

Southside Network Authority Summary Minutes of July 30, 2020

The July 30, 2020 meeting of the Southside Network Authority (SNA) was called to order by the Chair at 3:33 PM. The meeting was held electronically via WebEx pursuant to the declared state of emergency in the Commonwealth of Virginia in response to the COVID-19 pandemic and to protect the public health and safety of the Authority members, staff, and the general public. Chair Vitale asked Mr. Robert Crum, HRPDC Executive Director, to conduct a roll call to determine Authority members' attendance and asked that others participating in the meeting be introduced and identified. The following were in attendance:

Southside Network Authority Voting Members in Attendance:

Susan Vitale, Chair, CH
Andria McClellan, Vice-Chair, NO
Daniel Jones, PO
Patrick Roberts, SU
Rosemary Wilson, VB

Southside Network Authority Alternate Voting Members in Attendance:

Ken Beam, SU
Scott Fairholm, CH
Peter Wallace, Virginia Beach
Catheryn Whitesell, NO

Other Participants:

Steven DeBerry, SNA Executive Director
Robert Crum, HRPDC Executive Director
Debra Bryan, VB
Karla Carter, SU
Jay Stroman, CH
Mike Lockaby, Guynn, Waddell, Carroll & Lockaby, P.C.

Public Comment

There were no public comments.

Approval of Minutes

Chair Susan Vitale call for a motion to approve the minutes from the following meetings of the Southside Network Authority:

- May 13, 2020
- May 15, 2020
- June 19, 2020
- June 22, 2020
- June 25, 2020
- June 26, 2020 (11:00 AM)
- June 26, 2020 (2:00 PM)

Ms. Rosemary Wilson Moved to approve the minutes from the previous Southside Network Authority meetings (listed above); seconded by Ms. Andria McClellan.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Approval of Bylaws

Mr. Steven DeBerry, SNA Executive Director, reviewed the bylaws of the SNA. He asked for questions from the Authority members. Hearing none, Chair Vitale called for a motion for approval.

Ms. McClellan Moved to accept the Bylaws of Southside Network Authority as presented; seconded by Mr. Daniel Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Election of Officers

Mr. DeBerry noted that according to the recently approved bylaws, the SNA must elect members to serve as the Chair, Vice-Chair, Secretary and Treasurer. The Chair and Vice-Chair must be voting members of the Authority Board of Directors. The bylaws call for the SNA Executive Director to serve as the Secretary. The Secretary and Treasurer do not need to be voting members of the Board of Directors, and the offices may be combined. It was Mr. DeBerry's recommendation that the current Chair and Vice Chair be re-elected to serve in their respective roles through the end of the year. Then, as prescribed by the SNA bylaws, the Authority would elect new officers at the beginning of the new year. Mr. DeBerry made note that he in his role as Secretary, would be working with the HRPDC to leverage its staff for administrative support through a Memorandum of Understanding.

Chair Vitale called for nominations for the office of Chair.

Ms. McClellan Moved to appoint Ms. Susan Vitale as Chair; seconded by Ms. Wilson.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Chair Vitale called for nominations for the office of Vice Chair.

Ms. Wilson Moved to nominate Ms. Andria McClellan for the office of Chair; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Mr. Mike Lockaby, counsel for the SNA, noted that per the bylaws of the SNA, the Executive Director is designated as the Secretary; however, the Authority needs to appoint a Treasurer.

Chair Vitale called for nominations for the office of Treasurer.

Ms. McClellan Moved to nominate Mr. Steven DeBerry for the office of Treasurer; seconded by Ms. Wilson.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Freedom of Information Officer (FOIA), Records Management Officer and Southside Network FOIA Guidelines.

Mr. DeBerry explained that the Southside Network Authority must appoint a FOIA Officer and implement FOIA guidelines. Additionally, the designation of a Records Officer is required to fulfill FOIA requests and ensure compliance, as well as ensure that documents are managed in accordance with the Public Records Act (VPRA) and Library of Virginia regulations.

Ms. McClellan Moved to appoint Mr. Steven DeBerry, SNA Executive Director, as the Freedom of Information Officer and Records Management Officer for the Authority, and to approve the Southside Network FOIA Guidelines; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Memorandum of Understanding (MOU) between the Hampton Roads Planning District Commission and the Southside Network Authority for Certain Overhead Functions

Before proceeding with this agenda item, Mr. Lockaby noted a typographical error in the beginning of the MOU.

Mr. DeBerry presented the MOU between the SNA and HRPDC in the amount of \$25,000 during the first year. The MOU will cover such items as administrative, human resources, financial, purchasing and website support through June 30, 2021. The Authority can then decide if there is a need for full-time Authority staff to fulfill these functions.

