

**VIRGINIA
CONSTRUCTION AGREEMENT
GLOUCESTER COUNTY**

THIS CONSTRUCTION AGREEMENT (hereinafter called "Agreement"), made as of the Effective Date the 15 day of June, 2021, by and between Open Broadband, LLC, (hereinafter called the "Contractor"), and Gloucester County, a political subdivision of the Commonwealth of Virginia, (hereinafter called the "County," "Gloucester County," or "Owner.").

WITNESSETH:

That the Contractor and the Owner, for the consideration herein named, agree as follows:

1. DOCUMENTS

The Contract Documents between the parties include:

- a. This Agreement;
- b. Gloucester County Request for Proposals (RFP) #20-017-CJ titled Fixed Wireless Broadband Service Provider issued June 12, 2020;
- c. Open Broadband, LLC RFP Proposal dated July 6, 2020;
- d. Memorandum of Understanding dated July 21, 2020;
- e. Notice of Award, Fixed Wireless Broadband Service Provider dated July 24, 2020;
- f. Virginia Telecommunications Initiative 2021, Project Name Gloucester County Regional Fixed Wireless Project 2021, Application ID 75707302020081724, and subsequent submissions made in April 2021 to the Department of Housing & Community Development (DHCD)
- g. License Agreement for placement of wireless broadband equipment upon Gloucester County-owned towers and/or buildings.

All such documents are referenced hereby, and incorporated herein. Except when in conflict with the provisions of this Agreement, the parties hereto agree to be bound by the provisions of the Contract Documents referenced herein above.

2. SCOPE OF PROGRAM

For each broadband project, the Contractor shall furnish and deliver all of the materials, and perform, and be fully responsible for, all of the Work required by this Agreement within the time period stipulated in a written Notice-to-Proceed to be executed by the Contractor and Owner and in accordance with the enumerated documents, which are made a part hereof as if fully contained herein.

Contractor shall develop, perform and complete the scope of work for each project, and having the following goals and objectives:

- To provide broadband access in unserved areas within the County, for the term of this Agreement;
- To design, engineer and install broadband service by means of Contractor's Fixed Wireless broadband network for the County (served, unserved and underserved);
- Subject to reasonably acceptable technical limitations, to provide all access services made in County at speeds of at least 25Mbps download and 3Mbps upload, with availability of options that exceed the Federal Communications Commission's current definition of broadband, which is 25Mbps download and 3Mbps upload standard, given signal quality and Line of Sight required by manufacturer to obtain modulation to support faster speeds;

For the VATI project, Contractor agrees to:

- Design, build, and operate a fixed-wireless network according to the VATI grant criteria to reach the greatest number of homes and businesses feasible within the underserved areas.
- Communicate routinely with the County representatives on network progress and customer activations achieved in the VATI project.
- Provide the contracted matching cost share for the VATI project.
- Follow all provider related requirements listed in the State guidelines which are detailed in the VATI Program Guidelines and Criteria.

Contractor agrees to provide fixed-wireless broadband service for non-VATI projects desired in the county. These projects will be individually negotiated and funded. Contractor will:

- Design, build, and operate a fixed-wireless network according to each project's requirements, to reach the greatest number of homes and businesses feasible anywhere in the county.
- Provide "community Wi-Fi zones" at parks, libraries, etc. where individuals can obtain free wireless connections to the internet. Locations and quantity of hot spots are to be determined with input from the County representatives.
- Funding for non-VATI projects, if the County pursues any such projects, will be made under separate arrangements between County and Contractor.

Changes in a non-VATI Project:

- If changes to a project plan are identified by Contractor, Contractor must notify the County within ten business days of determining that a change or extra work is needed. These changes are subject to County approval.
- All equipment, unless otherwise excepted, necessary for the operation of each Project will be maintained by Contractor for at least 3 years after the final County funds have been paid. Abandoning locations where wireless equipment has been placed will be discussed with the County. If Contractor desires to cease operation at a location where wireless broadband equipment has been placed, Contractor shall notify the County of this desire to cease operation within 10 business days of the decision to cease operation at the location and at least sixty (60) days in advance of the ceasing of operation at the location.
- Contractor shall immediately notify the County of any change in its financial condition or applicable law, or any other event, which may significantly affect its ability to perform a Project in accordance with the provisions of this Agreement. Any funds associated with undelivered parts of the Project will be returned to the County.
- The County shall immediately notify the Contractor of any change in its financial condition or access to physical assets which may significantly affect its ability to perform its duties under this Agreement. In the event of a significant change, the County will no longer be responsible for the costs associated with the part of the project impacted by the change. A change in financial condition, for the purposes of this Agreement, shall include non-appropriation of funds during the term of this Agreement, by the County Board of Supervisors.

- Changes in the project scope of work as accepted by the County, financing or other material supporting the project must be submitted to, and be approved by the County prior to becoming effective. To the extent any such changes negatively affect the deliverables or satisfying the objectives of this Agreement, the County may suspend funding pending a determination that continued financial support is consistent with its goals; or terminate the award and further performance and be repaid all funds previously disbursed for any Work not already completed or material not already ordered under this Agreement.

3. TIMELINE AND SCHEDULING

Each project will have a specific timeline negotiated and agreed upon by the County and Contractor. Contractor will assign a Project Manager to each project and provide reporting on project status.

4. STANDARD OF CARE AND DUTIES OF CONTRACTOR

- a. The Contractor shall exercise reasonable care and diligence in performing the Work in accordance with the generally accepted standards of this type of Contractor practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Contractor is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work.
- b. Contractor shall be responsible for all Contractor, SubContractor, and Sub-SubContractor errors or omissions, in the performance of the Agreement together with the errors and omissions of any agent or employee of the Contractor or any SubContractor or Sub-SubContractor. Contractor shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Owner.
- c. Contractor is an independent Contractor of Owner. Any and all employees of the Contractor engaged by the Contractor in the performance of any work or services required of the Contractor under this Agreement, shall be considered employees or agents of the Contractor only and not of the Owner, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.
- d. Contractor shall at all times remain in compliance with all applicable local, state, and federal laws, rules, and regulations including but not limited to all state and federal discrimination laws, policies, rules, and regulations.
- e. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Contractor represents that it and/or its employees, agents and SubContractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.
- f. The Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. Except as specifically set forth in the Contract Documents, the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, and for safety precautions and programs in connection with the Work. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

- g. The Contractor shall attend all progress conferences and all other meetings or conferences either in-person or via conference call. The Contractor shall be represented at these progress conferences by the Area Manager and/or by such other representatives as the Owner may direct.
- h. **EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED:** During the performance of this contract, the Contractor agrees as follows:
 - 1. a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 2. The Contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- i. **DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- j. **CONDITION OF CONTRACT:** As a condition of awarding a contract for the provision of services that require the Contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the school board shall require the contractor to provide certification that all persons who will provide such services have not been convicted of a felony or any offense involving the sexual

molestation or physical or sexual abuse or rape of a child.

Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. School boards shall not be liable for materially false statements regarding the certifications required by this subsection.

This subsection shall not apply to a contractor or his employees providing services to a school division in an emergency or exceptional situation, such as when students health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students. *Code of Virginia § 22.1-296.1*

- k. **COMPLIANCE WITH STATE LAW REGARDING EMPLOYMENT OF ALIENS:** The Contractor agrees that it does not and shall not during the performance of the contract for goods and services knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

The Contractor shall comply with any federal and state laws and regulations in regards to confidential information it may be privy to.

This Agreement may not be modified except by written Agreement between the parties.

This Agreement has been reviewed by staff of the Purchasing Agent of Gloucester County. Its substantive terms are appropriate to the needs of the County. This Agreement is subject to appropriations by the Gloucester County Board of Supervisors.

5. PROJECT FUNDING

Each project will have a specific scope of work and funding negotiated and agreed upon by the County and Contractor. Contractor will provide reporting on project status, and invoice according to the terms of each project.

- a. County funds cannot be used for building acquisition, major building renovation, or any form of rent, lease, mortgage payments, or any service that may be used to serve individuals living outside of the County. The County funds can be used for rental of vertical facilities (including privately owned communications towers, water towers and public safety communication towers) storage facilities and co-location facilities necessary for the delivery of broadband services to business, residential and government customers in the County. Contractor hereby represents and warrants that all such sums as may be awarded under this grant shall be utilized exclusively for the purpose of the Project.
- b. In the event Contractor breaches any of the covenants or agreements contained in this Agreement, in addition to any other damages and rights held by the County, Contractor agrees to repay to the County the sums awarded under the Grant and delivered pursuant to this Agreement. If the breach is associated with a specific portion of the grant, Contractor agrees to repay the County the amount associated with the breach.
- c. For purposes of the funding, Contractor agrees to provide broadband service to County residents and businesses in the areas identified as unserved for the term of this Agreement.

- d. **Reimbursement and Refund** – If Contractor ceases service as contemplated herein within five years after the first payment of these funds, for any reason other than nonperformance by the County of its covenants under this Agreement then, at the County’s request, Contractor will refund to the County, a percentage of the funds previously paid to Contractor, in each case depending on the year in which the Company ceases services as determined in the following table and forfeits the right to receive any further grant payments:

Reimbursement

| <u>Year</u> | <u>Percentage</u> |
|-------------|-------------------|
| 1-3 | 100% |
| 4 | 50% |
| 5 | 25% |

In cases of proof of financial hardship, the Contractor may propose to reduce service in select neighborhood areas of the County. These neighborhood areas of the County are defined as areas served by micro-PoPs or small form factor Rohn Towers. Contractor will provide sufficient detail to display that continued operation of current service levels in the neighborhood area subject to reduced service will result in significant operating losses for Contractor that impact the overall profitability and sustainability of Contractor operation in the County. The County and Contractor agree to work together for a 180-day period in attempts to increase demand for Contractor services in the neighborhood area of proposed service reduction. If attempts to increase demand for Contractor are not successful, Contractor will be able to reduce service without reimbursement of previously allotted funds. Contractor agrees to redeploy the equipment serving the area of reduced service into another area of the County where enhanced service is required.

- e. **Adverse Change** – The parties acknowledge that the Project is mutually beneficial and supports the substantial investments in the Project by each party as outlined herein. The Project, including the Grant payments in inducement thereof, is based on current laws, policies, regulations and commitments. If during the term of the Project, the benefits to the parties as contemplated herein are successfully challenged or are adversely affected by changes resulting from legislative changes or administrative or judicial interpretation of laws, policies or regulations, the parties will, to the extent permitted by law, amend the Project and the grants so the parties receive at least the same benefits contemplated herein as if such laws, policies, regulations and commitments, or the interpretations thereof, have not changed.
- f. **Changes in Law** - In the event any applicable County ordinance or policy applicable to Contractor adversely affects or impacts the effective operation of the Project, the County will consider amending such ordinance or policy to facilitate effective operation of the Project, so long as such amendment is in the interest of the County and the public.
- g. **Further Action** – The parties acknowledge that the terms of the Project and the grants and other assistance received are subject to further actions legally necessary under Virginia law to implement the Agreement in a lawful manner. The parties agree that if this Agreement is challenged in a court of law, they shall cooperate in defense of the Agreement.

6. USE OF PROJECT FUNDS

Tower costs: Includes any required tower structural analysis studies, required mounting apparatus on towers, electricity to the base of towers, shed or enclosure for equipment at base of tower, cabling, and installation. Establishing licensed or unlicensed wireless links between towers, and purchase of equipment including routers, switches, antennas, radios, power supplies,

cable, and other physical equipment as specified by Contractor. All equipment will be owned by the Contractor, who is responsible for maintenance and management.

Construction and Operational costs: Internet bandwidth circuits inclusive of BGP routing, network design and IP addressing schema of the system, RF propagation mapping and planning, Project Management, Vendor Management, Construction Management, Billing, Customer Care, Network Maintenance, Sales and Marketing.

Open Broadband Tasks include:

1. Design a network that is cost-effective and delivers high-speed internet service.
2. Develop project recommendations and cost estimates.
3. Prepare detailed design and construction plans, technical specifications, and documents.
4. Act as project manager for all construction phases.
5. Provide on-site construction inspections and management.
6. Conduct system performance tests.
7. Conduct final project inspections and prepare the final construction report.
8. Maintain the equipment needed to provide retail broadband services to residential and business customers.
9. Provide management functions of the service provision, including sales, billing and customer service.

Contractor will use funds solely for the purposes described in each Scope of Work. Funds may not be transferred, either partially or completely, to any other entity or person. Any earnings derived from the broadband network shall be used by Contractor to support the purposes of fulfilling the Scope of Work.

7. TITLE TO EQUIPMENT

Title to equipment acquired by Contractor with funds from this Agreement shall vest in Contractor and become part of its overall network infrastructure.

- a. Contractor may grant ownership of equipment to the County if it is determined that County ownership of equipment is necessary for placement of equipment on certain Federal, State, County or Municipal Government properties. In cases where County ownership is required due to this circumstance, ownership will revert to Contractor if equipment is removed from the Federal, State, County or Municipal property.
- b. Contractor shall use the equipment for the purposes of this Agreement as long as needed, and for the purposes of this Grant Agreement.
- c. Contractor will immediately notify the county of repairs needed on county-owned equipment.
- d. Contractor shall have reasonable 24/7 physical access to equipment located on county property.

8. INDEPENDENT STATUS OF CONTRACTOR

- a. It is agreed between the Parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the County and Contractor. It is further agreed that except for the rights expressly granted to the County

in this Agreement, the County shall have no proprietary rights in the Project.

- b. The Parties acknowledge that Contractor is an independent entity. Contractor shall not represent itself as an agent of the County; nor shall the Agreement be construed so as to make Contractor an agent of the County. The Contractor shall not have the ability to bind the County to any agreement for payment of goods or services, nor shall it represent to any person or entity that it has such ability. Contractor shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. Contractor shall provide workers compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by Contractor are its sole responsibility, and the County shall not be liable for Contractor's payment of any obligations incurred in the performance of the Project.
- c. Contractor has not entered into any contract or established any understanding with a third party that is, or may be, considered a subgrantee under N.C.G.S. 143C-6-23. Further, Contractor shall not enter into any contract with a subgrantee without first giving notice to the County and obtaining approval of the County for such an agreement.

9. NON-EXCLUSIVE NATURE OF CONTRACT

The parties understand and agree that this Agreement is not exclusive with reference to non-VATI Projects, if any; and therefore, the County may contract with any other entity for such non-VATI projects.

10. NON-APPROPRIATION

- a. Contractor acknowledges that the validity of this Agreement is based upon the availability of public funding under the authority of statutory mandates.
- b. In the event that funds are unavailable and not appropriated by the County for the performance of either party's (Owner's or Contractor's) prospective obligations under this Agreement, then this Agreement shall automatically expire prospectively without penalty or further liability for damages to/from either party immediately upon written notice by the County to the Contractor of the unavailability and non-appropriation of funds.
- c. In the event of a change in the Owner's statutory authority, mandate and/or mandated functions, by state and/or federal legislative or regulatory action, which adversely affects Owner's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate prospectively without penalty or further liability for damages to/by Owner upon written notice to Contractor of such limitation or change in Owner's legal authority.

11. NOTICES

Any notice required by this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

Owner:
Gloucester County
Attn: Carol Steele
6489 Main Street
Gloucester, VA 23061

Contractor:
Open Broadband, LLC
Alan Fitzpatrick
PO Box 723
Waxhaw, NC 28173

12. PROJECT REPORTING

A. **Record Keeping.** Contractor shall maintain financial and other records that specifically show the use of the Funds exclusively for the purposes of the Scope of Work. Contractor shall maintain such records for at least three (3) years after the end of the Agreement. Owner shall have the right, upon reasonable notice, to conduct on-site visits and to audit at any time up to three (3) years after the end of the Funds Period, Contractor's records relating to the expenditure of the Funds.

B. **Written Reports.** Contractor shall submit written reports (described below) relating to the expenditure of the Funds and the progress of the Funds purposes. Contractor shall submit to Owner in writing the following reports:

- (i) **Monthly Reports.** On or before the 10th of each month, Contractor shall submit a use-of-funds report for the previous month, compliance with the terms of this Agreement, and the progress made toward achieving the purposes of the Scope of Work including status of the network build and new monthly activation of customers.
- (ii) **Final Report.** Contractor shall submit to the Owner a final report detailing the use of the Funds and describing the progress made toward the purposes of the Scope of Work within thirty (30) days after the expiration of the term of the Funds.
- (iii) **Other Reports.** In addition to the above reports, the Contractor shall comply with the reasonable requests of the Owner for other reports. Contractor shall also make its personnel available at the reasonable request of Owner to discuss expenditures, records and the progress of the Funds Project.

13. MISCELLANEOUS

- a. Duties and Obligations imposed by the Contract Documents shall be in addition to any Duties and Obligations imposed by state, federal or local law, rules, regulations and ordinances.
- b. No act or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty under the Contract Documents, nor shall any act or failure to act constitute any approval except as specifically agreed in writing.
- c. The Work shall be tested and inspected as required by the Contract Documents and as required by state and federal law. Unless prohibited by law, the costs of all such tests and inspections related to state and federal codes such as ADA, Administrative, Electrical, Plumbing, Mechanical and Building Codes shall be borne by the Contractor. The costs for material and structural testing, including any desired tower structural analysis, shall be conducted by an

independent third party at the expense of the Contractor. The Contractor shall notify the Owner in writing of any testing or analysis to be conducted on assets owned by the County prior to such work being scheduled. If any such tests and inspections reveal deficiencies in the Work such that the Work does not comply with terms or requirements of the Contract Documents and/or the requirements of any code or law, the Contractor is solely responsible for the cost of bringing such deficiencies into compliance with the terms of the Contract Documents and/or any code or law.

- d. Should the County reject any portion of the Work for failing to comply with the Contract Documents, Contractor shall immediately, at Contractor's expense, correct the Work. Any such rejection may be made before or after substantial completion.
- e. The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the County.

14. CONSEQUENTIAL DAMAGES

- a. County and Contractor mutually waive any claim against each other for consequential damages. Consequential Damages include:
 - (i) Damages incurred by Owner for loss of use, income, financing, or business.
 - (ii) Damages incurred by Contractor for office expenses, including personnel, loss of financing, profit, income, business, damage to reputation, or any other non-direct damages.

15. INSURANCE

During the terms of this Agreement the Contractor certifies it will maintain the following insurance coverage:

For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with Section 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The contractor further certifies that the Contractor and any subcontractors will maintain insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include employers. Contractors who fail to notify the County of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the Agreement shall be in noncompliance with the Agreement.
- b. Employer's Liability - \$500,000 bodily injury, \$500,000 bodily injury by disease, and \$500,000 by disease policy limit.
- c. Commercial General Liability - \$2,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Owner and The County of Gloucester must be named as an additional insured and so endorsed on the policy.

- d. Automobile Liability - \$1,000,000 – per occurrence, \$1,000,000 each occurrence of bodily injury liability, and \$1,000,000 each occurrence of property damage liability, policies with a single combined limit must be not less than \$2,000,000 or \$1,000,000 with an umbrella policy of \$1,000,000 per occurrence. (If a motor vehicle is to be used in the agreement.)
- e. Professional Liability/Errors and Omissions - \$1,000,000 per occurrence and shall hold Owner and Gloucester County, its departments, agents, employers or assigns harmless from any claim, including claims for attorney's fees or other legal expenses, which may arise as a result of the sole negligence or malpractice of an employee of the Contractor in providing services.

Owner and Gloucester County shall be named as additional insureds under the insurance policies specified above, and Contractor shall provide Certificates of Insurance to Owner and Gloucester County.

16. TERM

The effective period of this Agreement shall commence on the Effective Date, upon completion by the Parties' authorized signatories, and shall terminate on the fifth calendar year anniversary date.

17. Governing Laws and Courts:

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and ordinances of the County of Gloucester, Virginia. Any litigation with respect thereto shall be brought in the courts of Gloucester County, Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations (§ 15.2-1235, *Code of Virginia*).

18. Indemnification:

Contractor agrees to indemnify, defend and hold harmless Gloucester County, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the County or to failure of the County to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

19. Federal Requirements:



This Agreement may be subject to federal oversight. The Contractor, as applicable, will comply with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) Part 317-326 (Procurement Standards) and Section 2 CFR 200.404 (Cost Reasonableness).

20. ENTIRE AGREEMENT

All of the documents listed, referenced or described in this Agreement, the written Notice-to-Proceed, together with Modifications made or issued in accordance herewith are the Contract Documents, and the work, labor, materials, and completed construction required by the Contract Documents and all parts thereof is the Work. The Contract Documents constitute the entire Agreement between Owner and Contractor. This Agreement may be amended only by a written instrument signed by both parties. Modifications may be evidenced by facsimile signatures. If any provision of the Agreement or General Conditions shall be declared

invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first above written in a number of counterparts, each of which shall, without proof or accounting for other counterparts, be deemed an original contract.

| GLOUCESTER COUNTY : | CONTRACTOR: |
|---|--|
| By:  Carol Steele Acting County Administrator Gloucester County, VA | By:  Alan Fitzpatrick CEO Open Broadband, LLC |

This instrument has been pre-audited in the manner requested by the Local Government Budget and Fiscal Control Act.

N/A
Gloucester County Finance Director

Approved as to form:

 6-8-2021
County Attorney