

Bedford County

Board of Supervisors & Broadband Authority

Special Called Meeting Packet



September 07, 2021 at 5:00 PM

Board Members:

Tommy Scott, District 5 – Chair
Tammy Parker, District 7 – Vice-Chair
Mickey Johnson, District 1
Edgar Tuck, District 2
Charla Bansley, District 3
John Sharp, District 4
Bob Davis, District 6

Administration:

Robert Hiss, County Administrator
Amanda Kaufman, Deputy County Administrator
Patrick J. Skelley, III, County Attorney
John Putney, Broadband Manager

1) Call to Order

2) Closed Session

a. Closed Session pursuant to **Section 2.2-3711 (A) (33)**, 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. (specifically, pertaining to the Broadband project); and and **Section 2.2-3711 (A) (8)**, Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter (specifically, pertaining to the Nursing Home).

3) Action Item

a. Authorize submittal of VATI broadband grant for Zitel, Shentel, and Riverstreet

4) Adjourn



At a Special Called Meeting of the Broadband Authority of the County of Bedford, Virginia held at the County Administration Building on the 7th day of September 2021:

Supervisor _____ made a motion to enter into Closed Session pursuant to Section 2.2-3711 (A) (33), 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. (specifically, pertaining to the Broadband project); and **Section 2.2-3711 (A) (8),** Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter (specifically, pertaining to the Nursing Home).

Voting yes:

Voting no:

Motion _____.

Supervisor _____ made a motion to go back into regular session.

Voting yes:

Voting no:

Motion _____.

WHEREAS, the Bedford County Board of Supervisors and Broadband Authority has convened a Closed Meeting, pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, §2.2-3712 of the Code of Virginia requires a certification by the Bedford County Board of Supervisors and Broadband Authority that such closed meeting was conducted in conformity with Virginia Law.

NOW, THEREFORE BE IT RESOLVED, that the Bedford County Board of Supervisors and Broadband Authority does hereby certify that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting was heard, discussed or considered by the Bedford County Board of Supervisors and Broadband Authority.

MEMBERS:

VOTE:

Tommy Scott, Chair

Tammy Parker, Vice-Chair

Mickey Johnson

Edgar Tuck

Charla Bansley

John Sharp

Bob Davis



BEDFORD COUNTY BOARD OF SUPERVISORS

Agenda Item Summary

AGENDA ITEM # 3a

RESOLUTION #R 090721-01

MEETING DATE: September 7, 2021

MEETING TYPE: Special Called Meeting

AGENDA SECTION: Action Item

ITEM TITLE: Authorize submittal of VATI broadband grant for Zitel, Shentel, and Riverstreet

RECOMMENDATION

Approve the resolution to submit the VATI grants, sign memorandums of understanding (MOU), and appropriate the County matching funds.

SUMMARY

On May 17, 2021; staff issued an RFP for broadband projects and received six proposals. The RFP review and selection committee recommended to pursue VATI grants with Shentel and Zitel. These ISP's are recommended due to their project scope to achieve universal broadband coverage, ability to deliver the project in a timely manner, affordability to the county and customer, past company performance, and overall customer service experience. Separate VATI applications will be submitted for Zitel and Shentel.

Riverstreet already has a federally awarded RDOF (Rural Development Opportunity Fund) and CAF area (Connect American Fund) and these areas of the county are unserved or underserved with broadband. Also, since Riverstreet would likely win any challenge to these areas; it is recommended to proceed with a grant partnership with Riverstreet. The Riverstreet VATI grant will be regional with five other counties and be administered by the West Piedmont Planning District Commission.

VATI funding has been expanded by the General Assembly from \$50 million with another \$700 million of State American Rescue Plan Act (ARPA) funds. VATI desires to see large scale projects that will achieve universal broadband coverage.

