

NETWORK COOPERATION AND SERVICES AGREEMENT

This Network Cooperation and Services Agreement (the "Agreement") is entered into this __ day of __, 2013 (the "Effective Date") by and between the City of Overland Park, Kansas, a Kansas municipality (the "City") and Google Fiber LLC, a Kansas limited liability company ("Network Provider"), on behalf of itself and its subsidiaries (collectively, the "parties" and each, individually, a "party").

RECITALS

A. Network Provider has announced plans to build and operate fiber networks in one or more cities in the United States, in an effort to improve Internet access in such cities, to foster new high-speed applications, and to introduce new methods of delivering video services.

B. Based on the multiple factors considered by Network Provider, including the City's goals identified below, Network Provider has selected the City as a location to construct and deploy a fiber network.

C. Prior to Network deployment, Network Provider will be granted a state-issued video service authorization by the Kansas Corporation Commission pursuant to the Kansas Video Franchise Act, K.S.A. 12-2003 *et. seq.*, (the "Act"), to which Network Provider agrees to be bound, and which gives Network Provider access to City rights of way, subject to the City's Right of Way Ordinance.

D. Network Provider will remit to the City a 5% video service provider fee on gross revenues generated in the City under the terms of its video service franchise and K.S.A. 12-2024 as amended from time to time.

E. The City has a direct interest in improving the quality of life of its citizens through improvements to essential infrastructure and services within its boundaries and recognizes that improved access to high-speed broadband and video services will provide substantial value to the City and its citizens.

F. The City regularly enters into agreements with third parties that will improve the quality of life in the City.

G. Network Provider wishes to document certain understandings with the City to enable Network Provider to efficiently construct and deploy the Network.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound, hereby enter this Agreement as set forth below:

1. Design and Construction of the Network.

1.1. Network Description.

1.1.1 **Fiber Network.** Network Provider intends to design, construct and install an up to 1 Gigabit capable fiber network (the "Fiber Network") within the geographic boundaries of the City of Overland Park, Kansas (the "Market Area"). Concurrent with or following completion of the Fiber Network, Network Provider may then design, construct and install a WiFi network (the "WiFi Network") within the Market Area. The terms "Fiber Network" and "WiFi Network" shall sometimes be collectively referred to as the "Network." In the event Network Provider is able to successfully construct the Fiber Network within the scope of its defined plans and objectives, Network Provider intends to utilize the Fiber Network for commercial purposes to sell and provide various broadband and video services to residents within the Market Area (the "Services"). Subject to Network Provider's discretion to construct the WiFi Network, Network Provider may decide to deploy the WiFi Network within limited sections of the Market Area to be used for public WiFi access and subsequently for commercial purposes.

1.2. **Network Design and Construction.** Network Provider will design and construct the Network in compliance with all applicable regulatory and permitting requirements and processes, including without limitation, O.P.M.C. Chapter 13.12 – Managing the Use and Occupancy of the Public-Right-of-Way, and all amendments thereto (the "Right-of-Way Ordinance"), and any applicable zoning regulations in the City's Unified Development Ordinance. Network Provider intends to use various construction techniques, which may include, but are not limited to, the following: (i) traditional open trench or boring; (ii) slot cut micro-trenching or trenching and boring; (iii) fiber attached to buildings or aerial structures; and (iv) installation of fibers within existing utility infrastructure. City agrees to cooperate with Network Provider in a non-discriminatory and competitively-neutral fashion to review these and any other reasonable construction methods proposed by Network Provider, in accordance with the regulations pertaining to locating facilities in the City's right of way as set forth in the City's Code, including the Right of Way Ordinance and all other applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties. Construction and other work related to the Network may be completed by independent contractors and representatives engaged by Network Provider.

1.3. **Network Deployment and Fiberhoods.** Network Provider intends to define separate geographical areas within the Market Area (each, a "Fiberhood") based on its Network design and construction plans. Following construction of the Network, Network Provider will identify the specific Fiberhoods where the Network may first be deployed and schedule such deployment to residents within such Fiberhood. Deployment of the Network and Services within a Fiberhood shall enable Network Provider to offer each resident of single family homes and units within multiple-family dwelling units the opportunity to purchase Services from Network Provider for standard fees established by Network Provider. The Services will be provided by Network Provider to subscribing residents pursuant to the terms of Network Provider's standard terms of service for the Service ("Terms of Service"). Although it is Network Provider's present intent to complete construction of the Network and deploy the Services throughout various Fiberhoods within the Market Area as soon as reasonably practicable, Network Provider's plans are subject to change due to various business and market considerations and could result in delay, deferment or complete cancellation of the project in Network Provider's sole discretion.

1.4. Public Services.

1.4.1 **Scope of Public Services.** In consideration for those rights granted to Network Provider under the terms of the Attachment Agreement and License Agreement (as those are defined below), Network Provider will, at such time as Network Provider installs a Fiber Network in the City, use commercially reasonable efforts to provide the following services to the City without charge for a specified term: (i) up to 1 Gigabit capable broadband Internet services through the Fiber Network to various public facilities as more particularly set forth in Section 1.4.2 below (the "City Broadband Services") and (ii) subject to Network Provider's decision to deploy the WiFi Network, public WiFi access through the WiFi Network within a limited number of areas open to the public as set forth in Section 1.4.3 below (the "City WiFi Services"). The City Broadband Services and the City WiFi Services may be referred to collectively herein as the "City Services." City agrees and acknowledges that the City Broadband Services will be the same as those broadband services to be provided to residential customers and are solely intended to supplement any broadband and similar services that are currently provided or otherwise may be required for any Public Site (as defined below). The City Broadband Services are not intended for and should not be used for any emergency or mission critical services or functions. The City understands and acknowledges that Network Provider's Network construction plans will be based on optimal deployment of the Network to serve residential users and shall generally not be changed to accommodate the City Services. Additionally, this Section 1.4.1 will in no way impact the effectiveness or meaning of Section 7.1 below.

1.4.2. **City Broadband Services.** Network Provider shall use commercially reasonable efforts to provide, without charge during the Service Term (as defined in Section 1.4.4 below), City Broadband Services to a limited number of public facilities to be mutually agreed upon by the City and Network Provider based on a list of proposed sites created by the City ("Public Sites"), each of which shall be subject to the conditions and requirements set forth below. The Public Sites shall primarily be public or non-profit facilities that provide access and services directly to citizens (e.g., schools, libraries, civic buildings and recreational centers). Each Public Site, shall be subject to reasonable acceptance of Network Provider during the design and construction of the Fiber Network based on (i) the proximity of the Fiber Network to each public site within a Fiberhood; and (ii) reasonable technical requirements and cost considerations as determined by Network Provider. In the event Network Provider determines at any time that delivery of City Broadband Services to any Public Site is not feasible for any reason, Network Provider shall notify the City and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution to enable Network Provider, in its sole discretion, to deliver services to any specific Public Site or an alternative Public Site. The City, or the respective end-user of the Public Site, shall be responsible for any drop costs for each Public Site and other construction and upgrade costs related to each Public Site that may be required to enable a Public Site to receive the City Broadband Services.

1.4.3. **City Public WiFi Services ("Hotspots").** In the event Network Provider decides to construct a WiFi Network, Network Provider shall use commercially reasonable efforts to deploy the WiFi Network within a limited number of publicly accessible areas within the Market Area to be agreed upon by the City and Network Provider, based on a list of proposed areas created by the City ("WiFi Areas") which shall be subject to the conditions and

requirements set forth below. Each WiFi Area shall be subject to reasonable acceptance of Network Provider during the design and construction of the WiFi Network based on (i) the design and proximity of the WiFi Network to such WiFi Area; and (ii) market research conducted by Network Provider; and (iii) reasonable technical requirements and cost considerations as determined by Network Provider. The City shall be responsible for any construction and make ready costs related to any City or other infrastructure within the WiFi Area that may be required to enable Network Provider to install and operate the equipment for the City WiFi Services, provided that the City has approved such costs in advance. Network Provider agrees that City WiFi Services shall be free to users within the WiFi Areas (and not just Network Provider's customers). In the event Network Provider determines that delivery of City WiFi Services to any WiFi Area is not feasible due to technical or cost considerations, Network Provider shall notify the City and the parties shall meet and attempt to identify a mutually satisfactory solution to enable Network Provider to deliver services to any specific WiFi Area or an alternative area. The City agrees and acknowledges that Network Provider may decide, in its discretion, not to construct the WiFi Network or begin or complete the design, construction or deployment of the WiFi Network until it has fully completed construction and deployment of the Fiber Network. Following deployment of the WiFi Network within the initial WiFi Areas, as described above, Network Provider may, in its sole discretion, deploy the WiFi Network within other WiFi Areas throughout the Market Area in accordance with the terms of the Attachment Agreement (as defined in Section 2.3 of this Agreement) at its sole cost and expense.

1.4.4. **Terms of City Services.** Network Provider agrees to begin deployment of the City Broadband Services as soon as reasonably practicable following the date Network Provider completes deployment of the Services in the Fiberhood where the applicable Public Site is located. The City Services shall be provided free of charge for a maximum term of ten (10) years from the Effective Date of this Agreement or until this Agreement is terminated in accordance with its terms (the "Service Term"). Any City Services delivered by Network Provider shall be provided in accordance with Network Provider's standard practices and shall be subject to Network Provider's then applicable Terms of Service (other than Terms of Service relating to fees and charges, which shall be governed by this Agreement), subject to any reasonable changes that may be required by applicable law. Following expiration of the Service Term, to the extent Network Provider continues to generally operate the Network and deliver Services in the Market Area, City may elect to continue to receive City Broadband Services and WiFi Services from Network Provider at its then-current rates for comparable commercial services, subject to a mutually acceptable written agreement of the City and Network Provider or the Network Provider may agree with the City to continue to provide such City Services to offset Annual Structure Attachment Fees and Annual Conduit Rental fees, as each are defined in the Attachment Agreement (defined below).

2. City Support and Commitments.

2.1. **Permit Processing and Inspections.** Subject to the limitations and requirements of the Right-of-Way Ordinance and other applicable laws, ordinances and regulatory requirements, the City agrees to provide the following in a competitively-neutral and non-discriminatory fashion:

2.1.1. **Permit Processing.** The City will provide diligent and expeditious review and determinations of all applications for permits submitted by Network Provider in connection with the Network, including requests for any approvals necessary for construction, maintenance or other work within the public right-of-way and utility easements or related to access to City's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

2.1.2. **Inspections.** In order to facilitate and ensure continuity and efficiency of inspections, the City will designate qualified and knowledgeable inspectors, with the authority to inspect all construction, maintenance and related work in connection with each applicable permit to be issued by the City. The City will use reasonable efforts to ensure that all such inspections are completed in an expeditious manner in accordance with applicable ordinances and the City's processes and practices made available to all third parties.

2.2. **Right-of-Way, City Right-of-Way Assets; Utility Easements and Infrastructure for Construction.** The parties agree that Network Provider is subject to the City Code, including the Right-of-Way Ordinance, and that Network Provider will have access to the right of way in accordance with its legal authority to use the City's public rights of way in connection with its deployment, operation or installation of the Network. Additionally, the Parties may mutually agree to provide Network Provider with limited access to particular assets and infrastructure of the City, including City light poles (if applicable, but excluding traffic signals), conduit and utility easements, to the extent such assets and infrastructure and/or utility easements are available, have adequate space (as reasonably determined by the City), and are determined by the parties as reasonably necessary or desirable for the Network (collectively "City's Right-of-Way Assets"), and provided that (a) any such City assets and infrastructure shall be provided in a competitively-neutral and non-discriminatory fashion, and (b) that such use does not interfere with the City or any other governmental entities' current or future use of or need for use of the same. Any use of City light poles and similar infrastructure will be subject to the terms of any applicable Attachment Agreement referenced in Section 2.3 below. Subject to and in accordance with the City's Right-of-Way Ordinance, the City acknowledges that Network Provider and its contractors shall have access to and the right to perform construction and other work related to the Network within the City's public right-of-way, and subject to the terms of any applicable Attachment Agreement as referenced in Section 2.3 below. All such access will be provided in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties. Network Provider will have immediate access to its facilities in the public right-of-way and in the City's Right-of-Way Assets in the event of an emergency situation.

2.3. **Pole and Infrastructure Attachment Agreements.** The City agrees and acknowledges that Network Provider may desire certain additional rights to (i) place and maintain cables, equipment and facilities within the Market Area and install such fiber and WiFi cables, equipment, and facilities on various City-owned or controlled light poles (excluding traffic signals), and similar infrastructure (if applicable); and (ii) place and maintain equipment huts on certain real property sites owned by the City to be used by Network Provider for operation of the Fiber Network (each, a "Network Hut"). Network Provider's rights are subject to the use rights and related obligations related to the Fiber Network and the WiFi Network as set

forth in any Structure Attachment and Conduit Occupancy Agreement to be signed by both parties, substantially in the form attached hereto to as **Exhibit A** (the “Attachment Agreement”). Network Provider agrees and acknowledges that the Attachment Agreement provides Network Provider with its legal authority to use certain City-owned or controlled light poles (excluding traffic signals), underground conduit, and similar infrastructure (if applicable). The City and Network Provider agree that if the City, in its sole discretion, shall allow any Network Hut(s) on City-owned property, then the placement and use of each Network Hut by Network Provider shall be subject to the terms and conditions of a license agreement to be signed by both parties (the "License Agreement"), substantially in the form attached hereto as **Exhibit B**.

2.4. Map Data and Valid Address Data. The City agrees and acknowledges that Network Provider will require certain map data and address data in order to begin and complete construction and deployment of the Network. Most, if not all of this data will be provided by Johnson County, but the City agrees to cooperate with Network Provider in obtaining any such publicly available map and address information in reasonable form requested by Network Provider, and such other similar publicly available information reasonably requested by Network Provider from time to time (“Map and Address Data”), as it would for any other third-party Provider in the normal course. Network Provider shall pay directly to Johnson County or any other agency providing the Map and Address Data any reasonable fees generally assessed to all third parties for copying or data reproduction for Map and Address Data provided to Network Provider, to the extent said fees are approved by Network Provider. Network Provider agrees and acknowledges that the City may only provide Map and Address Data in accordance with all applicable law, regulations and ordinances and the City’s standard processes and practices generally made available to all third parties in accordance with applicable law and that may be made generally available by the City to other third parties. The Map and Address Data shall not include resident names or other personally identifiable information.

2.5. Public Outreach. Network Provider intends to independently promote and market the Network within the City. In addition to assisting with efforts to inform City residents about proposed activities in the public right-of-way related to the Network build-out, the City may participate in non-marketing, non-promotional educational programs for local residents concerning the build-out and deployment of the Network and the potential resulting impacts on the community. Provided any such activity is provided (a) in a competitively-neutral and non-discriminatory fashion, and (b) in accordance with applicable law and its common practices, the City’s outreach may include, direct mailings, community meetings, and other means of communication. Use and distribution of either party’s name and marks shall be subject to such party’s prior written consent, which consent may be withheld in said party’s sole discretion.

2.6. Project Announcement. The City and Network Provider will cooperate on a joint publicity and public relations initiative related to the announcement of the Network (the “Public Announcement”). Subject to the KORA, the City agrees that it shall not, prior to the Public Announcement, issue any press releases or make any public announcements related to the Network without the prior written consent of Network Provider, which consent may be withheld in Network Provider’s sole discretion.

2.7. **Fees and Charges.** Except for and for so long as the Network Provider pays (i) any applicable franchise fees under State law, (ii) any applicable right of way permit or zoning and building permit fees, (iii) any street excavation fees, (iv) any flood plain permit fees, (v) any fees and costs under any applicable Attachment Agreement and License Agreement, and (vi) any other fees and costs otherwise required of any third party for comparable City services, the City agrees that it shall not, during the Service Term, impose on Network Provider any other fees, charges and/or any in-kind services for the City's support and services described in this Section 2 above, provided that all payment of fees and costs shall be in accordance with applicable ordinances and the City's common processes and practices made available to all third parties.

3. **Intellectual Property Rights.** Network Provider shall be the owner of and will retain all Intellectual Property Rights (as defined below) created, conceived, prepared, made, discovered or produced in connection with the Network and Services. "Intellectual Property Rights" means worldwide common law and statutory rights associated with (i) patents and patent applications; (ii) works of authorship, copyrights, copyright applications, copyright registrations and "moral" rights; (iii) the protection of trade and industrial secrets and confidential information; (iv) trademarks, service marks, slogans, logos, sound marks, motion marks, trade dress, domain names, trade names, corporate names, or indicia (v) other proprietary rights relating to intangible intellectual property (specifically excluding trademarks, trade names and service marks); (vi) analogous rights to those set forth above; and (vii) divisions, continuations, renewals, re-issuances and extensions of the foregoing (as applicable), including all foreign counterparts of the foregoing, now existing or hereafter filed, issued or acquired.

4. **Confidentiality.** Reference is hereby made to the Kansas Open Records Act (the "KORA") which is found at K.S.A. 45-215 *et. seq.*, and Network Provider hereby understands and agrees that this Agreement and the terms set forth in this Section 4 shall be limited by and subject to the KORA.

4.1. **Confidential Information.** The term "Confidential Information" shall include all written communications between the Parties related to the Network to include all plans, documents, materials and data provided by Network Provider in connection with and related to the design, construction, deployment, operation and/or technical aspects of the Network, subject to the provisions of the KORA and other legal requirements. Confidential Information may not be purposefully disclosed by either party to any person other than its trustees, directors, officers, employees and attorneys of such party or agents of such party who have a need-to-know and are subject to similar confidentiality obligations. The Parties shall make a good faith effort to maintain the confidentiality of Confidential Information. These confidentiality obligations shall no longer apply to the extent Confidential Information (i) becomes publicly available other than through the receiving party; (ii) is required to be disclosed pursuant to a governmental or judicial rule, order, law, statute or regulation or the rule or regulation of a stock exchange; (iii) the recipient of the Confidential Information independently develops such information without access to or use of the Confidential Information; or (iv) becomes rightfully available to the receiving party without restriction from a third party.

4.2. **Legal Process.** If either party is required by law or similar regulatory process to disclose any Confidential Information, to the extent permitted, it will provide the other party with

prompt prior written notice of such request or requirement so that such party may seek an appropriate protective order or waive compliance with this Section 4. The recipient of such notice must respond in writing to such request as soon as possible, but in any event no later than three (3) business days of receipt of such notice, and either consent to such disclosure or advise of its election to seek an exception from disclosure. If a party chooses to seek an exception for preventing disclosure, the other party will refrain from disclosing such information (unless legally compelled to do so, by the KORA or otherwise) until the request for an exception from disclosure is resolved, and will then comply with the terms of any validly issued order to release the information.

4.3 **Applicable Disclosure Laws.** The parties acknowledge that this Agreement and the actions taken by the parties in furtherance of their mutual obligations under this Agreement are subject to the KORA and the Kansas Open Meetings Act (the "KOMA"), and a party's compliance with the KORA or the KOMA shall not be deemed to be a default under this Agreement.

4.4 **Term of Restriction.** Subject to the KORA, each party's obligations under this Section 4 shall remain in effect during the term of this Agreement and for a period of two (2) years after its termination for any reason, except with respect to information considered or deemed to be a trade secret under applicable law for which each party's obligations of confidentiality will remain in effect for so long as such information continues to constitute a trade secret under applicable law.

5. **Term and Termination.**

5.1. **Initial Term and Renewal.** The term of this Agreement shall begin on the Effective Date and shall expire at the end of the Service Term (as defined in Section 1.4.4), unless earlier terminated in accordance with the terms of this Agreement or renewed by mutual written agreement of the parties.

5.2. **Termination.**

5.2.1. **Termination for Convenience.** Either the City or Network Provider may terminate this Agreement at any time by providing sixty (60) days prior written notice to the other.

5.2.2. **Termination for Default.** Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provided that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; or (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof.

