

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this ____ day of _____ 2016, 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 “KCNA” individually) 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, which is attached hereto and incorporated by reference, throughout the Commonwealth of Kentucky; and

Comment [AB1]: KCNA has provided LFUCG with a map reflecting the most recent network design.

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. Cost- LFUCG shall pay the Commonwealth an amount not to exceed \$270,000.00 in as budgeted Fiscal Year 2016 for a 144 ct. bundle of Dielectric Fiber, Corning #

Formatted: List Paragraph, No bullets or numbering

432EU4-T4100A20 to be installed by the Commonwealth in Lexington-Fayette County pursuant to the construction plans set forth herein. LFUCG shall also pay the Commonwealth for construction work in future years an amount estimated to be \$80,000 pursuant to the construction plan set forth herein and subject to sufficient appropriation of funds. LFUCG shall also pay the Commonwealth an estimated amount not to exceed \$20,000.00, subject to sufficient appropriation of funds, for annual maintenance of such 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.

- ~~3~~.5. 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.
- ~~4~~.6. 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.
- ~~5~~.7. 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.
- ~~6~~.8. Use of Commonwealth Facilities — In addition to the fiber installation and maintenance services set forth herein, 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.
- ~~7~~.9. 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.
- ~~8~~.10. Responsibility for Maintenance – The Commonwealth assumes all responsibility for maintenance and repair of its facilities constructed as described in Attachment A, in accordance with the requirements of Chapter 17C. The Commonwealth hereby agrees to maintain facilities separately owned by LFUCG pursuant to this Agreement subject to LFUCG’s annual payment obligation set forth in Section 4.

Formatted: List Paragraph, No bullets or numbering

~~9.~~11. 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: (1) upon providing written notice to the Government, abandon all or a portion of such facilities in place or (2) remove all or a portion of such facilities within 90 days.

~~10.~~12. Indemnity – To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, 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.

~~11.~~13. Disputes – The parties mutually agree to cooperate during construction and operation of the KentuckyWired Network and to negotiate in good faith in an effort to resolve any disputes that may arise.

~~12.~~14. Cancellation clause - Either party may cancel the contract on 30 days' written notice if

- i. the other is in breach of any material obligation contained in this Agreement, which is not remedied (if the same is capable of being remedied) within 30 days of written notice from the other party so to do; or
- ii. a voluntary arrangement is approved by the parties.

~~13.~~15. Access to Records - LFUCG agrees that Finance, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this MOU for the purpose of financial audit or program review. LFUCG also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

16. Additional Costs – LFUCG agrees that it will bear the cost or reimburse the Commonwealth for all incremental costs including, but not limited to, engineering, materials and construction costs that arise due to a request from LFUCG.

Formatted: (none)

Formatted: List Paragraph, Left, Right: 0", No bullets or numbering

~~14.~~17. Notices - Any notices required or permitted to be given hereunder shall be delivered, in writing (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by facsimile, addressed as follows:

To LFUCG:

Daniel L. Kiser, P.E.
Municipal Engineer Senior, Right-of-Way Management Branch
Lexington-Fayette Urban County Government
4th Floor Phoenix Building
101 E. Vine Street
Lexington, KY 40507
Fax: (859) 258-3458

To the Commonwealth:
[INSERT CONTACT]

Formatted: Superscript

Comment [AB2]: Please provide contract manager or contact for this project.

Formatted: English (U.S.)

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
FINANCE AND ADMINISTRATION CABINET**

BY: _____

BY: _____
Secretary

BY: _____

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: _____
Jim Gray, Mayor

BY: _____

**KENTUCKY COMMUNICATIONS NETWORK
AUTHORITY**

BY: _____
Executive Director