In total, the three grants will pass 19,948 addresses and cost \$61,504,361.83. It will supplement existing fiber and wireless internet and if awarded, and will achieve nearly universal broadband coverage. If the grants are awarded, it is anticipated that construction be completed within 24 months from when a grant

contract is executed.

To proceed with the applications, staff is requesting the Broadband Authority to approve an MOU with each ISP, authorize the submission of a VATI grant with each ISP by or before the Sept 14th deadline, and appropriate the funds if the grant(s) are awarded.

FISCAL IMPACT

Attached is an overall project budget summary. The matching dollars for the VATI grant is unbudgeted. An appropriation of \$10,972,203.46 is being requested from the County ARPA and \$2,014,874 from fund balance previously identified as recovered salaries savings thru the CARES Act.

The County has \$15,457,650 million in ARPA funds and broadband is an eligible expense. Since the Riverstreet project is being administered regionally thru the West Piedmont Planning District Commission, it is recommended to fund that project thru the recovered salaries from the CARES Act to avoid any 3rd party compliance difficulties. The total County match for Shentel and Zitel is \$10,972,203.46. This leaves a balance in uncommitted ARPA funds of \$4,485,446.54. This balance can be used for additional future broadband projects, but is recommended for consideration of water and sewer projects in partnership with BRWA. This ARPA fund balance can be reviewed and discussed at a future meeting.

PRIOR ACTIONS

May 10, 2021, the Broadband Authority approved the issuance of a request for proposals for Phase III of broadband development.

July 26, 2021, the Broadband Authority approved the submittal of a letter of intent to apply for the 2022 VATI broadband grant program.

CONTACTS

Robert Hiss, County Administrator

Amanda Kaufman, Deputy County Administrator

John Putney, Broadband Project Manager

ATTACHMENTS

VATI project budgets

VATI MOU's



At a special meeting of the Board of Supervisors of the County of Bedford, Virginia held at the Bedford County Administration Building on the 7th day of September 2021, beginning at 5:00 pm:

MEMBERS:

VOTE:

- Tommy W. Scott, Chair
- Tammy Parker, Vice-Chair
- Mickey Johnson
- Edgar Tuck
- Charla Bansley
- John Sharp
- Bob Davis

On motion of Supervisor _____, which carried by a vote of _____, the following was adopted:

A RESOLUTION

AUTHORIZE SUBMITTAL OF VATI BROADBAND GRANTS FOR ZITEL, SHENTEL, AND RIVERSTREET

WHEREAS, broadband is a critical piece of necessary infrastructure and significant gaps remain in Bedford County for those who are unserved or underserved with broadband; and

WHEREAS, the County received American Rescue Plan Act (ARPA) funds and CARES Act funds in which broadband is an eligible expense; and

WHEREAS, the County desires to receive a grant from the Virginia Telecommunications Initiative (VATI) to leverage further broadband development; and

WHEREAS, thru a request for proposals, Zitel, Riverstreet, and Shentel were selected as internet service providers the County desires to partner with to achieve universal broadband coverage in conjunction with a VATI grant.

NOW, THEREFORE, BE IT RESOLVED, by the Bedford County Broadband Authority, that the County Administrator is authorized to submit a VATI application in partnership with Zitel, Riverstreet, and Shentel; approved to sign a memorandum of understanding with Zitel, Riverstreet, and Shentel; and appropriates the following to serve as the County cash match for each respective VATI grant: \$5,525,283.46 to Zitel and \$5,446,920 to Shentel from ARPA funds, and \$2,014,874 to Riverstreet from general fund balance previously identified as recovered salaries from the CARES Act.

