GG
3/13/14
Item No. 4

AN ORDINANCE 2014-03-13-0153

AUTHORIZING A MASTER LEASE AGREEMENT WITH GOOGLE FIBER TEXAS, LLC FOR THE USE OF CITY-OWNED PROPERTY FOR THE INSTALLATION OF PREFABRICATED COMMUNICATIONS EQUIPMENT SHELTERS.

* * * * * *

WHEREAS, on February 19, 2014, Google Fiber announced the proposal to build fiber-to-the-home (FTTH) broadband networks in thirty-four (34) cities within nine (9) metropolitan areas across the country, including the City of San Antonio, subject to reaching agreement with local governments on certain matters; and

WHEREAS, the deployment of a FTTH broadband network in San Antonio will require Google Fiber to install in excess of forth (40) network nodes throughout the City; and

WHEREAS, the City has agreed to provide Google Fiber access to city-owned property throughout San Antonio for the installation of its equipment shelters; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Master Lease Agreement between the City and Google Fiber Texas, LLC as it appears in **Exhibit A** are hereby approved.

SECTION 2. The City Manager or her designee is hereby authorized to execute the Master Lease Agreement and any and all documents necessary to fulfill the purpose and intent of this Ordinance, including initiating rezoning of city property where appropriate and necessary.

SECTION 3. The Master Lease Agreement is non-exclusive. Consistent with state law, the City does not discriminate in its dealings with broadband providers with regards to accessing City-owned property.

SECTION 4. Funds generated by this Ordinance will be deposited into Fund 11001000, with Internal Order and General Ledger Account to be determined.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

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SECTION 6. This Ordinance becomes effective immediately upon the receipt of eight affirmative votes, or in the event eight affirmative votes are not received, on the tenth day after passage by majority vote.

PASSED AND APPROVED, this 13th day of March 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**4**
Date:	03/13/2014
Time:	09:42:49 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Master Lease Agreement with Google Fiber Texas, LLC for the use of City-owned property for the installation of prefabricated telecom equipment shelters. [Carlos J. Contreras, III, Assistant City Manager; Ben Gorzell, Jr., Chief Financial Officer; Rene Dominguez, Director, Economic Development; Hugh Miller, Director, Information Technology Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				x
Joe Krier	District 9				x		
Michael Gallagher	District 10		x				

Exhibit A

DRAFT

Master Lease Agreement for the Use of City Property for Installation of Network Huts

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This *Master Lease Agreement for the Use of City Property for Installation of Network Huts* ("Master Lease") is dated as of the ___ day of _____, 2014 ("Effective Date"), and is between the City of San Antonio ("Landlord" or "City") and Google Fiber Texas LLC ("Tenant"), individually referred to as a "Party" and collectively referred to as "Parties."

WHEREAS, Landlord wishes to make available to Tenant certain City-owned properties for the installation and maintenance of certain "Network Huts" (as hereinafter defined) to be used for the purpose of deploying a fiber network throughout San Antonio to provide communications services to City residents.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the Parties agree as follows:

Section 1. Demise of Premises.

Section 1.01. Multiple City Sites. Pursuant to this Master Lease, Landlord agrees to lease certain City-owned premises ("City Sites") to Tenant, and Tenant agrees to lease certain City Sites from Landlord, each subject to the terms and conditions of this Master Lease. Tenant is to have and hold the City Sites, together with all corresponding leaseholder rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing may include easements, rights, and privileges of Landlord, existing now or at any time during the lease Term.

Section 1.02. Installation of Network Huts. The City Sites subject to this Master Lease will be described in **Exhibits A-1, A-2, A-3,** etc., and shall be used by Tenant for the installation and maintenance of certain Network Huts. The term "Network Huts" means the Tenant's uninhabitable enclosed structures, including all telecommunications equipment, fiber optic equipment, cables, conduits, and related facilities enclosed therein and related thereto as further described in **Exhibit D**. The construction plans, including any plans to include generation or other power drawing facilities whether inside or outside the Network Hut itself, for the installation of Network Huts will be outlined in **Exhibits B-1, B-2, B-3,** etc. Any provisions specific to a particular City Site will be set forth in **Exhibits C-1, C-2, C-3,** etc. These exhibits will be attached to this Master Lease over time, and made a part hereto pursuant to the form of Amendment Agreement outlined in **Exhibit E** herein, as the Parties agree on the selected City Sites and Tenant takes possession of each City Site. Accordingly, **Exhibits A-1, B-1** and **C-1** will correspond to City Site #1; **Exhibits A-2, B-2** and **C-2** will correspond to City Site #2; **Exhibits A-3, B-3** and **C-3** will correspond to City Site #3, and so on. **Exhibit D** will be the same for all City Site installations.

