

**VERTICAL ASSET AND NETWORK  
OPERATION AGREEMENT**

This AGREEMENT (hereafter, "the Agreement") is entered as of this 14<sup>th</sup> day of May, 2019, by and between the COUNTY OF CARROLL, VIRGINIA, a political subdivision of the Commonwealth of Virginia (hereafter, "the County"), being a governmental entity created under the laws of the Commonwealth of Virginia; the WIRED ROAD AUTHORITY, a Virginia wireless service authority created pursuant to Section 15.2-5431.1 *et seq.* of the Code of Virginia (1950), as amended (hereafter, "the Authority"); and GIGABEAM NETWORKS, LLC, a limited liability company organized under the laws of the Commonwealth of Virginia, and authorized and licensed to do business in the Commonwealth of Virginia (hereafter, "the Company").

**I. RECITALS:**

**WHEREAS**, the parties recognize that reliable broadband access has become a critical component of modern life, essential for commerce, promoting tourism, facilitating communications among emergency first-responders, telemedicine, and education; and,

**WHEREAS**, the County and the Authority recognize that without reliable broadband access, many children residing in rural areas experience a significant disadvantage in obtaining a quality education, creating a "homework gap" due to the lack of broadband access in their homes; and

**WHEREAS**, the County and the Authority recognize the urgent need to enhance broadband access throughout its boundaries in order to improve educational opportunities for the citizens of the County, promote the growth of the local economy, improve healthcare and public safety, and generally promote the public health, safety and welfare; and

**WHEREAS**, recognizing these needs, the County, acting jointly with the County of Grayson and the City of Galax, formed the Authority to purchase, construct and operate certain broadband network elements to promote improved broadband access throughout the region; and,

**WHEREAS**, due to the high capital costs associated with providing broadband in rural areas with mountainous topography, there remains a dearth of providers willing and able to provide residential service in many unserved areas of the County at a reasonable price; and,

**WHEREAS**, the Authority has received certain grant funds, allocated to the County to facilitate the expansion of broadband connectivity and availability within the County through the identification of suitable sites for the erection of "neighborhood poles," with a goal to serve 20 new residential customers, on average; and the acquisition of such sites, construction of vertical assets thereon, and the interconnection of the assets with suitable facilities for backhaul; and,

**WHEREAS**, the Company is willing to commit to providing broadband service to unserved areas of the County through the use of the neighborhood poles upon the terms and conditions set forth herein, and the County and the Authority (hereinafter collectively referred to as "Owner") wish to promote the expansion of broadband service to these unserved areas by

leasing to Company a number of the Authority's neighborhood pole sites located within the County.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the foregoing premises and the other mutual covenants between all parties, the receipt and sufficiency are hereby acknowledged by all parties, the parties hereto do hereby agree as follows:

## **II. WARRANTIES, REPRESENTATIONS AND COVENANTS**

2.1 Warranties, Representations and Covenants of the Company. The Company hereby warrants, represents, and covenants that, as of the date of the execution of this Agreement:

(a) All of the Company's representations and warranties contained in this Agreement and any written statements and exhibits prepared in connection with this Agreement, are true and correct as of the date of execution hereof, and

(b) The Company is a duly authorized limited liability company organized under the laws of Virginia; and

(c) The Company has the requisite expertise and financial ability to fully, completely, and satisfactorily perform its obligations hereunder in full compliance with applicable law; and

(d) The Company owns the Equipment of the Company, and has the right, power, and authority to utilize the Equipment of the Company pursuant to the terms of this Agreement, and such equipment is free from liens or other encumbrances; and

(e) To the best of its knowledge, the Company has disclosed to County its knowledge of all facts, information, and data pertinent to its capacity to perform its duty and obligations under this Agreement.

