

Google Fiber for Community Connections Agreement

This Google Fiber for Community Connections Agreement (the "Agreement") is effective as of the Effective Date, and is made between Google Fiber Inc. and its subsidiaries ("Google Fiber") having offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 USA and Raytown C2 School District ("Community Partner") with offices at the address set forth on, the signature block below.

Background

- A. Community Partner would like Google Fiber to install and make available the Service at the Site, in accordance with the terms of this Agreement.
- B. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties hereto agree as follows.

1. Service and Fiber Equipment.

1.1 Service. Google Fiber will provide the Service to Community Partner at the Site for the Term. Google Fiber agrees that the Community Partner may, subject to this Agreement, make the Service available to the Users at the Site.

1.2 Fiber Equipment. Community Partner agrees that Google Fiber owns, and will continue to own, all Fiber Equipment, which will not be deemed fixtures. Community Partner will not move, disturb, alter, or change the Fiber Equipment except with Google Fiber's written consent or in the case of an emergency.

2. License and Access.

2.1 License. Community Partner grants to Google Fiber, its agents, contractors, and subcontractors a license to install, operate, maintain, repair, upgrade, and replace Fiber at the Site, together with any necessary easements and rights of access and entry to the Site, in order for Google Fiber to provide Service. The purpose and scope of this license is to allow Google Fiber, its agents, contractors, and subcontractors: (a) to install and maintain the Fiber Equipment; and (b) the ingress and egress to the Site necessary to install, operate, maintain, upgrade and replace the Fiber Equipment.

2.2 Installation and Access. In accordance with Section 2.1, Community Partner has obtained, or will obtain, all necessary permissions for Google Fiber to install, maintain, repair, upgrade, and replace Fiber Equipment at the Site. The purpose and scope of this license is also to allow Google Fiber, its agents, contractors and subcontractors reasonable ingress and egress to the Site as needed.

3. Construction.

3.1 Design Plan. Google Fiber and Community Partner agree upon the Design Plan as described in Exhibit A.

3.2 General. Google Fiber agrees to apply for, maintain, and comply with all permits necessary for the Construction and for the provision of the Service. Google Fiber will perform the Construction in a safe manner consistent with generally accepted construction standards.

3.3 Liens. Google Fiber will be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services procured by, through or under Google Fiber. Google Fiber will discharge these liens within thirty days of notice by Community Partner to

Google Fiber that the liens have been filed, provided that Google Fiber may contest any liens, in good faith and by appropriate proceedings.

3.4 Construction Fee.

a. Prior to Construction. Google Fiber will be responsible for commercially reasonable Construction costs. If Google Fiber determines that Construction is not commercially reasonable, Google Fiber will identify any additional Construction Fee payable by Community Partner on the Design Plan and the amount will be in Exhibit A.

b. During Construction. If, after beginning Construction, Google Fiber becomes aware of a previously unforeseen construction issue that will result in a Construction Fee, Google Fiber will update the Design Plan accordingly and share the updated Design Plan with Community Partner. If the parties agree to modify the Design Plan to address the previously unforeseen construction issue, the Design Plan will be updated and the parties will amend the Agreement to replace Exhibit A with the updated Design Plan. If the parties do not agree to modify the Design Plan to address the previously unforeseen construction issue, then either party may terminate this agreement.

4. Responsibility for Content Accessed Through Service.

4.1 Service Provider Only. The Service will provide Community Partner with the ability to make Internet connectivity available to people on the Site. Community Partner agrees that Google Fiber bears no responsibility for any information technology infrastructure required to access, or limit access, to the Internet beyond the Fiber Equipment.

4.2 CALEA. Community Partner agrees that it is responsible for responding to any requests by government officials for information about the people who access the Internet through the Service provided to Community Partner pursuant to the Communications Assistance for Law Enforcement Act or any other law.

4.3 Terms of Service and Privacy Policy. Community Partner agrees to the Google Fiber Terms of Service and the Google Fiber Privacy Notice. Community Partner agrees that it is responsible for ensuring that Users are aware that their use of the Service is subject to the Google Fiber Terms of Service and the Google Privacy Policy.

