

**DARK FIBER  
INDEFEASIBLE RIGHT OF USE ("IRU") AGREEMENT**

**Between**

**OWENSBORO MUNICIPAL UTILITIES**

**And**

**Commonwealth of Kentucky**

**Dated: January 10, 2018**

## **EXHIBITS**

- Exhibit A Route Descriptions
- Exhibit A-1 Segments
- Exhibit A-2 Sites
- Exhibit B Maintenance Agreement
- Exhibit C Interconnection Procedures and Fiber Handoff
- Exhibit D Fiber Splicing, Testing, and Acceptance Standards and Procedures
- Exhibit E Cable Installation Specification
- Exhibit F Project Records
- Exhibit G Building Entrance Cables and Site Transmission
- Exhibit H Change Request Document

## DARK FIBER IRU AGREEMENT

THIS DARK FIBER IRU AGREEMENT (this "**Agreement**") is made as of the 10th day of January, 2018 (the "**Effective Date**") by and between the City Utility Commission of the City of Owensboro, Kentucky, a public body politic and corporate, d/b/a Owensboro Municipal Utilities ("OMU"), having its principal office at 2070 Tamarack Rd., Owensboro, KY 42301 and Commonwealth of Kentucky ("**Commonwealth**"), having its principal office at 702 Capital Avenue, Frankfort, Kentucky 40601. For purposes of this Agreement, OMU and Commonwealth are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

### BACKGROUND:

#### WHEREAS:

A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the "**RFP**"), the Commonwealth selected Macquarie Infrastructure Developments LLC ("**Macquarie**") to design, build, finance, operate and maintain a statewide fiber optic network, known generally as the NG-KIH System, to provide broadband services to the citizens of the Commonwealth;

B. On December 22, 2014, the Commonwealth and Macquarie entered into a master agreement (as amended from time to time, the "**Master Agreement**") in respect of the Project;

C. In 2015, Macquarie assigned its rights and obligations under the Master Agreement to KentuckyWired Infrastructure Company, Inc. ("**Project Co.**"). Project Co. then entered into a Project Implementation Agreement with KentuckyWired Operations Company, LLC ("**Operations Co.**");

D. On September 3, 2015, the Commonwealth and Project Co. entered into a project agreement (as amended from time to time, the "**Project Agreement**") in respect of the Project and to facilitate the financing of the Project. As part of this Project Agreement, Operations Co. and its subcontractors have specifically designed and tailored the NG-KIH System to the geographic area of the Commonwealth in a series of "rings";

E. A component of the NG-KIH System is located in Daviess County, Kentucky;

F. OMU can provide fiber facilities located in Davies County, Kentucky that fit the design of the NG-KIH System;

G. OMU, through ownership or other arrangements, has the rights to use the System;

H. Commonwealth desires to acquire from OMU, and OMU desires to provide to Commonwealth, an indefeasible right to use certain optical fibers in the System upon the terms and conditions set forth below; and

I. The parties intend that Commonwealth shall have substantially all benefits and risks associated with ownership of such optical fibers, subject to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms and phrases used in this Agreement and not otherwise defined herein shall have the following meanings:

"**Acceptance Date**" shall have the definition set forth in **Exhibit D** (Fiber Splicing, Testing, and Acceptance Standards and Procedures) to this Agreement.

"**Acceptance Standards**" means the standards set forth in **Exhibit D** to this Agreement with respect to the testing and condition of the Commonwealth Fibers.

"**Affiliates**" means, with respect to any entity, an entity controlling, controlled by, or under common control with such entity by means of direct or indirect equity ownership.

"**Agreement**" shall have the definition set forth in the introductory paragraph.

"**Available**" means that the Commonwealth Fibers meet the standards set forth in **Sections 2, 3 and 4** of **Exhibit D** attached hereto.

"**Backbone**" means 288 count fiber optic cable which OMU will install in accordance with this IRU from OMU pole number 121-63 at the intersection of U.S. Highway 144 and U.S. Highway 2830 in Daviess County, Kentucky, with latitude and longitude coordinates of - 87.054409/37.794411 to OMU pole number 186-14 at the intersection of Worthington Road and Audubon Parkway in Daviess County, Kentucky with latitude and longitude coordinates of 87.175600/37.766798 and as more fully described in Article IV – Construction.

"**Cable**" means the fiber optic cable included in the System and fibers contained therein that includes the Commonwealth Fibers and associated splicing connections, splice boxes and vaults, and conduit.

"**Change**" means an alteration, addition, deletion or other modification to the System or Sites, including but not limited to Site relocations.

"**Change Form**" means the Change document referenced in Section 3.4 of this Agreement and attached at Exhibit H.

"**Change Order**" means an order setting forth an agreed-upon change to a fiber route or design specification.

"**Claim**" means any claim, action, dispute, or proceeding of any kind between Commonwealth (or any of its Affiliates, successors or assigns) and OMU (or any of its Affiliates, successors, or assigns) and any other claim, transaction, occurrence, loss, liability, expense or other matter arising out of, in connection with, or in any way related to, the Commonwealth IRU, the Cable, the System, this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU.

"**Commonwealth**" shall have the definition set forth in the introductory paragraph of this Agreement.

"**Commonwealth Equipment**" means optronic (opto-electrical), electronic, or optical equipment or materials, facilities or other equipment owned, possessed or utilized, including the Connecting Points, by Commonwealth.

"**Commonwealth Fibers**" means those certain Fibers in which Commonwealth shall be granted an IRU hereunder as set forth in **Section 2.1**.

"**Commonwealth IRU**" shall mean the IRU granted to Commonwealth pursuant to the terms and conditions set forth in this Agreement.

"**Connecting Point**" means a point where the Commonwealth network or facilities will connect to the System as specified in **Exhibit C** (Interconnection Procedures) of this Agreement.

"**Contract Price**" means the total not-to-exceed price of \$1,957,226 to construct the Backbone, and to construct, operate and maintain the Laterals and the other costs payable to OMU under Article III. The Contract Price includes the fiber for the Backbone which is being provided by the Commonwealth. The Commonwealth's fiber contribution will be used to construct the Backbone as set forth in **Section 3.5**.

"**Core Fiber**" means the fiber backbone which makes up part of the NG-KIH System.

"**Data Dictionary**" shall have the meaning set forth in **Exhibit F**.

"**DBLLC**" means the Design-Build team.

"**Demarcation Point**" means the connector inside a Site facility where the IRU Lateral makes connection with the Commonwealth FOC Jumper as described in **Exhibit G**.

"**Designated Parties**" means each and all of the following parties: KentuckyWired Operations Company, LLC; NG-KIH Design Build, LLC; LTS Kentucky Managed Technical Services, LLC; and OpenFiber Kentucky Company, LLC. One or more of the Designated Parties, as the context requires, may act as the Commonwealth's agent during the Term.

"**Effective Date**" shall have the definition set forth in the introductory paragraph of this Agreement.

"**Facility Owners**" means any entity (other than OMU) owning any portion of the System, or any property or security interest therein, or leasing to OMU, or providing an IRU to OMU in, any portion of the System.

“**FDP**” means Fiber Distribution Panel.

"**Fiber Acceptance Testing**" means the fiber acceptance testing described in **Exhibit D** to this Agreement.

"**Fibers**" means any optical fibers contained in the System, including the Commonwealth Fibers, the fibers of OMU and the fibers of any third party in the System, but excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to Government Authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

“**FOC**” means the fiber optic cable included in the System, and fibers contained therein, that includes the Commonwealth Fibers and associated splicing connections, splice boxes and vaults, and conduit.

"**Force Majeure Event**" shall have the definition set forth in **Section 18.1**.

"**Government Authority**" means any federal, state, regional, county, town, municipal, territorial, or tribal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including, without limitation, any multinational body obtaining authority from any of the foregoing.

"**Indefeasible Right of Use**" or "**IRU**" is an exclusive, indefeasible right to use the specified property during the Term, and subject to the terms and conditions of this Agreement, but does not convey title, ownership, or rights of possession in any real or personal property.

"**Indemnitee**" shall have the definition set forth in **Section 12.1**.

"**Indemnitor**" shall have the definition set forth in **Section 12.1**.

"**Initial Term**" shall have the definition set forth in **Section 7.1**.

“**Lateral**” means a Fiber build off the Backbone, up to and including the Demarcation Point, consisting of 46 strands of Fiber, of which 38 strands shall be used to provide service to Sites as defined on a site-by-site basis in **Exhibit A-2**. All strands shall terminate at OMU’s NOC at 2070 Tamarack Road, Owensboro, Kentucky, where they will be connected to the Backbone. Eight (8) of the 46 strands shall be reserved for open access wholesale use by the Commonwealth without restriction. These 8 strands shall terminate at Site 225 located at 920 Frederica Street, Owensboro, Kentucky.

"**Lenders**" means one or more financial institutions, vendors, suppliers or other financing sources utilized by OMU or Commonwealth, as the case may be.

“**NESC**” means National Electric Safety Code.

"**NG-KIH**" means the Next Generation Kentucky Information Highway Project (AKA KentuckyWired).

“**NOC**” means Network Operating Center.

**“Open Access”** means that all providers, including the Wholesaler, seeking to gain access to bandwidth on either the spare Commonwealth Fibers or local loops extending from County POPs or Commonwealth Fibers to user endpoints will pay the same transport cost to provide the same service over the same time period on the same terms and that no reasonable party seeking access to such bandwidth can be denied access.

**"OMU"** shall have the definition as defined in the introductory paragraph of this Agreement.

**“Outage”** means that the Commonwealth Fibers are not Available; provided, however, in the event that the Commonwealth Fibers that were subject to an Outage meet the requirements set forth in **Exhibit D** after the occurrence of such Outage, regardless of whether OMU’s repair of such Commonwealth Fibers is temporary or permanent, such Outage shall be deemed to have been corrected and the Commonwealth Fibers shall be deemed to be Available as of the date and time when the Commonwealth Fibers meet the requirements set forth in **Section 2(D)** of **Exhibit -D** after the Outage occurred for purposes of calculating the Mean Time to Restore and any amounts due and payable by OMU under **Exhibit B**. The duration of an Outage will be calculated in accordance with **Section 9** of **Exhibit B**.

**“Point of Presence”** or **“POP”** means a carrier neutral location identified by the Commonwealth in each county in OMU’s operating territory.

**“Pole Owners”** means any entity that owns or manages poles to which OMU must attach the Commonwealth Fibers under this Agreement.

**“Released Party”** means each of the following:

- (a) Any Affiliates of the other party, Facility Owners, and any Lenders, except to the extent such Lender has assumed a party’s position under this Agreement by reason of default by such party or foreclosure by the Lender;
- (b) Any employee, officer, director, stockholder, partner, member, or trustee of the other party or its Affiliates or Lenders; or
- (c) Assignees of the entities included in the above subparagraphs (a) or (b) and any employee, officer, director, stockholder, partner, member, or trustee of such assignees.

**"Representatives"** shall have the definition set forth in **Section 16.1**.

**"Required Rights"** means the rights OMU is required to obtain pursuant to **Sections 4.4(a) and 4.4(b)**.

**"Route"** means the route, including spurs, upon which the System is or will be constructed and installed consisting of the Segments.

"**Segment**" means a discrete portion of the System and may refer to a Span, a portion between two points of presence or a point of presence and a System end point, or a portion of the System affected by a relocation or other circumstance.

"**Sites**" means the facilities as identified in Exhibit A-2 that the Commonwealth desires to connect to the System.

"**Span**" means a portion of the System between two Transmission Sites or between a Transmission Site and a point of presence or System end point.

"**System**" means a fiber optic communication system consisting of a Backbone, Lateral and Sites as depicted in **Exhibit A**.

"**Taking**" shall have the definition set forth in **Section 18.2**.

"**Term**" means the term as defined in **Section 7.1**.

"**Transmission Sites**" means the OMU designated optical amplifier, regenerator, or junction sites along the System Route as specified in **Exhibit A-2**.

"**Wholesaler**" means OpenFiber Kentucky Company LLC.

## **ARTICLE II** **CONVEYANCE OF IRU**

**2.1. Conveyance upon Acceptance.** Effective as of the Acceptance Date for each Segment and upon Commonwealth's timely payment of the Contract Price as set forth in **Section 3.3**, OMU hereby grants to Commonwealth the Commonwealth IRU, for the purposes described herein, in the Commonwealth Fibers.

**2.2.** Nothing in this Agreement, including the grant of the Commonwealth IRU, shall be construed to convey any legal title to any real or personal property, including the Fibers, the Cable, or the System, to the Commonwealth or any other party. The Commonwealth IRU does not include any equipment used to transmit capacity over or "light" the Fibers. Notwithstanding anything to the contrary contained herein, neither the Commonwealth Fibers leased nor Segments constructed by OMU pursuant to this Agreement shall be construed as permanently integrated into, or otherwise as forming a permanent part of, the NG-KIH System's Core Fiber.

**2.3. Use of Commonwealth Fibers.** Commonwealth will have full discretion on the use of the Commonwealth Fibers, including the ability to lease capacity to commercial users that have requested such access and negotiated an access agreement with Commonwealth or the Designated Parties

**2.4. Substitution of Fibers.** Commonwealth acknowledges and agrees that notwithstanding the above conveyance, upon not less than one hundred twenty (120) days' written notice from OMU to Commonwealth, OMU may substitute for the Commonwealth Fibers, or any Segment or Segments comprising a portion of the Commonwealth IRU, an equal number of alternative fibers along the same Route; provided that in any such event, such



substitution (a) shall be without unreasonable interruption of service and use by Commonwealth, (b) shall be effected at the sole cost of OMU, (c) shall be constructed and tested in accordance with the specifications set forth in this Agreement, and (d) shall not adversely affect the use, operation or performance of Commonwealth's network or business or change any Connecting Points or endpoints of Commonwealth.

### **ARTICLE III** **CONSIDERATION**

**3.1. Contract Price.** Commonwealth shall pay OMU the Contract Price in accordance with **Sections 3.2 and 3.3.**

**3.2. Method of Payment.** Commonwealth shall pay the Contract Price and any other payments due to OMU pursuant to this Agreement by wire transfer of United States currency to an account or accounts designated by OMU in writing.

**3.3. Time of Payment.** The Contract Price shall be due and payable by Commonwealth to OMU as follows:

(a) \$550,750 representing a 50% cost share of make-ready costs of transmission and distribution, said amount payable within thirty (30) days of the effective date of this Agreement;

(b) \$157,500 representing estimated installation labor costs. Provided, however, if OMU's procurement (in accordance with the Kentucky Model Procurement Code (KRS Chapter 45A)) results in the actual cost of the labor being more than \$157,500, Commonwealth will pay the incremental cost. If OMU's procurement results in the actual cost of labor being less than \$157,500 OMU shall invoice the Commonwealth for the actual contract amount, plus any OMU administrative costs. The Commonwealth shall pay this amount within thirty (30) days of the completion of the Backbone installation;

(c) \$188,640 for pole attachment costs for the Term of this IRU payable to OMU upon its award of a contract for the installation of the Fiber, as provided in subsection (b), supra; and

(d) \$960,336 representing the cost for a Dark Fiber IRU and to connect the Sites identified in Exhibit A-2 – Sites. The Commonwealth shall tender this payment upon Commonwealth's acceptance of the Commonwealth Fibers in accordance with **Exhibit D – Fiber Splicing & Acceptance and Exhibit F – Project Records.**

(e) \$100,000 representing a not-to-exceed contingency amount to include the installation of FOC and conduit across site 224, by a route which is not yet known at the time of Agreement, as well as any unknown make-ready costs associated with other poles along that route.

