

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)**, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2015, by and between the Commonwealth of Kentucky, \_\_\_\_\_, Frankfort, Kentucky 40601 (“the Commonwealth”) and the Lexington-Fayette Urban County Government, 200 E. Main St, Lexington, KY 40507 (“LFUCG” or “Government”).

**WHEREAS**, the Commonwealth and LFUCG are interested in providing modern, high capacity fiber in order to allow businesses to compete globally, to enable educators to expand their resources, and to provide consumers with high-speed Internet access; and

**WHEREAS**, the Commonwealth will be constructing an open access fiber optic network (“KentuckyWired Network” or “Network”) as described in Attachment A and provided digitally, which is attached hereto and incorporated by reference, throughout the Commonwealth of Kentucky; and

**WHEREAS**, the Commonwealth will encroach upon LFUCG’s public rights-of-way for the purpose of constructing portions of the KentuckyWired Network that will be located within Lexington-Fayette County; and

**WHEREAS**, LFUCG will establish procedures to assist the Commonwealth in accessing LFUCG’s public rights-of-way during construction of the KentuckyWired Network; and

**WHEREAS**, the Commonwealth and LFUCG mutually desire to set forth each party’s rights and responsibilities regarding the Commonwealth’s encroachment upon LFUCG’s public rights-of-way.

**NOW, THEREFORE**, in consideration of the mutual covenants expressed herein, the Commonwealth and LFUCG, acting through their duly authorized agents, hereby agree as follows:

1. Recitals - The Recitals set forth above are hereby incorporated in and made part of this MOU by reference.
2. Term - This MOU shall be effective from the date of its execution. The repair and maintenance obligations expressed herein shall be considered as running with the land and shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, assigns or successors in interest.
3. Scope – The terms of this MOU shall apply to construction of any and all portions of the KentuckyWired Network located within Lexington-Fayette County, Kentucky.
4. Authorization to Encroach – Subsequent to the execution of this Agreement, LFUCG authorizes the Commonwealth and its agents to encroach upon its public rights-of-way for the construction of KentuckyWired Network.

5. Agreement to Abide by Ordinances - The Commonwealth shall register with the LFUCG Division of Engineering, Right-of-Way Section and abide by Chapter 17C of the Lexington-Fayette Code of Ordinances (“Chapter 17C”) in its entirety.
6. Filing of Applications and Documents - LFUCG agrees to offer electronic filing for all related LFUCG applications, requests for notification, and other documents required of the Commonwealth during construction of the Network. LFUCG will make every effort to keep electronic submittal systems in working order, but provides no guarantee regarding the service level of electronic submittal systems.
7. Use of Commonwealth Facilities - The Commonwealth shall permit LFUCG and its authorized agents to lash over any part of the Commonwealth’s Network, occupy the Commonwealth’s conduit, and attach to any poles, or pole space, owned or controlled by the Commonwealth within Lexington-Fayette County at no cost upon thirty (30) days’ written notice, provided that the lashing, occupation of conduit, or attachment does not conflict with prevailing construction standards and does not impair or impede the Network’s effective operation.
8. Storage of Flammable Substances - The Commonwealth shall not store gasoline, coal fuel, or any other flammable substances within or adjacent to LFUCG’s public rights-of-way.
9. Responsibility for Maintenance – The Commonwealth assumes all responsibility for maintenance and repair of facilities constructed as described in Attachment A, in accordance with the requirements of Chapter 17C.
10. Abandonment of the Commonwealth’s Facilities – Upon permanent discontinuance of the use of all or a portion of the KentuckyWired Network located in Lexington-Fayette County, or upon a temporary discontinuance as defined in Chapter 17C, the Commonwealth shall make written application to the appropriate LFUCG official to either: (1) abandon all or a portion of such facilities in place; or (2) remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps in Attachment A, and shall also describe with reasonable accuracy the physical condition of such facilities.
  - (a) The Government shall determine whether the proposed abandonment or removal may be effected without detriment to the public interest and under what conditions the proposed abandonment or removal may be safely effected. The Government shall notify the Commonwealth of its determination and issue additional appropriate orders, including an order that the Commonwealth remove any or all such facilities.
  - (b) In the event that the Commonwealth fails to comply with the terms and conditions of abandonment or removal, the Government may remove or cause the Commonwealth’s facilities to be removed at the Commonwealth’s expense.

(c) In the event that the Commonwealth is unable or unwilling to comply with the terms and conditions of abandonment or removal as may be required by the the Government pursuant to Chapter 17C, the Urban County Government shall have the right of first refusal to purchase, at the appraised price, all or any part of the abandoned Network to be sold or otherwise disposed of within Lexington-Fayette County, Kentucky.

11. Indemnity – The Commonwealth agrees to indemnify, hold harmless, and defend LFUCG, including its elected and appointed officials, employees, agents and successors in interest, from all claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting directly or indirectly from the Commonwealth’s (or its subcontractors) construction of or defective operation, repair, or maintenance of the KentuckyWired Network, provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury or to destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act, omission, or willful misconduct of LFUCG, including its elected and appointed officials, agents and successors in interests, and its employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way shall survive the termination of this Contract.
12. Disputes – The parties mutually agree to cooperate during construction of the KentuckyWired Network and to negotiate in good faith in an effort to resolve any disputes that may arise.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Understanding on the date first above written.

APPROVED AS TO FORM  
AND LEGALITY

**COMMONWEALTH OF KENTUCKY**

BY:

\_\_\_\_\_

BY: \_\_\_\_\_  
Secretary

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT**

BY:

\_\_\_\_\_

BY: \_\_\_\_\_  
Jim Gray, Mayor