Ms. Wilson Moved to authorize the Executive Director to sign a Memorandum of Understanding with the Hampton Roads Planning District Commission to receive required overhead support and provide reimbursement for services for the remainder of Fiscal Year 2021; seconded by Ms. McClellan.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Consultant Services Contract - Special Legal Consultant for Southside Network Authority Issues

Mr. DeBerry noted that the law firm of Guynn, Waddell, Carroll, & Lockaby, P.C. has provided legal consulting services to the SNA since the beginning of the conceptual design of the Authority. This is a continuation of work from previous years, which will focus on advising the Authority in matters of telecommunications, the development of Authority governance and contractual issues regarding the design, construction, and operation of the fiber ring. Mr. DeBerry recommended that the Authority continue this contract through fiscal year 2021.

Mr. Lockaby noted that his contractual services were procured by the City of Virginia Beach; however, it was procured with the understanding that the Authority was his client, and the contract was assignable to the Authority once it legally existed through a cooperative procurement arrangement.

Ms. Wilson Moved to authorize the Executive Director to retain Guynn, Waddell, Carroll, & Lockaby, P.C., to provide legal consulting services on Authority issues, as needed, in Fiscal Year 2021 (July 1, 2020 to June 30, 2021); seconded by Ms. McClellan.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Purchase of Liability Insurance to Cover Southside Network Authority Operations

Mr. DeBerry indicated the Authority must have Workers' Compensation insurance, and it is also desirable to have liability insurance and coverage for the Board and the Executive Director's legal defense in the event of a lawsuit for monetary damages arising out of the Authority's work. Mr. DeBerry noted the Virginia Association of Counties Risk Pool (VACORP) provides the policy that best meets the Authority's self-insurance requirements at a fair and reasonable price of approximately \$1,700 annually. He outlined the coverage as follows:

- \$2M – General Liability
- \$1M – Public Officers Coverage
- \$50,000 – Crime
- \$1M – Environmental
- \$500,000 – Cyber-security

Mr. DeBerry's recommendation is that the Authority Board authorize him to sign the policy with VACORP for the remainder of the fiscal year.

Mr. Jones Moved to authorize the Executive Director to sign a liability insurance policy with VACORP for the remainder of Fiscal Year 2021 (July 1, 2020 to June 30, 2021) to cover its insurance needs; seconded by Ms. McClellan.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Small Purchase Authority

Mr. DeBerry noted the need for a Small Purchase Policy in place to conduct day-to-day operations. The purchasing procedures set forth in the attached Purchasing Policy are designed to supplement and implement the rules set forth in the Virginia Public Procurement Act. The proposed guidelines included with the agenda designates the Executive Director as the purchasing agent for the Authority. Mr. DeBerry indicated he intended to use the MOU with the HRPDC to leverage assistance in making small purchases on behalf of the Authority. He recommended the Authority approve the Small Purchase Policy.

Ms. Wilson asked if there was a cap on small purchases. Mr. DeBerry stated, if approved, he would have the authority to purchase items up to \$30,000; anything over that amount would go to the Authority for approval. Mr. Lockaby outlined the parameters and caps contained in the policy for all small purchases.

Ms. Wilson stated that there is \$50,000 that is owed to the City of Virginia Beach for legal fees. She inquired if this was included in the budget. Mr. DeBerry said that he has included this amount in the budget. Ms. Wilson clarified that she was referencing the legal fees that Virginia Beach expended while the Authority was being formed.

Mr. Lockaby noted that it was his understanding that any legal fees paid for by Virginia Beach on behalf of the Authority would be reimbursed on a pro rata share by the five Southside cities. The \$50,000 noted by Mr. DeBerry would be for legal fees incurred during fiscal year 2021. He deferred to Ms. Debra Bryan, legal representative for the City of Virginia Beach.

Ms. Bryan noted that the scenario described by Mr. Lockaby was one option initially identified; however, it was her understanding that the fees would be paid from the \$200,000 provided by each of the five cities for the first-year expenses. She noted that she would check on whether the \$50,000 identified in the budget for legal fees would be sufficient to cover the legal fees in arrears as well as the amounts for the current fiscal year.

Chair Vitale asked Ms. Bryan to forward the total amount of legal fees identified in arrears to Mr. DeBerry so that it can be appropriately budgeted by the Authority.

Mr. Robert Crum, HRPDC Executive Director, recommended the Authority use the \$50,000 budgeted for legal services to cover the expenses incurred by the City of Virginia Beach. Subsequently, Mr. DeBerry can report to the Authority the amount paid to the City and any funds remaining in the budget.

