

AGREEMENT

THIS AGREEMENT, made this ____ day of December, 2018, by and between the **COUNTY OF ALBEMARLE, VIRGINIA** (the “COUNTY”), a political subdivision of the Commonwealth of Virginia, the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY** (the “EDA”), a political subdivision established by the ALBEMARLE COUNTY BOARD OF SUPERVISORS, **CENTRAL VIRGINIA ELECTRIC COOPERATIVE** (“CVEC”), a Virginia utility consumer services cooperative, and **CENTRAL VIRGINIA SERVICES, INC.** (“CVSI”), a Virginia corporation.

W I T N E S S E T H:

WHEREAS, the EDA has been created to promote the economic development of Albemarle County, Virginia, pursuant to enabling legislation under Section 15.2-4900 *et seq.* of the Code of Virginia and has authority to make grants of money or property to encourage economic development pursuant to Section 15.2-4905;

WHEREAS, CVEC has embarked on a project throughout its fourteen-county service area to install fiber optic cable to avail broadband to its rural residential and commercial customers. This project will include improvements to CVEC’s distribution system needed to support the fiber optic cable, cable installation, service drops to individual customers, and supporting new equipment (the “Project”);

WHEREAS, the system installed through the Project shall be operated by CVSI, a wholly owned subsidiary of CVEC;

WHEREAS, Firefly Fiber Broadband, a division of CVSI, will provide internet services to subscribing customers;

WHEREAS, CVEC desires certain financial assistance in order to pursue its undertaking;

WHEREAS, expanding broadband affordable access to the underserved, rural communities is identified as a priority area requiring further development in the County's 2017-2019 Strategic Plan and is consistent with the long-term strategic goals of investing in infrastructure, fostering economic prosperity, improving access to educational opportunities, and preserving rural area characteristics.

WHEREAS, it is in the public interest of County citizens for the EDA to assist with improving the availability of broadband residents and businesses in the County's rural areas as such improvement is consistent with the Albemarle County Economic Development Mission to support critical infrastructure and will benefit Albemarle County through an increase in the tax base and the availability of additional communication, education, and employment opportunities for its citizens, thereby promoting the health, safety, welfare, convenience, and prosperity of the citizens of the County;

WHEREAS, the COUNTY is willing to provide funds (the "County Grant") to appropriate annually to the EDA sums described hereinafter to be paid to CVSI as an incentive for it to pursue the Project in the County so long as CVEC meets its performance obligations; and

WHEREAS, the COUNTY, EDA, CVEC and CVSI desire to enter into this Agreement to memorialize the understandings and conditions under which financial incentives will be provided to CVSI by the EDA for the Project, and to set forth the obligations and responsibilities of the parties in connection therewith.

WHEREFORE, in consideration of the mutual promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Undertaking. CVEC will begin the Project in Albemarle County in 2019 at an estimated cost of \$11,000,000 and with an estimated completion date being five years from the beginning of work. CVEC will build a fiber-optic communications network throughout its electric distribution system in Albemarle County to provide broadband internet access to approximately 3600 residences and businesses served by CVEC. Please see “Albemarle County Proposal and Request for Support,” “Project Overview,” and “Albemarle County Map” attached and incorporated herein. CVSI intends to contribute to the Project by building additional fiber plant outside of CVEC’s electric system at an estimated cost of \$1,500,000.

2. Grant. To incentivize the completion of the Project by December 31, 2022, the COUNTY agrees to appropriate annually a Grant to the EDA for tax years 2019 through 2026 a sum equal to the COUNTY’s public service taxes attributable to each year’s construction costs of the Project in the County, as calculated according to law, subject to these limits: i. the annual Grant sum shall not exceed \$105,000.00; ii. total Grant appropriations shall not exceed \$550,000.00; and iii. a given year’s construction costs shall be eligible for a Grant payment for no more than five years. The Grant eligibility schedule is defined below:

<u>Year Construction Costs Incurred</u>	<u>Years Eligible for Grant</u>
2019	2020, 2021, 2022, 2023, 2024
2020	2021, 2022, 2023, 2024, 2025
2021	2022, 2023, 2024, 2025, 2026

2022	2023, 2024, 2025, 2026, 2027
2023	2024, 2025, 2026, 2027
2024	2025, 2026, 2027
2025	2026, 2027
2026	2027

Project construction costs occurring in 2027 or later shall not be eligible for the Grant.