4.4 Abuse. Community Partner agrees that it will take all necessary steps to prevent misuse, as misuse is described in the Google Fiber Terms of Service and related materials, of the Service.

5. Payment. If the relationship between Community Partner and Google is one where Google charges Community Partner for either the Services or Construction, then the following Section 5 applies. Google Fiber will communicate any additional obligations for Community Partner, such as online signups, that may be necessary in order for Google Fiber to bill Community Partner.

5.1 Payment. All Fees are due thirty days from the invoice date and are non-cancellable. All payments due are in U.S. dollars and will be remitted as indicated on the invoice. Community Partner acknowledges and agrees that any credit card and related billing and payment information that Community Partner provides to Google Fiber may be shared by Google Fiber with companies who work on its behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Google Fiber and servicing Community Partner's account.

5.2 Taxes. Community Partner is responsible for and will pay any Taxes owed on the Construction Fee. If Google Fiber is obligated to collect or pay Taxes, the Taxes will be invoiced to Community Partner, unless Community Partner provides Google Fiber with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. In some states the sales tax is due on the total purchase price at the time of sale and must be invoiced and collected at the time of the sale. If Community Partner is required by law to withhold any Taxes from its payments to Google Fiber, Community Partner must provide Google Fiber with an official tax receipt or other appropriate documentation to support such withholding.

5.3 Invoice Disputes. Any invoice disputes must be submitted before the invoice due date. If the parties determine that certain billing inaccuracies are attributable to Google Fiber, Google Fiber will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Google Fiber will apply the credit memo amount to the disputed invoice, and Community Partner will be responsible for paying the resulting net balance due on that invoice.

5.4 Delinquent Payments. Delinquent payments may bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Community Partner will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google Fiber in collecting such delinquent amounts, except where such delinquent amounts are because of Google Fiber's billing inaccuracies.

6. Confidentiality.

6.1 Obligations. The recipient will not disclose the Confidential Information, except to affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser if allowed by law.

6.2 Permitted Disclosure. Community Partner and Google Fiber may disclose publicly and without the other's approval the following: (i) the fact that the parties have entered into the Agreement, but not the terms of the Agreement itself; (ii) the presence of Google Fiber at the Site, and (iii) any public information or marketing material provided by Google Fiber.

7. Representations. Each party represents and warrants that it has full power and authority to enter into the Agreement. Each party represents that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable. To the best of its knowledge, Community Partner represents and warrants that nothing in this Agreement conflicts with any other legal obligation to which it is bound, and that it is not a party to any Agreement with any third party that gives that third party the exclusive right to provide Service at the Site or would otherwise limit Google Fiber's rights under this Agreement. If Community Partner has provided exclusive marketing rights to another party at the Site, Community Partner will notify Google Fiber in writing and indicate this on the Approval Form. Community Partner, by signing this Agreement, represents and warrants that it is the Community Partner, Community Partner's authorized agent, or the representative board for Community Partner, and that the Community Partner has obtained all necessary approvals required by law.

8. Intellectual Property Rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's

intellectual property.

9. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE FIBER AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. NEITHER GOOGLE FIBER, NOR ITS SUPPLIERS, WARRANTS THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. THE SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES OR FOR USE IN CONNECTION WITH EMERGENCY SERVICES.

10. Use of the Services.

10.1 Static IP Addresses. Users of a Google Fiber Service that incorporates a static IP address may use servers and provide services for commercial or non-commercial purposes, subject to this Agreement. By requesting a Google Fiber service with static IP addresses, Community Partner agrees Google Fiber will register the IP addresses in the public whois database with the business name and address provided at time of Service signup.

10.2 Excessive Use. Google Fiber may manage all traffic and utilization of the Google Fiber network. Google Fiber may suspend or terminate Service where data consumption is in excess of a typical commercial user of the Service as determined by Google Fiber.

