

DARK FIBER LEASE AGREEMENT

Between
Commonwealth of Kentucky
Finance and Administration Cabinet (Finance)
And
The Center for Rural Development, Inc. (CRD)
A Kentucky non-profit corporation

Dated: August 19, 2019

EXHIBITS

- Exhibit A:** Map Depicting the Rings of the NG-KIH System
- Exhibit B:** \$27,562,400 Grant Agreements
- Exhibit C:** \$16,000,000 Grant Agreements
- Exhibit D:** List of State Parks within the ARC Service Area to which the last mile of the NG-KIH System will be provided pursuant to this Agreement
- Exhibit E:** Map Depicting the CRD Ring 1B and Ring 2 Fiber
- Exhibit F:** Illustrative Example of the Calculation of the Percentage Rent

DARK FIBER LEASE AGREEMENT

THIS DARK FIBER LEASE AGREEMENT (this "**Agreement**"), is made and entered into as of the 19th day of August, 2019 (the "**Effective Date**"), by and between the Commonwealth of Kentucky, Finance and Administration Cabinet ("**Finance**") or (the "**Commonwealth**"), an agency of the Commonwealth of Kentucky, having its principal office at 120 St. Clair Street, 4th Floor, Frankfort, Kentucky 40601, and The Center for Rural Development, Inc. ("**CRD**"), a Kentucky non-profit corporation, having its principal office at 2292 U.S. Highway 27 South, Suite 300, Somerset, Kentucky 42501. For purposes of this Agreement, the Commonwealth/Finance and CRD 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.**").

D. The Commonwealth and Project Co. have entered into that certain Project Agreement dated as of September 3, 2015, as amended pursuant to that certain Amended and Restated Project Agreement dated as of March 13, 2019 (as hereafter amended, modified, supplemented, restated and replaced from time to time, the "**Project Agreement**"), pursuant to which Project Co. has undertaken to design, construct, finance, operate and maintain the NG-KIH System on behalf of the Commonwealth.

E. Project Co. and KentuckyWired Operations Company, LLC ("**Operations Co.**") have entered into that certain Project Implementation Agreement dated as of September 3, 2015, as amended pursuant to that certain Amended and Restated Project Implementation Agreement dated as of March 13, 2019 (as hereafter amended, modified, supplemented, restated and replaced from time to time, the "**Project Implementation Agreement**"), pursuant to which Operations Co. has agreed to implement substantially all of Project Co.'s obligations under the Project Agreement.

F. Operations Co. and NG-KIH Design-Build LLC ("**DB**") have entered into that certain Design-Build Agreement dated as of September 3, 2015, as amended pursuant to that certain Amended and Restated Design-Build Agreement dated as of March 13, 2019 (as hereafter amended, modified, supplemented, restated and replaced from time to time, the "**Design-Build Agreement**"), pursuant to which DB has agreed to design and construct the NG-KIH System on behalf of the Commonwealth.

G. Pursuant to the Design-Build Agreement, Operations Co. and DB have specifically designed the NG-KIH System in six (6) separate Rings as depicted on the map attached hereto and made a part hereof as Exhibit A, including Ring 1B and Ring 2 which are located in the service area for the Appalachian Regional Commission (“ARC”).

H. CRD works closely with ARC to secure resources for the benefit of the communities located in the ARC service area.

I. Pursuant to those certain three (3) separate Agreements between ARC and CRD (ARC Contract Numbers CO-18225-214-15, CO-18731-214-17 and CO-18983-214-17), copies of which are attached hereto and made a part hereof as Exhibit B (the “**Initial ARC Grant Awards**”), ARC has awarded three separate grants to CRD in the respective amounts of Fifteen Million Dollars (\$15,000,000.00, Eight Million Dollars (\$8,000,000.00) and Four Million Five Hundred Sixty-Two Thousand Four Hundred Dollars (\$4,562,400.00), the aggregate amount of which is Twenty-Seven Million Five Hundred Sixty-Two Thousand Four Hundred Dollars (\$27,562,400.00), under the authorities of Section 302 of the Appalachian Regional Redevelopment Act of 1965, as amended, to fund a portion of the cost of construction of the NG-KIH System in Rings 1B and 2.

J. Pursuant to those certain two (2) separate Agreements between ARC and CRD (ARC Contract Numbers CO-18732-17 and CO-19420-18), copies of which are attached hereto and made a part hereof as Exhibit C (the “**Second ARC Grant Awards**”), ARC has awarded two separate grants to CRD each in the amount of Eight Million Dollars (\$8,000,000), the aggregate amount of which is Sixteen Million Dollars (\$16,000,000.00), under the authorities of Section 302 of the Appalachian Regional Redevelopment Act of 1965, as amended, to fund the acquisition and installation of the CRD Ancillary Equipment.

K. The Commonwealth/Finance and CRD have entered into that certain Memorandum of Agreement dated June 25, 2015 (the “**2015 Memorandum of Agreement**”), pursuant to which CRD has agreed to provide the Initial ARC Grant Awards to the Commonwealth/Finance and the Kentucky Communications Network Authority (“KCNA”) to support the design and construction of a portion of the NG-KIH System located within the ARC service area and/or to reimburse KCNA for previous costs of construction incurred by KCNA with respect to the design and construction of a portion of the NG-KIH System located within the ARC service area.

L. The Commonwealth and CRD have intended, from the earliest conception of the NG-KIH System, that, in exchange for the Initial ARC Grant Awards provided to KCNA, CRD will own certain segments of the NG-KIH System located within the ARC service area upon the completion of construction thereof, and CRD will lease those segments of the NG-KIH System to the Commonwealth/Finance for the benefit of KCNA.

M. Upon the completion of certain phases of construction of specific portions of the NG-KIH System located in Rings 1B and 2 and the funding of the applicable State Match, as such term is defined below, CRD will pay the sum of Twenty-Seven Million Five Hundred Sixty-Two Thousand Four Hundred Dollars (\$27,562,400.00), constituting the Initial ARC Grant Awards, to KCNA to reimburse KCNA for certain of the costs incurred by KCNA in the design and construction of specific portions of the NG-KIH System in that portion of Ring 1B and Ring 2

depicted on the map attached hereto and made a part hereof as Exhibit D, in exchange for which the Commonwealth/Finance and KCNA will convey all right, title and interest in and to the fiber optic cable constituting a part of such portion of the NG-KIH System to CRD.

N. Upon written request made by KCNA from time to time and the funding of the applicable State Match, CRD will pay the Second ARC Grant Awards to or on behalf of KCNA to finance the acquisition and installation of the CRD Ancillary Equipment, in exchange for which the Commonwealth/Finance and KCNA will convey all right, title and interest in and to the CRD Ancillary Equipment to CRD.

O. The Commonwealth/Finance and CRD now desire to replace the 2015 Memorandum of Agreement, including all addenda and other verbal or written agreements constituting a part of the 2015 Memorandum of Agreement, in its entirety with this Agreement.

P. The Commonwealth/Finance and CRD intend that the Commonwealth shall have substantially all benefits and risks associated with ownership of the CRD Fiber, as such term is defined below, and the CRD Ancillary Equipment, that will be owned by CRD and will be financed with the Initial CRD Grant Awards and the Second CRD Grant Awards, in accordance with and subject to the terms and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the mutuality, 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:

"Affiliate" 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 hereof.

"Available" means that the Ring in which the CRD Fiber is located has met the standards of Ring Availability as defined in the Project Agreement.

"Base Rent" means (a) with respect to the CRD Fiber, the sum of One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) per Fiscal Year, which amount equals 4.5% of the aggregate amount of the Initial CRD Grant Awards, and (b) with respect to the CRD Ancillary Equipment, the sum of Seven Hundred Twenty Thousand Dollars (\$720,000.00) per Fiscal Year, which amount equals 4.5% of the aggregate amount of the Second CRD Grant Awards.

"Cable" means the fiber optic cable included in the NG-KIG System and all fibers contained therein that includes the CRD Fiber and associated splicing connections, splice boxes and vaults, and conduit.

"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 the Commonwealth/Finance and/or KCNA (or any of their respective Affiliates, successors or assigns) and CRD (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, this Agreement, the NG-KIH System, the CRD Fiber, the CRD Ancillary Equipment or any other instrument, arrangement or understanding related to this Agreement.

"Commencement Date" means July 1, 2019.

"Commonwealth Equipment" means all equipment, facilities, and other personal property constituting the NG-KIH System, other than the CRD Fiber and the CRD Ancillary Equipment

"Commonwealth Lease" means the lease granted to the Commonwealth/Finance and KCNA pursuant to the terms and conditions set forth in this Agreement.

"CRD Ancillary Equipment" means, collectively, (a) the last mile of fiber optic cable run from the nearest location within the NG-KIH System to those state parks located within the ARC service area that have been mutually identified by KCNA and the Tourism, Arts and Heritage Cabinet, a list of which is attached hereto and made a part hereof as Exhibit D, together with all of the equipment installed within the foregoing state parks that is necessary in order for the employees and guests of the foregoing state parks to have access to the NG-KIH System, to the extent the acquisition and installation of such fiber optic cable and related equipment are funded with the proceeds of the Second ARC Grant Awards, (b) the last mile of fiber optic cable run from the nearest location within the NG-KIH System to the office buildings of those counties and cities within the ARC service area within the Commonwealth of Kentucky that choose to have access to the NG-KIH System, together with all equipment installed within those office buildings that is necessary in order for the employees and invitees of those counties and cities to have access to the NG-KIH System, to the extent the acquisition and installation of such fiber optic cable and related equipment are funded with the proceeds of the Second ARC Grant Awards, and (c) the last mile of fiber optic cable run from the nearest location within the NG-KIH System to other entities that are physically located within the ARC service area within the Commonwealth of Kentucky and that choose to have access to the NG-KIH System, together with all equipment installed within the buildings occupied by such entities that is necessary for the employees and invitees of such entities to have access to the NG-KIH System, to the extent the acquisition and installation of such fiber optic cable and related equipment are funded with the proceeds of the Second ARC Grant Awards. The Commonwealth/Finance/KCNA and CRD shall mutually develop and update as necessary a schedule identifying in appropriate detail all of the CRD Ancillary Equipment. The CRD Ancillary Equipment specifically includes all fiber optic cable and other equipment that replaces from time to time the original fiber optic cable and other equipment constituting the original CRD Ancillary Equipment irrespective of which Party or other entity has paid the cost of such replacement fiber optic cable and other equipment.

“CRD Ancillary Equipment Grant” means the portion of the \$16,000,000 comprising the Second ARC Grant Awards that have been or will be used to fund the acquisition and installation of the CRD Ancillary Equipment.

“CRD Fiber” means, collectively, the specific portions of the CRD Ring 1B and Ring 2 Fiber that are owned by CRD. The CRD Fiber specifically includes all fiber optic cable that replaces from time to time the original fiber optic cable constituting the original CRD Fiber irrespective of which Party or other entity has paid the cost of such replacement fiber optic cable.

“CRD Ring 1B and Ring 2 Fiber” means specific portions of the fiber optic cable located in Ring 1B and Ring 2 that is owned by CRD, which consists of 436.44 miles of fiber optic cable, which is more particularly depicted on the map attached hereto and made a part hereof as Exhibit E.

“CRD Territory” means the portions of Ring 1B and Ring 2 in which the CRD Fiber is located.

“Early Termination Fee” means the amount that will be owed by the Commonwealth/Finance/KCNA to CRD in the event the Commonwealth/Finance/KCNA exercises its right to terminate this Agreement for convenience pursuant to Section 3.4 below, which amount shall equal the sum of (a) all future installments of Base Rent due to CRD from the date of termination of this Agreement pursuant to Section 3.4 below through the balance of the Initial Term or the then existing Renewal Term, as applicable, with each such future installment of Base Rent discounted to net present value as of the date of termination of this Agreement using the then existing 30-year Treasury Rate as the discount rate, plus (b) all future installments of Percentage Rent due to CRD from the date of termination of this Agreement pursuant to Section 3.4 below through the balance of the Initial Term or the then existing Renewal Term, as applicable, with each such future installment of Percentage Rent discounted to net present value as of the date of termination of this Agreement using the then existing 30-year Treasury Rate as the discount rate. For purposes of determining the Early Termination Fee, the future installments of Percentage Rent shall be deemed equal to the average of the annual Percentage Rent paid to CRD during the immediately preceding three (3) years or, if less, the period between the Effective Date of this Agreement and the date of termination of this Agreement pursuant to Section 3.4 below. The Early Termination Fee shall not be considered Indirect Damages as further described in Section 12.1 below.

“Effective Date” shall have the definition set forth in the introductory paragraph of this Agreement.

“Fiscal Year” means July 1 of each calendar year through June 30 of the immediately succeeding calendar year, in each case during the term of this Agreement.