5.2.3. **Survival.** The following provisions shall survive any expiration or termination of this Agreement: Sections 3, 4, 5, and 7.

6. Representations and Warranties; Disclaimer of Warranties.

6.1 **Representations.** Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; (iii) and that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party. Network Provider and the City each agree to comply with all applicable laws and regulations. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time.

6.2 **Disclaimer of Warranties.** EXCEPT AS OTHERWISE SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THE NETWORK, THE CITY'S RIGHT-OF-WAY ASSETS, ANY MAP AND ADDRESS DATA PROVIDED OR THIS AGREEMENT. NETWORK PROVIDER DOES NOT WARRANT THAT IT SHALL COMPLETE CONSTRUCTION OR DEPLOYMENT OF THE NETWORK OR OPERATE THE NETWORK OR OFFER SERVICES OR CITY SERVICES FOR ANY SPECIFIED TERM. NETWORK PROVIDER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON INFRINGEMENT RELATED TO THE NETWORK, THE SERVICES, THE CITY SERVICES OR THIS AGREEMENT.

7. Limitations of Liability. EXCEPT FOR ANY BREACH OF INTELLECTUAL PROPERTY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, ELECTED OFFICIALS, MUNICIPAL STAFF, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. IN PARTICULAR WITH RESPECT TO CONSTRUCTION, NETWORK PROVIDER'S LIABILITY TO THE CITY FOR PROPERTY DAMAGE CAUSED BY ANY CONSTRUCTION WORK PERFORMED BY NETWORK PROVIDER WILL BE LIMITED TO THE COST OF REPAIRING THE DAMAGED PROPERTY.

NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, (A) THE CITY DOES NOT WAIVE ANY IMMUNITY FROM PUNITIVE DAMAGES AVAILABLE UNDER APPLICABLE KANSAS LAW, (B) THE PARTIES AGREE THAT THE TERMS OF THIS SECTION 7, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.), THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.) AND THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6101 ET SEQ.), AND ALL AMENDMENTS TO SUCH LAWS, RESPECTIVELY, AND (C) ANY LIABILITY OF THE CITY HEREUNDER SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO.

7.1 **Disputes and Defaults.** In no event shall a dispute, default or alleged default under the License Agreement or any Attachment Agreement entered into between the City and Network Provider constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement. In no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the License Agreement or any Attachment Agreement. Further, any termination or expiration of the rights and obligations under the License Agreement or any Attachment Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the License Agreement or any Attachment Agreement. This Section 7.1 may be amended or waived by the parties hereto at any time only by execution of a written instrument referencing this Section 7.1 and signed on behalf of each of the parties hereto.

8. General Terms.

8.1 **Governing Law and Jurisdiction.** This Agreement and any action related to this Agreement will be governed by the laws of the State of Kansas. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of Kansas, Johnson County, or if it has or can acquire jurisdiction, in the United States District Court for the District of Kansas. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum. The parties acknowledge and agree that this Agreement is not a grant of any license, easement, or franchise by the City to Network Provider. The parties agree that it is their mutual intent that this Agreement conforms to applicable local, state, and federal law regulating the covenants and obligations contained in this Agreement. Any term contained in this Agreement inconsistent with such law is severable and governed by and subject to the applicable local, state, or federal law.

8.2 **Dispute Resolution.** Except as otherwise specifically provided in this Agreement, all disputes, disagreement or controversies arising in connection with this Agreement will first be resolved through good faith negotiations in order to reach mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or equity.

8.3. **Notices.** All notices must be in writing and delivered to the addresses and persons specified below. Notice will be deemed delivered (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

To the City:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
Attn: City Clerk

With a copy to:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
Attn: City Manager

And:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
Attn: City Attorney

To Network Provider:

Google Fiber Kansas, LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: General Manager
Email: googlefibernotices@google.com
Fax: (650) 618-1806

With a copy to:

ATTN: Google Fiber Legal Department
Email: legal-notices@google.com
Fax: (650) 618-1806

8.4. **Assignment.** Except as set forth below, neither party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the prior written consent of the other party. Network Provider may, upon written notice to City, assign this Agreement or any or all of its rights and obligations under this Agreement to (i) any Affiliate (as defined below) of Network Provider; (ii) any successor in interest to Network Provider in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of Network Provider's assets related to the Network. "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with Network Provider; and (ii) "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

8.5. **Force Majeure.** Neither party will be deemed in Default under this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms, earthquakes or other natural occurrences, strikes or other labor unrest of third parties, power failures, terrorist activity, nuclear or other civil or military emergencies, acts of legislative, judicial, executive or administrative authorities, or any other circumstances that are not within its reasonable control and ability to prevent (a "Force Majeure" event). In event of

a Force Majeure event, the party who first becomes aware of the event must promptly give written notice to the other party of such event. When either party becomes aware of the end of the Force Majeure event, it must give notice to the other party. If the period of non-performance exceeds sixty (60) days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been affected may terminate the Agreement on written notice to the other party.

8.6. **Independent Contractors.** The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership or joint venture between the parties.

8.7. **Severability.** If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the fullest extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

8.8. **Waiver.** A waiver of any provision of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No failure or delay by either party in exercising any option, right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.9. **Remedies Cumulative.** Except as provided otherwise in this Agreement, all rights and remedies granted to each party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such party at law or in equity.

8.10. **Further Assurances.** In addition to any other obligations set forth in this Agreement, each party agrees to take such actions (including the execution, acknowledgment and delivery of documents) reasonably requested by the other party for the implementation or continuing performance of this Agreement.

8.11. **Entire Agreement; Amendment; Signatures.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by both parties. This Agreement is for the exclusive benefit of the parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the

provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub. L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch. 96.

9. **Powers of the City.** Notwithstanding anything set forth herein to the contrary, no provision contained herein, or in the other documents between the parties which are referenced herein, shall in any manner diminish or usurp the inherent rights and powers of City to act in its capacity as a public body.

The parties agree to the terms of this Agreement and have caused this Agreement to be signed by their duly authorized representatives.

GOOGLE FIBER KANSAS, LLC.

1600 Amphitheater Parkway
Mountain View, California 94043

(Authorized Signature)

(Name)

(Title)

THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

(SEAL)
ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Mike Santos
City Attorney

STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT

This Structure Attachment and Conduit Occupancy Agreement (the "Agreement"), is made and entered into this ____ day of ___, 2013, by and between the City of Overland Park, Kansas a municipal corporation duly organized under laws of the State of Kansas ("Licensor" and sometimes referred to as "City"), and Google Fiber Kansas, LLC, a Kansas limited liability company ("Licensee") (each a "Party" and collectively, the "Parties").

RECITALS

A. Licensor owns, leases, or operates light poles and other structures and improvements on real property in the City of Overland Park, Kansas ("Structures"); and

B. Licensor owns, leases or operates, a network of conduits and ducts ("Conduit"); and

C. Licensor, as the municipal government of the City has the ownership of land or other property ("Public Property"); and

D. Licensor has the right to use the City's public right of way (a "Right-of-Way") and Public Property to place and to provide passage to Structures, Conduits, and other facilities and equipment; and

E. Licensee proposes to furnish unique, ultra high-speed communications services in the City, in accordance with the Network Cooperation and Services Agreement between the Parties, and desires to place and maintain antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort necessary or desirable for Licensee to operate its businesses as such businesses may evolve, develop, or change at any time while this Agreement remains in effect ("Equipment") on Licensor's Structures and in Licensor's Conduits, and to access those Structures and Conduits on or in Public Property and the Right-of-Way of Licensor throughout Overland Park, Kansas; and

F. In consideration for Licensee agreeing to provide City Broadband Services and City WiFi Services, as each are defined in the Network Services and Cooperation Agreement, in Overland Park, Kansas, and Licensee paying the Rental Fees (as defined below), Licensor desires to provide Licensee with a non-exclusive license for the use of space on or in its Structures and Conduits and, for purposes of access to its Structures and Conduits, on or in Public Property and the Right-of-Way of Licensor throughout Overland Park, Kansas; and

G. Certain third party utility service providers operate within the City, and Licensee acknowledges that it must negotiate pole attachment agreements with said third parties to govern Licensee's attachments to such third party utility service providers' poles or structures independent of this Agreement with Licensor.

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

ARTICLE I. SCOPE OF AGREEMENT

Section 1.01 Service Area

This Agreement shall apply to Licensor Structures, Conduits, and Right-of-Way now existing or hereafter constructed or obtained throughout Overland Park, Kansas.

Section 1.02 Authorization

Subject to the provisions of this Agreement, Licensor grants to Licensee and Licensee accepts from Licensor (i) a non-exclusive license to occupy, place, and maintain Licensee's Equipment on certain Licensor Structures to be agreed upon by Licensor and Licensee, (to be offset or paid for by Licensee as set forth on Exhibit 1 attached hereto), whether City-owned or leased (to the extent permitted pursuant to any such leases); and (ii) a non-exclusive license to occupy, place, and maintain Licensee's Equipment in certain Licensor Conduits. Placement of Licensee's Equipment on light poles and in Conduits shall be at the reasonable discretion of Licensor as set forth in Section 2.02 below, subject to Licensor's Permit requirements and state and federal law; placement of Licensee's Equipment on all other Structures and Public Property shall be at the sole discretion of Licensor so long as Licensee is treated in a competitively neutral, non-discriminatory manner as compared with other similarly situated third-parties.

Section 1.03 No Property Right

No use of Licensor's Structures or Conduits, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership of property rights in such Structures or Conduits or right to use or direct the use or limit the use of such Structures or Conduits except as expressly set forth herein. Licensor reserves to itself the first priority in the use of Structures and Conduit. In the event of any conflict between the use of a Structure or Conduit by Licensor and Licensee, the use of a Structure or Conduit for its intended public purpose and/or any other essential City services to residents of the City shall prevail and have priority over Licensee's use of the Structure or Conduit.