VATI 2022 project budgets**Riverstreet**

Federal funds- RDOF	\$695,139
Bedford County – Fund balance	\$2,014,874
State funds – VATI	\$8,059,496
Riverstreet funds	\$3,874,991
TOTAL	\$14,644,500

Zitel

Bedford County Funds – ARPA	\$5,525,283.46
Zitel funds	\$5,525,283.46
State funds – VATI	\$11,050,566.91
TOTAL	\$22,101,133.83

Shentel

Bedford County Funds – ARPA	\$5,446,920
Shentel funds	\$6,932,444
State funds – VATI	\$12,379,364
TOTAL	\$24,758,728

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) entered into on this ___ day of _____, 2021, by and between RiverStreet Communications of Virginia, Inc., located at 1400 River Street, Wilkesboro, North Carolina, 28697, hereinafter referred to as the "RiverStreet," and the County of Bedford, Virginia, located at 122 East Main Street, Bedford, Virginia 24523, hereinafter referred to as the "County" (RiverStreet and County are collectively referred to as the "Parties"), for the purpose of establishing and achieving various goals and objectives relating to the project contemplated by the Parties.

WHEREAS, RiverStreet has been awarded funding from the FCC’s Rural Digital Opportunity Fund (“RDOF”) to cover a portion of the cost of building a fiber network and providing broadband service to specific unserved or underserved locations in the County (“the Project”); and

WHEREAS, RiverStreet has also been awarded funding from the Federal Connect America Fund (“CAF II”) as part of the Project to cover the portion of the cost of building additional fiber networks and providing broadband service to additional unserved or underserved locations in the County not necessarily encompassed by the RDOF-funded portions of the Project;

WHEREAS, additional unserved and underserved addresses have been identified outside of both the RDOF and CAF II area that Parties are desirous to serve with broadband fiber networks;

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

MISSION

The Project is intended to provide the areas of the County that are the subject of the RDOF and CAF II funding with access to broadband internet access service (“Broadband”), in order to meet the future needs of residents and businesses in those areas of the County.

PURPOSE AND SCOPE

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

OBJECTIVES

The Parties agree to work together to attempt to secure funding and establish policies and procedures that will promote and sustain a market for Broadband availability and intend to work toward delivering a product and/or services that meet or exceed business and industry standards.

RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

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

SERVICES COOPERATION

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

Broadband Internet access services

Phase 1 (beginning after MOU execution): The Parties will work together to apply for Virginia Telecommunication Initiative (“VATI”) grant(s). The Parties anticipate that VATI guidelines will require contributions by RiverStreet and by the County as matching funds to secure a FY2022 VATI Grant through the Virginia DHCD. DHCD funding shall not exceed 80% of Project costs. The Parties’ VATI grant application may be a part of a regional application made together with other Virginia counties.

The total budget for the Project is expected to be \$14,644,500. The County agrees to provide a total match of \$2,014,874 in funding for the Project. RiverStreet agrees to provide a minimum match of \$3,874,991 in funding for the Project along with \$695,139 in RDOF. The amount of the VATI Grant to be requested for the Project will be at least \$8,059,496. The total number of homes projected to be passed by the Project shall be at least 2,825 (inclusive of the CAF II project build estimated to cost \$5,659,715).

Phase 2 (beginning after Phase 1): RiverStreet will work with the County to continue Project planning and the Parties will seek additional Federal, State and local funding to expand the availability of Broadband service in the County.

TIMELINE

The above outlined scope and objective shall be contingent on the Parties’ ability to obtain the necessary funding required for the Project, as described in any applicable grant or business loan application. Responsibilities with regard to commencement and completion of the Project will be established in any future agreement between the Parties, and may coincide with the period specified in connection with any grants awarded in connection with the Project.

TERM

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

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

AMENDMENT OR CANCELLATION OF THIS MEMORANDUM

This Memorandum may be amended or modified at any time in writing by mutual agreement of both Parties.

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

GENERAL PROVISIONS

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

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

LIMITATION OF LIABILITY

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

ARBITRATION/MEDIATION DISPUTE RESOLUTION

The Parties to this MOU agree that should any dispute arise regarding any aspect of their relationship or the Project, including, but not limited to, any matters, disputes or claims, the Parties shall confer in good faith to promptly resolve any such dispute. In the event that the Parties are unable to resolve the issue or dispute between them, then the matter shall be subject to non-binding mediation in an attempt to resolve any and all issues between the Parties.