“Force Majeure Event” shall have the definition set forth in Section 17.1.

"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.

"Indemnitee" shall have the definition set forth in Section 11.1.

"Indemnitor" shall have the definition set forth in Section 11.1.

"Initial Term" shall have the definition set forth in Section 3.1.

"I-75 Corridor" means the following counties located in the Commonwealth of Kentucky: Campbell, Kenton, Grant, Scott, Fayette, Madison, Rockcastle, Pulaski, Laurel and Whitley.

"Net Wholesaler Revenues" means, with respect to each Fiscal Year during the term of this Agreement, the revenues received by KCNA pursuant to the Wholesaler Agreement with respect to fiber leased and/or services provided to or utilized by individuals and businesses to the extent of their physical locations within the I-75 Corridor, less the sum of the following expenses incurred by KCNA during the same Fiscal Year, in each case as determined without duplication:

- (a) All administrative and operating expenses incurred by KCNA during the Fiscal Year, multiplied by the Proration Percentage;
- (b) All payments made to the Service Provider pursuant to the Service Provider Agreement during the Fiscal Year, multiplied by the Proration Percentage;
- (c) All capital expenditures made by KCNA pursuant to the Wholesaler Agreement to repair and maintain the portion of the NG-KIH System located within the I-75 Corridor that are not otherwise reimbursable to KCNA from third parties including, without limitation, state or local governmental agencies;
- (d) All amounts reserved or spent by KCNA for the System Refreshes during the Fiscal Year, multiplied by the Proration Percentage;
- (e) All payments of principal and interest made to the Settlement Lender with respect to the Settlement Financing during the Fiscal Year, multiplied by the Proration Percentage; and
- (f) All payments made to either the Service Provider or DB for supervening events during the Fiscal Year, multiplied by the Proration Percentage.

"NG-KIH System" means the Next Generation Kentucky Information Highway System.

"Percentage Rent" means the additional rent payable to CRD pursuant to this Agreement, which shall equal the greater of (a) Forty Thousand Dollars (\$40,000.00) each Fiscal Year, or (b) twenty-five percent (25%) of the Net Wholesaler Revenues received by KCNA each Fiscal Year

pursuant to the Wholesaler Agreement during the Term of this Agreement. An example of the calculation of the Percentage Rent for illustration purposes only is attached hereto and made a part hereof as Exhibit F.

"Point of Presence" or "POP" means a carrier neutral location identified by the Commonwealth/Finance/KCNA in each county in the CRD Territory.

"Proration Percentage" means, for each Fiscal Year during the Term of this Agreement, the percentage determined by dividing (a) the revenues received by KCNA pursuant to the Wholesaler Agreement with respect to fiber leased and/or services provided to or utilized by individuals and businesses to the extent of their physical locations within the I-75 Corridor during or in respect of the particular Fiscal Year, by (b) the total revenues received by KCNA pursuant to the Wholesaler Agreement during or in respect of the same Fiscal Year.

"Released Party" means each of the following:

- (a) Any Affiliates of the other Party or the Settlement Lender, except to the extent the Settlement Lender has assumed a Party's position under this Agreement by reason of default by such Party or foreclosure by the Settlement Lender;
- (b) Any employee, officer, director, stockholder, partner, member, or trustee of the other Party or its Affiliates or the Settlement Lender; 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.

"Renewal Term" shall have the meaning set forth in Section 3.2 hereof.

"Representatives" shall have the definition set forth in Section 15.1.

"Ring 1B Grant – Phase 1" means the \$15,000,000 comprising a portion of the Initial ARC Grant Awards obtained by CRD from the ARC for use in the design and construction of the CRD Fiber located within Ring 1B of the NG-KIH System.

"Ring 2 Grant – Phase 1" means the \$8,000,000 comprising a portion of the Initial ARC Grant Awards obtained by CRD from the ARC for use in the design and construction of the CRD Fiber located within Ring 2 of the NG-KIH System.

"Ring 2 Grant – Phase 2" means the \$4,562,400 comprising a portion of the Initial ARC Grant Awards obtained by CRD from the ARC for use in the design and construction of the CRD Fiber located within Ring 2 of the NG-KIH System.

"Route" means the route, including spurs, upon which the NG-KIH System is or will be constructed and installed.

"Segment" means a discrete portion of the NG-KIH System and may refer to a Span, a portion between two Points of Presence or a Point of Presence and a NG-KIG System end point, or a portion of the NG-KIH System affected by a relocation or other circumstance.

"Service Provider Agreement" means that certain Services Agreement dated as of September 3, 2015, between the Service Provider and Operations Co., together with all future amendments, modifications, supplements, restatements and replacements thereof.

"Service Provider" means LTS Kentucky Managed Technical Services LLC.

"Settlement Agreement" means that certain Settlement and Release Agreement dated December 14, 2018, among the Commonwealth, Project Co., Operations Co., DB and the Service Provider, together with all future amendments, modifications, supplements, restatements and replacements thereof.

"Settlement Financing" means the sum of One Hundred Ten Million Dollars (\$110,000,000.00), which amount constitutes the additional amount that KCNA was obligated to finance in order to resolve certain disputes with DB and to complete the design and construction of the NG-KIH System.

"Settlement Lender" means, as of each date of determination thereof, the entity that has provided the Settlement Financing to the Commonwealth. The initial Settlement Lender is the Kentucky Bond Development Corporation.

"Span" means a portion of the NG-KIG System between two Transmission Sites or between a Transmission Site and a Point of presence or NG-KIH System end point.

"State Match" means (a) with respect to the Ring 1B Grant-Phase 1, the sum of Five Million Dollars (\$5,000,000.00), (b) with respect to the Ring 2 Grant-Phase 1, the sum of Two Million Dollars (\$2,000,000.00), (c) with respect to the Ring 2 Grant-Phase 2, the sum of One Million One Hundred Forty Thousand Six Hundred Dollars (\$1,140,600.00), and (d) with respect to the CRD Ancillary Equipment Grant, the aggregate sum of Four Million Four Hundred Thousand Dollars (\$4,400,000.00).

"System Refreshes" means the obligation of the Commonwealth/Finance/KCNA to upgrade and replace the Commonwealth Equipment at set intervals in accordance with the terms and conditions set forth in the Wholesaler Agreement.

"Taking" shall have the definition set forth in Section 17.2.

"Term" means, collectively, the Initial Term and each Renewal Term of this Agreement.

"Transition Site" means the optical amplifier, regenerator or junction sites within the CRD Territory.

"Wholesaler" means OpenFiber Kentucky Company LLC.

“Wholesaler Agreement” means the Wholesaler Agreement dated as of October 13, 2017, among the Commonwealth, the Wholesaler and Operations Co., together with all future amendments, modifications, supplements, restatements and replacements thereof.

ARTICLE II
CONVEYANCE OF CRD FIBER AND CRD ANCILLARY EQUIPMENT

2.1. Conveyance of the CRD Fiber. Effective upon the later of the full payment of the Ring 1B Grant – Phase 1, the Ring 2 Grant– Phase 1, and the Ring 2 Grant-Phase 2 by CRD to KCNA and the Availability of Ring 1B and Ring 2, the Commonwealth/Finance/KCNA shall convey all right, title and interest in and to the CRD Fiber to CRD, in exchange for which the Commonwealth/Finance/KCNA shall have the exclusive Commonwealth LEASE in and to the CRD Fiber upon the terms and conditions set forth in this Agreement.

2.2. Conveyance of the CRD Ancillary Equipment. Effective upon each acquisition of CRD Ancillary Equipment by the Commonwealth/Finance/KCNA, the Commonwealth/Finance/KCNA shall convey all right, title and interest in and to such CRD Ancillary Equipment to CRD, in exchange for which the Commonwealth/Finance/KCNA shall have the exclusive Commonwealth LEASE in and to such CRD Ancillary Equipment upon the terms and conditions set forth in this Agreement.

2.3. Limitation to CRD Fiber and CRD Ancillary Equipment. Nothing set forth in this Agreement, including the grant of the Commonwealth LEASE by CRD to the Commonwealth/Finance/KCNA, shall be construed to convey any legal title to any real or personal property constituting a part of the NG-KIH System to CRD other than the CRD Fiber and the CRD Ancillary Equipment. The CRD Fiber and the CRD Ancillary Equipment does not include any Commonwealth Equipment or any other equipment used to transmit capacity or "light" over the CRD Fiber or the CRD Ancillary Equipment.

2.4. Use of CRD Fiber and CRD Ancillary Equipment. The Commonwealth/Finance/KCNA shall have full discretion on the use of the CRD Fiber and the CRD Ancillary Equipment, including the ability to lease capacity to commercial users that have requested such access and negotiated an access agreement with KCNA or any Affiliate of KCNA. The CRD Fiber is expressly a part of and subject to the terms and conditions set forth in each of the Service Provider Agreement and the Wholesaler Agreement.

2.5. Maintenance of the CRD Fiber and CRD Ancillary Equipment. The Commonwealth/Finance/KCNA shall have the exclusive right and obligation to operate, repair, maintain and replace from time to time the CRD Fiber, subject to the obligations of the Service Provider under the Service Provider Agreement, as well as the CRD Ancillary Equipment

ARTICLE III
TERM

3.1. Initial Term. The initial term (the **“Initial Term”**) of this Agreement shall be the period commencing on July 1, 2019, and ending on September 3, 2045.

3.2. Renewal Terms. The term (the “**Term**”) of this Agreement shall automatically be renewed for successive terms of five (5) years each (each, a “**Renewal Term**”, and collectively, the “**Renewal Terms**”) unless the Commonwealth provides written notice to CRD that it does not intend to extend the term of this Agreement not less than one hundred eighty (180) days prior to the expiration of the Initial Term or the then existing Renewal Term, as applicable, of this Agreement. Upon the expiration of the Term of this Agreement, but subject to the obligation of the Commonwealth/Finance/KCNA to pay the Early Termination Fee to CRD pursuant to Section 3.4 below, the Commonwealth shall be relieved of all obligation to pay any Base Rent or Percentage Rent to CRD in respect of any period of time after the last day of the Term of this Agreement. In the event the Commonwealth/Finance/KCNA elects not to renew the Term of this Lease following the Initial Term or the then existing Renewal Term, the Commonwealth/Finance/KCNA shall have the option, exercisable in its sole discretion at least sixty (60) days prior to the last day of the Term of this Lease, to purchase the CRD Fiber and the CRD Ancillary Equipment for its then existing fair market value as agreed upon by the Commonwealth/KNCA and CRD or, in the event Parties cannot agree upon such fair market value, as determined by a third party mutually selected by the Parties. The Commonwealth/Finance/KCNA shall be obligated to pay the purchase price established for the CRD Fiber and the CRD Ancillary Equipment within sixty (60) days after the purchase price therefor has been established, in exchange for which CRD shall convey good title to the CRD Fiber and the CRD Ancillary Equipment to the Commonwealth/Finance/KCNA free and clear of all liens and security interests. The fees and expenses of such third party mutually selected by the Parties shall be borne equally by the Parties.

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

- (a) with respect to any Base Rent or Percentage Rent owed for any period prior to the last day of the Term of this Agreement;
- (b) pursuant to Articles VIII (Audit Rights), XI (Indemnification), XII (Limitation of Liability), XIII (Taxes and Governmental Fees), XV (Confidentiality), XVI (Prohibition on Illegal Payments), XVIII (Dispute Resolution), or XIX (Rules of Construction) or Sections 9.2 (Exclusion of Warranties) or 9.3 (No Third-Party Warranties); or
- (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive the termination of this Agreement.

3.4. Termination for Convenience. Subject to the express terms of 200 KAR 5:312 including, without limitation, the obligations of the Commonwealth/Finance/KCNA under 200 KAR 5:312, and the interpretation of 200 KAR 5:312 by the courts of the Commonwealth of Kentucky, CRD recognizes the Commonwealth may terminate this Agreement for convenience pursuant to 200 KAR 5:312. In the event the Commonwealth/Finance/KCNA terminates this Agreement for convenience pursuant to 200 KAR 5:312, the Commonwealth/Finance/KCNA and CRD mutually acknowledge and agree that (a) CRD will have suffered significant damages as a result of the early termination of this Agreement and that, in view of the difficulty of ascertaining the amount of such damages, the Commonwealth/Finance/KCNA shall be obligated to pay the Early Termination Fee to CRD within thirty (30) days of the termination of this Agreement for convenience, (b) the Early Termination Fee is just, equitable, and

reasonable compensation and an appropriate amount of liquidated damages to compensate CRD for the termination of this Agreement prior to the expiration of the Initial Term or then existing Renewal Term, as applicable, (c) the Early Termination Fee shall not be increased or decreased based upon cost data, expenses paid or incurred, revenues and/or expenditures associated with this Agreement, and/or all profit or loss attributable thereto, and (d) the Early Termination Fee is a material inducement and fundamental contract consideration for CRD to execute and deliver this Agreement and to perform its obligations hereunder and constitutes a material term of this Agreement that is not subject to amendment or modification without the express written consent of both the Commonwealth/Finance/KCNA and CRD.

ARTICLE IV **RENT**

4.1. Base Rent. The Commonwealth/Finance/KCNA shall pay the Base Rent to CRD annually on or about July 1 of each Fiscal Year during the entire Term of this Agreement. The Base Rent for any period less than a full Fiscal Year shall be prorated on a per diem basis. Without in any way limiting the generality of the foregoing, the Base Rent for the period from and including July 1, 2019, through and including June 30, 2020, shall equal the sum of the following calculations:

- (a) The amount equal to (i) the Ring 1B Grant-Phase 1 divided by 366 and multiplied by the number of days between and including the date the Ring 1B Grant-Phase 1 has been fully funded by the ARC and June 30, 2020, multiplied by (ii) 4.5%.
- (b) The amount equal to (i) the Ring 2 Grant-Phase 1 divided by 366 and multiplied by the number of days between and including the date the Ring 2 Grant-Phase 1 has been fully funded by the ARC and June 30, 2020, multiplied by (ii) 4.5%.
- (c) The amount equal to (i) the Ring 2 Grant-Phase 2 divided by 366 and multiplied by the number of days between and including the date the Ring 2 Grant-Phase 2 has been fully funded by the ARC and June 30, 2020, multiplied by (ii) 4.5%.
- (d) The amount equal to (i) each disbursement of the CRD Ancillary Equipment Grant divided by 366 and multiplied by the number of days between and including the date of the particular disbursement of the CRD Ancillary Equipment Grant and June 30, 2020, multiplied by (ii) 4.5%.

For the period from and including July 1, 2019, through and including June 30, 2020, only, the Base Rent shall be calculated in accordance with the calculations set forth above and shall be paid separately with respect to each of the Ring 1B Grant-Phase 1, the Ring 2 Grant-Phase 1, the Ring 2 Grant-Phase 2 and the CRD Ancillary Equipment Grant within thirty (30) days after each of the Ring 1B Grant-Phase 1, the Ring 2 Grant-Phase 1, the Ring 2 Grant-Phase 2 and each disbursement of the CRD Ancillary Equipment Grant has been funded by the ARC. The Base Rent shall therefore be paid to CRD in separate payments for this period only.

4.2. Percentage Rent. The Commonwealth/Finance/KCNA shall pay the Percentage Rent due to CRD within ninety (90) days after the end of each Fiscal Year during the entire Term of this Agreement. Each annual payment of Percentage Rent to CRD shall be accompanied by a

statement setting forth in appropriate detail the manner in which the Percentage Rent was calculated by KCNA. In the event CRD disputes the manner in which any annual Percentage Rent was calculated by KCNA, CRD shall notify KCNA in writing thereof, which shall include a detailed description of the items disputed by CRD. The Parties shall attempt to resolve the dispute within one hundred twenty (120) thereafter. In the event the Parties cannot resolve the dispute within the foregoing one hundred twenty (120) day period, CRD shall have the right to submit the dispute to dispute resolution in accordance with the provisions of Article XVIII below.

ARTICLE V **COMMONWEALTH LEASE**

5.1. Connections. The Commonwealth shall have the right to the Commonwealth LEASE during the entire Term of this Agreement.

5.2. No Unauthorized Access to System. The Commonwealth, the Service Provider or any of their respective contractors shall have the unconditional access to the CRD Fiber and the CRD Ancillary Equipment for purposes of the maintenance, repair and replacement thereof during the entire Term of this Agreement.

ARTICLE VI **USE OF THE CRD FIBER AND CRD ANCILLARY EQUIPMENT**

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 CRD Fiber and/or the CRD Ancillary Equipment that are known to it or that could reasonably be expected to adversely affect the CRD Fiber and CRD Ancillary Equipment.

6.2. Preventing Interference with the NG-KIH System. CRD and its Affiliates shall not use any equipment, technologies, or methods of operation that interfere in any way with, or adversely affect, the NG-KIH System, including the CRD Fiber and the CRD Ancillary Equipment, or the use of the NG-KIH System, including the CRD Fiber and the CRD Ancillary Equipment, by the Commonwealth and the Wholesaler and their respective Affiliates. CRD shall take all reasonable precautions to prevent damage to the NG-KIH System, including the CRD Fiber and the CRD Ancillary Equipment.

6.3. Liens. The Commonwealth shall not cause or permit any part of the CRD Fiber or the CRD Ancillary Equipment to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien. CRD shall not cause or permit any of the 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 the Commonwealth/Finance/KCNA from granting any lien, encumbrance, or security interest to the Settlement Lender in connection with the Settlement Financing. If a party breaches its obligations under this Section 6.3, 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
MAINTENANCE AND RELOCATION

7.1. Maintenance. The Commonwealth, through the Service Provider, shall maintain, repair and replace as necessary the CRD Fiber during the entire Term of this Agreement. The Commonwealth shall make separate arrangements for the maintenance, repair and replacement of the CRD Ancillary Equipment during the entire Term of this Agreement. For purposes of this Agreement, maintenance shall include, but not be limited to, any additional fees or assessments such as use or service taxes and/or pole attachment fees related to the CRD Fiber and/or the CRD Ancillary Equipment.

7.2. Relocations. The Commonwealth shall have the right from time to time, at its sole expense upon written notice to CRD, to re-locate any Segments constituting a part of the CRD Fiber as the Commonwealth shall determine to be necessary or appropriate to the full utilization of the NG-KIH System during the Term of this Agreement. No such re-location of any Segment constituting a part of the CRD Fiber shall cause any increase or decrease in the Base Rent or Percentage Rent payable to CRD pursuant to this Agreement or otherwise affect any other term or provision of this Agreement.

7.3. Maintenance of CRD Fiber, CRD Ancillary Equipment and Commonwealth Equipment Excluded. CRD shall have no obligation under this Agreement to maintain, repair, or replace the CRD Fiber, the CRD Ancillary Equipment or the Commonwealth Equipment or any part thereof. The Commonwealth and CRD intend that this Agreement shall constitute the equivalent of a "triple net lease" to CRD subject to the express duties and obligations of CRD set forth in this Agreement.

ARTICLE VIII
AUDIT RIGHTS

8.1. Subject to the Commonwealth'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 Section 8.1, (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 8.1, (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 IX
WARRANTIES

9.1. Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, the Commonwealth and CRD each 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 legal 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.

9.2. EXCLUSION OF WARRANTIES. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 9.1 HEREOF, CRD MAKES NO WARRANTY TO THE COMMONWEALTH OR ANY OF ITS REPRESENTATIVES, AFFILIATES, OR TO THE SETTLEMENT LENDER, 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 THE CRD FIBER, THE CRD ANCILLARY EQUIPMENT, THE NG-KIH 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.

9.3. No Third-Party Warranties. No third party, including the Settlement Lender, has made any representation or warranty of any kind, express or implied, to the Commonwealth concerning CRD, the CRD Fiber, the CRD Ancillary Equipment, the Commonwealth Equipment or the NG-KIH System or as to any of the matters set forth in Section 9.1, except for any express or implied representations and warranties set forth in the Project Agreement, the Project Implementation Agreement, the Design-Build Agreement, the Service Provider Agreement and the Settlement Agreement.

ARTICLE X
DEFAULT

10.1. Default and Cure. Except as set forth in Section 10.2, neither the Commonwealth nor CRD shall be in default under this Agreement until one of the following events occurs: (i) such Party fails to make a payment of any undisputed amount required under this Agreement including, without limitation, the payment by the Commonwealth/Finance/KCNA of any installment of Base Rent or Percentage Rent, and such failure continues for more than sixty (60) 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

10.2; (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 one hundred twenty (120) 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 one hundred twenty (120) 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 the cure of such default. Upon the failure of a defaulting Party to timely cure any such default pursuant to this Section 10.1, then the other Party may, subject to the terms of Articles XII (Limitation of Liability) and XVIII (Dispute Resolution), pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

10.2. Disputed Amounts. Notwithstanding any provision to the contrary in Sections 10.1 or 10.3, either Party shall have the right to dispute any amount due under this Agreement, other than the Base Rent, 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) days of the date any such amount is due. The Commonwealth shall pay disputed amounts mutually agreed upon in favor of CRD within thirty (30) days of the resolution of such dispute. CRD shall credit disputed amounts mutually agreed upon in favor of the Commonwealth on the 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 XVIII of this Agreement.

10.3. Failure to Pay. If the 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 CRD's written demand for payment thereof, CRD's sole remedy in respect thereof shall be to obtain a judgment for such undisputed amount together with applicable interest pursuant to KRS 45.454 in the Circuit Court of Franklin County, Kentucky.

ARTICLE XI **INDEMNIFICATION**

11.1. Indemnification. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth and CRD (each Party known individually as the "**Indemnitor**") each hereby agrees to indemnify, defend, protect and hold harmless the other Party and its Representatives 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.

11.2. 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 under this Agreement.

ARTICLE XII **LIMITATION OF LIABILITY**

12.1. EXCLUSION OF INDIRECT DAMAGES. SUBJECT TO THE COMMONWEALTH'S AUTHORITY TO SEEK ALL APPLICABLE DAMAGES FOR CRD'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, 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 THE 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 THIS SECTION 12.1 SHALL BE DEEMED TO LIMIT AN INDEMNITOR'S OBLIGATIONS UNDER SECTION 11.1. FOR PURPOSES OF CLARITY, THE COMMONWEALTH SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 12.1 TO THE EXTENT THAT THE COMMONWEALTH IS PROHIBITED FROM WAIVING THE DAMAGES DESCRIBED IN THIS SECTION 12.1 PURSUANT TO 200 KAR 5:312.

12.2. 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 LEASE. Each Party waives all such recourse to the extent set forth in this Section 12.2 on behalf of its successors, assigns, and any entity claiming by, through, or under such Party.

12.3. Pursuit of Actions Against Third Parties. Except as provided in Section 12.2, nothing contained in this Agreement shall operate as a limitation on the right of either CRD or the Commonwealth/Finance/KCNA to bring an action or claim for damages against any third party. Each of CRD and the Commonwealth/Finance/KCNA 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.

ARTICLE XIII **TAXES AND GOVERNMENTAL FEES**

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

13.2. CRD Obligations. Subject to Section 13.1 above, CRD 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 properly assessed against it due to its construction, ownership, physical location or use of the CRD Fiber and the CRD Ancillary Equipment.

ARTICLE XIV **NOTICE**

14.1. 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
4th Floor
Frankfort, KY 40601
Facsimile No. (502) 564-0883

If to CRD:

The Center for Rural Development
Attention: President
2292 U.S. Hwy. 27 South, Suite 300
Somerset, Kentucky 42501
Facsimile No. (606) 677-6011

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

14.2. 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 XV **CONFIDENTIALITY**

15.1. Confidentiality Obligation. To the extent permitted by the Kentucky Open Records Act, if either Party provides confidential information to the other Party 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 Party, 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, 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 by the Party disclosing confidential information of its confidential nature in writing, 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 the Commonwealth/Finance/KCNA receives a Kentucky Open Records Act request pursuant to which any information related to this Agreement will be disclosed, the Commonwealth/Finance/KCNA shall give CRD notice of such request before disclosing any

information with respect to such request; *provided*, however, that Commonwealth/Finance/KCNA 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 15.3. The obligations set forth in this Section 15.1 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 15.1 shall survive such expiration or termination indefinitely.

15.2. Permitted Disclosures. Notwithstanding any other provision herein, neither CRD nor the Commonwealth/Finance/KCNA 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.

15.3. 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 XVI **PROHIBITION ON ILLEGAL PAYMENTS**

16.1. 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 16.1, (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 XVII **FORCE MAJEURE; EMINENT DOMAIN**

17.1. Excused Performance. Neither CRD nor the Commonwealth/Finance/KCNA 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 ten (10) 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 CRD's negligence; or (h) any other cause beyond the reasonable control of such Party. The Party claiming relief under this Article XVII shall promptly notify the other Party 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 XVII shall exercise commercially reasonable efforts to minimize the time for any such delay. Notwithstanding the foregoing, such Force Majeure Event shall not excuse the obligation of the Commonwealth/Finance/KCNA to pay when due each installment of Base Rent and Percentage Rent under this Agreement. Provided, CRD expressly acknowledges and agrees that, to the extent the ability of the Commonwealth/Finance/KCNA to pay the Base Rent under this Agreement is subject to the Kentucky General Assembly appropriating funds to the Commonwealth/Finance/KCNA from the General Fund, the Commonwealth/Finance/KCNA shall be excused from paying the Base Rent to CRD until the Commonwealth/Finance/KCNA has sufficient resources, whether through appropriations out of the General Fund authorized by the Kentucky General Assembly or from other sources, to pay the Base Rent. Each such subsequent payment of Base Rent made by the Commonwealth/Finance/KCNA to CRD shall be applied first to the delinquent installments of Base Rent in chronological order of due date until all delinquent installments of Base Rent have been paid to CRD, and thereafter shall be applied to the future installments of Base Rent due under this Agreement.

