project” means the Southside Regional Connectivity Ring as described in Appendix A, and as let in SNA-IFB-2021-01, as constructed in accordance with such contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof.

“Project Committee” means the committee, established pursuant to Section 2.2, that exercises control over the Project as provided in this Agreement.

“Reserved Strand” has the meaning given to it in Section 4.4.

“Share” has the meaning given to it in Section 2.3.

“Soft Costs” means engineering costs, financing costs, and legal costs associated with a construction project.

“Staff” means the Executive Director and his or her appointees, as may be provided from time to time, or, where legally permitted, contractors, consultants, or other agents of the Authority.

ARTICLE II
Acquisition, Construction, and Financing

Section 2.1. Construction of Regional Fiber Connectivity Ring. The Authority shall, either through its own forces or contractors, acquire, construct, equip, finance, operate, maintain, market, and manage the Project as provided in this Agreement.

Section 2.2. Project Committee. The Authority hereby creates a Project Committee. The Project Committee is hereby delegated the full power of the Board to (i) within funds duly available and budgeted by the Board, organize and manage the acquisition, construction, and equipping of the Project, including but not limited to issuing notice(s) to proceed and negotiating, approving, and disapproving payment applications and change orders, (ii) organize and manage the operation, maintenance, and marketing of the Project, including, within funds duly available and budgeted by the Board, entering such contracts as it deems advisable on behalf of the Authority to carry out
these purposes, (iii) obtain all federal, state, and local permits for the Project, and (iv) enter agreements, including indefeasible rights of use or other similar lease and use-sharing arrangements, for the use of the Project. The Project Committee may further delegate the administration of these matters to Staff.

The Board reserves to itself the functions of (a) setting the budget for the Project Fund, (b) approving the issuance of the Authority’s Obligations and the terms thereof, (c) approving acquisition or disposition of interests in real estate, including municipal franchises or master lease agreements for the use of rights of way. However, in all such decisions, the Board shall consider the needs of the Project and give due weight to the recommendation, if any, of the Project Committee.

The Project Committee shall consist of one appointee from each Participating Member. Each Participating Member may appoint its own voting member of the Project Committee, who may be, but need not be, one of its appointees to the Board. The Project Committee may establish its own bylaws, which must be approved by the Board before going into effect. The Project Committee is authorized to appoint a chair, vice-chair, and secretary/treasurer, any of whom may be members of the Board or members of Staff but must be a Project Committee appointee. The Project Committee shall transmit its minutes to the Board regularly, but in any event within 10 days after the meeting for which such minutes are taken. In all matters and recommendations to the Board on which the Project Committee acts, the proportional weight of each Participating Member’s vote shall be determined by the number of Shares it possesses.

Section 2.3  Shares.

A.  The Board hereby authorizes an Initial Offering of 100 Shares in the Project, to be made on January 14, 2022, or a convenient date and time thereafter, as chosen by the
Authority, but not more than three months from January 14, 2022. The Initial Offering contains only one class of Shares, and Shares may only be purchased by Member Jurisdictions. The par value of each Share shall be $250,000.

B. In-Kind Contributions to be used by the Authority to complete the Project may, at the Board’s discretion, be considered in lieu of cash contributions for the purchase of Shares in the Project. The cash value of this In-Kind Contributions shall be determined by a Consulting Engineer chosen by the Authority using a cost or cost-avoidance basis, in the sole discretion of the Consulting Engineer. The Consulting Engineer shall submit its valuation of the proposed In-Kind Contributions to the Board and the Member Jurisdiction for approval. The In-Kind Contribution shall not occur without the concurrence of both the Board and the Member Jurisdiction. In-Kind Contributions shall become the sole property of the Authority.

C. Each Member Jurisdiction shall be offered 20 Shares of the Initial Offering. Shares may be purchased at a par value of $250,000 each, and the minimum buy-in at the initial offering is at least eight (8) Shares. If any Participating Member elects to purchase fewer than 20 Shares, the unpurchased Shares shall be offered at par to the remaining Participating Members within 30 days, who may each purchase an equal number of unpurchased Shares, with this process being repeated until all available Shares have been purchased or retained by the Authority. Within 30 days after purchase, each Participating Member shall either make payment for all Shares or appropriate such funds and enter a legally binding agreement with the Authority, acceptable in form and substance to the Authority, wherein the Authority shall draw down available funds as needed by the Authority until all (obligated or appropriated) funds are expended.
D. The Board, upon recommendation of the Project Committee, may issue further Shares to finance further capital expenditures in support of the Project. The sale of such Shares shall be governed by the same method for the sale of Shares and unpurchased Shares utilized for the Initial Offering under this Article II.

E. The proportional weight of each Participating Member’s vote on the Project Committee shall be determined by the number of Shares it possesses.

Section 2.4. Grants. The Authority shall actively seek grant opportunities in support of the goals of the Project. The Participating Members shall not unreasonably withhold or delay their support for any such grant. Unless the grant documents require or restrict use otherwise, grant funds shall be used for the following purposes, in order of priority: (i) to pay current costs of construction, if any; (ii) to defease for savings or redeem outstanding Obligations prorated based on initial debt allocations pursuant to Section 2.5; then (iii) into the Debt Service Reserve Fund, if any, until fully funded; and then (iv) deposited into the Capital Reserve Fund.

