

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into effective as of the last date signed (the "Effective Date") by and between the Unified Government of Wyandotte County/Kansas City, Kansas, a local government located in the State of Kansas ("City") and Google Fiber Kansas, LLC, a Kansas limited liability company ("Google").

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 its citizens for the 21st century; 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 to further the economic development of 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 for the citizens and businesses in Kansas City, Kansas (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 one hundred eighty (180) 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. Google will design and plan the

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Project for the entire City of Kansas City, Kansas. In consultation with City, Google will decide where to build the initial locations of the Project, including neighborhoods that are economically distressed. Google will then construct the balance of the Project where and when demand for services dictates such build should occur. For purposes of this Agreement, the term "demand for services" shall include neighborhood interest, demonstrated willingness to subscribe to the service, and activity to support deployment of the service. 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 Kansas City, Kansas. 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 at its sole discretion. 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. City will also encourage Google to provide opportunities for local businesses and contractors, women and local minority owned businesses to participate in the Project. For ease of reference, any reference to Google herein that also implies a Google contractor will refer to both.

Google hereby agrees that all work to be performed by Google or its contractors within electric supply space (whether overhead or below ground) shall be performed in compliance with all applicable laws and regulations, including safety requirements, use of qualified contractors and in compliance with the BPU's contractual requirements for such space.

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);

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- 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 gas or sewer systems.

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 City will not charge Google for such space, power or related services except as set forth in Exhibit B.

Subject to City's reasonable security and safety 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 and for certain locations reasonably required by Google, doors shall 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, metered power to be billed at cost, equipment and insurance for its work, 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. In the event that City incurs costs as a result of the Project that are over and above City's normal cost of doing business to support a project of this scope, the parties will negotiate in good faith

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to determine the appropriate cost responsibility. City will not charge Google for access to City's assets and infrastructure except as set forth in Exhibit B.

(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 and businesses, 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.

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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, substations, rack space, nodes, buildings, facilities, CO locations, available land, and others (TBD).

There shall be no charges for access to or use of any City facilities provided under this Agreement, nor will any permit and inspection fees be imposed by City, except as set forth in Exhibit B.

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

Reasonable and accessible 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 laws and regulations, as well as the terms of this Agreement.

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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 respective governing bodies.
- (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.
- (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 charges for such access according to the fee schedule set forth in Exhibit B.
- (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 on the Project within City right-of-way and in connection with City assets or infrastructure. This includes a commitment to review and respond to any subsequent modifications or similar documents that may 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.
- (j) Perform all necessary make-ready work on City-owned infrastructure, with such work to be done at no charge to Google for those infrastructure items that are part of City's regular replacement program.
- (k) Allow Google to attach fiber on City poles in a cost-effective manner, either by allowing installation in the supply space or via the installation of appropriate cross-arms to facilitate clearance.

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- (l) Subject to security and privacy laws, 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, without any charge.
- (m) 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.
- (n) Provide appropriate and necessary traffic control measures, including dedicated public safety personnel if needed, in connection with the build of the Project, with charges for such support according to the fee schedule set forth in Exhibit B.
- (o) Provide timely assistance to Google in working and negotiating with third parties relevant to the Project, as requested by Google.
- (p) 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.
- (q) 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 such as direct mailings, community meetings, and others to be decided on jointly by Google and City.
- (r) Cooperate with Google, to the extent requested, 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 and availability of necessary infrastructure.
- (d) Offer high-speed Internet services to City residents in locations within City via the network built in connection with the Project.

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- (e) Collaborate with City and its residents to develop and use next-generation high-speed Internet applications and services.
- (f) 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.
- (g) Cooperate with City on all public relations and publicity for the Project.
- (h) Provide the services in Section 4(a) to City, BPU (as defined in Section 20(b) below) and the school districts in Kansas City, Kansas, for up to a total of one hundred and thirty (130) locations throughout City, to be identified by City, and similar facilities constructed hereafter as mutually agreed upon by the parties. When such locations are passed by the Project construction, Google will connect the locations to the Project at no charge, so long as the cost is commercially reasonable. If the cost for connection of a particular location is outside that range, Google and City will discuss options to address that issue. Following such connection, City will receive the Section 4(a) services free of charge at each location.
- (i) Work with City on City's "Smart Grid" program, in a manner that allows the Smart Grid program to benefit from the Project. If and to the extent that such benefits result in savings to the Smart Grid budget, the parties will negotiate an agreement in which City agrees to reinvest those savings into the Project.

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). In the Event of a Default or a Termination, as part of the operational agreement contemplated under Section 14, City shall be granted a non-exclusive, royalty-free license to use the Intellectual Property Rights developed in connection with the fiber network, to the extent it is required in order to permit City to receive the benefits contemplated under this Agreement.

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;
- 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);

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- 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.** Google hereby agrees to defend, indemnify, and hold City, BPU, and their respective officers, directors, governing body members and employees (collectively, the "Indemnified Parties") harmless from and against any and all claims made by third-parties against any of the Indemnified Parties for damages, injuries, liabilities, costs and expenses (including but not limited to attorneys' fees) arising from or as a result of this Agreement, or the design, construction, completion, use or operation of the Project.

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

- i) promptly notify Google of any such claim and Google shall defend and hold the Indemnified Parties harmless from such claim, with counsel of Google's choice, as reasonably approved by City, provided that the Indemnified Parties may have their own counsel in connection with such defense at Google's cost and expense; and
- ii) affirmatively participate with Google, at Google's expense, in defending or settling the claim; but if any settlement results in any ongoing liability to, or prejudices or detrimentally impacts the Indemnified Parties, and that obligation, liability, prejudice or impact can reasonably be expected to be material, then that settlement will require the Indemnified Parties' written consent, which may be granted or withheld in its sole discretion.

(c) Notwithstanding the foregoing, the Indemnified Parties shall not be indemnified against any third-party claims for damage arising out of the Indemnified Parties' respective negligence or willful acts arising out of their performance under this Agreement,

(d) In no event shall Google's total liability for indemnification under this Section 8 exceed the sum of five million dollars (\$5,000,000). This limitation is subject to adjustment by mutual agreement of the parties.

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 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 PROJECT 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 PROJECT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PROJECT.

11. Insurance

(a) Google 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; (c) all risk or casualty insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) relating to Google's CO and other space used by Google per this Agreement and relating to Google's fixtures, furnishings, equipment, personal property, inventory and stock-in-trade on a full replacement cost basis, and (d) 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. Google will purchase and maintain excess liability insurance in an amount not less than \$5,000,000. If Google self-insures, it shall provide appropriate protection equivalent to the limits described above.

(b) Insurance carriers used by Google must be rated A- or better by A.M. Best Company. Upon request, Google will include City and/or BPU as an additional insured on its all risk, casualty and/or Commercial General Liability policies.

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(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) such party causes material damage to the UG, BPU or its property in the design, construction, completion, use or operation of the Project;
- 4) 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;
- 5) such party makes a general assignment for the benefit of creditors; or
- 6) 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) or 12(a)(3), 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 the date that is two (2) years after actual construction commences on the fiber network.

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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.

(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). If Google leaves any equipment or property or property installed under this Agreement, Google will not incur any charges for doing so.

(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 ownership and operation of the network by BPU or a third party. In the event of subsequent BPU or third party operation of the network, Google will cooperate in facilitating such a transition.

In the event of termination of this Agreement (for a reason other than default of City) after service begins to end users, the terminating party will provide written notice to the other party of its intention to terminate at least 180 days prior to such termination. In the event of such a termination (through no fault of City), City shall have the right and option to purchase the fiber network from Google at any time prior to such a termination. City shall exercise its aforesaid option by giving Google written notice of City's election to exercise its option and specifying the date, time and place of closing, which date (the "Closing Date") shall be neither earlier than 30 days nor later than 150 days after the notice is given. In connection with this option, the parties further agree as follows:

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- (a) The purchase price to be paid by City for the fiber network (the "Purchase Price") shall be the "Fair Market Value of the Fiber Network", which shall be mutually agreed upon by City and Google; however, if the parties do not agree as to the Fair Market Value of the Fiber Network within thirty 30 days after the Exercise Date, then each party shall choose a "Qualified Expert" who shall make such determination of the Fair Market Value of the fiber network as of the Exercise Date and submit the same to the other party (together with the information forming the basis for such determination) within seventy-five (75) days after the Exercise Date (with each party paying the fee for its own Qualified Expert), but if the two Qualified Experts do not agree as to the Fair Market Value of the Fiber Network within fifteen (15) days thereafter, the two Qualified Experts shall promptly jointly select a third Qualified Expert. Within 30 days after his or her appointment, the third Qualified Expert shall select one of the two initially submitted appraisals as the Fair Market Value of the Fiber Network and such selection shall be binding upon the parties.
- (b) For purposes hereof, the term "Qualified Expert" shall mean an independent, unaffiliated third party with expertise and knowledge about fiber networks of this kind and the market value of the same, taking into account the technology, infrastructure, the parties' previous contributions to the Project, customer base, service speeds and other relevant market factors. The fee of the third Qualified Expert, if any, shall be paid by the party whose determination of Fair Market Value of the Fiber Network is not selected by the third Qualified Expert.

Notwithstanding the foregoing, City may terminate the Agreement without giving 180 days notice if Google is in default and City does not elect to exercise its option to purchase the fiber network hereunder.

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.

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16. Governing laws; Choice of Venue

Any action related to this Agreement will be governed the laws of the State of Kansas (except that body of law controlling conflict of laws) and/or the laws of the United States, 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 Kansas, Wyandotte County, or if it has or can acquire jurisdiction, in the United States District Court for the District of Kansas. 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:

Unified Government Clerk
Unified Government of WYCO/KCK
701 N. 7th Street, Room 323
Kansas City, Kansas 66101
Fax no: (913) 573-5010
Email: ClerkEast@wycokck.org

Google:

Google Fiber Kansas, 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 Kansas, Inc.
Attn: General Counsel
1600 Amphitheatre Parkway
Mountain View CA 94043
USA

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With a copy to:

Chief Counsel
Unified Government of WYCO/KCK
701 N. 7th Street
Kansas City, Kansas 66101
Fax no: 913-573-5243
Email: jboeding@wycokck.org

And

County Administrator
Unified Government of WYCO/KCK
701 N. 7th Street
Kansas City, Kansas 66101
Fax no: 913-573-5540
Email: dhays@wycokck.org

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) City shall have the right to assign the performance of certain obligations set forth in this Agreement to its agent, the Board of Public Utilities (the "BPU"), upon receipt of written consent from Google to such assignment. In the case of such assignment, City shall remain in privity of contract with Google on all matters covered by this Agreement, and Google agrees to accept performance by the BPU, provided that performance is in accordance with the terms of this Agreement. BPU has executed the Joinder attached to this Agreement to demonstrate its understanding and agreement to the terms set forth herein.

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(c) 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

Reference is hereby made to the Kansas Open Records Act ("KORA") which is found at K.S.A. §45-215 et. seq., and Google hereby understands and agrees that this Agreement and the terms set forth in this Section 22 shall be limited by KORA.

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"). Additionally, Google agrees that information and data about its end-users in Kansas City, Kansas shall be considered

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Confidential Information unless such end-users waive their right to keep such information confidential in writing. 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, including without limitation, the KORA; (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; provided however, that Google understands and agrees that its consent shall not be required for the UG to disclose Confidential Information required to be disclosed by the KORA. 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. Powers of City; Compliance with laws

Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of City to act in its capacity as a public body.

Further, nothing herein shall relieve Google from complying with all applicable laws and regulations. Google and City shall, throughout the term of the Agreement, comply with all applicable laws and regulations.

For purposes hereof, the term "applicable laws and regulations" shall mean any applicable constitution, statute, rule, regulation, ordinance, order, directive, code,

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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.

25. 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.

(i) Either party may request a more detailed agreement in the future on a specific aspect of the Project in order to effectuate the intent of this Agreement. The parties agree to work cooperatively if such a request is made.

26. Valid and Binding Obligation.

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

27. Entire agreement

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

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contains all the terms, conditions and obligations of the parties with respect to such matters.

28. Ratification

Notwithstanding the fact that this Agreement has been signed by the County Administrator for City and the General Manager for the BPU, Google hereby understands and agrees that this Agreement shall not be effective and enforceable against such parties unless and until the Agreement is approved by, and such execution is ratified by City's Commission and the BPU's Board of Directors. If this Agreement is not approved and ratified by such Commission and Board within fifteen (15) days of the Effective Date, the parties hereby understand and agree that the Agreement shall be of no force and effect.

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

Unified Government of Wyandotte
County/Kansas City, Kansas

By: _____

Dennis Hays

Title: County Administrator

Date: March 29, 2011

Google Fiber Kansas, LLC

By: _____

Printed Name: _____

Title: _____

Date: March 30, 2011

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JOINDER

The Board of Public Utilities ("BPU"), as an agent of the Unified Government of Wyandotte County/Kansas City, Kansas ("City"), has reviewed the terms and conditions set forth in the attached Development Agreement between City and Google Fiber of Kansas, Inc. and hereby acknowledges and agrees to the same, if and to the extent that performance of the terms and conditions of such assignment are assigned to BPU by City.

BOARD OF PUBLIC UTILITIES

By: Don L. Gray

Don L. Gray

General Manager

Date: March 29, 2011

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EXHIBIT A

FORM OF ENCROACHMENT PERMIT

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(Added graphics)



UNIFIED GOVERNMENT OF WYANDOTTE COUNTY
PUBLIC WORKS DEPARTMENT -ENGINEERING DIVISION
USE OF RIGHT-OF-WAY PERMIT

PHONE (913) 573 - 5700

FAX (913) 573 - 5727

Date Issued

DRC NUMBER

PERMIT NUMBER

Permission is hereby granted



Address

Kansas City, Kansas.

Telephone #

hereinafter referred to as the "Petitioner", to perform certain work, described as follows:

Said work is located on the public right-of-way in, upon, or along: the City rights-of-way.

NOW THEREFORE, in consideration of the permission granted hereunder by the County Engineer, in accordance with City Ordinance No. 32-26, City of Kansas City, KS to utilize street right-of-ways in the manner described above, the following terms and conditions are agreed to by the petitioner:

1. **CONSTRUCTION AND INSPECTION-** All construction shall comply with the conditions and requirements of the Code of Ordinances, City of Kansas City, KS at the direction of the County Engineer. Preliminary and final inspections are required. Petitioner agrees to notify the County Engineer or his duly authorized representative before work is initiated and again when the work is completed. A 24-hour notice for inspection is required.
2. **OBSTRUCTION OF TRAFFIC-** Petitioner agrees that street traffic will be free of interference unless specifically provided for by permission of the County Engineer. Traffic protection shall be the responsibility of the Petitioner and performed in accordance with the MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES, current edition.
3. **RIGHT-OF-WAY RESTORATION-** Except for authorized changes, Petitioner agrees to restore said right-of-way to a condition equal to that which existed prior to approval of the work described on this Permit, normal wear and tear excepted. Any sod, shrubs or trees destroyed by this work shall be replaced as directed by the County Engineer.

Petitioner agrees to satisfactorily repair any failure or damage within the right-of-way from any excavation or construction covered under this permit within two years thereafter. This Permit is hereby accepted and its provisions agreed to by parties hereto.

Petitioner-Owner/Agent (signature) County Engineer/Authorized representative

\$_____ Total Permit Fee

Paid:_____

(Unified Treasurer)

FUND CODE

NOT VALID UNLESS COUNTERSIGNED BY THE COUNTY TREASURER.

If this permit is issued electronically, it is valid on receipt and by performance of work pursuant to this permit petitioner acknowledges and agrees to its terms.

EXHIBIT B

FEE SCHEDULE

<u>Item</u>	<u>Fee</u>
1. Collocation space	None
2. Other office space	None
3. Pole attachments (in utility/power space)	None
4. Pole attachments (in telecom space)	To be negotiated on a sliding scale based on homes passed
5. Conduit use	None
6. Fiber	None
7. Access to GIS data	None
8. Access to computer tools	None
9. Traffic control	Actual, 3 rd party costs only
10. Permits	None
11. Inspections	None
12. Access to City rights-of-way for construction and installation of ground furniture	One-time (non-recurring)

3/30/11 EXECUTIVE SUMMARY
GOOGLE FIBER DEVELOPMENT AGREEMENT

1. **Parties.** The Unified Government ("UG") and Google Fiber of Kansas, L.L.C. ("Google"), which is a new, single purpose entity. It will not be guaranteed from Google's parent organization. The Board of Public Utilities ("BPU") joins in the Agreement because certain of the obligations will be assigned to, and performed by the BPU.
2. **The Project.** Google will install a high-speed fiber network which will provide internet (and other services) and is expected to achieve service speeds of up to 1 gigabyte per second. It is contemplated that this network will be widely available to residential and business customers in Kansas City, Kansas.
3. **Costs.** Google will bear all of the costs of the Project, including design, engineering, construction, power, and equipment. Google will also bear all costs associated with operating the fiber network. Google has not received tax abatements or other traditional economic development incentives.
4. **Price for Internet Services.** Google will have individual contracts with KCK homes and businesses, all of which will have to pay for Google's high-speed internet services, Google covenants to the UG that the prices shall be "reasonable and accessible." Additionally, Google agrees to provide high-speed internet services to the UG, BPU and local school districts at no charge – for up to 130 locations in the City.
5. **Where Will Google Go?** Google plans to go all over the City, based on demand for services. Google says it wants the citizens of KCK to determine where and when the Project is deployed. For purposes of the Agreement, "demand for services" is dictated by neighborhood interest, demonstrated willingness to subscribe to the service and other activity to support deployment of the services in those locations. Google agrees to consult with the UG on the initial locations for roll out, including neighborhoods that are economically distressed.
6. **Term of the Agreement.** The initial term of the Agreement is 10 years, with automatic 5 year renewal terms unless the Agreement is terminated at the end of the initial term or any renewal term.
7. **What do the UG/BPU Have to Do?** Generally, the UG/BPU agree to give Google access to its infrastructure and are required to cooperate with Google in the installation and operation of the Project. More specifically, the UG/BPU must:
 - a. Make space available to Google for fiber installation on utility poles and in conduit, as well as space for certain Google equipment and offices.
 - b. Make available individuals, teams and departments to cooperate and facilitate the installation of the fiber network.
 - c. Provide quick, efficient reviews for permits, inspections and other timely assistance to Google on the planning and building of the Project.
 - d. Provide Google with access to data, computer tools and location information on UG/BPU facilities and infrastructure.

8. **Project Fees.** When Google is in the telecom space in the middle of utility poles, or when Google is in the normal right-of-way space where other parties pay fees – Google will pay normal and customary fees. However, when Google is in the restricted BPU electrical supply space, fees shall not apply in consideration of the provision of free services to public agencies.
9. **Prevailing Wages.** Google will pay prevailing wages and honor labor agreements when it works in the restricted BPU electrical supply space (above or below ground).
10. **MBE/LBE/WBE.** The Agreement recognizes that the UG will encourage Google to provide opportunities for local businesses and contractors, woman and local minority-owned businesses to participate in the Project.
11. **Smart Grid.** Google agrees to work with the UG and BPU on the planned "Smart Grid" program in a manner that allows Smart Grid to benefit from the Project. If and to the extent that BPU is able to save money on Smart Grid as a result of this collaboration with Google, the parties have agreed to negotiate an agreement which would reinvest those savings into the Project.
12. **Indemnification and Insurance.** Google agrees to maintain insurance and to give a relatively broad indemnity to the UG and BPU. However, Google's liability under the indemnification is capped at \$5 million.
13. **Termination.** During the first 2 years after construction of the fiber network commences, Google has a right to terminate the Agreement for any reason. Thereafter, Google or the UG can terminate in the event of a default by the other party. If the Agreement terminates at any time after Google begins providing internet services, then the parties will negotiate a commercially reasonable operating agreement for continued use of the fiber network, which could involve operation of the fiber network by the BPU or a third party. Also, if there is a termination of the Agreement for any reason other than a default by the UG, the BPU will have an option to purchase the fiber network for fair market value (as determined by a process that is articulated in Section 14 of the Agreement).
14. **Ratification.** This Agreement has previously been signed by Dennis Hays of the UG, Don Gray of the BPU and Milo Medin of Google. However, Section 29 requires that it must be ratified by the UG's Commission and the BPU's Board in order to be effective. If the Agreement is not ratified within 15 days of March 30, 2011, then it shall be of no further force and effect.