

HUNTINGTON BROADBAND BOARD RESOLUTION

24-R-04

(By Board Member Name Here)

[Introduced January 23, 2024]

Authorizing the Reassignment of a Contract Between the City of Huntington and Broadband Solutions WV, LLC to the Huntington Broadband Board for Broadband Consulting Services.

Whereas, the City of Huntington recognizes the crucial importance of broadband infrastructure in fostering economic development and improving the quality of life for its residents; and

Whereas, Broadband Solutions WV, LLC has been engaged by the City of Huntington to provide broadband consulting services; and

Whereas, the Huntington Broadband Board has been established to centralize efforts and initiatives related to broadband development within the City of Huntington; and

Whereas, the reassignment of the existing contract from the City of Huntington to the Huntington Broadband Board is deemed essential to consolidate and streamline broadband consulting services under the Board's purview; be it

Resolved by the Huntington Broadband Board:

Authorizes the Chair of the Huntington Broadband Board to enter into an agreement, reassigning a contract between the City of Huntington and Broadband Solutions WV, LLC to the Huntington Broadband Board for broadband consulting services; and be it

Further Resolved, that all terms, conditions, and obligations of the original contract between the City of Huntington and Broadband Solutions WV, LLC shall remain in effect after reassignment.

Done in the City of Huntington, State of West Virginia, on the Twenty-third day of January, in the year of our Lord, Two Thousand and Twenty-Four.



Mayor Steve Williams

Chair, Huntington Broadband Board

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the AGREEMENT) is dated this 1st day of July, 2021

CLIENT Huntington Municipal Development Authority 800 5 th Ave. Huntington, WV 25701 (the "Client")

CONSULTANT Broadband Solutions, LLC 5312 MacCorkle Avenue #121 South Charleston, WV 25309 (the Consultant)

Background

- A. The Client is of the opinion that the Consultant has the necessary qualifications, experience, and abilities to provide consulting services to the Client.
- B. The Consultant is agreeable to providing such consulting services to the Client on the terms and conditions set out in this agreement.

IN CONSIDERATION OF the matters described above and the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

SERVICES PROVIDED

1. The Client hereby agrees to engage the Consultant to provide the Client with the following consulting services (the "SERVICES"):
 - o Provide technical assistance and be the Project Lead to make Huntington, West Virginia a "Gigabit/Smart City." "Gigabit/Smart City" as used in this Agreement shall mean, as much as funds allow, the City will build fiber optic connectivity to every residence, business, government, and public facility within the corporate limits of the City. The concept integrates information and communication technology (ICT), and various physical devices connected to the IoT (Internet of things) network to optimize the efficiency of city operations and services and connect to citizens. The technology will be deployed to enhance public safety and quality of life.
 - o The Consultant realizes there are competing agendas when designing a Gigabit/Smart City. The Consultant will engage the stakeholders and provide technical assistance and guidance to produce the best possible project design.
 - o Lead or attend all necessary meetings and act as the Client's representative with stakeholders, contractors, vendors, and regulatory or legislative bodies.
 - o Assist the Client with project the selection of vendors and contractors.
 - o Supervise and monitor all contractors and construction related to the project.

- o Lead all feasibility studies.
 - o Establish timelines and budgets and make monthly progress and budget reports the Development Authority.
2. The Services will also include any other consulting tasks with which the Parties may agree on. The Consultant hereby agrees to provide such Services to the Client.

TERM OF AGREEMENT

3. The term of this Agreement (the Term) will begin on July 1, 2021, and will remain in full force and effect until December 31, 2024. The Term may be extended with the written consent of the Parties. The Client may terminate the Agreement either for cause at any time or if funds are not budgeted for said Agreement in any budget year. Termination for cause must be based on the failure of Consultant to adequately perform the duties set forth in Paragraph 1. If Client seeks to terminate the Agreement for cause, written notice shall be provided, and Consultant shall have thirty (30) days to remedy any inadequacy in performance. All fees and expenses must be incurred prior to December 31, 2024. Client will have no obligation for fees or expenses incurred thereafter unless the Agreement is extended in writing.

PERFORMANCE

4. The Parties agree that performance on the part of Consultant shall consist of actively and with requisite competence discharging all requirements set forth in Paragraph 1 of this Agreement without delay. Performance on the part of Client shall consist of timely paying payment as they become due and providing Consultant with necessary information as reasonably required to perform its obligations under the Agreement. The Parties covenant that they will perform their obligations as set forth herein.

CURRENCY

5. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

COMPENSATION

6. The Consultant will charge the Client for Services at the rate of \$11,000.00 per month (the "Compensation").
7. The Client will be invoiced every month in the amount of \$11,000.00.
8. Invoices submitted by the Consultant to the Client are due within fifteen (15) days of receipt.

REIMBURSEMENT OF EXPENSES

9. The Consultant will be reimbursed from time to time for reasonable and necessary expenses incurred by the consultant in connection with providing services.
10. All expenses must be preapproved by the Client.

CONFIDENTIAL INFORMATION

11. Confidential information (the "Confidential Information") refers to any data or Information relating to the business of the Client which would, reasonably be considered to, be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the Industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
12. The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Consultant has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
13. All written and oral information and material disclosed or provided by the Client to the Consultant under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Consultant.

OWNERSHIP OF INTELLECTUAL PROPERTY

15. All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design, and trade name (the "Intellectual Property") that is developed or produced under this Agreement, is a "work made for hire" and will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.
16. The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Consultant will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

RETURN OF PROPERTY

17. Upon the expiration or termination of this Agreement, the Consultant will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

CAPACITY/INDEPENDENT CONTRACTOR

18. In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service. The Client is not required to pay, or make any contributions to, any social security, local, state, or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Consultant during the Term. The Consultant is responsible for paying, and

complying with reporting requirements for, all local, state, and federal taxes related to payments made to the Consultant under this Agreement.

RIGHT OF SUBSTITUTION

19. It is anticipated by the parties that Consultant will be directly involved in all aspects of discharging the obligations of this Agreement. Except as otherwise provided in this Agreement, the Consultant may, with written consent of Client, engage a third-party sub-contractor to perform some or all of the obligations of the Consultant under this Agreement.
20. In the event that the Consultant hires a sub-contractor:
 - o the Consultant will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Consultant. Client will have no obligations with respect to subcontractors, and Consultant hereby indemnifies Client for any such claims and covenants to immediately take action to remove any subcontractor's vendor's or mechanic's liens upon demand by Client.
 - o for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Consultant.

AUTONOMY

21. Except as otherwise provided in this Agreement, the Consultant will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Consultant will work autonomously and not at the direction of the Client. However, the Consultant will be responsive to the reasonable needs and concerns of the Client.

EQUIPMENT

22. Except as otherwise provided in this Agreement, the Consultant will provide at the Consultant's own expense, any and all equipment, software, materials and any other supplies necessary to deliver the Services in accordance with the Agreement.

NO EXCLUSIVITY

23. The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services. Any services performed by Consultant for any other entity will be subordinated to service performed on behalf of Client. Consultant will assure that services on behalf of Client will be performed timely and will never be delayed by Consultant's work for any other party.

NOTICE

24. All notices, requests, demands or other communications required or permitted by the terms of

this Agreement will be given in writing and delivered to the Parties at the following addresses:

a. Huntington Municipal Development
Authority 800 5th Ave
Huntington, WV 25701

b. Broadband Solutions, LLC
5312 MacCorkle Ave #181
South Charleston, WV 25301

or to such other address as either Party may from time to time notify the other and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

MODIFICATION OF AGREEMENT

25. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

TIME OF THE ESSENCE

26. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

ASSIGNMENT

27. The Consultant will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

ENTIRE AGREEMENT

28. It is agreed that there is no representation, warranty, collateral agreement, or condition affecting this Agreement except as expressly provided in this Agreement.

ENUREMENT

29. This Agreement will endure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

TITLES/HEADINGS

30. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

GENDER

31. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

GOVERNING LAW

32. This Agreement will be governed by and construed in accordance with the laws of the State of West Virginia.

SEVERABILITY

33. In the event that any part of the provisions of this Agreement in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

WAIVER

34. The waiver by either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

INSURANCE

35. Consultant will obtain a liability insurance policy and name Client as a named insured for the duration of the Agreement.

APPROVAL BY GOVERNING BOARDS OR BODIES

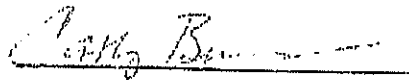
36. Each party confirms that approval for this Agreement has been officially given by the governing board or body of the respective parties.

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[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this
19th day of July, 2021.

Muntington Municipal Development Authority



Cathy Burns
Executive Director

7/19/21

Date

Broadband Solutions WV, LLC



Charles R. Dennie
Member

7/20/21

Date

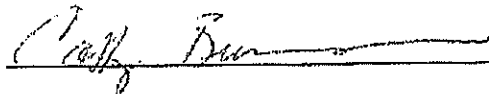
Amendment 1

Consulting Agreement

In accordance with Consulting Agreement dated the 1st of July, 2021, the Huntington Municipal Development Authority, hereby known as Client, and Broadband Solutions, LLC, hereby known as Consultant hereby agree effective August 1, 2022 the City of Huntington will serve in the capacity of Client.

IN WITNESS WHEREOF the Parties have duly affixed their signature under hand and seal on this 21st day of July, 2022.

Huntington Municipal Development Authority



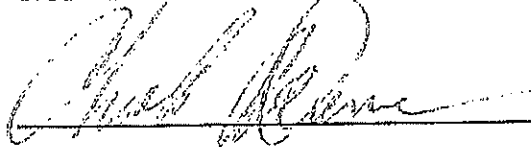
8/16/2022

Cathy Burns

Date

Executive Director

Broadband Solutions WV, LLC



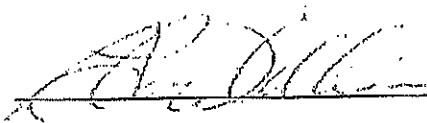
8/16/2022

Charles R. Dennie

Date

Member

City of Huntington



8/16/2022

Steve Williams

Date

Mayor

Amendment 2
Consulting Agreement

In accordance with Amendment 1 Consulting Agreement dated the 21st of July, 2022, the City of Huntington hereby known as Client, and Broadband Solutions, LLC hereby known as Consultant hereby agree effective January 23, 2024, the Huntington Broadband Board will serve in the capacity of Client.

IN WITNESS WHEREOF the Parties have duly affixed their signature under hand and seal this 23rd day of January, 2024.

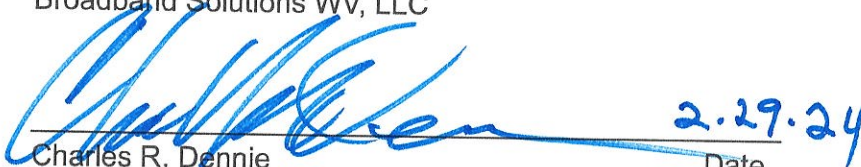
City of Huntington



Steve Williams
Mayor

Date

Broadband Solutions WV, LLC

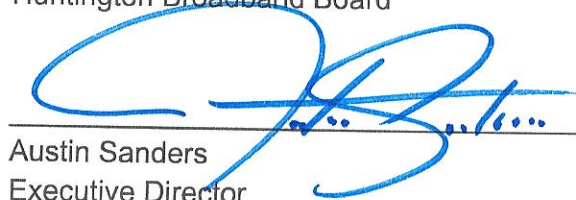


Charles R. Dennie
Member

2.29.24

Date

Huntington Broadband Board



Austin Sanders
Executive Director

2-28-24

Date