Section 2.5. Agreement to Finance.

A. General Provisions. The Authority may use a combination of cash and debt financing for the initial cost of acquiring, constructing, and equipping the Project and providing working capital for its initial operations by issuance of Shares pursuant to Section 2.3. The Board may, upon recommendation of the Project Committee, issue, from time to time, Obligations of the Authority to provide long-term or short-term financing of costs upon such terms as it may determine to be in the best interest of the Authority and in accordance with law. All debt service payment schedules will be provided to the Member Jurisdictions within 20 days after closing on an issuance of Obligations.
B. **Obligations to be Debts of Authority Only.** All Obligations authorized to be entered by this Agreement or which the Board issues pursuant to this Agreement shall be the obligations of the Authority only, unless also entered by or guaranteed by one or more Participating Members under such terms and conditions as their governing body or bodies might agree.

Section 2.6. **Cash Reserves.** There are three types of cash reserves that may be established for the Project to assure financial health. Outlined below are the descriptions, means of funding, and general balances of each type. The order of precedence of funding, unless varied by applicable financing documents related to Obligations, is as follows:

A. **Debt Service Reserve Fund—**The lenders for the Obligations may require a Debt Service Reserve Fund, generally equal up to the maximum annual debt service payment (principal and interest) for each issuance of Obligations. If required, this amount should be established at the time of the issuance of the Obligations, in consultation with the Authority’s financial advisor. The budget shall be set such that there are sufficient revenues each year to pay the debt service for the Fiscal Year. If, however, the revenue is insufficient, then the difference may be withdrawn from the Debt Service Reserve Fund, which shall then be replenished in accordance with the provisions of the documents establishing the Obligations, if so provided, or as part of the annual budgeting process under Article III.

B. **Operating Reserve Fund—**As part of each Fiscal Year’s Annual Budget, the Operating Reserve Fund shall be adjusted to contain operating and maintenance expenses in an amount approximating the costs of operations for ninety (90) days, to provide cash flow during transitions, lag time between delivery of service and payment, or other
operational shortfalls or unusual events. The ongoing Operating Reserve Fund shall also serve as a revenue stabilization fund during market changes during fiscal years.

C. Capital Reserve Fund (Sinking Fund)—A Capital Reserve Fund or Sinking Fund shall be established using the Asset Management Plan and the Capital Improvement Program to fund both capital replacements and future upgrades and expansions of the Project. The approved annual budget shall include funding for not less than 25% of the initial gross construction cost, exclusive of Soft Costs, of the Project based upon the AMP, which shall either be expended to fund future capital improvements in accordance with the CIP. The initial capitalization of the Capital Reserve Fund shall occur over a reasonable budgetary period, in the discretion of the Board, not to exceed seven years in length.

Section 2.7. Withdrawal; Transfer of Shares; Impact.

A. Withdrawal from Project. A Participating Member may withdraw, in whole or in part, from this Agreement if the following conditions are met:

1. Withdrawal is not prohibited by the terms of any applicable Obligations, nor will it materially impair any existing Obligations, in the reasonable opinion of a qualified independent municipal financial adviser, to be chosen by the Board; and

2. The Participating Member seeking to withdraw has disposed of some or all of its Shares to one or more other Participating Members. The Shares of the withdrawing Participating Member shall be offered to the other Participating Members in the same manner as Shares not purchased in the first round of the Initial Offering under Section 2.3.C.
B. **Impact of Withdrawal.** Upon partial or complete withdrawal, the proportional voting as provided in Section 2.3 and all other matters to be allocated by Share ownership under this Agreement shall be reallocated based upon the new Share ownership.

**ARTICLE III**

**Annual Budget & Fiscal Policies**

Section 3.1. **Project Fund to be Separate Fund.** The Project Fund shall be treated as a fund and budgetary unit separate and apart from the general operating fund or any other project or dedicated fund of the Authority.

Section 3.2. **Setting the Annual Budget.** On or before each January 15 the Authority shall provide to each Participating Member the Authority’s proposed Annual Budget for the next Fiscal Year. The Annual Budget shall consider all anticipating operating costs including, but not necessarily limited to, (i) all direct and indirect costs of operation and maintenance of the Project, (ii) any debt service cost of the Authority, (iii) all major capital expenditures anticipated during the five following Fiscal Years, including reasonable funding of replacements and any desired deposits to the Capital Reserve Fund, (iv) all revenues and fees to be paid by any person under long-term contracts, (v) all revenues and fees anticipated to be paid by any person under short-term contracts, and (vi) special categories of costs and revenues.

Section 3.3. **Capital Management; Replacement Fund.**

A. The Authority shall annually adopt, as part of its budget process, a Capital Improvement Program (CIP) for planning of capital improvements and replacements in the following five years. The CIP shall form the basis and provide guidance for the preparation and adoption of the annual capital budget of the Authority.

B. The Authority shall keep and maintain, as the basis for the CIP, an inventory of its durable and capital assets, together with an ongoing accounting of depreciation status
and anticipated remaining useful life and anticipated replacement cost, to be called its Asset Management Plan (AMP). The depreciation status and probable replacement schedule shall be updated annually as part of the budget process; assets shall be timely added or removed from the AMP upon their acquisition, sale, or disposal.

C. The Authority shall budget for the Sinking Fund in each annual budget as provided in Section 2.6.C.

Section 3.4. Quarterly Reporting on Budget. Within 30 days after the end of each of the first three quarters of each Fiscal Year, the Authority will provide each Participating Member with a statement of revenues and expenditures of the Authority for the preceding quarter. The Authority will provide to each Participating Member on or before each August 1 an unaudited report showing the activities and revenues, expenditures, and accounts of the Project Fund, for the preceding Fiscal Year.

Section 3.5. Forecasting. To assist the Participating Members in estimating their obligations to or revenues from the Project, the Authority shall develop a policy, which may be amended from time to time, for forecasting its revenues and expenditures over future periods of up to five years beyond the then-current Fiscal Year. The forecast shall be routinely monitored and revised as necessary. The forecast will be distributed annually to Participating Members during the budgetary process for review and consideration prior to Board approval.

Section 3.6. Books & Accounts. The Board shall adopt a system of accounts compliant with the standards of the Governmental Accounting Standards Board (GASB) and Applicable Laws, and shall keep an accounting of all property of the Authority and (i) its initial gross purchase price and (ii) its depreciation using uniform, accepted depreciation schedules, as part of the AMP established pursuant to Section 3.3.B.
Section 3.7. **Fiscal Agent.** The Authority may contract with any Member Jurisdiction or regional organization or qualified entity to act as its fiscal agent upon such terms and conditions as the Board and the fiscal agent may agree.

Section 3.8. **Liability & Insurance.** The Authority shall procure and contract for insurance or a lawful policy of self-insurance in its own name or a combination of both insurance and self-insurance to protect itself against liability, damages, and other matters subject to insurance as determined by the Board.

Section 3.9. **Procurement.** No funds shall be spent or expended without a purchase order or contract requiring payment of such funds, or, in the case of a donation of property, or goods and services, a deed or written receipt accepting the donation. Contracts with non-governmental entities shall be governed by the Virginia Public Procurement Act, *Code of Virginia*, Chapters 43 and 43.1 of Title 2.2, or the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), *Code of Virginia*, Chapter 22.1 of Title 56, as the Project Committee deems appropriate.

Section 3.10. **Audits.** The Authority shall obtain an annual financial audit of its accounts, or may contract with any Member Jurisdiction or regional organization or to cooperatively or jointly contract for an annual financial audit to be completed by a certified public accountant or accounting firm licensed to practice in the Commonwealth of Virginia by September 30 of each year. The audit shall be conducted according to generally accepted auditing and accounting standards or according to the audit specifications and audit program prescribed by the Auditor of Public Accounts. The annual audit shall be transmitted to the chief administrative officer of each Participating Member promptly upon delivery to the Board.
ARTICLE IV
Revenues and Distributions

Section 4.1. **Fees for Dark Fiber.** The Project Committee shall actively market dark fiber other than Reserved Strands and may enter contracts and agreements for the same upon such terms and conditions as it may approve. The Board shall set guidelines for standard rates for dark fiber, but the Project Committee may deviate from such guidelines for sound business or planning, community development, or economic development reasons, including but not limited to, (i) a request from a Participating Member for preferential treatment for an economic development prospect, (ii) service to neighborhoods, developments, or persons that are unserved, underserved, or served only with uneconomical internet, or (iii) bulk purchase (e.g., lease to a large institutional user).

Section 4.2. **Fees and Charges for Lit Fiber.** The Project Committee may offer lit fiber services to the public upon approval of the Board, in accordance with the Act, and pursuant to this Section.

A. In the event the Authority offers lit services through its own forces or contractors, the rates, fees, and charges at which the Authority’s lit fiber services are offered to the public shall be set in accordance with *Code of Virginia*, Section 15.2-5431.25. Rates, fees, and charges shall be set by the Board upon recommendation of the Project Committee.

B. In conjunction with offering lit services through the Project, including in conjunction with a lease of dark fiber, the Authority may enter a public-private partnership, in accordance with Applicable Laws, under such terms and conditions as the Board shall determine are in the best interest of the Authority and the goals in the Strategic Plan. The
rates, fees, and charges shall be set in accordance with the provisions of any public-private partnership governing documents.

Section 4.3. **Contributions & Distributions.** Participating Members shall pay rates, fees, and charges, or receive distributions of net revenues, as follows:

   A. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a deficit, after funding for all reserves, the Participating Members shall pay to the Authority, paid on a quarterly basis in arrears, rates, fees, and charges proportional to their ownership of Shares. The rates, fees, and charges shall be increased or decreased and reported to the Participating Members quarterly and shall be updated based upon actual costs and payments and as approved by the Board. These rates, fees, and charges are in the nature of a fee for the continuing provision and availability of a service, not a debt, and shall not be construed to be a general obligation within the meaning of the Virginia Constitution, Art. VII, § 10.

   B. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a surplus, after funding for all reserves, the Authority shall distribute, on a quarterly basis, net revenues to the Participating Members proportional to their ownership of Shares pursuant to Sections 2.2 and 2.3. The distributions shall be updated and reported to the Participating Members quarterly and may be updated based upon actual costs and payments.

Section 4.4. **Reserved Strands.** Participating Members shall be entitled to use up to six strand pairs of dark fiber (the “Reserved Strands”) for their own internal use without payment of any rate, fee, or charge, except those fees set under Section 4.3.A. The number of strands reserved at different levels of purchase of Shares are:
≥8 but <14.................................................................2 strands (1 pair)
≥14 but <20...............................................................4 strands (2 pairs)
20+ ..........................................................................6 strands (3 pairs)

The Participating Members agree that none will sell, lease, or otherwise offer access to Reserved Strands to third parties commercially at rates below those charged by the Authority for like access.

Section 4.5. Penalties. If any Participating Member fails to pay any sum due under this Article within 10 days after its due date, the sum due and payable shall bear interest at the rate set forth in Code of Virginia, Section 2.2-4355; provided, however, that this provision shall not apply in instances where Applicable Laws or the provisions of the documents establishing outstanding Obligations prescribe some other due date or late payment charge.

ARTICLE V
Operations and Maintenance

Section 5.1. Strategic Planning. The Project Committee shall develop and submit to the Board, not more than 12 months after the date of this Agreement, a Strategic Plan for achievement of its goals and for future expansion of the Project. In development of the Strategic Plan, the Project Committee shall consider, without limitation: The economic needs of the region; marketplace demand for its services; the provisions of the Comprehensive Plans and strategic plans of the Participating Members and other jurisdictions in which portions of the Project or its customers might exist or operate; and such other matters as may be relevant to its operations. Considerations in the development of the Strategic Plan shall include those matters designated in Appendix B.

Section 5.2. Operating the Regional Connectivity Ring. During the period of acquisition, construction, and immediate post-construction maintenance of the Project, the Project Committee shall procure the services of one or more qualified contractors to inspect, operate, maintain, and market the Project in accordance with this Agreement. These contractors may be procured as part
of a public-private partnership arrangement. If, in the opinion of the Project Committee, adequate contractors cannot be obtained, the Board may authorize the Project Committee to carry out some or all these functions with the Authority’s own forces. The Project Committee shall ensure that the Project is operated in an efficient and economical manner, considering advances in technology and changes in the needs of the Participating Members and the public, making all necessary and appropriate repairs, replacements, and renewals, consistent with good business and operating practices, in accordance with applicable standards of local, state, and federal law, and in accordance with the provisions of the Strategic Plan and this Agreement.

ARTICLE VI
Defaults and Remedies

Section 6.1. Default by the Authority. The following events are “Events of Default” by the Authority:

A. Failure of the Authority to pay principal and interest on any Obligations issued for the Project or obtained by the Authority pursuant to this Agreement when due;

B. If the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;

C. The Authority makes an assignment of all or a substantial portion of its Obligations under this Agreement without the prior consent of all the Participating Members;

D. The Authority defaults on any of its material obligations under any agreement pursuant to which any Obligation issued for the Project is obtained by the Authority pursuant to this Agreement and such default is not cured within any applicable cure period;
E. Any proceeding is instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any state or federal statute now or hereafter in effect, if the claims of such creditors are under any circumstances payable from the funds of the Authority; or

F. The Authority defaults in the due and punctual performance of any other of the covenants, conditions, agreements, and provisions contained in this Agreement.

Section 6.2. Default by Participating Members. The occurrence of any one or more of the following events shall constitute an “Event of Default” by any Participating Member:

A. Failure of any Participating Member to make any payment to the Authority when due and outside any applicable grace period;

B. Any Participating Member becomes unable to fulfil its material obligations under this Agreement;

C. Any proceeding is instituted, with the consent or acquiescence of any Participating Member, for the purpose of effecting a composition between such Participating Member and its creditors for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter in effect, if the claims of such creditors are under any circumstances payable from the general funds of such Participating Member; or

D. Any Participating Member defaults in the due and punctual performance of any other of the covenants, conditions, agreements, and provisions contained in this Agreement.
Section 6.3. Remedies of Participating Members. Upon the occurrence of an Event of Default by the Authority and the default continues for thirty (30) days after written notice specifying the default and requiring it to be remedied has been given to the Authority by any Participating Member, any Participating Member, after giving notice of such Event of Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.4. Remedies of Authority. Upon the occurrence of an Event of Default by a Participating Member and the default continues for thirty (30) days after written notice specifying the default and requiring it to be remedied has been given to such Participating Member by the Authority or other Participating Member, the Authority, after giving notice of such Event of Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Participating Member to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.5. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing.

Article VII
Additional Agreements

Section 7.1. Further Documents and Data. The parties to this Agreement will execute and deliver such further documents and perform all other acts that are reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.
Section 7.2. Notification. The Authority will promptly furnish to each Participating Member a copy of any notice or order of any governmental authority asserting that the Project is not in compliance in any material respect with any Applicable Law.

Section 7.3. Tax-Exemption Covenant; Continuing Disclosure.

A. The Authority may issue Obligations in a manner such that the interest thereon is excludable from gross income for income tax purposes under Applicable Laws. The Authority and each Participating Member agree that after an Obligation is issued they will not knowingly take any action or omit to take any action that would intentionally adversely affect such exclusion.

B. Pursuant to Section 15c2-12(b) of regulations issued by the U.S. Securities and Exchange Commission, the Authority and the Member Jurisdictions may be required to agree with the owners of Obligations, for as long as such Obligations are outstanding, to supply certain national municipal securities information repositories (i) annually, certain financial and operating information, and (ii) periodically, notification of certain specified material events affecting the Authority, the Participating Members, and such Obligations. The particulars of this ongoing disclosure requirement will be set forth in one or more of an indenture, loan agreement, or continuing disclosure agreement. Each Participating Member agrees to cooperate with the Authority in fulfilling this requirement, including providing the Authority with timely notice of the occurrence of any of the specified events that are material to its operations and hereby authorizes the Authority’s Executive Director to execute and deliver any agreement considered necessary or appropriate to evidence such Participating Member’s continuing disclosure undertaking.
Article VIII
Covenants & Guaranties

Section 8.1. Covenants of the Authority. The Authority represents, warrants, and covenants as follows:

A. Organization, Authorization and Validity. The Authority is a body corporate and politic and a political subdivision of the Commonwealth duly organized and validly existing under the laws of the Commonwealth and has duly authorized, executed, and delivered this Agreement.

B. Authority. The Authority has all requisite authority under the Act to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement the performance of which by the Authority would prevent or materially and adversely affect the Authority’s ability to perform the terms of this Agreement.

C. Non-Contravention. The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of the Act, the bylaws of the Authority or any material indenture, contract, or other agreement or arrangement to which the Authority is a party or by which any of its properties are bound, or any Applicable Law by which the Authority is bound.

D. Litigation. The Authority is not a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of the Authority’s knowledge, threatened, which would materially adversely affect the Authority’s ability to perform its obligations under this Agreement.
Section 8.2. **Covenants of Participating Members.** The Participating Members represent, warrant, and covenant as follows:

A. **Organization, Authorization, and Validity.** Each Participating Member is a political subdivision of the Commonwealth duly organized and validly existing under the laws of the Commonwealth, and each has duly authorized, executed, and delivered this Agreement.

B. **Authority.** Each Participating Member has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement, the performance of which by it would prevent or materially and adversely affect its individual performance under this Agreement.

C. **Non-Contravention.** The execution and delivery of this Agreement by each Participating Member and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions, or provisions of any charter, resolution, or ordinance, any material indenture, contract, or agreement or arrangement to which it is a party or by which any of its properties are bound, or any Applicable Law by which it is bound.

D. **Litigation.** No Participating Member is a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of its knowledge, threatened, which would materially and adversely affect its ability to perform under this Agreement.
Article IX
Miscellaneous Clauses

Section 9.1. Severability of Invalid Provisions. If any clause, provision, or section of this Agreement is held to be illegal or invalid by any court, administrative agency, or other governmental authority, the invalidity of the clause, provision, or section will not affect any of the remaining clauses, provisions, or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section has not been contained in it.

Section 9.2. Notices. Any notice or other communication under or in connection with this Agreement shall be in writing to the below persons and addresses, or to such other persons and addresses as any Participating Member may from time to time specify in writing. A notice shall be construed to be delivered upon the earliest of (i) execution of a registered mail return receipt by the addressee, (ii) refusal of the mail by the addressee, or (iii) seven days from the notice being deposited in the U.S. Mail, first-class postage prepaid by registered mail, return receipt requested.

Notice to: With a copy to:

For the Authority:

Southside Network Authority
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attn: Executive Director

Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Authority Counsel

For the City of Chesapeake:

City Manager
Chesapeake City Hall
306 Cedar Road
Chesapeake, Virginia 23322

City Attorney
Chesapeake City Hall
306 Cedar Road
Chesapeake, Virginia 23322
Section 9.3. Execution of Agreement. A sufficient number of copies for each party approving this Agreement, each of which shall be deemed to be an original having identical legal effect, shall be executed by the parties.

Section 9.4. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth. Venue for any dispute hereunder shall be in the state and federal courts for the City of Chesapeake, Virginia, or the locality of any future location of the Authority’s corporate office.

Section 9.5. Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Participating Member. No such change or amendment may be
made which will affect adversely the prompt payment when due of all moneys required to be paid by the Participating Members under the terms of this Agreement, and no such change or amendment shall be effective which would cause a violation of any provision of any resolution, indenture, or agreement pursuant to which any Obligation has been issued or obtained by the Authority for the Project.

Section 9.6. **Waiver.** Sufferance of violation of any term of this Agreement, no matter how long continued, shall not operate as a waiver of that term in any future situation. Any waiver by any party of its rights under this Agreement must be in writing, and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the waiver of any Participating Member’s obligation to make payments when due of all moneys required to be paid by the Participating Member under the terms of this Agreement.

IN WITNESS WHEREOF, see the following signatures:

*Signatures on following pages*...
Southside Network Authority:

By: __________________________

Name: _________________________

Its: ___________________________

Date: __________________________

A teste:

______________________________
Secretary, Board of Directors

Signatures continue on next page...
City of Chesapeake, Virginia:

By: __________________________________________

Name: _________________________________________

Its: ___________________________________________

Date: _________________________________________

A teste:

______________________________

Clerk, City Council

Signatures continue on next page...
City of Norfolk, Virginia:

By: _____________________________

Name: ___________________________

Its: _____________________________

Date: ____________________________

A teste:

_______________________________

Clerk, City Council

Signatures continue on next page...
City of Portsmouth, Virginia:

By: ________________________________

Name: ______________________________

Its: ________________________________

Date: ________________________________

A teste:

______________________________

Clerk, City Council

Signatures continue on next page...
City of Suffolk, Virginia:

By: ____________________________

Name: __________________________

Its: ____________________________

Date: ____________________________

A teste:

______________________________

Clerk, City Council

Signatures continue on next page...
City of Virginia Beach, Virginia:

By: ___________________________

Name: __________________________

Its: ___________________________

Date: ___________________________

A teste:

______________________________

Clerk, City Council
Appendix A

Project Summary

Network Design Overview

The RCR comprises approximately 119.1 miles of communications conduit and fiber routes (Figure 1) interconnecting designated peering points in each of the five Cities. The design includes a standard configuration of three two-inch conduits and a single 288-strand fiber optic cable, with vaults spaced at an average interval of less than 1,000 feet. The current design calls for a total of 24 railroad crossings and 17 waterway crossings.

Figure 1: High-Level Fiber Network Route

Map

Summary of Scope of Work

The scope of work encompasses the construction and maintenance of the conduit and fiber optic infrastructure comprising the RCR.

A summary of the required work includes, but is not limited to the following:

- Construction:
  - Initiation of underground utility locate requests through the Virginia 811 system, and strict adherence to all Virginia Underground Utility Damage Prevention laws;
  - Sub-surface installation of conduit, primarily through the use of horizontal directional drilling, including utility locating through test pitting, traffic control, and paved surface restoration;
  - Installation of underground handholes/vaults and ground rods;
  - Attachment of conduit to existing bridge structures;
  - Placement of fiber optic cable and/or tracer wire in conduit;
o Installation of fiber splice enclosures and fiber splicing;
o Optical performance testing of fiber optic strands; and
o Provision and storage of all materials related to the above construction.

- Maintenance:
  o Perform emergency repair work to damaged fiber plant and network facilities;
  o Provision and storage of all materials related to the above services;
  o Perform fiber locate services in response to 811 locate tickets; and
  o Collect and maintain a database of fiber infrastructure “As-built” documentation.

The Authority and its engineering consultants will provide all engineering work documents necessary for construction, and will supply or facilitate all Municipal, VDOT, and environmental permitting required. Any permitting costs to outside entities shall be borne by the Authority, and if required to be paid by the Contractor, shall be charged to the Authority at direct cost.

The Contractor shall be required to perform permanent restoration of all surfaces, according to applicable municipal and VDOT standards, for accidental damage or otherwise unnecessary surface disturbances caused by the Contractor. The Authority shall be the sole determinant as to the reasonableness of surface disturbances caused by the Contractor.

The Contractor will provide regular progress reporting and will closely coordinate its construction schedule with the Authority and its designated project management personnel. The Contractor shall provide a primary point of contact to the Authority for the duration of the project and shall be expected to attend regular project status and management meetings. The Contractor shall provide daily progress reporting and forecasting of the construction locations for the following workday during active construction phases of the project and shall provide weekly reporting of key progress metrics to be defined by the Authority.
Appendix B

- Reliable and secure backhaul communications connectivity to support the needs of public safety entities and national security institutions.

- Availability of dark fiber for internal governmental needs of the Participating Members.

- Provide bandwidth to support growing educational needs (e.g., virtual classrooms).

- Provide affordable access to underserved and unserved citizens to address the residential Digital Divide. (Affordability/availability of service to low- and moderate-income households and households with poor credit.)

- Attract new enterprises with high-paying jobs to the region (i.e., Biomed, cyber security, corporate headquarters, and financial services), and in particular the Participating Members.

- Enable strategic partnerships between commercial providers leveraging subsea cables and data centers and anchor institutions such as colleges, universities, hospitals, the Commonwealth of Virginia, and the armed forces.

- Expedited service availability or arrangements to benefit economic development prospects or other community development needs.

- Provide competitive and non-discriminatory access to middle-mile fiber to promote investment by commercial providers in innovative and competitively priced last-mile broadband services – the Project is not to be used exclusively for the Authority and its members, rather it must be available to facilitate competitive delivery of broadband services on an open access basis.

- Expand accessibility to subsea cables and related localized commercial data center infrastructure.

- Support broadband needs of business incubators, technology innovators, product accelerators, and data centers.

- Foster an ecosystem for low-cost internet service providers to meet demand for affordable internet to address the business Digital Divide.

- Expand advanced technology business creation and retain newly educated/skilled workforce.

- Such other and further matters as may be reasonably related to the Project.
January 31, 2022

Mr. Steven DeBerry
Executive Director
Southside Network Authority
Hampton Roads Planning District Commission (HRPDC)
Via email: StevenHDeBerry@gmail.com

Subject: Additional scope of work for Hampton Roads Region – Southside Regional Connectivity Ring 100% Design (PDC-RFP-2020-01)

Dear Steve:

CTC Technology & Energy (CTC) is pleased to present this scope of work for outside plant engineering and construction oversight services for the Southside Regional Connectivity Ring (RCR) 100% Design project.

Proposed Scope of Work

Task 1: Detailed Designs
This proposal anticipates that CTC will perform detailed design work for approximately 117 miles of the 119 miles that make up the RCR network routes, as defined by the network’s 50% design documents (an increase from the 103 miles identified by the 30% design). This scope does not include design engineering for the portions of the RCR that overlap with the Western Freeway bridge or the Midtown tunnel; however, it does assume detailed engineering will be required by CTC for the approximately 18.5 miles of RCR routes that fall within the City of Chesapeake’s jurisdictional boundaries.

In the detailed design stages, CTC’s outside plant (OSP) fiber network engineering processes are centered around Geographical Information System (GIS) technologies that are compatible with the GIS resources of the Southside Cities, enabling us to deliver a more precise design and bill of materials (BOM). We develop preliminary designs using GIS tools and perform field surveys using precision GPS receivers. Before initiating more manual drafting phases, our designs undergo rigorous quality control review in their native GIS formats.

We have refined our processes over the years to minimize the potential sources of human error, and to increase cost efficiencies by eliminating manual data input steps. Ultimately, this allows us to provide accurate design and as-built materials to the Authority in formats that can be
merged with existing GIS databases. These databases can in turn be used to populate industry-leading fiber cable management systems and/or used directly to facilitate more effective maintenance, repairs, and underground locating.

**Field Surveys**
The CTC engineer will walk out the routes and will photograph, survey, and take detailed notes via a GPS device on relevant physical features relating to outside plant construction.

CTC uses state-of-the-art field survey equipment, including Trimble Geo 7X handheld GPS receivers and related software (Trimble Pathfinder Office and TerraSync), to automate the OSP engineering and GIS surveying processes. A walkout map of the route will be designed and produced in ESRI ArcGIS.

The field survey will include measuring features within the right-of-way for placement of conduit and recording other pertinent details, including:

- Slack storage
- Storm drains and culverts
- Edge of pavement
- Street lights and signal poles
- Splice cases
- Equipment cabinets
- Vaults and pedestals
- Existing third-party utilities
- Green space

The information listed above will be recorded from visual observation while the survey is conducted, and those items necessary to aid in construction will be documented in the construction plans. CTC’s engineer will note potential barriers to construction, as well as potential route improvements, and will also determine what permits will be needed to construct the fiber.

Using the information from the survey, our team will complete a desktop review to identify and avoid potential impact to environmentally sensitive areas and vulnerable wildlife species. The scope of this proposal does not include wetland delineations; however, we will advise the Authority as to our desk review findings and any likely areas of environmental permitting identified by our review and will make design decisions intended to avoid permanent disturbances and the need for environmental permitting. Moreover, CTC will support initial consultations with environmental permitting authorities that may be necessary to determine permitting requirements.
CTC will provide updated route maps with any recommendations for realignment relative to the current 50% design plans, to include cost comparisons (if applicable) and updated material specifications.

Figure 1: Sample Walkout Map
**CAD Drawings**

CTC’s team will update the previously generated 50% design CAD construction drawings, which will capture related data from walkout map drawings and the GIS data collected during field surveys. The drawings will include:

- Running line of fiber
- Position of existing utility poles
- Road names
- Railroad crossings
- Bridges
- Fixed markers/significant landmarks (e.g., fire hydrants, valves, poles)
- Environmental protected areas (e.g., wetlands, bodies of water)
- Flood plains
- Easements
- Rights-of-way
- Applicable public utilities or assets
- Applicable private utilities or assets
- Termination points, coils, vaults, splices
- Fiber entry and installation, as applicable

*Figure 2: Sample Design Drawing*
CTC will provide design materials for review (both in CAD and GIS formats). CTC will generate a BOM detailing material types and quantities needed by the construction contractor to construct the engineered design based on the material specifications determined in consultation with the Authority during the system-level design task.

Task 2: Permitting

ROW Permitting
Based on field verification, CTC will prepare a complete list of required permits, including any that may be required by VDOT and the Southside Cities. Any special permits, such as railroad crossings (e.g., right-of-way and encroachment permits) and standard bridge attachments, will also be prepared to complete the engineering services, but may require additional input and discussion with the Authority and the appropriate permitting agency/organization. We note that some special permits will require payment directly from the Authority or applicable Authority member.

This proposal does not anticipate that civil engineering services will be required to obtain bridge attachment permits, and that permits for the identified bridges along the network route can be obtained through the submission of standard OSP design engineering. In the event that a bridge owner requires civil engineering work, CTC will provide a separate proposal for that work.

At the Authority’s direction, CTC will initiate and manage the submissions of all required permits and will track each application through to approval. To ensure the timely approval of permit applications, CTC will be prepared to quickly follow up on issues raised by the permitting authorities. When an issuing entity identifies any concerns in its initial review of a permit application, the reviewer will typically return the plans, send an e-mail about the issue, or call the engineer or project manager to discuss the concern. If an application or portion of an application is returned, CTC staff will discuss the necessary changes internally, then make appropriate revisions and resubmit the application (as needed), or e-mail or call the permit reviewer to provide the information requested.

Environmental Permitting
CTC will perform a preliminary wetlands evaluation (i.e., a “desk review”) for the entire RCR fiber route to determine potential areas of state or federal jurisdictional authority; identify areas in which environmental permitting may be necessary to avoid impact to the RCR network design; and to identify the extent to which the network can be engineered to limit or avoid environmental impact.

