

FIRST AMENDED MEMORANDUM OF UNDERSTANDING

THIS FIRST AMENDED MEMORANDUM OF UNDERSTANDING (“Amended MOU”), made and entered into this 26 day of ~~August~~^{November} 2019, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet and Commonwealth of Kentucky, Kentucky Communications Network Authority, Frankfort, Kentucky 40601 (“the Commonwealth” collectively; “Finance” and “the COMMONWEALTH” individually) and the Lexington-Fayette Urban County Government, 200 E. Main St, Lexington, KY 40507 (“LFUCG” or “Government”)(Finance, the COMMONWEALTH and LFUCG may be referred to collectively as “Parties”).

WHEREAS, the Commonwealth and LFUCG entered into a Memorandum of Understanding (“Agreement”) on May 4, 2017 wherein the Commonwealth agreed to build an additional 144 strands of fiber optic cable in the City of Lexington for LFUCG’s use and LFUCG agreed to pay all costs associated with this additional construction;

WHEREAS, LFUCG lacked funding to pay for the construction;

WHEREAS, the Commonwealth continued with construction in accordance with the Agreement;

WHEREAS, the Commonwealth and LFUCG have agreed to amend the Agreement to allow LFUCG certain rights relating to the construction of the KentuckyWired network within the City of Lexington; and

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

A. Paragraph No. 4 of the Agreement shall be replaced with the following language:

Costs- LFUCG has paid the COMMONWEALTH an amount not to exceed \$113,588 in Fiscal Year 2019, less the deduction provided in Section 5 of the Agreement, for the labor and minor material cost and half the material of approximately 27 miles 144-ct. bundle of Corning Dielectric Fiber (hereinafter referred to as “the Fiber”), to be installed by the COMMONWEALTH in Lexington-Fayette County pursuant to the KentuckyWired construction plans set forth herein. A map providing the location of the Fiber within Lexington-Fayette County, including beginning and end points, is attached and incorporated herein by reference as Exhibit B.

The Payment of \$113,588, less the deduction in Section 5 of the Agreement, reserves the Fiber for LFUCG. The LFUCG may pay an additional \$63,588 to obtain an Indefeasible Right of Use (“IRU”) of the Fiber. If LFUCG does not pay this additional amount, the COMMONWEALTH may make the Fiber available to third parties after leasing or selling all other fiber not reserved for the COMMONWEALTH or LFUCG within Lexington-Fayette County.

Prior to any sale or lease of the Fiber to a third party, LFUCG will be allowed first right of refusal to retain full use via an IRU of the Fiber. LFUCG will have sixty (60) business days to exercise its first right of refusal once it has been officially notified, in writing, of the COMMONWEALTH's intent to lease or sell all or some part of the Fiber. If LFUCG exercises its first right of refusal, it shall pay the COMMONWEALTH \$63,588 within thirty (30) days of exercising the right. If LFUCG does not exercise its first right of refusal, the COMMONWEALTH will be authorized to lease or sell all or some part of the Fiber to other entities.

Once LFUCG pays the COMMONWEALTH \$63,588, it will be granted a 28 year indefeasible right of use ("IRU") for the Fiber. The Fiber has not been test certified and does not have any LFUCG access points installed.

Any request for access to the Fiber, once an IRU is extended to LFUCG, shall be by change order by LFUCG. The COMMONWEALTH will provide LFUCG with the estimated cost to install and test access points before authorizing the access point work. When the COMMONWEALTH creates access points for LFUCG, it will also conduct certification testing and provide LFUCG with the test results. The COMMONWEALTH will invoice LFUCG for access point engineering, installation, and fiber testing within thirty (30) days after LFUCG has accepted the installation.

LFUCG shall pay the COMMONWEALTH an estimated amount not to exceed \$20,000.00, subject to sufficient appropriation of funds, for annual maintenance of the Fiber. The annual maintenance cost will be calculated based on the quantity of access points that the Commonwealth has installed for LFUCG. LFUCG annual maintenance cost will not be applicable until it obtains an IRU for the Fiber.

The Commonwealth hereby agrees to provide LFUCG with a statement of the maintenance work to be performed and fees for such work on or before April 1 of each fiscal year for the duration of this Agreement.

B. Paragraph No. 8 of the Agreement shall be replaced with the following language:

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. In the event of an electronic failure, the Commonwealth shall provide any and all required submittals in writing to the LFUCG Division of Engineering, Right-of-Way Section.

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

APPROVED AS TO FORM
AND LEGALITY

BY:

BY:

BY:

**COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION
CABINET**

BY:

William M. Landrum, III, Secretary


**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY:

Linda Gorton
Linda Gorton, Mayor

**KENTUCKY COMMUNICATIONS NETWORK
AUTHORITY**

BY:


Bernard (Deck) Decker
Interim Executive Director

First Amended Memorandum of Understanding between
Lexington-Fayette Urban County Government,
Commonwealth of Kentucky, Finance and Administration Cabinet, and
Kentucky Communications Network Authority
August---, 2019

Exhibit B

