

FRANCHISE LICENSE AGREEMENT

This Franchise License Agreement (the “Agreement”) is entered into effective as of April [____], 2013 (the “Effective Date”) by and between the Provo City Corporation, a municipal corporation located in Provo, Utah (the “City”); and Google Fiber Utah, LLC, a Utah limited liability company (“Google Fiber”), on behalf of itself and its subsidiaries.

RECITALS

- A. Google Fiber and its Affiliates (as defined below) have announced plans to build and operate fiber networks in one or more cities in the United States, in an effort to improve Internet access in such cities, to foster new high-speed applications, and to introduce new methods of delivering video services.
- B. The City has a direct interest in improving the quality of life of its citizens through improvements to essential infrastructure and services within its boundaries and recognizes that improved access to high-speed broadband services would provide substantial value to the City and its citizens.
- C. Contemporaneously herewith, the City and Google Fiber have entered into a certain Asset Purchase Agreement, dated as of [_____, 2013] (the “Asset Purchase Agreement”), whereby, among other things, the City agrees to sell and Google Fiber agrees to purchase certain “Acquired Assets,” as such term is defined in the Asset Purchase Agreement, associated with the City’s existing fiber network (the “City Network”).
- D. Entering into this Agreement is a condition precedent to the Closing of the transactions contemplated in the Asset Purchase Agreement.
- E. The Parties wish to provide for the terms and conditions upon which Google Fiber is granted a franchise by the City to provide high-speed broadband Internet access services and Internet Protocol (“IP”) video services within the City.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Google Fiber and the City enter into this Agreement for the deployment and operation by Google Fiber of a high-speed fiber project within the boundaries of the City (the “Project”), as set forth below:

1. Term of Agreement

The initial term of this Agreement will be ten (10) years from the Effective Date (“Initial Term”). At the end of the Initial Term, and unless otherwise terminated, the

Agreement will continue for successive five (5) year terms (each a “Renewal Term”). This Agreement will remain in effect unless and until terminated by Google Fiber at the end of the Initial Term or any Renewal Term on one hundred eighty (180) days written notice to the City prior to the end of the Initial Term or any Renewal Term, or unless otherwise lawfully terminated in accordance with the terms of this Agreement.

2. The Project

Pursuant to this Agreement, Google Fiber intends to design and plan the Project within the City, modifying and upgrading the existing City Network as described in a certain Network Services Agreement, dated as of [_____, 2013] (the “Network Services Agreement”). The specific details of the Project and such cooperation are set forth below.

(a) Design and construction

Google Fiber will be responsible for design of the Project. Google Fiber intends to use different construction techniques throughout the Project footprint, which may include (but not be limited to) any of the following:

- (i) traditional open trench and/or boring for aggregation fiber cable to the CO (defined below);
- (ii) slot cut micro-trenching and/or trenching/boring for distribution fibers to residential property lines;
- (iii) fiber on buildings or aerial structures; and
- (iv) installation of fibers within existing City conduit.

The City agrees that each of these construction methods, when properly undertaken, is acceptable for work performed in City rights-of-way. The City agrees to work cooperatively with Google Fiber in reviewing all other potential construction methods. Construction, operation, and maintenance of the Project shall be performed in substantial accordance with applicable federal, state, and local regulations.

All access to, and construction in, City rights-of-way shall be in compliance with the requirements of Provo City Code Chapter 15.11.

(b) Costs

Except as specifically provided in this Agreement, Google Fiber will bear all of the costs for the Project, including but not limited to design, engineering, construction, equipment and insurance for its work, up to the drop point for its end users. In addition, Google Fiber will bear all the operating costs of the fiber network, up to the drop point, during the term of this Agreement. Except as specifically provided in the Pole Attachment and Conduit Occupancy Agreement and Structure Attachment Agreement

entered into by the City and Google Fiber contemporaneously herewith, the City will not charge Google Fiber for access to City's assets and infrastructure.

