

BUILD AGREEMENT

This Build Agreement is made this ___ day of December 2022, by and between Windstream Georgia Communications, LLC, a Georgia limited liability company (“WIN”), and County of Baldwin, Georgia (the “County”).

In consideration of the mutual covenants and agreements, the parties hereto do mutually covenant and agree as follows:

INTRODUCTION

- Purpose.** The County has agreed to utilize \$842,136 in Georgia State and Local Fiscal Recovery Fund grants (the “Funds”) to enable WIN to develop valuable telecommunications facilities for community residents, particularly the increased availability of telemedicine services, distance learning, and telework. WIN has partnered with the County in connection with the Broadband Grant application and has committed to the County that upon receipt of the Funds it intends to design, construct, install and implement in such areas of Baldwin County, according to the plans and specifications approved by the State of Georgia, within a reasonable time after the Broadband Grant funding is approved, and in no event later than the date of the Broadband Grant expiration. Since the total expenses associated with the Project are estimated to be at least \$1,786,422, County has committed to provide the sum of \$151,782.50 in matching funds and WIN has committed to provide the sum of \$792,503. Any cost overruns will be paid by WIN.
- Need for Fiber Optic System.** Both WIN and the County recognize the need for installation of certain telecommunications facilities/broadband services within the County to meet the increasing capacity demand of residents by increasing speeds available to all residents of the County and especially to those residents located in areas of the County which may be considered unserved or underserved.
- Project Funding.** The parties agree that the County will provide WIN the Funds to design, construct, and install the Project, as described below, within the limits of the County pursuant to the terms and conditions of this Agreement not to exceed \$842,136 from the state and \$151,782.50 from the county. After all Funds have been paid to WIN, the remaining costs of constructing the Project will be paid by WIN. County acknowledges that WIN is receiving the Funds in consideration of its decision to install broadband infrastructure in the area covered by the Project.

THE PROJECT

- Project.** The Project entails WIN constructing fiber as generally shown on the drawing attached hereto as **Attachment A** in order to expand high-speed internet services to approximately 683 households within the County. The household count is based upon internal address data WIN obtained from multiple vendors. Upon completion of the Project, WIN will be able to offer and will offer broadband service to each residence within the Project area utilizing the facilities constructed as part of the Project, which newly constructed facilities may

be connected to existing facilities. Additionally, as part of the Project WIN will upgrade the electronics within this area, if necessary, in order to provide broadband speeds of at least 1 gigabit download and upload to the households within the County as shown on **Attachment A**. Certain Multiple Dwelling Units within the Project area may require internal wiring upgrades beyond the scope of the Project in order to receive broadband speeds of at least 1 gigabit download and upload. Any commercial properties within the Project area may require additional wiring/cabling inside the premises that will be the property owner's responsibility.

5. **Project Costs and Use of Project Revenues**. The Funds will be used solely for costs incurred to complete the aspects of the Project described in **Attachment B** and for no other purpose.
6. **Funds**. The Funds shall be disbursed to WIN via wire transfer or check. County will use its best efforts to submit all requests for any disbursements of Funds at the earliest opportunity that County would be entitled to such disbursement. Monthly WIN will provide to County such documentation that is necessary for County to seek reimbursement from the Georgia State and Local Fiscal Recovery Fund (the "Reimbursement Documentation"). County commits to request reimbursement from the Georgia State and Local Fiscal Recovery Fund within ten (10) days of receiving the Reimbursement Documentation. County further commits to pay to WIN any portion of the Funds distributed to County within ten (10) days of receipt, unless a longer or shorter timeframe is required by the Terms and Conditions, as that term is defined below.
7. **Political Activity**. No portion of the Funds will be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.
8. **Prohibition Against Payment of Bonus or Commissions**. No portion of the Funds will be used in payment of any bonus or commission for the purpose of obtaining any approval or concurrence under this Agreement.
9. **Reporting**. County agrees to prepare and submit all reporting required in connection with its receipt of the Funds (the "State Reporting"), including financial reports, performance (technical) reports, and annual reports. On a quarterly basis, or more frequently if required by the State Reporting standards, WIN will provide County, in a timely manner, with information within its possession necessary for County to fulfill its State Reporting obligations. County agrees that it will not alter any information provided to it by WIN to be used for State Reporting or other purposes, without first obtaining WIN's written consent. To the extent possible, County will arrange for WIN to have access to any State Reporting electronic portals, but County will still be responsible for completing and submitting all State Reporting. WIN agrees that it will provide County with such assistance as is reasonably necessary to allow County to comply with the American Rescue Plan Act State Fiscal Recovery Fund Broadband Infrastructure Award Terms and Conditions as executed by the County on April 7, 2022 (the "Terms and Conditions") and that it will comply with such portions of the Terms and Conditions that are directly applicable to WIN as a for profit sub-recipient.

