

NETWORK HUT LEASE AGREEMENT

This Equipment Housing (“Network Hut”) Lease Agreement (“Agreement”) is entered into by the Town of Carrboro, a North Carolina municipality (“Town”) and the Google Fiber North Carolina, LLC a North Carolina limited liability company (“Lessee”). Town and Lessee agree to the terms and conditions set forth below.

- 1. Purpose.** Lessee needs rights to occupy and use certain real property (the “Site” or “Sites”) owned by the Town. The Sites will be used for the purpose of constructing, operating and maintaining structure(s) that will house network equipment and fiber that are part of Lessee’s fiber optic network (“Network Hut”). The construction of each Network Hut will be based on the specifications described in Exhibit A to this Agreement, which may be amended by Lessee subject to the Town’s prior approval. Any such amendment(s) shall also be consistent with the Site Terms for the site (Exhibit B). Exhibits A and B are attached hereto and incorporated herein by reference
- 2. Location of Sites for Network Huts.** Lessee will identify and propose to the City the location of various Town owned sites. Lessee and Town will work together to agree upon each site to be used for each Network Hut. When Lessee and Town agree upon terms for a specific site, the parties will complete and sign the form attached as Exhibit B to this Agreement (“Site Terms”), which shall include all terms, including any site-specific terms for each site (“Network Hut Site”). The Site Terms shall include a legal description of the Network Hut Site, the fees to be paid for use of the site and any other special terms or requirements applicable to the Network Hut Site. Lessee’s occupancy and use of each Network Hut Site will be subject to this Agreement, including the terms set forth in the applicable Site Terms.
- 3. Lessee Rights and Obligations.** Town grants to Lessee the right to access, enter, occupy and use each Network Hut Site at any time for the purpose of constructing, operating and maintaining each Network Hut as shown on Exhibit A. Town grants these rights solely to the extent it has such rights, title and interest in and to the Network Hut Site, without any express or implied warranties. Lessee will obtain all applicable licenses, permits and other authorizations required to construct, operate and maintain the Network Hut and offer Lessee’s services. Lessee will construct the Network Hut in accordance with all applicable laws and permitting requirements. Lessee will use and maintain the Network Hut Site in accordance with all applicable laws and reasonable requirements and will keep the site secure (based on applicable standards) and reasonably free from debris, litter and graffiti.
- 4. Effective Date and Term.** This Agreement is effective on the last date it has been signed by both parties (“Effective Date”). The initial term of the Agreement is ten (10) years from the Effective Date. Following the initial term, this Agreement may be renewed in a new agreement, subject to any applicable notice and governing board approvals, by mutual agreement for successive two (2) year periods. The parties shall notify each other at least ninety (90) days prior to the expiration of the Agreement or any renewal period of their intent with respect to such renewal.
- 5. Termination of Agreement or Site Terms.** Lessee may terminate this Agreement or the Site Terms for a specific Network Hut Site at any time with thirty (30) days written notice to the Town, the Town may terminate this Agreement in the event of a material breach of this Agreement by Lessee and Lessee fails to cure the breach within sixty (60) days of receipt of notice from Town.

In the event of material breach of this Agreement or of the Site terms for a particular site Town may exercise such rights and seek such remedies, including self-help remedies, as are provided by law. Town may also terminate the Site Terms for a Network Hut Site by providing a minimum of one hundred eighty (180) days written notice to Lessee if the Town determines that the applicable Network Hut Site is needed for a reasonable and necessary public purpose or that the Network Hut Site poses a public safety or health hazard to the community. Following such written notice, Town agrees to use its best efforts to find an alternative Town owned site that Lessee may use as a replacement. Upon any termination or expiration of this Agreement, in whole or in relation to a particular Network Hut Site, Lessee will vacate premises and return site to its original condition other than removal of any concrete foundations.

6. **Fees and Costs.** Licensee agrees to pay to Town the annual fee of \$2 per square foot for each Network Hut Site. The fees shall be paid on an annual basis for each Network Hut Site. Lessee shall be responsible for all its costs associated with construction, operation and maintenance of the Network Hut and Network Hut Site. Lessee's first payment to Town shall be due within 45 days of the effective date of this Agreement. Thereafter, payments shall be delivered to Town within forty-five (45) days of the payment due date established by the parties in the Site Terms.
7. **Indemnification.** Lessee will defend and indemnify City, its officers, elected representatives, and employees from any claims and liabilities related to any third party claim for property damage, personal injury or death to the extent caused by Lessee or its contractors. Lessee will have the right to control the defense of any such claim. If, in Town's reasonable judgment, a conflict exists between the interests of Town and Lessee in such a claim, Town may retain its own counsel whose reasonable fees will be paid by Lessee.
8. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION SHALL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.
9. **Insurance.** Lessee will carry and maintain commercial general liability, workers compensation, business automobile liability, Lessee property insurance equivalent to ISO Special Form property Insurance on Lessee's property and other customary types of insurance applicable to the use of Network Hut Sites. The insurance coverage amounts shall be reasonably adequate based on the use of the Network Hut Sites but no less than \$2,000,000 aggregate and \$2,000,000 per occurrence for general liability coverage, \$1,000,000 combined single limit for automobile coverage, and as required by North Carolina law for workers compensation and shall be issued by insurers duly qualified to offer and bind coverage within the state of North Carolina. Lessee's insurance policies shall name Town as an additional insured as its interest may appear. The Town's manager will be included as a person to be notified under the policy. The "other insurance" clause shall not apply to Town, it being the intention of the parties that the above policies covering Lessee and Town shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against Town, its officers, agents, employees and elected officials.
10. **Notice.** All notices related to this Agreement will be in writing and sent to the address set forth in each signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the