(c) Operation of network and facilities

Google Fiber will be entirely responsible, during the term of the Agreement, for the management of the Project, in accordance with industry-accepted practice in the provisioning of Internet services. As part of this management, Google Fiber will be responsible for maintenance and operation of the fiber network, up to the drop point. Google Fiber will also be responsible for operation and maintenance of all equipment installed in the in City rights-of-way.

3. Access to rights of way and infrastructure

The installation of Google Fiber equipment on City streets and roads and in City rights-of-way will be subject to an encroachment permit to be issued by the City.

Subject to existing rights-of-way and easements and the encroachment permit described above, the City will allow Google Fiber to have access to necessary rights-of-way on property owned by the City. Such access will be provided during regular business hours for non-emergency work and 24x7 for emergency work. This access includes permission to perform construction work on City property, including construction in the streets as needed for the Project. Subject to the Pole Attachment and Conduit Occupancy Agreement and Structure Attachment Agreement, the City will use its best efforts to provide Google Fiber with access to assets and infrastructure of the City upon request and on commercially reasonable terms, to the extent such assets or infrastructure are generally made available to all service providers and are needed for Google Fiber's deployment of the fiber network. Such infrastructure may include, but will not be limited to, conduit, fiber, poles, substations, rack space, nodes, buildings, facilities, available land, and others that may be identified by the parties.

4. Services to be offered by Google Fiber

(a) High speed Internet access; IP Video

Google Fiber will provide broadband Internet service and IP video service to end-users. The specifics of the services will be defined as the Project progresses. Google Fiber will make commercially reasonable efforts to achieve a broadband Internet service speed of up to 1Gbps. Google Fiber's broadband Internet service is an unregulated, interstate service. Google Fiber's IP video service is not a cable service for purposes of the federal Communications Act of 1934, as amended. Google Fiber's IP video service is not a cable television service for purposes of the Utah Code. Google Fiber's IP video service is not a multi-channel service ("MCS") or multi-channel programming service provider for purposes of the Provo City Code.

(b) Pricing

Pricing for Google Fiber's services will be defined as the Project progresses.

(c) Other services

Google Fiber may offer other, as-yet undetermined services, using the network constructed as part of the Project. It will offer such services in accordance with all applicable laws and regulations, as well as the terms of this Agreement.

5. Franchise Fee

(a) Google Fiber shall pay the City a franchise fee of five percent (5%) of annual Gross Revenue (as defined in Section 5(b)-(c) below). The twelve (12) month period applicable under the Agreement for the computation of the franchise fee shall be a calendar year. Such Franchise Fee shall be paid by Google Fiber to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City and the Utah State Tax Commission. The franchise fee payment shall be due quarterly and payable within sixty (60) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a Google Fiber representative showing the basis for the computation.

(b) “Gross Revenue” means any and all revenues of Google Fiber derived from the sale of video services to its customers within the City, without regard to the billing address of the customer; and to the extent such video services utilize the fiber network described in this agreement.

(c) “Gross revenue” does not include:

- (i) revenue from sources excluded by law;
- (ii) revenue derived by Google Fiber from services provided to its parent, subsidiaries of its parent, or affiliated companies of Google Fiber;
- (iii) recovery of expenses of collection;
- (iv) late payment fees;
- (v) amounts billed to video service subscribers to recover taxes, fees or surcharges imposed upon video service subscribers in connection with the provision of video service, including the fee authorized by this Section; or
- (vi) charges, other than those described above, that are aggregated or bundled with amounts billed to video service subscribers.

(d) At the request of the City, no more than once per year, the City may perform a reasonable audit of Google Fiber’s calculation of the franchise fee.

(e) Google Fiber may identify and collect the amount of the franchise fee as a separate line item on the regular bill of each subscriber.

(f) The period of limitation for City recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Google Fiber is due.

