



REGULAR MEETING AGENDA
Wednesday, June 21, 2023 at 7:00 p.m.

CITY HALL
6090 Woodson Street
Mission, KS 66202

Meeting In Person and Virtually via Zoom

This meeting will be held in person at the time and date shown above. The meeting will also be available virtually via Zoom. Information will be posted, prior to the meeting, on how to join at www.missionks.org/calendar.

If you require any accommodations (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-676-8350 no later than 24 hours prior to the beginning of the meeting.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ROLL CALL

- 1. PUBLIC HEARINGS**
- 2. SPECIAL PRESENTATIONS**
 - **Recognition of Retiring Businesses - Taylored Hair and Gingerbread House Daycare**
 - **PRIDE Proclamation**
 - **Elder Abuse Awareness Proclamation**
 - **Introduction of New Building Inspector**
- 3. ISSUANCE OF NOTES AND BONDS**
- 4. CONSENT AGENDA**

*NOTE: Information on consent agenda items has been provided to the Governing Body. These items are determined to be routine enough to be acted on in a single motion; however, this does not preclude discussion. **If a councilmember or member of the public requests, an item may be removed from the consent agenda for further consideration and separate motion.***

CONSENT AGENDA - GENERAL

- 4a. Minutes of the May 17, 2023 City Council Meeting

CONSENT AGENDA - Finance & Administration Committee

[Finance & Administration Committee Meeting Packet June 7, 2023](#)
Finance & Administration Committee Meeting Minutes June 7, 2023

- 4b. CMB Application, Natural Grocers

CONSENT AGENDA - Community Development Committee

[Community Development Committee Meeting Packet June 7, 2023](#)
Community Development Committee Meeting Minutes June 7, 2023

- 4c. Ordinance Revising Section 103.115 and Adding Section 103.118 to the Mission Municipal Code for Land Disturbance and Right-of-Way Permits
- 4d. Biennial Bridge Inspection
- 4e. Lamar Ave. and Foxridge Dr. Every Traffic Signal Buyout
- 4f. Mission Family Aquatic Center Shade Replacement
- 4g. Repeal and Termination of a Special Use Permit to Operate a Microbrewery and Drinking Establishment for Sandhills Brewing (5612 Johnson Drive)
- 4h. Repeal and Termination of a Special Use Permit to Operate a Microbrewery and Drinking Establishment for r Rock Creek Brewing (5880 Beverly)

5. PUBLIC COMMENTS

6. ACTION ITEMS
Planning Commission

Miscellaneous

7. COMMITTEE REPORTS

Finance & Administration, Trent Boultinghouse

[Finance & Administration Committee Meeting Packet June 7, 2023](#)
Finance & Administration Committee Meeting Minutes June 7, 2023

- 7a. Google Franchise Agreement (page 4)

Community Development, Ben Chociej

[Community Development Committee Meeting Packet June 7, 2023](#)
Community Development Committee Meeting Minutes June 7, 2023

7b. Cardboard Recycling Bins for Downtown Business District ([page 22](#))

8. UNFINISHED BUSINESS

9. NEW BUSINESS

9a. Fence Replacement at Powell Community Center ([page 23](#))

10. COMMENTS FROM THE CITY COUNCIL

11. COUNCIL COMMITTEE LIAISON REPORTS

- Sustainability Commission (Kring/Thomas)
- Parks, Recreation + Tree Commission (Loudon/Ryherd)
- Mission Magazine Editorial Board (Boultinghouse)
- Family Adoption Committee (Chociej)

12. MAYOR'S REPORT

Appointments

12a. Sustainability Commission Appointment

- Jenn Schouten (term expiring 12/31/2024)

13. CITY ADMINISTRATOR'S REPORT

13a. Business Updates

14. EXECUTIVE SESSION

14a. Executive Session – Discussion of Personnel Matters of Non-Elected Personnel, and Preliminary Discussions relating to the acquisition of real property.