17.2. Eminent Domain. Should any portion of the CRD Fiber and/or the CRD Ancillary Equipment 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 17.1. In the event the Commonwealth/Finance/KCNA wishes to restore the affected Route that was subject to a Taking during the Term, the Commonwealth/Finance/KCNA shall have the right at

its expense to relocate all or any portion of the CRD Fiber and/or the CRD Ancillary Equipment; provided, any monetary awards made to CRD pursuant to the Taking shall be paid to the Commonwealth/Finance/KCNA to the extent of the costs incurred by the Commonwealth/Finance/KCNA in relocating the CRD Fiber and/or the CRD Ancillary Equipment that was the subject of the Taking.

ARTICLE XVIII **DISPUTE RESOLUTION**

18.1. It is the intent of CRD and the 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 XVIII.

18.2. 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 XIX **RULES OF CONSTRUCTION**

19.1. 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.

19.2. Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of CRD or the Commonwealth/Finance/KCNA shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

19.3. 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 12.2; and (b) the Settlement Lender shall be entitled to rely on, and have the benefit of, Sections 9.3, 11.1, 12.2, and 12.3.

19.4. Agreement Fully Negotiated. This Agreement has been fully negotiated between and jointly drafted by CRD and the Commonwealth/Finance/KCNA.

19.5. 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.

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

19.7. Limited Effect of Waiver. The failure of either CRD or the Commonwealth/Finance/KCNA 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.

19.8. 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.

19.9. No Partnership Created. The relationship between CRD and the Commonwealth/Finance/KCNA 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. CRD and the Commonwealth/Finance/KCNA, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

ARTICLE XX **ASSIGNMENT**

20.1. Conditions to Effective Assignment. Subject to the other terms and conditions set forth in this Article XX, 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 XX without the non-assigning Party's consent, then the assignor shall give prior written notice of the assignment to the non-assigning Party.

20.2. 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, CRD'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 CRD 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 the Commonwealth/Finance/KCNA may sublicense or sublease the use of the CRD Fiber and the CRD Ancillary Equipment to third parties, including the Wholesaler, for commercial use or economic development reasons, which shall not be considered an assignment of this Agreement.

20.3. Assignments to Particular Classes of Entities. The provisions of Section 20.1 notwithstanding:

- (a) CRD may grant a security interest in some or all of its rights and obligations under this Agreement to any lender to CRD. If the Commonwealth/Finance/KCNA so requests, CRD 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 the Commonwealth/Finance/KCNA 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 the Commonwealth/Finance/KCNA hereunder.
- (b) The Commonwealth/Finance/KCNA may grant a security interest in some or all of its rights and obligations under this Agreement in all or any part of the CRD Fiber and the CRD Ancillary Equipment to the Settlement Lender. If CRD so requests, the Commonwealth/Finance/KCNA shall use commercially reasonable efforts to obtain from the Settlement Lender a written agreement pursuant to which the Settlement Lender acknowledges that (i) the Settlement Lender is subject to all of the terms and conditions of this Agreement that are binding on the Commonwealth/Finance/KCNA, and (ii) to the extent the Settlement 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, the Commonwealth/Finance/KCNA prior to such exercise, and (B) it would be subject to any rights and remedies available to CRD under this Agreement at such time.
- (c) 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 NG-KIH System; 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.

20.4. 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, CRD and the Commonwealth/Finance/KCNA and their respective permitted successors and assigns.

20.5. 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.

20.6. Right to Subcontract. The Commonwealth/Finance/KCNA may subcontract with any third party for construction, testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide under law or under contract.

ARTICLE XXI
ENTIRE AGREEMENT; AMENDMENT; EXECUTION

21.1. Integration; Exhibits. This Agreement constitutes the entire and final agreement and understanding between CRD and the Commonwealth/KCNA with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof including, without limitation, the 2015 Memorandum of Agreement, 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.

21.2. No Amendment. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of CRD and the Commonwealth/KCNA.

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

21.4. 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)

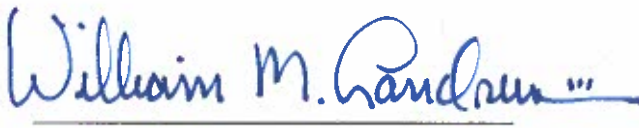
IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, CRD and the Commonwealth have executed this Agreement as of the dates set forth below.

CENTER FOR RURAL DEVELOPMENT


Lonnie Lawson, Chief Executive Officer
Center for Rural Development

8/19/19
Date

COMMONWEALTH OF KENTUCKY, by and through
FINANCE AND ADMINISTRATION CABINET:


William M. Landrum III, Secretary
Finance and Administration Cabinet

19 Aug 2019
Date

Approved as to Form and Legality:


Attorney, Office of General Counsel
Finance and Administration Cabinet

8/19/19
Date

ACKNOWLEDGED AND AGREED TO BY:

KENTUCKY COMMUNICATIONS NETWORK AUTHORITY


Bernard "Deck" Decker
Interim Executive Director

8.19.19
Date

EXHIBIT A

Network Map

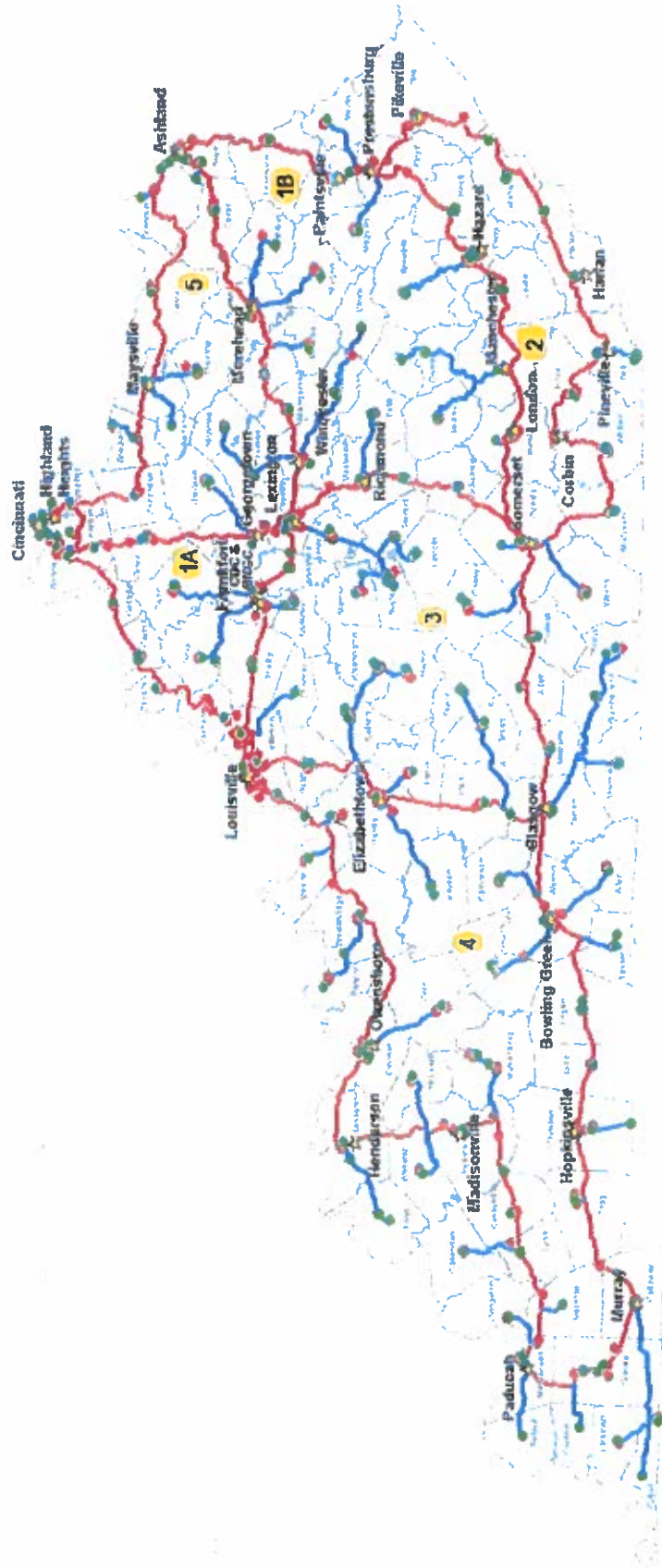


EXHIBIT B



**APPALACHIAN
REGIONAL
COMMISSION** *A Proud Past,
A New Vision*

To: Earl Gohl, Federal Co-Chair
Subject: The Center for Rural Development Fiber Infrastructure Project
 CO-18225-214-15
Grantee: The Center for Rural Development
 Somerset, KY
County: Distressed: Clay, Floyd, Knott, Leslie, Perry
 At Risk: Laurel, Pike, Pulaski
Basic Agency: Rural Development
Goal: ARC Goal 3, Objective 3, State Strategy 3.3.1: Provide strategic support for development of high-speed telecommunications infrastructure to increase local and regional connectivity and affordability within the region.
Purpose: This grant helps provide the funding to construct the Eastern Kentucky portion of the Kentucky Information Highway.
Funding:

| | | |
|--------------|---------------------|-------------|
| ARC (CAB) | \$15,000,000 | 75% |
| State | \$5,000,000 | 25% |
| Total | \$20,000,000 | 100% |

The matching funds are being provided by the Commonwealth of Kentucky.

Description:

This grant helps fund construction costs related to portions of the Eastern Kentucky network which is part of a larger statewide network called the Kentucky Information Highway (KIH). It is also known as Kentucky Wired. The overall statewide project will involve over 3,500 miles of fiber construction with initial connections to over 1,000 Community Anchor Institutions (CAIs). The network will be a "dark fiber" network which will allow for service providers to lease capacity on the network and provide an array of services to their customers. The network is considered "middle mile" in that it does not provide connectivity directly to homes and businesses (except the CAIs). The cost to build the network is approximately \$324 million.

The Eastern Kentucky portion of the network will involve approximately 750 miles of fiber construction and include three fiber loops (designated as Rings 1B, 2 and 5) which will directly connect approximately 114 CAIs. The cost to build this is approximately \$120 million. The ARC construction grant will be used to construct portions of the Eastern Kentucky Rings 1B and 2. Specifically, the grant will be used to construct the route segments going from Somerset to London, London to Manchester, Manchester to Hazard, Hazard to Prestonsburg, Prestonsburg to Pikeville and Pikeville to Harlan. This will involve up to 230 miles of fiber construction and directly connect approximately 19 CAIs. These segments will be funded by the ARC grant and the \$5 million match coming from the Commonwealth.

CO-18225-214-15

The network will be constructed and operated by Macquarie Capital and its partners as defined in the Master Agreement between Macquarie and the Commonwealth. The Commonwealth will be the largest single customer leasing capacity on the network to provide high-speed connectivity to all the CAIs.

As this grant application is considered a construction project, Rural Development has agreed to be the federal Basic Agency responsible for the administration of the grant.

Rationale/Benefits:

Kentucky ranks near bottom in the nation for average Internet connection speeds (Alaska is the worst with an average speed of 7.0 Mbps; Kentucky ties with Montana and Arkansas for second worst with a connection speed of 7.3 Mbps). However, Eastern Kentucky is significantly worse than the Kentucky average.

Kentucky ranks 46th in the nation in broadband availability: Twenty-three percent of rural Kentucky has no wireline broadband access available and only half the state's households subscribe to a broadband service.

The KIH will support increased access and greater bandwidth availability for schools, public safety, healthcare institutions and government offices (CAIs) with direct connections to the network. CAIs will be able to obtain speeds between 1 Gig up to 10 Gig depending on need.

The KIH will be an "open access" network meaning other entities (phone companies, cable companies, ISPs, cellular providers, etc.) will be able to lease fiber capacity on the network to provide their own array of services. These entities will be primarily responsible for developing "last mile solutions" to extend high-speed bandwidth available from the KIH middle mile facilities out to individual businesses and households.

The Commonwealth has issued a separate RFP soliciting partners to work directly with communities to try and find these last mile fiber solutions.

Eastern Kentucky will be the first priority in rolling out the new network with some segments to be completed as early as the second quarter 2016.

Performance Measure (Outcomes):

This grant will support up to 230 miles of fiber construction through distressed counties in Eastern Kentucky. This will include providing high-speed broadband connectivity to approximately 19 CAIs and provide the backbone conduit for other entities to lease capacity and provide broadband services directly to households and businesses.