Section 2. Use of City Sites.

Section 2.01. Permitted Use. Unless Landlord otherwise consents in writing, Tenant may use City Sites only for the purpose of installing, operating, and maintaining Network Huts ("Permitted Use").

Section 2.02. Non-Permitted and Illegal Use Not Permitted. Tenant shall not use or permit the City Sites to be used for any purpose other than the Permitted Use, nor may Tenant use or permit the City Sites to be used for any activity violating any applicable City, state, or federal law, rule, or regulation. Tenant shall not use or store, or permit to be used or stored, on the City Sites any hazardous or toxic substances or materials. Tenant is not considered to have violated this provision unless Landlord has notified Tenant in writing specifying the alleged violation and Tenant has had a reasonable time in which to cure the specified violation.

Section 3. Lease Term.

Section 3.01. Initial Term. The Initial Term shall be for twenty (20) years beginning on the Effective Date.

Section 3.02. Right to Extend. This Master Lease will be subject to three (3) subsequent renewal periods, each of five (5) years, unless either Party gives not less than ninety (90) days written notice prior to the end of the then-term, that it does not wish to renew this Master Lease.

Section 3.03. Termination. This Master Lease shall terminate if Tenant fails either to pay any payment required under this Master Lease, or timely perform any material obligation under this Master Lease, and if such default has not been cured within three months of Tenant's receipt of written notice of default from the City, the City may terminate this Master Lease upon written notice to Tenant. Upon receipt of a notice to termination, Tenant shall promptly begin the process of removing all Network Huts.

In the event of termination in accordance with the foregoing, the Network Huts shall be removed within 180 days after the date of notice of termination, or within such longer time as the Landlord may agree. Until all of Tenant's Network Huts are removed, Tenant shall continue to comply with all of the terms of this Master Lease and perform all of its duties and obligations hereunder, including without limitation the obligation to pay the annual rent. Such payment by Tenant or acceptance by Landlord of the annual rent shall not act to cure the default that triggered the termination nor shall it reinstate this Master Lease or Tenant's lessee rights hereunder.

In addition, Tenant may terminate this Master Lease upon 60 days written notice to Landlord, in which event the Network Huts shall be removed within 180 days after the date of the notice of termination or within such longer time as the Landlord may agree. Until all of Tenant's Network Huts are removed, Tenant shall continue to comply with all of the terms of this Master Lease and perform all of its duties and obligations hereunder, including without limitation the obligation to pay the annual rent. Termination by Tenant shall not relieve Tenant from payment for the full annual rent for the year of termination or any other sum owing the Landlord.

Section 3.04. Holdover. If Tenant holds over and continues in possession of a City Site after the Initial Term (or any extension) expires, Tenant's occupancy will be at will, subject to all the terms of this Master Lease. However, Tenant's holding over after expiration is not a renewal of this Master Lease. Holdover rent will be assessed at one hundred and fifty percent (150%) of the then prevailing annual rent.

Section 4. Rent.

Section 4.01. Initial Rent. The annual rent shall be based on market rates as set out in **Exhibit F** for space necessary for the installation of a Network Hut and surrounding fence at each City Site. The rent shall be subject to an annual escalation factor of three percent (3%).

Section 4.02. Adjusted Rent. The Landlord reserves the right, at the end of the Initial Term and any Renewal Terms, to adjust the annual rent based on prevailing market conditions, by increasing the annual rent subject to all City Sites on a non-discriminatory basis between Tenant and all other tenants of city sites. If the Parties cannot agree to the proposed increase in rent, an independent real estate appraiser will be engaged at the expense of Tenant to determine the

appropriate increase in rent. Both Parties must agree on the independent appraiser. If the rent is not adjusted at the end of the Initial Term or any Renewal Terms, the same annual rent methodology will remain in effect during the Renewal Term including the annual escalation factor of three percent (3%).

Section 4.03. Time and Manner of Payment. Tenant must pay rent to Landlord annually in advance of the next year on or before December 15th of each year; provided that in the first year of this Master Lease, in addition to paying the rent in advance, Tenant will pay rent to Landlord for Network Huts built between the Effective Date and October 1 2014, in arrears. Payments must be in lawful money of the United States to the address provided for receiving rent payments, unless Landlord agrees otherwise.

Section 4.04. Interest on Delinquent Payments. Rent installments unpaid by the due date of December 15th will bear interest at the rate of one and a half percent (1.5%) per month.

Section 5. Taxes.