**3.4. Changes to the Route.** Except as provided herein, the Contract Price is a fixed price for construction of the Commonwealth Fibers and maintenance of Laterals. The parties

agree to meet and discuss the scope and costs of any changes to the Backbone or Lateral with the understanding that in the event a fiber route or design specification change at the request of Commonwealth, resulting in an increase in construction scope, the Commonwealth shall pay OMU the incremental costs of such changes, and a change at the request of OMU resulting in an increase in construction scope will be OMU's responsibility. OMU shall not be bound by any change to a fiber route or design specification unless and until each Party has signed a Change Order. Either the Commonwealth or OMU may propose a Change in the form of a modification of the Route, the System design specifications, or the addition, elimination or relocation of one or more Sites by giving written notice to the other Party using the Change Form attached to this Agreement at **Exhibit H**.

**3.5. Commonwealth Provision of Fiber.** The Commonwealth will provide the Fiber required to construct the Backbone to OMU free and clear of all liens or claims of third parties with a manufacturer's warranty and specifications acceptable to OMU. The warranty shall be fully assignable to OMU and transfer with title. The parties will enter into an addendum to this IRU to identify the amount of Fiber required, including required slack loops and breakout points required by the design. The Commonwealth will deliver the Fiber to 1715 E. 4<sup>th</sup> St., Owensboro, Kentucky on or before May 1, 2018. Title to the Fiber will pass to OMU and OMU will assume all responsibility for the Fiber upon delivery to the foregoing location until the Acceptance Date. After the Acceptance Date, and up to the end of the Term, Commonwealth will be responsible for the maintenance of the Backbone and Commonwealth Fiber. However, OMU shall not be responsible for the condition of the Backbone and Commonwealth Fiber and Commonwealth will look only to the warranty provided by the manufacturer of the Fiber.

#### **ARTICLE IV** **CONSTRUCTION**

**4.1. Construction Obligations.** OMU will be responsible for all costs not payable by the Commonwealth to OMU, as provided in Section 3.3 of this Agreement, associated with construction of the Backbone and Lateral and installation of the Commonwealth Fibers, except as otherwise provided in this Agreement, including, but not limited to, design, engineering, construction, walkouts, staking, engineering, permitting, pole attachments, make-ready, easements, conduit access, all required equipment and fiber installation, hand holes, building entrance cables and termination on network interface units within the Sites. The Commonwealth, at its own cost, will provide the Fiber required for Construction of the Backbone. OMU's construction and installation shall meet the Rural Utility Service's specifications and comply with the latest version of the NESC, unless the Commonwealth timely identifies a more stringent requirement.

(a) Commonwealth will be responsible for Fiber splicing to the Backbone to be completed through a hand hole or other designated connection point as the Parties may agree to in writing;

(b) Commonwealth will provide fiber optic cable to construct the Backbone by May 1, 2018. The Parties will meet and determine the amount of fiber optic cable necessary to construct the Backbone, including required slack loops, the interface to the Backbone tie-point at 2070 Tamarack Road, Owensboro KY, 42301 for the purpose of connecting Sites, and the location for delivery of the fiber optic cable on or before March 1, 2018.

(c) The Parties' engineering teams will meet within 41 business days after the Effective Date to agree upon Segment handoff, building entrance cables and termination within the Sites. Entrance cables and site network termination standards and documentation are provided in **Exhibit G – Building Entrance Cables and Site Termination**.

(d) OMU will make all Sites available to Commonwealth on or before August 31, 2018.

(e) OMU will be responsible for the installation of the interconnect cabinet provided by Commonwealth for the interconnection to be located at 2070 Tamarack Road, Owensboro, Kentucky, 42301, between the Backbone and the Laterals. OMU will be responsible for installing the necessary FOC and conduits from the OMU NOC to the interconnect cabinet. OMU shall be responsible for all the splicing and connections within the OMU NOC. OMU shall also provide the necessary conduit and fiber from the interconnection cabinet to the pole, including the riser, for connection into the Backbone. Commonwealth will be responsible for all splicing and connections to the Backbone and within the interconnection cabinet. A diagram of the expected Interconnection is shown in **Exhibit C – Interconnection Procedures and Fiber Handoff**.

(f) OMU will be responsible for the installation of the Backbone FOC and conduit across site 224 for connection to the hut/node location at longitude/latitude -87.086863/37.717821. Approximately 2,000 ft. of conduit has been installed and extends to a Kenergy pole within longitude/latitude coordinates of -87.085393/37.719980 and a vault at -87.084487/37.716694. OMU will utilize the existing conduit for the Backbone path.

i. OMU will place fibers into the existing hut that has been installed by Commonwealth.

ii. DBLLC will provide and identify two (2) rack mounted FDP's for OMU to utilize.

iii. OMU will be responsible to terminate the Backbone FOC at the FDP's. This location should be utilized to test back to the interconnections cabinets on each end of the Backbone.

**4.2. Construction Completion.** OMU shall complete Construction on or before August 17, 2018.

**4.3. Fiber Acceptance Testing.** **Exhibit D** sets forth Fiber Acceptance Testing procedures and test deliverables that OMU shall provide to Commonwealth and procedures for determining the Acceptance Date of the Commonwealth Fibers. Notwithstanding the foregoing, the installation of all Commonwealth Fibers shall, subject to **Section 4.3**, meet the Acceptance Standards as described in **Exhibit D** on or before August 31, 2018.

**4.4. Acceptance Date Obligations.** As of the Acceptance Date of the Commonwealth Fibers in any Segment, OMU hereby represents and warrants on an ongoing basis throughout the Term that:

(a) OMU shall have obtained all rights, licenses, authorizations, easements, leases, fee interests, or agreements necessary to provide for the presence

- of the FOC on the real property or fixtures (such as conduit, bridges, river crossings, Sites or transmission towers) on the specified route;
- (b) OMU is the legal owner of the Commonwealth Fibers or shall have obtained by IRU agreement, lease, or otherwise the right to use any portion of the System along the Segment it does not own; and
  - (c) The material and workmanship provided by OMU on the Commonwealth Fiber shall be free of defects and is designed, engineered, installed, and constructed, at a minimum, in accordance with prevailing industry standards and the specifications set forth in **Exhibits D and E** to this Agreement.

Subject to the terms of **Section 8.2**, OMU shall renew or replace existing Required Rights through at least the Initial Term.

**4.5. Provision of Revised As-Built Drawings.** If there is a material change in the Commonwealth Fibers as a result of maintenance or relocation, OMU shall deliver updated as-built drawings to Commonwealth with respect to the relevant Segment within the later of (i) one-hundred eighty (180) calendar days following the completion of such change or (ii) thirty (30) calendar days after receipt of Commonwealth's request.

**4.6. Design Requirements.** OMU and Customer will meet on or before January 31, 2018 to define specific design requirements in accordance with Exhibit C – Fiber Handoff, Exhibit D – Fiber Splicing, Testing and Acceptance Standards and Procedures, and Exhibit E – Cable Installation Specifications.

## **ARTICLE V**

### **CONNECTION AND ACCESS TO THE SYSTEM**

**5.1. Connections.** OMU shall provide connection of the Laterals to the Demarcation Location at the Sites. Commonwealth shall provide all connections and splices of the Laterals to the Backbone, as provided for in Exhibit C, and connection of the OMU-owned Backbone to the Commonwealth Backbone.

**5.2. No Unauthorized Access to System.** Commonwealth or its contractors shall have access to any part of the Backbone and the Sites for the purposes of maintenance. Commonwealth may request and OMU may grant, in OMU's discretion and subject to any condition specified by OMU with prior written consent, access to any other part of the System for any other purpose.

## **ARTICLE VI**

### **USE OF THE SYSTEM**

**6.1. Notice of Damage.** Each Party shall notify the other Party in writing of any matters pertaining to any damage or impending damage to or loss of the Commonwealth Fibers that are known to it or that could reasonably be expected to adversely affect the Commonwealth Fibers as provided in the Maintenance Agreement.

**6.2. Preventing Interference with Other Fibers.** Neither Commonwealth nor OMU shall use equipment, technologies, or methods of operation that interfere in any way with, or adversely affect, the System or the use of the System by the other party or authorized third parties or their respective fibers, equipment, or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to the System or to fibers used or owned by the other party or third parties. Notwithstanding the above, the provisions of this Section shall not prevent a party from using commercially reasonable equipment, technologies, or methods of operation if the interference or adverse effect on the other party or a third party results primarily from such other party or third party's use of equipment, technologies, or methods of operation that are not commercially reasonable or that are not standard in the telecommunications industry.

**6.3. Liens.** Commonwealth shall not cause or permit any part of the System to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien. OMU shall not cause or permit any of Commonwealth's rights under this Agreement to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien; *provided, however,* that nothing herein shall prohibit OMU from granting any lien, encumbrance, or security interest to a Lender in connection with any financing. If a party breaches its obligations under this Section, it shall immediately notify the other party in writing and shall promptly cause such lien to be discharged and released of record without cost to the other party.

## **ARTICLE VII**

### **TERM**

**7.1. Term.** Subject to Commonwealth's rights to terminate this Agreement for default or convenience in accordance with 200 KAR 5:312, and OMU's right to terminate for default, the Initial Term shall end on September 3, 2045 (the "**Term**"). Subject to the conditions set forth below, Commonwealth may, by written notice, request to extend the Term with respect to a Major Segment; *provided, however,* that the granting of such extension is in OMU's sole discretion. In the event that Commonwealth desires to extend the Term, Commonwealth shall provide OMU with written notice at least one (1) year in advance of the date the Term would expire specifying that Commonwealth wishes to negotiate an extension to the Term.

### **7.2. Intentionally Left Blank**

**7.3. Effect of Termination.** No termination of this Agreement shall affect the rights or obligations of any party hereto:

- (a) with respect to any payment hereunder for services rendered prior to the date of termination;
- (b) pursuant to **Articles IX (Audit Rights), XII (Indemnification), XIII (Limitation of Liability), XIV (Taxes and Governmental Fees), XVI (Confidentiality), XVII (Prohibition on Illegal Payments), XIX (Dispute Resolution), or XX (Rules of Construction) or Sections 10.2 (Exclusion of Warranties) or 10.3 (No Third-Party Warranties);** or

- (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

**7.4. Termination for Convenience.** In the event of a termination for convenience by Commonwealth pursuant to 200 KAR 5:312, OMU shall submit to Commonwealth a claim for any amounts it may be due, including amounts due for an executed Change Order for which the Commonwealth has not made payment at the time of termination for convenience and for any other billable services provided under this Agreement for which it has not been paid as of the date of termination for convenience. Any undisputed outstanding performance deductions payable to the Commonwealth in accordance with **Exhibit B** will be offset against any and all amounts payable to OMU.

## **ARTICLE VIII** **MAINTENANCE AND RELOCATION**

**8.1. Maintenance.** Commonwealth or its Service Provider will be responsible for maintaining the Backbone during the Term, excluding all required cable as per Section 8.2. OMU will be responsible for maintaining the Laterals to each Site up to the Demarcation Point during the Term. Should any section of FOC fail during the Term, it shall be the responsibility of the maintaining entity to replace such failed sections at its own expense.

**8.2. Relocations.** OMU shall be responsible for all Lateral FOC relocations at its own expense. Should the Commonwealth request any portion of the System be relocated, Commonwealth will be responsible for all relocation expenses. In the instance that the relocation is required by some means outside the control of OMU or the Commonwealth, and OMU is not fully reimbursed for such relocation, Commonwealth agrees to share the actual relocation expenses equally with OMU.

**8.3. Maintenance of Commonwealth Equipment Excluded.** OMU shall have no obligation under this Agreement to maintain, repair, or replace Commonwealth Equipment.

## **ARTICLE IX** **AUDIT RIGHTS**

**9.1.** Subject to the Commonwealth's and OMU's obligations under the Kentucky Open Records Act, each party shall keep such books and records (which shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) and shall readily disclose the basis for any charges (except charges fixed in advance by this Agreement or by separate agreement of the parties) or credits, ordinary or extraordinary, billed or due to the other party under this Agreement and shall make them available for examination, audit, and reproduction by the other party and its duly authorized agents or representatives for a period of one (1) year after such charge or credit is billed or due; *provided, however*, that the auditing party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5) business days prior written notice to the party being audited that it wishes to have access to such books and records for purposes of auditing the party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the party being audited, and (iv) not unreasonably interfere with the business of the party being audited.

**ARTICLE X**  
**WARRANTIES**

**10.1. Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in this Agreement, each party hereto represents and warrants to the other that:

- (a) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (b) it has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and
- (d) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body.

**10.2. EXCLUSION OF WARRANTIES.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN **SECTION 12.1**, OMU MAKES NO WARRANTY TO COMMONWEALTH OR ANY OF ITS REPRESENTATIVES, AFFILIATES, OR LENDERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE SYSTEM, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

**10.3. No Third-Party Warranties.** No Facility Owners or Lenders have made any representation or warranty of any kind, express or implied, to Commonwealth concerning OMU, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in **Section 12.1**. No Commonwealth Lenders have made any representation or warranty of any kind, express or implied, to OMU concerning Commonwealth, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in **Section 12.1**.

**ARTICLE XI**  
**DEFAULT**

**11.1. Default and Cure.** Commonwealth or OMU may terminate this Agreement for default by the other party. Commonwealth may terminate this agreement for convenience in accordance with 200 KAR 5:312. Except as set forth in **Section 13.2**, a Party shall not be in default under this Agreement until one of the following events occurs: (i) either Party fails to make a payment of any undisputed amount required under this Agreement, and such failure continues for more than thirty (30) days after such Party receives written notice of such failure from the other Party; *provided, however*, that any disputed amount must be submitted to the other Party pursuant to **Section 13.2**; (ii) either Party fails to perform or comply with any other



material obligation, agreement, term, or provision of this Agreement applicable to it, and such failure continues for more than thirty (30) days after such Party receives written notice of such failure from the other Party; provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, and if the defaulting Party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time as may be reasonably necessary to complete such curing. Upon the failure of a defaulting Party to timely cure any such default pursuant to this **Section 13.1**, then the other Party may, subject to the terms of **Articles XIV (Limitation of Liability) and XXI (Dispute Resolution)**, pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

**11.2. Disputed Amounts.** Notwithstanding any provision to the contrary in **Sections 13.1 or 13.3**, either party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing party provides written notice of such dispute to the other party by the date that any such amount is due; (ii) such dispute is submitted in good faith by the disputing party; (iii) the disputing party presents a written statement of any billing discrepancies to the other party in reasonable detail together with supporting documentation and evidence within thirty (30) days after the date that any such amount is due; and (iv) the disputing party negotiates in good faith with the other party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. Commonwealth shall pay disputed amounts mutually agreed upon in favor of OMU within thirty (30) days of the resolution of such dispute. OMU shall credit disputed amounts mutually agreed upon in favor of Commonwealth on Commonwealth's next invoice. In the event the parties fail to mutually resolve or settle the dispute within sixty (60) days of the date any such disputed amount is due, the parties will pursue resolution of the dispute in accordance with **Article XXII** of this Agreement.