## **III. SCOPE OF WORK**

3.1 Intent. In order to assure viability of the broadband internet system for the Authority within the County the parties hereto intend to develop new markets throughout the County, in addition to the markets currently served within the County. The Company shall perform all services called for hereunder in compliance with all applicable federal, state, county, and municipal laws, ordinances and regulations, at the Company's expense. The parties shall work together to develop these new markets, including cooperating on joint applications to funding agencies for expansion of the Authority's broadband network within the County. The Company shall utilize its reasonable efforts to assist the County in identifying potential locations for vertical assets, however the Authority and the County will have primary responsibility for obtaining and maintaining any and all new land use agreements, license agreements, and leasehold agreements and/or renewals or modifications of any existing land use agreements, license agreements, and leasehold agreements as may be required in order to operate said broadband internet system as anticipated by this Agreement. All duties or activities of Company hereunder are referred to herein as the "Work."

3.2 The Company's Responsibilities. As more specifically set forth in this Agreement, Company agrees to perform all services called for hereunder in material accordance with all applicable federal, state, and local laws and administrative procedures, and in accordance with applicable standards of care. Company agrees to work in good faith with the County and the Authority in exploring the creation of public-private partnerships beyond the scope of this pilot project, including without limitation the joint application for additional phases of grant funding, as reasonably requested by the County and/or the Authority.

Except as otherwise provided herein, the Company shall, at its expense, conduct the Work, including, but not limited to, the specific items listed below:

(a) The Company shall consult with the Authority and the County as requested to identify strategic locations for siting of the neighborhood pole facilities;

(b) The Company shall enter into a lease agreement or agreements with the Authority for each pole location (the "Site" or "Sites"), the terms and conditions of which shall substantially conform to the form Lease attached hereto as Exhibit A; The Company shall provide service to subscribers from each pole location in accordance with the terms and conditions of this Agreement and the Lease for the Sites;

(c) Company shall initially offer "high speed" broadband service to subscribers from each pole location. "High Speed" for purposes of this Agreement shall be defined as 10Mbps download and 1Mbps upload (10/1Mbps) or greater. The Company shall permit an agent or designee chosen by the Authority to monitor the physical sites upon which the Equipment of the Company is located.

(d) For each pole location, Company shall begin offering service to subscribers within three (3) months of completion of construction of the pole, or signing of a lease for the pole site, whichever occurs later;

(e) Company shall make reasonable efforts to extend service to any business or resident in the Unserved Areas covered by this Lease upon request, with a mutual goal of achieving an average take rate of 60% of homes within the area capable of being served from the Leased Premises. "Unserved" for purposes of this Agreement shall mean any areas in which service of 10 Mbps download and 1 Mbps upload are unavailable (10/1 Mbps);

(f) Service to customers shall be reliable, with uptimes of at least 99.9% or greater, and shall respond to outages and service requests within industry standard response times. Service shall further meet the criteria set forth in Exhibit C, attached hereto;

(g) Rates for services offered to the public shall initially be in accordance with the rate schedule set forth in Exhibit B, attached hereto. Rates may be adjusted annually, provided that no rates shall be increased by more than 2.5% from any year to the next without prior written approval from the Owner.

The Company shall be solely responsible for providing services to customers served from the Sites through its own employees and agents. Employees of the Company shall at all times be covered by the Workers' Compensation policies, insurance policies, and other compensatory policies of the Company, and shall not be deemed to be agents or employees of Owner. The Company warrants that all employees of Company shall be alcohol free and substance-free at the time said employees are conducting work within the scope of this Agreement.

In provision of services to the public from the Sites, the Company will at all times ensure that its level of service, uptime, troubleshooting shall be in conformity with the requirements of this Agreement, and if not explicitly defined herein, shall at all times meet or exceed industry standards. An authorized representative of the Company shall be responsible for handling complaints regarding the wireless broadband internet system. The Company shall report complaints to the Authority as otherwise authorized herein.

### 3.3 The Owner's Responsibilities.

(a) As more specifically set forth in this Agreement, the Owner shall work in good faith with Company to facilitate Company's performance of its obligations hereunder, including without limitation development of strategies to increase the number of residents of the County to whom service may be provided.