Section 5.01. Payment by Tenant. As a part of the rent due under this Master Lease, Tenant must pay and discharge all taxes, general and special assessments, and other charges of any kind, including interest, levied on or assessed against any City Site and all improvements and other personal property located therein during the Initial Term and any Renewal Terms, belonging to to Tenant. Tenant must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than fifteen (15) days before delinquency. Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Tenant may, in good faith at its own expense (in its own name or in that of Landlord, or both), contest taxes, charges, and assessments. But it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

Section 5.02. Payment by Landlord. If taxes, special assessments, or governmental charges remain unpaid and uncontested following delinquency, Landlord may give written notice to Tenant. If Tenant continues to fail to pay the taxes, special assessments, or governmental charges, or to timely contest them in good faith within thirty (30) days of receipt of notice, Landlord may pay the items specified in the notice. Tenant must then reimburse Landlord on demand for amounts paid or expended for such purpose, with interest at eighteen percent (18%) per annum from the date of Landlord's payment until Tenant's reimbursement.

Section 6. Utilities.

Section 6.01. Utility Charges. Tenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on any City Sites throughout the Initial Term and any Renewal Terms, including any connection fees.

Section 7. Installation and Construction by Tenant.

Section 7.01. General Conditions. Tenant may install, maintain, alter, remodel, reconstruct, rebuild, replace, and remove Network Huts and any necessary related improvements on City Sites subject to the following:

A. Tenant bears the cost of the work.

B. Tenant keeps the City Sites free of mechanics' and materialmen's liens.

C. Tenant notifies Landlord, before installation of Network Huts begins at any City Site and the time frame for completing installation and construction at each such City Site.

D. Tenant has secured approval of all plans in the manner provided for later in this Master Lease and obtained all necessary permits.

Section 7.02. Historic Preservation and other Regulations. Tenant shall comply with the following requirements related to City Sites:

A. **Historic Preservation Review.** The City's Office of Historic Preservation is charged with reviewing the design plans for all structure constructed or installed on City property. The design plans for all Network Huts and fencing surrounding such structures will be subject to the review of the Office of Historic Preservation in order to satisfy that the design is compatible with the historic designation of the zone or character of the neighborhood in which City Sites are located. The Tenant commits to implement design concepts, and the use of materials and camouflage, as necessary in order to achieve compliance with historic preservation review, including following the City of San Antonio Historic Design Guidelines.

B **Edwards Aquifer Recharge Zone.** Tenant will be required to comply with all environmental protection measures associated with installations and construction of Network Huts at any City Sites located over the Edwards Aquifer Recharge Zone.

C. **Homeowner Association Restrictions.** Tenant acknowledges that certain City Sites may be located in neighborhoods subject to Homeowner Association restrictions, including architectural design regulations. The Tenant will be responsible for following and complying with such regulations, which Landlord has no authority to waive.

D. **Plat Not Required.** Tenant understands that under current City of San Antonio platting regulations, it is not necessary to obtain a plat for the installation of an uninhabitable Network Hut.

Section 7.03. Temporary Construction Easement. The Network Huts shall be installed within one hundred eighty (180) days of the issuance of a building permit for each City Site. Tenant shall be granted a temporary construction easement, for initial construction and maintenance purposes only, to use City property within the specified construction zone as shown on the construction plans described in **Exhibit B** for each City Site.

Section 7.04. Gated Access. Tenant shall install a security fence not to exceed ten (10) feet in height, or such other height as provided for in applicable law, around the Network Hut at each City Site. This requirement may be waived by the City on a case-by-case basis in order to accommodate an installation at a given City Site where space is limited. The fence shall be installed at a reasonable setback to allow for emergency personnel or other reasonable access, or such other setback as provided for in applicable law, from the perimeter of the Network Hut. Tenant shall keep such gate properly locked and secured against trespassers, and shall not allow access to the City Site other than by its authorized employees and contractors.

Section 8. Equipment Ownership, Installation and Relocation.

Section 8.01. Ownership of Utility Equipment and Alteration. The Network Huts, including all equipment housed therein, installed by Tenant at City Sites pursuant to this Master Lease are, and shall continue to be, the property of the Tenant. The Network Huts shall be maintained, erected, placed, or altered in a safe, commercially and good and workmanlike manner and free from debris and litter on an ongoing basis.

Section 8.02. Relocation of Utility Equipment. The Landlord may require that a Network Hut be relocated from a City Site at Tenant's expense in the event the site is repurposed by the San Antonio City Council, or Landlord determines that the relocation is necessary to accommodate a *bona fide* development plan pursuant to the governmental authority of the City of San Antonio. The Landlord will use its best efforts to provide an alternative City Site for Tenant to relocate to within close proximity to the vacated City Site. Upon receipt of written notification by Landlord to Tenant that the Network Hut will be relocated within a reasonable period, but not to exceed one hundred and eighty (180) days.

Section 9. Repairs, Maintenance, and Restoration.

