MICHAEL CULP, DIRECTOR



BAAO@albemarle.org tel: 434-296-5891 fax: 434-296-5800

Albemarle County ACP Bridge Program

PROVIDER ENROLLMENT PACKET

The COVID-19 pandemic made clear the vital importance of adequate, reliable, and affordable broadband service for residents of all means. To further our mission of improving affordability in Albemarle County, we have created the ACP Bridge program, that provides up to an additional \$20 per month for current ACP beneficiaries.

We are soliciting providers to participate in this program and have provided the attached packet to explain the program framework and provide a Memorandum of Understanding along with associated attachments for providers to complete and return to our office at the specified e-mail address or by fax.

The ACP Bridge program largely mirrors the Federal Affordable Connectivity Program. Providers would receive enrollees by first verifying their ACP enrollment status and then begin issuing service credits up to the specified amount for any broadband costs remaining after the application of the ACP benefit. At quarterly intervals, providers would submit a payment request form for all service credits issued during the prior period, along with an invoice for the total sum of credits issued. The request form is largely similar to that required by the ACP benefit.

Our office will receive and process applications for this program, process invoices received by providers, and will coordinate with our Department of Social Services to ensure continued eligibility for the program, including residency in Albemarle County. Payments due will be remitted within 30 days of receipt of invoice.

Further details and requirements can be found in the attached Memorandum of Understanding.

This program is an opportunity for ACP eligible residents to have their demonstrated needs met in affording broadband access. Our goal is to have all ACP-participating providers enrolled in this program so that the benefit is available to all our ACP-enrolled residents, regardless of service provider.

For questions or more information, contact us at acpbridge@albemarle.org.

COUNTY OF ALBEMARLE, VIRGINIA BROADBAND OFFICE OF ACCESSIBILITY & AFFORDABILITY AFFORDABLE CONNECTIVITY PROGRAM BRIDGE

THIS AGREEMENT ("**Agreement**") is entered into as of the Effective Date (defined herein) by and between the COUNTY of ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("**County**"), and _______, an Internet Service Provider ("**ISP**") (each a "**Party**" and collectively the "**Parties**").

RECITALS

WHEREAS, the County by and through its Broadband Office of Accessibility & Affordability Department established the Affordable Connectivity Program Bridge ("Bridge") to acquire and maintain fixed and/or wireless broadband service for eligible subscribers in Albemarle County; and

WHEREAS, the County intends to promote the community's access to its broadband resources by supporting "Eligible Household" (as defined herein) access to high quality broadband services, a critical resource in today's society; and

WHEREAS, the ISP provides broadband service to one or more Eligible Households, participates in the Federal Communications Commission (FCC) Affordable Connectivity Program as an Approved Broadband Provider, and desires to assist the Eligible Households in its subscriber base maintain connectivity to high quality broadband service.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the County and ISP agree as follows:

1. Purpose and Scope.

- 1.1. The County will pay the ISP a sum equal to no more than twenty dollars (\$20.00) per month for each of the Eligible Households identified by the ISP in its subscriber base (the "Payment") to maintain connectivity to fixed and/or wireless broadband for Eligible Household subscriptions so long as sufficient funding and appropriations exist and permit continuation of payments either in part or in full. Under no circumstance will the County be obligated to pay the ISP after all funding and appropriations for the Bridge are exhausted, when subscriber services cease, the EBB/ACP program ends, or if the ISP stops participating in the EBB/ACP Program.
- 1.2. "Eligible Households" means those households that have already been approved to receive the federal Emergency Broadband Benefit or Affordable Connectivity Program (EBB/ACP). The full amount of the federal EBB/ACP is to be applied each month to the subscriber broadband charge before the Eligible Household may be deemed qualified to

receive credit under this Agreement. The credit for Eligible Households hereunder shall not exceed twenty dollars (\$20.00) per month and shall be applied to the remaining monthly portion of the Eligible Household's subscriber broadband charge after accounting for any EBB/ACP payments or credits.

- 1.3. In no event shall Payments requested or made under this Agreement result in payments that are duplicative of any federally funded assistance provided to or for the benefit of Eligible Households and/or applied to any costs that have been or will be reimbursed under any other federal, state, or local assistance.
- 2. Term. The term of this Agreement shall commence on the date that it has been fully executed (the "Effective Date") and shall continue through and until Bridge funding and appropriations are exhausted, unless terminated sooner.

3. Bridge Payments.

3.1. Submissions.

- 3.1.1. During the term of this Agreement, ISP will submit for quarterly Bridge Payments.
- 3.1.2. Each quarterly submission based on an Eligible Household shall be separately considered a "**Request**" made by or on behalf of the households identified in such submission for purposes of this Agreement.
- 3.1.3. Each Request shall identify the Eligible Household by address as well as identify the broadband charges assessed by the ISP for the month for which a Bridge Payment is being requested.
- 3.1.4. Each Request shall be submitted in substantially similar format to the spreadsheet attached hereto as Exhibit A.
- 3.1.5. Prior to submitting a Request for an Eligible Household, the ISP shall:
- 3.1.5.1. Confirm the Eligible Household is registered to receive federal EBB/ACP; and
- 3.1.5.2.Confirm that there remains an outstanding amount due for that month's broadband charge for the Eligible Household, after the federal EBB/ACP and any other federal, state, or local assistance benefit has been credited.
- 3.1.6. The County may require the ISP to submit such other and further documents and information as it determines, in its sole and absolute discretion, is necessary or appropriate to ensure that Bridge Payments are authorized.
- 3.1.7. Upon ISP request to <u>baao@albemarle.org</u>, the County may accommodate monthly Requests for no more than six months.

3.2. Amounts of Bridge Payments.

- 3.2.1. To the extent the County has appropriated funding for the Bridge and to the extent such appropriated funding has not been exhausted, the County will make the Payments to the ISP, according to the number of Eligible Households, for up to and no more than Twenty Dollars (\$20.00) of the payable broadband charges identified per household, in each Request.
- 3.2.2. The exact amount of the Payment shall be determined by what remains unpaid after the application of the monthly federal EBB/ACP for the Eligible Household and all other federal, state, and local benefits have been credited or paid, but shall, in no event, exceed twenty dollars (\$20.00) per month.
- 3.3. Manner of Payment. The ISP will provide all necessary information to the County and its Department of Finance & Budget to facilitate the Payments. The County will have thirty (30) days to process and make payment after receipt and satisfactory verification of the ISP's Request.

4. Representations and Warranties

- 4.1. The ISP represents and warrants to the County, as of the Effective Date, as follows:
 - 4.1.1 The ISP is fully registered and authorized to transact business in the Commonwealth of Virginia and will remain so continuously during the term of this Agreement.
 - 4.1.2 The ISP has full power and authority to enter into this Agreement and to incur and perform all obligations and covenants contained herein.
 - 4.1.3 The ISP has obtained all necessary prior consents and approvals to enter into this Agreement, and to undertake each of the obligations, covenants, and agreements contained herein, from all owners, shareholders, partners, managers, members, investors, lenders, governmental authorities, and other persons and entities that are required or entitled to consent to or approve this Agreement, and any obligations, covenants and agreements contained herein, and that the individual executing this Agreement has been duly authorized to act on behalf of the ISP and has executed this Agreement free from coercion, duress or undue influence.
 - 4.1.4 The ISP is currently an Approved Broadband Provider by the FCC for its Affordable Connectivity Program and is so listed on the FCC's public facing online database. The ISP understands and agrees that failure to be in compliance and remain in compliance with the federal EBB/ACP rules may result in the denial of funding, cancellation of funding commitments, and the recoupment of past disbursements. ISP agrees to notify the County within no more than 5 business days if it loses its approval to participate in the EBB/ACP, or is delisted from the FCC online public facing database for any reason.

- 4.2 In addition to the representations and warranties made at the time of this Agreement, each time that the ISP submits a Request, the ISP represents and warrants to the Department as follows:
 - 4.2.1 The representations and warranties contained in Section 4.1 remain true, Accurate, and complete as of the date of the Request to the County.
 - 4.2.2 The eligibility requirements identified in Section 1.3 are met as to the Households identified in the Request.
 - 4.2.3 The payable broadband charges identified in the Request were incurred during the EBB/ACP Subsidy Period, and, to the best of the ISP's knowledge, information, and belief, the Eligible Households listed have not utilized any other public (federal, state, or local) or private subsidy, assistance, or credit to pay the portion of the broadband charges subject of any Request.
 - 4.2.4 ISP has not applied for any other financial assistance on behalf of the Eligible Households to offset the broadband charges identified in the Requests and does not anticipate receiving payments from any other source for any portion of such unpaid broadband costs which would violate Section 5.4 of this Agreement.
- 5. <u>Covenants and Agreements</u>. ISP covenants and agrees as follows:
 - 5.1 <u>Notice to Customers of Opportunity</u>. Upon the County's request, the ISP shall cooperate with the Broadband Office and its designees in preparing a notification to potential participants in the program, including allowing the use of logos and trademarks, by the ISP and the Broadband Office.
 - 5.2 <u>Notice to Customers of Receipt</u>. ISP shall provide prompt notice to Eligible Households on whose behalf it receives Payments under this Agreement (a) that Bridge Payments have been made on their behalf for the month, and (b) what payment remains due after application of EBB/ACP and Bridge credits. Notice shall be substantially in the form provided at <u>Exhibit B</u>.
 - 5.3 **Waiver of ISP Right to Disconnect Service**. In exchange for each Bridge Payment, ISP shall:
 - 5.3.1 Agree not to disconnect the service of any Eligible Household for which the ISP has applied for or received a Bridge Payment, based on failure to pay, for at least thirty (30) days from the date the ISP receives the Bridge Payment.

- 5.4 Other Payments. ISP shall not accept any other payments for broadband charges covered by a Bridge Payment for any month for which a Bridge Payment is made, from the Eligible Household, or from any person on behalf of the Eligible Household. Any such payments received shall be returned to the payor. Notwithstanding the foregoing, the ISP shall not be prohibited under the terms of this Agreement from applying for, requesting, obtaining, and/or accepting financial assistance for portions of the subscriber's broadband charge which remain due and owing after application or receipt of a Bridge Payment(s), provided that:
 - 5.4.1 Any applications or requests for Alternative Financial Assistance made by the ISP, and the receipt and acceptance of any such Alternative Financial Assistance, shall not be made or received in violation of any provision of any state, federal, or local law regarding duplication of benefits or duplicative payments of federally funded broadband assistance;
 - 5.4.2 The acceptance and receipt of any Alternative Financial Assistance shall not cause any Bridge Payment to be considered an ineligible expense under EBB/ACP;
 - 5.4.3 The ISP's acceptance and receipt of any Alternative Financial Assistance shall have no adverse impact or consequences to the Eligible Household or the County;
 - 5.4.4 If the County or any agency or department of the United States of America determines that the ISP applied for, requested, received, or accepted any Alternative Financial Assistance in violation of this Agreement, EBB/ACP, EBB/ACP Guidance, or any other federal, state, or local law regarding duplication of benefits or duplicative payments of federally funded broadband assistance to an Eligible Household, the ISP shall immediately repay the person(s) from whom the Alternative Financial Assistance was received the full amount of such Alternative Financial Assistance.
- 5.5 ISP shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.

6. Confidential Information

6.1 All confidential information and documentation provided by ISP, including but not limited to household-specific information or confidential commercial/financial information of ISP, is being provided under a request for confidentiality. The County promises to hold such proprietary information in confidence to the extent permitted by law, including Virginia's Freedom of Information Act and Governmental Data Collection and Dissemination Act. The Department shall, however, be permitted to disclose relevant confidential information to its officers, agents, and personnel to the extent that such disclosure is necessary for the performance of their duties under this Agreement. If the County receives a request to disclose such information, the County will notify the ISP to coordinate a response. Should the ISP not consent to the County releasing any or all of the requested information, then the ISP agrees to defend, indemnify, and hold the County

harmless from any resulting claim or damages arising from the withholding of such information, including costs and attorney fees.

6.2 Upon request, the County shall be authorized to provide documentation of any Bridge Payment(s) to the Eligible Household on whose behalf such Payments were made.

7. Default

- 7.1 ISP's breach of any representations, warranties, obligations, agreements, or certifications under this Agreement shall constitute an event of default for which the County will provide thirty (30) days' notice and an opportunity to cure, if the default is curable. A default that is not curable or which is not cured within the 30-day cure period shall constitute a final default ("Final Default").
- 7.2 Upon Final Default, the County may take any one or more of the following actions:
 - 7.2.1 Terminate this Agreement;
 - 7.2.2 Require immediate repayment of the Bridge Payments or any portion thereof, such repayment in full or part being without recourse to any participating Eligible Household;
 - 7.2.3 Proceed with debarment actions under the Albemarle County Purchasing Manual, Chapter 23, as enabled by Virginia Code § 2.2-4321; and
 - 7.2.4 Enforce any other available legal rights and remedies, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- **8. Indemnification.** ISP releases and agrees to defend, indemnify, and hold harmless the County, and its officers, employees, and agents from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, and proceedings of any kind whatsoever (including but not limited to reasonable attorney's and expert's fees and costs), whether or not involving a third-party claim, that are caused by, relate to, or arise from this Agreement.
- **9. Nondiscrimination in Employment.** ISP agrees: (a) not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, military status, medical condition, genetic information, any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test, and to comply with other non-discrimination provisions of federal and Virginia law, including the Virginia Human Rights Act (Virginia Code § 2.2-3900 *et seq.*).

- **10. Drug Free Workplace**. ISP warrants that it shall maintain drug workplaces in accordance with Virginia Code § 2.2-4312, including the posting of a notice for current employees and the inclusion of such notice in employment solicitation advertisements.
- 11. Retention of Records. ISP shall retain and maintain all records and documents in any way relating to this Agreement for the longer of (i) five (5) years after payment by the County hereunder or (ii) any applicable federal retention requirement or condition of EBB/ACP and shall make them available for inspection and audit by authorized representatives of the County at all reasonable times. ISP shall provide copies of any such records or documents upon the County's request.
- **12. Governing Law.** This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any litigation arising from this Agreement shall only be brought in the Circuit Court for the County of Albemarle, Virginia, or the United States District Court, Western District of Virginia, Charlottesville.
- 13. Entire Agreement. This Agreement, together with any exhibits attached hereto, represents the complete, total, and final understanding of the Parties. No other understanding or representations, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or bind the Parties at the time of the execution.
- **14. Severability.** If any term, covenant, or condition of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this Agreement shall be construed without such provision and shall, nevertheless, remain in full force and effect as long as the essential terms of this Agreement remain valid, legal, reasonable, and enforceable.
- 15. Amendments and Assignment. This Agreement may not be changed, altered, or modified except by written agreement executed by the Parties. Except for any specific provision of this Agreement which is amended in accordance with this Section, this Agreement remains in full force and effect after any such amendment. This Agreement shall not be assignable or transferable without the prior written consent of the Parties.
- **16. Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, with a copy via email, as follows:

To the County:

Albemarle County Broadband Office of Accessibility & Affordability 401 McIntire Road Attn: Michael Culp, Director

Email: acpbridge@albemarle.org

Phone: 434-296-5891

To the ISP:

Name Address Attn: Email:

Phone:

- **17. Exclusive Benefit.** This Agreement is for the exclusive benefit of the Parties. No other person or entity shall have rights under or be deemed a beneficiary of this Agreement, including Eligible Households.
- **18.** Survival. The following sections survive termination of this Agreement: Section 4; Section 5; Section 6; Section 7; Section 11; and Section 17.

19. Subheadings and Signatures

- 19.1 Section headings and subheadings in this Agreement are used for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 19.2 This Agreement may be executed in counterparts; all such executed counterparts shall be deemed one agreement. Signatures of the Parties, transmitted by facsimile or by electronic mail printable in tangible form to the other Party, shall be as effective as an original signature delivered by the signing Party.
- 19.3 This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original handwritten signature. "Electronic signature" includes electronically scanned and transmitted versions (e.g., via pdf) of an original handwritten signature and any typed signature (including any electronic symbol or process attached to, or associated with, the Agreement) adopted by a Party with the intent to sign the Agreement.
- **20.** Exhibits The following Exhibits attached hereto are an integral part of this Agreement and are incorporated herein:

Exhibit A: ACP Bridge Payment Request Form

Exhibit B: Sample Notice to Affected Households of ACP Bridge Payments Made Exhibit C: Federal Funding Conditions regarding Lobbying and Access to Records

Certification regarding Use of Federal Funds for Lobbying

Exhibit D: Albemarle County Vendor Registration Information

Exhibit E: Provider ACP Data

[Signature Page and Attachments Follow]

IN WITNESS HEREOF, the Parties have caused the Agreement to be executed and delivered on the dates provided below.

ISP

	By:
	[NAME] [TITLE]
	Date
	COUNTY OF ALBEMARLE, VIRGINIA By:
	Michael Culp, Director Albemarle County, Broadband Accessibility and Affordability Office
	Date
	Nelsie Birch, Chief Financial Officer Albemarle County
	Date
	Jeffrey Richardson, County Executive Albemarle County
Approved as to Form:	Date
County Attorney	

EXHIBIT A – ACP BRIDGE PAYMENT REQUEST FORM

sst		57	0	0	0	38	45	0	0	140
ACP Bridge Request (\$30 (\$20/month maximu	(kpisqns	117	0	45	09	78,	105	0	0	iy
Subscriber Charge ACP Bridge Request Subscriber Broadband after ACP subsidy (\$30 (\$20/month maximum	riod) max subsidy)	207	06	135	150	138	195	_09	90	ACP Bridge Subsidy Reauest
Subscriber Broa	Charge (this per									
	Phone Number Service Type Charge (this period) max subsidy)	80010001001 FIXED	80010001002 FIXED	80010001003 FIXED	80010001004 FIXED	80010001005 FIXED	80010001006 FIXED	80010001007 FIXED	80010001008 FIXED	
	Zip Ph	22638	22901	22901	22901	22638	22901	22903	22903	
	City State	Earlysville VA	Charlottesville VA	Keswick VA	Charlottesville VA	Scottsville VA	Charlottesville VA	arlysville VA	Earlysville VA	
	Street Address	3709 Galway Dr	1342 Stallone Ct	212 S Cirus Ave K	4117 NW 88th Ave Apt. 201	16305 NW 118th PI S	320 SE 15th PI C	15300 W Colonial Dr Apt. 1107 Earlysville	5340 5th Ave S	
	First Name	Jerry	Wilson	Wilson	Jerry	George	Sam	Luke	Jerry	
	SAC Last Name First Name	909993 Walton	909993 Walton	909993 Washington Wilson	909993 Westerby Jerry	909993 Westerby	909993 Jefferson	909993 Westerby	909993 Thompson Jerry	
		69 1440000001	30 1440000001	45 1440000001	50 1440000001	69 1440000001	65 1440000001	30 1440000001	30 1440000001	
	Rate S		30		20	69	92	30		
	Subscriber ID Rate SPIN	14464169	46449373	35908069	48620140	38022999	9134562	36988953	55614038	

EXHIBIT B – NOTICE TO AFFECTED HOUSEHOLDS OF ACP BRIDGE PAYMENTS MADE FORM

A below notice in substantially similar format as below or other format approved by the County must appear on your subscriber's billing statement each month the subsidy is provided. The notice shall reference by footnote or other means the Bridge credit/payment line on the bill.

Notice to appear on billing statement:

A credit was provided to your account because of the County of Albemarle's ACP Bridge Program payment to provide and maintain your broadband access. The Bridge payments are available for ______. After that date, you may be responsible for the full cost of your broadband service.

EXHIBIT C – FEDERAL FUNDING CONDITIONS REGARDING LOBBYING AND ACCESS TO RECORDS

A. Certification prohibiting use of federal funds for lobbying

1. The subrecipient shall require that the language of the attached certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

B. Access to Records

- 1. The subrecipient agrees to provide DHCD, the U.S. Department of the Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the subrecipient which are directly pertinent to this MOU for the purposes of making audits, examinations, excerpts, and transcriptions.
- 2. The subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

CERTIFICATION PROHIBITING THE USE OF FEDERAL FUNDS FOR LOBBYING

Undersigned hereby certifies that to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned entity, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned entity shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making

or entering into this transaction imposed by S fail to file the required certification shall be so not more than \$100,000 for each failure. ISP Name:	ection 1352, Title 31, U.S. Code. Any persons who ubject to a civil penalty of not less than \$10,000 and
Authorized Signature Printed Name and Title	
Date	
	-
	_

EXHIBIT D – ALBEMARLE COUNTY VENDOR REGISTRATION INFORMATION

Vendor Registration Requirements

In order to receive payments remitted in this program, providers are required to be registered vendors with Albemarle County.

Submit the required documents via email at <u>vendorsupport@albemarle.org</u> with the following: Subject: **Vendor Registration - << Add Vendor Name>>**

Required Documents:

- Albemarle County Substitute W-9 form The Substitute W9 form is required for registration to be active and must be completed in its entirety. (Standard W9 will be accepted but must be accompanied by the required Albemarle County Substitute W9 form.
- Provide VA SCC # by filling out the Albemarle County <u>VA SCC Form</u> You can find your SCC# at the <u>State Corporation Commission Information System</u>
- If you have provided goods/services to the County within the last 3 years, please contact Purchasing at 434-296-5854 or vendorsupport@albemarle.org before you begin the online vendor registration as you may already be in the registered.

EXHIBIT E – PROVIDER ACP DATA

Affordable Connectivity Program Data for Projections

Providers must share current Affordable Connectivity Program enrollment figures, along with three month growth figures and the number of ACP beneficiaries that still had broadband costs after the \$30/month benefit in the last month. This data will be used for program cost projections, only, and will be protected to the full extent of all applicable Virginia laws.

ACP Data Table for Providers				
Provider				
Current ACP Enrollment				
Growth per month across last three months				
Beneficiaries with monthly broadband costs > \$30				