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September 4, 2012

Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

***Re: Special Access Rates for Price Cap Local Exchange Carriers,
WC Docket No. 05-25***

Dear Ms. Dortch:

On August 30, 2012 Bob Barber, Jay Bennett and I spoke with Matthew Berry and Nicholas Degani, respectively Chief of Staff and Legal Advisor to Commissioner Pai, to discuss the forthcoming mandatory special access data request (“data request”).

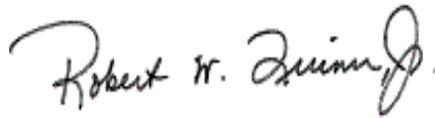
AT&T’s representatives emphasized that the requests must acquire all of the information necessary to properly complete the forward-looking market analysis that the Commission indicated it would undertake in its August 22, 2012 Report and Order.¹ To that end, we described the importance of obtaining from all competitive providers current fiber mapping data, as well as information concerning the self-supply of special access. We further explained that providers should be required to submit information not only concerning collocation in ILEC wire centers, but also identifying interconnection points located outside of ILEC wire centers. AT&T urged that the data request include submission of requests for proposal (“RFPs”) so that the Commission can evaluate claims that such RFPs are not valid indicators of potential competition.² Factors that should be evaluated in determining the potential geographic scope of the data request (i.e. information from all MSAs or some sample) were also discussed.

¹ See Report and Order, released August 22, 2012, paragraphs 97-101

² See, for example, Sprint ex parte dated August 14, 2012 (at page 8), stating that “RFP responses simply are not a reliable indicator of where providers are willing and able to provide service. In Sprint's experience, companies that respond to RFPs are frequently unable to deliver even if their proposal is accepted.”

Finally, because some parties have asserted that various factors impede non-ILEC providers from deploying or extending their own loop facilities to locations in close proximity to their fiber rings,³ the data request should collect complete and specific data on any such occurrences for all locations encompassed by the data request. That is, if a party contends that it has been prevented from obtaining access to a building or public right of way, it should be required to specifically identify and describe each such occurrence. This information will enable the Commission to take steps to address any identified impediments to competitive deployment. As requested, AT&T subsequently provided (via e-mail) the attached agreement between Google Fiber Missouri, Inc. and the City of Kansas City, Missouri, which provides an actual example of steps that a community has taken to mitigate any such impediments and further advance broadband deployment within its borders.⁴

Respectfully submitted,



Robert W. Quinn, Jr.

Attachment

cc: Matthew Berry
Nicholas Degani

³ See, for example, XO ex parte dated June 26, 2012 (at page 3), stating that “[] a build cannot occur unless it [sic] relatively easy to obtain access to public and private rights of way, including municipal permitting and building access;” Comments of tw telecom dated January 19, 2010 (at page 16), stating that “[t]he relevant barriers to loop deployment include problems associated with obtaining timely and cost-efficient access to multi-tenant buildings, access to poles, ducts and conduit, a particular customer’s tolerance for delay during loop deployment, distance from a carrier’s transport network, and labor costs.”

⁴ As its agreement with Google Fiber Missouri reflects, the steps Kansas City undertook to facilitate broadband deployment included providing access to assets and infrastructure with no charges for such access, a commitment to review and respond to any documents that require approval by the city within five working days of submission, providing a single point of contact responsible for addressing all issues related to the Project (including coordination across all City departments) and provision of a dedicated inspection team for inspection of all work performed on the project.

DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is entered into effective as of the last date signed (the “Effective Date”) by and between the City of Kansas City, a local government located in the State of Missouri (“City”) and Google Fiber Missouri, Inc. (“Google”), a corporation incorporated in the State of Missouri.

WHEREAS, Google 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 and to foster new high-speed applications; and

WHEREAS, City has a direct interest in improving the quality of life of its citizens through improvements to important infrastructure within its boundaries; and

WHEREAS, City recognizes that improved access to high-speed Internet services is a key infrastructure improvement for the City and its citizens for the 21st century; and

WHEREAS, via this Agreement City will be provided with a unique development tool; and

WHEREAS, Google and City acknowledge the mutual benefit of the exchange of services to City and the waiver of certain fees to Google; and

WHEREAS, City regularly enters into public/private agreements with third parties for the development of improvements to the quality of life in City; and

WHEREAS, Google and City desire to work together to further all of these goals;

NOW therefore Google and City enter into this agreement for the deployment and operation by Google of a high-speed fiber project within the boundaries of City (the “Project”).

1. Term of agreement

The initial term of this Agreement will be ten (10) years from the Effective Date (“Initial Term”). At the end of the Initial Term, and unless otherwise terminated, the Agreement will continue for successive five (5) year terms (each a “Renewal Term”). This Agreement will remain in effect unless and until terminated by Google at the end of the Initial Term or any Renewal Term on ninety (90) days written notice to City prior to the end of the Initial Term or any Renewal Term.

2. The Project

Pursuant to this Agreement, City and Google will cooperate in the design, planning, construction and operation of the Project. In consultation with City, Google will decide where to build the initial locations of the Project, including neighborhoods that are economically distressed. The specific details of the Project and such cooperation are set forth below.

(a) Location of the Project

The Project will be built within the geographic boundaries of City. Specific locations, and the timing of all construction, will be determined as part of the design and review process. The parties agree that Google intends to build the fiber network on a demand-driven basis, allowing the citizens of City to determine where and when the Project will be deployed.

(b) Design and construction

Google will be responsible for design of the Project. Google will consult with City on the suitability of all network designs, but Google will make all network design decisions. Final decisions about what type of construction method to use will depend on specific scenarios identified during the network planning and design process and consultation with City. All design details for locations, dimensions, construction techniques, and materials will be subject to the approval process set forth in this Agreement prior to scheduling any work. Such approval will not be unreasonably withheld, conditioned or delayed, and will be handled in accordance with the provisions of this Agreement.

All work to be performed by Google under this Agreement will be performed by Google or a contractor retained by Google. For ease of reference, any reference to Google herein that also implies a Google contractor will refer to both.

Google intends to use different construction techniques throughout the Project footprint, which may include (but not be limited to) any of the following:

- i) traditional open trench and/or boring for aggregation fiber cable to the CO (defined below);
- ii) slot cut micro-trenching and or trenching/boring for distribution fibers to residential property lines;
- iii) fiber on buildings or aerial structures; and
- iv) installation of fibers within existing City conduit or in City sewer systems.

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City agrees that each of these construction methods is acceptable for work performed in City rights-of-way. City agrees to work cooperatively with Google in reviewing all other potential construction methods.

(c) Space and power

City will make space available to Google in City facilities for the installation of Google's Central Office ("CO") equipment and for additional network facilities, in locations to be determined as part of the design. In addition, City will provide power necessary for Google's equipment at City locations. Google will install all equipment necessary for operation of its facilities. City will cooperate with Google in connection with all equipment matters under this Agreement, and will not charge Google for such space, power or related services.

Subject to City's reasonable security measures and escort procedures, City will provide to Google and its contractors 24 x 7 access to Google's network in City facilities so that Google may perform installation, operation, maintenance, replacement and repair functions. City will secure City locations via locked doors that trigger alarms in the event of unauthorized entry.

The parties will determine the timing for delivery of the necessary space for the Google equipment cooperatively as part of the Project planning. Location may be changed at the discretion of City to locations at least as suitable. In the event of such a change, City will cooperate with Google to allow for any necessary reconfiguration of Google's network and the necessary move of any Google equipment. Any such change will be undertaken in a manner that is as least disruptive to Google's operations as possible. The parties will negotiate in good faith to determine the appropriate cost responsibility.

(d) Costs

Google will bear all of the costs for the Project, including but not limited to design, engineering, construction, equipment and insurance for its work, except as up to the drop point for its end users. In addition, Google will bear all the operating costs of the fiber network during the term of this Agreement. City will not charge Google for access to City's assets and infrastructure.

(e) Operation of network and facilities

Google will be entirely responsible, during the term of the Agreement, for the management of the Project, in accordance with industry-accepted practice in the provisioning of Internet services. As part of this management, Google will be responsible for maintenance and operation of the fiber network up to a termination point outside each end user premise (to be defined in specific end user agreements). Google will also be responsible for operation and maintenance of all equipment installed in the CO and in City rights-of-way.

(f) End user connections

In order to connect an end user to the network, the fiber will be terminated at an Optical Network Terminal (“ONT”) inside the end-user’s premises, via a drop from the Google network and in a manner to be determined by Google. The location and the method of the drop to the ONT will vary depending on the circumstances of the end-user location.

The following will apply to the connection between Google’s network and the premises of each end user:

- (i) Google will enter into individual contracts with each end user regarding the connection to Google’s fiber network. City will not be a party to any agreement between the end user or a property owner and Google for connection to the fiber network.
- (ii) For single-family residences, this will generally involve installation of conduit from the network demarcation point to the property.
- (iii) For multiple-dwelling units, this will generally involve a connection from the demarcation point in the building’s telecommunications or meet-me room.
- (iv) In all cases, Google will coordinate directly with the property owner on all matters related to the connection to Google’s fiber network.

3. Access to rights of way and infrastructure

The installation of Google equipment on City streets and roads and in City rights of way will be subject to an encroachment permit to be issued by City, in the form attached hereto as Exhibit A.

Subject to existing rights-of way and easements, City will allow Google to have access to necessary rights-of-way on property owned by City. Such access will be provided during regular business hours for non-emergency work and 24x7 for emergency work. This access includes permission to perform construction work on City property, including construction in the streets as needed for the Project. City will provide Google with access to assets and infrastructure of City, to the extent such assets or infrastructure are available and are needed for Google’s deployment of the fiber network. City will use its best efforts to make such assets available to Google upon request, on commercially reasonable terms. Such infrastructure may include, but will not be limited to, conduit, fiber, poles, rack space, nodes, buildings, facilities, CO locations, available land, and others (TBD).

City will not impose any charges for access to or use of any City facilities provided under this Agreement, nor will it impose any permit and inspection fees.

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City will cooperate with Google in efforts to allow Google to gain access to poles and rights-of-way owned or controlled by third parties.

4. Services to be offered by Google

(a) High speed Internet access

Google will provide broadband Internet service to end-users. The specifics of the service will be defined as the Project progresses. Google will make commercially reasonable efforts to achieve a service speed of up to 1Gbps.

(b) Pricing for Internet services

Pricing for Internet services will be defined as the Project progresses.

(c) Customer support

Google will provide customer support for end-users of the Internet service.

(d) Other services

Google may offer other, as-yet undetermined services, using the network constructed as part of the Project. It will offer such services in accordance with all applicable permits and laws, as well as the terms of this Agreement.

5. Obligations of City

In addition to all other obligations mentioned elsewhere in this Agreement, City will have the following obligations:

- (a) Provide an Executive Sponsor for the Project at the most senior level of City. The Executive Sponsor will have the primary responsibility for interaction between Google and the City Council.
- (b) Provide a single point of contact (“SPOC”) for Google, which SPOC will be responsible for addressing all issues related to the Project, providing coordination across City departments and serving as a communications and troubleshooting resource for Google. The SPOC will report directly to the Executive Sponsor for all issues related to the Project.
- (c) Create a City team dedicated to the Project and allow Google to place Project employees in City office locations, working side-by-side with the dedicated City team.

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- (d) Offer the full cooperation of all City departments with respect to relevant issues on the Project. Such cooperation will be supervised by the SPOC.
- (e) Provide access to assets and infrastructure, with no charges for such access.
- (f) Participate in regular status meetings (at least weekly) for the coordination of all matters related to the Project.
- (g) Provide quick, diligent review of all applications for permits, including permits or other necessary items for construction work within city right-of-way and in connection with city assets or infrastructure. This includes a commitment to review and respond to any documents that require approval by City within five (5) working days of submission by Google.
- (h) Use the dedicated City Project team to provide on-the-spot exception management where necessary to avoid delays in the Project.
- (i) Provide a dedicated inspection team as part of the City Project team for inspection of all work performed on the Project. As part of this process, City will permit Google to use an approved third-party inspection firm to assist the City in completing necessary inspections in a rapid, timely manner.
- (j) Allow Google to attach fiber on City poles, to the extent such poles are technically suitable and mutually agreeable for attaching a fiber optic cable.
- (k) Provide Google with access to detailed GIS data and computer tools, including location information on all facilities owned by City and, to the extent available, those of third parties, with no charges for such access.
- (l) Provide consulting assistance to Google on planning and build of the Project, as requested by Google. Such requests will be responded to in a timely manner sufficient to meet Google's design and build requirements.
- (m) Permit Google to manage all traffic control for the Project pursuant to applicable ordinances. To secure necessary permits, Google shall use the City's permitting system.
- (n) Provide timely assistance to Google in working and negotiating with third parties relevant to the Project, as requested by Google.
- (o) Cooperate with Google on all publicity and public relations for the Project, including the obligation to obtain Google's approval for all public statements or announcements related to the Project.
- (p) Develop and implement a City managed marketing/education program for local residents with respect to the Project, in consultation with Google. Such program would include items as direct mailings, community meetings, and others to be decided on jointly by Google and City.

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- (q) Cooperate with Google to obtain settlement-free interconnections with anchor institutions in City that have existing fiber and/or network connections.

6. Obligations of Google

In addition to all other obligations mentioned elsewhere in this Agreement, Google will have the following obligations:

- (a) Work closely with the Executive Sponsor and SPOC of City and relevant City departments with respect to the design and construction of the Project.
- (b) Comply with all requirements of City for permit and use applications.
- (c) Build, operate and maintain the FTTH network, based upon demand by City residents, availability of necessary infrastructure, and appropriate cooperation of Kansas City Power & Light.
- (d) Offer high-speed Internet services to City residents in locations within City via the network built in connection with the Project.
- (e) Manage all coordination with resident community groups for the Project in general, and with neighborhoods, blocks, and residents individually, regarding the Project's logistics, impacts, and schedule.
- (f) Cooperate with City on all public relations and publicity for the Project.
- (g) Provide the services in Section 4(a) to City for up to a total of three hundred (300) locations and other governmental buildings throughout the City, to be identified by City. When such locations are passed by the Project construction, the City or other designated governmental entity may connect the locations to the Project at its expense, and then receive the Section 4(a) services free of charge.

7. Intellectual property rights

Google will retain all Intellectual Property Rights created, conceived, prepared, made, discovered or produced in connection with the Project itself (but not applications running on the fiber network if not developed by Google).

For purposes of this Agreement, "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;

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- iii) the protection of trade and industrial secrets and confidential information;
- iv) other proprietary rights relating to intangible intellectual property (specifically excluding trademarks, trade names and service marks);
- v) analogous rights to those set forth above; and
- vi) 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.

8. Indemnity

(a) **Obligation to Indemnify.** Each party agrees, to the extent permitted by law, to defend, indemnify, and hold the other party, its trustees, officers, directors and employees harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) incurred by the indemnified party arising from or as a result of any third-party property damage, personal injury or death related to the indemnifying party's performance under this Agreement.

(b) **Indemnification Procedure.** In connection with an indemnification under this Agreement, the indemnified party will:

- i) promptly notify the indemnifying party of any such claim and grant the indemnifying party control of the defense and all financially related settlement negotiations, except that the indemnified party may have its own counsel in attendance at all public interactions and substantive negotiations at its own cost and expense; and
- ii) cooperate with the indemnifying party, at the indemnifying party expense, in defending or settling the claim; but if any settlement results in any ongoing liability to, or prejudices or detrimentally impacts the indemnified party, and that obligation, liability, prejudice or impact can reasonably be expected to be material, then that settlement will require the indemnified party's written consent.

9. Limitation of liability

EXCEPT FOR A BREACH OF CONFIDENTIALITY OBLIGATIONS OR A PARTY'S INDEMNIFICATION 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

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HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

10. No Warranties

EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THE TRIAL BUILD CONTEMPLATED BY THIS AGREEMENT. GOOGLE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT, IN CONNECTION WITH THE TRIAL BUILD. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE TRIAL BUILD.

11. Insurance

(a) Each party will maintain in full force and effect during the term of this Agreement insurance that will include at a minimum: (a) Worker's Compensation in accordance with all federal, state and local requirements; (b) Commercial General Liability - coverage for bodily injury and property damage liability, including contractual liability coverage - \$2,000,000 each occurrence bodily injury and property damage combined; and (c) Business Automobile Liability Insurance – coverage for bodily injury and property damage liability, including coverage for all non-owned, hired and rented automotive equipment - \$1,000,000 each occurrence, bodily injury and property damage combined. If either party self-insures, it shall provide appropriate protection equivalent to the limits described above.

(b) Insurance carriers used by the parties must be rated A- or better by A.M. Best Company. Upon request, each party will include the other party as an additional insured on its Commercial General Liability policy.

(c) All coverage will be considered primary without right of contribution of the other party's insurance policies.

(d) Each insurance policy must contain a severability of interests clause.

(e) Policies should provide thirty (30) days written notice prior to cancellation, except in the event of non-payment, which will require at least ten (10) days written notice.

12. Default and termination

- (a) Unless otherwise provided herein, a party will be in default if:
- 1) such party breaches any term or provision of this Agreement;
 - 2) such party becomes insolvent or ceases to operate as a going concern;
 - 3) 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;
 - 4) such party makes a general assignment for the benefit of creditors; or
 - 5) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof.

(b) In the event of a default under Section 12(a)(1), the non-defaulting party must provide written notice of such default, including reasonable detail and an opportunity to cure the default within thirty (30) days after receipt of such notice.

(c) Upon the failure by the defaulting party to cure any default in accordance with Section 12(b), or upon the occurrence of any other default described herein, the non-defaulting party may: (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, at the expense of the defaulting party; (ii) terminate the Agreement; and (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Each of the remedies described in Section 12(c) is separate and apart from the other remedies and may be pursued in addition to, or in lieu of, any other remedy.

(d) Google will have the right to terminate the Agreement for convenience at any time up to two (2) years after actual construction commences on the fiber network.

13. Actions upon termination

Upon termination of the Agreement, the parties agree that the following steps will be taken:

(a) If the termination occurs after service has begun to end users, the parties will undertake a transition as contemplated by Section 14.

(b) Except for a termination under section 12(d), Google will not remove its equipment and property from City without the consent of City. Any removal will be at Google's own cost, provided, however, that any property that is installed underground may be abandoned in place.

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(c) To the extent that Google wishes to leave any equipment or property in City locations or right of way at the time of termination, it will cooperate with City in doing so (or remove such equipment and property, if City declines to retain such equipment or property).

(d) Google will take all reasonable steps to restore the locations where it has operated under this Agreement to their original condition, ordinary wear and tear excepted.

(e) Unless a transition occurs pursuant to Section 14, then at the time of termination, Internet access services for end-users will be terminated, but in no case will such services be terminated on less than ninety (90) days notice.

14. Transition upon termination

In the event of termination of this Agreement after service begins to end users, the parties will negotiate a commercially reasonable operating agreement for the continued use of the existing fiber network, which could involve operation of the network by a third party.

15. Dispute resolution

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement will first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of thirty (30) days, or any agreed further period, the parties are unable to resolve the dispute, then the parties may seek resolution by exercising any rights or remedies available to either party at law or in equity.

16. Governing laws; Choice of Venue

Any action related to this Agreement will be governed the laws of the State of Missouri (except that body of law controlling conflict of laws) and the United Nations Convention on the International Sale of Goods will not apply. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of Missouri, or if it has or can acquire jurisdiction, in the United States District Court for the District of Missouri. Notwithstanding the foregoing, jurisdiction will also lie with appropriate federal and state regulatory agencies. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court or agency in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum.

17. Relationship of the parties

The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

18. Notices

All notices must be in writing and addressed as specified below. Notice will be deemed given (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.

City:

City of Kansas City, Missouri
Office of the City Manager
Attn: Richard Usher
29th Floor City Hall, 414 E. 12th Street
Kansas City, MO 64106
Fax no.: (816) 513-1363
Email: Richard.Usher@kcmo.org

With a copy to (which copy will not constitute notice):

City of Kansas City, Missouri
Attn: City Attorney
28th Floor City Hall, 414 E. 12th Street
Kansas City, MO 64106
Fax no.: (816) 513-3133
Email: law@kcmo.org

Google:

Google Fiber Missouri, Inc.
Attn: General Counsel
1600 Amphitheatre Parkway
Mountain View CA 94043
Fax no.: (650) 618-1806

email: legal-notices@google.com

With a copy to (which copy will not constitute notice):

Google Fiber Missouri, Inc.
Attn: Kris Bennett
1600 Amphitheatre Parkway
Mountain View CA 94043
Email: boomer@google.com

19. Waiver

Failure to enforce any provision of this Agreement will not constitute a waiver of that provision.

20. Assignment

(a) Except as set forth below, neither party may assign or transfer this Agreement and its rights or obligations hereunder to another party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

(b) Notwithstanding Section 20(a), Google may at any time, on written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:

- (i) to any Affiliate of Google;
- (ii) to any successor of Google's business operations; or
- (iii) to any purchaser of all or substantially all of Google's assets.

For purposes of this Section, (i) "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 Google; 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.

21. Force Majeure

Neither party will be deemed in violation of 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.

22. Confidentiality

The parties understand and agree that all communications between the parties regarding this Agreement or the subject of this Agreement, as well as any financial or business information of either party and any material designated as confidential, are to be considered confidential (“Confidential Information”). Such Confidential Information may not be disclosed by either party to any individual other than the trustees, directors, officers, employees and attorneys of such party or agents of such party who have a need-to-know. However, neither party is required to keep confidential any information that (i) becomes publicly available other than through the receiving party; (ii) is required to be disclosed pursuant to a governmental or judicial rule, order or regulation; (iii) the recipient of the Confidential Information independently develops without access to or use of the Confidential Information; (iv) becomes rightfully available to the disclosing party without restriction from the third party; or (v) is required by its lender and is given to such lender on a confidential basis. If either party is required by law or similar 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 and/or waive compliance with this Section 22. The party whose consent to disclose information is requested must respond to such request, in writing, within five (5) working days of the request, by either authorizing the disclosure or advising of its election to seek a protective order. If such party fails to respond within the prescribed period the disclosure will be deemed approved. If a party chooses to seek an appropriate protective order, the other party will refrain from disclosing such information (unless legally compelled to do so) until the request for a protective order is resolved, and will then comply with any validly-issued protective order.

23. No publicity

Neither party may issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to this Agreement or referencing or implying the other party or its trade names, trademarks, or service marks, without the prior written approval of the other party.

24. Prior agreements

This Agreement supersedes all prior communications and agreements, oral or written, between the parties regarding the subject matter herein contemplated.

25. Compliance with laws

Google shall, throughout the term of the Agreement, comply with all applicable laws and regulations.

26. Miscellaneous

(a) The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the parties or their respective successors or permitted assigns.

(b) Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.

(c) The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof.

(d) If any provision of these terms is found unenforceable, the balance of the Agreement will remain in full force and effect.

(e) This Agreement may be amended only by a written instrument executed by the parties.

(f) This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.

(g) There are no third-party beneficiaries to this Agreement.

(h) Nothing in this agreement will limit either party's ability to seek equitable relief.

27. Valid and Binding Obligation.

This Agreement is the legal, valid and binding obligation of City and Google, enforceable against City and Google in accordance with its terms.

28. Entire agreement

This Agreement supersedes any and all other agreements and representations respecting the matters addressed herein and contains all the terms, conditions and obligations of the parties with respect to such matters.

(SIGNATURES ON NEXT PAGE)

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

City of Kansas City, Missouri

Google Fiber Missouri, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

FORM OF ENCROACHMENT PERMIT

As Google submits its work requirements for the Project to City, City will give Google an authorization to proceed by providing an Excavation Permit, attached hereto as Attachment A-1 and a Traffic Permit, attached hereto as Attachment A-2.

Upon completion of construction, should Google need to relocate its facilities to accommodate City infrastructure, it will do so by following the guidelines below:

Relocation of Facilities placed in Public Ways

A. *Relocation of Facilities - Relocation Obligation on Public Ways and Places or Other City Property (but not a City building).* Google shall temporarily or permanently remove, relocate, change or alter the position of any Google facility constructed or placed in public ways and places or other City property (but not a City building), whenever the City will determine that such removal, relocation, change or alteration is necessary for the completion of any public purpose. Google shall have the option of relocating in public right of way or securing private easements. Nothing in this paragraph shall obligate Google to move any facilities without compensation when the facilities are service facilities serving City facilities or any department or agency deriving its authority as a political subdivision of the City or its Charter as a customer, or pursuant to Company's legitimate private property interest.

An improvement is for a public purpose if the primary purpose of the improvement project is public rather than private, that is, there is an identifiable public necessity or public convenience implicated by the project.

Nothing herein is intended to amend or modify the common law of Missouri with respect to utility relocation or to amend or modify any remedy available to the City or Google to enforce the rights enjoyed by each.