Section 9.01. Tenant's Duty to Maintain and Repair. Tenant must keep and maintain all Network Huts and improvements installed and constructed on City Sites in a good state of appearance and repair (except for reasonable wear and tear) at Tenant's own expense.

Section 9.02. Damage or Destruction. If the Network Hut or any other improvement constructed on City Sites is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Tenant must, within sixty (60) days from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed structures. Tenant must pursue the repair, reconstruction, or replacement with reasonable diligence and restore the structures to substantially the condition it was in before the casualty; provided, however, that if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond

Tenant's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

Section 10. Mechanic's Liens.

Section 10.01 No Mechanic's Liens. Tenant will use commercially reasonable efforts to avoid any mechanic's or other liens to be filed against the City's fee interest in any City Site or against Tenant's leasehold interest. If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action to do so at Tenant's sole expense. If Tenant contests the lien, Tenant will reimburse Landlord for any costs incurred by Landlord in connection with such lien, and cause to be removed any such lien that is not successfully contested.

Section 11. Condemnation.

Section 11.01. Parties' Interests. If any City Site, or any part thereof, is taken by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this Master Lease. Landlord will promptly notify Tenant in writing when it becomes aware of any pending or threatened condemnation of a City Site and Tenant may intervene in the condemnation action to protect its leasehold interests.

Section 11.02. Total Taking – Termination. If the entire City Site is taken or so transferred, this Master Lease and all of the rights, titles, and interests under it ceases, as to that City Site, on the date that title to the City Site vests in the condemning authority.

Section 11.03. Partial Taking – Termination. If only part of a City Site is taken or transferred, this Master Lease terminates, as to that City Site, if in Tenant's opinion, the remainder of the City Site is in such a location, or is in such form, shape, or reduced size, that the City Site is no longer functional for the Tenant. In such case, this Master Lease and all rights, title, and interest under it, as to the affected City Site, cease on the date that title vests in the condemning authority.

Section 11.05. Condemnation Award. That portion of the condemnation award that is attributable to Landlord's ownership interest in the City Site shall be the property of Landlord. Tenant shall be entitled to claim, prove and/or receive in the condemnation proceeding that portion of the award that is attributable to Tenant's leasehold estate, the value of Network Hut(s) taken, relocation costs, and any actual losses that the court may accept.

Section 12. Notices.

Section 12.01. Required Notice. All notices required by this Master Lease shall be in writing and sent to the following:

City	Tenant
Office of East Point and Real Estate Services	Google Fiber Texas LLC

Attn: Leasing Manager
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Phone: (210) 207-7723
Fax: (210) 207-7888

Attn: General Counsel
1600 Amphitheater Parkway
Mountain View, CA 94043

Fax: (650) 618-1806

E-Mail: chris.kurzon@sanantonio.gov
With a copy to: City Attorney

Section 12.02. Notice Effective. All 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 first class mailing, postage prepaid, whichever is earlier.

Section 13. Insurance

Section 13.01. Allocation of Claims. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence at any City Site is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Tenant.

Section 13.02. Required Insurance. Tenant must provide and maintain in full force and effect with respect to all City Sites from the Commencement Date of this Master Lease and for the duration of this Master Lease and any extensions or renewals thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Employer's Liability	$500,000/$500,000/$500,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following: (a) Premises/Operations (b) Independent Contractors	For Bodily Injury, Death, and Property Damage of $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage

(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of $1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of the Tenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements.

Section 13.03. Required Clauses. Each insurance policy required by this Master Lease must contain the following clauses:

"Notice of cancellations, reduction or material modification will be delivered in accordance with policy provisions to:

(a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Office of East Point and Real Estate Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Leasing Manager

Section 13.04. Required Clauses. Each insurance policy required by this Master Lease must contain the following clauses:

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Master Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Master Lease with the City of San Antonio."

Section 13.05. Certificates. Within 30 days after the Commencement Date, Tenant must deliver certificates to Landlord's Risk Manager and the City Clerk from Tenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title.

Section 13.06. Address for Delivery. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancelation.

Section 13.07. Liability Not Limited. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities, or the failure to act, of Tenant's agents, employees, sublessees, or invitees under this Lease.

Section 14. Indemnification

Section 14.01. Definitions.

Section 14.01.01. "Indemnified Losses" mean all loss, cost, liability, or expense incurred by the Indemnitees arising from any Claim arising out of acts or omissions of Indemnitor in connection with this Master Lease and Tenant's activities or omissions under the privileges granted to it by this Master Lease.

Section 14.01.02. "Indemnitees" means the City and its elected officials, officers, employees, agencies, boards, departments, utilities, agents, and other representatives, collectively, against whom a Claim has been asserted.

Section 14.01.03. "Indemnitor" means Tenant.

Section 14.01.04. "Claims" means claims, lawsuits, actions, causes of action, demands, or proceedings related to the claims specified below asserted by any third party against any Indemnitee arising out of, relating to, or otherwise in respect of any of the following: (A) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (i) proximately caused by the negligence or willful acts or omissions of the Indemnitor, its personnel, or its contractors; or (ii) resulting proximately from the

Indemnitor's failure to perform its obligations under this Master Lease; (B) Claims that any Indemnitor personnel is an employee of City, including Claims arising out of Indemnitors' failure to promptly pay any Indemnitor personnel for its services, materials, facilities, equipment or labor; and (C) Indemnitors' fraud, violation of law, wrongful misconduct or misrepresentations.

Section 14.02. Indemnification. Indemnitor agrees to indemnify, save, and hold harmless the Indemnitees, individually and collectively, for all Indemnified Losses resulting from Claims.

Section 14.03. Duty of Indemnitor. If one or more Indemnitees are finally adjudged to bear fault other than on account of an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from such claim. Indemnitor must nevertheless defend all Indemnitees until final adjudication and all appeals have been exhausted. An Indemnitee may but need not waive appeals.

Section 14.04. No Third-Party Beneficiaries. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

Section 14.05. Defense of Claims. Upon notice of a Claim, an Indemnitee shall give written notice thereof to the Indemnitor promptly, however, the failure to give such notice shall not affect the rights of the Indemnitee, except and only to the extent the Indemnitor is prejudiced by such failure, and provided Indemnitor is not aware of the Claim. Where Indemnitor is aware of a Claim, Indemnitor shall provide notice to Indemnitee and will pay to defend Indemnitee against the Claim. The Indemnitor shall have the right to employ counsel acceptable to the Indemnitee to defend against any Claim. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnitee other than for money damages which will be paid by Indemnitor. If such counsel will represent both Indemnitor and Indemnitee, there may be no conflict with such counsel's representation of both, and Indemnitee must agree to the joint representation. The Indemnitee will fully cooperate with counsel in defense of any Claim and shall make available to the Indemnitor and its counsel any books or records useful for the defense of any Claim, and shall reasonably make available its personnel with respect to defense of the Claim.

Section 14.06. Governmental Immunity. Nothing in this Master Lease waives governmental immunity or other defenses of Indemnitees under applicable law.

Section 15. Assignment

Section 15.01. Consent Required. Tenant may not assign or otherwise transfer this Master Lease, nor may control of Tenant be assigned or transferred to another person, without Landlord's prior written consent, except that Tenant may without consent:

A. transfer or assign this Master Lease to an affiliate or subsidiary of Tenant. Tenant's rights and obligations hereunder shall pass to such successor only upon receipt by Landlord within 30 days of closing of such transaction, of written

notice of such transfer or assignment, together with a written, executed document binding on such affiliate or subsidiary accepting the terms of this Master Lease and assuming all of Tenant's obligations and liabilities thereunder, and true copies of the assignment documents;

B. transfer or assign this Master Lease to a purchaser of Tenant's communications systems that utilize City Sites, whether such transfer or assignment is structured as a merger, acquisition of stock, sale of all or substantially all assets, or otherwise. Tenant's rights and obligations hereunder shall pass to such successor only upon receipt by Landlord within 30 days of closing of such transaction, of written notice of such transfer or assignment, together with a written, executed document binding on such purchaser accepting the terms of this Master Lease and assuming all of Tenant's obligations and liabilities thereunder, and true copies of the assignment; and

C. mortgage any or all its property, rights, privileges and franchises, or to enter into any merger, consolidation, or sale of its assets substantially in their entirety in the City of San Antonio area. In such an instance, Tenant shall provide Landlord with advance written notice of merger, consolidation or sale and, within 30 days of closing such transaction, a written, executed document binging on such successor party accepting the terms of this Master Lease and assuming all of Tenant's obligations and liabilities thereunder, and true copies of assignment documents.

Section 16. Default and Remedies.

Section 16.01. Termination of Default. If Tenant defaults in performing any obligation arising out of this Master Lease and does not correct the default within 30 days (or such longer period as reasonably required based on the nature of the alleged breach) after receipt of written notice to Tenant and any lender, notice to whom is required by this Master Lease, Landlord may terminate this Master Lease.

Section 16.02. Other Remedies. Termination of this Master Lease does not relieve Tenant from paying (A) money owing to Landlord under the Master Lease at the time of termination, or (B) any claim for damages against Tenant under this Master Lease. Termination does not prevent Landlord from enforcing payment by any remedy provided for by law or from recovering from Tenant for any default. Landlord's rights, options, and remedies under this Master Lease are cumulative, and no one of them is exclusive of the other. Landlord may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Landlord of a breach of any covenant or condition of this Master Lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Master Lease.

