

ECONOMIC DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, FAUQUIER COUNTY BROADBAND AUTHORITY AND  
DATA STREAM MOBILE TECHNOLOGIES, INC. BROADBAND EXPANSION  
MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (MOU) made and entered this \_\_\_\_ day of \_\_\_\_\_, 2019, by and among FAUQUIER COUNTY (the “County”), THE FAUQUIER COUNTY BROADBAND AUTHORITY (the “FCBA”) a political subdivision of the Commonwealth of Virginia, DATA STREAM MOBILE TECHNOLOGIES, INC. (“DATA STREAM”) a corporation authorized to transact business in the Commonwealth of Virginia, and the ECONOMIC DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA (the “EDA”), a political subdivision of the Commonwealth of Virginia,

WITNESSETH:

WHEREAS many businesses in Fauquier County are home based and many residents telecommute or desire to do so; and

WHEREAS the extension of broadband provides enhanced educational opportunities and furthers workforce development which supports economic development in Fauquier 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 the EDA wish to make funds available for the purpose of purchasing transmission equipment and other necessary assets which will be used by DATA STREAM to provide and expand access to Broadband using “Wireless Transmission” by installing said equipment on approved towers, County owned assets and Fauquier Water and Sewer Authority owned assets located in areas under-served and/or unserved by broadband; and

WHEREAS the Path Foundation, from time to time, may award Grants to the County with the expectation that the County will provide such funds to the EDA and the EDA will use said funds to purchase necessary wireless transmission equipment to be used by DATA STREAM and, provided that DATA STREAM has agreed to meet certain performance targets relating to use of any FCBA owned equipment, pay an agreed fee for use of said equipment and expanding access to, Wireless broadband service; and

WHEREAS the County, the EDA, FCBA and DATA STREAM desire to set forth their understanding and agreement as to the use of any funds resulting from the Grant, the use of the proceeds of the Grant, the obligations of DATA STREAM regarding Capital Investment and the payment to FCBA of proceeds from subscriber revenue; and

WHEREAS, it is anticipated that the, equipping, and installation of the initial phase of the Wireless broadband project will require a capital expenditure of approximately \$1,700,000.00; and

WHEREAS, Path may provide a Grant to the County to be disbursed by the EDA and directed to FCBA in order to purchase equipment for DATA STREAM's required transmission equipment; 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 EDA:

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

**Section 1 - Broadband installation plan.**

In exchange for the incentives outlined herein, DATA STREAM has agreed to deploy broadband service at 7 sites identified below, provided that all necessary approvals can be obtained and leases satisfactory to DATA STREAM and the County can be negotiated. Alternative sites may be substituted for the identified sites by mutual written agreement between the County and DATA STREAM. The County further agrees to fund an additional 8 sites under the terms set forth herein at locations mutually acceptable to the County and DATA STREAM.

*Identified initial tower sites:*

- a. Calverton Cell Tower
- b. Catlett WSA Water Tower
- c. Warrenton Water Tower
- d. Bealeton Water Tower or Luck Stone, Bealeton

- e. Lovers Lane Cell Tower
- f. Rt. 17 American Tower tower (Cecil Campbell property)
- g. Bear Wallow Road Cell Tower (Crown Castle)

**Section 2 – Addition of towers subject to prior tower incentives**

The Casanova, and Goldvein sites may, at the County’s discretion, be added to this agreement after January 1, 2020, provided that the following conditions are met:

- a. DATA STREAM has obtained and provided to County a fully executed lease between DATA STREAM and the site owner/operator.
- b. DATA STREAM has fully reimbursed County for any and all incentives previously paid to DATA STREAM by County or EDA.
- c. DATA STREAM has clear legal title to all equipment installed on the site and grants to County a first-priority lien securing all equipment installed on the site.
- d. 7 tower sites participating in this MOU are operational and have at least 10 subscribers per site.

**Section 3 - Disbursement of Grant**

The EDA hereby authorizes the County to act as the fiscal agent for the purpose of disbursement and receipt of funds associated with this MOU. The County, acting as fiscal agent for the EDA shall disburse to DATA STREAM \$235,000 for each site referred to herein on the following schedule:

- a. The amount paid for transmission equipment, to be paid at time of purchase upon execution of all lien documentation and provision of satisfactory proof of payment and ownership.

- b. Fifty percent of the balance remaining after reimbursement for the cost of the transmission equipment shall be paid upon installation of the transmission equipment.
- c. The remaining balance shall be paid when site is operational and able to accept subscribers.
- d. Expenses for extraordinary modifications requiring structural analysis or engineering necessary to construct a site, shall require County approval. Any such costs shall be agreed upon by both parties in writing and shall be in addition to the \$235,000.00 distribution noted in Section 3. For example, if transmission equipment is to be mounted on a water tower and the tower is not already capable of accepting required equipment, yet the County deems the site necessary, after written agreement by both parties, these additional modification and engineering costs would be paid for by the county above and beyond the \$235,000.00 payment referred to in Section 3.

#### **Section 4. Rental Reimbursement**

Upon execution of this agreement the County, as fiscal agent for the EDA, shall further reimburse DATA STREAM for its actual rent for each operational site referred to in Section 1 above, so long as DATA STREAM continues to provide services and support to subscribers from the site for which the reimbursement is provided. Reimbursements shall be made monthly. DATA STREAM shall also be entitled to rental reimbursement for those sites identified in Section 2 above provided that they are added to this MOU in accordance with the terms of Section 2. DATA STREAM shall obtain written approval from County of

any lease or renewal thereof as a condition of the rent reimbursement provided for herein, and County shall have no obligation to reimburse rent for any lease it has not approved.

**Section 5-Reimbursement for Backhaul Costs**

County as fiscal agent for EDA shall provide DATA STREAM \$750 per month for each operational tower covered by this MOU to defray the cost of backhaul/fiber expense for so long as the tower site for which the reimbursement is made is providing service and support to subscribers. Reimbursements shall be made monthly. This reimbursement shall also include the Casanova and Goldvein sites referred to in Section 2 above once all conditions outlined in Section 2 above have been met

**Section 6-Reimbursement of Administrative Costs**

County as fiscal agent for EDA shall provide \$10,000 per month through December 31 of 2020 for personnel solely dedicated to Fauquier County. DATA STREAM shall provide documentation to demonstrate that such staff were dedicated to the County and County shall have no obligation to reimburse during any month in which dedicated staff are not present and documentation is not provided. Reimbursements shall be made monthly.

**Section 7-Office Space**

County will work to locate office space for DATA STREAM.

**Section 8-Rates and Fees**

DATA STREAM shall provide broadband service at the rates and fees identified in Appendix A.

**Section 9-Subscriber Fees**

DATA STREAM shall pay to County as fiscal agent for EDA 20% (twenty percent) of all subscriber fees collected from customers receiving service from any site which is

subject to this MOU. DATA STREAM will provide all necessary supporting documentation upon request.

### **Section 10 – Termination for Cause**

County may terminate this MOU in the event that (1) DATA STREAM fails to make operational at least 4 of the 7 sites, or those site alternatives mutually agreed to as substitutes referred to in Section 1, by December 31, 2019, and the remaining 3 by March 31, 2020, provided that all leases have been signed, Notice To Proceed obtained, permits, Structural analysis, and any engineering modifications have been approved. Further, because external factors such as weather delays may hinder the start or construction of each site, the County shall assign a contact person, or project coordinator to advise of any such delays in the project which may occur from time to time. (2) DATA STREAM fails to provide the services and support provided for herein at the prices agreed to herein. (3) DATA STREAM fails to maintain FCC licensing or comply with any other material provision of federal or state law or local ordinance; or (4) DATA STREAM is in violation of the terms of any tower or site lease it has entered into within the County in order to provide broadband service in the County. (5) DATA STREAM fails to pay to County the County's portion of subscriber fees as provided for herein within 30 days of receiving such fees. In the event of Termination for Cause by County or termination by DATA STREAM because it is unable to operate profitably as provided for herein, all equipment purchased by FCBA for use by DATA STREAM in order to provide Wireless Transmission shall be transferred to County or other designated Wireless Internet Service Provider. DATA STREAM shall also assign any lease covered by this MOU to County upon County request. DATA STREAM shall refund to the FCBA, and FCBA shall return to County any portion of the funds provided

pursuant to this MOU not used to purchase equipment necessary to provide Wireless Transmission under the terms of this MOU. DATA STREAM may terminate the contract in the event that the grant funding provided by this MOU is not provided.

**Section 11 – Sale or Assignment by DATA STREAM**

DATA STREAM shall not attempt to sell or assign the assets purchased to comply with this MOU without the written consent of County. In the event of a Termination for Cause by County or DATA STREAM, DATA STREAM shall assign all subscribers, contracts and associated equipment to County or County’s designee.

**Section 12 - Miscellaneous**

- (a) Entire Agreement; Amendments: This MOU constitutes the entire agreement among the parties and may not be amended or modified, except in writing, signed by each of the parties. This agreement supersedes all prior incentive agreements between Fauquier County, Data Stream the EDA, and the FCBA, except that the Goldvein incentive agreement shall remain in force and effect unless and until the County, in its discretion, adds the Goldvein site to this agreement..
- (b) Governing Law; Venue: This MOU 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 MOU 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) Attorneys Fees: In the event of a dispute arising under this MOU, each party shall bear its own attorneys fees.



(d) Severability: If any provision of this MOU 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.

(f) County agrees to assume responsibility for filing of any final report required of EDA by the by Path Foundation.

### **Section 13 - Notices**

Any notices required or permitted under this MOU 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 County:

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

If to DATA STREAM, to:

Sean Lee  
President  
Data Stream Mobile Technologies, Inc.  
1535 S. Perimeter Road #26B  
Fort Lauderdale, Florida 33309

If to Fauquier County Broadband Authority

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

If to Fauquier County Economic Development Authority

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

IN WITNESS WHEREOF, the parties hereto have executed this Performance MOU as of the date first written above:

FAUQUIER COUNTY BOARD OF SUPERVISORS, a political subdivision of the Commonwealth of Virginia

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FAUQUIER COUNTY BROADBAND AUTHORITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DATA STREAM MOBILE TECHNOLOGIES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FAUQUIER COUNTY ECONOMIC DEVELOPMENT AUTHORITY, a political  
subdivision of the Commonwealth of Virginia:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX A

## Appendix A

<b>Data Plans</b>	
<b>MBPS</b>	<b>Cost/Month</b>
10	\$ 29.00
15	\$ 49.00
25	\$ 69.00
40	\$ 79.00
50	\$ 89.00
<b>No Monthly Data Caps</b>	

<b>BUSINESS Data Plan</b>	
<b>MBPS</b>	<b>Cost/Month</b>
Mega Link 50	\$159.00
Super Link 35	\$129.00
Extra Link	\$99.00
Select 20	\$89.00
Ultimate 15	\$79.00
<b>No Monthly Data Caps</b>	