CO-18225-214-15

Additional Comments:

Other documentation related to this project can be found in the original RFP issues by the Commonwealth soliciting bids to design, construct and operate the middle mile network, the winning bid response from Macquarie, the Master Agreement to be signed between the Commonwealth and Macquarie, the Governor's Executive Order creating the Kentucky Communications Network Authority to Manage the Statewide Broadband Network and the Preliminary Engineering Report representing the first portion of the KIH (the segments funded by the ARC grant proposal).

Once the construction is complete, the project will be sustained through a monthly fee structure. Macquarie, who is financing most of the \$324 million network, will charge the Commonwealth a monthly fee for the use of the fibers supporting the CAIs. In addition, there will be a wholesale arrangement where network capacity will be leased to other entities creating an additional revenue stream. The combined revenues will support future expansion, maintenance and operating costs.

The Commonwealth is exploring the ability to use Connect America Funds (CAF) from the FCC's Universal Service Funds Program to support last mile buildouts in unserved areas where the existing providers have elected to reject the funds. This could provide a funding source to help communities construct last mile facilities using capacity from the KIH.

For those network segments owned by the Center for Rural Development (and funded through the ARC construction grant), the Center will receive 100% of the excess wholesaler revenue (excluding maintenance and operating costs).

This project will have a primary impact on distressed areas. The project is consistent with the ARC Act and Code and is recommended for funding.

RECOMMENDED:

Scott T. Hamilton
Executive Director



**APPALACHIAN
REGIONAL
COMMISSION**

*A Proud Past,
A New Vision*

To: Earl Gohl, Federal Co-Chair
Subject: The Center for Rural Development Fiber Infrastructure, Phase 2
CO-18731-214-17
Grantee: The Center for Rural Development
Somerset, KY
County(s): Distressed: Bell, Harlan, Knox, Letcher, Whitley
At Risk: Pike

Basic Agency: Rural Development
Goal: ARC Goal 3, Objective 1, State Strategy 3.3.1: Provide strategic support for development of high-speed telecommunications infrastructure to increase local and regional connectivity and affordability within the region.

Purpose: This grant helps provide the funding to construct the Eastern Kentucky portion of the Kentucky Information Highway.

| | | | |
|-----------------|--------------|---------------------|-------------|
| Funding: | ARC (CAB) | \$8,000,000 | 80% |
| | State | \$2,000,000 | 20% |
| | Total | \$10,000,000 | 100% |

The matching funds are being provided by the Commonwealth of Kentucky.

Description:

This grant helps fund construction costs related to portions of the Eastern Kentucky network which is part of a larger statewide network called the Kentucky Information Highway (KIH). It is also known as Kentucky Wired. The overall statewide project will involve over 3,500 miles of fiber construction with initial connections to over 1,000 Community Anchor Institutions (CAIs). The network will be a "dark fiber" network which will allow for service providers to lease capacity on the network and provide an array of services to their customers. The network is considered "middle mile" in that it does not provide connectivity directly to homes and businesses (except the CAIs). The cost to build the network is approximately \$324 million.

The Eastern Kentucky portion of the network will involve approximately 750 miles of fiber construction and include three fiber loops (designated as Rings 1B, 2 and 5) which will directly connect approximately 114 CAIs. The cost to build this is approximately \$120 million. The ARC construction grant will be used to construct portions of the Eastern Kentucky Ring 2. Specifically, this grant will be used to construct the route segments going from Pikeville to Corbin. This will impact the following counties: Whitley, Bell, Knox, Harlan, Letcher and Pike.

This will involve up to 140 miles of fiber construction. These segments will be funded by the ARC grant and the \$2 million match coming from the Commonwealth.

CO-18731-214-17

The network will be constructed and operated by Macquarie Capital and its partners as defined in the Master Agreement between Macquarie and the Commonwealth. The Commonwealth will be the largest single customer leasing capacity on the network to provide high-speed connectivity to all the CAIs.

As this grant application is considered a construction project, Rural Development has agreed to be the federal Basic Agency responsible for the administration of the grant.

Rationale/Benefits:

Kentucky ranks near bottom in the nation for average Internet connection speeds (Alaska is the worst with an average speed of 7.0 Mbps; Kentucky ties with Montana and Arkansas for second worst with a connection speed of 7.3 Mbps). However, Eastern Kentucky is significantly worse than the Kentucky average.

Kentucky ranks 46th in the nation in broadband availability: 23 percent of rural Kentucky has no wireline broadband access available and only half the state's households subscribe to a broadband service.

The KIH will support increased access and greater bandwidth availability for schools, public safety, healthcare institutions and government offices (CAIs) with direct connections to the network. CAIs will be able to obtain speeds between 1 Gig up to 10 Gig depending on need.

The KIH will be an "open access" network meaning other entities (phone companies, cable companies, ISPs, cellular providers, etc.) will be able to lease fiber capacity on the network to provide their own array of services. These entities will be primarily responsible for developing "last mile solutions" to extend high-speed bandwidth available from the KIH middle mile facilities out to individual businesses and households.

The Commonwealth has issued a separate RFP soliciting partners to work directly with communities to try and find these last mile fiber solutions. Eastern Kentucky will be the first priority in rolling out the new network with the Eastern Kentucky portion of the network to be completed around 3/19.

Performance Measure (Outcomes):

This grant will support up to 140 miles of fiber construction through distressed counties in Eastern Kentucky. This will include providing high-speed broadband connectivity to approximately 19 CAIs and provide the backbone conduit for other entities to lease capacity and provide broadband services directly to households and businesses.

Additional Comments:

Other documentation related to this project can be found in the original RFP issues by the Commonwealth soliciting bids to design, construct and operate the middle mile network, the winning bid response from Macquarie, the Master Agreement to be signed between the Commonwealth and Macquarie, the Governor's Executive Order creating the Kentucky

Communications Network Authority to Manage the Statewide Broadband Network and the Preliminary Engineering Report representing the first portion of the KIH (the segments funded by the ARC grant proposal).

CO-18731-214-17

Once the construction is complete, the project will be sustained through a monthly fee structure. Macquarie, who is financing most of the \$324 million network, will charge the Commonwealth a monthly fee for the use of the fibers supporting the CAIs. In addition, there will be a wholesale arrangement where network capacity will be leased to other entities creating an additional revenue stream. The combined revenues will support future expansion, maintenance and operating costs.

The Commonwealth is exploring the ability to use Connect America Funds (CAF) from the FCC's Universal Service Funds Program to support last mile buildouts in unserved areas where the existing providers have elected to reject the funds. This could provide a funding source to help communities construct last mile facilities using capacity from the KIH.

For those network segments owned by the Center for Rural Development (and funded through the ARC construction grant), the Center will receive 100% of the excess wholesaler revenue (excluding maintenance and operating costs).

This project will have a primary impact on distressed areas. The project is consistent with the ARC Act and Code and is recommended for funding.

RECOMMENDED:

Scott T. Hamilton
Executive Director



To: Earl Gohl, Federal Co-Chair

Subject: The Center for Rural Development Fiber Infrastructure Construction Project - Phase 3
KY-18983-214-17

Grantee: The Center for Rural Development
Somerset, KY

County(s): Distressed: McCreary, Whitley
At Risk: Pulaski

Basic Agency: Rural Development

Goal: ARC Goal 3, Objective 1, State Strategy 3.3.1: Provide strategic support for development of high-speed telecommunications infrastructure to increase local and regional connectivity and affordability within the region.

Purpose: This grant helps provide the funding to construct the Eastern Kentucky portion of the Kentucky Information Highway.

Funding:

| | | |
|--------------|--------------------|-------------|
| ARC (CAB) | \$4,562,400 | 80% |
| Local | \$1,140,600 | 20% |
| Total | \$5,703,000 | 100% |

The matching funds are being provided by the Commonwealth of Kentucky.

Description:

This grant helps fund construction costs related to portions of the Eastern Kentucky network which is part of a larger statewide network called the Kentucky Information Highway (KIH). It is also known as Kentucky Wired. The overall statewide project will involve over 3,500 miles of fiber construction with initial connections to over 1,000 Community Anchor Institutions (CAIs). The network will be a "dark fiber" network which will allow for service providers to lease capacity on the network and provide an array of services to their customers. The network is considered "middle mile" in that it does not provide connectivity directly to homes and businesses (except the CAIs). The original cost to build the network was approximately \$324 million but because of considerable delays, the cost to construct the network will be significantly higher.

The Eastern Kentucky portion of the network will involve approximately 750 miles of fiber construction and include three fiber loops (designated as Rings 1B, 2 and 5) which will directly

connect approximately 114 CAIs. The cost to build this is approximately \$120 million. The ARC construction grant will be used to construct portions of the Eastern Kentucky Ring 2. Specifically, this grant will be used to construct the route segments going from Corbin back to Somerset (to complete the loop). This will impact the following counties: Whitley, McCreary and Pulaski.

KY-18983-214-17

This will involve up to 80 miles of fiber construction. These segments will be funded by the ARC grant and the \$1,140,600 match coming from the Commonwealth.

The network will be constructed and operated by Macquarie Capital and its partners as defined in the Master Agreement between Macquarie and the Commonwealth. The Commonwealth will be the largest single customer leasing capacity on the network to provide high-speed connectivity to all the CAIs.

As this grant application is considered a construction project, Rural Development has agreed to be the federal Basic Agency responsible for the administration of the grant.

Rationale/Benefits:

Kentucky ranks near bottom in the nation for average Internet connection speeds (Alaska is the worst with an average speed of 7.0 Mbps; Kentucky ties with Montana and Arkansas for second worst with a connection speed of 7.3 Mbps). However, Eastern Kentucky is significantly worse than the Kentucky average.

Kentucky ranks 46th in the nation in broadband availability: 23 percent of rural Kentucky has no wireline broadband access available and only half the state's households subscribe to a broadband service.

The KIH will support increased access and greater bandwidth availability for schools, public safety, healthcare institutions and government offices (CAIs) with direct connections to the network. CAIs will be able to obtain speeds between 1 Gig up to 10 Gig depending on need.

The KIH will be an "open access" network meaning other entities (phone companies, cable companies, ISPs, cellular providers, etc.) will be able to lease fiber capacity on the network to provide their own array of services. These entities will be primarily responsible for developing "last mile solutions" to extend high-speed bandwidth available from the KIH middle mile facilities out to individual businesses and households.

The Commonwealth has issued a separate RFP soliciting partners to work directly with communities to try and find these last mile fiber solutions. Eastern Kentucky will be the first priority in rolling out the new network with the Eastern Kentucky portion of the network to be completed in 2020.

Performance Measure (Outcomes):

This grant will support up to 80 miles of fiber construction through distressed counties in Eastern Kentucky. This will include providing high-speed broadband connectivity to multiple CAIs and provide the backbone conduit for other entities to lease capacity and provide broadband services directly to households and businesses.

KY-18983-214-17

Additional Comments:

Other documentation related to this project can be found in the original RFP issued by the Commonwealth soliciting bids to design, construct and operate the middle mile network, the winning bid response from Macquarie, the Master Agreement signed between the Commonwealth and Macquarie, the Governor's Executive Order creating the Kentucky Communications Network Authority to Manage the Statewide Broadband Network and the Preliminary Engineering Report representing the first portion of the KIH (the segments funded by the ARC grant proposal).

This project will have a primary impact on distressed areas. The project is consistent with the ARC Act and Code and is recommended for funding.

RECOMMENDED:

Scott T. Hamilton
Executive Director

EXHIBIT C

**Grant Agreement
Between
Appalachian Regional Commission
and
The Center for Rural Development**

| | | |
|--|---|---|
| ARC Contract Number: CO-18732-17 | | |
| Project Title: The Center for Rural Development Fiber Infrastructure Construction Management, Phase 2 | | |
| Grantee: | The Center for Rural Development 2292 South Highway 27 Somerset, KY 42501 | ARC Project Coordinator: Mark Defalco |
| Grantee's EIN: | 61-1291304 | Telephone: 202-884-7719 |
| Project Director: | Vicki Hiestand | Fax: 202-884-7691 |
| Telephone Number: | 606-677-6000 | Email: mdefalco@arc.gov |
| Grantee's Email: | vhiestand@centertech.com | State Administration/Liaison Officer: |
| Part I - Special Provisions | | |

I. Statement of Purpose - Incorporation of Proposal:

This agreement implements a grant made under the authorities of Section 302 of the Appalachian Regional Development Act of 1965 (ARDA), as amended, (40 USC 14321) to provide funding for the oversight of the build out related to the Eastern Kentucky portion of the Kentucky Information Highway (KIH), also known as Kentucky Wired. The overall statewide project will involve 3,500 miles of fiber construction with initial connection to over 1,000 Community Anchor Institutions (CAIs).

Grantee will provide management oversight, marketing, education outreach, enhanced videoconferencing for higher education instruction delivery and ongoing support services for the Appalachian portion of the KIH. This includes involvement in all aspects of the planning, construction oversight assistance for the Southeast Kentucky network segments and system testing. Also included are efforts to promote the broadband network with media campaigns and at appropriate national conferences, trade shows and conventions as part of an education and economic development outreach program. Grantee will also assist with one-on-one consultations for public officials and provide community information workshops and work to develop an assistance program to help communities formulate grant requests to finance locally initiated projects. Grantee will work within the telecom/broadband sector to help find partners for unserved communities seeking last mile facilities.

The Eastern Kentucky portion of the network will involve approximately 750 miles of fiber construction and include three fiber loops (designated as Rings 1B, 2 and 5) which will directly connect approximately 114 CAIs. The cost to build this is approximately \$120 million. ARC's construction grants (CO-18225 and CO-18731) will be used to construct portions of the Eastern Kentucky Rings 1B and 2. The cost for this portion of the network is \$20 million.

This project shall be carried out in general accord with Grantee's proposal, received at ARC on October 27, 2016. Grantee's proposal is incorporated by this reference as a supplement to Part I. To the extent the Articles of this grant agreement conflict with the incorporated proposal, the Articles shall control.

2. Order of Precedence:

This grant agreement is subject to the provisions of the ARDA, the ARC Code and Project Guidelines, the Special Provisions (Part I), the attached Grant Agreement: General Provisions (Part II), the attached Grant Administration Manual, and any incorporated Supplements. Any conflict among these provisions shall be resolved giving precedence to these authorities in the order in which they are listed above.

3. Reports:

A progress report for each 120-day period and a final report are required under this agreement (see Part II, Article 4).

4. Consideration and Method of Payment:

A. Total.

For the complete and satisfactory performance of this grant agreement, as determined by ARC, Grantee shall be paid by ARC a total sum not to exceed \$727,621 of actual, reasonable and eligible project costs. Grantee shall pay, or cause to be paid, the non-ARC share of \$181,905 in cash, contributed services, or in-kind contributions, as approved by ARC.

B. Method.

Progress and advance payments not to exceed 90% of total ARC-approved funds are authorized under this agreement. Upon Grantee's satisfactory completion of the Agreement, Grantee shall receive any balance of funds which may be due under this agreement (see Part II, Article 11).

5. Budget:

Costs will be determined in general accord with the budget submitted on 11/15/2016, which is hereby incorporated into this agreement as a supplement to Part I, subject to the terms of this Grant Agreement and to pertinent ARC Code Provisions.

6. Period of Performance:

The grant period of performance shall be 10/1/2016 through 9/30/2019.

Charles Howard-12/14/2016 12/14/2016

Charles Howard **Date**
General Counsel

Lonnie Lawson-12/19/2016 12/19/2016

Lonnie Lawson **Date**
President & CEO

Part II
Appalachian Regional Commission
Grant Agreement: General Provisions

Article 1 General Procedures.

ARC grants shall be administered in accord with the Office of Management and Budget guidelines, Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards found in Chapter 2 of Title 2 of the Code of Federal Regulations and other Federal regulations as applicable.

Article 2 Restrictions on Use of ARC Funds.

Grantee warrants that it is cognizant of Section 224(b)(1) of the ARDA, which prohibits the use of ARDA funds to assist businesses to relocate from one area to another; and that, further, in keeping with Commission policy, it will not utilize ARDA funds actively to engage in any activity, the purpose of which is to encourage businesses now operating in one state to relocate into another state. No funds provided under this agreement will be used to publish or distribute material which would solicit such relocation.

Article 3 Work Plan/Detailed Budget.

(1) Grantee shall submit, as required by the ARC Project Coordinator, a work plan and/or budget for any and/or all of the tasks specified in Part I.

(2) Prior to submission of any work plan and/or budget so required by the ARC Project Coordinator, no costs shall be eligible for reimbursement, except those costs directly related to the preparation of such work plan and/or budget. Within one week after receipt, ARC shall complete a preliminary review of the work plan and/or budget and shall immediately advise the Grantee either that it is unacceptable or that it is preliminarily approved. After such preliminary approval by ARC, the Grantee may proceed with work on the project immediately with such modifications in the work plan and/or budget as required by ARC.

Article 4 Reports.

(1) Progress Reports. Grantee shall prepare and submit to the ARC Project Coordinator, progress reports indicating the work accomplished under the agreement to date, any problems encountered and ameliorative actions taken, and a forecast of work for the next report period.

(2) Final Report. Within one (1) month after the period of performance (see Part I), Grantee shall prepare and submit to the ARC Project Coordinator for approval, a final report (2 copies and a reproducible master) of all work accomplished under this Agreement including recommendations and conclusions based on the experience and results obtained.

Article 5 Contracting Procedures

In contracting for services and/or purchasing equipment under this Agreement, Grantee shall assure that (1) all contracting shall be at prices and on terms most advantageous to the Grantee and to the project; and (2) all interested parties shall have a full and fair chance at doing business with the Grantee. Grantee shall arrange for all contracting through competitive bidding, or, if permitted by state law, other negotiating and contracting procedures that will assure compliance with (1) and (2) above.

Article 6 Subcontracting.

The Grantee shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining the prior written approval of the Project Coordinator, and subject to conditions and provisions as the Project Coordinator may deem necessary, in his/her discretion, to protect the interests of the Commission: Provided, however, that notwithstanding the foregoing unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Agreement: Provided, further, however, that no provision of this article and no such approval by the Project Coordinator of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the Commission in addition to the total grant amount and the Commission shall not be responsible for fulfillment of Grantee's obligations to subcontractors: Provided, further, that no subcontracting shall be deemed to relieve the Grantee of any obligations under this Agreement.

Article 7 Coordination and Non-Duplication.

In carrying out the project under this Agreement, Grantee shall assure that the planning, design work and implementation of activities are coordinated with activities conducted by Grantee under other related ARC grants, if any, and shall assure that there shall be no duplication of effort or funding under this Agreement of any work or payments under those grants.

Article 8 Project Personnel.

ARC reserves the right to approve or disapprove the selection or continued participation of any personnel supported with funds made available under this Agreement.

Article 9 Compliance with Applicable Laws.

Grantee shall assure that all provisions of applicable federal, state, and local laws shall be complied with in the conduct of activities under this grant agreement. The ARC reserves the right to suspend or terminate this agreement in the event that applicable federal, state, and local laws and regulations are not complied with. Such right shall not be exclusive and does not affect rights and remedies

provided elsewhere by law, regulation, or agreement.

Article 10 Retention of Rights.

Title to equipment purchased with grant funds resides with the Grantee and assignees and successors approved by ARC, but the equipment must be accounted for during and after the end of the project period. Accountability may be satisfied by continued use during its useful life in the same or other projects related to objectives of the ARC, as approved by ARC. If the equipment is disposed of or transferred during its useful life to a use outside the scope of the ARC objectives, an amount equal to the resale value or the value of the ARC share at the time of disposal must be deposited in the grant account if still open, or the federal share must be refunded to ARC or an ARC-designated successor. ARC reserves the right to transfer such equipment and title thereto or other interest therein, to ARC, or an agency of the federal government or to another Grantee, in the event equipment, leased or purchased with funds under this agreement, is no longer used primarily for the purposes for which it is dedicated under this agreement, or is not used in substantial accord with the applicable provisions of this agreement.

It shall be Grantee's responsibility to monitor all use to ascertain that all such equipment is being used primarily for the purposes outlined herein. Grantee may propose to ARC that the equipment be transferred to another agency or entity which could utilize it for the purposes outlined in this agreement. Such transfers shall be subject to prior approval by the ARC Project Coordinator and to the reservation of rights in this Article.

Article 11 Method of Payment.

(1) Progress Payments. Grantee may receive progress payments (a) on the basis of the work performed; (b) upon ARC concurrence as to reasonableness of costs and submission of Form SF 270 (Request for Advance or Reimbursement); and; (c) upon submission to ARC of, and with the same frequency as, progress reports; and (d) upon determination by the ARC that the requirements of the agreement are being met. The total of such progress payments shall not exceed ninety (90) percent of the total grant amount unless specifically authorized in Part I of this agreement.

(2) Advance Payments. Grantee may receive advances of funds, in amounts sufficient to meet scheduled payroll costs and other related costs, including payments to subcontractors on the following basis: (a) Grantee's certification that a firm commitment has been obtained from each employee appointed under this agreement, or that firm, formal subcontracts have been executed which will require payments for goods and services to be delivered during the period for which advance is sought; (b) upon submission of form SF 270 (Request for Advance or Reimbursement) and on the basis of cost estimates approved by the ARC Project Coordinator; (c) Grantee's certification that any previous advance has been exhausted (if previous advance has not been exhausted, this remainder must be used to meet scheduled expenses payable during the next period); any additional advance subject to ARC concurrence as to need; and (d) satisfactory progress on tasks specified in Part I and the incorporated proposal.

Total Advance Payments shall not exceed 90 percent of the total grant amount unless specifically authorized in Part I of this agreement.

(3) Final Payment. Upon Grantee's satisfactory completion of the Agreement, Grantee shall receive

any balance of funds which may be due under this Agreement.

(4) Disbursements. All disbursements shall be for obligations incurred, after the effective date, in the performance of this Agreement, and shall be supported by contracts, invoices, vouchers and other data, as appropriate, evidencing the disbursements.

NOTE: All payment requests must show the 9-digit taxpayer identifying number (TIN) assigned by the Internal Revenue Service. For individuals, the Social Security Number serves as the TIN; for businesses, the Employer Identification Number serves as the TIN.

Article 12 Grant-Related Income.

Grant-related income means gross income earned by Grantee from grant supported activities and shall include, but not be limited to, income from service fees, sale of commodities, or usage or rental fees. All grant-related income shall be reported to ARC in the progress and final reports required by this Agreement.

Article 13 Rebates and Discharges from Liability.

Grantee agrees that any refunds, rebates or credits, or other amounts (including interest earned thereon) received by the Grantee (or any Assignee) shall be paid to the Commission to the extent that they are properly allocable to costs for which the Grantee has been reimbursed under this Article. Grantee will, when requested, assign such amounts to the Commission and execute such releases as may be appropriate to discharge the Commission, its officers and agents from liabilities arising out of this Agreement.

Article 14 Records /Audit.

(1) Grantee shall establish procedures to ensure that all records pertaining to costs, expenses, and funds related to the Agreement shall be kept in a manner which is consistent with generally accepted accounting procedures. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Grantee shall maintain custody of time records, payrolls, and other data, as appropriate, to substantiate all services reported to the Commission as Contributed Services under this Agreement.

(2) All invoices, vouchers, statements of costs, and reports of disbursements of funds are subject to audit.

(3) Any payment may be reduced for overpayment(s) or increased for underpayment(s) on preceding invoices or vouchers. In the event of overpayment(s) ARC reserves the option of requiring the Grantee to reimburse the Commission for the amount of the overpayment(s).

(4) If Grantee has not provided either cash or contributed services of a value determined by the Commission to be sufficient to support the payments made by the Commission, or has failed to obligate or disburse any such sums for the purpose of this Agreement, the final payment shall be

reduced, or the Grantee shall make an appropriate refund.

(5) The Grantee agrees that the Federal Co-Chairman of the ARC, the Comptroller General of the United States, the ARC, or the duly authorized representatives of any of them shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Grantee involving transactions related to this Agreement.

(6) The Grantee will, in each subcontract, require the subcontractor to agree to the application of the provisions of this article in a similar manner to the subcontractor's records relating to said subcontract.

Article 15 Responsibilities.

Notwithstanding any other provisions of this Agreement, it is expressly agreed that:

(1) Grantee will carry out the program under this Agreement as an independent contractor and not as agent of the Commission;

(2) Grantee assumes sole and complete responsibility for the conduct of the program in such a manner as to assure the safety and welfare of all persons participating in or in any way involved in, or affected by, any activities conducted under this Agreement; and

(3) The Commission, by its provision of funds for this project, undertakes no responsibility in this regard.

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The Project Director shall be responsible for the general guidance and overall supervision of Grantee's efforts. The Project Director shall maintain liaison with the Commission's Project Coordinator. In the event the replacement of the Project Director becomes necessary, the Grantee will advise the Commission, in writing, of the change. The Commission reserves the right to disapprove any proposed substitute or addition.

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Grantee shall submit copies of all correspondence, reports and requests for payment required to be submitted to ARC simultaneously to the State Administration and Liaison Officer named in this

Agreement.

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(1) Procedure. Except as otherwise provided in this Agreement, in the event of any dispute arising under this Agreement concerning a question of fact which is not disposed of by agreement, a decision regarding the dispute shall be rendered by the Executive Director. The Grantee may, within 20 days from receipt of the Executive Director's written decision, submit to the Commission's Contract Review Committee (ARC-CRC), a written request for a review to which the ARC-CRC shall respond in writing within 60 days. Alternatively, the Grantee and the Executive Director may mutually agree to select any alternative means of dispute resolution to resolve such dispute. The decision of either the ARC-CRC or the arbitrator retained for the purpose of dispute resolution, shall be final and conclusive. Pending final decision under either alternative, the Grantee shall proceed diligently with the performance of the Agreement in accordance with the Executive Director's decision.

(2) Consideration of Questions of Law. This Article does not preclude the consideration of questions of law in connection with decisions provided for in the above paragraph; provided that nothing in this grant shall be construed as making final any decision of any administrative official, representative, or the ARC-CRC on a question of law.

(3) ARC Contract Review Committee. The ARC-CRC shall consist of the Federal Co-Chairman and the States' Co-Chairman or their appointed representatives. In a dispute in which one of the parties is either the State of the States' Co-Chairman or a Grantee from said State, the States' Vice Co-Chairman, or his/her representative, shall replace the States' Co-Chairman on the ARC-CRC for that dispute alone. Nothing herein shall operate in any way as a restriction on the powers of the Federal Co-Chairman or any state member of the Commission under the ARDA.

Article 20 Suspension/Termination for Cause.

The ARC shall have the right, upon written notice to the Grantee, to suspend or terminate this Agreement for cause, whenever the Federal Co-Chairman determines there is reasonable basis to believe there has been malfeasance, embezzlement, misappropriation, unauthorized application of federal funds or material false statement in the conduct of this Agreement or any other ARC grant agreement.

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The ARC may, by written notice to Grantee, terminate this Agreement in whole or in part in accordance with Part 52.249 of the Federal Acquisition Regulations' "Default (Fixed-Price Supply and Service)" clause in effect on the date of this Agreement including, but not limited to provisions regarding failure to perform due to causes beyond the control of Grantee, the status of completed and partially completed work after termination for default, excusable default, ARC's right to repro cure, and other remedies. Such regulations are incorporated by reference as part of this Agreement. The rights and remedies of the ARC provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

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The ARC may, by written notice to the Grantee, terminate this Agreement in whole or in part for the convenience of the Commission, whenever the ARC determines that such action is in its best interest. If this Agreement is so terminated, the rights, duties and obligations of the parties, including compensation of the Grantee, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this Agreement and such regulations are incorporated by reference as part of this Agreement.

Article 23 Official Not to Benefit.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with an incorporated entity for its general benefit.

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The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Commission shall have the right to annul this Agreement without liability or in its discretion to deduct from the grant amount or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 25 Equal Opportunity.

Grantee shall carry out all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, and other federal laws prohibiting discrimination, and in such a manner that no person shall, on the grounds of race, color, national origin, religion, sex, age or disability be excluded from participation in, be denied the benefits of, or be subject to discrimination with respect to any such programs or activities.

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All research and development grants are subject to the government-wide Patent Policies outlined in Department of Commerce regulations (37 CFR Part 401).

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**Grant Agreement
Between
Appalachian Regional Commission
and
The Center for Rural Development**

ARC Contract Number: KY-19420-18

Project Title: CRD Fiber Infrastructure Project - Phase 4

| | | |
|--------------------------|---|---|
| Grantee: | The Center for Rural Development 2292 South Highway 27 Somerset, KY 42501 | ARC Project Coordinator: Mark Defalco Telephone: 202-884-7719 Fax: 202-884-7691 |
| Grantee's EIN: | 61-1291304 | Email: mdefalco@arc.gov |
| Project Director: | Lonnie Lawson | State Administration/Liaison Officer: Scott Sharp 502-892-3491 scott.sharp@ky.gov |
| Telephone Number: | 606-677-6000 | |
| Grantee's Email: | llawson@centertech.com | |

Part I - Special Provisions

I. Statement of Purpose - Incorporation of Proposal:

This agreement implements a grant made under the authorities of Section 302 of the Appalachian Regional Development Act of 1965 (ARDA), as amended, (40 USC 14321) to provide funding for the construction of the lower Eastern Kentucky fiber loop which starts in Somerset and connects through to London, Manchester, Hazard, Prestonsburg, Pikeville, Harlan, Pineville, Corbin and then back to Somerset. This grant will help install 74 access points along the fiber backbone throughout Eastern Kentucky. The access points will be used as "connection points" for ISP access to the fiber network. The Grantee will also continue its multiple outreach and education efforts related to the overall KY-Wired project.

KY-19420-18

This project shall be carried out in general accord with Grantee's proposal, received at ARC on September 19, 2018. Grantee's proposal is incorporated by this reference as a supplement to Part I. To the extent the Articles of this grant agreement conflict with the incorporated proposal, the Articles shall control.

2. Order of Precedence:

This grant agreement is subject to the provisions of the ARDA, the ARC Code and Project Guidelines, the Special Provisions (Part I), the attached Grant Agreement: General Provisions (Part II), the attached Grant Administration Manual, and any incorporated Supplements. Any conflict among these provisions shall be resolved giving precedence to these authorities in the order in which they are listed above.

3. Reports:

A progress report for each 120-day period and a final report are required under this agreement (see Part II, Article 4).

4. Consideration and Method of Payment:

A. Total.

For the complete and satisfactory performance of this grant agreement, as determined by ARC, Grantee shall be paid by ARC a total sum not to exceed \$8,727,621 of actual, reasonable and eligible project costs. Grantee shall pay, or cause to be paid, the non-ARC share of \$2,181,905 in cash, contributed services, or in-kind contributions, as approved by ARC.

B. Method.

Progress and advance payments not to exceed 90% of total ARC-approved funds are authorized under this agreement. Upon Grantee's satisfactory completion of the Agreement, Grantee shall receive any balance of funds which may be due under this agreement (see Part II, Article 11).

5. Budget:

Costs will be determined in general accord with the budget submitted on 9/21/2018, which is hereby incorporated into this agreement as Supplement B to Part I, subject to the terms of this Grant Agreement and pertinent ARC Code Provisions.

6. Period of Performance:

The grant period of performance shall be 9/28/2018 through 3/28/2020.

7. Federal Retention of Interest:

Title to equipment and/or real property purchased with grant funds resides with the Grantee and assignees and successors approved by ARC, but the equipment and/or real property must be accounted for during and after the end of the project period. Accountability may be satisfied by continued use in

the same or other projects related to objectives of the ARC, as approved by ARC. If the equipment and/or real property is disposed of or transferred to a use outside the scope of the ARC objectives, an amount equal to the value of the ARC share at the time of disposal must be refunded to ARC. It shall be Grantee's responsibility to monitor all use to ascertain that the equipment and/or real property is being used primarily for the purposes of the grant and to notify ARC promptly in the event that the equipment and/or real property is no longer being used for such purposes.

Charles Howard-9/28/2018

9/28/2018

Charles Howard
General Counsel

Date

Lonnie Lawson-9/28/2018

9/28/2018

Lonnie Lawson

Date

Part II
Appalachian Regional Commission
Grant Agreement: General Provisions

Article 1 General Procedures.

ARC grants shall be administered in accord with the Office of Management and Budget guidelines, Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards found in Chapter 2 of Title 2 of the Code of Federal Regulations and other Federal regulations as applicable.

Article 2 Restrictions on Use of ARC Funds.

Grantee warrants that it is cognizant of Section 224(b)(1) of the ARDA, which prohibits the use of ARDA funds to assist businesses to relocate from one area to another; and that, further, in keeping with Commission policy, it will not utilize ARDA funds actively to engage in any activity, the purpose of which is to encourage businesses now operating in one state to relocate into another state. No funds provided under this agreement will be used to publish or distribute material which would solicit such relocation.

Article 3 Work Plan/Detailed Budget.

(1) Grantee shall submit, as required by the ARC Project Coordinator, a work plan and/or budget for any and/or all of the tasks specified in Part I.

(2) Prior to submission of any work plan and/or budget so required by the ARC Project Coordinator, no costs shall be eligible for reimbursement, except those costs directly related to the preparation of such work plan and/or budget. Within one week after receipt, ARC shall complete a preliminary review of the work plan and/or budget and shall immediately advise the Grantee either that it is unacceptable or that it is preliminarily approved. After such preliminary approval by ARC, the Grantee may proceed with work on the project immediately with such modifications in the work plan and/or budget as required by ARC.

Article 4 Reports.

(1) Progress Reports. Grantee shall prepare and submit to the ARC Project Coordinator, progress reports indicating the work accomplished under the agreement to date, any problems encountered and ameliorative actions taken, and a forecast of work for the next report period.

(2) Final Report. Within one (1) month after the period of performance (see Part I), Grantee shall prepare and submit to the ARC Project Coordinator for approval, a final report (2 copies and a reproducible master) of all work accomplished under this Agreement including recommendations and conclusions based on the experience and results obtained.

Article 5 Contracting Procedures

In contracting for services and/or purchasing equipment under this Agreement, Grantee shall assure that (1) all contracting shall be at prices and on terms most advantageous to the Grantee and to the project; and (2) all interested parties shall have a full and fair chance at doing business with the Grantee. Grantee shall arrange for all contracting through competitive bidding, or, if permitted by state law, other negotiating and contracting procedures that will assure compliance with (1) and (2) above.

Article 6 Subcontracting.

The Grantee shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining the prior written approval of the Project Coordinator, and subject to conditions and provisions as the Project Coordinator may deem necessary, in his/her discretion, to protect the interests of the Commission; Provided, however, that notwithstanding the foregoing unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Agreement; Provided, further, however, that no provision of this article and no such approval by the Project Coordinator of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the Commission in addition to the total grant amount and the Commission shall not be responsible for fulfillment of Grantee's obligations to subcontractors; Provided, further, that no subcontracting shall be deemed to relieve the Grantee of any obligations under this Agreement.

Article 7 Coordination and Non-Duplication.

In carrying out the project under this Agreement, Grantee shall assure that the planning, design work and implementation of activities are coordinated with activities conducted by Grantee under other related ARC grants, if any, and shall assure that there shall be no duplication of effort or funding under this Agreement of any work or payments under those grants.

Article 8 Project Personnel.

ARC reserves the right to approve or disapprove the selection or continued participation of any personnel supported with funds made available under this Agreement.

Article 9 Compliance with Applicable Laws.

Grantee shall assure that all provisions of applicable federal, state, and local laws shall be complied with in the conduct of activities under this grant agreement. The ARC reserves the right to suspend or terminate this agreement in the event that applicable federal, state, and local laws and regulations are not complied with. Such right shall not be exclusive and does not affect rights and remedies

provided elsewhere by law, regulation, or agreement.

Article 10 Retention of Rights.

Title to equipment purchased with grant funds resides with the Grantee and assignees and successors approved by ARC, but the equipment must be accounted for during and after the end of the project period. Accountability may be satisfied by continued use during its useful life in the same or other projects related to objectives of the ARC, as approved by ARC. If the equipment is disposed of or transferred during its useful life to a use outside the scope of the ARC objectives, an amount equal to the resale value or the value of the ARC share at the time of disposal must be deposited in the grant account if still open, or the federal share must be refunded to ARC or an ARC-designated successor. ARC reserves the right to transfer such equipment and title thereto or other interest therein, to ARC, or an agency of the federal government or to another Grantee, in the event equipment, leased or purchased with funds under this agreement, is no longer used primarily for the purposes for which it is dedicated under this agreement, or is not used in substantial accord with the applicable provisions of this agreement.

It shall be Grantee's responsibility to monitor all use to ascertain that all such equipment is being used primarily for the purposes outlined herein. Grantee may propose to ARC that the equipment be transferred to another agency or entity which could utilize it for the purposes outlined in this agreement. Such transfers shall be subject to prior approval by the ARC Project Coordinator and to the reservation of rights in this Article.

Article 11 Method of Payment.

(1) Progress Payments. Grantee may receive progress payments (a) on the basis of the work performed; (b) upon ARC concurrence as to reasonableness of costs and submission of Form SF 270 (Request for Advance or Reimbursement); and; (c) upon submission to ARC of, and with the same frequency as, progress reports; and (d) upon determination by the ARC that the requirements of the agreement are being met. The total of such progress payments shall not exceed ninety (90) percent of the total grant amount unless specifically authorized in Part I of this agreement.

(2) Advance Payments. Grantee may receive advances of funds, in amounts sufficient to meet scheduled payroll costs and other related costs, including payments to subcontractors on the following basis: (a) Grantee's certification that a firm commitment has been obtained from each employee appointed under this agreement, or that firm, formal subcontracts have been executed which will require payments for goods and services to be delivered during the period for which advance is sought; (b) upon submission of form SF 270 (Request for Advance or Reimbursement) and on the basis of cost estimates approved by the ARC Project Coordinator; (c) Grantee's certification that any previous advance has been exhausted (if previous advance has not been exhausted, this remainder must be used to meet scheduled expenses payable during the next period); any additional advance subject to ARC concurrence as to need; and (d) satisfactory progress on tasks specified in Part I and the incorporated proposal.

Total Advance Payments shall not exceed 90 percent of the total grant amount unless specifically authorized in Part I of this agreement.

(3) Final Payment. Upon Grantee's satisfactory completion of the Agreement, Grantee shall receive

any balance of funds which may be due under this Agreement.

(4) Disbursements. All disbursements shall be for obligations incurred, after the effective date, in the performance of this Agreement, and shall be supported by contracts, invoices, vouchers and other data, as appropriate, evidencing the disbursements.

NOTE: All payment requests must show the 9-digit taxpayer identifying number (TIN) assigned by the Internal Revenue Service. For individuals, the Social Security Number serves as the TIN; for businesses, the Employer Identification Number serves as the TIN.

Article 12 Grant-Related Income.

Grant-related income means gross income earned by Grantee from grant supported activities and shall include, but not be limited to, income from service fees, sale of commodities, or usage or rental fees. All grant-related income shall be reported to ARC in the progress and final reports required by this Agreement.

Article 13 Rebates and Discharges from Liability.

Grantee agrees that any refunds, rebates or credits, or other amounts (including interest earned thereon) received by the Grantee (or any Assignee) shall be paid to the Commission to the extent that they are properly allocable to costs for which the Grantee has been reimbursed under this Article. Grantee will, when requested, assign such amounts to the Commission and execute such releases as may be appropriate to discharge the Commission, its officers and agents from liabilities arising out of this Agreement.

Article 14 Records /Audit.

(1) Grantee shall establish procedures to ensure that all records pertaining to costs, expenses, and funds related to the Agreement shall be kept in a manner which is consistent with generally accepted accounting procedures. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Grantee shall maintain custody of time records, payrolls, and other data, as appropriate, to substantiate all services reported to the Commission as Contributed Services under this Agreement.

(2) All invoices, vouchers, statements of costs, and reports of disbursements of funds are subject to audit.

(3) Any payment may be reduced for overpayment(s) or increased for underpayment(s) on preceding invoices or vouchers. In the event of overpayment(s) ARC reserves the option of requiring the Grantee to reimburse the Commission for the amount of the overpayment(s).

(4) If Grantee has not provided either cash or contributed services of a value determined by the Commission to be sufficient to support the payments made by the Commission, or has failed to obligate or disburse any such sums for the purpose of this Agreement, the final payment shall be

reduced, or the Grantee shall make an appropriate refund.

(5) The Grantee agrees that the Federal Co-Chairman of the ARC, the Comptroller General of the United States, the ARC, or the duly authorized representatives of any of them shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Grantee involving transactions related to this Agreement.

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EXHIBIT D

\$ 81,000

| Ring | Sub Category | Site Name | Site Address City State and Zip | County | Build Party Area | EKA-BGN/IRU | EKN-BGN/Last Mile | Backbone Segment | Lateral Segment | Estimated Miles to Nearest Lateral/Backbone Route | Estimated Miles to Nearest 3rd Party CO or Backbone Route | OSP Cost Estimates | ARC County |
|------|--------------|------------------------------------|--|------------|------------------|-------------|-------------------|------------------|-----------------|---|---|--------------------|------------|
| 1 | Parks | Backhorn Lake State Resort Park | 4461 KY Highway 1811, Hazard, KY 41701 | Perry | EKN | N | Y | 1722 | N/A | 10.90 | 21.91 | \$ 1,774,710 | Y |
| 2 | Parks | Dale Hollow State Resort Park | 6371 State Park Road, Burkesville, KY 42717 | Cumberland | HGN | N | Y | 243 | 39 | 10.75 | 15.17 | \$ 1,228,770 | Y |
| 3 | Parks | Lake Cumberland State Resort Park | 940's State Park Road, Lambertown, KY 40291 | Russell | HGN | N | Y | 233 | N/A | 19.23 | 13.17 | \$ 1,556,010 | Y |
| 4 | Parks | Carters Caves State Resort Park | 844 Caveland Drive, Grayson, KY 41143 | Carters | DB/LLC | N | N | 177 | N/A | 5.23 | N/A | \$ 422,010 | Y |
| 5 | Parks | Fort Booneborough State Park | 4175 Booneboro Rd., Be Linnod, KY 40475 | Madison | DB/LLC | N | N | 347 | N/A | 6.23 | N/A | \$ 504,690 | Y |
| 6 | Parks | Cumberland Falls State Resort Park | 7351 Highway 90, Williamsburg, KY 40769 | Whitley | DB/LLC | N | N | 1735 | N/A | 11.50 | N/A | \$ 931,500 | Y |
| 7 | Parks | Grayson Lake State Park | 110 Grayson Lake Road, Grayson, KY 41141 | Carters | DB/LLC | N | N | 177 | N/A | 11.77 | N/A | \$ 993,370 | Y |
| 8 | Parks | Tatesville Lake State Park | 2667 Theasant Ridge Rd., Lenoir, KY 41140 | Lawrence | EKN | N | N | 181 | N/A | 7.55 | 9.16 | \$ 761,660 | Y |
| 9 | Parks | Carters Creek State Park | 3086 Smithboro Rd., HWY U, Sassafras, KY 41759 | Knox | EKN | N | N | 990 | 200 | 9.94 | 11.14 | \$ 905,840 | Y |
| 10 | Parks | Dawkins Line Rail Trail | Hwy 275, Swamp Branch, KY 41240 | Johnson | EKN | N | N | 181 | 106 | 9.16 | 11.67 | \$ 944,720 | Y |
| 11 | Parks | Dr. Thomas Walker Historical Site | 4979 Ky 459, Bathbourne, KY 40906 | Knox | DB/LLC | N | N | 1711 | 90 | 4.31 | N/A | \$ 349,110 | Y |
| 12 | Parks | Kingdom Come State Park | 5027 Park Road, Cumberland, KY 40823 | Harlan | DB/LLC | N | N | 240 | N/A | 2.03 | N/A | \$ 164,430 | Y |
| 13 | Parks | Pantysville Lake State Park | [Ky 40] 1511 KY Route 2275, Hat Gap, KY 41119 | Johnson | EKN | N | Y | 181 | 186 | 3.61 | 2.24 | \$ 184,130 | Y |
| 14 | Parks | Woodland State Historical Site | 275 Waveland Museum Tr., Lexington, KY 40514 | Layette | DB/LLC | N | N | 1776 | 185 | 0.29 | N/A | \$ 23,490 | N |

\$ 10,704,380

Parks Priority

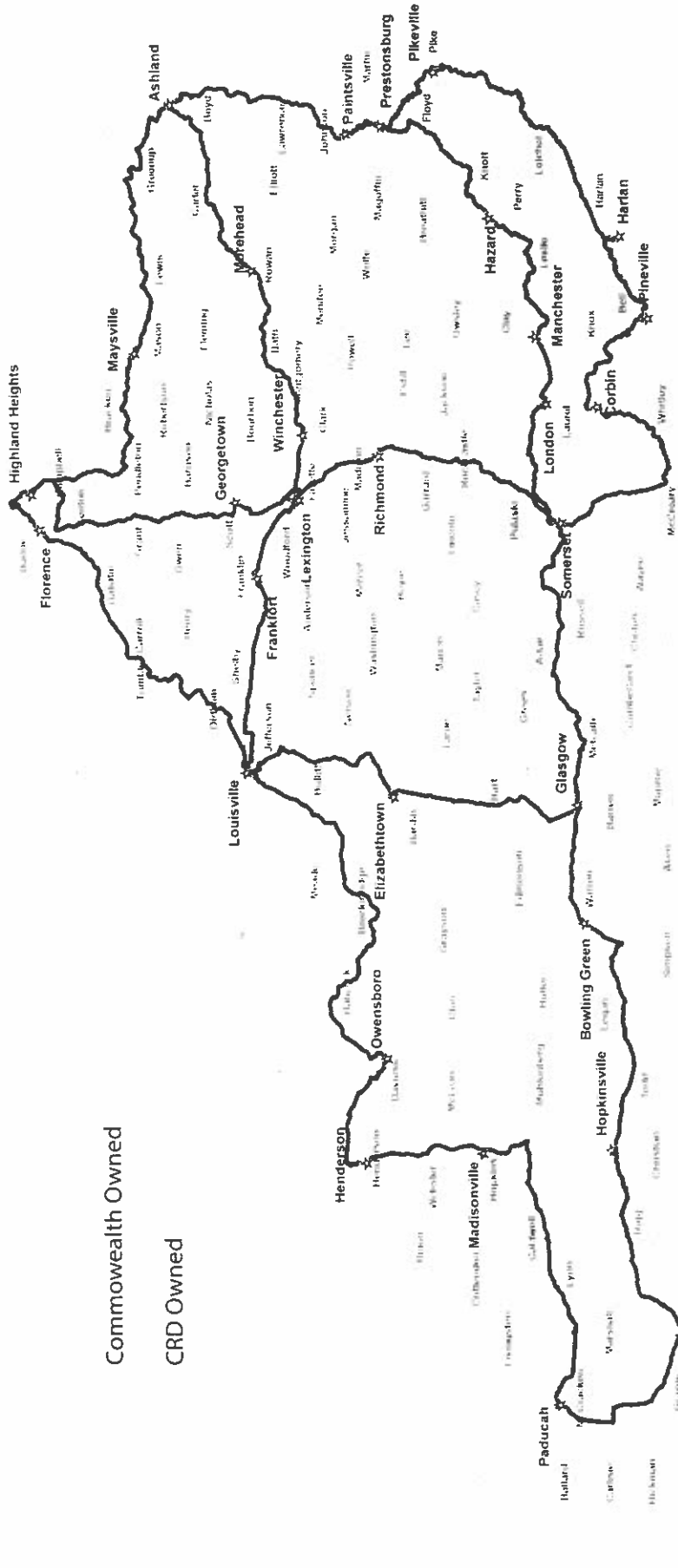
\$ 8,132,660

EXHIBIT E

KCNA

Kentuckywired

Commonwealth Owned
CRD Owned



Fiber Map

EXHIBIT F

Illustrative Example of the Calculation of Percentage Rent

1. Calculation of the Proration Percentage:

- a. The revenues received by KCNA pursuant to the Wholesaler Agreement with respect to fiber leased and/or services provided to or utilized by individuals and businesses to the extent of their physical locations within the I-75 Corridor by our under the Wholesaler Agreement during or in respect of the particular Fiscal Year equals \$_____.
- b. The total revenues received by KCNA pursuant to the Wholesaler Agreement during or in respect of the same Fiscal Year equals \$_____.
- c. Section 1.a. (\$_____) divided by Section 1.b. (\$_____) equals _____%.

2. Calculation of Net Wholesaler Revenues:

- a. The revenues received by KCNA pursuant to the Wholesaler Agreement with respect to fiber leased and/or services provided to or utilized by individuals and businesses to the extent of their physical locations within the I-75 Corridor by our under the Wholesaler Agreement during or in respect of the particular Fiscal Year equals \$_____.
- b. The administrative and operating expenses incurred by KCNA during the same Fiscal Year, multiplied by the Proration Percentage, equals \$_____.
- c. The payments made to the Service Provider pursuant to the Service Provider Agreement during the same Fiscal Year, multiplied by the Proration Percentage, equals \$_____.
- d. The capital expenditures made by KCNA pursuant to the Wholesaler Agreement to repair and maintain the portion of the NG-KIH System located within the I-75 Corridor that are not otherwise reimbursable to KCNA from third parties including, without limitation, state or local governments, equals \$_____.
- e. The amounts reserved or spend by KCNA for the System Refreshes during the same Fiscal Year, multiplied by the Proration Percentage, equals \$_____.

- f. The payments of principal and interest made to the Settlement Lender with respect to the Settlement Financing during the same Fiscal Year, multiplied by the Proration Percentage, equals \$_____.
- g. The payments made to either the Service Provider or the Design-Build contractor for supervening events during the same Fiscal Year, multiplied by the Proration Percentage, equals \$_____.
- h. Section 2.a. (\$_____), minus the sum of Section 2.b. (\$_____), 2.c. (\$_____), 2.d. (\$_____), 2.e. (\$_____), 2.f. (\$_____), and 2.g. (\$_____), equals \$_____.
3. 25% of the Net Wholesaler Revenues calculated pursuant to Section 2 above equals \$_____.
4. The Percentage Rent equals the greater of (a) \$40,000, or (b) the amount set forth in Section 3 above.