10.3 Prohibited Uses. Community Partner will not, and will not allow third parties to: (a) resell the Services, directly or indirectly; (b) make the Services available to anyone outside the Site to which the Services are delivered, absent Google Fiber's prior written consent; (c) generate or facilitate unsolicited bulk commercial email; (d) attempt to create a substitute or related service through use of or access to the Services; or (e) test or reverse-engineer the Services in order to find limitations or vulnerabilities

11. Term and Termination.

11.1 Term. The Initial Term of this Agreement will begin on the Effective Date and will end upon either the termination or non-renewal of the City Development Agreement

11.2 Termination. Upon written notice, this Agreement may be terminated as follows: (a) by a party if the other party breaches any material term or condition of this Agreement and fails to cure the breach within sixty days after receipt of written notice; (b) by Google Fiber at any time prior to Construction; (c) by either Party if the Parties cannot agree upon and updated the Design Plan in accordance with Section 3.4; (d) by either party if the terms and conditions of Section 1.2 are not met; or (e) if the Site ceases to exist, or if the address for the Site changes.

11.3 Effects of Termination. If the Agreement expires or is terminated, then: (i) the rights granted by one party to the other will immediately cease; (ii) all Fees (including Taxes) owed by Community Partner to Google are immediately due upon receipt of the final invoice; (iii) within ninety days of termination, Google Fiber will either remove its Fiber Jack and Fiber Equipment or it will be deemed abandoned and become the property of Community Partner; and (iv) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party. Upon termination of this Agreement, Community Partner understands that if it wants to continue receiving Service, Google Fiber may charge Community Partner the then current rates for the Service.

12. Limitation of Liability.

12.1 Limitation on Indirect Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR GOOGLE FIBER'S SUPPLIERS, WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

12.2 Limitation on Amount of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN \$10,000.00 OR THE ACTUAL AMOUNT OF DAMAGES, WHICHEVER IS LESS.

12.3 Exceptions to Limitations. The limitations of liability in Sections 12.1 and 12.2 do not apply to breaches of confidentiality obligations, violation by a party of the other party's Intellectual Property Rights, or indemnification obligations.

13. Indemnification.

13.1 Indemnification.

a. By Community Partner. To the extent permitted by applicable law and without waiving sovereign immunity, Community Partner agrees to indemnify, defend and hold harmless Google, its officers, directors, and employees from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding: (i) Community Partner's negligence, willful misconduct, fraud, misrepresentation, or violation of law; or (ii) any property damage, personal injury or death in connection with Community Partner's negligence in connection with its performance under this Agreement; (iii) content accessed through the Service; or (iv) the fact that the Service was or was not made available to any person or group of people.

b. By Google. Google agrees to indemnify, defend and hold harmless Community Partner, its officers, directors, and employees from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding: (i) Google's negligence, willful misconduct, fraud, misrepresentation, or violation of law; or (ii) any property damage, personal injury or

death in connection with Google's negligence in connection with its performance under this Agreement.

13.2 General. The party seeking indemnification must promptly notify the other party of the claim in writing and cooperate with the other party in defending the claim but the failure to promptly provide notice does not excuse a party's obligation to indemnify except to the extent the delay causes additional damage or liability. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. Notwithstanding the foregoing, if the indemnified party settles without the prior written consent of the indemnifying party, the indemnifying party has no obligation of contribution.

14. Insurance. Google Fiber will obtain and maintain the following types of insurance: (i) commercial general liability (Bodily Injury/Property Damage) \$1,000,000 per occurrence and \$2,000,000 general aggregate, and (ii) an umbrella policy in the amount of \$1,000,000 per occurrence.

15. Miscellaneous.

15.1 Notices. All notices must be in writing and addressed to the other party's legal department and primary point of contact. The email address for notices being sent to Google Fiber's Legal Department is legal-notices@google.com. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

15.2 Assignment. Either party may assign any part of this Agreement without the written consent of the other, provided: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Despite the foregoing, Google Fiber has agreed to provide the Services to Community Partner, not to the Site. If Community Partner vacates the Site, Google Fiber has no obligation to provide the Services to the new occupant of the Site.

15.3 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

15.4 No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.

15.5 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

15.6 Severability. If any term, or part of a term, of this Agreement is invalid, illegal or unenforceable, the rest of the Agreement will remain in effect.

15.7 No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.

15.8 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

15.9 Amendments. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

15.10 Survival. The terms of this Agreement will survive any expiration or termination of this Agreement for as long as Google Fiber continues to provide Service to the Site.

15.11 Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, the parties have relied solely on the express statements in this Agreement. Terms at a URL and referenced in this Agreement are hereby incorporated by this reference. If there is a conflict between this Agreement and a term referenced at a URL, this Agreement controls.

15.12 Counterparts. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

15.12 Governing Law. This Agreement is governed by Missouri law, excluding that state's choice of law rule. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN KANSAS CITY, MISSOURI.

16. Definitions.

“City Development Agreement” means the agreement between Google Fiber and the city in which Community Partner is located, via which Google Fiber agreed to provide the Service, with an Effective Date of MAY 19, 2011.

“Community Partner” means the entity that controls the Site.

“Confidential Information” means information that one party (or an affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was lawfully given to the recipient by a third party. The terms of this Agreement are confidential.

“Construction” means the work by Google Fiber, including by its employees, agents or subcontractors, on the Site in order to enable Google Fiber to provide the Service.

“Construction Fee” means those Construction costs in excess of commercially reasonable Construction costs, which will be included in the Design Plan, and which must be paid by Community Party, or Google will not be obligated to perform any Construction.

“Design Plan” means a separate document prepared by Google and agreed to by Community Partner, which documents the Construction plans, and any potential Construction Fee, for the Site, and which is attached to this Agreement as Exhibit A.

“Effective Date” means the date last signed by a party below.

“Fees” means the amounts invoiced to Community Partner by Google as described in this Agreement.

“Fiber Equipment” means fiber optic cable, associated conduit and network equipment, a NIU, a Fiber Jack, a wall plate with a Fiber connection, and any associated materials or equipment.

“Fiber Jack” means the device inside the building that connects the fiber coming into the building to Ethernet for connection to a network box and to a network within the building.

“Google Fiber Privacy Notice” means the terms located here:

<https://fiber.google.com/legal/privacy.html>.

“Google Fiber Terms of Service” means the terms located here:

<https://fiber.google.com/legal/terms.html>.

“Initial Term” means a period of ten years.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

"Service" means Google Fiber's then currently available single, symmetric connection (up to a gigabit), Internet service to the Site.

"Site" means the building located at 6140 Norfleet Rd, Kansas City MO 64133 and known as NORFLEET ELEMENTARY SCHOOL.

"Users" mean any people on the Site who use the Service, whether routinely on the Site such as those who work there, or those who are temporarily on the Site such as those coming to the Site for an appointment.

IN WITNESS WHEREOF, the parties have executed this Agreement by persons duly authorized as of the Effective Date.

Community Partner: Raytown C2 School District

By: Steven T. Shelton
Steven T. Shelton (Mar 24, 2015)

Name: Steven T. Shelton
Title: Assistant Superintendent
Address:
6608 Raytown Road
Raytown, MO 64133
Date: Mar 24, 2015

If required (City locations only):
Approved as to form:

Assistant City Attorney

Google Fiber Inc:

By: 

Name: Omid Kordestani
Title: SVP, Global Business Operations
Date: Mar 24, 2015

Exhibit A:

1. Construction Fee Payable by Community Partner. Aspects of the Design Plan that will result in higher than commercially reasonable Construction costs, and therefore result in a Construction Fee to be paid by Community Partner (if any): None (in US Dollars).
2. Miscellaneous Design Terms: None.
3. Design Plans. The approved Design Plans are in design package 6140 Norfleet Rd (Norfleet Elementary School)_Fiberhood_CC HL_02-18-15.pdf dated 2/18/2015, which the parties agree have been provided by Google to Community Partner and are incorporated by reference herein.