

NETWORK HUT LICENSE AGREEMENT [OVERLAND PARK]

This Network Hut License Agreement ("Agreement") is entered into by the City of Overland Park, Kansas, a Kansas municipality ("City") and Google Fiber Kansas, LLC ("Licensee"). City and Licensee agree to the terms and conditions set forth in this Agreement, including each exhibit.

- 1. Purpose.** Licensee needs rights to occupy and use various real property sites that may be owned by City ("City Property"). The sites will be used for the sole purpose of constructing, operating and maintaining structures that will house network equipment and fiber that are part of Licensee's fiber optic network ("Network Hut"). The construction of each Network Hut will be based on the specifications described in Exhibit A to this Agreement.
- 2. Location of Sites for Network Huts.** Licensee will identify and propose to City the location of City Property on which to place Network Huts. Licensee and City will work together in good faith to agree upon specific portions of City Property to be used for each Network Hut ("Network Hut Site"). Each Network Hut Site may occupy all or a portion of City Property on which it is located. When Licensee and City agree upon a specific Network Hut Site, the parties will complete and sign the form attached as Exhibit B to this Agreement ("Addendum") for each Network Hut Site. City is not required to license any particular site or number of sites to Licensee, nor is Licensee required to license or use any particular site or number of sites. The Addendum includes a legal description of the Network Hut Site, the fees to be paid for use of the site and any other special terms or requirements applicable to the Network Hut Site. Licensee's occupancy and use of each Network Hut Site will be subject to this Agreement, including the terms set forth in the applicable Addendum.
- 3. Licensee Rights and Obligations.** City grants to Licensee the right to access, enter, occupy and use each Network Hut Site at any time for the sole purpose of constructing, operating and maintaining each Network Hut. City grants these rights solely to the extent it has such rights, title and interest in to the Network Hut Site, without any express or implied warranties. Licensee will obtain all applicable licenses, permits and other authorizations required to construct, operate and maintain the Network Hut and offer Licensee's services. Licensee will construct and maintain the Network Hut in accordance with all applicable laws and permitting requirements. Licensee will use and maintain the Network Hut Site in accordance with all applicable laws and will keep the site secure and reasonably free from debris, litter and graffiti. Licensee agrees that it shall not unreasonably interfere with City's ingress and egress from any remaining or adjacent City Property. City will have the right to inspect any Network Hut Site for fire, security or emergency purposes, in which case the City will give Licensee notice as soon as practicable, not to exceed 48 hours after the inspection. Nothing herein shall be deemed to create a lease, or an easement, or to grant any other property interest in any Network Hut Site.
- 4. Effective Date and Term.** This Agreement is effective on the last date it has been signed by both parties ("Effective Date"). The initial term of the Agreement is twenty (20) years from the Effective Date (the "Initial Term"). Following the Initial Term, this Agreement will renew for successive two (2) year periods (each a, "Renewal Term") unless City provides Licensee with written notice that it does wish to renew the Agreement. City must provide written notice of non-renewal at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.
- 5. Termination of Agreement or Addendum.** Licensee may terminate this Agreement or Addendum for a specific Network Hut Site at any time with thirty (30) days written notice to the City. City may terminate this Agreement in the event of a material breach of this Agreement by

Licensee and Licensee fails to cure the breach within sixty (60) days of receipt of notice from City. City may also terminate the Addendum for a Network Hut Site by providing a minimum of one hundred eighty (180) days written notice to Licensee if the City determines that the applicable Network Hut Site is needed for a reasonable and necessary public purpose or poses a public safety or health hazard to the community. Following such written notice, City agrees to use its best efforts to find an alternative City owned site that Licensee may use as a replacement. Upon any termination or expiration of this Agreement, in whole or in relation to a particular Network Hut Site, Licensee will vacate premises and return site to its original condition.

6. **Fees and Costs.** Licensee agrees to pay to City an annual fee of \$2 per square foot for each Network Hut Site. The fees will be paid for each Network Hut Site on a billing cycle beginning January 1 of each year. In the event of a termination of this Agreement or a relocation of any Network Hut Site, the annual fee will be prorated for any portion of a year that a Network Hut Site is occupied. Licensee will be responsible for all its costs associated with construction, operation and maintenance of the Network Hut and Network Hut Site. Payments will be delivered by Licensee within forty-five (45) days of the payment due date agreed upon by the parties.
7. **Indemnification.** Licensee will defend and indemnify City, its officers, elected representatives, and employees from any claims and liabilities (including reasonable attorney fees and court costs) related to any third party claim for property damage, personal injury or death to the extent caused by Licensee or its contractors. Licensee will have the right to control the defense of any such claim. If, in City's reasonable judgment, a conflict exists between the interests of City and Licensee in such a claim, City may retain its own counsel whose reasonable fees will be paid by Licensee. The parties acknowledge and agree that the indemnification provisions of this paragraph shall apply to any liability or obligations hereunder that may have accrued or may be accruing at the time of termination.
8. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.

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 8, 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.

9. **Insurance.** Licensee will carry and maintain commercial general liability (CGL), workers' compensation and business automotive liability insurance applicable to the use of the Network Hut Site(s). CGL insurance with respect to Licensee's activities on the Network Hut Site(s) will be in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit, per occurrence and in the aggregate covering bodily injury and property damage, with City as an

additional insured. The policy amount of the (a) workers' compensation insurance will be in accordance with Kansas's statutory limits and (b) business automotive liability insurance will be in the amount of not less than Two Million Dollars (\$2,000,000). Licensee will provide City with certificates of insurance reflecting the aforementioned coverage. Licensee will provide notice of cancellation in accordance with policy provisions.

10. **Notice.** All notices related to this Agreement will be in writing and sent to the address set forth in each signature block to this Agreement. 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.

11. **General Provisions.** This Agreement is governed by the laws of the state where the Network Huts are located. City will make the entirety of the rights set forth in this Agreement available to other network-based providers of internet access and multichannel video programming services in a non-discriminatory manner, including access to the City's infrastructure, poles, conduits, assets and rights of way to the extent set forth in this Agreement, on rates, terms and conditions that are as favorable as those the City provides to Licensee for the same access; recognizing that the equivalent consideration afforded by other service providers may be different than what Licensee is obligated to provide under this Agreement. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. Licensee may not sublet its rights obtained by this Agreement to any other entity without first obtaining City's approval. This Agreement may not be assigned by Licensee without the consent of City except for assignments to Licensee's affiliates or in connection with a merger, acquisition, sale of network assets or similar transactions. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, 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 the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may: (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).

(Signatures page(s) to follow)

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

LICENSEE:

(Authorized Signature)

(Name)

(Title)

Address:

**1600 Amphitheatre Parkway
Mountain View, CA 94043**

Date: _____, 2014

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos, City Attorney

EXHIBIT A

NETWORK HUT SPECIFICATIONS

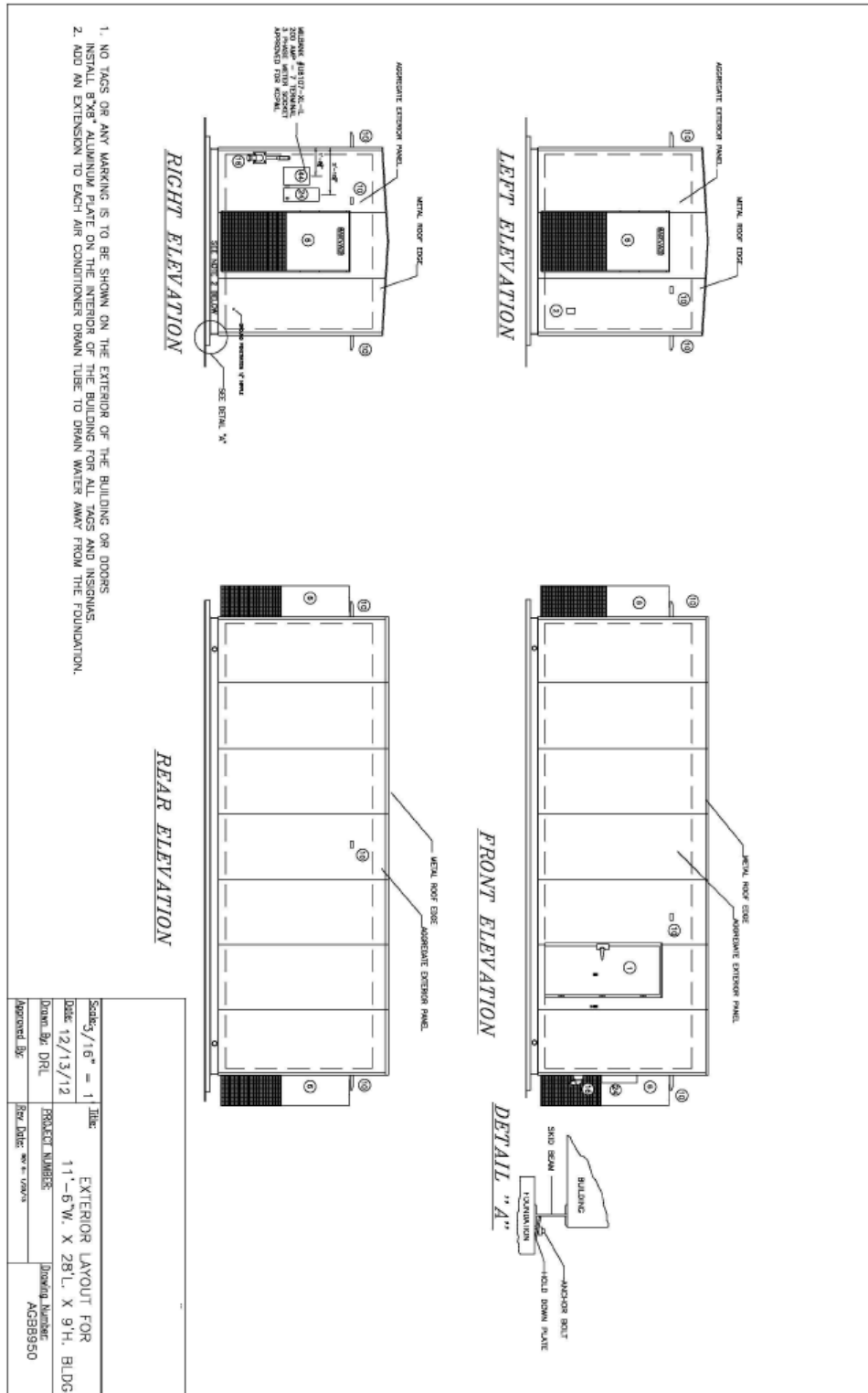


EXHIBIT B

ADDENDUM NO. ____ TO LICENSE AGREEMENT

This Addendum No. __ (“Addendum”) to the Network Hut License Agreement (“Agreement”) is entered into as of the date last signed below (the "Addendum Effective Date"), by the City of Overland Park, Kansas, a Kansas municipality (“City”) and Google Fiber Kansas, LLC (“Licensee”). The capitalized terms in this Addendum are as defined in the Agreement, unless expressly defined otherwise in this Addendum.

RECITALS

- A. The parties signed the Agreement dated _____ to provide for the use of certain City Property by Licensee for operation of its network.
- B. The parties have identified and agreed upon a new Network Hut Site for the construction and operation of additional Network Hut(s).
- C. The parties wish to enter into this Addendum to document the location of the Network Hut Site and other terms related to this Network Hut Site.

TERMS

In consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt of which both parties acknowledge, the parties agree that the following Network Hut Site and site specific provisions are hereby incorporated in to the Agreement:

1. Legal Description of Network Hut Site Location (describe below or attach legal description).

2. Other terms or requirements applicable to Network Hut Site.

Except as explicitly amended by this Addendum, the Agreement remains in full force and effect.

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

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos, City Attorney

LICENSEE:

By: _____

Name: _____

Title: _____