(b) The Owner agrees to work in good faith with Company to consider the use of public-private partnerships to obtain grant funding to strengthen the current broadband internet system and to expand said broadband internet system into other areas throughout the County.

(c) As consideration for the services rendered by Company, the Owner agrees to enter into exclusive lease agreements for the vertical assets identified and constructed pursuant to this agreement to Company for a lease term of three (3) years and at rents equal to the Owner's costs for the ground lease for the sites selected, renewable at the option of Company as provided in the Lease(s), upon satisfactory performance by Company of each of the terms herein, including provision of the broadband access to customers at the speeds and rates agreed to herein. Such leaseholds shall automatically terminate upon termination of this Agreement. The parties acknowledge that for any leases on County-owned property, such lease may be contingent upon the holding of a public hearing in accordance with Va. Code section 15.2-1800 et seq. and an affirmative vote by the County's Board of Supervisors. Nothing herein shall be deemed to entitle Company to damages in the event that the Board of Supervisors does not vote to approve such leases, and in such event Company's sole remedy shall be to terminate this agreement upon written notice to the Owner as provided herein. The parties agree that the lease pricing described herein represents a significant discount from market prices and constitutes valuable consideration for the Owner's rights under this Agreement, including enforcement of the Company's performance standards under Section III herein.

(d) The Authority agrees to work with Company to arrange point to point service to interconnect with the Authority's Network. Rates to be paid by the Company for such connections shall initially

be set at a rate of \$60 per month for a wireless, point to point backhaul. Rates may be amended by the Wired Road Authority from time to time in accordance with its generally applicable rate schedule.

3.4 Designated Representatives. The Owner designates the County Administrator for the County and the Authority as the Owner's primary liaison with the Company. Said liaison shall be required to devote only the time and effort to the administration of this Agreement that the Owner shall require. Company also shall designate in writing an individual to serve as its primary liaison with the Owner's liaison and the Authority's liaison. The liaison so designated by Company shall administer this Agreement on behalf of Company. Instructions and/or representations from the Owner's liaison and the Company's Liaison shall be deemed to be instructions and/or representations from the Owner and the Company, respectively; provided, that the Owner's liaison may on a case-by-case basis expressly condition his or her actions hereunder with respect to any particular issue upon obtaining the prior authorization and approval from the full County Board of Supervisors or the full board of directors of the Authority.

3.5 Term. This Agreement shall be effective upon execution by the parties hereto. The term of this Agreement shall continue for the entire three (3) year term of the Lease(s) executed pursuant to this Agreement, However, either party may terminate this Agreement, without cause, upon six (6) month's written notice to the other party. Termination of this Agreement will also constitute termination of all lease agreements entered into pursuant to this Agreement. In such event, the Company shall remove its equipment in accordance with the provisions of the Lease. The non-terminating party shall not be entitled to damages or other compensation arising from a termination under this paragraph Provided that no party is in default of any provisions of this Agreement beyond any applicable grace periods, this Agreement shall automatically renew for up to three (3) additional one (1) year terms (individually, a "Renewal Term"), each of which shall begin on the anniversary of the Effective Date of the Lease. The Company may decline renewal by giving the Authority written notice of its intention not less than sixty days prior to the expiration of the then current term. All terms, covenants, and conditions of this Agreement shall remain in full force and effect during all Renewal Terms.

#### **IV. LAND USE AGREEMENTS AND LEASEHOLDS**

4.1 Permits. Owner will be responsible for procuring rights for the construction access, use and maintenance of the Sites, whether by ground lease, purchase or otherwise. Company and Owner agree to work cooperatively to identify Site locations and other locations for possible network expansion. In no event shall the Company have any rights against the Owner as a result of any failure or inability to obtain land use rights to a location, and this Agreement confers no rights on the part of Company to require the Owner to take any action to obtain such rights. The final terms of any site ground lease shall be at the sole discretion of the Owner. Company shall at all times comply with the terms of the ground lease applicable to each Site, and shall keep the premises thereof in a safe and reasonably orderly condition, free to trash and other debris and in accordance with all laws and regulations applicable to the Sites or to Company's operations thereon.

#### **V. REPORTING**

5.1 Monthly Reports. The Company shall make reports to the Owner regarding the operation of the Company's broadband internet system and the activities contemplated hereunder. Such written reports shall include, but not be limited to, the following: (1) reports regarding number of Carroll County, Virginia customers served pursuant to this Agreement, by month and by pole location; (2) financial reports regarding the numbers of users by rate plan selected; (3) reports regarding any outages in the broadband internet system lasting for a period of greater than six (6) hours; (4) reports regarding service calls involving the broadband internet system; (5) reports regarding the status of infrastructure and equipment owned by the County or the Authority and utilized by Company.

5.2 Complaints. An authorized representative of the Company shall be responsible for handling complaints regarding the services provided by Company pursuant to this Agreement. The Company shall report complaints not resolved within six (6) hours to the Owner, providing a description of the issue and action plan for resolution.

5.3 Company's Provision of Bandwidth. Upon the commencement of services hereunder, the Company shall be responsible for providing bandwidth to support all customers served pursuant to this agreement through its own network resources, agreements with the Authority, or through third parties. Bandwidth or other services provided by the Authority shall be at the rates provided in Section 3.3.

## **VI. ACCESS AND SAFETY**

6.1 Access. Company's access to the sites shall conform in all respects to the requirements of the applicable ground lease governing the Authority or County's rights to access the sites. Company shall implement all safety procedures and equipment required by law or regulation and shall at all times act in a reasonably prudent manner to protect the safety of employees, contractors, or others on or near the premises leased hereunder, as well as the public in general.

## **VII. DEVELOPMENT OF ADDITIONAL WIRELESS BROADBAND INTERNET SYSTEMS OR EXPANSION OF EXISTING SYSTEM**

7.1 Expansion. The Company shall, in cooperation with Owner, develop a plan for the possible expansion of the broadband internet system in accordance with the terms of this Agreement. The planned expansion of the system would continue to be overseen and regulated by the Owner with end-user service to be provided by the private sector or a combination of the Authority and private-sector providers. Plans developed by the Company and the Owner shall include the expected cost of the expansion and anticipated rates for potential customers. The Owner, in its discretion, may elect to pursue the proposed plan or not pursue the plan.

7.2 Company's Rights. Nothing herein shall limit the Company's rights to acquire its own sites for serving customers within the County. The Company may, in the Company's discretion and at the

Company's expense, design, construct, operate and develop an expansion of its broadband internet system using the Owner-leased sites or sites acquired independently by Company.

## VIII. DEFAULT

**8.1 Event of Default.** An "Event of Default" occurs when Company fails to materially perform any of its obligations under this Agreement including, but not limited to the following, and Company fails to cure its default within thirty (30) days after its receipt of written notification by the Owner; provided the Company shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the Company commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion in accordance with a schedule and plan for such cure acceptable to the Owner:

- (a) Failure of Company to materially comply with any and all conditions under this Agreement, or under the applicable Site Lease;
- (b) Willful or grossly negligent acts of Company in performing any aspect of the Work;
- (c) Failure of Company to substantially perform any aspect of the Work, including adhering to the performance standards referenced in Exhibit C, or other substantial failure in the Owner's judgment, to provide consistent customer service, response, troubleshooting and claims resolution to customers served pursuant to this Agreement; or
- (d) Failure to materially comply with any federal, state or local law, rule, resolution or ordinance applicable to the Work;

Upon the occurrence of an Event of Default, the Owner shall have the right to terminate this Agreement by written notice to Company at any time prior to cure or Owner's waiver of said Event of Default, and in the alternative has the right, but not the obligation, to cure said Event of Default, at Company's expense; provided, that in the event that the Owner exercises its right to terminate this Agreement hereinabove, the Company shall, if directed by Owner, continue operations in good faith to minimize service disruptions to end-users for a reasonable transition period to enable the orderly transfer of operations to the Owner or a designee of Owner, whereupon Company shall vacate the Sites.

**8.2 Owner's Rights.** In the event the Owner terminates this Agreement in whole or in part as provided in Section 9.1, the Owner shall have the right to assume maintenance and operation of the Sites, and to operate the Sites for the remainder of the term of this Agreement. If Owner terminates under this provision and it is later adjudicated that Company was not in breach of this Agreement, then Owner's termination shall constitute a breach by Owner.

**8.3 Company's Rights.** Company shall have the right to terminate this Agreement in the event of a material breach of this Agreement by the Owner, which, after ninety (90) days following written notice from Company, has not been cured.

8.4 General. The rights and remedies of the parties provided in this Article IX shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Failure on the part of either party to exercise any right or remedy granted to it hereunder for previous default shall not constitute a waiver to exercise any right or remedy granted to it hereunder in the event of a subsequent default.

8.5 Notices Concerning the System. Both parties agree to copy the other party promptly, but in no event later than seven (7) days of receipt of any notice of any correspondence that affects the wireless broadband internet system.

## **IX. REVENUE COLLECTION & COMPENSATION**

9.1 Leasehold Fees of the County and Authority. Company shall make all rent payments as called for in the Lease, for each Site.

9.2 Service Prices and Fees. During the first year of this Agreement, the Company shall institute its current schedule of rates, fees, and charges as currently charged by the Company, and as set forth in Exhibit B. Such rates, fees, and charges shall be no higher than any rates, fees, and charges the Company charges its customers served by any systems the Company maintains and operates. Upon request, the Company will provide the Owner with verification of the Company's rate schedules for other systems. The Company shall provide the Owner and the customers served pursuant to this Agreement written notice of at least thirty (30) days in advance of the Company's intent to increase the Company's rates, fees, and/or penalties for services.

## **X. SALE OF SITES; ENCUMBRANCES**

10.1 Sale of Sites. In the event of a sale or other transfer of one or all of the Sites, the Company's rights shall be governed by the terms of the applicable Site lease.

10.2 No Liens. The Company agrees that it shall not cause or allow any liens, encumbrances, charges, or assessments to be placed or levied upon the Property of the Owner in use for the broadband internet system, and further agrees that, in the event of such occurrence, it will promptly and fully discharge the same.

## **XI. GENERAL PROVISIONS**

11.1 Independent Contractor. The Company is, for all purposes arising out of this Agreement, an independent Contractor and shall not be deemed an employee, agent, or mandate of the Owner. It is expressly understood and agreed that the Company shall in no event as a result of this Agreement be entitled to any benefits to which the employees of Owner are entitled, including, but not limited to, overtime, any retirement benefits, worker compensation benefits, any injury leave or other leave benefits.

11.2 Assignment and Subcontracting. This Agreement or any portion thereof may not be assigned by the Company without the expressed prior written consent of the County and the Authority, in their jointly-exercised discretion. Company shall have the right to subcontract construction and



installation of equipment, but will operate from the Sites using its own forces. The Company shall give its personal attention to the fulfillment of the Agreement and the services provided to the public from the Sites.

11.3 Hold Harmless Clause.

(a) The Company agrees to indemnify, defend and hold harmless the Owner, and their officers, agents, and employees from, against, and with respect to any claims incurred by or asserted against the County or the Authority, arising due to any negligence or intentional misconduct of the Company or any of its officers, agents, employees, or subcontractors, in the performance of this Agreement. Such claims shall include, but not be limited to, any violations of Federal Communications Commission policies, regulations, rules, or any other applicable federal, state, or local laws. However, the Company shall not be required to indemnify the Owner for any matter to the extent that it is due in whole, or in part, to the negligence, willful misconduct, or wrongful act of the Owner.

11.4 Taxes, Assessments and Fees. Company shall pay all applicable taxes and fees related to the Company's equipment or the performance of its obligations under the Agreement.

11.5 Insurance. The Company shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown to protect the County, the Authority, and the authorized agents and employees of the above, from any damage claims, including exemplary or punitive damages, for damage such as bodily injury, death, or property damage, which may arise from the Company's operations and Work under this Agreement, whether such operations be by Company, a subcontractor, an agent of Company, or anyone employed by Company directly or indirectly.

(a) Worker's Compensation Insurance. The Company and its subcontractors shall procure and maintain during the term of this Agreement Worker's Compensation Insurance for all of its employees to be engaged in the Work under this Agreement. In case any class of employees engaged in the Work under this Agreement is not protected under the Workers Compensation Statute, the Company shall provide employer's liability insurance for the protection of such of its employees as are not otherwise protected. Employer's Liability Insurance shall be a minimum of One Million Dollars (\$1,000,000.00) for occurrence.

(b) Company's General Liability Insurance. The Company shall procure and maintain in full force and effect during the term of this Agreement and including completed operations and coverage for underground explosion or collapse, a Comprehensive Liability Policy on an occurrence basis. Comprehensive Liability Insurance shall be a yearly minimum of Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate.

(c) Comprehensive Automobile Liability Insurance. The Company agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing Property Damage Liability on an accident basis. The policy shall protect the Company against all liability arising out of the use of automobiles, both private, passenger, and commercial, regardless of whether such vehicle shall be owned by

the Company, owned by others, or hired. Limits of Liability for Comprehensive Automobile Liability Insurance shall be Two Million Dollars (\$2,000,000.00) per occurrence combined single limit.

(d) Certificate of Insurance. Appropriate Certificates of Insurance shall be used in submitting evidence of compliance with the above requirements. The Company will provide the Authority with a copy of the Company's Certificates of Insurance.

(e) Insurance Adjustment. On the third (3rd) anniversary of the Commencement Date and every three (3) years thereafter, the Authority and Company shall reconsider the policy limits of all required insurances to reflect appropriateness of the coverage required.

The foregoing insurance policies shall be carried with responsible insurance companies authorized to transact business in the Commonwealth of Virginia; shall name the Owner as an additional insured; shall provide that with respect to the interest of the County or Authority in such policy or policies, the insurance shall not be invalidated by any action or inaction of the Company or by any breach or violation of Company of any warranties, declarations or conditions contained in such policy or policies; and shall provide that Owner shall be given at least thirty (30) days written notice prior to any modification or termination of said insurance. Prior to the commencement of any activity or operation by the Company hereunder, the Company shall furnish to the Owner certificates evidencing insurance coverage satisfactory to the Owner as set forth herein above.

11.6 Audit and Inspection of Records. The Company shall keep accurate records related to the services provided as part of this Agreement, particularly records documenting the matters to be reported in Company's monthly reports to Owner, and such supporting documentation shall be subject to audit and verification by Owner upon five (5) business days' notice. Company shall not, however, be required to disclose information which is required by law to be kept confidential, such as end-user identifying information and Company may redact such confidential information prior to inspection by Owner.

11.7 Force Majeure. Notwithstanding the foregoing, neither party shall be assessed with damages during any delay in the performance of its obligations hereunder caused by events beyond the reasonable control of the performing party, including without limitation: acts of God, war, riot, explosion, sabotage caused by an unrelated third party, floods, forest fires, tornadoes, hurricanes or other extreme weather, earthquakes, epidemics, quarantine restrictions, labor strikes, suppliers' or vendors' strikes, freight embargoes, legislative action, and regulatory action or inaction, provided that such events are not directly or indirectly the result of the performing party's omission, material fault, or negligence. The performing party shall make reasonable efforts to mitigate the effects of said causes.

11.8 Compliance with Laws. The Company agrees to comply with all laws and regulations federal, state, and local laws and regulations now in force and which may hereafter be in force during the term of this Agreement, including compliance with all applicable permits, licenses, reporting, inspections, or regulations as amended.

11.9 Compliance with Safety Regulations. To the extent applicable, the Company shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 (PL-596), and under Section 107 of the Agreement Work Hours and Safety Standard Act (PL-9154), and under corresponding Virginia statutes and regulations.

11.10 Discrimination. The Company shall not discriminate against any person because of race, sex, age, creed, color, religion, or national origin, or other status protected by law.

11.11 Notices. All notices or other communications required or permitted hereunder shall be sent by telecopy, facsimile, email, certified mail, or express mail, addressed as follows or to such other addresses as may be designated hereunder from time to time:

Company: Gigabeam Networks, LLC  
ATTN: Michael Clemons  
601 Virginia Avenue  
Bluefield, VA 24605  
Telephone: (540) 726-2317

County: Steve Truitt –County Administrator  
Carroll County Board of Supervisors  
605-1 Pine Street  
Hillsville, VA 24343  
Telephone: (276) 730-3001  
Fax: (276) 730-3004

Authority:  
The Wired Road Authority  
1117 E Stuart Drive  
Galax, VA 24333

Copy To: Stephen V. Durbin – Carroll County Attorney  
P.O. Box 2009  
Christiansburg, VA 24068-2009  
Telephone: (540) 260-9011  
Fax: (540) 260-0022

11.12 Affirmative Action and Equal Employment Opportunity. The Company shall comply with all affirmative action and equal employment opportunity requirements as set forth herein or as required by applicable laws, rules, or regulations.

11.13 Time is the Essence/Survival or Terms. Time is of the essence in this Agreement and in each of its provisions. The provisions of Paragraph 12.3 (Hold Harmless Clause) shall survive the termination of this Agreement.

### **XIII. MISCELLANEOUS**

12.1 Complete Agreement. This Agreement, including the Exhibits, represents the complete agreement between the parties, and it supersedes all prior agreements, requests for proposals, and proposals. No terms of any previous agreement remain in force or effect.

12.2 Section Headings. The section or paragraph headings are used only for convenience and are not to be used in determining the intent of the parties or in otherwise interpreting this Agreement.

12.3 Provisions Severable. If any provision of Agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect, unless the resulting interpretation of the Agreement shall materially alter the obligations of either party so as to work an unfair hardship on such party (the "Burdened Party"), in which case the Burdened Party shall have the option to request a renegotiation of the Agreement and/or to terminate this Agreement upon ninety (90) days advance written notice to the other party stating the reason for termination. This Agreement may be modified, amended, discharged, or waived only by an agreement in writing by each party.

12.4 Successors and Assigns. This Agreement shall be binding upon and will inure to the benefit of the successors and assigns of the respective parties hereto.

12.5 Counterpart. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

12.6 Attorney's Fees. The parties hereto shall be responsible for their own attorney's fees in any action related to this Agreement.

12.7 Governing Laws. This Agreement will be governed by and construed according to the laws of the Commonwealth of Virginia. The parties agree that any actions brought to enforce the rights of either party under this Agreement shall be filed in the state and federal courts in the Commonwealth of the Virginia.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day and year first above written.

CARROLL COUNTY, VIRGINIA

By: Rex L. Hill  
Rex Hill, Chairperson

COMMONWEALTH of VIRGINIA,  
COUNTY of CARROLL, to-wit:

The foregoing Agreement was acknowledged before me, the undersigned Notary Public, in and for the jurisdiction aforesaid by Rex Hill, Chairperson of the Carroll County Board of Supervisors, whose identity was satisfactorily proven before me, on this 14 day of May, 2019.



My Commission Expires: 12-31-20

My Notary Registration No.: 7127399

Cystle D. Adams  
Notary Public

Attest: \_\_\_\_\_

WIRED ROAD AUTHORITY

By: Keith Barker  
\_\_\_\_\_, Chairperson

COMMONWEALTH of VIRGINIA,

COUNTY of CARROLL, to-wit:

The foregoing Agreement was acknowledged before me, the undersigned Notary Public, in and for the jurisdiction aforesaid by Keith Barker, Chairperson of the Wired Road Authority, whose identity was satisfactorily proven before me, on this 14<sup>th</sup> day of May, 2019.