**11.3. Failure to Pay.** If Commonwealth fails to pay any undisputed amounts owed under this Agreement as required by KRS 45.453, and fails to pay all of such amount within thirty (30) days of OMU's notice that it will disconnect the Commonwealth Fibers, OMU may, in addition to the remedies set forth in **Section 11.1**, disconnect the Commonwealth Fibers from all Connecting Points and from all Commonwealth Equipment on OMU's premises. OMU shall restore such Connecting Points and Commonwealth Equipment connections and resume providing services only if Commonwealth (a) pays OMU's bona fide estimate of the costs incurred or to be incurred pursuant to this **Section 11.3** and (b) pays all amounts due and owing to OMU with applicable interest pursuant to KRS 45.454. In the event that Commonwealth does not take the actions described in clauses (a) and (b) above in this **Section 11.3** within thirty (30) days after OMU's disconnection of the Commonwealth Fibers or cessation of services as described in this Section, then, in addition to all other remedies described in this **Section 11.3**, this **Article XI** or otherwise in this Agreement, OMU shall have the right to terminate this Agreement and shall have no further obligation with respect to this Agreement.

**11.4. Interest.** If Commonwealth fails to make any payment under this Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at a rate (unless specifically described elsewhere in this Agreement) equal to one percent (1.0%) per month or, if lower, the highest percentage allowed by law.



**ARTICLE XII**  
**INDEMNIFICATION**

**12.1. Indemnification.** To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth and OMU (each party known individually as the "**Indemnitor**") each hereby agrees to indemnify, defend, protect and hold harmless the other party and its Representatives, Facility Owners (with respect to OMU), Lenders and Affiliates (the "**Indemnitee**"), from and against, and assumes liability for: (i) claims made by a third party for any injury, loss or damage to any person, tangible property or facilities of any person to the extent arising out of, or resulting from, the grossly negligent acts or omissions or willful misconduct of the Indemnitor or its Representatives, Affiliates, licensees, invitees and vendors, or any entity for whom it is in law responsible, arising out of, or in connection with, the performance by Indemnitor of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by Indemnitor of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Indemnitor of its obligations under this Agreement; and (iii) any liability to a third party arising directly or through one or more intermediaries from an action or claim brought by the Indemnitor against such third party, but only to the extent such third party has a right of indemnification, impleader, cross claim, contribution or other right of recovery against the Indemnitee for any indirect, special or consequential damages awarded against such third party in favor of the Indemnitor.

**12.2. Material and Continuing Obligation.** Each party's obligation to indemnify, defend, protect, and save the other party harmless is a material obligation to the continuing performance of the other party's obligations hereunder.

**ARTICLE XIII**  
**LIMITATION OF LIABILITY**

**13.1. EXCLUSION OF INDIRECT DAMAGES.** SUBJECT TO THE COMMONWEALTH'S AUTHORITY TO SEEK ALL APPLICABLE DAMAGES FOR OMU'S DEFAULT AS PROVIDED FOR IN 200 KAR 5:312, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY APPLICABLE LAW OR REGULATION OTHER THAN 200 KAR 5:312 TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, FACILITY OWNERS, LENDERS AND AFFILIATES FOR ANY SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OR FAILURE TO PERFORM ITS RESPECTIVE OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE (WHETHER ARISING OUT OF (I) TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE; (II) CLAIMS OF COMMONWEALTH, WHETHER OCCASIONED BY ANY OBLIGATIONS PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY; OR (III) ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, ALL CLAIMS FOR WHICH

INDIRECT DAMAGES ARE HEREBY SPECIFICALLY WAIVED. NOTHING CONTAINED IN SECTION 13.1 SHALL BE DEEMED TO LIMIT AN INDEMNITOR'S OBLIGATIONS UNDER SECTION 12.1. FOR PURPOSES OF CLARITY, COMMONWEALTH SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 13.1 TO THE EXTENT THAT COMMONWEALTH IS PROHIBITED FROM WAIVING THE DAMAGES DESCRIBED IN SECTION 13.1 PURSUANT TO 200 KAR 5:312.

**13.2. No Recourse Against Released Parties.** Neither Party shall have any recourse of any kind against any Released Party or any assets of a Released Party in respect of any Claim except in the case of such Released Party's gross negligence or willful misconduct, it being expressly agreed and understood that no liability whatsoever shall attach to, or be incurred by, any Released Party in respect of any other claims under, or by reason of, this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU. Each Party waives all such recourse to the extent set forth in this Section on behalf of its successors, assigns, and any entity claiming by, through, or under such Party.

**13.3. Pursuit of Actions Against Facility Owners.** Notwithstanding the foregoing provisions of this Article, and only to the extent OMU is required under the terms and provisions of any Required Right to indemnify a Facility Owner from and against any and all claims arising out of service interruption, cessation, unreliability of or damage to the System, regardless of whether any such claim arises from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner, Commonwealth hereby releases such Facility Owner, and hereby waives, all claims arising out of service interruption, cessation, unreliability of or damage to the Commonwealth Fibers regardless of whether such claims arise from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner. Commonwealth shall notify OMU in writing before pursuing any such Claim against a Facility Owner, and such notification shall make specific reference to this provision of the Agreement. Nothing in this Section 13.3 shall be construed as a release or waiver by Commonwealth of any Claim against OMU.

**13.4. Pursuit of Actions Against Third Parties.** Except as provided in Sections 13.2 and 13.3, nothing contained in this Agreement shall operate as a limitation on the right of either OMU or Commonwealth to bring an action or claim for damages against any third party. Each of OMU and Commonwealth shall reasonably cooperate with the other Party to the extent necessary to enable the other Party (at such other Party's sole expense) to pursue any such action or claim related to the terms and conditions of this Agreement against such third party.

**13.5. Commonwealth Contracts.** To the extent Commonwealth is permitted to allow other parties to use the Commonwealth Fibers for any purpose, Commonwealth, in any contract or tariff offering of service, capacity, or rights of use that involves use of the System, shall include in such contract or tariff a written limitation of liability that is binding on Commonwealth's customers and is at least as restrictive in all material respects as the limitations set forth in Sections 13.1, 15.2, 13.2 and 13.3.

**ARTICLE XIV**  
**TAXES AND GOVERNMENTAL FEES**

**14.1. Taxation of Commonwealth.** OMU understands that, as of the Effective Date, Commonwealth is a tax-exempt entity. Accordingly, and notwithstanding the remainder of this Article, OMU shall not, directly or indirectly, request or receive reimbursement or contribution from Commonwealth for any tax from which Commonwealth is exempt. For any taxes or fees, including, but not limited to, universal service funding, that may be assessed against OMU for which Commonwealth is not exempt, or if the Commonwealth Fibers are assigned to a non-tax exempt entity, OMU will collect and remit such taxes and fees to the appropriate Government Authority.

**14.2. OMU Obligations.** Subject to **Section 14.1** above, OMU shall timely report and pay any and all sales, use, income, gross receipts, excise, transfer, ad valorem or other taxes, and any and all franchise fees or similar fees, if any, properly assessed against it due to its construction, ownership, physical location or use of the System.

**ARTICLE XV**  
**NOTICE**

**15.1. Notice Addresses.** Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

**If to Commonwealth:** Commonwealth of Kentucky  
Attention: Secretary  
Finance and Administration Cabinet  
702 Capital Avenue  
Room 383  
Frankfort, KY 40601  
Facsimile No. (502) 564-6785

**With copy to KCNA:** KCNA  
General Government Cabinet  
209 St. Clair Street  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
Facsimile No. (502) 564-0883

**If to OMU:** Owensboro Municipal Utilities  
Attn: Director of Delivery  
P.O. Box 806  
Owensboro, KY 42302-0806

With copy to:

Owensboro Municipal Utilities  
Attn: Telecommunications Superintendent  
P.O. Box 806  
Owensboro, KY 42302-0806

or at such other address as may be designated in writing to the other party in accordance with this **Article XV**.

**15.2. Notice and Invoice Delivery.** Unless otherwise provided herein, notices and invoices shall be hand delivered; sent by registered or certified U.S. Mail, postage prepaid; or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, on the day after being sent when sent by overnight delivery service, or three (3) United States Postal Service business days after deposit in the mail when sent by U.S. mail.

## **ARTICLE XVI** **CONFIDENTIALITY**

**16.1. Confidentiality Obligation.** To the extent permitted by the Kentucky Open Records Act, if either party provides confidential information to the other or, if in the course of performing under this Agreement or negotiating this Agreement a party learns confidential information regarding the facilities or plans of the other, the receiving party shall (a) protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any case with at least reasonable care and (b) refrain from using such confidential information except in negotiating or performing under this Agreement. Notwithstanding the above, a party may provide such confidential information to its directors, officers, members, managers, employees, agents, attorneys, contractors, and consultants (collectively, the "**Representatives**") and its Affiliates, financial institutions, underlying facility owners, potential assignees (who are bound by a written agreement restricting use and disclosure of confidential information), and Representatives of Affiliates, in each case whose access is reasonably necessary. Each such recipient of confidential information shall be informed in writing by the party disclosing confidential information of its confidential nature, shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each party shall be liable (with respect to the other party) for any breach of this provision by any entity to which that party discloses confidential information. In the event that Commonwealth or OMU receives a Kentucky Open Records Act request pursuant to which any information related to this Agreement will be disclosed, the Party receiving the request shall give the other Party notice of such request before disclosing any information with respect to such request; *provided*, however, that Party receiving the request shall use best efforts to ensure that any and all information that is exempt from disclosure pursuant to the Kentucky Open Records Act is redacted and not disclosed to any party requesting such information pursuant to the Kentucky Open Records Act. The terms of this Agreement (but not its execution or existence) shall be considered confidential information for purposes of this Article, except as set forth in **Section 16.3**. The obligations set forth in this Section shall survive expiration or termination of this Agreement for a period of

two (2) years, except that, with respect to any confidential information designated by the disclosing party as a trade secret, and entitled to protection as such, the obligations set forth in this Section shall survive such expiration or termination indefinitely.

**16.2. Permitted Disclosures.** Notwithstanding any other provision herein, neither OMU nor Commonwealth shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the recipient;
- (b) is required to be disclosed by a governmental, regulatory authority, or judicial order, rule, or regulation or proceedings with respect to this Agreement or a party's obligations as a publicly held company, provided that a party subject to such requirement shall promptly notify the other party of such requirement;
- (c) is independently developed by the disclosing party;
- (d) becomes available to the disclosing party without restriction from a third party who is not otherwise restricted from disclosing such information;
- (e) is required by its lender and is given to such lender on a confidential basis;  
or
- (f) to the extent disclosure by the receiving party is required by applicable law or regulation.

**16.3. Goodwill and Publicity.** Neither party shall use the name, trade name, service mark, or trademark of the other party in any promotional or advertising material without the prior written consent of the other party. The parties shall coordinate and cooperate with each other when making public announcements related to the terms of this Agreement, and each party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other party that refer to, or that describe any aspect of, this Agreement. Notwithstanding the above, either party may, without the other party's approval but after allowing the other party a reasonable opportunity to comment on a proposed press release, issue a press release announcing the execution of this Agreement.

## **ARTICLE XVII** **PROHIBITION ON ILLEGAL PAYMENTS**

**17.1.** Neither party shall use any funds received under this Agreement for purposes that violate any applicable laws, regulations, decrees, or judgments of any Governmental Authority applicable to that party. Neither party shall pay any commission, fees or rebates to any employee of the other party. If either party has reasonable cause to believe that one of the provisions in this Article has been violated, it or its representative may audit the books and records of the other party for the sole purpose of establishing compliance with such provisions; *provided, however,* that the auditing party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5)

business days prior written notice to the party being audited that it wishes to have access to such books and records for purposes of auditing the party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the party being audited, and (iv) not unreasonably interfere with the business of the party being audited.

**ARTICLE XVIII**  
**FORCE MAJEURE; EMINENT DOMAIN**

**18.1 Excused Performance.** Neither OMU nor Commonwealth shall be in default under this Agreement with respect to any delay in its performance caused by any of the following conditions (each a "**Force Majeure Event**"): (a) act of God; (b) fire; (c) flood; (d) material shortage or unavailability, including, but not limited to, any shortage of fiber optic cable (each Party hereby acknowledges and agrees that eight to twelve(8-12) weeks is the customary period of time necessary for delivery of fiber optic cable), not resulting from the responsible Party's failure to timely place orders or take other necessary and commercially reasonable actions therefor; (e) codes, laws, rules, regulations, decrees, judgments, or restrictions of a Governmental Authority; (f) war, acts of terrorism or civil disorder; (g) power outages and cable cuts not due to OMU's gross negligence; or (h) any other cause beyond the reasonable control of such party. The party claiming relief under this Article shall promptly notify the other in writing of the existence of the Force Majeure Event relied on and the expected duration of the Force Majeure Event (if known) and upon the cessation or termination of the Force Majeure Event. The party claiming relief under this Article shall exercise commercially reasonable efforts to minimize the time for any such delay. Notwithstanding the foregoing, such Force Majeure Event shall not excuse OMU's timely performance pursuant to the Maintenance Agreement in any area not affected by the Force Majeure, except to the extent timely performance is beyond the reasonable control of OMU.

**18.2 Eminent Domain.** Should any portion of the Commonwealth Fibers belonging to OMU or the underlying Facility Owner be acquired by eminent domain, nationalization, or expropriation (each of which, a "**Taking**") by any authority or entity possessing such power, then, in that event, each party shall be excused from performance of its obligations to the extent provided in **Section 18.1**. In the event Commonwealth wishes to restore the affected Route that was subject to a Taking during the Term, OMU shall relocate all or any portion of the Commonwealth Fibers which are the subject of the Taking covered by and in accordance with **Section 8.2**.

**ARTICLE XIX**  
**DISPUTE RESOLUTION**

**19.1.** It is the intent of OMU and Commonwealth that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article.

**19.2.** Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties are unable to resolve within the seventy-two (72) hour time period, shall be resolved pursuant to KRS 45A.230 - 245.

## **ARTICLE XX** **RULES OF CONSTRUCTION**

**20.1. Interpretation.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. References to "person" or "entity" each include natural persons and legal entities, including corporations, limited liability companies, partnerships, sole proprietorships, business divisions, unincorporated associations, governmental entities, and any entities entitled to bring an action in, or that are subject to suit in an action before, any state or federal court of the United States. The word "including" means "including, but not limited to." "Days" refers to calendar days and references to "business days" exclude Saturdays, Sundays and federal holidays and holidays in the Commonwealth of Kentucky. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

**20.2. Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of OMU or Commonwealth shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

**20.3. No Third-Party Rights.** Nothing in this Agreement, is intended to provide any legal rights to any other person or entity other than the Parties except under the indemnification provisions and except that (a) the Released Parties shall have the benefit of **Section 13.2**; and (b) the Facility Owners or Lenders shall be entitled to rely on, and have the benefit of, **Sections 12.3, 14.1, 13.2, and 13.3**.

**20.4. Agreement Fully Negotiated.** This Agreement has been fully negotiated between and jointly drafted by OMU and Commonwealth.

**20.5. Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement, the generally accepted standards of performance within the telecommunications industry in the relevant market engaging in an undertaking of similar scope and size shall be the measure of whether a party's performance is reasonable and timely.

**20.6. Cross References.** Except as the context otherwise indicates, all references to Exhibits, Articles, Sections, Subsections, Clauses, and Paragraphs refer to provisions of this Agreement.

**20.7. Limited Effect of Waiver.** The failure of either OMU or Commonwealth to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.



**20.8. Severability.** If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**20.9. No Partnership Created.** The relationship between OMU and Commonwealth shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. OMU and Commonwealth, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

**20.10. Third-party Pole Attachments.** This agreement shall not be construed as conveying any rights to any other entities connecting to, leasing, or utilizing the KentuckyWired Network, including, but not limited to, any right to make additional pole attachments to OMU facilities or to be excused from payment of any applicable fees, requirements for the acquisition of any right to use OMU facilities or obtain any franchise. The Commonwealth acknowledges that pursuant to Sections 163 and 164 of the Kentucky Constitution, any entity, other than the Commonwealth, must be awarded a franchise from the City of Owensboro before using the City's rights of way.

## **ARTICLE XXI** **ASSIGNMENT**

**21.1. Conditions to Effective Assignment.** Subject to the other terms and conditions set forth in this **Article XXIV**, an assignment or other transfer of this Agreement or a Party's rights or obligations hereunder, in whole or in part, to any other party shall not be effective without (a) the non-assigning Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; (b) the written agreement of the assignee to be bound by all terms and conditions of this Agreement; and (c) such assignee's agreement to promptly cure all prior defaults of the assigning Party under this Agreement. If assignment is permitted under this Article without the non-assigning Party's consent, then the assignor shall give prior written notice of the assignment to the non-assigning Party.

**21.2. Consent Not to be Unreasonably Withheld.** The non-assigning party shall not unreasonably withhold, delay, or condition its consent required hereunder to an assignment if neither the assigning party nor the proposed assignee is in material default under this Agreement or any other agreement with the non-assigning party. For purposes of this Section, OMU's consent to a requested assignment or transfer shall not be considered unreasonably withheld if such requested assignment or transfer is to a party which OMU determines does not have the technical ability or financial capability to perform Commonwealth's obligations under this Agreement. It is the express understanding of the Parties that Commonwealth may sublicense the use of the Commonwealth Fibers to third parties, including the Designated Parties, for commercial use or economic development reasons, which shall not be considered an assignment of this Agreement.

**21.3. Assignments to Particular Classes of Entities.** The provisions of **Section 21.1** notwithstanding:



- (a) OMU may grant a security interest in some or all of its rights and obligations under this Agreement or in the System to any Lender to OMU. If Commonwealth so requests, OMU shall use commercially reasonable efforts to obtain from any such Lender a written non-disturbance agreement, containing such terms and conditions as are customary, pursuant to which such Lender acknowledges Commonwealth's rights and interests under this Agreement and agrees not to disturb such rights and interests so long as Commonwealth is in compliance with the terms and provisions of this Agreement, including, without limitation, the payment in full when due of all amounts payable by Commonwealth hereunder.
- (b) Commonwealth may grant a security interest in some or all of its rights and obligations under this Agreement in all or any part of the Commonwealth Fibers to a Lender of Commonwealth. If OMU so requests, Commonwealth shall use commercially reasonable efforts to obtain from any such Lender a written agreement pursuant to which such Lender acknowledges that (i) such Lender is subject to all of the terms and conditions of this Agreement that are binding on Commonwealth, and (ii) to the extent such Lender exercises its rights as a secured party, (A) it does not acquire any greater rights or assume any lesser obligations than were available to, or imposed upon, Commonwealth prior to such exercise and (B) it would be subject to any rights and remedies available to OMU under this Agreement at such time.
- (c) OMU may assign all of its rights and obligations to the underlying Facility Owners with respect to portions of the System with the prior written consent of Commonwealth, which consent shall not be unreasonably withheld, conditioned, or delayed if, at the time of OMU's request, (a) neither OMU nor the proposed assignee is in material default under this Agreement or any other agreement with the Commonwealth and (b) the assignee agrees in writing to be bound by all the terms and conditions of this Agreement and the exhibits hereto.
- (d) Either party may assign its interest in this Agreement without the prior consent of the other party (i) to any corporation or other entity which is a successor to such party either by merger, consolidation, or sale of stock or equity; (ii) to a purchaser of all or substantially all of such party's assets; (iii) to any entity that acquires all of the System containing the major Segments; or (iv) to a corporation or other entity which is an Affiliate of such party, so long as, in the case of an assignment to an Affiliate, the assignor remains fully and jointly and severally liable for all its obligations hereunder.

**21.4. Agreement Binds Successors.** This Agreement and the rights and obligations under this Agreement (including the limitations on liability and recourse set forth in this Agreement benefiting the other party and the Released Parties) shall be binding upon, and shall

inure to the benefit of, OMU and Commonwealth and their respective permitted successors and assigns.

**21.5. Change in Control Not an Assignment.** Notwithstanding any presumptions under applicable state law that a change in control of a party constitutes an assignment of an agreement, a change in control of a party shall not be deemed an assignment for purposes of this Agreement.

**21.6. Right to Subcontract.** OMU may subcontract with any third party for construction, testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder or may have the underlying Facility Owner or its contractor perform such obligations, but OMU in any event shall remain fully and directly responsible to Commonwealth for the performance of such services and obligations.

**21.7. Designated Parties as Agents.** The Parties acknowledge and agree that the Designated Parties may operate as agents of Commonwealth and shall have authority to make decisions for and bind Commonwealth. Commonwealth agrees and acknowledges that OMU may follow the instructions and take such actions or not take such actions as the Designated Parties may instruct OMU, and the actions and instructions of the Designated Parties shall be binding on Commonwealth. In no event will OMU be obligated to confirm that a Designated Party is duly-authorized by Commonwealth or otherwise has the authority to make such determination or otherwise bind Commonwealth with respect to this Agreement or the actions to be taken or actions not to be taken, and Commonwealth shall have no claim or defense against OMU that such Designated Party was not authorized to act as the agent of and bind Commonwealth pursuant to this Agreement and any action taken or action not taken pursuant to this Agreement.

## **ARTICLE XXII** **ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

**22.1. Integration; Exhibits.** This Agreement constitutes the entire and final agreement and understanding between OMU and Commonwealth with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference. Where the terms of the Agreement and an Exhibit conflict, the Exhibit will control.

**22.2. No Amendment.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of OMU and Commonwealth.

**22.3. Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**22.4. Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and delivery of the signature page of a counterpart to the other Party by electronic mail in "portable document format" (".pdf") form, or by any other electronic means; *provided* that, if delivery is made by electronic mail in .pdf form, or by any other electronic

means, the executing Party shall promptly deliver a complete counterpart that it has executed to the other Party.

*[Remainder of Page Left Blank Intentionally – Signature Page Follows]*

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**APPROVED AS TO  
FORM & LEGALITY**

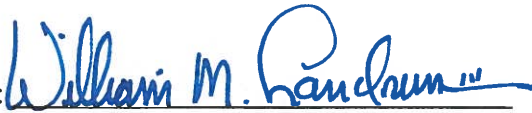
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**APPROVED  
FINANCE & ADMINISTRATION CABINET**


IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, OMU and Commonwealth have executed this Agreement as of the dates set forth below.

**THE CITY UTILITY COMMISSION  
OF THE CITY OF OWENSBORO  
KENTUCKY, D/B/A OWENSBORO  
MUNICIPAL UTILITIES**

**COMMONWEALTH OF KENTUCKY**

By:   
Name: J. T. Fulkerson  
Title: Chairman

By:   
Name: William M. Landrum III  
Title: Secretary, Finance and  
Administration Cabinet

Attest:  
By:   
Name: Ted Lolley, Secretary  
Date: 1/18/18

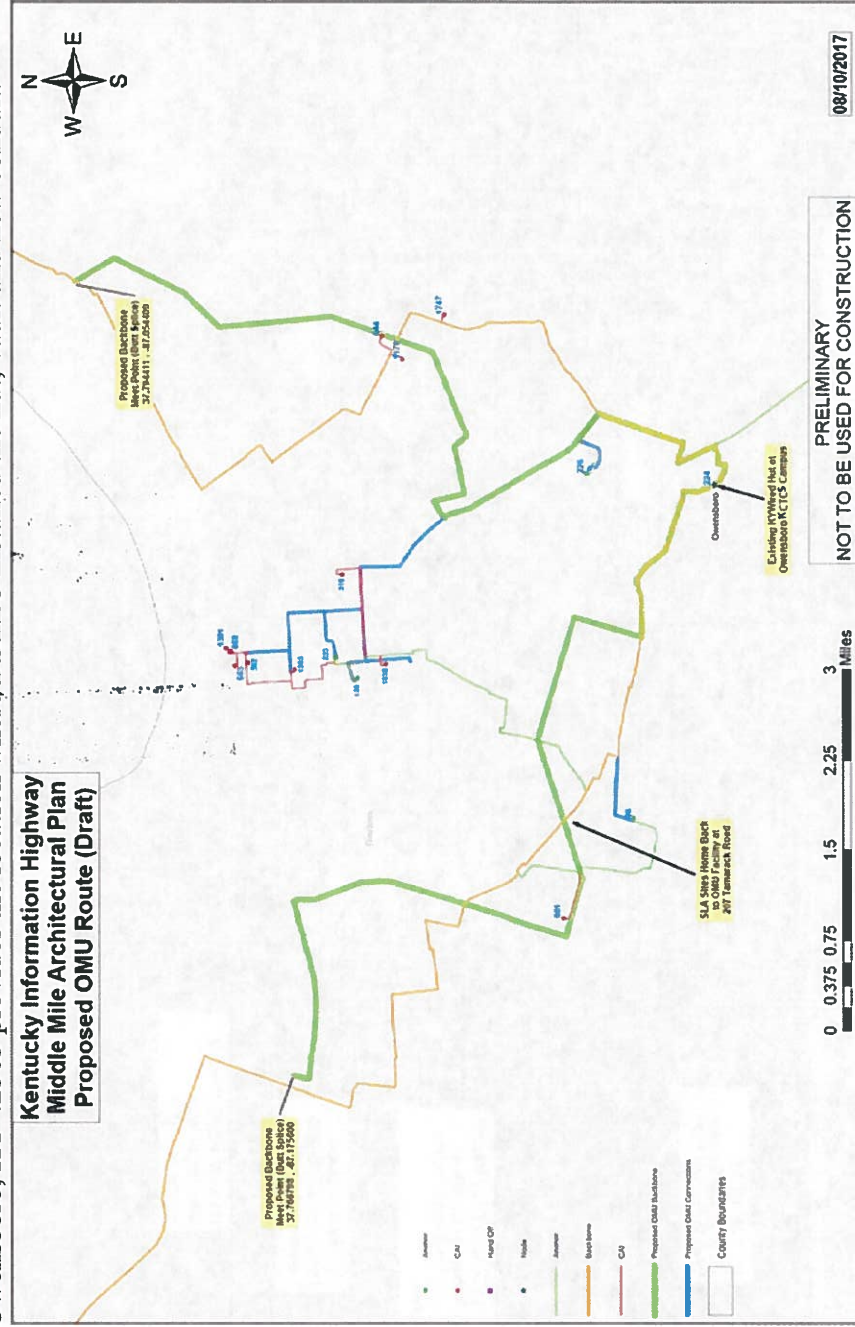
Date: 24 Jan 2018

**APPROVED AS TO  
FORM & LEGALITY**  
  
**APPROVED  
FINANCE & ADMINISTRATION CABINET**

# EXHIBIT A Route Descriptions

## A1 - Segments

The map provides an overview of the Commonwealth Fiber. The diagram of the Community College at 4800 New Hartford Rd, Owensboro, KY 42303 provides the location where DBLLC installed the hut, vault and new conduit.





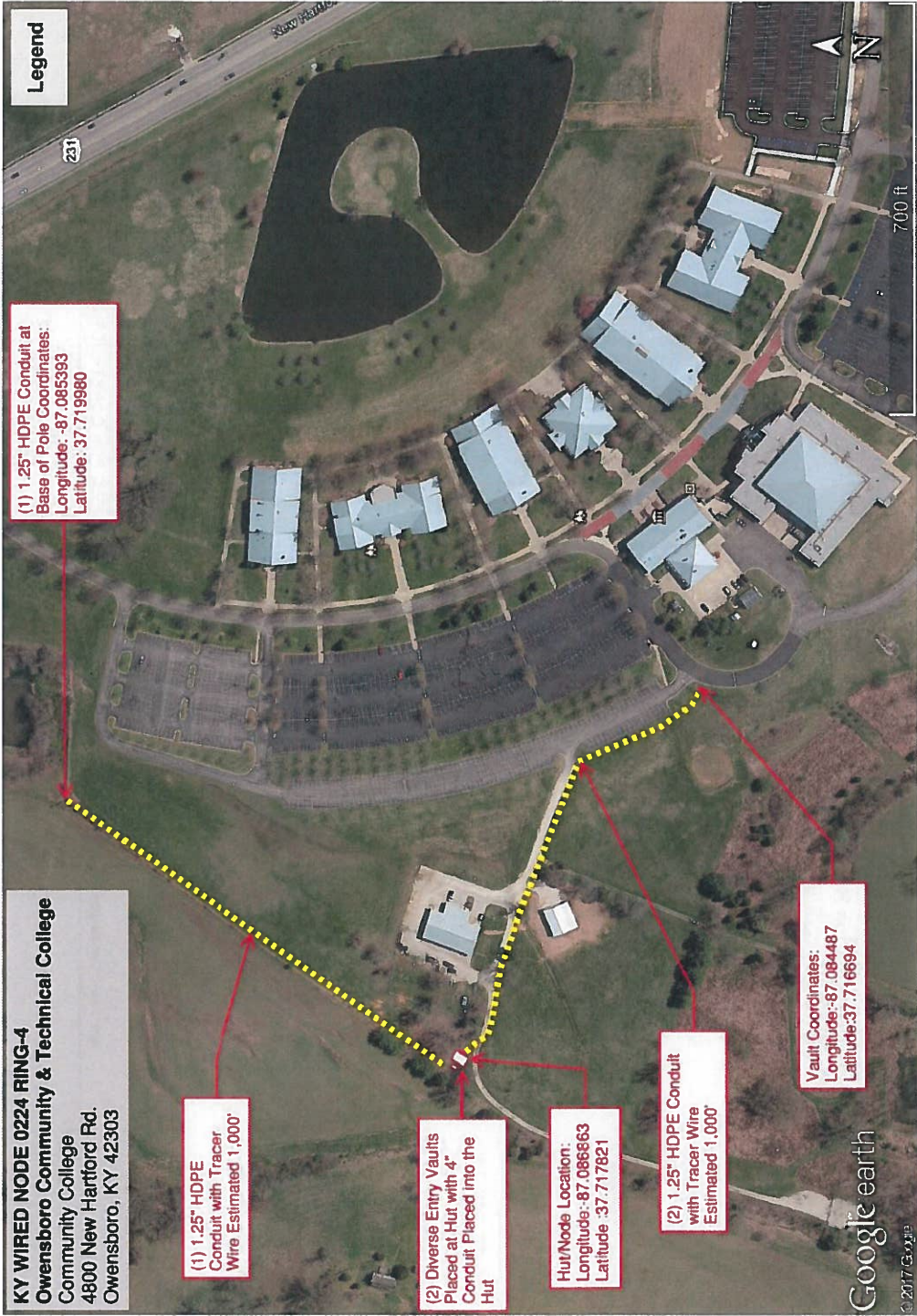


Exhibit A, Page 2

### Exhibit A2 - Sites

The list of Sites OMU is connecting is below. Note: the termination point of Wholesale spares is not as identified in the table but rather at Site 225 at 1501 Frederica Street.

#### Owensboro Site List

Site ID	Lateral ID	Ring #	Site Category	Site Name	Address	City	County	Zip Code	Segment Type	Fiber Needed	County Site with Spares for Wholesale	Sites A Wholesale Spares	(L) / (R)	OMU Fiber Count w/spares	Notes
224	224	4	KCTCS	Owensboro Community & Technical College - Main Campus	4900 New Hartford Rd, Owensboro, KY 42303	Owensboro	Dawless	42303	Node	244				244	Partial Backbone segment only. At the existing R/Wired hut, terminate the fibers into an FDP (provided by the DBLLC) at an assigned relay rack
46	46	4	K-12	Dawless Co Maint Dept	1621 Southtown Blvd Owensboro, Ky 42301	Owensboro	Dawless	42301	Anchor	4				4	
561	46	4	Government Site	Dawless Co DCSS	3600 W. Hobbs Crossing	Owensboro	Dawless	42301	CAI	2				2	
1381	225	4	Government Site	MED ONE STOP/ COP- R&P Owensboro	121 E 2ND ST	Owensboro	Dawless	42303	CAI	2				2	
668	225	4	Government Site	DCIT-ODL Dawless	190 E 2ND ST	Owensboro	Dawless	42303	CAI	2				2	
593	225	4	Government Site	Dawless County Clerk	212 Sahn Ann St	Owensboro	Dawless	42303	CAI	2				2	
592	225	4	Government Site	Dawless Co-Wenters Clin	480 Frederica St	Owensboro	Dawless	42303	CAI	2				2	
1205	225	4	Government Site	OFA Dawless County	920 Frederica St	Owensboro	Dawless	42303	CAI	2				2	
225	225	4	KCTCS	Owensboro community & Technical College - Downtown Campus	1501 Frederica St, Owensboro, KY 42301	Owensboro	Dawless	42303	Anchor	4	8	12		12	Includes 8 spares for future wholesale
128	225	4	K-12	North Campus - Owensboro High School	450 Griffith Avenue Owensboro, Ky 42302	Owensboro	Dawless	42301	Anchor	4				4	
510	225	4	Government Site	CHS CSC/CM/DAWLESS CO HEALTH DEPT	1600 BRUCELANDGE ST	Owensboro	Dawless	42303	CAI	2				2	
1010	225	4	Library	Dawless County Public Library	2820 Frederica Street, Owensboro, KY 42301	Owensboro	Dawless	42301	CAI	2				2	
1732	1732	4							Node	244				244	Partial Backbone segment only. At the existing R/Wired hut, terminate the fibers into an FDP (provided by the DBLLC) at an assigned relay rack
226	1732	4	KCTCS	Owensboro Community & Technical College - Southeastern Campus	1901 Southeastern Pkwy, Owensboro, KY 42303	Owensboro	Dawless	42303	Anchor	4				4	
644	1732	4	Government Site	DU-Owensboro-YDC	3001 Hwy 501, A 3001 Leitchfield Rd	Owensboro	Dawless	42303	CAI	2				2	
1170	1732	4	Government Site	NR EP/Dawless Co	3032 ALVEY PARK DR W	Owensboro	Dawless	42303	CAI	2				2	

**EXHIBIT B**  
**Maintenance Agreement**

Throughout the Term, OMU shall have the obligation to maintain and repair the Laterals up to the Demarcation Points, at its cost. The Commonwealth shall have the obligation to maintain and repair the Backbone and Sites under maintenance of its service provider. Both parties shall perform maintenance in accordance with the following requirements and procedures:

1. Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair (“Scheduled Maintenance”) of the Laterals (“**Scheduled Maintenance**”) shall be performed by, or under the direction of, OMU. Routine maintenance and repair of the Backbone and Sites shall be performed by, or under the direction of the Commonwealth. OMU shall have no responsibility or liability for the routine maintenance and repair of those facilities to be maintained by the Commonwealth or its service provider. Scheduled maintenance shall include, at a minimum, the following activities:

(i) Patrol of the System on a regularly scheduled basis, in accordance with then-current procedures for maintenance; and

(ii) OMU will subscribe to each and all One-Call Agencies that affect one or more of the Routes.

For purposes of this **Exhibit B**, “**One-Call Agencies**” includes the following, which may be updated from time to time: Kentucky811.

(b) Unscheduled Maintenance. Non-routine maintenance and repair of the Laterals, which is not included as Scheduled Maintenance (“**Unscheduled Maintenance**”), shall be performed by, or under the direction of, OMU and shall consist of:

(i) “**Emergency Unscheduled Maintenance**” in response to (A) the identification of a failure, interruption or impairment in the operation of Commonwealth Fibers by OMU’s OC (as defined below); (B) notification of OMU’s OC by any third party of any failure, interruption or impairment in the operation of Commonwealth's Fibers; or (C) any event imminently likely to cause the failure, interruption or impairment in the operation of Commonwealth Fibers of which OMU’s OC has actual knowledge.

(ii) “**Non-Emergency Unscheduled Maintenance**” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of Commonwealth Fibers of which OMU’s OC has actual knowledge.

OMU shall report the need for Emergency Unscheduled Maintenance to Commonwealth within thirty (30) minutes of OMU learning of same and shall report the need for Non-Emergency Unscheduled Maintenance to Commonwealth within twenty-four (24) hours of OMU learning of same. OMU will log the time of the report to Commonwealth, verify the problem, and dispatch personnel to assess and commence corrective action within four (4) hours of notification being given to OMU of the service-affecting situation or any potential service-affecting situation. If Emergency Unscheduled Maintenance is



needed for the Backbone, OMU will notify LTS Kentucky Managed Technical Services, LLC at 1-877-859-1155

2. Operations Center.

OMU shall operate and maintain, or shall enter into an agreement with an Affiliate or third party for the operation and maintenance of, an Operations Center (“OC”) which is staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel whose responsibility it is to receive notification of, and assess and respond to, service-affecting or potential service-affecting situations. The OC shall be able to dispatch maintenance personnel twenty-four (24) hours a day, seven (7) days a week, and at least one maintenance personnel will be dispatched to the site requiring Emergency or Non-Emergency Unscheduled Maintenance activity within four (4) hours after the time OMU becomes aware of an event requiring Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of OMU. OMU shall maintain a telephone number to contact personnel at the OC. OMU’s OC personnel shall dispatch maintenance personnel along the Laterals to handle and repair problems detected on the Laterals (i) through OMU’s remote surveillance equipment or (ii) upon notification of OMU by Commonwealth or its employees.

3. Cooperation and Coordination.

(a) In performing its services hereunder, OMU shall take workmanlike care to ensure signal continuity and performance of the Commonwealth Fibers, at a minimum, in accordance with prevailing industry standards.

(b) OMU shall notify Commonwealth at least ten (10) business days prior to the commencement date of any Scheduled Maintenance. Commonwealth shall have the right to be present during the performance of any Maintenance so long as Commonwealth’s presence does not interfere with OMU’s ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for any reason, OMU shall notify Commonwealth within twenty-four (24) hours of the cancellation of such Scheduled Maintenance. OMU will comply with the provisions of this subsection in rescheduling any cancelled Scheduled Maintenance.

4. Facilities.

(a) OMU shall maintain the Laterals in a manner which will permit Commonwealth’s full use of the Commonwealth Fibers and in accordance with the terms and conditions of the Agreement.

(b) Except to the extent otherwise expressly provided in the Agreement, Commonwealth will be solely responsible for providing and paying for any and all maintenance of all Commonwealth Equipment used by Commonwealth in connection with the operation of Commonwealth Fibers, Backbone, and Sites, none of which is included in the maintenance services to be provided hereunder.

5. Cable/Fibers.

(a) OMU shall perform appropriate Scheduled Maintenance on the Laterals in accordance with OMU’s then-current procedures, which procedures shall meet or exceed standard industry practice.

(b) OMU shall use commercially reasonable efforts to have qualified representatives on site at any time it has advance notice that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable.

(c) OMU shall maintain sufficient capability to teleconference with Commonwealth during Emergency and Non-Emergency Unscheduled Maintenance during the repair process. When correcting or repairing discontinuity or damage to the Laterals, including in the event of Emergency and Non-Emergency Unscheduled Maintenance, OMU shall repair its own necessary operations required fibers before making any repairs to Commonwealth fibers. Upon OMU returning its operations network to full service, OMU shall repair traffic-affecting discontinuity within twelve (12) hours of notification to OMU of the service-affecting situation or the potential service-affecting situation. The repairs so affected may be temporary in nature, and in such event, within twenty-four (24) hours after completion of any such temporary repair for Emergency and Non-Emergency Unscheduled Maintenance, OMU shall commence its permanent repair and shall notify Commonwealth of such plans. Notwithstanding the foregoing, restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule.

(d) OMU's maintenance employees shall carry the appropriate equipment and testing devices on their vehicles that are customary for its industry and that would enable a temporary splice to restore a cut Cable.

6. Planned Service Work Period (PSWP).

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the Parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for weekends. A calendar showing approved Scheduled Maintenance will be agreed upon by OMU and Commonwealth in the last quarter of every year for the following year and shall be scheduled to avoid work on the first and last weekends of the month and high-traffic holidays.

7. Restoration.

When restoring a cut Cable in the Laterals, OMU, promptly upon arriving at the location of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. OMU shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, first splicing fibers for its operations network, second for first responders and medical and emergency services, third splicing fibers for the Commonwealth Fibers, and then splicing the fibers of other interest holders in the Laterals; *provided* that lit fibers in all buffer tubes or ribbons or fiber bundles shall have priority over any dark fibers in order to allow transmission systems to come back on line; and *provided, further*, that OMU will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. After the restoration of service for OMU then first responders and medical and emergency services, Commonwealth shall be given priority among all other interest holders affected by a cut; *provided, however*, OMU may not rely on this section to seek relief from its maintenance and/or performance obligations under this Agreement.

8. Contracting.

OMU may subcontract any of the maintenance services hereunder; *provided* that OMU shall require the subcontractor(s) to perform in accordance with the requirements, standards and

procedures set forth herein.

9. Performance Reporting.

During the Term, the Commonwealth Fibers shall continue to meet the prevailing industry standards and the Acceptance Standards as described in **Exhibit D**. OMU will provide Commonwealth with a written report of each Commonwealth Fiber Outage or maintenance request by Commonwealth for the previous calendar month, which report shall include at a minimum (i) OMU's response and restoration times, rounded up to the nearest minute; (ii) the location of the Lateral containing Commonwealth Fiber outage; and (iii) the mean response and restoration times for the subject month.

The Parties acknowledge that OMU's failure to respond and restore Outages will cause Commonwealth substantial damages and losses of a type and degree which is impossible to compute and ascertain with any certainty as a basis for recovery by Commonwealth of actual damages, and that the following liquidated damages represent a fair, reasonable and appropriate estimate thereof:

Time to Maintenance Responder to Location

Up to 4 hours 15 minutes:	-\$0-
4 hours 16 minutes to 4 hours 30 minutes	\$500 for each event
4 hours 31 minutes to 5 hours:	\$750 for each event
Over 5 hours	\$1,000 for each event

For the avoidance of doubt, the Time to First Maintenance Responder to Location standard will apply to each Outage that occurs during a calendar month. For example, if a unique Site is impacted by two separate Outages in a given month, and the respective response times for said Outages are 4 hours 16 minutes and 6 hours, the Time to First Maintenance Responder to Site penalty would be equal to \$500 + \$1,000 = \$1,500.

Mean Time to Restore (Per Average Number of Sites Impacted)

Up to 12 hours:	-\$0-
12 hours 1 minute to 16 hours:	\$232
16 hours 1 minute to 20 hours	\$579
20 hours 1 minute to 24 hours	\$1,159
24 hours 1 minute to 36 hours	\$1,738
Over 36 hours	\$2,317

The Mean Time to Restore penalties pursuant to this **Exhibit B** will be calculated as follows: (x) Average Number of Sites impacted, *multiplied by* (xi) the Mean Time To Restore.

For purposes of this **Exhibit B**, the following definitions shall apply:

- (i) **"Average Number of Sites"** is calculated as follows: (a) the number of unique Outages in a calendar month *multiplied by* the number of Sites impacted by such Outages, *divided by* (b) the total number of unique Outages.
- (ii) **"Mean Time to Restore"** is calculated as follows: (x) the sum of the duration of each Outage, calculated in minutes, *divided by* (y) the total number of unique Outages in each

calendar month, where the duration of an Outage will be calculated as the number of minutes from the point at which OMU's Operating Center is notified of Sites not being Available until all Sites impacted by such Outage are Available; *provided, however*, that in the event that OMU requires access to a Site that is under the control of Commonwealth or a third party in order to correct an Outage, the duration of such Outage shall only include the period of time after OMU actually receives access to such Site and OMU was able to begin corrective measures with respect to such Outage; *provided, further*, that in the event that correction of the Outage requires a joint effort between OMU and either Commonwealth or any third party, any period of time during which Commonwealth or third party delayed such joint effort shall not be included in the duration of such Outage.

*For example purposes only, if there are 10 Outages in a given month, 5 of which each impact 5 Sites and 5 of which each impact 3 Sites, the Average Number of Sites is calculated as follows: (i) (a) 5 Outages multiplied by 5 Sites plus (b) 5 Outages multiplied by 3 Sites, divided by (ii) 10 Outages, which equals 4. If the Mean Time to Restore the Outages is 14 hours, the total penalty for the relevant monthly billing period is calculated as follows: \$232 x 4, which equals \$928.*

Notwithstanding anything to the contrary contained in this **Exhibit B** or the Agreement, in no event may the penalties assessed pursuant to this **Exhibit B** during any calendar month exceed Three Thousand Dollars \$3,000.00).

10. Restoration Activities with Respect to Commonwealth Equipment. In the event that Commonwealth or any other person or entity requests that OMU provide restoration or maintenance services with respect to any Commonwealth Equipment and OMU agrees to provide such services, those services shall be billed to Commonwealth at OMU's standard terms and conditions and shall be paid within thirty (30) days of Commonwealth's receipt of OMU's invoice.

11. Erroneous Callout. In the event that more than three (3) Erroneous Callouts occur during any Calendar Quarter, Commonwealth shall promptly pay to OMU \$250.00 per Erroneous Callout occurring during such Calendar Quarter. For purposes of this Agreement, the term "**Erroneous Callout**" means those instances where Commonwealth or any other person or entity requests that OMU provide restoration or maintenance services and, upon OMU's inspection with respect to such request, OMU determines in good faith that no Outage exists. For purposes of clarity, a "**Calendar Quarter**" shall mean the three (3) calendar month period ending on (and including) each of the following dates: March 31, June 30, September 30, and December 31.

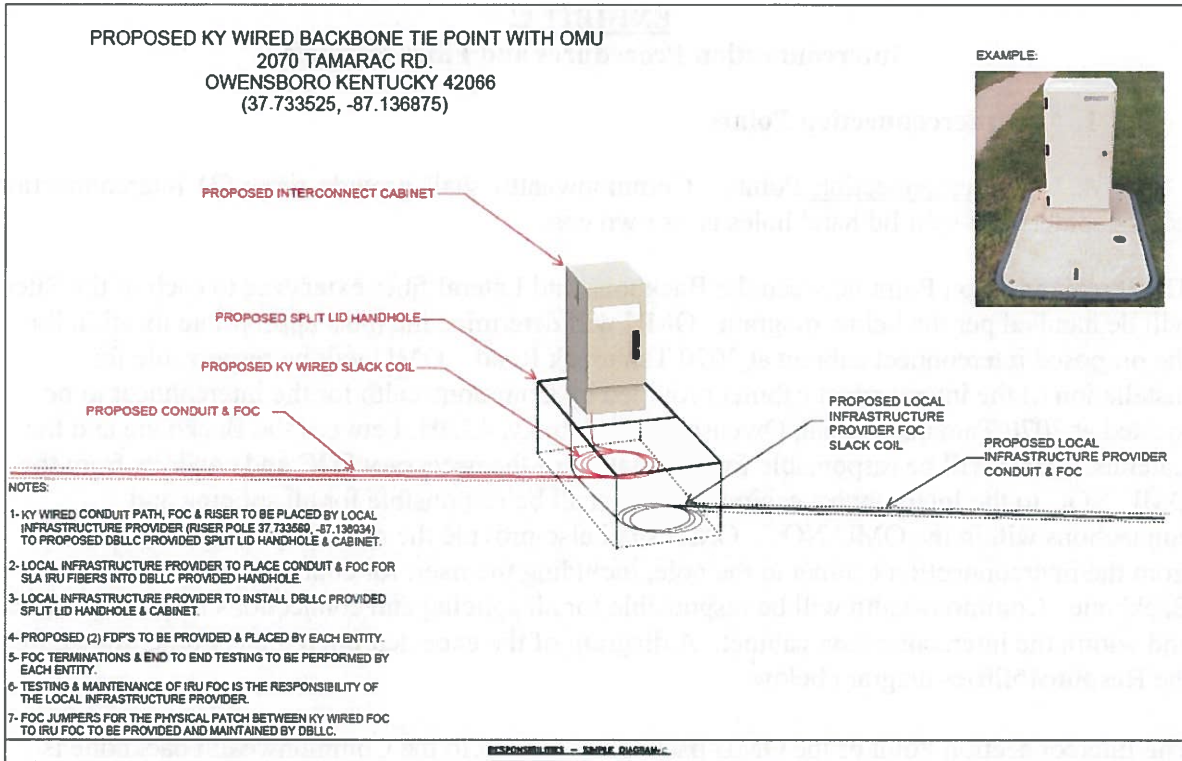
**EXHIBIT C**  
**Interconnection Procedures and Fiber Handoff**

**1. Interconnection Points**

A. Interconnection Points. Commonwealth shall provide three (3) interconnection point cabinets and split lid hand holes at its own cost.

The Interconnection Point between the Backbone and Lateral fiber extending to each of the Sites will be handled per the below diagram. OMU will determine the most appropriate location for the proposed interconnect cabinet at 2070 Tamarack Road. OMU will be responsible for installation of the interconnect cabinet provided by Commonwealth for the interconnect to be located at 2070 Tamarack Road, Owensboro, Kentucky, 42301, between the Backbone and the Laterals. OMU will be responsible for installation of the necessary FOC and conduits from the OMU NOC to the Interconnect cabinet. OMU shall be responsible for all splicing and connections within the OMU NOC. OMU shall also provide the necessary conduit and fiber from the interconnection cabinet to the pole, including the riser, for connection into the Backbone. Commonwealth will be responsible for all splicing and connections to the Backbone and within the interconnection cabinet. A diagram of the expected Interconnection is shown in the **Responsibilities** diagram below.

The Interconnection Point of the OMU backbone segment to the Commonwealth backbone is indicated in Exhibit A as Proposed Backbone Meet-Point with longitude and latitudes. Commonwealth, through its service provider, will be responsible for all splices and connections required between the OMU Backbone and the Commonwealth Backbone.



B. Permitted Connecting Points. Commonwealth shall be responsible to establish Connecting Points with other telecommunications facilities (“**Interconnect Facilities**”) at Commonwealth’s sole expense along the Backbone. Commonwealth shall have no right to establish any connection to the Laterals other than at such Sites as identified in Exhibit A-2. Commonwealth may request the right to establish connections to the Laterals at other locations. The costs for additional connections to the Laterals that are granted by OMU to the Commonwealth shall be payable by Commonwealth. The cost of any capacity required from the Laterals shall be calculated in a manner similar to the methodology of Section 3.3(d) interpolated for the remaining duration of the Term. A determination by OMU of the existence of any of the conditions described in Subsection 2.B of this **Exhibit C** shall not be deemed an unreasonable denial of permission for additional connections.

## 2. Requests for Interconnections

A. Connection Requests. Commonwealth shall provide OMU at least sixty (60) days’ prior written notice (the “**Interconnect Notice**”) of the date it requests that a connection be completed or sixty (60) days’ prior written notice if the connection requires installation of Commonwealth Equipment at a Site. The Interconnect Notice shall set forth a description of the work required to be performed including:

- (i) the connection location (which shall be at a permitted Connecting Point as set forth in **Subsection 1.A** of this Exhibit);
- (ii) a copy of Commonwealth's construction design drawings including a diagram of the desired location of the Interconnect Facilities and Commonwealth Equipment;
- (iii) identification of all Interconnect Facilities and Commonwealth Equipment to be installed;
- (iv) Commonwealth's requested installation schedule;
- (v) any excess cable storage requirements;
- (vi) the space, power, environmental and other requirements for the Interconnect Facilities and Commonwealth Equipment;
- (vii) the estimated in-service and termination dates for the interconnection; and
- (viii) all other information reasonably required by OMU.

B. Response to Requests. Within twenty (20) business days of receiving the Interconnect Notice, OMU shall respond with its acceptance or objections to the proposed interconnection. OMU shall use commercially reasonable efforts to accommodate the request, but may restrict such work to the planned system work periods set forth in **Exhibit B**. OMU may decline to make a requested connection if OMU determines, in its reasonable discretion, that there is a significant likelihood that (i) Commonwealth's use of a proposed connection would cause a material and adverse effect on the Laterals or the use thereof; (ii) use of a particular location will cause a significant technical impediment; (iii) the making or existence of the connection presents a risk of creating an interruption of transmission; (iv) OMU has no rights to interconnect to the Cable at such point due to restrictions existing in the underlying rights or an inability to obtain other required permits, authorizations or approvals; or (v) there are unreasonable costs and/or logistics required to make such interconnection.

### **3. Demarcation and Ownership**

A. Demarcation Points. OMU shall designate an installation demarcation point and a maintenance demarcation point (which may be a different point) for each interconnection in order to safeguard and maintain sole control over the Laterals. OMU shall perform all installation work on facilities on its side of the installation demarcation point and shall perform all post-installation work on facilities on its side of the maintenance demarcation point. Commonwealth shall pay the costs of such installation and post-installation work as set forth in this Exhibit. Installation by OMU of the Interconnect Facility shall extend no further than the boundary of OMU's right of way or other property unless otherwise mutually agreed to by the parties.



B. Ownership. Commonwealth shall retain ownership of Interconnect Facilities during the Term. At the end of the Term, title to any portion of an Interconnect Facility located on Transmission Sites or other OMU premises or right of way not removed by Commonwealth within ninety (90) days shall pass to OMU.

#### **4. Installation of Interconnect Facilities**

A. Spur Cable. Except for the Interconnection Point of the Laterals to the Backbone at 2070 Tamarack Road, Commonwealth or its contractors shall provide a spur cable adequate to reach the Interconnection Point with an additional length (minimum 100 feet) sufficient for Commonwealth to perform splicing. Commonwealth will be responsible for any splicing or connections required at 2070 Tamarack Road.

B. Rights of Way and Equipment. Commonwealth shall provide, at its sole cost and expense, any and all necessary rights of way, permits, access rights and/or any required consents or authorizations, and OMU-approved materials and equipment (including cables and conduit) necessary for the construction, use, operation, maintenance and repair of each Interconnect Facility. At Commonwealth's request, to the extent permitted under OMU's lease or other agreements relating to a co-location facility, and if space is available, OMU shall at its sole discretion provide to Commonwealth access to building entrances, conduits and risers at the co-location facility or use of OMU's rights to install such building entrances, conduits or risers necessary in connection with constructing an Interconnect Facility. Such access or use of rights shall be at such additional charges to which OMU and Commonwealth may agree. Commonwealth shall be subject to all limitations and restrictions for conduits, risers and building entrances imposed by the applicable underlying owner. Commonwealth shall be solely responsible for placement, construction and installation of all Commonwealth facilities required to interconnect at the Connecting Point designated by OMU.

If necessary, and where applicable, OMU shall assist Commonwealth, at Commonwealth's sole expense, in obtaining from any third-party building owner or OMU lessor access to existing building entrance facilities, if available, to access and exit Transmission Sites. Otherwise, Commonwealth shall be solely responsible for obtaining all necessary rights for the Interconnect Facility, as described in the first sentence of this Subsection, and OMU does not make and hereby disclaims any warranties or representations that such rights are available at any particular location or regarding the cost or availability of such rights.

#### **5. Maintenance of Interconnect Facilities**

A. Maintenance and Changes. Commonwealth shall provide all maintenance and repair of the Interconnect Facility on Commonwealth's side of the maintenance demarcation point. Any improvement, modification, addition to, relocation, or removal of, the Interconnect Facility by Commonwealth at Transmission Sites or other OMU premises shall be subject to OMU's prior review and written approval. Commonwealth shall pay the cost of such improvement, modification, addition to, relocation, or removal of, the Interconnect Facility and of the cost of repairing any damage due to Commonwealth's actions. OMU's maintenance



responsibility shall be limited to the Interconnect Facilities on its side of the maintenance demarcation point and the associated cross connect or other connection at that point.

B. Unusual Costs. OMU may submit a request to Commonwealth to pay additional costs incurred in maintaining any connection that requires OMU to obtain additional Required Rights, and Commonwealth shall pay such costs.

C. Standards. Commonwealth shall (except to the extent OMU has installation or maintenance responsibility) ensure that any Interconnect Facilities are installed, operated, and maintained to meet or exceed any reasonable requirements of OMU, any requirements of OMU's building management or insurance underwriters, and any applicable local, state and federal codes and public health and safety laws and regulations (including fire regulations and the National Electric Code).

## **6. Additional Provisions Applicable to Transmission Sites**

A. Limitations on Transmission Site Interconnections. Transmission Sites are established and designed to support network transmission equipment and, therefore, no interconnections may be made at such sites for other purposes, such as directly or indirectly connecting to local exchange carrier facilities or other local access facilities or for purposes of providing local exchange carrier or local access services.

B. Prohibition on Dark Fiber Cross-Connects with Other Co-location. Unless otherwise agreed, Commonwealth shall not establish dark fiber cross-connects between Commonwealth's co-located facilities or the Commonwealth Equipment and the co-located facilities of other parties who are using a Transmission Site. Unless otherwise agreed, Commonwealth shall not use any Interconnect Facility to allow third parties co-located in any Transmission Site to interconnect with each other at that Transmission Site.

C. Additional Co-location Requirements. If any Interconnect Facility requires installation or storage of Commonwealth Equipment (other than the spur cable) at OMU premises, Commonwealth must arrange for co-location of such Commonwealth Equipment through a separate written agreement.

## **7. Additional Requirements for Connections at Splice Points**

A. At any time there is cable activity (including initial installation of the splice, repair of cable cuts or other cable damage, and relocation of the cable) on the Span where the splice is located (the "**Spliced Span**"), Commonwealth or its Contractors shall (a) at OMU's request (written, oral or electronic), promptly provide a trained and qualified technician with an optical time-domain reflectometer ("**OTDR**") at its fiber distribution panel ("**FDP**") to aid in the cable activity, or (b) if Commonwealth cannot provide the technician and an OTDR, then Commonwealth shall provide OMU access to Commonwealth's FDP for the duration of the cable activity.

B. OMU's Operations Center (OC) shall remain the central point of contact and shall

control all Cable activity. OMU's OC will maintain an open line to Commonwealth's NOC during Cable activity.

C. The restoral times stated in **Exhibit B** of this Agreement, for the services OMU is providing, do not apply to the mid-span interconnection splice(s).

D. During a cable emergency situation, OMU shall proceed with "blind" fiber splicing of the Commonwealth Fibers along the Spliced Span (i.e. splicing without the ability to test the Spliced Span) in order to make initial temporary repairs. OMU may defer blind splicing until all other fibers in the damaged cable are spliced. Commonwealth shall make reasonable efforts to coordinate with an OMU technician in the performance of permanent repairs to the Commonwealth Fibers along the Spliced Span.

