

## **PHASE ONE MEMORANDUM OF UNDERSTANDING**

This Phase One Memorandum of Understanding (this “Memorandum”) is made effective as of March 1, 2021 (the “Effective Date”), by and between Virginia Electric and Power Company d/b/a Dominion Energy Virginia, a Virginia public service corporation (“Dominion”), Central Virginia Services, Inc. d/b/a Firefly Fiber Broadband, a Virginia stock corporation (“Firefly”), Rappahannock Electric Cooperative, a Virginia electric cooperative corporation (“REC”), and each of the participating counties who subsequently join this Memorandum in the manner set forth herein (“Participating Counties”). Dominion, Firefly, and REC are, collectively, the “Organizing Parties”, and Dominion, Firefly, REC, and each Participating County are each a “Party” and collectively may be referred to as the “Parties”.

### **RECITALS**

- A. Pursuant to the Virginia Code § 56-585.1 :9, effective July 1, 2019 (the “Pilot Statute”) the Commonwealth of Virginia is seeking to expand broadband services into unserved areas of the Commonwealth. The Pilot Statute further permits electric utilities to pursue pilot programs with broadband providers and local counties and municipalities to facilitate such expansion.
- B. Dominion and Firefly have explored the feasibility of Dominion deploying middle mile service to facilitate Firefly in extending last-mile service to unserved populations throughout the communities Virginia and have identified several counties as viable candidates based on the legislative requirements for such a pilot program.
- C. REC desires to collaborate with Dominion and Firefly to leverage the proposed middle-mile and last-mile deployments by Dominion and Firefly, respectively, to improve the security, reliability and efficiency of REC’s electric system and to extend broadband availability to as many of REC’s unserved members as reasonably possible.
- D. The Organizing Parties believe their partnership as set forth herein (the “Initiative”) can dramatically expand broadband access to presently unserved areas throughout Virginia, and are inviting counties that could benefit from the Initiative to join this Memorandum and become Participating Counties.
- E. The Parties will pursue a relationship whereby: (i) pursuant to the Pilot Statute, Dominion would construct a fiber route that maximizes the number of unserved areas to be served by Firefly within each Participating County, (ii) Dominion will leverage the additional fiber installed along the route to connect devices that may not have had fiber connectivity under the original plan pursuant to the Grid Transformation and Security Act, (iii) REC will leverage the Initiative to improve the security, reliability and efficiency of REC’s electric system and to facilitate the extension of broadband availability to as many of REC’s unserved members as possible, (iv) Firefly will collaborate with and invest in each Participating County and use the additional Dominion fiber capacity and network elements contributed by REC to serve broadband end users in unserved locations in each Participating County, and (v) each Participating County will share relevant information with the Organizing Parties and collaborate with the Organizing Parties to advance the Initiative. The efforts of the Parties herein in each such Participating County shall be referred to as a “Project”, and collectively the “Projects”).
- F. It is the intention of the Parties that the Initiative will result in the deployment of a fiber-to-the-premises last-mile broadband network to offer service to all locations within each Participating County that are unserved as of the date hereof. The Parties acknowledge and

agree that the specific details and characteristics of each Project will be analyzed and refined as the Initiative proceeds.

G. The Organizing Parties have divided the Initiative into three phases.

NOW, THEREFORE, the Parties hereby agree as follows:

## **1. PROCEDURE TO BECOME A PARTICIPATING COUNTY**

Any county that is invited to join the Initiative by the Organizing Parties shall have until April 1, 2021 to return a counterpart signature page to this Memorandum to the Organizing Parties; provided the Organizing Parties may extend this deadline for good cause if such extension will not materially delay the Initiative. Upon acceptance of the counterpart signature page by the Organizing Parties, such county shall become a Participating County.

## **2. INFORMATION SHARING AND COORDINATION**

- a) Each Participating County and each Organizing Party agrees to share with the Organizing Parties such information as it has in its possession related to broadband deployment and availability that may be useful to the Organizing Parties in conducting their analysis or otherwise facilitate the Initiative.
- b) Firefly will serve as the central conduit for all information sharing activities and will be responsible for overall coordination of the Initiative.
- c) The Parties will coordinate any communication releases to the public, and all announcements are subject to the prior written consent of Dominion and prior written or verbal consent of all parties.
- d) Notwithstanding anything to the contrary hereunder, in no event does this sharing of information agreement require any Party to disclose confidential or proprietary information not otherwise authorized for release to any Party or Parties.

## **3. PHASE ONE TIMEFRAME AND ACTIVITIES**

- a) The Parties anticipate that Phase I of the Initiative will continue until approximately June 30, 2021.
- b) During Phase I:
  - a. The Organizing Parties will conduct community and stakeholder engagement activities in each Participating County.
  - b. The Organizing Parties will collaborate to develop preliminary plans and design criteria that: (i) are consistent with the Pilot Statute, (ii) support REC's desire to leverage the Initiative to improve the security, reliability and efficiency of REC's electric system, and (iii) facilitate the extension of broadband availability to as many presently unserved locations as reasonably possible.
  - c. Firefly will perform a last-mile feasibility study ("Initial Feasibility Study") for the Project within each Participating County.
  - d. Firefly will prepare a preliminary financial analysis for the Project within each Participating County.
  - e. The Participating Counties, and each Organizing Party, as applicable, will agree to support an application for one or more grant programs ("Phase I Grants") to partially offset the cost of the Initial Feasibility Study and financial analysis. Firefly will coordinate and oversee the development and submission of applications for Phase I Grants. The Parties anticipate that the Phase I Grants will not require any local matching funding.
- c) At the Conclusion of Phase I:
  - a. Firefly, in coordination with the other Organizing Parties, will present the results of the Initial Feasibility Study and financial analysis to each Participating County.
  - b. Firefly will identify the cost of Proceeding to Phase II for each Participating County and

identify grants and other sources of potential funding to reduce or eliminate each Participating County's out-of-pocket costs to proceed.

- c. Each Participating County will decide whether or not to continue to Phase II. Counties that elect to withdraw from the Initiative at the conclusion of Phase I will have no further obligations under this Memorandum.

#### 4. **PHASE TWO TIMEFRAME AND ACTIVITIES**

- a) The Parties anticipate that Phase II of the Initiative will commence upon the conclusion of Phase I and continue until approximately December 31, 2021.
- b) During Phase II:
  - i. Dominion will prepare a petition (the "Petition") under the Pilot Statute to the Virginia State Corporation Commission (the "Commission") seeking approval of the Projects that are then included in the Initiative. Firefly will serve as the nongovernmental internet service provider pursuant to the Pilot Statute. Firefly and each of the other Parties will provide such information and assistance to Dominion as it may reasonably request to advance the Initiative and will commit to continuing to be involved in the Petition until and after approval of the Petition is received. The Parties agree that implementation of each Project shall be contingent upon Commission approval of such Project on terms and conditions approved by Dominion that are not materially adverse to Dominion.
  - ii. Firefly will complete preliminary last-mile designs for each Project based upon the Dominion middle-mile infrastructure and such network elements as REC elects to contribute to the Initiative. Such last-mile designs will be tailored to maximize each Project's eligibility for all available state and federal grant, loan, loan guarantee, and other support mechanisms (collectively, "Public Support Mechanisms").
  - iii. Firefly will prepare detailed financial plans for each Project. Each financial plan will address initial capital investment needs, ongoing operational expenses and provide more than one indicative approach for funding each Project through a combination of private capital, Public Support Mechanisms and contributions from Participating Counties.
  - iv. The Participating Counties, and each Organizing Party, as applicable, will agree to support an application for one or more grant programs ("Phase II Grants") to partially offset the cost of the activities to be conducted during Phase II. Firefly will coordinate and oversee the development and submission of applications for Phase II Grants.
  - v. Firefly will coordinate and oversee the development and submission of applications for all available Public Support Mechanisms to fund each Project within the Initiative.
- c) At the Conclusion of Phase II:
  - i. Firefly will present the anticipated outcome of its last-mile designs to each Participating County.
  - ii. Each Participating County will decide whether or not to continue to Phase III. Counties that elect to proceed to Phase III will enter into negotiations with Firefly for one or more binding mutual definitive agreements ("Definitive Agreements"), setting forth their respective commitments and obligations and such particulars as the parties thereto may deem appropriate. Counties that elect to withdraw from the Initiative at the conclusion of Phase II will have no further obligations under this Memorandum.

#### 5. **EXPENSES**

The Parties understand that various costs will be incurred in relation to activities contemplated herein. The Parties understand that regardless of which Party incurs such costs, none of the Parties herein shall be responsible for reimbursement of expenses to any of the others, unless such reimbursement is to be funded by a Phase I Grant or Phase II Grant, or otherwise agreed to in the Definitive Agreements.

**6. GOOD FAITH COMMITMENT TO INITIATIVE**

- a) Each Participating County agrees that, for so long as it is a Party to this Memorandum, it shall not participate in any activity or course of conduct that is inconsistent with or competitive to the Initiative, and that it will devote its broadband-related attention and resources to the Initiative.
- b) The Parties understand and agree that, except as provided in the next sentence, this Memorandum (i) constitutes only a statement of intentions, (ii) does not reflect all matters upon which Definitive Agreements must be reached in order for the transactions contemplated hereby to be consummated, (iii) binding obligations with respect to a Project will only result from the execution of one or more Definitive Agreements and subject to the terms and conditions stated therein, and (iv) does not obligate the Parties to enter into any Definitive Agreement relating to any Project. This Memorandum is not intended to be binding, other than Paragraphs 4(b)(i), 5 and 6.

**7. TERMINATION**

Any Party may terminate its participation in this Memorandum at any time, with or without cause, upon written notice to the other Parties with at least ten (10) days prior notice. In addition, this Memorandum shall terminate and be of no further force and effect if the Commission rejects the petition.

**8. LIMITATION OF LIABILITY**

No Party shall be liable to the others in contract, tort, or otherwise, for any claims, liabilities or losses arising out of this Memorandum or alleged to result from the failure of the other Party to enter into any Definitive Agreements. The Parties hereby waive, in advance, any claims (whether such claims are based on breach of contract, tort, equity or any other theory) for the failure for any reason to enter into the Definitive Agreements. In no event shall any Party be liable to the other for any incidental, indirect, special, punitive or consequential damages (including without limitation damages for lost profits).

**9. GENERAL**

a. Governing Law.

This Memorandum shall be governed in all respects by the laws of the Commonwealth of Virginia.

b. Amendments.

No modification, amendment or waiver of any of the provisions of this Memorandum will be binding without the written consent of the Parties hereto.

c. Binding Effect; Assignment.

This Memorandum will inure to the benefit of and be binding upon each of the Parties hereto and their respective successors and permitted assigns to the extent provided in Section 6, but in no respect shall give rise to any third party beneficiary rights or claims. No Party may assign any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties, except that any of the Organizing Parties may assign

this Memorandum to an affiliated entity upon written notice to the other Parties.

d. Counterparts.

This Memorandum may be executed in counterparts, all of which for all purposes shall be deemed to be an original and all of which shall, taken together, constitute one and the same instrument.

e. Relationship of Parties.

Nothing in this Memorandum shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind.

f. Notices.

All notices, requests and other communications hereunder shall be in writing and delivered by hand, by nationally-recognized delivery service that guarantees overnight delivery, or by first-class registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Dominion:

Dominion Energy Virginia  
600 Canal Street  
Richmond, Virginia 23219  
Attention: Director, Electric Distribution Grid Solutions

with a copy to:

Dominion Energy Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
Attention: Deputy General Counsel – State Regulatory  
Fax: (804) 819-2677

If to Firefly:

[Firefly for notice by US Mail:  
Firefly Fiber Broadband  
Attention: President and CEO  
P O Box 359  
Lovingston, VA 22949

For Firefly for notice by overnight delivery:  
Firefly Fiber Broadband  
Attn: President and CEO  
800 Cooperative Way  
Arrington, VA 22922

If to REC:

Rappahannock Electric Cooperative  
P.O. Box 7388  
Fredericksburg, Virginia 22404-7388  
Attention: Director of Broadband and Fiber Services

If to a Participating County, to the address set forth on such Participating County's counterpart signature page to this Memorandum.

Any Party may change its address at any time upon notice to the other Parties.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the Effective Date.

VIRGINIA ELECTRIC AND POWER COMPANY  
D/B/A DOMINION ENERGY VIRGINIA

  
  
augustus Johnson (Mar 2, 2021 06:58 EST) 

Name: Augustus Johnson  
Title: Director – Electric Distribution Grid Solutions

CENTRAL VIRGINIA SERVICES, INC.  
D/B/A FIREFLY FIBER BROADBAND

  
  
Gary E Wood (Mar 1, 2021 07:45 EST)

Name: Gary Wood  
Title: President and CEO

RAPPAHANNOCK ELECTRIC COOPERATIVE



Name: Peter Muhoro, Ph.D.  
Title: Vice President, Strategy and Technology

[SIGNATURE PAGE TO PHASE ONE MEMORANDUM OF UNDERSTANDING]



IN WITNESS WHEREOF, the County named below has executed this Memorandum as of the Effective Date.

ALBEMARLE BROADBAND AUTHORITY



Bucky Walsh (Apr 30, 2021 17:06 EDT)

Name: William M. (Bucky) Walsh

Title: Chairman, Chair, Albemarle County Broadband Authority

Address for Notice Information:

William M. (Bucky) Walsh III

[bwalsh@albemarle.org](mailto:bwalsh@albemarle.org)

c/o Michael Culp, Chief Administrative Officer

401 McIntire Road

Charlottesville, VA 22902

APPOMATTOX COUNTY



Susan Adams (Apr 23, 2021 14:45 EDT)

Name: Susan Adams

Title: County Administrator

Address for Notice Information:

Susan Adams

[susan.adams@appomattoxcountyva.gov](mailto:susan.adams@appomattoxcountyva.gov)

County Administrator- Appomattox County

153-A Morton Lane

P.O. Box 863

Appomattox, VA 24522

BUCKINGHAM COUNTY



Name: Karl Carter

Title: Asst County Administrator

Address for Notice Information:

Buckingham County Administrator's Office

13380 West James Anderson Hwy

Buckingham, Va 23921

CUMBERLAND COUNTY



Don Unmussig (Apr 14, 2021 07:46 EDT)

Name: Don Unmussig

Title: County Administrator

Address for Notice Information:

Don Unmussig

County Administrator- Cumberland

[DUnmussig@cumberlandcounty.virginia.gov](mailto:DUnmussig@cumberlandcounty.virginia.gov)

1 Courthouse Circle Cumberland, Virginia 23040

FLUVANNA COUNTY

*Eric Dahl*

Eric Dahl (Apr 16, 2021 09:42 EDT)

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Name: Eric Dahl

Title: County Administrator

Address for Notice Information:

Eric Dahl

County Administrator- Fluvanna

[edahl@fluvannacounty.org](mailto:edahl@fluvannacounty.org)

132 Main St. Palmyra, VA 22963

GOOCHLAND COUNTY

*Kenneth A. Young, April 9, 2021*

Kenneth A. Young, April 9, 2021 (Apr 23, 2021 15:26 EDT)

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Name: Kenneth A. Young

Title: County Administrator

Address for Notice Information:

Kenneth A. Young

County Administrator

1800 Sandy Hook Road

Goochland, VA 23063

[kayoung@goochlandva.us](mailto:kayoung@goochlandva.us)

GREEN COUNTY

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Name:

Title:

Address for Notice Information:

LOUISA COUNTY

*Christian R. Goodwin*

Christian R. Goodwin (Mar 2, 2021 07:21 EST)

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Name: Christian R. Goodwin, ICMA-CM

Title: County Administrator

Address for Notice Information:

County of Louisa

1 Woolfolk Avenue

Louisa, Virginia 23093

POWHATAN COUNTY



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Name: Ned Smither  
Title: County Administrator

Address for Notice Information:  
Ned Smither  
County Administrator  
3834 Old Buckingham Road  
Powhatan, VA 23139  
[NSmither@powhatanva.gov](mailto:NSmither@powhatanva.gov)

[SIGNATURE PAGES TO PHASE ONE MEMORANDUM OF UNDERSTANDING]



## LOUISA COUNTY ADDENDUM

1. The project will assure gigabit speed service is available to every location in Louisa County.
2. Louisa County, Firefly and REC will begin a pilot project in two substation areas in 2021 while the final study for the remainder of the county is being completed.

## GOOCHLAND COUNTY ADDENDUM TO

### PHASE ONE MEMORANDUM OF UNDERSTANDING

1. The project will assure fiber optic connected gigabit speed service is available to every unserved location in Goochland County.
2. The return deadline for Goochland County's counterpart signature page is extended to April 9, 2021.
3. Goochland County's participation in and continued efforts and activities associated with its pre-existing partnership with Port 80 related to the 2021 Virginia Telecommunication Initiative (VATI) Grant from the Commonwealth of Virginia Department of Housing and Community Development are not inconsistent with or competitive to the Initiative, and do not in any way violate the MOU.

## ALBEMARLE BROADBAND AUTHORITY ADDENDUM TO PHASE ONE MEMORANDUM OF UNDERSTANDING

1. Effective Date. The Memorandum is effective as to the Albemarle Broadband Authority ("ABBA") and the Organizing Parties as of the date the ABBA Chair signs the Memorandum.
2. Participating Counties. The term "Participating Counties" includes ABBA, a public body politic and corporate distinct from the County of Albemarle, Virginia.
3. Procedure to Become a Participating County. ABBA shall have until May 7, 2021, to return a counterpart signature page to this Memorandum to the Organizing Parties
4. Existing ABBA Projects. The current projects and programs in which ABBA is involved, including but not limited to the CVEC/Firefly tax grant agreement and prior and current VATI

Grant Award Projects (including the 2021 award), as well as ABBA's development of customer support, affordability, and equitable access to broadband programs shall not be considered inconsistent, competitive, or materially adverse to this Memorandum.

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