B. *Relocation from Private Rights of Ways.* The City may, in writing, request the adjustment, relocation and/or replacement of Google's facilities located within private rights of ways whenever reasonably necessary for the widening, change of grade, relocation or other public purpose by the City. Google will not unreasonably refuse the

Final Execution Version

request if City is willing to pay the direct and indirect costs of the relocation including the cost of acquiring another private easement or relocating in the public right-of-way, so long as such placement in the public right-of-way does not give up any of Google's rights, under this Section, associated with future relocation activities. Within forty-five (45) days of receipt of the City's written request, the Company will provide the City with an estimate of the cost of the relocation. Indirect costs are comprised of, but not limited to, supervision, engineering, transportation, material handling, and administrative cost functions that support actual construction or such costs as otherwise authorized by the Missouri Public Service Commission. The amount of the allocation of indirect costs is derived by application of unit costs or allocation percentages, determined from historical experience. Google will, upon request, explain the detail behind its determination of costs. Within ninety (90) days of the City's written acceptance or approval of Google's estimate of the cost of relocation, Google will solicit bids for the relocation, evaluate the costs and proposed plans of the bids received, and provide feasible bids to the Franchise Administrator.

C. *Planning and Payment of Relocation from Private Rights of Ways.* When the City requires Google to relocate its facilities from private easements, the Google will, to the extent feasible, follow the City's major street plan, and the City will pay the relocation costs. The relocation costs referenced herein will include applicable material and labor costs including allocation of indirect costs. If Google relocates its facilities from private easements into public ways or places in accordance with this Section, the City will pay Google for the amortized and unamortized fair market value of the private easement and the costs of subsequent relocations from the public ways or places if required for a future public purpose.

D. *Relocation Performance.* The relocations will be completed within a reasonable time from the date on which the City requests, in writing, that the relocation commence and gives Google adequate assurance any required relocation cost will be paid. Should the City and Google disagree on the question of which party must pay for a relocation from public property, they will promptly exchange with the other in writing the basis for their positions. Such exchange will occur within five business days of the statement by the City or Google that a disagreement exists. The parties will then attempt to promptly resolve the issue as stated in the Agreement. The parties will use their best efforts to minimize the cost to resolve the dispute through stipulations, cooperative review of records, and other similar approaches to the resolution of the issue. Google will be entitled to an extension of time to complete a relocation where the Google's performance was delayed due to a cause that could not be reasonably anticipated by Google. Google will promptly notify the City in writing (which may include email or fax) of any such delay. Upon request by Google, the City will also grant Google reasonable extensions of time for good cause shown and the City will not unreasonably withhold any such extension.

E. *Proposed Alternatives or Modifications.* Upon receipt of written notice of a required relocation, Google may promptly propose an alternative to or modification of the relocation in an effort to mitigate or avoid the impact of the required relocation on its

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facilities. The City will, in good faith, review the proposed alternative or modification and will not unreasonably withhold acceptance of the proposed alternative or modification.

F. ***Reimbursement of Funds by City.*** Should the City apply for any reimbursements of funds for any relocation project to support a public purpose, then City will take into consideration the cost for Google to relocate its facilities and will include this cost in its total request for funds. If City receives an allocation of funds to support such relocation project, then Google will be allocated its portion of funds required to complete the relocation of the affected facilities, limited to the extent that the relocation of facilities qualifies as a reimbursable item in the application for reimbursement.

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ATTACHMENT A-1
EXCAVATION PERMIT FORM

Public Works Department
Street and Traffic Division
5th Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106-2705

(816) 513-2679
Fax: (816) 513-2715

APPLICATION FOR EXCAVATION PERMIT

APPLICANT Name: _____ E-MAIL: _____

FIRM RESPONSIBLE FOR EXCAVATION: _____

BUSINESS ADDRESS: _____ PHONE: _____

CITY/STATE/ZIP: _____ FAX: _____

JOB SUPERINTENDANT NAME: _____ CONTACT PHONE: _____

LOCATION OF EXCAVATION

STREET ADDRESS NUMBER: _____

PLEASE SKETCH WORK AREA OR ATTACH A COPY OF PLANS:

DESCRIPTION OF WORK: _____

SIZE OF DIG [NUMBER OF HOLES, LENGTH, WIDTH AND DEPTH]

BORE: _____

Will any portion of excavation be in street pavement? _____

Length and width of pavement cut: _____

Anticipated schedule of work Start Date Completion Date

I certify that I have read, have understood and will comply with the requirements of the City of Kansas City Missouri SR-1 Standards for completions.

APPLICANT'S SIGNATURE: _____ DATE: _____

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ATTACHMENT A-2
TRAFFIC PERMIT FORM

