

## WAKE COUNTY

### BUSINESS DEVELOPMENT GRANT AGREEMENT

#### Tier Two Business Development Grant

This Business Development Grant Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between Bandwidth, Inc., a business corporation incorporated in the state of North Carolina and authorized to transact business in the State of North Carolina (the “Company”) and WAKE COUNTY, North Carolina, a body politic and corporate and political subdivision of the State of North Carolina (the “County”). The County and Company may from time to time be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

#### WITNESSETH:

WHEREAS, the Local Development Act of 1925, as amended, (Article 1 of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the county or for other purposes which the county’s governing body finds, in its discretion, will increase the population, taxable property base and business prospects of the county; and

WHEREAS, N.C. Gen. Stat. § 158-7.1(b) lists specific economic development activities which a county may undertake, which list is not exclusive; and

WHEREAS, in Summer 2019, the Company began discussions with the State of North Carolina (the “State”), and thereafter with the County, to explore the possibility of expanding the Company’s business operations in the County to include a regional operations facility located in Wake County which will serve as a physical location for management and operations (the “Project”); and

WHEREAS, on September 16, 2019, the Board of Commissioners of the County met in closed session regarding the Company and its location possibilities and determined that (i) the Project would tend to increase the population, taxable property base and business prospects of the County, (ii) an incentive grant would encourage the Company to locate and provide jobs in the County, and (iii) it would be in the public interest to provide assistance as authorized by N.C. Gen. Stat. § 158-7.1 and approved the negotiation of a business development grant agreement for the Project; and

WHEREAS, the Company has decided to locate the Project within the County; and

WHEREAS, the Company has decided to hire no fewer than 1,165 new employees at average wages above 120% of the County average by December 31, 2027, and invest or cause to be invested no less than \$106,426,500 for acquisitions of tangible personal property and improvements to real estate related to the Project no later than **December 31, 2024**.

WHEREAS, the State of North Carolina (the “State”) has awarded the Company a Job Development and Investment Grant (“JDIG”); and

WHEREAS, N.C. Gen. Stat. § 153A-449 authorizes the County to contract with and appropriate money to any person, association, or company in order to carry out the public purpose in which the County is authorized by law to engage; and

WHEREAS, the Board of Commissioners of the County found that the consideration that the County will receive, based on prospective tax revenues to be generated over an eight-year period due to investment in the Project, will exceed the amount of the grant offered in this Agreement; and

WHEREAS, the Board of Commissioners of the County, following a public hearing on **DATE** approved the execution of a business development grant to the Company for the Project on the terms of this Agreement.

NOW, THEREFORE, in consideration of the reasons recited above, and the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Real Estate Improvements and Machinery, Equipment, Furniture and Fixture Acquisition. The Company shall purchase and/or make or cause to be made improvements at the site chosen for the Project in Wake County, North Carolina, (the “Property”) and shall produce documentation for improvements which have been made to the Property and receipts showing proof of acquisitions of machinery, equipment, furniture and fixtures by the Company for use at the site of the Project. The Property shall be improved in accordance with the following:

(a) All construction undertaken, or caused to be undertaken, shall be or has been designed, constructed, and completed in accordance with applicable standards established by federal, State, local, and County regulations and laws; and

(b) The County shall not be responsible for any aspect of the design or construction of the premises.

2. Performance by the Company. This Agreement and the expenditure of County funds under this Agreement is expressly contingent upon the Company achieving the performance requirements within the time periods set forth below:

(a) Investment in Real Estate Improvements and Tangible Personal Property. The Company shall make, or cause to be made, investments for improvements to real estate and for acquisitions of tangible personal property (collectively, the “Investments”) in the County in connection with the Project which shall total at least \$106,426,500 on or before December 31, 2024.

(b) Employment. The Company shall, by December 31, 2027, employ in Wake County a minimum of 1,165 new full-time employees with an average annual wage of no less than \$96,832, which the Parties agree is at least 120% of the 2019 average annual wage for the County as determined by the North Carolina Department of Commerce’s Finance Center. Employment of the 1,165 new employees shall align with JDIG’s annual incremental employment requirements for each individual Grant Year for which the Company requests a payment, as described in Paragraph 4(b), such that Company shall be deemed to have met Wake County’s employment requirement for the Grant Year if JDIG’s employment requirement is met in the Grant Year. The

Company shall maintain employment of the new employees for all years of the Grant Period beyond 2027. Telecommuting positions for employees residing outside of Wake County shall not be counted towards the employment requirement set forth in this section.

The Parties agree that for purposes of calculating the “annual wage” of an employee of the Company “wage” shall have the meaning it has for purposes of the North Carolina Department of Commerce’s Finance Center’s calculation of “average annual wage” and that such meaning is the gross wage subject to reporting to the Division of Employment Security of the North Carolina Department of Commerce.

The Parties agree that the term “new employee” as used in this Agreement means a full-time employee who represents a net increase in the aggregate number of employees employed by the Company in connection with the Project. A full-time employee is a person who is employed by the Company for at least thirty-five (35) hours per week and whose wages are subject to withholding. The Company agrees to include residents of the County in recruiting for such job positions.

(c) Use. The Investments shall be made to accommodate an office facility that allows the Company to open a new technology and information hub focusing on cutting edge technology areas.

(d) Payment of Taxes by Company. The County must receive confirmation from the County tax assessor’s office that the Company has paid, in full, the annual ad valorem taxes based on the increased value resulting from Investments in the Project.

3. Documentation from the Company. In connection with each request for reimbursement, the Company shall deliver to the County Manager a performance letter in substantially the form of the attached Exhibit A (the “Performance Letter”), certifying that (1) the Company has taken the actions described in Section 2(a) and (b) of this Agreement, (2) as of the date of the Performance Letter, the Investments for which the request is made have been completed, and (3) the Company qualifies for Jobs Development Incentive Grant program monies for such Grant Year. If the Company does not meet all of the conditions required to be certified in the Performance Letter, the Company shall not qualify for a grant payment from Wake County for that calendar year. Upon the request of the County Manager, the Company shall present to the County such evidence as may be reasonably requested to confirm the facts in the Performance Letter. To the full extent allowed by law, such requested evidence shall be kept confidential by the County and shall remain the property of the Company to be returned after the County’s review.

It is agreed that the County, through its auditors, shall have the right upon reasonable notice and during normal business hours, to inspect and audit the Company’s records pertaining to Investments made with respect to the Project. All records revealed by the Company to the County’s auditors shall remain confidential and may be used by the County only for audit purposes to the full extent allowed by law.

The Company acknowledges that it has been informed by the County that the County is required by law, upon request, to disclose “Public Records” as that term is defined by N.C. Gen. Stat. §132-1. Notwithstanding the immediately preceding sentence, the County acknowledges that

some or all of the information made available by the Company to the County pursuant to this Agreement may be exempt from disclosure as a “Public Record” pursuant to N.C. Gen. Stat. §§ 132-1.2 and/or 132-6(d), and that all such information may be proprietary. Some or all of the information made available to the County pursuant to this Agreement may be designated by the Company as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by state law, will hold such designated information as confidential. The County shall, if it receives a request for disclosure of any such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a Public Record, and the County shall refrain from making any such disclosures unless or until it (i) receives the Company’s written permission to do so; or (ii) is compelled to do so by the final order of a court of competent jurisdiction. The Company shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Company acknowledges that the County has met the disclosure requirements set forth in N.C. Gen. Stat. § 132-1.11(b).

#### 4. Payment of Grant.

(a) Upon the terms and conditions herein, the County agrees to partially reimburse the Company for the Investments that the Company makes or causes to be made in the Project in order to provide an incentive to the Company to make or cause such Investments and create such jobs within the County. A cash grant will be paid to the Company in an amount equal to a percentage of the additional County property tax revenue attributable to the assessed value of the Investments, as determined by the County tax assessor as more specifically set forth in Section 4(c). Tax-exempt investments shall not count towards Investments for the purpose of this Section.

(b) Once the Company has met the performance requirements set forth in Section 2 of this Agreement for the Grant Year in question and the Company has submitted the required documentation under Section 3, the Company shall be eligible to receive the grant payments described in this Agreement. The grant payments shall begin in the year after the taxable property base of the Investments attributable to the Project as determined by the County Revenue Director first exceeds \$106,426,500 provided that JDIG requirements for that year are also met. For clarity, the first payment is expected to be based on the Company’s performance for calendar year 2024, assuming the requirements are met, but could be earlier depending on the timing of the applicable Investments. The exact date of payments during each Grant Year shall be at the discretion of the County but in any event shall be made during the period from January 1st through March 31<sup>st</sup> that immediately follow the County’s receipt of the Company’s Performance Letter.

For example, if the Company’s Investment prior to December 31, 2024 is assessed by the County in 2025 at a value in excess of \$106,426,500, the Company has paid or caused to be paid the *ad valorem* tax on Investment by January 6, 2026, and the Company has met the 2024 JDIG employment requirements, as set forth in Paragraph 2(b), the Company’s first Grant Year will be 2024. The Company’s Performance Letter for that year will be due by June 30, 2025 (as described below), and the County will issue payment to the Company no later than March 31, 2026.

(c) The amount of the grant payments to be paid by the County to the Company shall be fifty percent (50%) of the additional County property tax revenue attributable to the assessed value

of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager. The grant payments shall be paid for each Grant Year for a period of eight (8) consecutive years (the "Grant Period"). In no event shall the grant amount paid by the County for any Grant Year exceed the amount of ad valorem taxes actually paid in the preceding year for Investments in connection with the Project. The Parties agree that any payment of ad valorem tax made before January 6 following the due date of the tax shall be deemed to have been paid in the year the tax was due.

(d) Grant payments are to be made directly to the Company and mailed directly to \_\_\_\_\_, or at such other address as shall be provided by the Company to the County in writing.

(e) As a material condition of receiving the Grant, the Company must submit the Performance Letter required by Section 3 by June 30 of the year following the calendar year for which the Grant is requested. **Failure to submit the Performance Letter by June 30 shall disqualify the Company from receiving the Grant for the previous calendar year, and the County shall have no obligation to the Company for any reimbursement based on performance or payment in the previous calendar year.** The June 30 deadline may be extended for cause only with the advance consent of the Board of Commissioners.

(f) In the event that all Grant requirements outlined in Section 2 of this Agreement are not met by Company for any year of the Grant Period, or the required documentation outlined in Section 3 is not submitted by Company for the year in time to allow payment by March 31 of the following year, then the County shall have no responsibility for all or any part of Grant Funding for the non-qualifying Grant Year, and Company or its Affiliates shall have no interest in or entitlement to Grant Funding for that Grant Year. No cure periods shall be allowed for the purpose of qualification in any Grant Year.

5. State and Local Incentives. This Agreement is expressly contingent on the Company's ability to qualify for funds from the State of North Carolina's part of the JDIG program. Company shall not qualify for County Grant payments in any years of the Grant Period in the event that in such year the Company does not qualify for the JDIG program monies. This contingency only applies in those years when funds are available to the Company from the JDIG program.

6. Amendments to Agreement. This Agreement may be modified or amended only with the mutual written consent of the Parties.

7. Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their heirs and successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

8. Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no other representations, inducements, or other provisions other than those expressed in this writing. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. All changes, additions, or deletions to this Agreement must be in writing and signed by all Parties.

It is specifically understood and agreed that the Company will be subject to applicable County ordinances, policies, procedures, and other regulations.

9. Laws of North Carolina to Control This Agreement. The Parties agree that this Agreement is to be controlled by the laws of the State of North Carolina.

10. Jurisdiction and Venue. Any controversy or claim arising out of this Agreement shall be settled by an action initiated in the appropriate division of the General Court of Justice in Wake County, North Carolina.

11. Termination. Except as otherwise provided herein, this Agreement shall terminate on December 31st of the last year in which the County makes grant payments to the Company under this Agreement.

12. Assignment. With the consent of the County which shall not be unreasonably withheld, The Company may assign all or part of its rights, benefits, and/or obligations under this Agreement to one or more Affiliates designated by the Company; provided that no such assignments shall relieve the Company of its obligations or Company specific performance requirements under this Agreement which are a condition of County Grant Funding. For the purpose of this section, an Affiliate means the Company or any other entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ATTEST:

WAKE COUNTY

\_\_\_\_\_  
Denise Hogan  
County Clerk

By: \_\_\_\_\_  
Gregory Ford  
Chair, Board of Commissions

Approved as to Form:

\_\_\_\_\_  
Scott Warren  
Wake County Attorney

Bandwidth Inc.

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

**Exhibit A**

[Bandwidth Letterhead]

[date]

County Manager  
Wake County  
P. O. Box 550  
Raleigh, NC 27602

**Business Development Grant Agreement dated [ ],: Performance Letter**

Dear Sir/Madam:

Section 3 of the Business Development Grant Agreement between Wake County and Bandwidth, Inc. dated [ ], 2020 (the “Agreement”) requires the Company to deliver a Performance Letter to the County Manager in connection with each request for reimbursement for the Investments that the Company makes or causes to be made in the Project described in the Agreement.

(Terms used in this letter have the meanings that such terms have in the Agreement.) The Company hereby certifies that:

1. The Company made or caused to be made investments for improvements to real estate and for acquisitions of tangible personal property in the County in connection with the Project totaling at least \$106,426,500 on or before December 31, 2024 in accordance with Section 2(a) of the Agreement;
2. The Company has paid in full its ad valorem taxes to the County for tax year \_\_\_\_\_;
3. As of December 31, [20\_\_], the Company employed [\_\_] new employees, in accordance with Section 2(b) of the Agreement;
4. The Company has maintained employment of [\_\_] new employees since December 31, [20\_\_];
5. The Investments for which this request is made have been completed; and
6. The Company qualifies for a JDIG payment for the Grant Year.

The Company respectfully requests reimbursement in the amount of \$\_\_\_\_\_, the amount determined by the County Revenue Director in accordance with Section 4 of the Agreement.

Sincerely yours,

[name] [title]