Ms. Wilson Moved to have the Executive Director reimburse the City of Virginia Beach for legal fees incurred by the City during fiscal year 2019-2020.

Mr. DeBerry noted that he will make that recommendation as part of the presentation of the budget under Agenda Item #13. Ms. Wilson agreed with Mr. DeBerry's suggestion and withdrew her motion.

Ms. McClellan Moved to approve the Small Purchase policy as presented; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Southside Network Authority Public-Private Education Facilities & Infrastructure Act of 2002 (PPEA) Guidelines

Mr. DeBerry noted that the Public-Private Education Facilities & Infrastructure Act of 2002 (PPEA) grants a public entity such as the Southside Network Authority the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines that there is a need for a project and that such a partnership might provide the project to the public in a more timely or cost-effective manner than standard procurement under the Virginia Public Procurement Act (VPPA). This flexibility is necessary as the Authority moves forward and reviews multiple strategic options for designing, constructing, financing, and operating the regional fiber ring. Mr. DeBerry recommended adoption of these guidelines to manage the Authority's implementation of the Act in individual situations. These guidelines are especially necessary in order to begin serious consideration of potential "turnkey" approaches or approaches to the fiber ring that leverage private equity in the project.

Ms. McClellan Moved to approve the Southside Network Authority PPEA guidelines; seconded by Ms. Wilson.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Fiscal Year 2021 Budget

Mr. DeBerry presented an overview and summary of the FY 2021 budget which is aligned with the five Cities' fiscal year of July 1 – June 30. The budget has been initially funded with \$1M appropriated by the five Southside cities comprising the Southside Network Authority. Mr. DeBerry noted that he will come back to the Authority at its next meeting with the amount owed by the Authority to Virginia Beach for legal fees and stated the Authority can revisit this item in the budget as appropriate.

Mr. Crum reported that based on conversations with Mr. Lockaby, the amount currently owed to Virginia Beach for legal fees is approximately \$25,000. Pursuant to earlier conversations during this meeting, Virginia Beach will be reimbursed for these fees and the remaining legal costs will be covered under this line item in the budget. If necessary, the Authority can amend its budget at a later date.

Ms. McClellan Moved to adopt the budget as proposed with the stipulation that the legal fees expended by the City of Virginia Beach in last fiscal year will be reimbursed first from the funds designated for legal expenses; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Fiber Network Design Contract

Chair Vitale asked Mr. DeBerry to brief the Authority on this item. Before Mr. DeBerry began his presentation, Mr. Jones asked if the insurance policies of the Authority included a Risk Management policy. Mr. Jones stated that he would also like to ensure that any future contractors with the Authority carry policies in such areas as Cybersecurity. Mr. Lockaby noted that he will be bringing additional policies to the Authority for its consideration, one of which is a risk management policy. Mr. Lockaby also stated that these assurances are standard items that he prefers to see in a contract.

Mr. DeBerry stated that he and Mr. Lockaby began discussions with the preferred vendor to negotiate a contract at a fair and reasonable price for the advancement of the fiber ring. Mr. DeBerry, along with Mr. Matthew DeHaven, CTC Technology & Energy Vice President for Fiber and Infrastructure provided a presentation to the Authority as to the status of their discussions and negotiations. Mr. DeBerry outlined an anticipated timeline for actions to be taken over the next 90 days. He requested the Authority approve the Executive Director moving forward with negotiations with the selected contractor, CTC Technology.

Mr. Crum noted that the timeline presented by Mr. DeBerry provides a critical path forward for the Authority to answer two very important questions – whether the five Southside cities start to budget for construction in fiscal year 2022 or do they move forward with a public-private arrangement.

Ms. McClellan questioned if a firm were interested in offering a future interest in providing a turnkey option, that firm would not be able to provide the level of service as currently being negotiated with CTC – there would be a conflict for them in responding to future RFPs. Mr. Lockaby said that was correct – a contractor could not be both the Authority’s design consultant and a P3 proposer; and a contractor cannot also be the design consultant and be on the construction contract.

Mr. Jones inquired if the scope of work covers review of an RFP should the Authority use a different approach for Phase 2. If the Authority were to do 100% design, CTC would be the Authority’s consultant. If the Authority were to pursue a different approach, for example, design-build, CTC would be the Authority’s design consultant and assist the Authority in its review of proposals.

Ms. McClellan Moved to authorize the Executive Director to enter into an agreement with CTC Technology & Energy for professional services in an amount not to exceed \$315,000; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Roberts	Yes
Ms. Wilson	Yes

The Motion Carried.

Adjournment

With no further business to come before the Southside Network Authority, the meeting adjourned at 5:00 PM.