

# Issue Analysis Form (rev. July 2013)



**Date:** May 12, 2020  
**Item:** Broadband Agreement #2 with PGECE  
**Lead Department(s):** County Administration  
**Contact Person(s):** Jeffrey Stoke, Deputy County Administrator

## Description and Current Status

After the success of the June 2017 public/private partnership agreement between the County, Prince George County Industrial Development Authority and PGECE, LLC, attached is a proposal to enter into a second agreement with similar parameters to provide fiber to the home to rural Prince George County. Staff is presenting an agreement that has been created to meet the needs of the second phase of the project. If approved by the Board on May 12, staff would present to the Prince George County Industrial Development Authority on May 20 for consideration.

## Government Path

- |  |   |  |
|--|---|--|
| Does this require IDA action?                  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Does this require BZA action?                  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does this require Planning Commission action?  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does this require Board of Supervisors action? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Does this require a public hearing?            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

If so, before what date?

Since the funding has already been attained through a taxable bond (fall closing 2019), the County path is to pass a resolution (May 12) to enter into the agreement and then transfer the \$1 million to the Prince George County Industrial Development Authority.

## Fiscal Impact Statement

The County issued a taxable bond for \$1 million. The financial closing has occurred and the funds have been placed in a County account specifically for this project.

## County Impact

Another 500 potential connection points in the County will have access to fiber to the home technology.

## Notes

This is the second agreement with PGECE, LLC. The first agreement was successfully completed in two years and won a total of five (5) state and national awards for a public/private partnership solving the rural internet dilemma.

Board of Supervisors  
County of Prince George, Virginia

Resolution

At the regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 12<sup>th</sup> day of May, 2020:

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Present:

Donald R. Hunter, Chairman  
Alan R. Carmichael, Vice-Chairman  
Floyd M. Brown, Jr.  
Marlene J. Waymack  
T. J. Webb

Vote:

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A-9

On motion of Mr. \_\_\_\_\_, seconded by Mr. \_\_\_\_\_, which carried a vote the following Resolution was adopted:

RESOLUTION; AUTHORITY TO EXECUTE A BROADBAND PERFORMANCE AGREEMENT BETWEEN PGECE, PRINCE GEORGE COUNTY IDA AND THE COUNTY OF PRINCE GEORGE – PHASE II

NOW, THEREFORE, BE IT RESOLVED That the Board of Supervisors of the County of Prince George this 12<sup>th</sup> day of May, 2020, does hereby authorize the County Administrator to execute a broadband performance agreement between PGECE, Prince George County IDA and the County of Prince George for expansion of fiber broadband in the County – Phase II.

A Copy Teste:

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Percy C. Ashcraft  
County Administrator

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE COUNTY OF PRINCE GEORGE  
FIBER TO THE HOME  
BROADBAND EXPANSION GRANT 2020

**PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and among **THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the “County”) a political subdivision of the Commonwealth of Virginia, **PGEC ENTERPRISES, LLC** (“PGECE”) a Virginia limited liability company authorized to transact business in the Commonwealth of Virginia, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE GEORGE, VIRGINIA** (the “Authority”), a political subdivision of the Commonwealth of Virginia,

**WITNESSETH:**

WHEREAS sixty-one percent of all businesses in Prince George County are home-based businesses; and

WHEREAS the extension of broadband provides enhanced educational opportunities and furthers workforce development which supports economic development in Prince George County; and

WHEREAS the availability of secure, reliable, competitive and sustainable infrastructure is essential to meet future broadband needs; and

WHEREAS small and medium size business enterprises with greater high-speed internet use grow faster than those with less high-speed internet use; and

WHEREAS the internet is a powerful catalyst for job creation; and

WHEREAS the internet drives economic modernization; and

WHEREAS the County and Authority wish to make funds available for the purpose of inducing PGECE to expand access through “Fiber To The Home” broadband at an accelerated pace, after making a significant Capital Investment through a Fiber To The Home Broadband Expansion Grant (“Grant”); and

WHEREAS the County is willing to provide funds to the Authority with the expectation that the Authority will provide the funds to PGECE, provided that PGECE has agreed to meet certain performance targets relating to construction of infrastructure, and expanding access to, Fiber To The Home broadband; and

WHEREAS the County, the Authority and PGECE desire to set forth their understanding and agreement as to the payout of the Grant, the use of the proceeds of the Grant, the obligations

of PGECE regarding Capital Investment and the potential for recapture or “claw back” upon default; and

WHEREAS, it is anticipated that the construction, equipping, operation and installation of Phase II of the Fiber To The Home broadband project will require a capital expenditure of One Million Dollars (\$1,000,000.00) by PGECE; and

WHEREAS the stimulation of additional tax revenue to the County and economic activity in the County to be generated by the Capital Investment constitutes a valid public purpose for the expenditure of public funds and is the primary purpose of the Grant by the Authority:

NOW, THEREFORE in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### **Section 1 - Definitions**

For the purposes of this Agreement, the following terms shall have the following definitions:

“**Broadband Service**” – a minimum broadband speed of twenty-five (25) Mbps down and three (3) Mbps up as defined by the FCC.

“**Broadband Availability**” - The availability of a minimum of five hundred (500) new connection points allowing access to Fiber To The Home broadband for potential subscriber structures that are within one thousand (1,000) feet of a VDOT road where an existing pole or other access point is located.

“**Consistent**” - ability of service to maintain promised speeds at periods of peak use.

“**Capital Investment**” - a capital expenditure by or on behalf of PGECE for the installation of a Fiber Backbone and Fiber To The Home broadband infrastructure.

“**Event of Force Majeure**” – any circumstances beyond a party’s reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages, shortages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power, telecommunications or transportation.

“**Fiber Backbone**” - the principal data routes between large, strategically interconnected computer networks on the defined route and core routers on the Internet.

“**Fiber To The Home**” – installation of fiber optic wire from a central point directly to a structure to provide high-speed internet access.

“**Phase II**” - the successful completion of the necessary infrastructure to serve a minimum of five hundred (500) new potential subscribers located within one thousand feet of a roadway by July 1, 2024.

“**Reliable**” - ability to maintain service in the case of storms or system breakdowns consistent with industry standards for a rural fiber optic network.

“**Roadway**” – a road that is part of the Virginia Department of Transportation (VDOT) secondary system, which is immediately adjacent to a fiber network access point owned by Prince George Electric Cooperative.

### **Section 2 - Broadband Installation Plan.**

Within sixty (60) days of the execution of this Agreement, PGECE shall provide to the Authority a broadband installation plan for installation of the Fiber Backbone. The broadband installation plan shall include, but not be limited to, the locations where PGECE proposes to install broadband infrastructure, the types of materials proposed to be used, and the capacity and lifespan of the materials.

### **Section 3 – Broadband Subscriptions**

As of July 1, 2024 PGECE shall have made available consistent and reliable Broadband Service to a minimum number of five hundred (500) new potential subscribers after the effective date of the Agreement.

PGECE shall provide reasonable documentation to the County and the Authority annually, beginning July 1, 2021 and continuing through July 1, 2024, verifying the number of new potential subscribers to Broadband Service, to whom service has been made available. In addition, the number of new connections within the County shall be supplied for informational purposes.

After the effective date of this Agreement, in the event PGECE has not made available Broadband Service to a minimum of five hundred (500) new potential subscribers on or before July 1, 2024, PGECE shall be in default under the terms of this Agreement as defined in Section 8 – Default herein.

### **Section 4 - No Degrading of Service**

PGECE shall ensure that there is no degrading of Broadband Service, as defined in this Agreement, to customers during the term of this Agreement.

### **Section 5 - Continuation of Service/New Customers**

PGECE agrees that as long as a reasonable demand exists for Broadband Service, PGECE will continue to provide Broadband Service to existing and new subscribers, who reside within one thousand (1,000) feet of a roadway as defined herein.

## **Section 6 - Disbursement of Grant**

(a) Notwithstanding anything in this Agreement to the contrary, the Authority will not have any obligation to disburse any portion of the Grant under this Agreement until and unless this Agreement is approved by the County's Board of Supervisors and the Authority has received such funds from the County.

(b) Subject to the delivery of the Grant by the County to the Authority, within thirty (30) days of its receipt of the Grant funds, the Authority will disburse the Grant funds to PGECE on condition that PGECE has complied with Section 2 of this Agreement.

## **Section 7 - Community Service Commitments**

Upon request, PGECE, at its expense, will construct and make available within a reasonable timeframe, fiber optic cable connections to all public structures and facilities owned or operated by the County that are adjacent to the Phase II construction route within one thousand (1,000) feet of a VDOT road where an existing pole or access point is located., including, but not limited to schools, libraries, parks and recreation facilities, fire stations, and wireless communications towers. Internet service charges for these facilities shall be at the commercial rate.

## **Section 8 - Default**

After the effective date of this Agreement, if PGECE fails to make available consistent and reliable Broadband Service to five hundred (500) new potential subscribers by July 1, 2024 as set forth in Section 3 – Broadband Subscriptions of this Agreement, then PGECE shall be in default and shall refund to the Authority Two Thousand Dollars (\$2,000.00) for each potential subscriber below the required five hundred (500) new potential subscribers for whom such service has not been made available.

## **Section 9 - Event of Force Majeure**

PGECE shall not be considered in Default under Section 8 – Default, of this Agreement if prevented from meeting the new subscription requirements of this Agreement by July 1, 2024 on account of an Event of Force Majeure as defined herein. If such occurs, PGECE shall be allowed a reasonable extension of time from the date of the occurrence of such Event, to allow PGECE to meet the required subscription objective.

## **Section 10 – Sale or Assignment of PGECE**

In the event of a sale or assignment of PGEC Enterprises, LLC to any person, firm or corporation prior to PGECE's fulfillment of its obligations under the terms of this Agreement, such sale or assignment shall be made expressly subject to all terms of this Agreement.

## **Section 11 - Discharge by PGECE of Contract Obligations**

All parties hereto understand and agree that as of the date PGECE has installed and made available, consistent and reliable Broadband Service to a minimum of five hundred (500) new potential subscribers, after the effective date of this Agreement and has provided reasonable documentation to the County and to the Authority verifying same, PGECE shall have satisfied in full all of the requirements of it under the terms of this Agreement and shall be discharged from any further obligations to the County and to the Authority hereunder.

## **Section 12 - Miscellaneous**

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement among the parties and may not be amended or modified, except in writing, signed by each of the parties hereto. Other than this Agreement, PGECE shall not be required to enter into any additional agreements or submit any additional application letters in order to receive the Grant.

(b) *Governing Law; Venue.* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions.

(c) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability.* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

### Section 13 - Notices

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to PGECE, to:

Cary J. Logan, Jr., CEO  
PGEC Enterprises, LLC  
7103 General Mahone Hwy  
Waverly, Virginia 23890

with copy to:

F. Lewis Wyche, Jr., Esquire  
F. Lewis Wyche, Jr., P.C.  
6405 Courthouse Road  
Post Office Box 160  
Prince George, Virginia 23875

and:

Garland Slaughter Carr  
Williams Mullen  
200 South 10<sup>th</sup> Street, Suite 1600  
Post Office Box 1320 (23218)  
Richmond, Virginia 23219

if to the County, to:

Percy C. Ashcraft, County Administrator  
County of Prince George  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:

Dan Whitten, Esquire  
Prince George County Attorney  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

if to the Authority, to:

Jeff Stoke, Assistant Secretary  
Industrial Development Authority of the  
County of Prince George, Virginia  
6602 Courts Drive, 3<sup>rd</sup> Floor  
Post Office Box 68  
Prince George, Virginia 23875-0068

with copy to:

David L. Richardson, Esquire  
McGuire Woods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3916



**IN WITNESS WHEREOF**, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PGEC ENTERPRISES, LLC, a Virginia limited liability company**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF PRINCE GEORGE, VIRGINIA, a political subdivision of the Commonwealth of Virginia**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# RURALBAND PG County Phase II

Casey Logan, P.E.

CEO

4/28/2020

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# The Underserved

(based off FCC 2019 study for 25/3 MBs)

- In America, **37 million people** lack access to high-speed internet service
- In Virginia, ~703,000 people lack access to the minimum defined Broadband standards
- 17% of residents (~6,400) in Prince George County, lack access to broadband
- Down from 20% based off 2016 study

# Current Options

- Wireless has optimal speeds between 5 Mbps and 12 Mbps
  - NetFlix movie requires 5 Mbps for streaming
  - Each user need own plan
  - Signal strength
  - Speed issues with preloading video, aka “Buffering”
- Wireless has data caps
  - Avg NetFlix Movie uses 3GB per hour
  - Data overage rates could be as high as \$20/GB

# Phase I Progress

- Connected **780** homes in PG County
- FTTH is currently available to over **1,800** homes and businesses in PG County
- Made FTTH available to:
  - Central Wellness Center
  - PG Emergency Crew Building
  - Burrowsville FD
  - New FD on Moody Rd
  - Burrowsville Library

# Phase I Progress

- Submitted application to serve all PG County Schools with a secure WAN as well as internet connectivity
- Hosted Congressional Roundtable with PG County at Central Wellness Center
- Deployed Fiber in the Industrial Park
- Applied for VATI funding with PG County



# Phase I Progress

- COVID-19 Hotspots
  - Central Wellness Center
  - South Elementary
  - JEJ Moore Middle School
  - NB Junior Highschool

## FIBER TO THE HOME Tiered Service Plans

25 Mbps  
\$49  
PER MONTH

Entry Level internet service for everyday use. Light streaming, downloading shows/music/photos.  
Up to 25 Mbps download/ 25 Mbps upload  
Home WiFi access included.  
Unlimited data use.

100 Mbps  
\$74  
PER MONTH

Basic internet service for single family use. Stream on multiple devices, download shows quickly, and download large files.  
Up to 100 Mbps download/100 Mbps upload  
Home WiFi access included.  
Unlimited data use.

250 Mbps  
\$99  
PER MONTH

Gamer internet service for multi-device HD streaming, work from home, download movies, upload and transfer data, and online gaming.  
Up to 250 Mbps download/ 250 Mbps upload  
Individual IP Address included.  
Home WiFi access included.  
Unlimited data use.

1 Gbps  
\$169  
PER MONTH

Professional internet service. Work from home, stream on multiple devices, download shows quickly, and download large files.  
Up to 1 Gbps download/1 Gbps upload  
Individual IP Address included.  
Home WiFi access included.  
Unlimited data use.

Phone  
\$11

Unlimited local and long distance domestic (US, Canada) calling.  
Applicable local, state, and federal taxes may apply.



## Proposed Phase II

- RURALBAND will make available FTTH service to over 500 homes located in Prince George County.
- The areas in which will be passed:
  - the intersection of Hines Rd and Route 10 following Route 10 east to a point one tenth of a mile west of Morning Star Rd, this will make FTTH available to approximately **100** county residents and **2** businesses

## Proposed Phase II

- From the Surry/PG County line to a point one mile past the intersection of Rt 10 and Chippokes Road as well as along Chippokes Road, this will make FTTH available to approximately 55 County Residents.
- Areas along Ellis Road, Lone Oak Mill Road, Lebanon Road, Fox Hollow Rd and Williams Lane, this will make FTTH available to approximately 42 county residents.

## Proposed Phase II

- Areas along Rowanty Road, Johns Road, Gosee Road, Horseshoe Road, Crestview Lane and Turkey Ridge Lane, this will make FTTH available to approximately **130** county residents.
- Areas from Rt 35 and Templeton Road to the intersection of Lansing Road and Halifax Road, this will make FTTH available to approximately **134** county residents

## Proposed Phase II

- Areas along Rt 35 from Templeton Road to the Sussex county line, this will make FTTH available to approximately **40** county residents
- Areas from Rt 35 and Templeton road to The KOA Campground, this will make FTTH available to approximately **14** county residents and **3** Businesses

# QUESTIONS?

Contact Information:

Casey Logan, P.E.

[clogan@PGEC.coop](mailto:clogan@PGEC.coop)

804-834-5171