Section 17. General Protective Provisions.

Section 17.01. Right of Entry. Tenant must permit Landlord or its agents, representatives, or employees to enter any City Site, excluding access to Network Huts, to (A) maintain, repair, or alter a City Site; or (B) provide emergency medical assistance.

Section 17.02. No Partnership or Joint Venture. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or joint venturers.

Section 17.03. Force Majeure. If installation of Network Hut and related construction, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period, but only for the period of such delay.

Section 17.04. Termination on Bankruptcy. Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.

Section 17.05. Release of Landlord. If Landlord sells or transfers all or part of a City Site and as a part of the transaction assigns its interest in this Master Lease, of the effective date of the assignment, Landlord has no further liability under this Master Lease, except with respect to matters that have accrued and are unsatisfied as of that date. Landlord's covenants and obligations under this Master Lease will bind Landlord and its successors and assigns only during their respective, successive periods of ownership of the fee interest in the City Site(s).

Section 17.06. Joint and Several Liability. If the Master Lease names more than one Tenant or Landlord, the obligations of all Tenants and Landlords are joint and several.

Section 17.07. Non-discrimination. Landlord shall make the entirety of the rights set forth in this Master Lease available to other network-based providers of Internet access and multichannel video programming services in a non-discriminatory manner, including access to Landlord's infrastructure, poles, conduits, assets and rights-of-way to the extent set forth in this Master Lease, on rates, terms and conditions that are as favorable as those Landlord provides to Tenant for the same access; recognizing that the equivalent consideration afforded by other service providers may be different than what Tenant is obligated to provide under this Master Lease.

Section 18. Prohibited Interests in Contracts

Section 18.01. Prohibited Interest. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

A. a City officer or employee;

B. his parent, child or spouse;

C. a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

D. a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Section 18.02. Tenant's Warranties. Tenant warrants and certifies as follows:

A. Tenant and its officers, employees and agents are neither officers nor employees of the City.

B. Tenant has tendered to the City the Contracts Disclosure Statement in compliance with the City's Ethics Code.

C. Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

Section 18.03. City's Reliance Is Reasonable. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

Section 19. Miscellaneous.

Section 19.01. Rights and Remedies Cumulative. The rights and remedies under this Master Lease are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Section 19.02. Time of Essence. Time is of the essence under this Master Lease.

Section 19.03. Applicable Law. This Master Lease is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas' provided however that the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas.** The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Section 19.04. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Section 19.05. Successors. This Master Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

Section 19.06. Integration. This Written Master Lease Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

Section 19.07. Modification. This Master Lease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Section 19.09. No Third Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Section 19.09. Captions. Paragraph captions in this Master Lease are for ease of reference only and do not affect the interpretation hereof.

Section 19.10. Counterparts. This Master Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Section 19.11. Further Assurances. The parties shall execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Master Lease.

Section 20. Public Information.

Section 20.01. Public Disclosure. Tenant acknowledges that this instrument, including all exhibits, is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Exhibit A
City Sites pursuant to Section 1.02

Exhibit B
Construction Plans pursuant to Section 1.02

Exhibit C
Specific Provisions for each City Site pursuant to Section 1.02

Exhibit D
Network Huts

Exhibit E
Addition of City Sites

Landlord and Tenant are parties to the Master Lease Agreement for the Use of City Property for Installation of Network Huts ("**Master Lease**") dated [ ], [ ] 2014.

Tenant wishes to add Network Huts on new City Sites pursuant to Section 1.02 of the Master Lease, such City Sites to be incorporated into the Master Lease.

The Parties hereby agree to the addition of Exhibits A –[x], B –[x] and C –[x] [include Exhibit C and repeat numbering as necessary] to the Master Lease, such Exhibits as attached to this letter.

Exhibit F
Annual Rent

$2250 per Network Hut

CITY COUNCIL ITEM # 4

City Council A Session

Master Lease Agreement with Google Fiber Texas, LLC

March 13, 2014

Item for Consideration

- An ordinance authorizing a lease agreement between the City of San Antonio and Google Fiber Texas, LLC for the use of City property for the installation of prefabricated communications equipment shelters

Background

- Internet access connects a city to available knowledge, people, and commercial markets across the globe.
- On February 19, 2014, Google Fiber announced the proposal to build fiber-to-the-home (FTTH) broadband network
  - Nine (9) metropolitan areas, including San Antonio
    - 34 cities inside the 9 metro areas
- Final selection of San Antonio subject to reaching agreement on certain issues.

Project Details

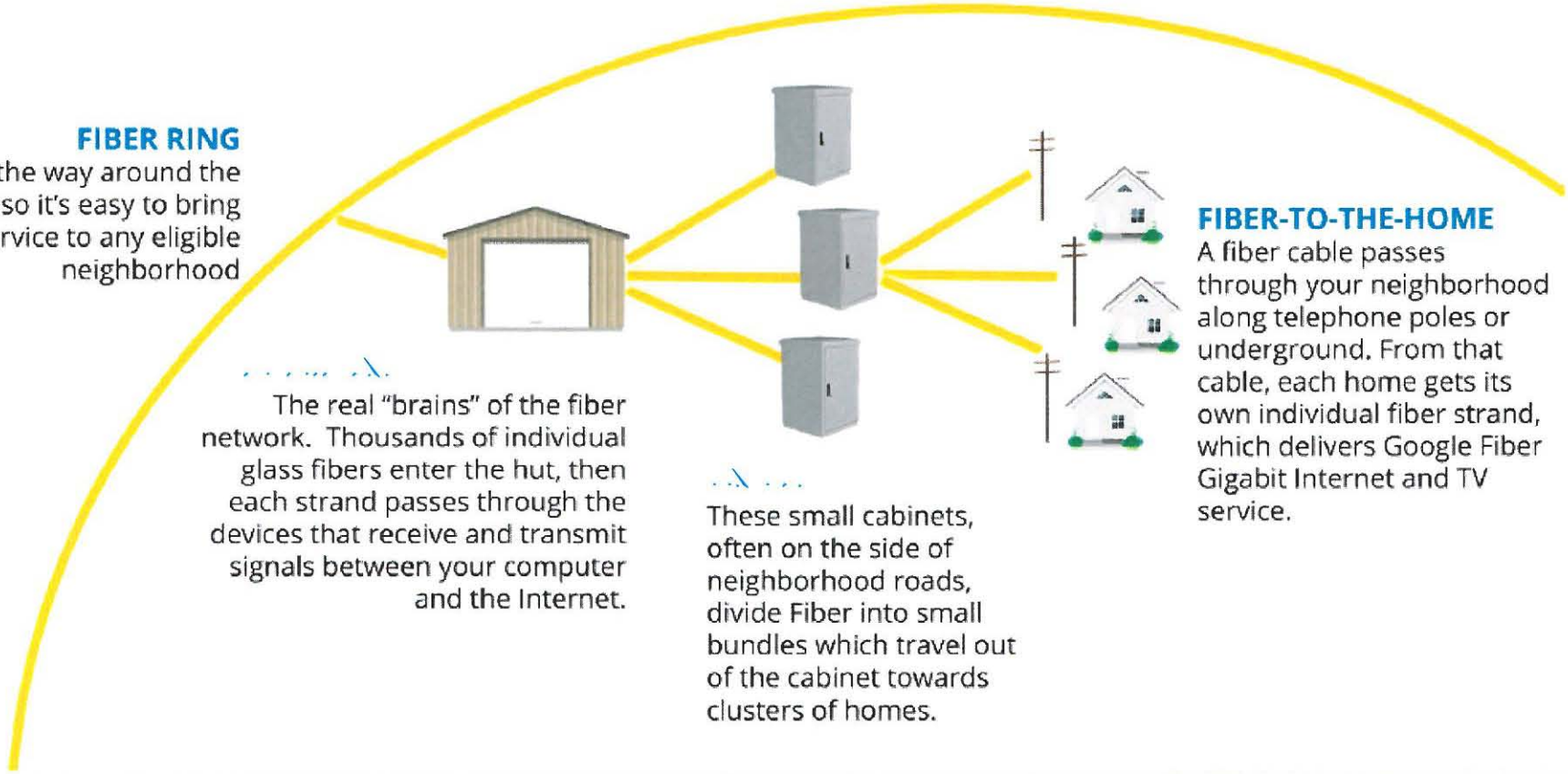
- To efficiently deploy its network, Google Fiber will need to install approximately 40 communications equipment shelters throughout the city.
- They have requested access to City-owned property for installation of the equipment shelters.

Google fiber

Master Lease Agreement

- The Master Lease Agreement will give Google Fiber access to municipal-owned land across San Antonio for the installation of its communications equipment shelters
  - Outlines terms of access to City property for the location of approximately 40 equipment shelters
  - Selection of sites subject to mutual agreement
  - Total annual rent could reach $90,000 and will have a 3% annual escalation factor

Background



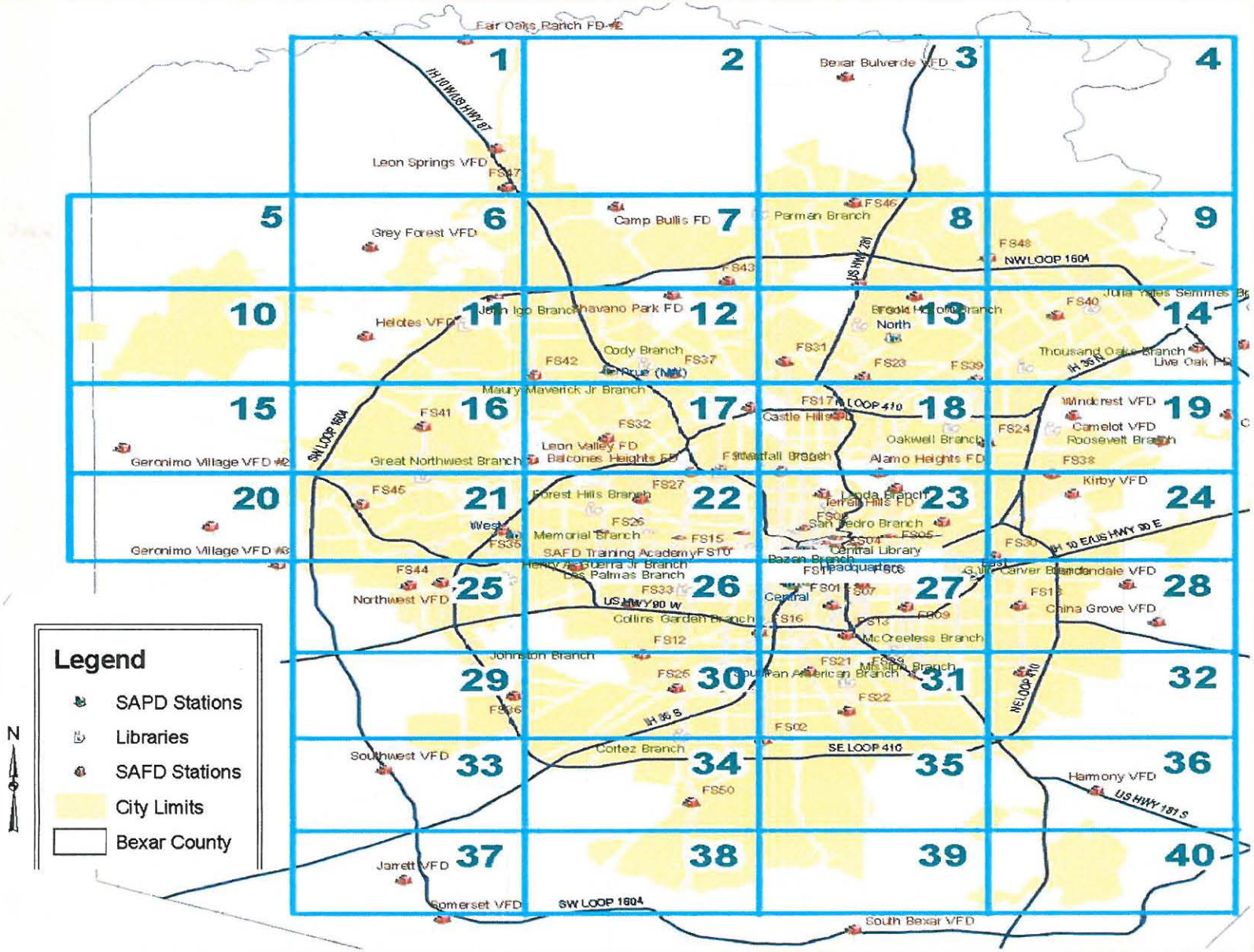
FIBER RING
Goes all the way around the city, so it's easy to bring service to any eligible neighborhood

The real "brains" of the fiber network. Thousands of individual glass fibers enter the hut, then each strand passes through the devices that receive and transmit signals between your computer and the Internet.

These small cabinets, often on the side of neighborhood roads, divide Fiber into small bundles which travel out of the cabinet towards clusters of homes.

FIBER-TO-THE-HOME
A fiber cable passes through your neighborhood along telephone poles or underground. From that cable, each home gets its own individual fiber strand, which delivers Google Fiber Gigabit Internet and TV service.

Deployment Quadrants (illustrative)



Fiscal Impact

- Annual rents per site will be $2,250 per year and have an annual 3% escalation factor.
- These figures are based on a market analysis of real estate values throughout San Antonio conducted by the City's Real Estate Office.
- The rent for the lease of City property reflects current market values for the land that will be used.

Recommendation

- Staff recommends approval of this ordinance delegating to the City Manager or her designee the authority to execute the Master Lease Agreement with Google Fiber Texas, LLC.

Questions?