The Parties agree that venue for any claim or dispute that arises from or through this MOU shall be in the state and Federal courts for Bedford County, Virginia.

NOTICE

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

GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflicts of laws rules.

SEVERABILITY CLAUSE

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

ASSIGNMENT

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

or to any entity into which RiverStreet may have merged or consolidated or which purchases all or substantially all of the assets of RiverStreet.

ENTIRE UNDERSTANDING

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

MOU SUMMARIZATION

The Parties to this MOU have mutually acknowledged and agreed to the following:

- The Parties to this MOU shall work together in a cooperative and coordinated effort, and in a manner and fashion intended to bring about the achievement and fulfillment of the goals and objectives of the Project.
- It is not the intent of this MOU to restrict the Parties from their involvement in or participation with any other public or private individuals, agencies or organizations or opportunities.
- The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of the Project, to the fullest extent possible.
- This MOU is not a binding contract, and it is not the intent or purpose of this MOU to create any rights, benefits, obligations and/or trust responsibilities by or between the Parties.
- This MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the Project or the effort to bring it to fruition.
- Should there be any need or cause for the reimbursement or the contribution of any funds to or in support of the Parties' efforts relating to the Project, then such shall then be done in accordance with applicable Virginia laws, regulations and/or procedures, and any Project Agreement which the Parties may enter into in the future.
- In the event that it should become necessary to provide funding for the effort to develop the Project, then any such endeavor shall be addressed in a separate and mutually agreed upon written agreement signed by the Parties or their representatives, in accordance with applicable laws and regulations, and in no way does this MOU provide such right or authority or obligate any Party to provide any such funding.
- The Parties have the right to individually or jointly terminate their participation in this MOU provided that advanced written notice is delivered to the other Party as provided for herein.

AUTHORIZATION AND EXECUTION

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

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

RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC.

By: _____

Gregory S. Coltrain

VP, Business Development

BEDFORD COUNTY, VIRGINIA

By: _____

County Administrator

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") entered into on this ___ day of _____, 2021, by and between Shenandoah Telecommunications Company, located at 500 Shentel Way, Edinburg, VA 22824 hereinafter referred to as "Shentel", and the County of Bedford, Virginia, a political subdivision of the Commonwealth of Virginia, located at 122 East Main Street, Bedford, Virginia 24523, hereinafter referred to as the "County" (Shentel and County are collectively referred to as the "Parties"), for the purpose of establishing and achieving various goals and objectives relating to the project contemplated by the Parties.

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

MISSION

The Project is intended to provide the areas of the County with access to broadband Internet service ("Broadband"), in order to meet the future needs of residents and businesses in those areas of the County.

PURPOSE AND SCOPE

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

OBJECTIVES

The Parties agree to work together to attempt to secure funding and establish policies and procedures that will promote and sustain a market for Broadband availability and intend to work toward delivering a product and/or services that meet or exceed business and industry standards.

RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

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

SERVICES COOPERATION

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

Broadband Internet access services

Phase 1 (beginning after MOU execution): The Parties will work together to apply for Virginia Telecommunication Initiative (“VATI”) grant(s). The Parties anticipate that VATI guidelines will require contributions by Shentel and by the County as matching funds to secure a FY2022 VATI Grant through the Virginia DHCD. DHCD funding shall not exceed 80% of Project costs.

The total budget for the Project is expected to be \$24,758,728. The County agrees to provide a total match of \$5,446,920 in funding for the Project. Shentel agrees to provide a minimum match of \$6,932,444 in funding for the Project. The amount of the VATI Grant to be requested for the Project will be at least \$12,379,364 and the total number of homes projected to be passed by the Project shall be at least 5,590.

Phase 2 (beginning after Phase 1): Shentel will work with the County to continue Project planning and the Parties will seek additional Federal, State and local funding to expand the availability of Broadband service in the County.

TIMELINE

The above outlined scope and objective shall be contingent on the Parties’ ability to obtain the necessary funding required for the Project, as described in any applicable grant or business loan application. Responsibilities with regard to commencement and completion of the Project will be established in any future agreement between the Parties, and may coincide with the period specified in connection with any grants awarded in connection with the Project.

TERM

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

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

AMENDMENT OR CANCELLATION OF THIS MEMORANDUM

This Memorandum may be amended or modified at any time in writing by mutual agreement of both Parties.

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

GENERAL PROVISIONS

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

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

LIMITATION OF LIABILITY

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

ARBITRATION/MEDIATION DISPUTE RESOLUTION

The Parties to this MOU agree that should any dispute arise regarding any aspect of their relationship or the Project, including, but not limited to, any matters, disputes or claims, the Parties shall confer in good faith to promptly resolve any such dispute. In the event that the Parties are unable to resolve the issue or dispute between them, then the matter shall be subject to non-binding mediation in an attempt to resolve any and all issues between the Parties.

The Parties agree that venue for any claim or dispute that arises from or through this MOU shall be in the state and Federal courts for Bedford County, Virginia.

NOTICE

Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address

set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflicts of laws rules.

SEVERABILITY CLAUSE

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

ASSIGNMENT

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

ENTIRE UNDERSTANDING

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

MOU SUMMARIZATION

The Parties to this MOU have mutually acknowledged and agreed to the following:

- The Parties to this MOU shall work together in a cooperative and coordinated effort, and in a manner and fashion intended to bring about the achievement and fulfillment of the goals and objectives of the Project.

- It is not the intent of this MOU to restrict the Parties from their involvement in or participation with any other public or private individuals, agencies or organizations or opportunities.

- The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of the Project, to the fullest extent possible.
- This MOU is not a binding contract, and it is not the intent or purpose of this MOU to create any rights, benefits, obligations and/or trust responsibilities by or between the Parties.
- This MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the Project or the effort to bring it to fruition.
- Should there be any need or cause for the reimbursement or the contribution of any funds to or in support of the Parties' efforts relating to the Project, then such shall then be done in accordance with applicable Virginia laws, regulations and/or procedures, and any Project Agreement which the Parties may enter into in the future.
- In the event that it should become necessary to provide funding for the effort to develop the Project, then any such endeavor shall be addressed in a separate and mutually agreed upon written agreement signed by the Parties or their representatives, in accordance with applicable laws and regulations, and in no way does this MOU provide such right or authority or obligate any Party to provide any such funding.
- The Parties have the right to individually or jointly terminate their participation in this MOU provided that advanced written notice is delivered to the other Party as provided for herein.

AUTHORIZATION AND EXECUTION

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

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

Shentel

By: _____

Title: _____

BEDFORD COUNTY, VIRGINIA

By: _____

County Administrator

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) entered into on this ___ day of _____, 2021, by and between Zitel LLC, a Virginia Limited Company, located at 1123 Celebration Avenue, Moneta, Virginia 24121, hereinafter referred to as "Zitel", and the County of Bedford, Virginia, a political subdivision of the Commonwealth of Virginia, located at 122 East Main Street, Bedford, Virginia 24523, hereinafter referred to as the "County" (Zitel and County are collectively referred to as the "Parties"), for the purpose of establishing and achieving various goals and objectives relating to the project contemplated by the Parties.

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

MISSION

The Project is intended to provide the areas of the County with access to broadband Internet service (“Broadband”), in order to meet the future needs of residents and businesses in those areas of the County.

PURPOSE AND SCOPE

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

OBJECTIVES

The Parties agree to work together to attempt to secure funding and establish policies and procedures that will promote and sustain a market for Broadband availability and intend to work toward delivering a product and/or services that meet or exceed business and industry standards.

RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

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

SERVICES COOPERATION

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

Broadband Internet access services

Phase 1 (beginning after MOU execution): The Parties will work together to apply for Virginia Telecommunication Initiative (“VATI”) grant(s). The Parties anticipate that VATI guidelines will require contributions by Zitel and by the County as matching funds to secure a FY2022 VATI Grant through the Virginia DHCD. DHCD funding shall not exceed 80% of Project costs.

The total budget for the Project is expected to be \$22,101,133.83. The County agrees to provide a total match of \$5,525,283.46 in funding for the Project. Zitel agrees to provide a minimum match of \$5,525,283.46 in funding for the Project. The amount of the VATI Grant to be requested for the Project will be at least \$11,050,566.91 and the total number of homes projected to be passed by the Project shall be at least 12,476.

Phase 2 (beginning after Phase 1): Zitel will work with the County to continue Project planning and the Parties will seek additional Federal, State and local funding to expand the availability of Broadband service in the County.

TIMELINE

The above outlined scope and objective shall be contingent on the Parties’ ability to obtain the necessary funding required for the Project, as described in any applicable grant or business loan application. Responsibilities with regard to commencement and completion of the Project will be established in any future agreement between the Parties, and may coincide with the period specified in connection with any grants awarded in connection with the Project.

TERM

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

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

AMENDMENT OR CANCELLATION OF THIS MEMORANDUM

This Memorandum may be amended or modified at any time in writing by mutual agreement of both Parties.

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

GENERAL PROVISIONS

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

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

LIMITATION OF LIABILITY

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

ARBITRATION/MEDIATION DISPUTE RESOLUTION

The Parties to this MOU agree that should any dispute arise regarding any aspect of their relationship or the Project, including, but not limited to, any matters, disputes or claims, the Parties shall confer in good faith to promptly resolve any such dispute. In the event that the Parties are unable to resolve the issue or dispute between them, then the matter shall be subject to non-binding mediation in an attempt to resolve any and all issues between the Parties.

The Parties agree that venue for any claim or dispute that arises from or through this MOU shall be in the state and Federal courts for Bedford County, Virginia.

NOTICE

Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address

set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflicts of laws rules.

SEVERABILITY CLAUSE

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

ASSIGNMENT

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

ENTIRE UNDERSTANDING

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

MOU SUMMARIZATION

The Parties to this MOU have mutually acknowledged and agreed to the following:

- The Parties to this MOU shall work together in a cooperative and coordinated effort, and in a manner and fashion intended to bring about the achievement and fulfillment of the goals and objectives of the Project.

- It is not the intent of this MOU to restrict the Parties from their involvement in or participation with any other public or private individuals, agencies or organizations or opportunities.

- The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of the Project, to the fullest extent possible.
- This MOU is not a binding contract, and it is not the intent or purpose of this MOU to create any rights, benefits, obligations and/or trust responsibilities by or between the Parties.
- This MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the Project or the effort to bring it to fruition.
- Should there be any need or cause for the reimbursement or the contribution of any funds to or in support of the Parties' efforts relating to the Project, then such shall then be done in accordance with applicable Virginia laws, regulations and/or procedures, and any Project Agreement which the Parties may enter into in the future.
- In the event that it should become necessary to provide funding for the effort to develop the Project, then any such endeavor shall be addressed in a separate and mutually agreed upon written agreement signed by the Parties or their representatives, in accordance with applicable laws and regulations, and in no way does this MOU provide such right or authority or obligate any Party to provide any such funding.
- The Parties have the right to individually or jointly terminate their participation in this MOU provided that advanced written notice is delivered to the other Party as provided for herein.

AUTHORIZATION AND EXECUTION

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

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

ZITEL, LLC

By: _____

Title: _____

BEDFORD COUNTY, VIRGINIA

By: _____

County Administrator