3. Payments. The EDA shall pay the County Grant to CVSI within sixty days of each semi-annual tax due date provided that CVEC shall have paid all local taxes to the COUNTY as they fall due. There will be no grant for the taxes attributable to CVEC's currently existing real property, improvements, machinery and tools, personal property values, and public service values.

4. Schedule. CVEC or CVSI, as the case may be, shall take all reasonable steps and exercise due diligence in completing the Project related to particular substations in the following order:

Martin's Store
Zion
Cash Corner
Midway
White Hall
Schuyler
Red Hill.

5. Reporting. CVEC and CVSI shall report, document, and verify to the EDA at CVEC's expense the construction cost and the price of its related new equipment and personal property for the Project installed in the County by no later than January 31st

for the preceding year. Upon the COUNTY's or EDA's request for additional information, CVEC and CVSI shall provide such additional information reasonably satisfactory to the COUNTY or EDA within thirty (30) days. No County Grant payment shall be made until the COUNTY or the EDA receives adequate documentation and verification.

6. Third-Party Grants. Grants secured by CVEC or CVSI either independently or jointly with the COUNTY, the EDA, or the Albemarle County Broadband Authority shall not setoff any of the County Grant; grants, gifts, or other funds secured by the COUNTY, the EDA, or the Albemarle County Broadband Authority independently of CVEC or CVSI may be used to pay the County Grant.

7. Appropriation. While the COUNTY has made clear its commitment to the undertaking in this Agreement, it is understood that funding must be appropriated by future Boards of Supervisors and thus no EDA funds are obligated to be paid under this Agreement should the EDA fail to receive the necessary funding from the COUNTY.

8. Termination.

(a) If at any time during the term of this Agreement, CVEC or CVSI fails to meet its obligations, the COUNTY or the EDA may terminate the Agreement. Upon termination, neither the COUNTY nor the EDA will be required to provide County Grant payments under Sections 2 and 3.

(b) If at any time during the Agreement term, CVEC or CVSI fails to pay any taxes due to the COUNTY, the COUNTY shall notify CVEC or CVSI of the overdue tax liability. The COUNTY shall provide CVEC or CVSI thirty (30) days from receipt of notice to pay any overdue taxes to the COUNTY. If CVEC or CVSI does not pay the overdue taxes to the COUNTY at the expiration of the 30-day

curative period, this Agreement shall automatically terminate and no further grant payments shall be due under Sections 2 and 3 of the Agreement.

9. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia without regard to choice of law principles. The venue for any legal dispute arising from this Agreement shall be exclusively in Albemarle County, either before the Albemarle County Circuit Court or the United States District Court, Western District of Virginia, Charlottesville Division.

10. Indemnification. CVEC and CVSI shall indemnify and hold harmless the COUNTY and the EDA, their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, in connection with the performance of this Agreement and/or any act or omission of CVEC or CVSI or an employee, agent, or contractor of either or both, to the extent that such liability or damage is caused in whole or in part, by such party's negligence or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.

This agreement shall not be construed to limit the COUNTY's or the EDA's rights, claims, or defenses which arise as a matter of law pursuant to any provisions of this agreement. This agreement shall not be construed to limit the sovereign immunity of the COUNTY or the EDA.

11. Entire Agreement. This Agreement constitutes the full agreement among the parties and no party shall be bound by any terms, conditions, or representations not contained herein. This Agreement may be modified only by written agreement signed

by the parties hereto with the same formality. This Agreement may be executed in one or more counterparts, each of which shall be an original.

12. 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 the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with law.

13. Term. This Agreement shall run until 31 December 2026, when all obligations under this Agreement shall end.

14. Notices. Any notices required or permitted under this Agreement shall be given in writing and shall be deemed received upon actual receipt or refusal to accept after mailing such notice in the United States by certified mail, postage fully prepaid or by overnight courier. Refusal to accept means return of certified mail or non-acceptance of overnight courier delivery by the addressee.

If to CVEC or CVSI, to:

With a copy to:

Gary Wood, CEO
CVEC/CVSI
Post Office Box 247
Lovingston, Virginia 22949

If to the COUNTY, to:

Jeffrey Richardson, County Executive
Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902

William M. Letteri, Director
Department of Finance
401 McIntire Road
Charlottesville, Virginia 22902

If to the EDA, to:

W. Rod Gentry, Chairman
Economic Development Authority
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902

Roger Johnson, Director
Economic Development Office
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902

IN WITNESS WHEREOF, the parties hereto set their signatures and seals by
their respective duly authorized representatives.