CONSTRUCTION

10. WIN Responsibilities.

- a. All work on the Project will conform to the plans described in **Attachment(s) A and B**.
- b. The Project shall be performed in a workman like fashion in keeping with the prevailing industry standards.
- c. Upon completion of the Project, WIN shall notify the County.
- d. WIN shall be responsible for Project Costs that exceed the amount of the Funds.

11. Completion Date. The parties agree to use commercially reasonable efforts to have the Project completed on or before October 31, 2026.

LEGAL INTERESTS/RIGHTS IN CONSTRUCTED PROJECT

12. Project Ownership. The County will have no ownership right or interest in any part of the Project and hereby irrevocably grants, sells, transfers, conveys, sets over, and assigns any interest that it may have or may in the future obtain in the Project to WIN. WIN retains full legal and/or beneficial title, to any and all components of the Project, including during construction, and the components will be utilized as part of the WIN network. Additionally, WIN will manage the Project's assets for their most efficient use, consistent with current management practices of the WIN network, including transferring title to, or allowing use by, other parties.

GENERAL TERMS & CONDITIONS

13. Term. This Agreement shall become effective upon its execution and shall expire upon completion of the Project.

14. Relationship of Parties. Each party shall perform its duties under this Agreement and neither party has the authority to create binding obligations or liabilities on the part of the other party through the first party's actions.

15. Warranties. Each party represents and warrants that the entry and performance of this Agreement are within the powers of the respective party; have been duly authorized by all necessary actions; have received all necessary approvals; do not contravene any law, regulation, decree, or any contractual obligations; and will be the legal and binding obligations of the party.

16. Successors and Assigns.

- (a) **Generally.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- (b) **Exceptions.** Notwithstanding the foregoing,

- (i) WIN may assign this Agreement without the consent of the County to any WIN affiliate, to the surviving entity into which WIN may merge or consolidate, or to any entity to which WIN transfers all, or substantially all, of its business and assets or its stock or all or a substantial portion of its assets located within the limits of the County;
- (ii) WIN may, at any time, transfer its ownership interest in any of the Project components to any WIN affiliate without the consent of County; and
- (iii) WIN shall also have the right, without the consent of the County, to assign or otherwise transfer this Agreement as collateral to any lender to WIN (or lender to any successor or assign of WIN); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement.

17. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, or (c) on the date of deposit in the U. S. mails, postage prepaid, by certified mail, return receipt requested, in each case addressed as follows, or to such other addresses as shall be designated from time-to-time by the parties:

If to WIN to:

Windstream Georgia Communications, LLC
4001 North Rodney Parham Road
Mailstop KINETIC #1207
Little Rock, AR 72212
Attention: Staff Manager – Government Programs

With a copy to:

Windstream Georgia Communications, LLC
4001 North Rodney Parham
Mailstop: B1F03-71A
Little Rock, AR 72212
Attention: Legal Department

If to the County:

County of Baldwin, Georgia
1601 N Columbia St, Ste 230

Milledgeville, GA 31061
Attn: Chairman Harry Craig

- 18. Force Majeure.** In the event WIN or the County is delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts of civil or military authority, fires, floods or earthquakes, fiber cuts, inability to procure necessary supplies due to global or national supply chain shortages, impacts or effects of pandemics or epidemics on labor needs or goods and services, or other causes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the foregoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance.
- 19. Limitation of Liability.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
- 20. Disclaimer.** THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- 21. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same document.
- 22. Expenses.** Except as otherwise expressly provided herein, each party shall bear the costs and expenses incurred by it in negotiating, entering into, and performing any of its obligations under this Agreement.
- 23. Headings.** The headings of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.
- 24. Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia applicable to contracts made and to be performed entirely in that state, without regard to the conflicts of laws rules of that state. The

parties agree that the proper venue for a matter brought by either party shall be in a state or federal court located within the State of Georgia.

25. Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. If this Agreement shall be held to be unenforceable against either party, the enforceability of such agreement against the other party hereto shall not in any way be affected or impaired thereby.

26. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTION OF EITHER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE, AND ENFORCEMENT HEREOF.

27. Binding Agreement. This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

28. Right-of-Way Agreements. To the extent possible, the County will assist WIN in securing any easements or right-of-way agreements necessary for the Project in an efficient and timely manner, and at a commercially reasonable cost.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and to become effective as of the date first written above.

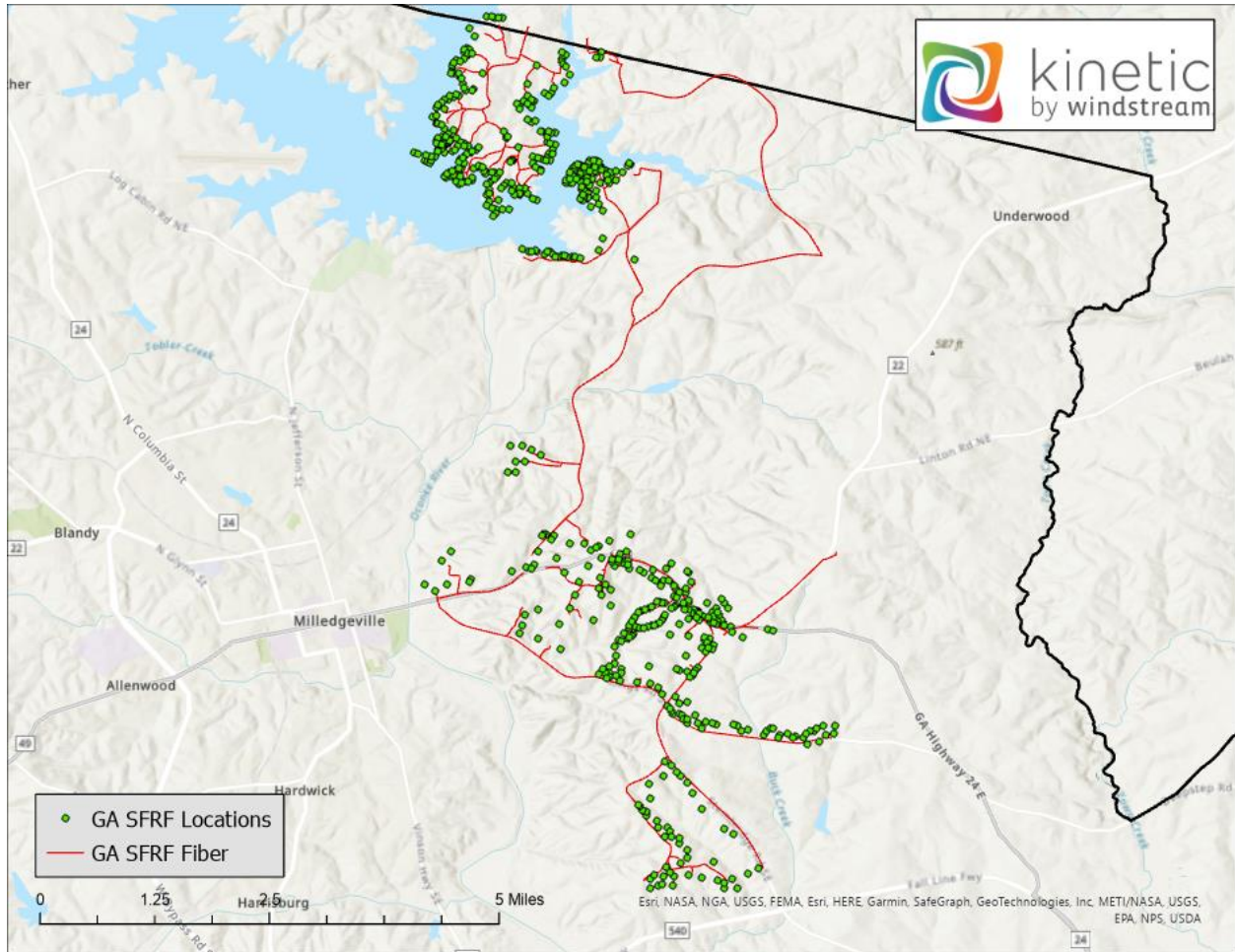
COUNTY of BALDWIN, GEORGIA

**WINDSTREAM GEORGIA
COMMUNICATIONS, LLC**

By: _____
Name: Henry Craig
Title: Chairman

By: _____
Name: _____
Title: _____

ATTACHMENT A



ATTACHMENT B

Planning, Fiber Engineering, and Equipment Engineering: The construction planning phase of the project will include the preparation of preliminary layouts, detailed design and construction plans, and cost estimates. Project specifics will be entered into the company Jobtrac system to monitor construction status and ensure a smooth workflow during each step from startup to project completion. A site survey will be conducted, and equipment engineering will place orders for materials within the company supply and warehouse system.

Fiber Construction: The construction work will include placement and splicing of fiber. Internal and/or contractor resource options will be utilized as needed to meet completion targets. Any needed right of ways or permits will be obtained. Project status will be monitored on a regular basis. A video inspection team will schedule and conduct testing.

Testing, Activation, Speed Qualification Updates: As fiber lines are completed, work on equipment installation, testing and turn up will get underway. Needed Central Office wiring and assignments will be completed. Once site testing is completed and equipment activated, location records will be updated reflecting the speeds available at specific addresses, and the new locations readied for service.