Section 1.04 Discrimination

Licensor shall treat Licensee in a competitively neutral, non-discriminatory manner as compared with other attachers to its Structures and Conduits. Upon Licensee's request, Licensor shall provide Licensee with a copy of all agreements where Licensor makes access to its Structures and Conduits available to third-parties in accordance with the notice requirements herein. In the event that Licensor makes available any terms or conditions for Structures or Conduit which are, in the context of the same or similar circumstances, more favorable to one or more other attachers than to Licensee as set forth herein, Licensor shall, upon a reasonable request from Licensee, provide an amendment to this Agreement to make those same terms and conditions available to Licensee for future attachments or placements.

Section 1.05 Post-Termination Rights

Upon termination of this Agreement for any reason (other than failure to pay the rental fees in Section 7.01 or 7.02 hereof), Licensee, at the request of Licensor, may maintain its Equipment on and in Licensor's Structures and Conduits, but may no longer add new Equipment. Except as set forth in Section 2.15, existing Equipment will continue to be subject to the terms of this Agreement until such Equipment is removed by Licensee from Licensor's Structures and Conduits.

Section 1.06 Authorizations Required

Licensee acknowledges that Licensor shall require a separate application for each request to place Equipment on or in Licensor's Structures or Conduits. Licensee shall secure all authorizations, franchises, licenses, permits, and consents ("Permits") required for the construction, operation, and maintenance of its Equipment. If any required Permit obtained by Licensee is subsequently revoked or denied for any reason, Licensee shall retain the right to pursue and exhaust all legal, administrative, and equitable remedies, in any available forum, before Licensor may revoke Licensee's right to attach the Equipment requiring such Permit to Licensor's Structures or revoke Licensee's right to occupy Licensor's Conduits with the Equipment requiring such Permit.

Section 1.07 Term

This Agreement shall become effective upon the date first written above (the "Effective Date") above and shall continue in effect for ten (10) years. This Agreement will automatically renew for up to three (3) successive five (5) year periods, unless Licensee is no longer operating its network within Overland Park, Kansas.

Section 1.08 Licensor's Rights over Facilities

Subject to the provisions of Section 2.08 below, the Parties agree that this Agreement does not in any way limit Licensor's right to locate, operate, maintain or remove its Structures and Conduit in the manner that will best enable it to fulfill its own governmental requirements.

ARTICLE II. PLACING, TRANSFERRING, OR REARRANGING ATTACHMENTS

Section 2.01 Application; Confidentiality

Before attaching any Equipment to any Licensor Structure or placing any Equipment in any Licensor Conduit (other than a new or existing service wire drop that is attached to the same Structure as an existing attachment of Licensee), Licensee shall submit an application to Licensor for consent for such attachment or placement. All materials submitted by Licensee in connection with such application shall be handled and reviewed only by those Licensor employees and contractors directly responsible for the coordination and administration of such requests. Licensee's plans, designs, drawings or specifications that are of a confidential, proprietary, and commercially sensitive nature ("Confidential Information") and shall not be

disclosed by Licensor or its employees or contractors for any reason other than (a) as required by the Kansas Open Records Act at K.S.A. 45-215 *et seq.* (the "KORA"), or as otherwise required by law, and (b) as necessary in connection with processing and administering the Licensee's application to attach Equipment to Structures or place Equipment in Conduits.

Section 2.02 Grant or Denial of Access

Except as set forth in Section 1.02 above and except as otherwise provided by law, Licensor reserves the right to deny or modify Licensee access to any Structure or Conduit, on a competitively-neutral and non-discriminatory basis, where Licensor determines that Licensee's proposed attachment will (a) jeopardize the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of Licensor's facilities, or (c) violate applicable zoning restrictions or other laws and regulations, or (d) exceed the capacity of the Structures or Conduit to include taking into consideration the reserved capacity of the Structures or Conduit, or (e) interfere with the Licensor's intended use of the Structures or Conduit, and (f) interfere with any other reasonable governmental interest; provided, however, that before Licensor denies access, Licensor shall explore potential accommodations in good faith and take all reasonable steps to accommodate Licensee's request for access. Licensor shall use its best efforts to either grant or deny access to a Structure or Conduit within thirty (30) days of Licensee's written request; the Licensor's grant may include a Make Ready Estimate as described in Section 2.04. If Licensor denies access, subject to the terms of Section 2.05 hereof, then Licensor must use best efforts to provide notice in writing within thirty (30) days of Licensee's application with information to support its denial.

Section 2.03 Make Ready Survey

When Licensor receives an attachment or placement request from Licensee, a make-ready-survey (the "Make Ready Survey") may be necessary, at Licensee's cost, to determine the adequacy of the existing Structures or the capacity of Conduit to accommodate Licensee's Equipment without jeopardizing the safety of Licensor's facilities or placing Licensor in violation of generally applicable zoning restrictions. Licensee shall be responsible for performing and paying all costs associated with the Make Ready Survey. Licensor may perform a field inspection and structural analysis as part of the Make Ready Survey. Licensor shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

Section 2.04 Make Ready

- (a) Except where Licensor denies the application to the extent permitted by this Agreement, whenever any Structure or Conduit to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Equipment and Licensor's existing attachments or equipment and the attachments and equipment of other pre-existing attachers and occupants, Licensor, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of make ready work (the "Make Ready Estimate") it believes to be necessary to prepare the Structure or Conduit for Licensee's Equipment (the "Make Ready Work"). All Make Ready Work will be performed at the

sole cost and expense of Licensee. Licensor will use its best efforts to provide Licensee with the Make Ready Estimate within twenty (20) days of Licensee's application for attachment. The Make Ready Work may include engineering, design, planning, construction, materials, cost of removal (less any salvage value), cost of transferring Licensor's facilities and those of other users of the Structure or Conduit, and cost of expanding existing Conduit, in each case as reasonably necessary for the installation of Licensee's Equipment on a Structure or Conduit. The Make Ready Estimate shall include itemized estimates of the cost of each component of the Make Ready Work. Any reference to costs or expenses borne by Licensee within Section 2.03 and 2.04 are limited to third-party out of pocket expenses incurred by Licensor and do not include administrative time incurred by the Licensor or expenses that third-party attachers are obligated to bear under pre-existing agreements.

- (b) After receiving the Make Ready Estimate, if Licensee still desires to make the Structure attachment or utilize the Conduit, Licensee may within ninety (90) days of receiving the Make Ready Estimate elect by written notice to Licensor any of the following alternatives:
 - (i) Offer Licensor the option to perform such Make Ready Work as called for in the Make Ready Estimate (the "Option"), and if Licensor, in its sole and absolute discretion, agrees to perform such Make Ready Work pursuant to the Option, Licensee will pay to Licensor fifty percent (50%) of the fees for Make Ready Work specified by the Make Ready Estimate (the "Down Payment"). Licensee shall pay an additional twenty-five percent (25%) of the Make Ready Estimate when Licensor has completed one-half of the Make Ready Work (the "Progress Payment"). Licensee shall pay the remaining twenty-five percent (25%) of the Make Ready Estimate upon Licensor's completion of the Make Ready Work.
 - (ii) Licensee may retain contractors to perform all the Make Ready Work. The contractors shall be approved by Licensor to work on or in its Structures and Conduits. Approval shall be based upon reasonable and customary criteria employed by the Licensor in the selection of its own contract labor
 - (iii) Licensee may retain its own contractors to perform part of the Make Ready Work and utilize Licensor to perform part of the Make Ready Work, but only where the Licensor has, in its sole and absolute discretion, agreed to such Option described in subparagraph (i) above. The Licensee is responsible for determining what portion of the Make Ready Work it will perform through this joint-build option and to notify Licensor of its choices. In the event Licensee retains contractors to perform part of the Make Ready Work and utilizes Licensor to perform part of the Make Ready Work, Licensee shall adjust the payments described in subparagraph (i) above to include only the costs of the itemized components of the Make Ready Estimate to be performed by Licensor.
- (c) If Licensor, in its sole and absolute discretion, exercises its Option to perform any Make Ready Work as described in subparagraph (i), Licensor shall use its best efforts

to make sure that necessary Make Ready Work, including the work necessary to rearrange third party attachments to Licensor's Structures and Conduits or facilities, is completed within sixty (60) days from Licensee's remittal of the Down Payment. If Make Ready Work is not completed by Licensor within the sixty (60) day period, any fees payable by Licensee for Make Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make Ready Work.

- (d) If Licensee submits an application that affects existing attachments or occupancy, Licensor will use commercially reasonable efforts to notify third-party owners and coordinate the rearrangements of such attachments. To the extent third-party equipment is affected by Licensee's application, the Licensor will follow the procedure as described in parts a, b and c of this section 2.04, but only to the extent such third-parties do not elect to perform the rearrangement or are not already obligated to rearrange attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

Section 2.05 Deemed Granted

If access is not granted or denied by Licensor within thirty (30) days of Licensee's written request, and Licensor has not been in communication with Licensee over such thirty (30) day period, Licensee may provide written notice of the same to Licensor and if Licensor shall fail to respond within five (5) business days, then the application will be deemed granted. The Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than thirty (30) days if the Parties are communicating and mutually proceeding diligently with the application in good faith. When a request is deemed granted, the Licensee may retain its own contractor to perform the Make Ready Work.

Section 2.06 Structures and Conduit – Rights of Third Parties

Licensee agrees to comply with all federal, state and local laws, rules, orders and regulations ("Requirements") that are applicable in connection with the installation and operation of equipment and facilities on Structures and in Conduit, including without limitation, such Requirements governing interference with other providers/attachers, and Licensor agrees to require any later attaching third-parties to comply with the Requirements.

The rights of any third-parties to whom Licensor confers Structure attachment or Conduit occupancy rights after the Licensee shall be subject to the rights of the Licensee as set forth herein. Further, the Licensor shall not license any Conduit or Structure occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by Licensor and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee's Equipment pursuant to the Requirements, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third-party pursuant to state or federal law, then Licensor shall give Licensee prior written notice of any such grant of third-party access and give

Licensee reasonable time to remove and relocate equipment prior to that time any third party is able to access any Conduit or Structure previously occupied by or attached to by Licensee.

If Licensor grants Structure attachment or Conduit occupancy rights to any third-party prior to Licensee applying for or being granted such rights, Licensee shall be subject to the rights of said third-party attacher, unless it is determined that Licensee access would not unreasonably interfere with such third-party's equipment pursuant to the Requirements or if such access is required by state or federal law. This Section 2.06 shall not be deemed to otherwise limit the Licensor from using any Conduit or Structure in connection with providing its own services or from licensing any Conduit or Structure to another person or entity if no application from Licensee is pending or such Conduit or Structure is not occupied by Licensee.

Section 2.07 Structure and Conduit Maintenance

The expense of maintaining the Licensor's Structures and Conduits shall be borne exclusively by Licensor and Licensor shall maintain its Structures and Conduits in a safe and serviceable condition in Licensor's sole discretion, and shall replace, remove, reinforce, or repair such Structures and Conduits as they become defective. Licensor shall be responsible for routine and periodic tree trimming and brush cutting as appropriate or necessary, in Licensor's sole discretion, to avoid contact with, or jeopardizing the functionality of, Structures utilized by Licensee. Licensor shall be solely responsible for collection of costs of damages to Licensor's Structures and Conduits broken or damaged by third-parties. Licensee shall be responsible for repair, maintenance, aesthetic appearance and collection of costs of damages to its own Equipment. Nothing in this Agreement shall be construed to be a guaranty of the condition of any Structure or Conduit by Licensor in connection with Licensee's placement of its Equipment in or on Licensor's Structures or Conduit or impose any obligation upon Licensor to repair or replace an existing Structure or Conduit in order to accommodate a request by Licensee to install Equipment on or in an existing Structure or Conduit.

Section 2.08 Structure and Conduit Replacement

Licensor shall have the right to relocate Licensee's Equipment on Licensor's Structure or within Licensor's Conduit system if deemed necessary by Licensor for any public project or improvement provided that such relocation does not adversely affect the accessibility, reliability, or protective safety features of Licensee's Equipment and/or adversely affect Licensee's services to its customers. Licensor shall provide Licensee with thirty (30) days' advance notice of any such relocation required as a result of any public projects or improvements deemed necessary for public health and safety or other reasonable governmental purpose. Upon receipt of notification by Licensor to Licensee that Licensee's equipment needs to be relocated, the Parties will, within five (5) working days, mutually agree upon the length of time it will take for Licensee to accommodate such request, and upon and in accordance with the terms of such agreement, Licensee shall proceed with such relocation. Licensee shall bear the cost of any such relocation. Licensee has the right to observe any relocation of Licensee's Equipment. Licensor shall mark or tag any relocated Equipment with appropriate identification of Licensee. Licensor shall use commercially reasonable efforts to ensure that Licensee shall have reasonably equivalent access to and ability to maintain any relocated Equipment. Nothing herein shall be deemed to limit

Licensor's authority to relocate Licensee's Equipment during an Emergency as set out in Section 2.12(b) of this Agreement.

The provisions in this Section 2.08 shall be subject to and limited by the terms of the Overland Park City Code, including the right of way ordinances as set forth therein.

Section 2.09 Installation

Licensee, at its own expense and risk and by the terms of this Agreement, shall place, transfer, and rearrange its own Equipment on Licensor's Structures or in Licensor's Conduits. Licensee at all times shall perform such work and operate its Equipment in such manner as not to interfere with the service or operations of Licensor or any other Structure attacher or Conduit occupant. In the event any lien is filed upon any of the Licensor's Structures, Conduit or other property as a result of any claim against Licensee, Licensee agrees, within 120 days of the filing of such lien, to cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Licensor; provided however, that the Licensee shall have the right to contest in good faith said mechanics' liens, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

Section 2.10 Subsequent Attachment by Third-Party Attachers

If at any time subsequent to Licensee's attachment to a Structure, a third-party requests that Licensor provide access to that same Structure, the following procedures shall apply:

- (a) If it is determined that Make Ready Work on Licensee's attachment(s) will be necessary to accommodate such third-party's equipment, the Licensee will provide the cost estimate to the attaching third-party for Licensee or its Approved Contractor to complete the Make Ready Work. In Licensee's sole discretion and upon Licensee's written instruction, Licensee or the third party attacher or its contractor shall complete the Make Ready Work on Licensee's attachment at the sole expense of the third party attacher.
- (b) Licensee will communicate with Licensor with respect to the rearrangement of Licensee's Equipment, and Licensor shall be responsible for communicating such information to and from third-parties.
- (c) Except where such rearrangement is for the benefit of Licensee and as may be required under Section 2.08 herein, Licensee shall not be responsible for paying any charges attributable to the rearrangement of its Equipment to accommodate a third-party attacher.
- (d) Licensee shall make all rearrangements of its Equipment necessary for third-party attachers within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or service denial to Licensee's customers.

Section 2.11 Compliance with Safety Codes

When a Permit is issued pursuant to this Agreement, Licensee's Equipment shall be installed and maintained in accordance with all applicable standards. Licensee shall be responsible for the installation and maintenance of its Equipment. Licensee shall place and maintain its facilities attached to Licensor Structures or in Licensor Conduits in good and safe and condition and in thorough repair, and in compliance with applicable law, permits, codes and with such requirements and specifications as required by any regulatory agency or other authority having jurisdiction.

Section 2.12 Nonconforming Equipment

- (a) If any attachment is not placed and maintained in accordance with Section 2.11 above, upon notice by Licensor, Licensee shall use commercially reasonable efforts to timely perform all work reasonably necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities or under a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below).

- (b) In the event Licensor determines in good faith that a particular condition or situation is an Emergency, Licensor may arrange to relocate, replace, remove, renew, or disconnect Licensee's facilities and transfer them to substituted Structures or Conduits or perform any other work in connection with Licensee's Equipment that may be required during the Emergency. Licensor shall also endeavor to provide Licensee with the best practicable notice of the situation so that Licensor and Licensee, if possible, may coordinate their responses to the Emergency. If notice is impossible during the Emergency, Licensor shall notify Licensee of any Emergency and any relocation, replacement, or removal affecting Licensee's Equipment as soon as reasonably practicable. An "Emergency" is conditions that (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of Licensor's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of Licensor's or other attachers' equipment or Structures.

Section 2.13 Reasonable Precautions

Each Party shall exercise reasonable precautions to avoid damage to the facilities of the other Party.

Section 2.14 Removal of Attachments by Licensee

Licensee, at any time, may remove its Equipment from any Structure(s) or Conduit(s) of Licensor, and shall give Licensor written notice within seven (7) days of such removal. After removal, Licensee shall restore Licensor's Structures or Conduits to their condition immediately prior to the date such attachments were made, excepting normal wear and tear. Any applicable rental fees shall cease with respect to such removed Equipment as of the date of such notice.

Section 2.15 Abandonment

Licensee shall have the right to abandon Equipment located within Licensor's Conduit system or on Licensor's Structures by written notice to Licensor. Rental Fees shall cease with respect to such Equipment as of the date of such notice. In the event abandoned equipment is not removed by Licensee within a reasonable period of time not to exceed two (2) years, ownership of such equipment shall revert to Licensor.

The provisions in this Section 2.15 shall be subject to and limited by the terms of the Overland Park City Code, including O.P.M.C. Section 13.12.430.

Section 2.16 Interference

Licensee shall not allow its Equipment or operations to impair the Licensor's ability to place, locate, operate, use or repair Licensor's Structures or Conduit, nor shall Licensee require Licensor to place, locate or operate Structures and Conduit for a primary purpose other than providing city services.

ARTICLE III. INSPECTIONS

Section 3.01 Post-Installation and Safety Inspections

Licensor reserves the right to inspect each new Licensee installation on Licensor Structures and in Licensor Conduit. Licensor also reserves the right to make periodic inspections, as conditions may warrant, to determine if Licensee's construction complies with the approved application and/or applicable law.

Section 3.02 Facilities Inventory

Licensor shall have the right to require a jointly conducted physical inventory of Licensee's Equipment on Licensor Structures and in Licensee Conduit upon ninety (90) days' advance written notice. In such event, Licensor may select an independent contractor for the performance of such physical inventory through a competitive bid process. Licensee shall be permitted to supplement Licensor's invitation to bid list to include contractors designated by Licensee. A jointly conducted physical inventory shall be taken no more frequently than once every three years. If the facilities of more than one joint-user are inventoried, each such joint-user shall contribute a proportionate share of the costs of such inventory.

As an alternative to performance of the jointly conducted physical inventory, the Parties may, if mutually agreed, determine the number of attachments and feet of occupancy from existing maps and/or attachment records provided that such maps or records exist and provided that each Party agrees that results with reasonable accuracy can be achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties and utilized to count attachments and Conduit occupancy shall be made available to the other Party and the number of attachments and feet of Conduit occupancy shall be determined through a mutual and cooperative effort of both Parties. The results of attachment and occupancy counts performed in this manner shall be

treated, for the purpose of determining rentals and other charges due for unauthorized attachments, as if results were achieved by an actual jointly conducted physical inventory.

Section 3.03 Inventory Disparity

- (a) In the event that the number of Structures or feet of Conduit to which Licensee has attached or placed its Equipment differs from the number shown in Licensor records, the Licensor records shall be revised and the rental obligations due shall be revised as of the date of the completion of the jointly conducted physical inventory or the attachment count based on maps and records. No back payment or refund shall be due in the event of an inventory disparity, whether the total number of Structures and Conduit feet was more or less than the Licensor's records.

- (b) Upon forty-five (45) days' notice from Licensor to Licensee of an unauthorized attachment, Licensee shall either apply for consent to such attachment or remove such attachment.

ARTICLE IV. LICENSOR ABANDONMENT OF STRUCTURES AND CONDUITS

If Licensor desires at any time to abandon any Structure or Conduit which is being used by Licensee pursuant to this Agreement, then it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Structure or Conduit. For purposes of this Article, the term "Abandon" shall mean the demolition or removal of such Structure or the permanent disposal of City Property through such means as a sale, vacation or similar method. If, at the expiration of such period, Licensee has not removed all of its Equipment from such Structure or Conduit, Licensor may remove the Equipment or offer to sell the Structure or Conduit to Licensee. If Licensee elects to purchase the Structure or Conduit, Licensee shall pay Licensor a sum equal to the current in-place value less expired service life of such abandoned Structure(s) or Conduit(s) at time of abandonment or as otherwise mutually agreed to by the parties.