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

By: _____
W. Rod Gentry, Chairmain

ATTEST:

Elton Oliver, Secretary/Treasurer

CENTRAL VIRGINIA ELECTRIC
COOPERATIVE

By: _____
Gary Wood, President & CEO

CENTRAL VIRGINIA SERVICES, INC.

By: _____
Gary Wood, President & CEO

Approved as to form only:

Greg Kamptner, County Attorney



Rural Fiber-Optic High Speed Broadband Internet Access

Albemarle County

Project Proposal and Request for Support

Central Virginia Electric Cooperative (CVEC) proposes to build a fiber-optic communications network throughout its electric distribution system. The communications system will provide benefits to the electric system operation but not pay for itself through electric system benefits alone. CVEC plans to lease the fiber-optic system to its wholly-owned subsidiary, Central Virginia Services, Inc. to provide broadband internet and communications services to residences and businesses. To accelerate the deployment of fiber and help overcome the digital divide in rural central Virginia, CVEC seeks support to help offset a small portion of the significant capital costs and/or to provide CVSI dependable cashflow in the first years of the new business.

The project will provide access to 3600 homes and businesses in rural Albemarle County. These members are served from six different CVEC substations (Cash's Corner, Martin's Store, Midway, Red Hill, White Hall, and Zion). The total investment for the fiber-optic network in Albemarle is estimated to be \$11 million.

CVEC requests combined capital and cash flow support [REDACTED] from Albemarle County to help offset costs and assure timely completion and success for the project. With this support, about two-thirds of the Albemarle accounts will be served within the first half of the project timeline, with the final one-third coming in the second half of the five year project.

The following are some potential funding options for Albemarle County:

1. Grant to offset capital costs
2. Economic Development Authority commitment to provide the equivalent of annual tax revenue from new plant investment for the first five years after each substation area is completed.
3. Contracts for broadband internet or communications services to public facilities such as schools, radio towers, libraries, etc.

This request will help our Board of Directors to see their way to committing to the full five-year build out contemplated in our feasibility study. Final decisions on the schedule for each substation will be based on overall density and cost of service to provide the best cash flows into the new subsidiary business as it develops enough to create positive annual cashflow.

The project will provide clear benefits to the accounts served with world-class, high-speed broadband internet service at very competitive rates. It will also provide benefits by expanding fiber availability into the most rural areas for further broadband expansion by companies wishing to extend the fiber further outside CVEC territory or for wireless internet providers. It will also expand options for cell phone providers and for other companies and groups needing high speed connections to rural tower sites for coverage. There will be a better platform for home businesses or telecommuting, reducing traffic and improving public safety. Home values will increase.

There are many, many positive outcomes from having a fiber-optic network deployed across the rural countryside in Albemarle County. CVEC is planning the project based on the benefits over the thirty year life of the fiber. Albemarle County will also see positive paybacks that justify a contribution to support timely construction of a virtually future-proof infrastructure to deliver communications and broadband services in the rural areas.



Project Overview

Central Virginia Electric Cooperative (CVEC) has a growing need for high-speed communications to many points on its electric distribution system. The Cooperative needs to improve communications speeds and bandwidth to its substations to allow for better equipment control and monitoring as well as for improved security. Downline equipment, including reclosers, regulators, capacitor banks, automatic switches, and voltage meters, all will provide better and more timely information through broadband connections. The immediate benefits for the CVEC members will be improved reliability and reduced power costs. In the longer term, a system-wide broadband network will provide the platform for next generation electric distribution smart grid applications, including integration of distributed generation resources and battery storage.

As a not-for-profit electric cooperative, CVEC is focused on its members' needs. Given the dearth of true high-speed broadband access throughout the CVEC service territory, the Cooperative plans to leverage the new fiber-optic network to help members overcome the digital divide that separates them from their more urban neighbors and from the world. CVEC plans to extend more than 4,500 miles of fiber-optic cable across parts of 14 central Virginia counties within five years to offer broadband connections to all 36,000 home and business accounts held by the CVEC membership. The total investment in infrastructure will be \$110 million.

CVEC is uniquely situated to provide this service in this area. The new cable will be installed on and adjacent to existing overhead and underground electric distribution lines. Utilizing the existing infrastructure, also paid for by the members, will make economical installation much more possible. CVEC has access to very low-cost financing through the Rural Utilities Service and several private cooperative banks serving the industry. CVEC is focused on service instead of profits, and can be patient to wait through a long breakeven period for the fiber investment.