ADJOURNMENT

City of Mission	Item Number:	7a.
ACTION ITEM SUMMARY	Date:	June 21, 2023
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: Google Fiber Franchise Ordinance and Related Agreements

RECOMMENDATION: Approve the Ordinance granting a telecommunications franchise to construct, operate and maintain communication service facilities within the public right-of-way to Google Fiber Kansas, LLC.

DETAILS: Google Fiber Kansas, LLC has proposed a Franchise Ordinance between Google Fiber Kansas, LLC and the City of Mission. The Ordinance proposed would grant Google Fiber a franchise to provide, operate, maintain and control its internet services with the City. Until recently, Google has operated its facilities in the right-of way under the authority of a State video service franchise granted through the Kansas Corporation Commission in accordance with K.S.A. 12-2023, *et seq.*

In addition to the statewide video service provider franchise, the City and Google Fiber entered into 1) a Network Cooperation and Services Agreement; and 2) a Structure Attachment and Conduit Occupancy Agreement in June of 2013. These agreements allowed for use of the ROW and allowed Google Fiber to affix certain equipment to structures and conduits within Mission to provide telecommunication services, including broadband, voice, and video services to Mission residents.

In 2022, Google Fiber began notifying cities of its intent to discontinue video service, while continuing to provide broadband and voice services. With the discontinuation of its State Video Franchise, Google needs City authorization to maintain its facilities in the right-of-way. Accordingly, Google’s use of the City right-of-way would be governed by K.S.A. 12-2001, the “general” franchise statute used to provide utilities with ROW access.

Google has negotiated this form of franchise with most other cities in Johnson County. The agreement was negotiated through a group of local municipal attorneys, with the City of Overland Park being the first to adopt the new franchise agreement.

The new franchise agreement is similar in most respects to others negotiated by the City. Under the agreement, Google agrees to: abide by the City’s right-of-way ordinance and permit requirements; submit a bond; maintain insurance and indemnify the City.

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA

City of Mission	Item Number:	7a.
ACTION ITEM SUMMARY	Date:	June 21, 2023
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

The term of the franchise provides for an initial 10-year term, with two renewals up to five years each for a total term of twenty (20) years.

Under the new franchise agreement, Google will pay the City a franchise fee of 2% of its broadband services. This is less than the City's standard 5% franchise fee, but the current fee with Google (and other providers) only covers video services. As Google reduces/eliminates video services in favor of broadband, the City's 5% franchise fee would eventually disappear. The revenues generated by the 2% franchise fee included in the new agreement are expected to equal or exceed the current fees generated by the current video service fees.

With the adoption of the revised franchise agreement, amendments to the Network Cooperation and Services Agreement and the Structure Attachment and Conduit Occupancy Agreement are also required. All documents have been reviewed by the City's legal staff and Google Fiber and are ready for Council consideration.

CFAA CONSIDERATIONS/IMPACTS: N/A

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA

ORDINANCE NO.

AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF MISSION, KANSAS AND PRESCRIBING THE TERMS THEREOF.

WHEREAS, the City of Mission, Kansas, a city organized and existing under the laws of the State of Kansas (the “**City**”), has jurisdiction over the use of the public rights-of-way in the City (“**Public ROW**”); and

WHEREAS, Google Fiber Kansas, LLC, a Kansas limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Franchisee**”), owns, maintains, operates, and controls a fiber optic infrastructure network in Public ROW (“**Network**”); and

WHEREAS, the Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”); and

WHEREAS, prior to the Effective Date (as defined herein), Franchisee operated the Network pursuant to an appropriate state video services franchise and Franchisee desires to continue to use and occupy Public ROW in order to install, operate, and maintain its Network for the purposes of offering certain communications services (“**Services**”), consisting of broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services (“**VOIP Services**”) to residents and businesses in the City (“**Customers**”), but excluding multichannel video programming services that would be subject to a video services franchise under K.S.A. 12-2021 et seq. and telecommunications services as defined in 47 C.F.R. § 153(53), K.S.A. 12-2001(c)(9) or K.S.A. 17-1902(a)(3); and

WHEREAS, in order to facilitate Franchisee’s desire, and pursuant to K.S.A. 12-2001 and its home rule powers, the City is adopting this ordinance granting Franchisee the right to install, operate and maintain its Network in the Public ROW for the provision of Services to its Customers (this “**Contract Franchise**”) and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION:

SECTION 1. Grant and Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. Upon the Commencement Date, the City grants Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”) in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (e.g., any City parkland or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee’s use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.

Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining a separate



franchise or license or amending this Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.

- 1.2. Commencement Date. This Contract Franchise will be effective upon the later of the date on which (a) (i) Franchisee has discontinued provision of facilities-based linear video services to Customers, (ii) Franchisee has taken all actions necessary under its state video services franchise to terminate such state franchise and such state franchise has terminated, and (iii) Franchisee has notified the City of (i) and (ii); or (b) the Effective Date (“**License Commencement Date**”).
- 1.3. Subject to State and Local Law. This Contract Franchise is subject to the City’s valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Contract Franchise.
- 1.4. Subject to City’s Right to Use Public ROW. This Contract Franchise is subject and subordinate to the City’s prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. The City’s grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest. This Contract Franchise does not grant or convey any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant the right to use any facilities or property owned or controlled by a third-party without the consent of such third-party; and Franchisee is responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third-party.
- 1.7. Non-Exclusive. This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever (“**Person**”), as well as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.
- 1.8. Reservation of Right. In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 2. Franchisee’s Obligations

- 2.1. Use of Public ROW. Franchisee’s use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be



competitively neutral and may not be unreasonable or discriminatory. Franchisee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities.

- 2.2. Individual Permits Required. Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of the City as authorized. Franchisee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by the City.
- 2.3. Franchisee's Sole Cost and Expense. Franchisee will perform the Work at its sole cost and expense.
- 2.4. Compliance with Laws. Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- 2.5. Reasonable Care. Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.
- 2.6. No Nuisance. Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.7. Repair. Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work (including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under law. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section 2.7 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 2.8. As-Built Drawings and Maps. Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.
- 2.9. Network Design. Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- 2.10. Protection of Facilities. It shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.



SECTION 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Franchisee will, upon written notice from the City, relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances.
- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.
- 3.4. Non-Discrimination. The City will at all times treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Broadband Internet Services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

SECTION 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if



applicable, references in this Contract Franchise to “Franchisee” shall include and apply to Franchisee’s contractors and subcontractors.

- 4.2. Contractors to be Licensed. Franchisee’s contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Franchisee’s contractors and subcontractors may submit individual permit applications to the City on Franchisee’s behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to the City in the form attached as **Exhibit A (“Authorized Individuals”)**. The City will accept permit applications under this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

SECTION 5. Franchise Fee. Franchisee will pay the City a fee (“**Franchise Fee**”) to compensate the City for Franchisee’s use and occupancy of Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee’s use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the License Commencement Date (as defined herein) and will be calculated as set forth in Section 5.1. Subject to any applicable statute of limitations, Franchisee’s payment obligations as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.

- 5.1. Franchise Fee. Franchisee will pay the City two percent (2%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the License Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee’s payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.

5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or the City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Franchisee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;



- (vii) any revenue derived from VOIP Services;
- (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (ix) any revenue derived from referral or marketing agreements with third party providers of online services which Franchisee may make available to Customers;
- (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);
- (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xii) sales of capital assets or sales of surplus equipment.

5.2. Pass Through. To the extent allowed by either federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the Franchise Fee.

5.3. Interest on Late Payments. Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.

5.4. No Accord. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release or any claim of the City.

5.5. Audit. The City shall have the right to examine, upon 30-days written notice to Franchisee and no more often than once per calendar year, those records necessary to verify the correctness of the Franchise Fee paid by Franchisee.

5.6. Change in Franchise Fee. The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:

5.6.1. A request by either party to reduce or increase the Franchise Fee.

5.6.2. A change in applicable law.

5.6.3. If during the term of this the Contract Franchise the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Broadband Internet Services for a fee more favorable than the Franchise Fee set forth in Section



5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

SECTION 6. Defense and Indemnity.

- 6.1. Franchisee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing or maintaining Facilities in the Public ROW.
- 6.2. The indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of any third party not associated with Franchisee, or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 6.3. Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

SECTION 7. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

SECTION 8. Performance Bond. If Franchisee has not previously provided the City with a performance bond under any prior agreement, Franchisee will, promptly after the License Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph.

SECTION 9. Insurance.

- 9.1. Franchisee will carry and maintain:
 - 9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.



- 9.1.2. Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.
- 9.1.3. Business Automobile Policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- 9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.

SECTION 10. Term.

- 10.1. This Contract Franchise is effective on the later of (a) the date the last party to sign executes this Contract Franchise and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Contract Franchise will expire automatically on the twentieth anniversary of the License Commencement Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Contract Franchise will automatically renew for successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.
- 10.2. In the event the parties are actively negotiating in good faith a new contract franchise or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.
- 10.3. Upon written request of either the City or Franchisee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract Franchise granted to Franchisee or the compensation to be received by the City hereunder.

SECTION 11. Termination.

- 11.1. Termination by City. The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

SECTION 12. Assignment. Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the written consent of the City. Any agreed upon assignee will take the place of the Franchisee, and the Franchisee will be released from all of its rights and obligations upon the completion of the requirements of Subsection 12.3 below; provided, however, such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may constitute a breach of the Contract Franchise and have accrued prior to the date of such assignment.



- 12.1. Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:
- 12.1.1. to any Affiliate (as defined below) of Franchisee;
 - 12.1.2. to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or
 - 12.1.3. to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.
- 12.2. Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) 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 (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.
- 12.3. Franchisee shall: furnish the City with written notice of the assignment/transfer; provide a point of contact for the assignee; and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, bond and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

SECTION 13. Notice and Emergency Contact.

- 13.1.** Emergency Contact. Franchisee shall maintain with the City a point of contact who shall be available to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.

Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at (866) 954-1572 or by email to gfiber-noc-leads@google.com.

(Or to replacement Emergency Contact that is later designated by Franchisee in writing.)

Emergency notice by Franchisee to the City may be made by telephone to the City's ROW Supervisor at (913) 742-6239. If the City's ROW Supervisor, then contact the City Engineer or Public Works Director.

(Or to replacement Emergency Contact that is later designated by the City in writing.)

- 13.2.** Notice. All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt

when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (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.

Franchisee's e-mail address for notice is: googlefibernotices@google.com, with a copy to legal-notices@google.com.

(Or to replacement Notice contact that is later designated by Franchisee in writing.)

City's address for notice is: 6090 Woodson Road, Mission, KS 66202

(Or to replacement Notice contact that is later designated by the City in writing.)

SECTION 14. General Provisions. This Contract Franchise is governed by the laws of the state where the City is located (Kansas). Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The failure of either party to insist upon the strict performance of any one or more terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Contract Franchise, 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 Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures. If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

SECTION 15. Acceptance of Terms and Effective Date. This Contract Franchise shall take effect and be in force from and after (i) its passage and approval by the City, (ii) written acceptance by Franchisee, and (iii) publication in the official city newspaper in accordance with Statute (the "**Effective Date**"). Franchisee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Franchisee. In accordance with Kansas Statute, Franchisee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.



PASSED by the City Council this [_____], 2023.

APPROVED by the Mayor this [_____], 2023.

CITY OF MISSION, KANSAS

[_____], Mayor

ATTEST:

APPROVED AS TO FORM:

[_____], City Clerk

[_____], City Attorney



**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[Franchisee LETTERHEAD]

[Date]

Via Email ([Email Address])

Mission

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Contract Franchise dated [redacted] between **the City of Mission, Kansas** and **Google Fiber Kansas, LLC** (“**Google Fiber**”), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Contract Franchise), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber. *[If applicable: This letter amends and supersedes the Letter of Authorization dated _____.]*

[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]

1. ~~Name, Title~~
2. ~~Name, Title~~
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, **Google Fiber Kansas, LLC**



**FIRST AMENDMENT TO
NETWORK COOPERATION AND SERVICES AGREEMENT**

THIS FIRST AMENDMENT TO NETWORK COOPERATION AND SERVICES AGREEMENT ("First Amendment") is made and entered into as of the ____ day of _____, 2023, by and between the **City of Mission, Kansas**, a Kansas municipality (the "City"), and **Google Fiber Kansas, LLC**, a Kansas limited liability company ("Network Provider").

RECITALS

- A. City and Network Provider entered into that certain Network Cooperation and Services Agreement dated June 26, 2023 (the "Agreement").
- B. The parties desire to amend the Agreement as set forth herein.

AGREEMENT

- 1. Capitalized Terms. Capitalized terms used in this First Amendment but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
- 2. Conflict of Terms. In the event of any direct conflict between the Agreement (as amended by this First Amendment), and City Ordinance No. _____ (2023), the terms of such City Ordinance No. _____ (2023) shall prevail.
- 3. Term of Agreement. Notwithstanding anything in the Agreement to the contrary, the Service Term (as defined in the Agreement) and the Agreement shall not exceed the term under, and shall automatically terminate upon the expiration or termination of, Network Provider's contract franchise under Ordinance No. _____ (2023); provided, that this First Amendment shall not be deemed to extend or renew the Service Term beyond that provided in the Agreement.
- 4. Miscellaneous. Except as expressly modified by this First Amendment, the Agreement remains unmodified and in full force and effect, and is hereby ratified and affirmed in all respects. To the extent of any conflict or inconsistency between this First Amendment and the Agreement, the terms and conditions of this First Amendment shall control. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this First Amendment. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and permitted assigns. This First Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same document. Signature pages may be detached from the counterparts and attached to a single copy of this First Amendment to physically form one document. Facsimile, electronic, scans, copies, or other digital signatures shall be acceptable and shall bind the party transmitting such signature to the same extent as an original.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties effective as of the date first above written.

CITY OF MISSION, KANSAS

GOOGLE FIBER KANSAS, LLC

Solana Flora, Mayor

By:_____

Printed Name:_____

ATTEST:

Title:_____

Robyn L. Fulks, City Clerk

APPROVED AS TO LEGAL FORM:

David K. Martin, City Attorney

**FIRST AMENDMENT TO
STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT**

THIS FIRST AMENDMENT TO STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT ("First Amendment") is made and entered into as of the ____ day of _____, 2023, by and between the **City of Mission, Kansas**, a Kansas municipality ("Licensor"), and **Google Fiber Kansas, LLC**, a Kansas limited liability company ("Licensee").

RECITALS

- A. Licensor and Licensee entered into that certain Structure Attachment and Conduit Occupancy Agreement dated June 26, 2013 (the "Agreement").
- B. The parties desire to amend the Agreement as set forth herein.

AGREEMENT

- 1. Capitalized Terms. Capitalized terms used in this First Amendment but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
- 2. Term. Section 1.08 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 1.08 Term.

This Agreement shall become effective as of June 26, 2013 (the "Effective Date") and shall expire at 11:59 pm on December 31, 2023. This Agreement will automatically renew for successive five (5) year periods unless Licensee is no longer operating its network within Mission, Kansas. Provided, that notwithstanding anything in the Agreement to the contrary, the term of this Agreement shall not exceed the term under, and shall automatically terminate upon the expiration or termination of, Licensee's contract franchise with Licensor under Ordinance No. _____ (2023).

- 3. Access to Right-of-Way. Section 5.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 5.02 Access to Right-of-Way.

Licensor shall provide Licensee with access to and use of the Right-of-Way to the extent provided in, and pursuant to the terms and conditions of, Licensee's contract franchise with Licensor under Ordinance No. _____ (2023), and to the extent Licensor holds any rights to the Right-of-Way pursuant to agreements with third parties and such agreements expressly or impliedly grant Licensor the right to provide such rights to others. Where Licensor notifies Licensee that Licensor's agreement with a third-party does not expressly or impliedly grant Licensor the ability to provide such access and use rights to others, upon Licensee's request, Licensor shall use its best efforts to obtain the consent of the owner or grantor and to otherwise secure such rights for Licensee, but further provided that restrictions on access that are done as a legitimate exercise of the Licensor's police powers will never be considered unreasonable.

4. Conflict of Terms. In the event of any direct conflict between the Agreement (as amended by this First Amendment), and City Ordinance No. _____ (2023), the terms of such City Ordinance No. _____ (2023) shall prevail.

5. Miscellaneous. Except as expressly modified by this First Amendment, the Agreement remains unmodified and in full force and effect, and is hereby ratified and affirmed in all respects. To the extent of any conflict or inconsistency between this First Amendment and the Agreement, the terms and conditions of this First Amendment shall control. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this First Amendment. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and permitted assigns. This First Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same document. Signature pages may be detached from the counterparts and attached to a single copy of this First Amendment to physically form one document. Facsimile, electronic, scans, copies, or other digital signatures shall be acceptable and shall bind the party transmitting such signature to the same extent as an original.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties effective as of the date first above written.

CITY OF MISSION, KANSAS

GOOGLE FIBER KANSAS, LLC

Solana Flora, Mayor

By: _____

Printed Name: _____

ATTEST:

Title: _____

Robyn L. Fulks, City Clerk

APPROVED AS TO LEGAL FORM:

David K. Martin, City Attorney

City of Mission	Item Number:	7b.
ACTION ITEM SUMMARY	Date:	June 21, 2023
Community Development	From:	Brian Scott

Action items require a vote to recommend the item to the full City Council for further action.

RE: Carboard Recycling Bins for Downtown Businesses

RECOMMENDATION: Recommend that City provide opportunities with for cardboard recycling opportunities in the downtown business district through GFL at an annual cost not to exceed \$9,000 (\$750/month).

DETAILS: City staff was recently approached by the owner of Lu Lu’s Boutique, about the possibility of having cardboard recycling bins at strategic locations in the downtown business district for businesses to use.

Currently, there are no recycling opportunities for downtown businesses, with cardboard presenting the most significant challenge. Businesses receive package goods for their stores but have no place to take the cardboard boxes. Some business owners take boxes home while others use the recycling bin at the Powell Community Center, which is often full or overflowing. Providing cardboard recycling bins at strategic locations behind businesses in downtown will help local business owners while taking a burden off the one bin located at the Community Center.

GFL, the City’s solid waste hauler, has agreed to provide six cardboard recycling bins for \$125 per month per bin. This equates to \$750 a month or \$9,000 a year. The bins would be serviced once a week. Staff will work with GFL and the downtown businesses to determine appropriate placement of the bins.

Staff is recommending the City provide the funding for this cardboard recycling opportunity from the General Overhead budget in the General Fund for the remainder of 2023, with ongoing funding sources to be evaluated as a part of the 2024 Budget discussions.

CFAA CONSIDERATIONS/IMPACTS: N/A

Related Statute/City Ordinance:	
Line Item Code/Description:	01-07-212-06 – Service Contracts
Available Budget:	\$25,000 budgeted.

City of Mission	Item Number:	9a.
ACTION ITEM SUMMARY	Date:	June 21, 2023
Parks + Recreation	From:	Penn Almoney

Action items require a vote to recommend the item to the full City Council for further action.

RE: Fence Repair at Powell Community Center

RECOMMENDATION: Approve the bid from Yates Construction, LLC to replace 132 feet of the outdoor fence at the Powell Community Center (PCC) southeast parking lot in an amount not to exceed \$14,905.44.

DETAILS: The fence in the southeast corner of the PCC was replaced in 2020 due to a patron driving through the parking lot fence and over the retaining wall onto Beverly Avenue. That repair was reimbursed through the City's insurance carrier and the fence was installed along the top block of the retaining wall where it had been located previously. In 2022, a microburst blew through Mission and damaged the same section of fence, which when anchored to the retaining wall could not sustain the wind speeds.

Four vendors were solicited to bid, with three responding. Staff brought forward an Action Item in May recommending Council approve a contract with Mid-America Contractors in an amount not to exceed \$13,479.00. Following Council approval, staff reached out to the contractor to finalize the contract and schedule, and received a revised bid of \$16,478.17 due to construction cost escalation.

Staff reached out to the second lowest bidder, Yates Construction, to determine if their initial price was still valid. Yates submitted a revised bid for \$14,905.44 which is only guaranteed until June 22, 2023. Staff is recommending that the original contract award to Mid-America Contractors be rejected and a new contract authorized with Yates Construction in an amount not to exceed \$14,905.44. The revised bid comparison is shown in the table below:

Vendor	Amount	REVISED BID June 2023
Mid-America Contractors	\$13,479.00	\$16,468.17
Yates Construction	\$13,843.75	\$14,905.44

As discussed with the May contract award, since this project was not initially included in the 2023 CIP, staff will forego the trash and recycling can replacement that was

Related Statute/City Ordinance:	N/A
Line Item Code/Description:	45-90-805-09
Available Budget:	\$15,000

City of Mission	Item Number:	9a.
ACTION ITEM SUMMARY	Date:	June 21, 2023
Parks + Recreation	From:	Penn Almoney

Action items require a vote to recommend the item to the full City Council for further action.

approved for \$15,000.00 and utilize those funds for the fence replacement. The trash and recycling can replacement will be deferred to a future year.

In order to finally move forward to alleviate this potential fall hazard, staff is recommending approval of a contract with Yates Construction, LLC, the lowest and most responsive bidder, in an amount not to exceed \$14,905.44. This project will be paid for from the Parks + Recreation sales tax fund which includes Parks + Recreation capital improvements.

CFAA CONSIDERATIONS/IMPACTS: Repair and replacement of aging components keeps facilities safe, efficient and allows residents and visitors to engage as a community within dynamic facilities.

Related Statute/City Ordinance:	N/A
Line Item Code/Description:	45-90-805-09
Available Budget:	\$15,000



Yates Construction, LLC
 20970 Parallel Road
 Tonganoxie, KS
 66086
 Phone: 816-719-3982
 Phone: 913-940-3378
yates.construction@yahoo.com

QUOTE

6/8/2023

South East Portion of the Fence at the Powell Community Center for the City of Mission KS- handrail is to be installed in the ground behind the retaining wall. Quote includes removals of existing/old handrail.

LINE ITEM	QUANTITY	DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	132	42" - 3 Rail Handrail (Black)	LF	\$ 112.92	\$ 14,905.44
ESTIMATED TOTAL:					\$ 14,905.44

Our prices are valid for fifteen (15) days. After 15 days our prices will be revised again based on current prices. Provide a Contract/Signed purchase order within 15 days if quote is accepted.

If rock is encountered, there will be an additional \$100.00 Per Hole added to the final invoice.

Following completion and acceptance of installation Yates Construction, LLC. does not warranty installed products. Yates Construction, LLC will not be held liable for any damages to existing structures/property.

If quantity increases or scope of work changes- above quoted pricing will be subject to revision. Shop Drawings will be provided for the above listed material. PE stamped drawings can be provided but costs are not included in this quote and will be additional.

Yates Construction, LLC. Cannot be held liable to purchase and store materials for a period of time to ensure material is accessible for installation. Yates Construction, LLC. will require stored materials to be paid as the material is fabricated/delivered and documentation is provided.

Signature Of Acceptance:

Date of Acceptance: