

**Agreement between Thomas Jefferson Planning District Commission,
Firefly, and _____(Participating County)_____
Regarding Awarded VATI 2022 Funding**

This Grant Agreement (“Agreement”), effective December 15, 2021, and dated June 1, 2022, is entered into by and between the Thomas Jefferson Planning District Commission (TJPDC), a public body corporate and politic jointly and cooperatively created by its member localities pursuant to Virginia Code § 15.2-4200 *et seq.*, Firefly Fiber Broadband (FIREFLY), and _____(Participating County)_____, (“the Parties”).

WITNESSETH:

- A. WHEREAS, the Commonwealth of Virginia established the Virginia Telecommunication Initiative (VATI); and
- B. WHEREAS, pursuant to the VATI program guidelines and statutory authority, the primary objective of VATI is to provide financial assistance to supplement construction costs by private sector broadband providers, in partnership with local units of government, to extend broadband facilities to areas that presently are unserved by any broadband provider; and
- C. WHEREAS, the Virginia Department of Housing and Community Development (DHCD) has been authorized to distribute and administer funds awarded through the Virginia Telecommunications Initiative (VATI) grant-making process; and
- D. WHEREAS, _____(Participating County)_____ pledged its support for obtaining VATI funding to achieve deployment of a fiber-to-the-premises last-mile broadband network to offer service to all locations within _____ County and within all other participating counties; and
- E. WHEREAS, _____(Participating County)_____ resolved to participate in this regional project, to fully support the application, and to provide matching funds up to \$_____ at its _____(date)_____ Board of Supervisors meeting; and
- F. WHEREAS, the participating counties cooperated in the VATI 2022 grant application process, with TJPDC as the primary applicant and FIREFLY as the co-applicant, and the parties understand the participating counties remain committed to bringing universal broadband internet access to their residents and businesses; and
- G. WHEREAS, DHCD awarded TJPDC and co-applicant FIREFLY a 2022 VATI grant (VATISF#2022-034 on December 15, 2022) to provide a fiber optic network that would extend through parts of the participating counties; and
- H. WHEREAS, this VATI project is anticipated to take at least 36 months from the date of the grant award to complete; and

I. WHEREAS, ____ (Participating County) ____ has the \$ ____ in matching funds committed to support the ____ County portion of the project; and

J. WHEREAS, the Parties now enter into this agreement (“TJPDC/FIREFLY ____ (Participating County) ____ Agreement”) formally setting forth the respective roles regarding the work and project as the VATI grant has been awarded.

NOW, in consideration of the recitals, mutual promises, and such other consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, TJPDC, FIREFLY and ____ (Participating County) ____ now hereby agree as follows:

TJPDC, on behalf of itself, ____ (Participating County) ____, and the counties participating in the VATI grant will do the following:

- 1) Maintain all data and records related to the project for a period of five (5) years following the conclusion of the project for the purposes of compliance with potential audits; and
- 2) Serve as fiscal agent for the project and maintain accurate records of the financial expenditures of the VATI monies, including, but not limited to financial reports, monthly funding draws, approval of FIREFLY expenditures and invoices, documentation of matching funds, receipt and disbursement of matching funds, etc.; and
- 3) Provide overall grant management of the VATI project, as well as coordination and administration of the project by working as a liaison between the counties, FIREFLY and DHCD; and
- 4) Assist the participating counties and FIREFLY with educating the public about the project and services to be available in their respective areas; and
- 5) Submit invoices to ____ (Participating County) ____ that detail the County’s expense obligations for the required matching funding for project completion in the ____ (Participating County) ____ area; and
- 6) Provide a copy of the monthly financial and performance report to DHCD that provides information on progress against established project milestones as approved by DHCD; and
- 7) At ____ (Participating County) ____ request, share or request from FIREFLY all invoices applicable to the construction project in ____ (Participating County) ____ and cooperate with the County to verify pre-construction or construction work has been completed or equipment has been ordered and received prior to disbursing any VATI funds; and
- 8) Use its best efforts to request the full amount of grant funds prior to June 30, 2025; and
- 9) Notify FIREFLY and ____ (Participating County) ____ immediately of any change in the availability of funding; and
- 10) Cooperate with FIREFLY in requesting from DHCD any needed extension to the completion date; and
- 11) Share FIREFLY’s post-closeout subscriber reports with ____ (Participating County) ____.

FIREFLY will:

- 1) Provide the TJPDC with required information for the management of the VATI grant, including, but not limited to progress reports and monthly invoices, to include all supporting documentation to verify eligible expenses; and
- 2) Prepare and file the required documents to the localities for zoning and permit applications; and
- 3) Design, engineer, construct and implement broadband services as designated in the VATI application, in compliance with the grant program requirements; and
- 4) Allow TJPDC or ____ (Participating County) ____ to audit and verify project progress at reasonable times and places, including the inspection of project sites. TJPDC and ____ (Participating County) ____ and its representatives, agents, and employees must maintain the confidentiality of any proprietary information obtained or learned through such audits or inspections and agree to indefinitely maintain such confidentiality to the furthest extent permitted under law. Firefly agrees to notify TJPDC and ____ (Participating County) ____ of any information it asserts should be subject to this subsection prior to providing such information; and
- 5) Guarantee that the minimum bandwidth offerings for the project will be no less than the Federal Communications Commission's definition of broadband as of the date of project commencement; and
- 6) Provide service extensions from the network backbone of up to 2,500 feet to any location within the project service area; and
- 7) Participate in the federal Affordable Connectivity Program; and
- 8) Perform the necessary speed testing and reporting to comply with the DHCD Agreement; and
- 9) Own, along with Rappahannock Electric Cooperative, all assets to be funded by VATI grant monies and the localities matching funds; and
- 10) Provide ongoing communication and outreach to the counties and its residents throughout the project; and
- 11) Indemnify, defend, and hold ____ (Participating County) ____ and TJPDC harmless for any failure(s) by it to complete any Grant Activities described in the DHCD Contract Documents; and
- 12) Provide all invoices requested by TJPDC applicable to the construction project and cooperate with TJPDC or ____ (Participating County) ____ to verify pre-construction or construction work has been completed or equipment has been ordered and received prior to receiving any VATI funds; and
- 13) Provide to TJPDC its post-closeout subscriber reports necessary to fulfill reporting requirements by TJPDC to DHCD, according to its agreement with DHCD.

____ (Participating County) ____ will:

- 1) Provide matching funds in an amount not to exceed \$ ____ for the grant activities constructed in and provided to ____ (Participating County) ____ over the period of the project; and
- 2) Maintain all data and records related to the project for a period of five (5) years following the conclusion of the project; and

- 3) Produce all data and records related to the project upon written request of TJPDC or DHCD or its successors or designees within thirty (30) days; and
- 4) Provide prompt payment of submitted invoices to TJPDC within 45 days of the receipt of an invoice; and
- 5) Acknowledge and agree that a certain portion of the DHCD VATI award may be retained by DHCD and paid in accordance with the provision of the DHCD Agreement; and
- 6) Cooperate with TJPDC and FIREFLY to communicate the project to ____ (Participating County) residents and business owners; and
- 7) Recognize TJPDC, FIREFLY, and DHCD support in their efforts to expand broadband in all project-related communication with the media and its marketing publications; and
- 8) Cooperate with FIREFLY in requesting from DHCD any needed extension to the completion date.

All Parties will use due diligence and best efforts on community outreach and marketing the availability of service, which is the intent of the project and VATI program. The Parties acknowledge, however, that the actual number of customers who choose to subscribe is beyond the Parties' control. The Parties also acknowledge that the DHCD's intent is that the Parties exercise due diligence and best efforts and that no funds will be returned to the Commonwealth nor retained by TJPDC and ____ (Participating County) so long as the Parties in fact exercise due diligence and best efforts to reach the project and program goals.

CONTRACT PERFORMANCE

This agreement will terminate when DHCD notifies the TJPDC that all grant requirements have been satisfied.

This Agreement constitutes the entire agreement as to the Project and any associated VATI grant. Amendments or modifications may not be amended or modified except in writing, signed by each of the parties hereto.

Recognizing the scale and complexity of this project, to the extent that changes to the project management schedule arise due to requirements imposed by DHCD or for any other reason not caused by the action or failure to act by any party to this agreement, including Acts of God, weather events, or construction supply and/or labor shortages, the Parties agree to engage in good faith discussions to undertake modifications to the schedule. All agreed-upon changes to the project management schedule shall be set forth in a new written schedule and provided to all Parties. A formal amendment to this Agreement shall not be required, but the Parties will cooperate to request a project completion date extension from DHCD as needed.

This Agreement is conditioned upon TJPDC and other necessary parties executing the DHCD Agreement and obtaining funding under the VATI program.

The Parties will cooperate with any audit of this project and Grant Activities undertaken by DHCD. This responsibility survives the termination of this Agreement. TJPDC and ____(Participating County)_____ and its representatives, agents, and employees agree to maintain the confidentiality of any proprietary information obtained or learned through such audits and agree to indefinitely maintain such confidentiality to the furthest extent permitted under law.

This Agreement is made and is intended to be performed in the Commonwealth of Virginia and must be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

[SIGNATURE PAGES INCLUDED ON THE FOLLOWING THREE PAGES]

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