

BROADBAND STUDY AGREEMENT

This Broadband Study Agreement ("Agreement") is entered into this ___ day of _____, 2020 ("Effective Date") by and between Marshall County, Kentucky (hereinafter "the County" or "Marshall County") and West Kentucky and Tennessee Telecommunications Cooperative, Inc. (hereinafter "WK&T"), having an office at 100 WK&T Technology Dr., Mayfield, Kentucky 42066. Marshall County and WK&T are sometimes referred to collectively as the "Parties" or individually as a "Party."

WHEREAS, WK&T desires to conduct an engineering study of whether or not it is feasible to construct and operate a broadband network in Marshall County that will enable WK&T to provide upon request and where economically feasible broadband internet access service to any and every residence and business within the County, not in city limits and not in WK&T territory today; and

WHEREAS, because of the rural character of Marshall County and the high cost of determining whether it is feasible to construct and operate a broadband network throughout the County, Marshall County desires to enter into this Agreement for the purpose of contributing to the cost of such a study.

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 who subscribes to WK&T's broadband internet access service.

2. Scope of Agreement

2.1 This Agreement sets forth the terms by which WK&T will partner with the county to determine whether it is feasible for WK&T to offer broadband internet access service throughout the County and explore all possible avenues of funding sources.

2.2 WK&T will hire an engineering firm to review the cost and feasibility of providing broadband internet access service to subscribers throughout the County as calculated and designed by WK&T.

2.3 The term of the Agreement shall be two (2) years, beginning on the Effective Date. During the term of the Agreement, the County will not enter into a similar arrangement with another provider of internet broadband access. During this time, both parties will explore grant and other funding avenues.

3. Payment

3.1 The estimated cost of the engineering study is \$30,000. The County will contribute \$15,000 and WK&T will contribute \$15,000. If the cost of the study is in excess of \$30,000, WK&T will contribute the excess amount.

4. Indemnification and Limitation of Liability

4.1 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.

4.2 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.

4.3 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.

5. Force Majeure

5.1 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.

6. Notice

6.1 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
Phone: 270-527-4750

7. Assignment; Succession

7.1 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.

7.2 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.

8. Governing Law

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

9. Entire Agreement

9.1 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.

Marshall County

By: _____

By:  _____

Name: _____

Name: KEVIN ROAL

Title: _____

Title: SENIOR EXECUTIVE

Date: _____

Date: 9/21/21