CTC will coordinate with the Virginia Department of Environmental Quality (VDEQ) and the U.S. Army Corps of Engineers (USACE) to establish concurrence on our findings. CTC will request and
attend a pre-application meeting with VDEQ to review the findings of our preliminary wetlands evaluation.

Based on feedback from the Authority, CTC will determine the required scope for environmental permitting and will identify and document specific criteria for the network design in affected areas.

The limited physical impact of the RCR project (i.e., minimal permanent disturbance to rights-of-way) is unlikely to require any form of wetlands mitigation plan or more complex analysis, but an application to be submitted jointly to VDEQ and USACE may be necessary for final determination of jurisdictional authority and approvals.

CTC will prepare and submit any required permit applications to VDEQ and USACE. (For the purposes of this Proposal, it is assumed that the proposed project will qualify for a “Letter of Authorization” and not be subjected to mitigation and alternative site analysis requirements.) Additional information may be required, on a case-by-case basis, as determined by comments from representatives of VDEQ and USACE. CTC will respond to agency comments and attend field meetings. If fees are required by these regulatory agencies, the fees will be the responsibility of the Authority.

While we do not anticipate any of the following given the project’s limited physical disturbance, we note that the following are excluded from the proposed scope:

- Changes in policies or regulations during the progress of the work;
- Wetland delineation report;
- Jurisdictional determinations;
- Wetland mitigation design;
- Rare, threatened, and endangered species inquiries and surveys; and
- Historical and archaeological inquiries and surveys.

Task 3: Construction Oversight
CTC will serve as the Authority’s representative overseeing the performance of the selected fiber construction Contractor to the extent needed to augment the Authority’s own project manager and/or inspectors. We anticipate construction of the Authority’s network will take approximate 18 to 24 months to complete. During this time, we envision the following subtasks may be required:
• Attend a project kick-off meeting and facilitate regular project status conference calls with the Contractor.

• Review and approve project timelines for construction prepared by the Contractor.

• Review the Contractor’s construction management and safety plans.

• Develop quality assurance inspection checklists to facilitate construction oversight.

• Perform onsite inspection during construction for safety and workmanship.

• Perform onsite post-construction inspection for compliance with the approved designs and workmanship, to include a detailed review of accuracy and completeness for a sampling of as-built documentation provided by the Contractor. This may include verifying slack loop cable lengths; verifying proper bonding/grounding; and verifying the locations of outside plant assets (e.g., splice enclosures, slack loops, handholes, etc.) using precision GPS receivers.

• Review Contractor construction invoices for consistency with design and observed construction progress.

• Review Contractor-provided fiber optic performance test data.

• Prepare a comprehensive report documenting the results of our test data review, independent testing, and post-construction inspection to provide verification that the network, as installed, is suitable for the Authority’s purposes and conforms to the approved final design.

CTC anticipates being onsite for the kickoff meeting and first week of construction, five (5) weeks for post-construction inspection, and up to an additional forty (40) days of onsite inspection throughout the project lifecycle.

Task 4: As-built Documentation
CTC will produce final as-built revisions to applicable engineering work documents (EWD), to include construction CAD prints, GIS data, and splice matrices/schematics.

As-builts will be based on field data collected by the construction Contractor. We anticipate the Authority will require its construction Contractor to provide “redlines” of construction prints and/or electronic data detailing final as-built conditions, such as:

• Conduit placement depth and/or offset measurements
• GPS coordinates of handholes
• GPS coordinates of conduit paths and/or location data from directional boring guidance systems
• Cable slack coil lengths / fiber cable sequential footage markings

Proposed Fees

CTC proposes to perform this work according to the tasks described above for a fixed fee cost of $918,000, inclusive of all travel costs and other fees, as illustrated in the following table. We reserve the right to shift estimated costs between tasks within the budget.

<table>
<thead>
<tr>
<th>Scope Description</th>
<th>Estimated Cost by Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detailed Design</td>
<td>$353,900</td>
</tr>
<tr>
<td>Permitting</td>
<td>$88,400</td>
</tr>
<tr>
<td>Construction Oversight</td>
<td>$361,100</td>
</tr>
<tr>
<td>As-Builts</td>
<td>$114,600</td>
</tr>
<tr>
<td><strong>Total Not-to-Exceed Cost</strong></td>
<td><strong>$918,000</strong></td>
</tr>
</tbody>
</table>

For any additional tasks, we will bill our work at the following hourly rates, inclusive of travel and other expenses.

<table>
<thead>
<tr>
<th>Labor Category</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Technology Officer/ Director of Business Consulting</td>
<td>$250</td>
</tr>
<tr>
<td>Principal Engineer/Analyst</td>
<td>$225</td>
</tr>
<tr>
<td>Senior Engineer/Analyst</td>
<td>$200</td>
</tr>
<tr>
<td>Staff Engineer/Analyst</td>
<td>$180</td>
</tr>
<tr>
<td>Aide</td>
<td>$105</td>
</tr>
</tbody>
</table>

We look forward to the opportunity to support the HRPDC. Please do not hesitate to contact me if I can provide any additional information about our proposed scope of work.

Best Regards,

Matthew DeHaven
Vice President for Fiber and Infrastructure