My Commission Expires: 12-31-20

My Notary Registration No.: 7127399

Cystle D. Adams  
Notary Public



GIGABEAM NETWORKS, LLC

By: Michael Clemons Michael Clemons, President

COMMONWEALTH of VIRGINIA,

COUNTY of CARROLL, to-wit:

The foregoing Agreement was acknowledged before me, the undersigned Notary Public, in and for the jurisdiction aforesaid by Michael Watson, President of Gigabeam Networks, LLC, whose identity was satisfactorily proven before me, on this 14<sup>th</sup> day of May, 2019.

My Commission Expires: 12-30-20

My Notary Registration No.: 7127399

Cybil D. Adams

Notary Public



Approved as to Form:

\_\_\_\_\_  
Stephen V. Durbin, Esq.  
Carroll County Attorney

**EXHIBIT B**

**INITIAL PRICE STRUCTURE**

Residential:

10x1Mbps - \$39  
25x2Mbps - \$59  
50x3Mbps - \$79

Business:

25x2Mbps - \$89  
50x3Mbps - \$109  
75x5Mbps - \$119  
Custom plans up to 1Gbps\*

Residential (router included):

10x1Mbps - \$45  
25x2Mbps - \$65  
50x3Mbps - \$85  
100x5Mbps - \$105

Business:

25x2Mbps - \$89  
50x3Mbps - \$109  
100x5Mbps - \$129  
Custom plans up to 1Gbps\*

\*Custom plans will not be subject to Owner approval, provided that Company continues to offer standard plans acceptable to Owner.

For entirely new levels of service, such as 5G or other packages, Company shall obtain Owner approval of rates prior to offering such services to the customers served pursuant to this Agreement.

## EXHIBIT C

### **Standards of Performance for Services Provided by Company**

1. Company shall make reasonable efforts to extend service to any business or resident in the County that requests it. If coverage to the business or resident requesting service is available from one or more of the Sites, Company shall proceed with reasonable diligence to provide the requested service in a timely manner. If the coverage is not available from an existing Site, Company shall promptly notify the requesting party. Company's monthly reports pursuant to Section 5.1 shall include a description of all service requests that could not be served from existing Sites, along with a brief description of proposed extensions of the network into further unserved areas, taking into account the service requests that could not be provided from existing Sites.
2. Service provided by Company shall be reliable, with uptimes of 99.9% or greater. A fifteen (15) day "shakedown" period shall be permitted for each Site as it becomes operational and begins connections to customers.
3. Company shall, whenever feasible, perform routine maintenance so as to minimize service disruptions or degradation of service.
4. Company shall report service disruptions in accordance with Section 5.1.
5. Company shall provide customers with the ability to report service problems both via telephone and online. Company shall ensure adequate staffing to avoid excessive telephone wait times for service problems, scheduling of service, billing issues and other customer-service related inquiries.
6. In the event of service disruptions, Company will act with reasonable responsiveness at all times to inform customers of the receipt any outage report and the status of the Company's efforts to restore service. For service disruptions occurring in the normal course and except for extreme weather events or other natural disasters, the Company will acknowledge customer reported outages within four (4) hours and notify the customer of the plan for restoring service. Company will dispatch a truck within four (4) hours of the reported outage, or if the fourth (4<sup>th</sup>) hour ends after normal business hours, by 12:00 p.m. the following day. For outages due to extreme weather, company will proceed expeditiously to restore service as promptly as reasonably possible.
7. Company shall respond promptly to requests for new service.
8. For all service calls to customer premises, whether for initial service setup, repairs, maintenance or other service, Company shall give customers reasonable windows of time for the service call, and will notify customers promptly of changes in the service visit schedule.



9. Excessive legitimate complaints, as determined by the Owner, will be considered a failure to meet the Company's obligations hereunder.
10. Failure to consistently meet the Performance Standards described herein shall be cause for the Owner to suspend the discounted rental provided to the Company as described herein or to terminate the Agreement.