CVEC sees the need for broadband for homes and businesses. Many recent studies and articles have explored rural broadband access and its impact on business, education and healthcare. It is easier to attract new businesses into an area when their potential employees can have a high quality of life including broadband access. Home values are enhanced, increasing personal wealth as well as providing local governments with growth in their real estate bases during an era of low growth. The utility investment will also provide tax revenue from the higher payments to local governments due to higher utility plant value. The benefits of this project touch members, businesses, schools, and local governments.

Having fiber-optic service to 36,000 points across central Virginia will also facilitate expansion of other communications networks. Cell towers, fixed wireless towers, private radio networks and 911 systems can benefit from fiber being available all across the rural CVEC service territory.

Given the many benefits to diverse parties, CVEC has committed to making the fiber-optic network a reality. The 11-year payback period is marginal for the level of investment, even for a not-for-profit. A 5% increase in costs extends the payback to year 13, and if take rates fall 5%, the payback period is extended to year 19. The CVEC Board of Directors has committed to the first year of the five-year buildout to allow staff to show proof of concept, to confirm construction estimates and revenue projections, and to look for support to reduce risks.

Business Organization and Services: CVEC will own the fiber-optic cable on its poles, and be responsible for its installation and maintenance. Under present Virginia code, the Cooperative is not allowed to provide broadband internet service. CVEC will operate its wholly owned subsidiary, Central Virginia Service Inc, which will lease the fiber from CVEC and provide retail services to internet customers.

Basic residential service will be 100 mbps internet with a target price of \$49.99 per month, with an optional service with 1 gigabit speed for \$79.99 per month. Neither service will have data limits. There will also be a voice over IP offering for telephone service, with a target price of \$29.99 per month for unlimited local and long distance calling. The other service will be a managed router service (\$5 per month) for customers who prefer not to own and maintain their own routers in their homes or businesses.

There will be a class of business offerings and there will be options for businesses who require bulk lit service or backhaul to the internet.

To operate the business and offer these services, the subsidiary will be staffed with 20 to 25 new jobs, including a general manager, fiber line technicians, service personnel for work in homes, customer service representatives in the call center, and network engineers.

Financing: CVEC will be responsible for the financing of the fiber plant and associated capital costs. Support to offset the capital costs will go to CVEC and be used to reduce the loans and associated interest payments. CVEC will lease the fiber plant to the subsidiary to allow CVSI to sell internet service through the fiber. CVSI will be responsible for leased fiber payments as well as all other internet and voice service costs, the capital investment for the electronics to operate the business, and all operational expenses.

Any cash flow incentives will be directed to CVSI which is projected to lose money the first six years of the business plan and reach breakeven in year 11.

In addition to the capital investment CVEC and CVSI will make in the project, they will seek support from federal, state and local governments and agencies. Their goal is to obtain \$20 to \$25 million in support through a combination of one-time capital support and ongoing cash flow support for the first five years of the project.

CVEC plans to participate in the Federal Communications Commission Connect America Fund Auction, Phase II and seek other federal grants that will total \$5 to \$10 million. It will seek support from the Tobacco Commission Last Mile program and grants from state government agencies to provide \$5 to \$8 million in support. CVEC will ask counties to provide economic development support, including consideration of grants equivalent to the first five years of taxes on the new investment in each county. These local programs will hopefully provide \$3 to \$5 million in support. CVEC will also seek local grants, matching funds, in-kind services (fiber swaps, use of conduit or easements, etc.), and guaranteed contracts for broadband internet and communications services to government buildings and facilities such as schools, towers, and libraries, to provide an additional \$4 to \$7 million in support.

This level of support will provide for an approximate 80-20 match with CVEC and its affiliate organization, providing 80% of the cost to solve the broadband problems for large portions of the central Virginia countryside. This level of support will allow the Board of Directors of CVEC to feel more comfortable making the decision to commit to the full \$110 million project.

Scheduling and Priority: The intent is to begin construction in the third quarter of 2017 and continue building for five years. The areas to be built each year will be decided based on creating maximum positive cash flows for the new organization. Priority will be given to higher density areas and those with a lower cost to serve. Consideration will be given to how contributions impact cost, and these considerations will influence scheduling each year. CVEC's goal is to complete the project and make service available to all CVEC members in five years.



ALBEMARLE COUNTY

Legend

Substation by Color

- Martins Store
- Midway
- Cashes Corner
- Schuyler
- Centenary
- Cunningham
- Red Hill
- Zions Crossroads
- Kidds Store
- White Hall
- Mt. Rush