E. The operation and maintenance specifications set forth in the Maintenance Agreement do not provide for fiber rolls to dark fiber to restore Commonwealth's service. However, if OMU does elect to provide fiber rolls, it may elect not to allow fiber rolls on the Spliced Span.

F. If Commonwealth reports a damaged fiber on the Spliced Span and OMU is not aware of any continuity problems on its System, Commonwealth shall have the burden of demonstrating that the problem is a result of damage to a Commonwealth Fiber. Commonwealth must use an OTDR to demonstrate that the problem is not a result of conditions off the System and beyond the Splice.

G. The provisions of **Paragraphs 7(C), 7(D), 7(E) and 7(F)** of this **Exhibit C** shall apply (a) only to the Commonwealth Fibers having a mid-span interconnection splice and (b) only to the extent such Commonwealth Fibers are on a Spliced Span.

H. Commonwealth may only have OMU perform a mid-span interconnection splice at existing OMU splice points and then only with OMU's prior written consent.

I. OMU is not obligated to perform any maintenance, repair, or restoration on the Commonwealth interconnection beyond the splice point.

## EXHIBIT D

### Fiber Splicing, Testing, and Acceptance Standards and Procedures

#### 1. Installation Testing

A. During installation, OMU shall use an OTDR to test splices and a 1-km launch cable to test pigtail connectors. Such installation tests shall be uni-directional and performed at 1550 nm.

B. If the combined front-end connectors and pigtail splice loss value exceeds 0.8 dB, OMU shall break the splice and re-splice until the loss value is 0.8 dB or less. If OMU is unable to achieve a loss value of 0.8 dB or less after five total splicing attempts, the splice shall be marked as Out-of-Spec (“OOS”). The .8 dB spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

C. If the loss value for a splice, when measured in one direction with an OTDR, exceeds 0.3 dB, OMU shall break the splice and re-splice until the loss value is 0.3 dB or less; provided that, if OMU is not able to achieve a loss value of 0.3 dB after three total splicing attempts, then OMU shall mark the splice as OOS. The .3 dB loss spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

#### 2. End-to-End Testing

A. After OMU has established end-to-end connectivity on the fibers during installation, it shall:

- perform bi-directional OTDR end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been "frogged" or crossed at any splice points, and
- record loss measurements using a light source and a power meter.

B. At Fiber termination points, the pigtail splice loss shall be no greater than .80 dB, and the reflection level at such termination points shall be equal to or greater than -50dB.

C. OMU shall perform the bi-directional OTDR end-to-end testing at both 1310 nm and 1550 nm, provided that 1310 nm OTDR tests are not required (i) for Spans longer than 64 kilometers or (ii) where the fiber being tested is not manufactured to support 1310 nm optical signals. The results of such tests for any given Span shall not be deemed within specification unless showing loss measurements between fiber distribution panels at each end of such Span in accordance with the loss specifications set forth by the cable manufacturer's specifications for dB per kilometer loss as shown in **Exhibit D**. OMU shall measure and verify losses for each splice point in both directions and average the loss values. OMU shall mark any splice points as OOS that have a splice loss greater than 0.05 dB per event. OMU shall also designate as OOS any cumulative splice loss across a Span consisting of the entire Core Segment if the bi-

directionally averaged cumulative splice loss across such Span exceeds 0.25 dB per km at 1550 nm and will work with the Commonwealth to resolve any Commonwealth tested Span which exceeds 0.35 dB at 1625 nm. OMU shall likewise designate as OOS any cumulative splice loss across a Segment if the bi-directionally averaged cumulative splice loss across either such Span exceeds 0.30 dB per km at 1310 nm, 0.25 dB per km at 1550 nm, and will work with the Commonwealth to resolve any Commonwealth tested Span which exceeds 0.35 dB per km at 1625 nm. Any such splice points or Span shall be subject to Section 4, below.

D. All 1625 nm testing is conditional upon the Commonwealth notifying OMU of its purchase of or bona fide intent to install electronics operating at that wavelength. OMU shall have 90 days in which to complete testing and if necessary provide fibers that meets the specifications.

### **3. Post-Installation Testing**

After performing permanent splicing (in conjunction with repair of a cable cut, replacement of a segment of cable, or other work after initial installation and splicing of the cable), the test procedures set forth in **Section 2** (End-to-End Testing) of this Exhibit shall apply to the relevant fibers and cable segments. The provisions in **Sections 5** (OTDR Equipment and Settings) and **6** (Acceptance Test Deliverables) of this Exhibit, that are relevant to such testing shall also apply. OMU may adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

### **4. Out-of-Spec Splices**

Out-of-Spec splices or Spans shall be noted, but shall not preclude Acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the Commonwealth is later able to reasonably establish that the OOS splice or Span affects service, OMU shall take necessary action to bring the splice or Span into compliance with the applicable specifications under **Section 1** of this Exhibit.

### **5. OTDR Equipment and Settings**

OMU shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, equipment models compatible for testing and able to support the following settings:

#### **A. Index of refraction settings:**

	1310 nm	1550 nm	1625nm
Corning SMF-28	1.4675	1.4681	1.4681

B. Tests of a pigtail connector and its associated splice:

4 km Range  
50ns Pulse

1. m Resolution

**6. Acceptance Test Deliverables**

OMU shall provide a file containing the following information for the relevant fibers and cable segments:

A. Verification of end-to-end fiber continuity with power level readings for each fiber taken with a stable light source and power meter.

B. Verification that the loss at each splice point is either (i) in accordance with 2.C. above or (ii) in accordance with the requirements of **Section 4** of this Exhibit.

C. The final bi-directional OTDR test data, with distances.

D. Cable manufacturer, cable type (buffer/ribbon), fiber type, number of fibers, number of fibers per tube, and distance of each section of cable between splice points.

OMU will provide required documentation for new fiber that meets G.652D specification E. In the event Commonwealth notifies OMU of its purchase or bona fide intent to install electronics operating at 1625 nm on a Segment, OMU shall provide documentation from Chromatic Dispersion and PMD measurements for such Segment within 90 days and if necessary provide Fibers that meets the specification.

**7. General Testing Procedures and Acceptance**

A. As soon as OMU determines that the Commonwealth Fibers in a given Span meet the Acceptance Standards such that there is Fiber connectivity between all fiber distribution panels along such Span or connectivity to Commonwealth requested spliced off-net location, it shall provide the deliverables set forth in **Section 6** of this Exhibit. Commonwealth shall have fourteen (14) calendar days after receipt of test deliverables for any Span to provide OMU written notice of any bona fide determination that the Commonwealth Fibers on such Span do not meet the Acceptance Standards. Such notice shall identify the specific data that indicate a failure to meet the Acceptance Standards.

B. Upon receiving written notice pursuant to **Subsection 7.A** of this Exhibit, OMU

shall either:

- (i) expeditiously take such action as shall be reasonably necessary to cause such portion of the Commonwealth Fibers to meet the Acceptance Standards and then re-test the Commonwealth Fibers in accordance with the provisions of this Exhibit; or
- (ii) provide Commonwealth written notice that OMU disputes Commonwealth's determination that the Commonwealth Fibers do not meet the Acceptance Standards.

After taking corrective actions and re-testing the Commonwealth Fibers, OMU shall provide Commonwealth with a copy of the new test deliverables and Commonwealth shall again have all rights provided in this **Subsection 7.B** of this Exhibit with respect to such new test deliverables. The cycle described above of testing, taking corrective action and re-testing shall take place until the Commonwealth Fibers meet the Acceptance Standards.

C. If OMU provides notice to Commonwealth pursuant to **Subsection 7.B.ii** of this Exhibit, Commonwealth shall, within five (5) calendar days of such notice, designate by written notice to OMU the names and addresses of three reputable and independent fiber optic testing companies. OMU shall designate one of such companies to conduct an independent re-test of the Commonwealth Fibers for the relevant Span. If, after such re-testing, the testing company determines that the Commonwealth Fibers:

- (i) meet the Acceptance Standards, then Commonwealth shall pay the testing company's charges for performing the testing and the acceptance date for the relevant Span shall be fourteen (14) days after OMU provided its test deliverables.
- (ii) do not meet the Acceptance Standards, then OMU shall pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in **Subsection 7.B.i** of this Exhibit.

D. Unless Commonwealth provides a written objection pursuant to Subsection 7.A of this Exhibit, the acceptance date of a Span shall occur on the fourteenth (14<sup>th</sup>) day after OMU provides the test deliverables for that Span, or, if earlier, the date Commonwealth provides written acceptance of such Span. Commonwealth's acceptance (pursuant to this subsection or of **Subsection 7.C** of this Exhibit) of the last Span within a Major Segment shall constitute "**Acceptance**" of the Commonwealth Fibers for such Major Segment. The date of Acceptance for each Major Segment shall constitute the "**Acceptance Date**" of such Major Segment.

E. Acceptance testing shall progress Span by Span along the System as Cable splicing progresses so that test deliverables may be reviewed in a timely manner. The Commonwealth shall have the right, but not the obligation, to have an individual present to observe such testing and OMU shall provide the Commonwealth at least seven (7) days' prior

notice of its testing schedule. Within thirty (30) calendar days after OMU's conclusion of the Fiber Acceptance Testing in any given Span, OMU shall provide the Commonwealth with a copy of the test deliverables.

**EXHIBIT E**  
**Cable Installation Specifications**

**1. Material**

- Existing fiber, conduit and poles will be used to the maximum extent possible, as is/where is, and may not comply with portions of these cable installation specifications. Only new construction shall follow these specifications.
- Steel or PVC conduit shall be minimum schedule 40 wall thickness.
- Any exposed steel conduit, brackets or hardware (e.g., bridge attachments) shall be hot-dipped galvanized after fabrication.
- All new split steel shall be flanged.
- Hand holes shall have a minimum H-15 loading rating.
- Manholes shall have a minimum H-20 loading rating.
- Warning signs shall display universal do not dig symbol, "Warning-Buried Fiber-Optic Cable," company name and logo, local and emergency One Call toll-free numbers.

**2. Minimum Depths**

Minimum cover required in the placement of the conduit/cable shall be forty-two inches (42"), except in the following instances:

- Existing construction will be used as is/where is and may not comply with portions of these cable installation specifications as existing fiber is typically buried at a depth of 30 to 36 inches.
- The minimum cover across streams, river washes, and other waterways shall be sixty inches (60") below the clean out line or existing grade, whichever is greater.
- At locations where the cable crosses other subsurface utilities or other structures, the cable/conduit shall be installed to provide a minimum of twelve inches (12") of vertical clearance from the utility/obstacle. The cable/conduit can be placed above the utility/obstacle, provided the minimum clearance and applicable minimum depth can be maintained; otherwise the cable/conduit shall be installed under the existing utility or other structure.
- In rock, the cable/conduit shall be placed to provide a minimum of eighteen inches (18") below the surface of the solid rock, or provide a minimum of forty-two inches (42") of total cover, whichever requires the least rock excavation.
- Where existing pipe is used, current depth is sufficient.

**3. Buried Cable Warning Tape**

All cable/conduit shall be installed with buried cable warning tape. The warning tape shall be:

- laid a minimum of twelve inches (12") above the cable/conduit,
- generally placed at a depth of twenty-four inches (24") below grade and directly above the cable/conduit,



- a minimum of three inches (3") wide and display "Warning-Buried Fiber-Optic Cable," a company name, logo and emergency one-call toll-free number repeated every twenty-four inches (24").

#### **4. Conduit Construction**

- Conduits may be placed by means of trenching, plowing, jack and bore, multi-directional bore or directional bore.
- Conduits shall generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- Steel conduit shall be joined with threaded collars, Zap-Lok or welding. (Welding is the preferred method.)
- All jack and bores shall use HDPE or steel conduit.
- All directional or mini-directional bores shall use HDPE or steel conduit.
- Any cable placed in swamp or wetland areas shall be placed in HDPE, PVC, or steel conduit.

Where required by the permitting agency:

- all crossings of paved city, county, state, federal, and interstate highways, or railroad crossings shall be encased in steel conduit,
- all longitudinal cable runs under paved streets shall be placed in steel or concrete encased PVC conduit,
- all cable placed in metropolitan areas shall be placed in steel or concrete covered PVC conduit, and
- at all foreign utility/underground obstacle crossings, steel conduit shall be placed and shall extend at least five feet (5') beyond the outer limits of the obstacle in both directions.

#### **5. Innerduct Installation**

- No cable shall be placed directly in any split/solid steel conduit without innerduct. This might not be the case in existing fiber.
- Innerduct(s) shall extend beyond the end of all conduits a minimum of eighteen inches (18"). No cable shall be placed directly in any split/solid steel conduit without innerduct. This might not be the case with existing fiber.

#### **6. Cable Installation in Conduit**

- The cable shall be installed using either a sealed pneumatic cable blowing system or a powered pulling winch and hydraulic powered assist pulling wheels.
- The maximum pulling force to be applied to the cable shall be six hundred pounds (600 lbs.).
- Sufficient pulling assists shall be available and used to insure the maximum pulling force is not exceeded at any point along the pull.
- The cable shall be lubricated at the reel and all pulling assist locations.

- A pulling swivel breakaway rated at six hundred pounds (600 lbs.) shall be used at all times.
- Splices shall be allowed only at planned junctions and reel ends.
- All splices shall be contained in a hand hole or manhole.
- A minimum of twenty meters (20m) of slack cable shall be left in all intermediate hand holes and manholes.
- A minimum of thirty meters (30m) of slack cable shall be left in all splice locations.
- A minimum of fifty meters (50m) of slack cable shall be left in Transmission Sites and points of presence.
- PVC conduit/innerduct may be split, with the cable installed inside the split duct and plowed in.

#### **7. Manholes and Hand holes**

- Manholes shall be placed in traveled surface streets and shall have locking lids. This might not be the case with existing fiber.
- Hand holes shall be placed in all other areas.

#### **8. EMS Markers**

EMS Markers shall be placed directly above the lid of all buried hand holes or shall be fabricated into the lids of the hand holes.

#### **9. Cable Markers (Warning Signs)**

- Cable markers shall be installed at all changes in buried cable running line direction, splices, pull boxes, assist-pulling locations, and at both sides of street, highway or railroad crossings.
- Markers shall be spaced at intervals of no more than five hundred feet (500') apart in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) and within line of sight (not to exceed one thousand feet (1,000')) in non-metropolitan areas.
- Markers shall be positioned so that they can be seen from the location of the cable and generally set facing perpendicular to the cable running line.
- Splices and pull boxes shall be marked on the cable marker post.

#### **10. Updating of Specifications**

OMU may revise these Cable Installation Specifications to include new procedures, materials, or processes so long as the changes achieve the objectives of the specifications set forth above and are in accordance with, or superior to, then-current telecommunications industry standards.