ARTICLE V. ACCESS TO PROPERTY

Section 5.01 Access to Public Property

In connection with performance of this Agreement, Licensee and any of its employees or contractors shall have reasonable access to the parts of any real property, or improvements upon real property, that Licensor owns, leases, controls, or manages ("Licensor's Property"), including but not limited to stairways, elevators, hallways, pathways, ladders, lobbies, and entryways, which Licensee must use to access the location of any attachment and related Equipment on any Structure or in any Conduit. Licensor may place reasonable restrictions on Licensee's access to Licensor's Property, provided that such restrictions do not unreasonably interfere with Licensee's ability to access its attachments and related Equipment, and provided that such restrictions do not unreasonably interfere with Licensee's ability to transport Equipment to its attachment locations.

Section 5.02 Access to Right-of-Way

Pursuant to the O.P.M.C. Chapter 13.12 – Managing the Use and Occupancy of the Public-Right-of-Way, and all amendments thereto (the "Right-of-Way Ordinance"), Licensor shall provide Licensee with access to and use of such Right-of-Way to the same extent that third parties may access or use such Right-of-Way, including but not limited to access for ingress, egress, or other access and to construct, utilize, maintain, modify, and remove Equipment for which Structure attachment, Conduit occupancy, or Right-of-Way use licenses have been issued, provided that any agreement with a third-party under which Licensor holds such rights expressly or impliedly grants Licensor the right to provide such rights to others.

ARTICLE VI. CONDUIT PROCEDURES

Section 6.01 Conduit Specifications

Licensee's Equipment placed in Licensor's Conduit system must meet all of the following physical design specifications:

- (i) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in Licensor's Conduit.
- (ii) The integrity of Licensor's Conduit system and overall safety of Licensor's personnel and other personnel working in Licensor's Conduit system requires that "dielectric cable" be placed when Licensee's cable facility utilizes an alternative duct or route that is shared in the same trench by any current-carrying facility of a power utility.
- (iii) New construction splices in Licensee's fiber optic cables shall be located in manholes, pull boxes or handholes.
- (iv) Flexible fabric innerduct shall be used in Conduits where new cable is deployed or where more than one cable is within the Conduit, and at least one empty cell shall be reserved for future use by the City and its affiliates.

The following specifications apply to connections of Licensee's Conduit to Licensor's Conduit system:

- (i) Licensee will be permitted to connect its Conduit only at a Licensor manhole.
- (ii) No attachment will be made by entering or breaking into Conduit between manholes.
- (iii) All necessary work to install Licensee Equipment will be performed by Licensee or its contractor at Licensee's expense.
- (iv) In no event shall Licensee or its contractor "core bore" or make any other modification to Licensor manhole(s) without the prior written approval of Licensor, which approval will not be unreasonably delayed, withheld, or conditioned.

If Licensee's Conduit enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into Licensor's Conduit system.

Section 6.02 Opening of Manholes

The following requirements apply to the opening of Licensor's manholes:

- (i) Licensor's manholes shall be opened only as permitted by Licensor's authorized employees or agents, including authorized third-party contractors, which permission shall not be unreasonably denied, delayed, or conditioned.
- (ii) Except in the event of an emergency, Licensee shall notify Licensor forty-eight (48) hours in advance of any routine work operation requiring entry into any of Licensor's manholes.
- (iii) Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open manholes for Conduit work operations therein.

Section 6.03 Eminent Domain

Nothing in this Agreement shall be construed to require Licensor to exercise any power of eminent domain or other police power on Licensee's behalf.

ARTICLE VII. RENTAL AND PROCEDURE FOR PAYMENTS

Section 7.01 Rental Amount – Structures

For authorized attachments to Structures covered under this Agreement, Licensee shall pay to Licensor a rental amount for Structures as set forth on Exhibit 1, on a billing cycle beginning January 1 of each year (the "Annual Structure Rental Fee").

Section 7.02 Rental Amount – Conduit and Duct

For authorized attachments placed in Licensor's Conduit covered under this Agreement, Licensee shall pay to Licensor, on an annual basis, a rental amount per linear foot set forth on Exhibit 1, on a billing cycle beginning January 1 of each year (the "Annual Conduit Rental Fee"). The rental amount for each year shall be based on Licensor's tabulation of Licensee's attachments situated in Licensor's Conduit and Licensor's current records.

Section 7.03 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually in arrears by February 1 for the preceding calendar year. Invoices for all

Make Ready Work fees, if applicable, and other obligations or amounts due under this Agreement (other than annual rental charges) will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement; provided, however, that no charges (other than annual rental charges) may be billed by Licensor more than one hundred twenty (120) days after such charges were incurred.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within thirty (30) business days from the invoice date. Interest at the rate set forth in Section 13.06 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within one hundred eighty (180) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed, with interest accruing at the rate specified in Section 13.06 from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Licensor notice of the amount in dispute. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 13.06 on any unpaid disputed amounts, dating from the bill due date. All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's billing address:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212

Licensee's billing address:

Google Fiber Kansas, LLC
1600 Amphitheater Parkway
Mountain View, CA 94043

ATTN: FINANCE DIRECTOR

Section 7.04 Incremental Personal Property Taxes and Other Taxes

Licensee shall pay any personal, real property or other taxes on Licensee's Equipment and any personal, real property or other taxes resulting from or associated with the use of the Licensor's Structures or Conduit as set forth in this Agreement.

ARTICLE VIII. BREACH AND REMEDIES

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this Article VIII the remedies available to each Party shall include, without limitation, termination of this Agreement and injunctive relief.

ARTICLE IX. INDEMNIFICATION

Section 9.01 Indemnification by Licensee

Licensee shall defend, solely at Licensee's expense, Licensor, its Affiliates, and each of their respective officers, employees, elected and appointed officials, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands, or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensee, its personnel, or its contractors; or (b) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor directions or requirements;
- (iii) Claims that any Licensee personnel, contractor or agent is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor;
- (iv) Licensee's fraud, violation of law, wrongful misconduct, or misrepresentations; and
- (v) Claims arising from any failure by Licensee, its agents or contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor or Licensee.

Section 9.02 Indemnification by Licensor

To the extent permitted by law, Licensor shall defend, solely at Licensor's expense, Licensee, its Affiliates, and each of their respective officers, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensee Indemnified Parties"), against all Claims and shall indemnify and hold harmless Licensee Indemnified Parties from Losses arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensor, its personnel, or its contractors or (b) resulting proximately from Licensor's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensor's breach of any representation or warranty in this Agreement;

(iii) Claims arising from any failure by Licensor to comply with all applicable safety codes and requirements with respect to attachments of Licensor; and

(iv) Licensor's fraud, violation of law, wrongful misconduct or misrepresentations.

THE PARTIES HEREBY AGREE THAT THE CITY SHALL HAVE NO OBLIGATION TO INDEMNIFY GOOGLE FOR ACTS FOR WHICH THE CITY WOULD OTHERWISE BE IMMUNE PURSUANT TO THE PROVISIONS OF THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6104, ET SEQ.), AND AMENDMENTS THERETO, NOR WILL THE INDEMNITY OBLIGATIONS SET FORTH HEREIN ACT AS A WAIVER OF THE CITY'S PROTECTIONS UNDER SUCH PROVISIONS, AND FURTHER THAT ANY LIABILITY OF THE CITY SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO. ADDITIONALLY, AND NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, THE PARTIES SPECIFICALLY AGREE THAT THE TERMS OF THIS SECTION 9.02, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.) AND THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.), AND AMENDMENTS THERETO.

Section 9.03 Procedure

A Party who seeks indemnification pursuant to this Agreement (the "Indemnified Party") shall give written notice thereof to the other Party (the "Indemnitor") promptly after the Indemnified Party learns of the existence of such Claim; provided, however, that the failure to give such notice shall not affect the rights of such Indemnified Party, except and only to the extent the Indemnitor is prejudiced by such failure. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Claim. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnified Party other than for money damages. If such counsel will represent both Indemnitor and the Indemnified Party, there may be no conflict with such counsel's representation of both. The Indemnified Party will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim.

ARTICLE X. LIMITATION OF LIABILITY

Section 10.01 Disclaimer of Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD-PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; AND (II) WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO,

LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS, OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING.

NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, (A) THE CITY DOES NOT WAIVE ANY IMMUNITY FROM PUNITIVE DAMAGES AVAILABLE UNDER APPLICABLE KANSAS LAW, (B) THE PARTIES AGREE THAT THE TERMS OF THIS SECTION 10.01, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.), THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.) AND THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6101 ET SEQ.), AND ALL AMENDMENTS TO SUCH LAWS, RESPECTIVELY, AND (C) ANY LIABILITY OF THE CITY HEREUNDER SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO.

ARTICLE XI. INSURANCE

Section 11.01 Worker's Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Structures or in Licensor's Conduits.

Section 11.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Structures or in Licensor's Conduits, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

Commercial General Liability insurance with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third-parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

Business Automobile Liability insurance with a minimum single limit of \$1,000,000.00 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its directors, officers, and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is

excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without written notice to Licensor in accordance with the terms of such policies. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

Section 11.03 Licensor Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor shall, at its sole expense, secure and continuously carry with insurers reasonably acceptable to Licensee Commercial General Liability insurance with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensor's employees, Licensee's employees, and all other third persons, or damage to property, including Licensee's property and the property of all other third-parties, based upon or arising out of Licensor's operations hereunder, including the operations of its contractors of any tier.

The policies required herein shall include a cross-liability and severability of interest clause.

ARTICLE XII. CONFIDENTIALITY

The Licensor will implement commercially reasonable measures to insure that the Confidential Information (as defined in Section 2.01 hereof) obtained in connection with this Agreement is not inadvertently disclosed. Subject to the foregoing provisions, each Party expressly agrees to maintain communications containing such Confidential Information from the other Party pursuant to or in connection with this Agreement in confidence.

Notwithstanding the foregoing, Licensee understands and agrees that this Agreement and all of the terms set forth in this Article XII are subject to and limited by the KORA and the Kansas Open Meetings Act - K.S.A. 75-4317 *et seq.* ("KOMA"). Licensor's compliance with the KORA and KOMA shall in no event be deemed to be a default under this Agreement.

ARTICLE XIII. GENERAL PROVISIONS

Section 13.01 Governing Law

This Agreement and any action related to this Agreement will be governed the laws of the State of Kansas.

Section 13.02 Dispute Resolution

Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the parties shall be entitled to pursue all available remedies at law or equity.

Section 13.03 Force Majeure

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations, and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

Section 13.04 Notice

Except as otherwise provided herein, any notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by U.S. Mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

Licensor

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, KS 66212

ATTN: CITY CLERK

With a copy to:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
Attn: City Manager

Licensee

Google Fiber Kansas, LLC
1600 Amphitheater Parkway
Mountain View, CA 94043

ATTN: General Manager
Email: googlefibernotices@google.com

Fax: (650) 618-1806

With a copy to:

ATTN: Google Fiber Legal Department
Email: legal-notices@google.com
Fax: (650) 618-1806

Section 13.05 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions. Rather, such terms and conditions shall be and remain, at all times, in full force and effect.

Section 13.06 Interest

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within thirty (30) business days of the invoice date. An interest charge at the rate of ten percent (10%) per month (as set forth in K.S.A. 16-201) shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

Section 13.07 No Third-Party Beneficiaries

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

Section 13.08 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party. Licensor may sell, transfer, or assign its ownership interest in the Structures and Conduits provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may, upon written notice to Licensor, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide communications services to residents and businesses located in the City of Overland Park, Kansas.

An "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with, a Party; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

Section 13.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

Section 13.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement.

Section 13.11 Severability

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants, or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

Section 13.12 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements, and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Licensor's Structures and in Licensor's Conduits. Any Equipment of Licensee attached to Licensor's Structures or in Licensor's Conduits shall be subject to the terms and conditions and rental rates of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

Section 13.13 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it, or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

Section 13.14 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

Section 13.15 Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or

remedies otherwise available to such Party at law or in equity. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that a Party shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

Section 13.16 Default

In no event shall a dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement and in no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the License Agreement or Network Cooperation and Services Agreement. Additionally, any dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement individually shall not constitute or be deemed a default under any other agreement. Further, termination or expiration of the rights and obligations under the License Agreement or Network Cooperation and Services Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the License Agreement or Network Cooperation and Services Agreement.

Section 13.17 Further Assurances

In addition to any other obligations set forth in this Agreement, each Party agrees to take such actions (including the execution, acknowledgment, and delivery of documents) reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

Section 13.18 Counterparts; Signatures

This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each Party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN), Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).

THIS AGREEMENT has been executed as of the date first hereinabove written.

GOOGLE FIBER KANSAS, LLC

1600 Amphitheater Parkway
Mountain View, California 94043

(Authorized Signature)

(Name)

(Title)

CITY OF OVERLAND PARK, KANSAS

8500 Santa Fe Drive
Overland Park, Kansas 66212

Carl Gerlach, Mayor

(SEAL)

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Mike Santos
City Attorney

**EXHIBIT 1
FEE SCHEDULE**

Annual Structure Rental Fees – From and after the Effective Date, the parties understand and agree that Licensor may, in its sole discretion, promulgate annual structure rental fees (which shall include any costs for electricity for WiFi pole attachments provided through Licensor's Structures) from time to time which fees shall be applied to Licensee's use of the Structures (the "Annual Rental Fee") and all similarly-situated providers who have equipment and/or facilities on Structures within the City. Notwithstanding the foregoing, Licensor has evaluated the City Broadband Services and/or City WiFi Services to be provided by Licensee pursuant to the terms of the Network Cooperation and Services Agreement, and Licensor has, with the exception of those Licensee costs and expenses set forth in this Agreement, agreed that Licensee's Annual Rental Fee shall be fully offset by the provision of free City Broadband Services and City WiFi Services to be provided by Licensee under the terms of the Network Cooperation and Services Agreement entered into by the Parties. Licensee agrees that it shall pay such Annual Rental Fees to Licensor on an annual basis in the event of any of the following: (i) Licensee fails to provide such City Broadband Services to the Public Sites in the City within a time period that is reasonably contemporaneous with the deployment of Licensee's Services to residences in the Fiberhoods which are located around or adjacent to such Public Sites; (ii) Licensee thereafter discontinues providing such free City Broadband Services; or (iii) Licensee uses the WiFi pole attachments to provide wireless services to the public or any third party in exchange for fees.

Annual Conduit Rental Fees - To be mutually agreed to by the Parties from time to time.

LICENSE AGREEMENT

This license agreement (“Agreement”) is dated as of the ____ day of _____, 2013 (“Effective Date”), and is between the City of Overland Park, Kansas, a municipal corporation duly organized in accordance with the laws of the State of Kansas, (“City” or “Licensor”), and Google Fiber Kansas, LLC, a Kansas limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043 (“Licensee”) (and together with the “City”, the “Parties”, and each, individually, a “Party”).

WHEREAS, Licensee desires to use certain City property (hereinafter “Premises”), described in **Exhibit 1**, for the placement and maintenance of certain Utility Equipment and Fiber Housing (as both are hereinafter defined), described in **Exhibit 2**; and

WHEREAS, City desires to authorize Licensee, subject to the terms of this Agreement, to utilize the Premises; and

NOW THEREFORE, City and Licensee agree as follows:

1. **Permit and Use of Premises; Maintenance.** City hereby grants Licensee a license to enter upon and use the Premises for the sole purpose of installing, operating and maintaining Utility Equipment and Fiber Housing for the purpose of providing broadband and video services within the City pursuant to the Kansas Video Franchise Act (K.S.A. 12-2003 et seq.). Licensee agrees to install the Utility Equipment in specific locations that are mutually agreeable to the Parties and in compliance with the applicable City Code and ordinances, including the City’s “Unified Development Ordinance,” as amended, which may include application fees, administrative or other review processes on a case-by-case basis. The City agrees that its Governing Body, subject to applicable City ordinances and regulations, is authorized to enter into agreements with Licensee for the location, mode of placement, and maintenance of Licensee’s telecommunication lines, other telecommunication equipment and housing, fiber optic equipment and housing (the “Fiber Housing”), and other cables, conduits and housing (the “Utility Equipment”) to be located on City property. Such license shall be exclusive for that portion of the Premises occupied by such Fiber Housing, and shall be non-exclusive as to the balance of the Premises.

All construction and improvements shall be done in a workmanlike manner. Licensee shall utilize and install adequate protective equipment to ensure the safety of people and its facilities. Licensee shall, at Licensee’s expense, keep and maintain the Premises and all buildings and improvements now or hereafter located thereon in commercially reasonable condition and repair. Licensee shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature. Licensee shall not use the Premises in any way which interferes with the City’s use of the Premises or its adjacent property, or City’s other licensees’ similar use. Similarly, City shall not use, nor shall City permit its other licensees to use, any portion of City’s properties in any way which interferes with the operations of Licensee. Licensee may not sublet its rights obtained by this License to any other entity without first obtaining City’s approval.

2. **Justification of Utilities.** The Utility Equipment and Fiber Housing shall be installed within ninety (90) days of the issuance of the initial installation permit(s). Licensee is

given the right, for initial construction and maintenance purposes only, to use public property within five (5) feet on either side of the limits of construction as shown on the construction plans described in **Exhibit 3**.

3. **Notification to Adjoining Property Owners.** At least five (5) days before starting the installation of the Utility Equipment and Fiber Housing, the Licensee shall notify, in writing, all adjoining property owners who may be affected by the installation.

4. **Ownership of Utility Equipment and Alteration.** The Utility Equipment and Fiber Housing installed by Licensee under the authority of this Agreement is and shall continue to be the property of the Licensee. The Utility Equipment and Fiber Housing shall be maintained, erected, placed, landscaped and/or altered by Licensee at such times and in such manner as shall be necessary to protect the public safety as is deemed reasonable by the City, recognizing the recommended operation and maintenance of the equipment manufacturer and the authorized use of the equipment.

5. **Costs of Installation, Maintenance, Alteration or Relocation of Utility Equipment; Taxes.** Any and all costs associated with the installation, maintenance, alteration or relocation of the Utility Equipment and Fiber Housing shall be borne completely by the Licensee. Licensee shall pay any personal, real property or other taxes associated with the use of the Premises as contemplated herein.

6. **Relocation of Utility Equipment.** The City may require that the Utility Equipment and/or Fiber Housing and all appurtenances be relocated from City property if deemed reasonably necessary for public health, safety and welfare by the City and in its sole discretion for any public projects or improvements. The City shall use commercially reasonable efforts to provide sufficient property for Licensee to relocate and shall use reasonable efforts to find relocation property within close proximity to the existing Premises. Notwithstanding the foregoing, the City shall not be required to purchase property or use its powers of eminent domain or other police powers in connection with such relocation. Upon receipt of notification by City to Licensee that the Utility Equipment and/or Fiber Housing will need to be relocated, the Parties will, within five (5) working days, mutually agree upon the length of time it will take for Licensee to accommodate such request, and upon and in accordance with the terms of such agreement, Licensee shall proceed with such relocation. If Licensee intends to abandon any Fiber Housing and/or Utility Equipment, then Licensee shall notify Licensor of such abandonment and shall remove such facilities within a reasonable period of time, not to exceed one (1) year after providing notice.

7. **Indemnity.** Licensee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability for personal or bodily injury (including death) and physical or tangible property damage to the extent that it is found by a court of competent jurisdiction to be caused by the negligence or willful misconduct of Licensee, any agent, officer, director, representative, employee, affiliate or subcontractor of Licensee, or its respective officers, agents, employees, directors or representatives, while installing, repairing, maintaining or otherwise utilizing Licensee's Utility Equipment and Fiber Housing located on City property.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. This section is solely for the benefit of the City and Licensee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

City shall promptly advise the Licensee in writing of any known claim or demand against City or related to or arising out of Licensee's activities on City property that is the subject of this License Agreement.

8. **Subsequent Maintenance by Licensee.** Licensee shall at all times properly maintain the Utility Equipment and Fiber Housing. City shall cooperate with Licensee in issuing the necessary permits to perform certain maintenance, except for emergencies and in such case Licensee shall give City notice of Licensee's emergency maintenance and repair as soon as practicable under the circumstances. Without limiting the generality of the foregoing, the Licensee shall be responsible for removing any graffiti from the Utility Equipment and Fiber Housing as necessary from time to time.

9. **Insurance.** During the term of this Agreement, Licensee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Licensee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Licensee shall provide not less than the following insurance:

(1) Workers compensation as provided for under any workers compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Licensee's operations under this Agreement.

(3) Commercial automobile liability, in the amount of no less than One Million Dollars (\$1,000,000) combined single limit, bodily injury and property, including all owned, hired and non-owned vehicles.

The City shall be included as an additional insured with respect to liability arising from Licensee's operations under this Agreement.

a. As an alternative to the requirements above, Licensee may demonstrate to the satisfaction of the City that it is self-insured and as such Licensee has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury,

death or property damage occasioned by Licensee, or alleged to so have been caused or occurred.

b. Licensee shall, as a material condition of this Agreement, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City notice in accordance with the policies.

10. Annual Fee and Term.

In consideration of the permission granted herewith, Licensee agrees to comply with the requirements of this Agreement and to pay City an annual fee of One Dollar (\$1.00) within thirty (30) business days from the invoice date for so long as free City Broadband Services are provided to the City pursuant to the Network Cooperation and Services Agreement between the parties. If Licensee fails to provide such City Broadband Services to the Public Sites in the City within a time period that is reasonably contemporaneous with the deployment of Licensee's Services to residences in the Fiberhoods which are located around or adjacent to such Public Sites, or if Licensee thereafter discontinues providing such free City Broadband Services, then Licensee shall pay such Annual License Fee as set forth on **Exhibit 4** attached hereto. This Agreement shall be effective for a term beginning on the Effective Date of this Agreement and remain in effect so long as any of the Services are provided by Licensee.

11. **Notices.** All notices required by this agreement shall be in writing and sent to the following:

City

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Ks 66212

Attn: City Clerk

Licensee

Google Fiber Kansas, LLC
Attn: General Counsel
1600 Amphitheater Parkway
Mountain View, CA 94043
Fax: (650) 618-1806
Email: legal-notices@google.com

With a copy to: City Attorney

All notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

12. **Governing Law.** This Agreement and any action to this Agreement will be governed by the laws of the State of Kansas.

13. **Conformance with Codes and Registration with Kansas Law.** All installations by Licensee shall be made in accordance with the standard of the appropriate municipal code(s).

14. **Default and Termination.** In no event shall a dispute, default or alleged default under the Network Cooperation and Services Agreement which has been entered into between the City and Licensee, or any Attachment Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement and in no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the Network Cooperation and Services Agreement or any Attachment Agreement. Further, termination or expiration of the rights and obligations under the Network Cooperation and Services Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the Network Cooperation and Services Agreement or any Attachment Agreement.

In the event of any default the Parties may exercise any of their rights as provided by law.

15. **No Interest in Property.** No use of any City Facilities and no payment of any fees or charges under this Agreement shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of the Premises or adjacent property. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

16. **Severability.** All of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

17. **Modification.** Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by City.

18. **Counterparts; Signatures.** This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each party to this Agreement agrees to use electronic signatures and to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN. Pub. L. 106-229. 14 Stat. 464. Enacted June 30, 2000. 15 U.S.C. ch.96).

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representatives.

CITY OF OVERLAND PARK, KANSAS
8500 Santa Fe Drive
Overland Park, Kansas 66212

Carl Gerlach, Mayor

(SEAL)

ATTEST:

Marion Cook
City Clerk

APPROVED AS TO FORM:

Mike Santos
City Attorney

LICENSEE:

Google Fiber Kansas, LLC.
1600 Amphitheater Parkway
Mountain View, California 94043

(Authorized Signature)

(Name)

(Title)

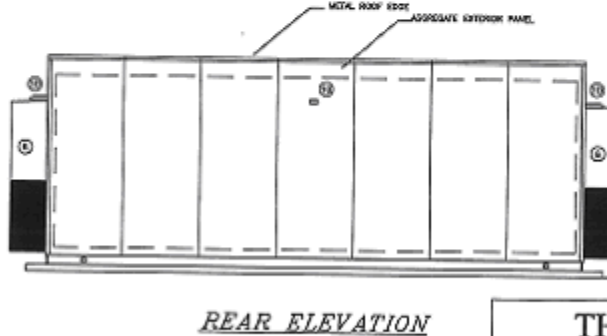
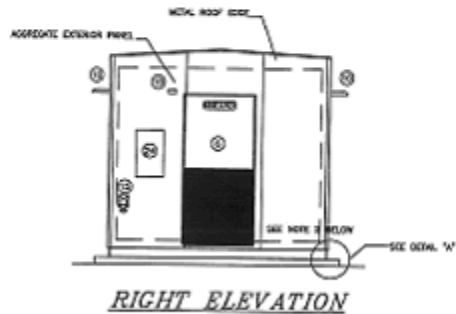
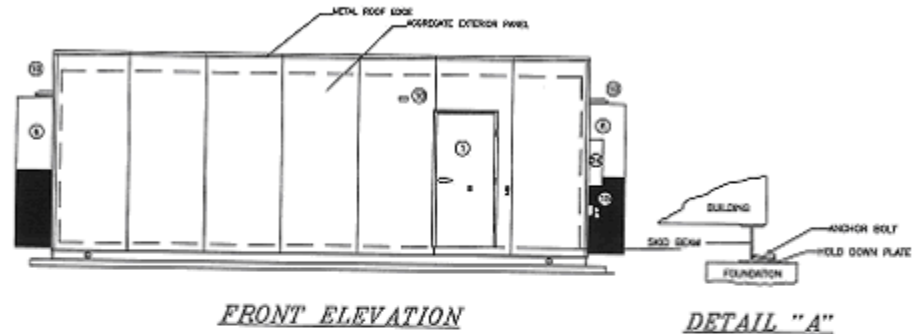
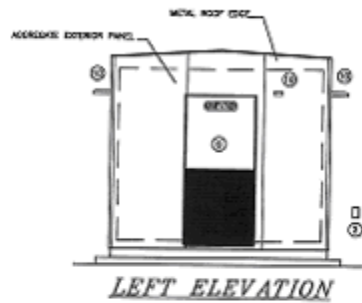
EXHIBIT 1
SITE(S) SURVEY

[to be attached after mutual agreement between Licensor and Licensee and after all approvals required pursuant to Section 1]

EXHIBIT 2

DESCRIPTION OF UTILITY EQUIPMENT AND FIBER HOUSING

EXHIBIT B



1. NO TAGS OR ANY MARKING IS TO BE SHOWN ON THE EXTERIOR OF THE BUILDING OR DOORS. INSTALL 8"X8" ALUMINUM PLATE ON THE INTERIOR OF THE BUILDING FOR ALL TAGS AND INSIGNIAS.
2. ADD AN EXTENSION TO EACH AIR CONDITIONER DRAIN TUBE TO DRAIN WATER AWAY FROM THE FOUNDATION.

PROJECT
GOOGLE FIBER

THIS DRAWING CONTAINS PROPRIETARY INFORMATION OF THERMOBOND BUILDINGS, LLC. IT IS INTENDED SOLELY FOR THE INFORMATION AND USE OF PARTIES ORIGINATING AND MANAGING THE EQUIPMENT DESCRIBED HEREIN AND MAY NOT BE USED, REPRODUCED OR DISCLOSED TO ANY OTHER PARTIES FOR ANY OTHER PURPOSE WITHOUT THE EXPRESS WRITTEN PERMISSION OF THERMOBOND BUILDINGS, LLC.

THERMOBOND BUILDINGS	
209 N. Court P.O. Box 445, Sta. Point, St. 87028-0445 Phone: 888-366-3383, www.thermobond.com	
Sheets/16" = 1 Date: 7/24/12 Drawn by: DRL Approved By:	Title: EXTERIOR LAYOUT FOR 11'-6"W. X 28'L. X 9'H. BLDG. PROJECT NUMBER: Drawing Number: ACBB551 Rev. Date: 4/12/12 PAGE 6 OF 15

EXHIBIT 3

CONSTRUCTION PLANS

To be completed and attached prior to start of construction

EXHIBIT 4

FEE STRUCTURE

The Parties acknowledge that the rental fees set forth in this fee schedule may be abated and/or offset to the extent the Licensee has provided to the Licensor in-kind contributions and other valuable consideration as set forth in Section 10 of this Agreement:

Annual License Fees - From and after the Effective Date, the parties understand and agree that Licensor may, in its sole discretion, promulgate annual license fees from time to time which fees shall be applied to Licensee's use of the Premises (the "Annual License Fee") and all similarly-situated providers who have similar utility equipment and/or fiber housing on public property within the City. Notwithstanding the foregoing, the parties hereby understand and agree that for purposes of this Agreement, Licensor has evaluated the City Broadband Services and/or City WiFi Services to be provided by Licensee pursuant to the terms of the Network Cooperation and Services Agreement, and except for those Licensee costs and expenses set forth in this Agreement, Licensor has agreed that Licensee's Annual License Fee shall be fully offset by the provision of free City Broadband Services and WiFi Services to be provided by Licensee under the terms of the Network Cooperation and Services Agreement entered into by the Parties. If Licensee fails to provide such City Broadband Services to the Public Sites in the City within a time period that is reasonably contemporaneous with the deployment of Licensee's Services to residences in the Fiberhoods which are located around or adjacent to such Public Sites, or if Licensee thereafter discontinues providing such free City Broadband Services, then Licensee shall pay such Annual License Fee as set forth above.