

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this ____ day of _____ 2018, 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 City of Morehead, 314 Bridge Street, Morehead, KY 40351 (“MOREHEAD” or “Government”).

WHEREAS, the Commonwealth and MOREHEAD 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

WHEREAS, the Commonwealth will encroach upon MOREHEAD’s public rights-of-way for the purpose of constructing portions of the KentuckyWired Network that will be located within Morehead; and

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

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

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the Commonwealth and MOREHEAD, 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 Morehead, Kentucky.
4. Cost- Morehead shall pay the Commonwealth a total amount not to exceed \$275,420 or a 144 ct. bundle of Dielectric Fiber to be installed by the Commonwealth in

Morehead per the agreed upon construction plans. Morehead shall, within 45 days of execution of this MOU, pay the Commonwealth \$137,710 for engineering, planning, and construction activities. Final payment will be due within forty-five (45) days of final construction. Final construction means all the fibers have been placed spliced, terminated, tested for end-to-end continuity and fiber budget loss. Morehead shall also pay the Commonwealth an estimated amount not to exceed \$20,000 for annual maintenance of such fiber.

The Commonwealth will provide Morehead a statement of work for the maintenance to be performed and the fees for the work on or before April 1 of each fiscal year for the duration of the MOU.

5. Authorization to Encroach – Subsequent to the execution of this Agreement, MOREHEAD authorizes the Commonwealth and its agents to encroach upon its public rights-of-way for the construction of KentuckyWired Network.
6. Agreement to Abide by Ordinances - The Commonwealth shall register with the MOREHEAD Planning and Zoning division and abide by the applicable ordinances in the Morehead Code of Ordinances.
7. Filing of Applications and Documents - MOREHEAD agrees to offer electronic filing for all related MOREHEAD applications, requests for notification, and other documents required of the Commonwealth during construction of the Network. MOREHEAD 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 MOREHEAD Division of Engineering, Right-of-Way Section.
8. Use of Commonwealth Facilities – In addition to the fiber installation and maintenance services set forth herein, the Commonwealth shall not permit MOREHEAD and its authorized agents to lash over any part of the Commonwealth's Network. MOREHEAD may occupy the Commonwealth's conduit owned or controlled by the Commonwealth within MOREHEAD at no cost upon thirty (30) days' written notice, provided that the occupation of conduit does not conflict with prevailing construction standards and does not impair or impede the Network's effective operation.
9. Storage of Flammable Substances - The Commonwealth shall not store gasoline, coal fuel, or any other flammable substances within or adjacent to MOREHEAD's public rights-of-way.
10. Responsibility for Maintenance – The Commonwealth assumes all responsibility for maintenance and repair of its facilities constructed as described in Attachment A. The Commonwealth hereby agrees to maintain facilities separately owned by

MOREHEAD pursuant to this Agreement subject to MOREHEAD's annual payment obligation set forth in Section 4.

11. Abandonment of the Commonwealth's Facilities – Upon permanent discontinuance of the use of all or a portion of the KentuckyWired Network located in Morehead, or upon a temporary discontinuance, 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.
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 MOREHEAD, 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 MOREHEAD, 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.
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.
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.
15. Access to Records - MOREHEAD 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. MOREHEAD 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 – MOREHEAD 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 additional requests from MOREHEAD.

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 MOREHEAD:

Jim Tom Trent
Mayor of Morehead

To the Commonwealth:

Mike Hayden
Chief Operating Officer

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: _____

MOREHEAD

BY: _____
City of Morehead Mayor

BY: _____

**KENTUCKY COMMUNICATIONS NETWORK
AUTHORITY**

BY: _____
Executive Director

Attachment A