next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

11. General Provisions. This Agreement is governed by the laws of the state where the Network Huts are located. The venue of any dispute that may arise out of this Agreement shall be in Orange County, North Carolina or in the United States District Court for the Middle District of North Carolina. Town will make the entirety of the rights set forth in this Agreement available to other network-based providers of internet access and multichannel video programming services in a non-discriminatory manner, including access to the Town's infrastructure, poles, conduits, assets and rights of way to the extent set forth in this Agreement, on rates, terms and conditions that are as favorable as those the Town provides to Lessee for the same access; recognizing that the equivalent consideration afforded by other service providers may be different than what Lessee is obligated to provide under this Agreement. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement may not be assigned by Lessee without the prior written consent of Town except for assignments to Lessee's affiliates, defined as any person or entity controlling, controlled by, or under common control with Lessee, or in connection with a merger, acquisition, sale of network assets or similar transactions. In the event of any such assignment, Lessee shall notify City in writing of such assignment within thirty (30) days. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).

**LICENSEE: GOOGLE FIBER NORTH
CAROLINA, LLC**

By: _____

(Authorized Signature)

(Name)

TOWN: TOWN OF CARRBORO

By: _____

(Authorized Signature)

(Name)

(Title)

Address: 1600 Amphitheatre Parkway

Mountain View, CA 94043

Date:

(Title)

Address:

Date:

Form Agreement

EXHIBIT B

NETWORK HUT SITE TERMS #RDU 130

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

Non-Exclusive Noise Attenuation Easement

In addition to the Network Hut Site Location described above, the Town also conveys to the Lessee a non-exclusive noise attenuation easement over an area extending sixty (60) feet in all directions from the boundary of the Network Hut Site Location described above. The boundary line of this easement area shall run parallel to and shall be exactly 60 feet from the boundary line of the external boundary line of the Network Hut Site Location lease area described above. Lessee may not make any improvements whatsoever to this area, and the Town may make such use of this area for any and all lawful purposes. This non-exclusive noise attenuation easement is conveyed for the sole purpose of establishing the boundary line at which compliance with applicable noise level limitations related to Lessee's use of the Network Hut Site Location lease area shall be measured.

2. **Annual Fees:** For purposes of this agreement, and as indicated on the approved site plan for this network Hut Site, the area of the Network Hut Site is 2600 square feet, which area measurement shall be used for the purpose of calculating the annual fee/rent for the Site pursuant to paragraph 6 of the Network Hut Lease Agreement.
3. **Other terms or requirements applicable to Network Hut Site.**
 - (a) The site plan for this Network Hut Site approved by the Town is (or, upon approval by the Town, shall be) attached hereto and incorporated by reference as Exhibit B-1 to this Agreement. Lessee shall comply with all terms and conditions of the approved site plan.
 - (b) Until such time as the Agreement expires or is otherwise terminated or amended, Lessee shall have vehicular access to the Hut Site from the gravel drive lying adjacent to,

and generally west of, the Site as shown on the approved site plan. The gravel drive is subject to an access easement benefitting the "Lion's Club Property", which lies south and West of the site, at the terminus of the gravel drive. Lessee shall at all times keep the gravel drive clear of obstructions so as not to interfere with the right of access, ingress and egress for the 'Lion's Club Property'.

- (c) The Town recognizes that utility providers may require the Town to grant easements or encroachment agreements for installation of public utilities to serve the Network Hut Site. The Town agrees to negotiate in good faith to develop appropriate easements, encroachment agreements or other instruments with utility providers to provide utility service, such instruments being subject to discretionary approval by the Town's Board of Aldermen in accordance with law.
- (d) If necessary to serve the Network Hut Site, the rights granted to lessee under this Agreement shall include the non-exclusive right to cross Town property adjacent to the Network Hut Site along Fidelity Street and the gravel drive as shown on the approved site plan for the installation of underground fiber optic cables and underground communications infrastructure to serve the Network Hut Site.

LICENSEE: _____

CITY: _____

(Authorized Signature)

(Authorized Signature)

(Name)

(Name)

(Title)

(Title)

Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043

Address:

Date:

Date: