



MEMORANDUM

TO: Mayor Laurel L. Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: October 9, 2014
RE: Gargoyle Technologies, Inc., Agreement for Use of Wireless Internet Facility (Wi-Fi) at 111 West Main Street (City Parking Deck)

Action Requested

Approval of the attached resolution entitled "A RESOLUTION APPROVING AN AGREEMENT FOR WIRELESS INTERNET FACILITY (WI-FI) INSTALLATION WITH GARGOYLE TECHNOLOGIES, INC., D/B/A VOLO BROADBAND."

Background and Facts

Gargoyle Technologies (Volo Broadband) of Champaign, Illinois, proposes to install a wireless internet facility (Wi-Fi) to provide free public access wireless internet service to the area in and around the City Parking Deck. The approximate limits of the free public wireless internet service around the City Parking Deck are shown in Exhibit B. In accordance with City policy, a license agreement, which is required for that installation, is attached for Council consideration. The proposed locations and description of the Wi-Fi equipment are depicted in Exhibits A and B attached to the proposed agreement.

Public Works staff members have reviewed and approved the proposed installation locations of the Wi-Fi equipment to minimize any visual impacts to the interior and exterior of the City Parking Deck.

Financial Impact

The proposed installation will be at no cost to the City. Gargoyle Technologies, Inc. (Volo Broadband) will pay an annual fee of \$13.00 to the City for the electricity consumed and for the space occupied by the Wi-Fi equipment. The annual fee will be adjusted by the Consumer Price Index each year of the agreement.

Recommendation

It is recommended that the City Council approve the attached resolution entitled "A RESOLUTION APPROVING AN AGREEMENT FOR WIRELESS INTERNET FACILITY (WI-FI) INSTALLATION WITH GARGOYLE TECHNOLOGIES, INC., D/B/A VOLO BROADBAND."

Attachments: A RESOLUTION APPROVING AN AGREEMENT FOR WIRELESS INTERNET FACILITY (WI-FI)
INSTALLATION WITH GARGOYLE TECHNOLOGIES, INC., D/B/A VOLO BROADBAND

AGREEMENT FOR USE OF WIRELESS INTERNET FACILITY (WI-FI) INSTALLATION AT
111 WEST MAIN STREET

RESOLUTION NO. 2014-10-054R

A RESOLUTION APPROVING AN AGREEMENT FOR WIRELESS INTERNET FACILITY (WI-FI) INSTALLATION WITH GARGOYLE TECHNOLOGIES, INC., D/B/A VOLO BROADBAND

(111 West Main Street)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

An Agreement for Wireless Internet Facility (Wi-Fi) Installation at 111 West Main Street between the City of Urbana, Illinois, and Gargoyle Technologies, Inc., d/b/a Volo Broadband, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

After recording return to:

City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

**AGREEMENT FOR WIRELESS INTERNET FACILITY (WI-FI) INSTALLATION AT
111 WEST MAIN STREET**

THIS AGREEMENT is made and entered into by and between the CITY OF URBANA, a municipal corporation of the State of Illinois ("City"), and Gargoyle Technologies, Inc., d/b/a Volo Broadband ("Company") and is effective on the last date signed by a party hereto. The City and the Company agree as follows:

1. **Garage.** The City of Urbana municipal parking garage ("Garage") is located at 111 West Main Street, Urbana, Illinois, and has a Permanent Index Number of 92-21-17-206-030.
2. **Grant of license.** The City hereby grants the Company a limited license to install a wireless internet (Wi-Fi) facility ("Facility") within said Garage, as described in Exhibit A and as shown in Exhibit B, both of which exhibits are attached hereto and are made a part hereof.
 - A. The license granted under this Agreement is wholly dependent upon the Company fully and faithfully performing and complying with all the terms, conditions, and covenants contained in this Agreement. This License is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the Garage.
 - B. The license granted under this Agreement is immediately revocable at the option of the City in the event that the Company fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that the Company will have a period in which to cure any such failure as set forth in this Agreement.
 - C. The license granted under this Agreement may not be transferred or assigned.
 - D. The license granted under this Agreement does not convey any right, title, or interest in the Garage but is deemed a license only to use and occupy the Garage for the limited purposes and term stated herein. The license will not be construed as any warranty of title.

- E. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said Garage for purposes normally associated with such a public Garage or the redevelopment of the 111 West Main Street site.. Accordingly, the Company shall, at its sole cost, relocate or remove any portion of the Facility upon the written direction of the City's Public Works Director ("Director") if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the Garage.

3. **Compliance with governmental requirements.**

- A. **Ordinances.** The Company shall comply with all ordinances of the City, including without limitation all generally-applicable provisions regarding constructing and maintaining facilities in public places, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement.
- B. **Installation standards.** The Company shall comply with all installation standards contained in Exhibit C, attached hereto and made a part hereof.

4. **Fees.** Annual payments shall be made to the City in the amount of \$13.00. The amount herein set for compensation shall be adjusted on January first of each year beginning January 1, 2015, by the Consumer Price Index published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

5. **Facility maintenance and repair.** The Company will be fully responsible and will bear all costs associated with any and all maintenance or repair of the Facility.

6. **Garage repair.** After doing any work, the Company at its sole cost and expense shall promptly repair and restore to the extent practicable any part of the Garage or other City property disturbed by the Company, including without limitation all walls, ceilings, roofs, sidewalks, parkways, or pavements, to the condition in-kind in which they existed.

- A. If such property or improvement cannot be so repaired, replaced or restored, the Company shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect, engineer, or contractor mutually agreed upon by the parties.
- B. The Company shall keep all structures constructed pursuant to this Agreement in a reasonably safe condition at all times and shall maintain such traffic control and protection during the installation, repair, or renewal work performed hereunder as will reasonably avoid danger to life, limb, and property.

7. **Lapse and termination.** The License shall be limited solely to the installation, maintenance, and use of the Facility. Upon cessation of such use, as determined by the Director, this Agreement will immediately and automatically lapse and terminate. If the Director believes the Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice shall state that the Company has thirty (30) days in which reassert its rights under this Agreement and demonstrate that it has not in fact abandoned use of the license granted by this Agreement. If the Company demonstrates within the thirty (30) day period that it has not abandoned the Facility, this

Agreement shall remain in force and effect according to its terms. If the Company does not demonstrate within the thirty (30) day period of the notice that it has not abandoned the Facility, this Agreement shall be deemed lapsed, terminated, and no longer in effect. Any additional use other than that specifically named herein, without the further express written consent of the City, shall be construed as a violation of this Agreement.

8. **Facility removal.** In the event of the existence of one or more of the following, the Company consents and agrees that the City or its duly authorized agent may remove the Facility, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Company:

- A. An emergency that presents imminent peril to person or property.
- B. Non-compliance with any term, provision, or covenant in this Agreement that is not cured within the time period provided herein following notice of such non-compliance tendered to the Company.
- C. Termination of this Agreement for any reason.
- D. Abandonment of the Facility's use in accordance with the provisions in Paragraph 7 of this Agreement.
- E. Expiration of this Agreement in the absence of any renewal thereof.

Should the Contractor fail in any way to make timely payment to the City for such costs and expenses, the Contractor agrees to pay, in addition to any amount so owed, actual attorneys' fees and court costs incurred in the collection of such amount.

9. **Indemnity.** The Company, at its sole cost and expense, shall defend and indemnify the City from and against any and all claims, suits, actions, causes of actions, judgments, decrees, damages, rights, remedies, and/or liabilities, whether in law or in equity, brought against the City in connection with the Company's installation, maintenance, operation, repair, use, or removal of the Facility, unless such claim, suit, action, cause of action, judgment, decree, damages, or liability arises solely and exclusively from a negligent or intentional act or omission by the City or any of its employees, agents or contractors.

10. **Term; termination.** The initial term of this Agreement shall be twenty (20) years from the date of the execution. Upon expiration of this initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) years, unless, no fewer than ninety (90) days prior to the scheduled expiration of the current term, either party provides written notice to the other party of the intent not to renew. This Agreement may be terminated at any time without notice upon the express written consent of both parties. Either party may terminate this Agreement for cause by giving written notice to the other party at least forty-five (45) calendar days prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of termination are not fully and completely cured.

11. **Entire agreement.** This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

12. **Notices.** All notices required under this Agreement must be in writing. Notices must be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the respective party as shown below, or to any changed address either party may have fixed by notice. Notice will be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice will be deemed given on the date of the mailing.

To the City: Public Works Director
City of Urbana
706 S. Glover Avenue
Urbana, Illinois 61802

To the Company: Volo Broadband
Peter Folk, President
822 Pioneer Street
Champaign, IL 61820-2513

Either party may designate by written notice a different address to which notices must be sent.

13. **Non-waiver.** The Company will not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

14. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Illinois, and the parties agree that any action to interpret, construe, or enforce this Agreement shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois. Each party hereto acknowledges that this Agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this Agreement strictly construed against the other party as drafter of this Agreement by reason of the principles of evidence or contract law.

15. **Amendment.** This Agreement may be amended only by a writing which is fully and duly executed by the parties hereto.

16. **Due Authorization.** Each party hereto acknowledges that the individual who has executed this Agreement has the due and full authority to do so.

17. **Recording.** This Agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the Company.

18. **Execution by counterpart.** This Agreement may be executed in counterparts, each of which will for all purposes be deemed to be an original and will together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement at Champaign County, Illinois, on the dates as stated below.

City of Urbana, Illinois:

Laurel Lunt Prussing
Mayor

1

Date

ATTEST:

Phyllis Clark
City Clerk

Gargoyle Technologies, Inc., d/b/a Volo Broadband



Peter Folk
President

10/3/2014

Date

ATTEST:



Peter Folk
Secretary

- Attachments: Exhibit A Written description (1 page)
 Exhibit B Maps (4 pages)
 Exhibit C Installation standards (1 page)

Exhibit A

Volo Broadband Downtown Urbana Wi-Fi

Measurements:

The fiber optic cable measures two hundred and ninety-nine (299) lateral feet.

Aerial 1 measures sixty-four (64) lateral feet.

Aerial 2 measures fifty-seven (57) lateral feet.

Bridge Aerial 1 measures twenty-seven (27) lateral feet.

Bridge Aerial 2 measures fourteen (14) lateral feet.

The run for Access Point 1 measures sixty (60) lateral feet.

The run for Access Point 2 measures one hundred and eight (108) lateral feet.

The run for Access Point 3 measures one hundred and six (106) lateral feet.

The run for Access Point 4 measures one hundred and thirty-six (136) lateral feet.

The run for Access Point 5 measures one hundred and ninety-one (191) lateral feet.

The run for Access Point 6 measures three hundred and forty-nine (349) lateral feet.

The run for Access Point 7 measures three hundred and two (302) lateral feet.

The run for Access Point 8 measures two hundred and nineteen (219) lateral feet.

Conduit 1, along the span for Access Point 7, measures twenty-two (22) lateral feet.

Conduit 2, along the span for Access Point 8, measures ninety-seven (97) lateral feet.

Other specifications:

1. With the exception of the Access Point 4, the Access Point enclosures will be mounted vertically (targeted out from the building to feed the connecting streets, sidewalks, and plazas).
2. The interior access point will be situated and oriented so as to cover the interior of the Parking Garage, to serve events that use that space.
3. With the exception of the interior Access Point, the runs will follow existing vertical grooves in the façade to discretely get the Ethernet cable to the location of the wall mount enclosure.
4. Enclosures will be placed, as discussed, in line with the horizontal section of concrete running around the perimeter of the building.
5. The run for Access Point 6 may prove to provide a problematic data connection given its aggregate distance. If the connection is or becomes unstable Volo will run an additional 1/8" fiber optic cable from Enclosure 2 to Access Point 6 and only provide power over the Cat5 Ethernet cable.
6. Volo may adjust decisions concerning private property owners as determined by private negotiations

Exhibit B







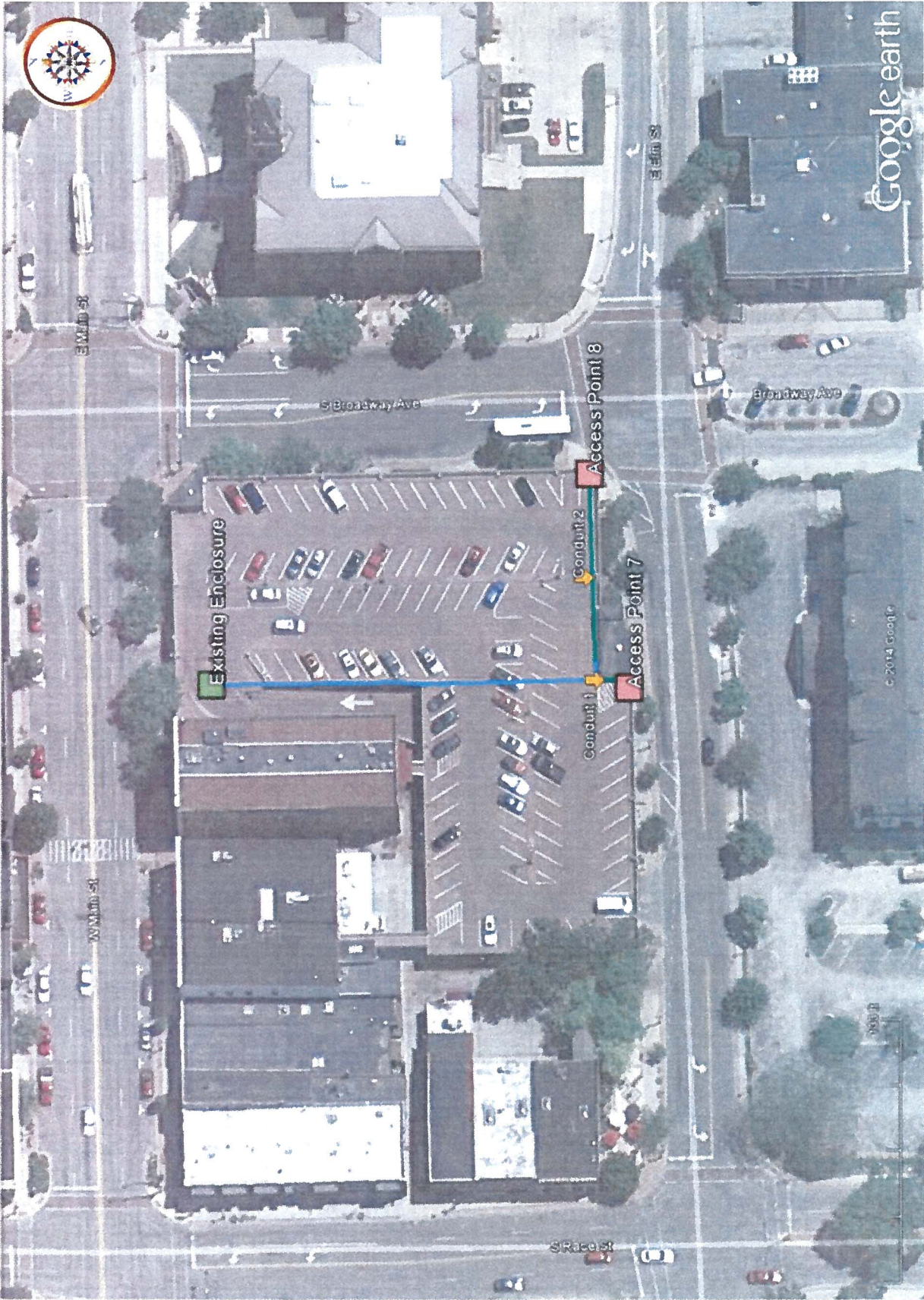


Exhibit C

Installation Standards

1. The Company will install outdoor fiber optic cable to connect the fiber optic backbone in downtown Urbana to a "hub" enclosure on the wall of the parking deck.
2. The Company will install outdoor Cat5 cabling along the path of existing infrastructure in the parking deck to feed up to 8 "access points," in a manner mutually agreed by the Company and the City, attaching the cable to existing duct where possible, and adding conduit where there is none currently.
3. The Company will install up to 8 "access points" at strategic locations around the parking deck, in a manner chosen by the City to have minimal visual impact (grey 12"x12"x6" plastic enclosures mounted to concrete above eye level on the parking deck structure).
4. The Company will install up to three 9"x10"x4" enclosures for fiber distribution to premises surrounding the parking deck at locations identified and agreed on with the City.
5. Pending approval from the appropriate property owner, the Company will install up to two fixed and two aerial laterals from those enclosures buildings west and north of the parking deck. Aerial laterals will use industry standard methods, running the cable within conduit from the enclosure to six (6) inches below the top of the upper parking deck parapet, utilizing ADSS self-supporting cable, and hanging at the lowest point in the alley at a height no lower than eighteen (18) feet.
6. The Company will inform the City prior to installation of any aerial, establish a mutually-agreeable timeline for such construction, and request inspection of the aerial by the City once it has been installed.
7. The Company will promptly remedy any problems the City identifies with any part of this installation.
8. Within sixty (60) days following written notice from the City, at its own expense, the Company will protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any portion or all of the Facility whenever the City Engineer has determined that such removal, relocation, change, or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, City property.
9. If the Facility is no longer being used for the purpose of providing wireless internet service, the Company will notify the city within sixty (60) days of the time the use ceases.