

## **AGREEMENT TO PROVIDE BROADBAND SERVICE IN MARSHALL COUNTY**

This Agreement to Provide Broadband Access to an Unserved Area of Marshall County ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date") by and between Marshall County, Kentucky ("the County") and West Kentucky and Tennessee Telecommunications Cooperative, Inc. ("WK&T"), having an office at 100 WK&T Technology Drive, Mayfield, Kentucky 42066. Marshall County and WK&T are sometimes referred to collectively as the "Parties" or individually as a "Party."

WHEREAS, WK&T intends to construct and operate a broadband network in portions of Marshall County that will enable WK&T to provide upon request broadband internet access service in an unserved area(s) of the County.

WHEREAS, the County desires to make available to Community Anchor Institutions ("CAIs") located in a designated unserved area broadband internet access service that will improve access to and use of broadband service by public safety agencies, schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and agencies, including charitable and faith-based institutions, that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low income, the unemployed, the aged, and students who would not otherwise have access to high speed internet service.

WHEREAS, because of the rural character of Marshall County and the high cost per customer of constructing and operating a broadband network in a lightly populated area, the County desires to purchase broadband internet access service for the benefit and use of Participating CAI's in the unserved area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

### **1. Definitions**

1.1 "WK&T's broadband network" refers to fiber optic cables and related equipment used by WK&T to provide broadband internet access service and includes a Network Termination Device ("NTD"), such as an Optical Network Terminal or other similar device, located on the premises of each customer.

1.2 "Community Anchor Institutions" as used herein refers to those entities described in the "Whereas" clauses of this Agreement and is intended to be consistent with the meaning of "community anchor institutions" in federal law, as amended, as interpreted and applied by the Federal Communications Commission and the Universal Service Administrative Co. Connect America Fund et al., "Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, 17700-01, paragraph 102, n. 163 (Nov. 18, 2011); see 47 U.S.C. § 1305(b)(3) and (4).

1.3 "Participating CAIs" refers to Community Anchor Institutions mutually selected by WK&T and Marshall County that are located in the designated unserved area and that subscribe to broadband internet access services offered by WK&T pursuant to this Agreement.

1.4 The "unserved area" is a designated geographic area(s) within Marshall County in which residents are without fixed, terrestrial broadband service offering at least download speeds of ten megabits per second (10 Mbps) and upload speeds of one megabits per second (1 Mbps).

## 2. Scope of Agreement

2.1 This Agreement sets forth the terms by which WK&T will offer broadband internet access service to Participating CAIs and other customers in the unserved area.

2.2 WK&T and the County will mutually agree upon and designate up to 2 CAIs in the unserved area that are eligible to participate in this program. Each Participating CAI must sign a service contract agreeing to receive service for a minimum of 24 months.

2.3 Once a sufficient number of Participating CAIs as determined by WK&T have signed service contracts, WK&T, upon obtaining all required authorizations, shall construct a broadband network that enables WK&T to provide broadband internet access service to each Participating CAI and, where economically feasible as determined by WK&T, to any requesting business and residential customer in the unserved area. Service to Participating CAIs will be provided at no charge but otherwise in accordance with the terms and conditions of WK&T's standard contract for comparable broadband service. If requested by a Participating CAI, the service contract may also include a provision setting forth the hours when broadband service will be provided at that location.

2.4 The term of the Agreement shall be 2 years, beginning on the Effective Date.

## 3. Condition Precedent

3.1 In order to insure that WK&T has the necessary funds to construct and operate a broadband network capable of providing broadband internet access to each of the Participating CAI's as described in Section 2.3, WK&T must certify to the County that WK&T has sufficient funds to complete and operate the network in the designated unserved area. Such certification is a condition precedent to the Parties' obligations under this Agreement. Should WK&T fail to provide such certification prior to beginning construction of the network, this Agreement is null and void.

## 4. Payment

4.1 In consideration for providing broadband internet access service for 2 years to the CAI's and expanding WK&T's broadband network into unserved areas, the County shall pay to WK&T \$625,000. The payment, in full, shall be due 30 days following the date when WK&T begins providing service to a Participating CAI. County's obligation to contribute \$625,000 under this section is expressly conditioned upon the approval and receipt of the grant monies



referenced in Resolution No. \_\_\_\_\_, executed by the Marshall County Fiscal Court on \_\_\_\_\_, 2021.

## 5. Warranties

5.1 WK&T warrants the equipment, installation and operation of its broadband network and related equipment, including the NTDs.

## 6. Indemnification and Limitation of Liability

6.1 WK&T hereby indemnifies and holds harmless the County against any and all liability or claims arising out of its lack of adequate regulatory or other authority or violation of any law, rule or regulation.

6.2 In all instances in which WK&T ("Indemnitor") is obligated to indemnify the County ("Indemnitee") as provided for in this Agreement, (i) Indemnitee shall give Indemnitor written notice of all claims, damage, losses, suits, and any other event which is in any way related to or asserted by Indemnitee as a basis for such obligation, which notice shall be given immediately after Indemnitee becomes aware thereof, (ii) Indemnitor shall have the sole right to control the defense of such matter and the sole right to determine the disposition of such matter; however, the Indemnitor will not enter into any settlement that imposes any liability or obligation on the Indemnitee without the Indemnitee's prior written consent, and (iii) Indemnitee shall furnish such available information and assistance as may be required by the Indemnitor to assist in disposition of such matter and no disposition or settlement shall be made by Indemnitee of any matter for which a claim or indemnification or to be held harmless will be made, without the prior written consent of Indemnitor, which shall not be unreasonably withheld, delayed or denied.

6.3 Notwithstanding any provision of this Agreement to the contrary, neither Party shall be liable to the other for any special, incidental, indirect, punitive or consequential damages, whether foreseeable or not, arising out of, or in connection with such Party's failure to perform its respective obligations or breach of its respective representations hereunder, including, but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of licensees, in each case whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other Party or any other cause whatsoever,

including breach of contract, breach of warranty, negligence, or strict liability, all claims with respect to which such special, incidental, indirect, punitive or consequential damages are hereby specifically waived.

## 7. Force Majeure

7.1 The obligations of the Parties hereto are subject to force majeure and neither Party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor problems, accident, acts of God, fire, flood, adverse weather conditions, material or facility shortages or unavailability not resulting from such Party's failure to timely place order therefore, lack of transportation, governmental codes, ordinances, laws, rules, regulations or restrictions, condemnation or exercise of rights of eminent domain, war or civil disorder, acts of terrorism, labor shortages resulting from reserve or active military status or employees or contractors or any other cause beyond the reasonable control of either Party.

## 8. Notice

8.1 All notices under this Agreement shall be in writing and shall be deemed to have been given: if by mail, three (3) days after deposit in the U.S. Mail, Certified Mail, Postage Prepaid, Return Receipt Requested; if by overnight courier, one (1) day after delivery to an overnight courier service, fee prepaid, and addressed as provided as follows:

If to West Kentucky and Tennessee Telecommunications Cooperative:

WK&T Telecommunications Coop  
100 WK&T Technology Dr.  
Mayfield, KY 42066

If to Marshall County:

Marshall County, Fiscal Court  
1101 Main St.  
Benton, KY 42025

9. Assignment; Succession

9.1 Neither Party shall assign this Agreement, or its rights, licenses or obligations hereunder to any third Party without the express written consent of the other Party, which consent shall not be unreasonably conditioned or withheld. Notwithstanding the foregoing, WK&T may assign or transfer this Agreement to a legal successor to this Agreement. For purposes of this Agreement, the term "legal successor" shall include an affiliate, subsidiary, parent company, or purchaser of all or substantially all of WK&T's assets. In the event WK&T assigns or transfers this Agreement to a legal successor, it shall so notify the County within three (3) days of the assignment. Any assignee for which such consent may be granted shall be subject to all terms and conditions of this Agreement.

9.2 This Agreement, and each of the Parties, respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and permitted assigns.

10. Governing Law

The rights and obligations of the Parties hereunder shall be construed in accordance with the laws of Kentucky.

11. Entire Agreement

This Agreement, shall constitute the entire agreement between the Parties hereto with respect hereto and collectively constitute the entire agreement and supersede all agreements previous to this Agreement with regard hereto, whether written or oral, between WK&T and the County. This Agreement may not be amended or otherwise altered except by written agreement between the Parties hereto.

SIGNATURES ON NEXT PAGE



IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date(s) recorded below.

West Kentucky and Tennessee Rural  
Telecommunications Cooperative, Inc.

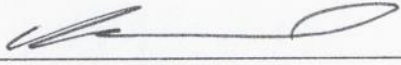
By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Marshall County

By:  \_\_\_\_\_

Name: Kevin Noal

Title: Sub C Executive

Date: 9/21/21