**EXHIBIT F**  
**Project Records**

**1. As-Built Drawings and Specifications**

- C. OMU shall provide updated route (OSP) drawings and specifications in an approved ESRI ArcGIS compatible format.
- (1) The drawings shall include all geospatial details, including but not limited to, length of cable, fiber count, slack coils, vaults, splice closures, butt splices, riser transitions, poles or other details identified in the Data Dictionary.
- (2) The drawings shall be in a known coordinate system, including but not limited to a Kentucky State Plane system, WG884, Web Mercator or UTM (which includes Kentucky).
- D. OMU shall provide updated site (ISP) drawings and specifications in AutoCAD or with Customer's approval a different approved electronic format. These drawings shall include, but not be limited to, Fiber routes inside buildings, the location of Fiber Distribution Panels, slack coils, and fiber jumpers.
- E. OMU shall submit all information required by this Exhibit through the KentuckyWired Document Management System (Aconex).
- F. Commonwealth shall provide to OMU all records of any and all splicing at interconnections, and any splice modifications, changes, additions, or connections, to OMU within thirty (30) days after they are made throughout the Term to ensure OMU has accurate information for the Backbone.

**2. Reports and Test Results**

OMU shall provide and maintain in Aconex official reports and certified test results of all inspections and tests which were undertaken as a part of Construction or are otherwise required by this IRU.

**3. Data Dictionary**

<i>Fiber</i>	
Field Name	Description
CLLI	Standard Kentucky Telco CLLI code Ex. DAVLKY0185

<b>CABLE_NAME</b>	To and From CLLI plus the fiber count Ex. LXTOKY0253-DAVLKY0185-288
<b>PLACEMENTTYPE</b>	Aerial or underground
<b>FROM_STRUCTURE</b>	Start location of structure for Backbone Ex. Paintsville
<b>TO_STRUCTURE</b>	Finish location of structure for Backbone E. Prestonsburg
<b>CABLETYPE</b>	Cable Type- Loose Tube or Ribbon
<b>BUFFERCOUNT</b>	Count of Buffer Tubes
<b>FIBERSPERBUFFER</b>	Number of fibers per buffer
<b>FIBERCOUNT</b>	Count of fiber Ex. 288
<b>INSTALLATIONDATE</b>	Date the fiber is installed. If exact date is not known estimate by decade
<b>MANUFACTURER</b>	Name of the manufacture for the fiber
<b>PARTNUMBER</b>	The Fiber part number
<b>BUILD_PRIORITY</b>	DBLLC Design Priority Ex. 1A, 1B, 2, 3, 4,5
<b>SITE_ID</b>	Segment ID corresponds to the building site ID
<b>Site_Categ</b>	Is the fiber serving a school, government bldg or other
<b>SLA</b>	Service Level Agreement
<b>ISP_OSP</b>	Inside Plant or Outside Plant
<b>EASEMENT</b>	Location of easement to property such as front, rear, undeveloped land
<b>ThirdParty</b>	Entity other than DBLLC responsible for design feature

***Slackloop***

<b>Field Name</b>	<b>Description</b>
<b>LENGTH</b>	Length of slackloop Ex. 25ft, 75ft, 150ft
<b>CLLI</b>	Standard Kentucky Telco CLLI code Ex. DAVLKY0185
<b>ISP_OSP</b>	Inside plant or outside plant
<b>OWNER</b>	Who owns the slackloop
<b>BUILD_PRIORITY</b>	BV Design Priority Ex. 1A, 1B, 2, 3, 4,5
<b>SITE_ID</b>	Segment ID corresponds to the building site ID
<b>ThirdParty</b>	Entity other than DBLLC responsible for design feature

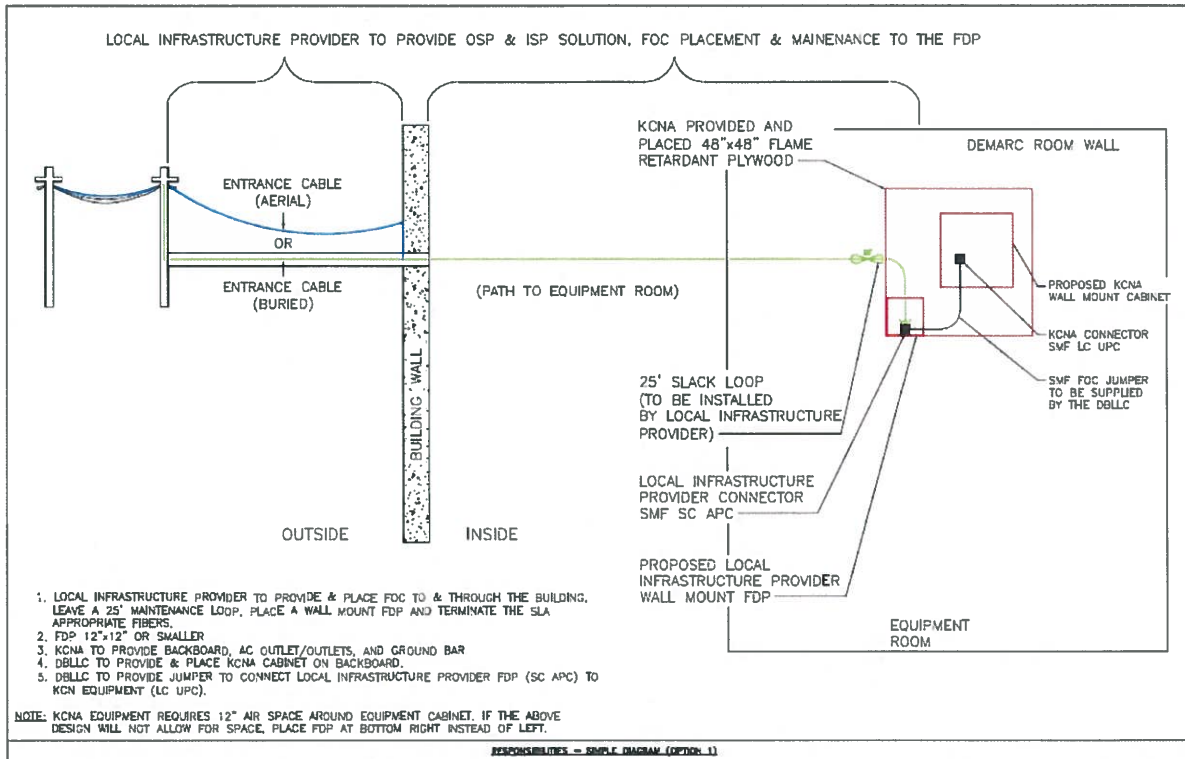
***Structure***

<b>Field Name</b>	<b>Description</b>
<b>STRUCTURE_NAME</b>	To and From CLLI plus the fiber count Ex. LXTOKY0253-DAVLKY0185-288
<b>SUBTYPECODE</b>	Type of structure Ex. hand hole, cable marker, small vault, medium-light vault
<b>STRUCTURE_SIZE</b>	Size of the structure Ex. Large, small, extra large, medium light, medium heavy, large light, large heavy
<b>BUILD_PRIORITY</b>	BV Design Priority Ex. 1A, 1B, 2, 3, 4,5

<b>SITE_ID</b>	Segment ID corresponds to the building site ID
<b>ISP_OSP</b>	Inside plant or outside plant
<b>ThirdParty</b>	Entity other than DBLLC responsible for design feature

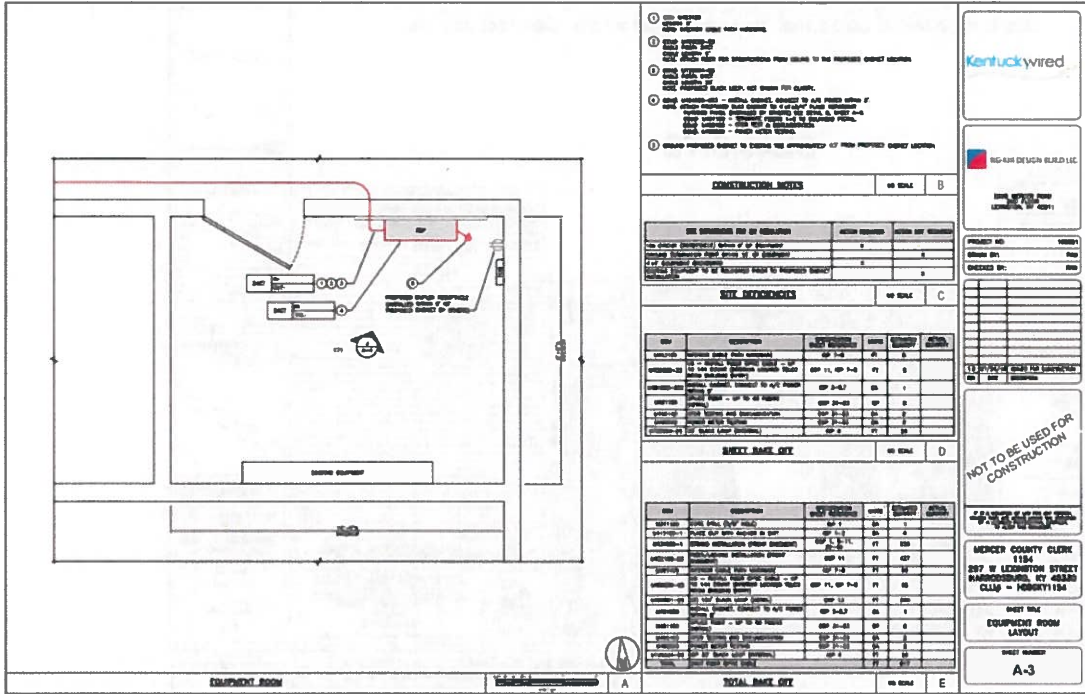
## EXHIBIT G Building Entrance Cables and Site Termination

Details of the entrance cables and fiber termination at a network interface unit are detailed in this exhibit. The Parties will work together on a site by site basis to document the termination requirements.









**Kentuckywired**

REG-634 DESIGN BUREAU LLC

1154 LEXINGTON STREET  
HARRISBURG, KY 40333  
CLAY - 403071154

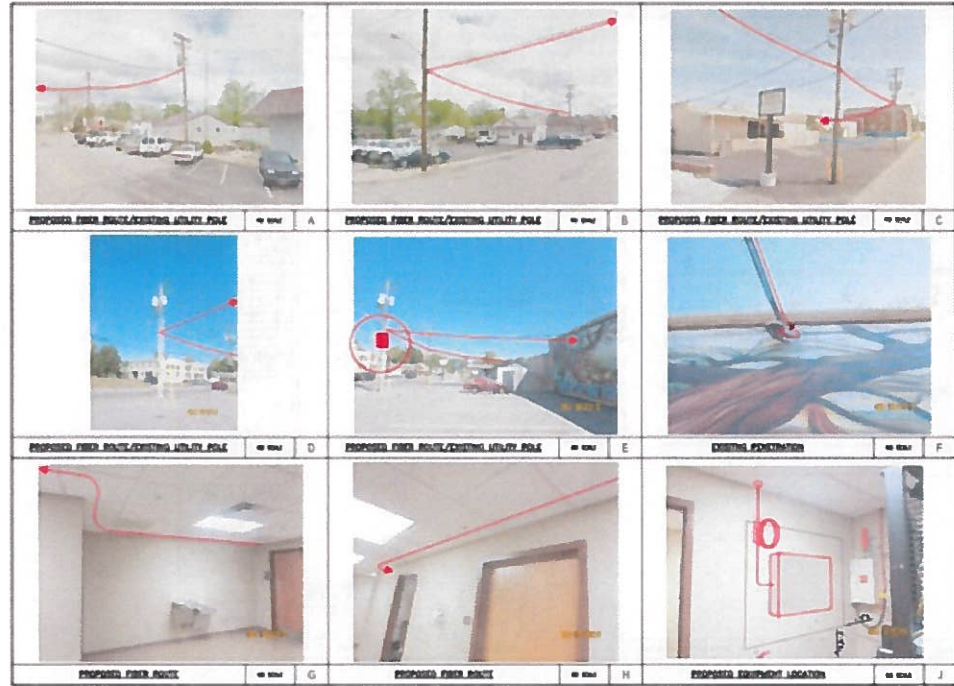
PROJECT NO: 1154  
SHEET NO: A-3  
CHECKED BY: [Signature]

**NOT TO BE USED FOR CONSTRUCTION**

**MERCER COUNTY CLERK**  
1154 LEXINGTON STREET  
HARRISBURG, KY 40333  
CLAY - 403071154

**SHEET TITLE**  
EQUIPMENT ROOM LAYOUT

**SHEET NUMBER**  
A-3



**Kentuckywired**

REG-634 DESIGN BUREAU LLC

1154 LEXINGTON STREET  
HARRISBURG, KY 40333  
CLAY - 403071154

PROJECT NO: 1154  
SHEET NO: A-4  
CHECKED BY: [Signature]

**NOT TO BE USED FOR CONSTRUCTION**

**MERCER COUNTY CLERK**  
1154 LEXINGTON STREET  
HARRISBURG, KY 40333  
CLAY - 403071154

**SHEET TITLE**  
SITE PHOTOGRAPHS

**SHEET NUMBER**  
A-4



**Exhibit H – Change Form**

From: [Commonwealth of Kentucky] [OMU]

To: [OMU] [Commonwealth of Kentucky]

Date of Change Request: \_\_\_\_\_

CC: \_\_\_\_\_

**Detailed Description of Proposed Change:**

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(attach additional pages as may be necessary)

**Reason for Proposing the Change:**

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**Proposed Change in Contract Price:**

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**Proposed Change in Construction Completion Date(s):**

Core Segment: \_\_\_\_\_

Lateral Segment 1: \_\_\_\_\_

Lateral Segment 2: \_\_\_\_\_

By: \_\_\_\_\_  
(signature on behalf of requesting party)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Amendment of Proposed Change (after meetings of parties and/or information exchange):**

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional pages as may be necessary)

**Proposed Amended Change in Contract Price:**

\_\_\_\_\_

**Proposed Amended Change in Construction Completion Date(s):**

Core Segment: \_\_\_\_\_  
Lateral Segment 1: \_\_\_\_\_  
Lateral Segment 2: \_\_\_\_\_

By: \_\_\_\_\_  
(signature on behalf of requesting party)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Date Amended Change Proposal Submitted: \_\_\_\_\_

**The foregoing Change Request dated \_\_\_\_\_, as amended by the foregoing Amendment of Proposed Change submitted \_\_\_\_\_ (if any) is hereby ACCEPTED.**

By: \_\_\_\_\_  
(signature on behalf of party accepting change)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Date of Change Acceptance: \_\_\_\_\_

**The foregoing Change Request dated \_\_\_\_\_, as amended by the foregoing**

Amendment of Proposed Change submitted \_\_\_\_\_ (if any) is hereby REJECTED for the reasons set forth below.

**Detailed Description of Reasons for Rejection of Proposed Change:**

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(attach additional pages as may be necessary)

By: \_\_\_\_\_  
(signature on behalf of party rejecting Change)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Date of Change Rejection: \_\_\_\_\_

