

RESOLUTION NO. 412 – 2023

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A TWENTY-EIGHT YEAR INDEFEASIBLE RIGHT OF USE AGREEMENT WITH THE COMMONWEALTH OF KENTUCKY FOR APPROXIMATELY TWENTY-SEVEN MILES OF A ONE HUNDRED FORTY-FOUR COUNT BUNDLE OF FIBER WITHIN THE URBAN COUNTY, AT A ONE TIME COST NOT TO EXCEED \$63,588.00 AND AN ANNUAL COST NOT TO EXCEED AN ADDITIONAL \$20,000.00 IN MAINTENANCE COSTS; AND AUTHORIZING THE CHIEF INFORMATION OFFICER TO EXECUTE FUTURE CHANGE ORDERS PURSUANT TO SECTION 4.3 OF THE INDEFEASIBLE RIGHT OF USE AGREEMENT; ALL CONTINGENT UPON PASSAGE OF A SIMULTANEOUS RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A FIBER LEASE AGREEMENT WITH THE UNIVERSITY OF KENTUCKY.

WHEREAS, the Commonwealth of Kentucky and the Lexington-Fayette Urban County Government 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 constructed an open access fiber optic network, commonly referred to as "KentuckyWired Network"; and

WHEREAS, the Commonwealth encroached upon the urban county government's public rights-of-way for the purpose of constructing portions of the KentuckyWired Network that will be located within Lexington-Fayette County. The urban county government established procedures to assist the Commonwealth in accessing its public rights-of-way during construction of the Network; and

WHEREAS, the parties entered into a Memorandum of Understanding on May 4, 2017, setting forth each party's rights and responsibilities regarding the Commonwealth's encroachment upon LFUCG's public rights-of-way; and which required LFUCG to pay a sum of \$270,000.00 for a 144 ct. bundle of fiber to be installed by the Commonwealth in Lexington-Fayette County pursuant to the construction plans set forth therein, and an ongoing sum for annual maintenance of the fiber; and

WHEREAS, the fiber referenced above was installed by the Commonwealth; and

WHEREAS, after a miscommunication between the parties regarding the above installation payment, the parties entered into the First Amendment of Memorandum of Understanding on January 13, 2020, which reserved approximately 27 miles of the 144 ct. bundle of dark fiber referenced above within the urban county for the urban county government upon payment of \$113,588.00, less a deduction for

in-kind labor and material costs provided by the urban county government to the Commonwealth. According to the First Amendment, the urban county government could also pay an additional \$63,588.00 to obtain an Indefeasible Right of Use to the fiber, and any annual maintenance costs would be capped at \$20,000.00; and

WHEREAS, the use of the fiber is currently reserved for the urban county government; and

WHEREAS, upon payment of \$63,588.00, the Commonwealth of Kentucky is willing to grant to Grantee an indefeasible right of use for the operation and use of the fiber in the Network to the urban county government, and the Commonwealth desires to license, the use of the fiber;

WHEREAS, the University of Kentucky is interested in leasing the use of twenty-four of the fibers from the urban county government in return for paying the \$63,588.00 for the urban county government's Indefeasible Right of Use and the entirety of the annual maintenance costs for as long as it uses the only active fiber in the bundle; and

WHEREAS, authorization to execute the Fiber Lease Agreement with the University of Kentucky is concurrently being requested via another resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to execute a twenty-eight year Indefeasible Right Of Use Agreement with the Commonwealth of Kentucky for approximately twenty-seven miles of a one hundred forty-four count bundle of fiber within the urban county, at a one-time cost not to exceed \$63,588.00 and an annual cost not to exceed an additional \$20,000.00 in maintenance costs, contingent upon passage of a concurrent resolution authorizing and directing the Mayor to execute a Fiber Lease Agreement with the University of Kentucky.

Section 2 – That the Chief Information Officer, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to execute any future change orders pursuant to Section 4.3 of the Indefeasible Right of Use Agreement.

Section 3 – That an amount not to exceed \$83,588.00, be and hereby is approved for payment to the Commonwealth of Kentucky, or its designee, from account # 1101-

202505-0001-76101, pursuant to the terms of the Indefeasible Right of Use Agreement, with the entirety of these funds being first provided to us by the University of Kentucky pursuant to the Fiber Lease Agreement with the University of Kentucky, until such time as the urban county government is required to pay a partial share in the annual maintenance costs.

Section 4 –That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 13, 2023



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

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