6. Education and Government Access Channels

Not later than 120 days after a request by the City, Google Fiber shall provide City with capacity over its video service to allow public, educational and governmental (“PEG”) access channels for noncommercial programming, according to the following:

(a) Google Fiber shall not be required to provide more than two PEG access channels;

(b) operation of any PEG access channel provided pursuant to this Section shall be the responsibility of the City, and Google Fiber bears only the responsibility for the transmission of such channel; and

(c) the City must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by Google Fiber are provided or submitted to Google Fiber in a manner or form that is capable of being accepted and transmitted by Google Fiber, without requirement for additional alteration or change in the content, over the particular network of Google Fiber, which is compatible with the technology or protocol utilized by Google Fiber to deliver video services.

7. Emergency Use

In order to alert customers to any public safety emergencies, Google Fiber shall offer the concurrent rebroadcast of local television broadcast channels, or utilize another economically and technically feasible process for providing an appropriate message through Google Fiber’s video service in the event of a public safety emergency issued over the emergency broadcast system.

8. Customer Support

Upon 90 days written notice, the City may require Google Fiber to comply with customer service requirements consistent with 47 C.F.R. § 76.309(c) for its video service.

9. Intellectual property rights

Google Fiber will retain all Intellectual Property Rights created, conceived, prepared, made, discovered or produced in connection with the Project itself (but not applications running on the fiber network if not developed by Google Fiber).

For purposes of this Agreement, “Intellectual Property Rights” means worldwide common law and statutory rights associated with:

- (i) patents and patent applications;
- (ii) works of authorship, copyrights, copyright applications, copyright registrations and “moral” rights;
- (iii) the protection of trade and industrial secrets and confidential information;
- (iv) trademarks, service marks, slogans, logos, sound marks, motion marks, trade dress, domain names, trade names, corporate names, or indicia;
- (v) other proprietary rights relating to intangible intellectual property (specifically excluding trademarks, trade names and service marks);
- (vi) analogous rights to those set forth above; and
- (vii) divisions, continuations, renewals, re-issuances and extensions of the foregoing (as applicable), including all foreign counterparts of the foregoing, now existing or hereafter filed, issued or acquired.

10. Indemnity

(a) Obligation to Indemnify

Each party hereby agrees to defend, indemnify, and hold the other party, its trustees, officers, directors, and employees (collectively, the “Indemnified Party”) harmless from and against any and all damages, injuries, liabilities, costs and expenses (including but not limited to attorneys’ fees) incurred by the Indemnified Party (hereinafter individually a “Loss” and collectively “Losses”) arising from or as a result of any third-party property damage, personal injury or death related to the performance of the party from whom indemnification is sought (“Indemnifying Party”) under this Agreement.

(b) Indemnification Procedure

- (i) Any Indemnified Party seeking indemnification hereunder shall notify the Indemnifying Party in writing promptly (but in no event later than 30 calendar days) after receiving written notice of any third-party Action or other claim against it (a “Third Party Claim”), describing the Third Party Claim, the amount thereof (if known and quantifiable), and the basis thereof (such notice sent to the Indemnifying Party, a “Notice of Claim”), provided that the failure to so notify an Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent such failure shall have actually prejudiced the Indemnifying Party.
- (ii) With respect to any Third Party Claim, the Indemnifying Party shall have the sole and absolute right, upon written notice thereof to the Indemnified Party provided within twenty (20) business days of its

receipt of the Notice of Claim, at its option and at its own expense, to be represented by counsel of its choice and to control and assume the defense of such Third Party Claim; provided, however, that the Indemnified Party may participate in any such Third Party Claim with counsel of its choice and at its own expense. If the Indemnifying Party elects to assume the defense of any Third Party Claim, such election will constitute an admission by the Indemnifying Party that it is responsible under this Section 10 to the Indemnified Party with respect to such Third Party Claim. The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such Third Party Claim and cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. Any out-of-pocket expenses incurred by the Indemnified Party in providing such cooperation will be reimbursed by the Indemnifying Party. Notwithstanding the foregoing, to the extent that (A) the Indemnifying Party elects not to assume the defense of such Third Party Claim (or fails to elect such defense within the twenty (20) Business Day period referred to above) and the Indemnified Party defends against or otherwise handles any such Third Party Claim, (B) in the reasonable opinion of counsel for the Indemnified Party, there is a conflict or potential conflict of interest between the Indemnified Party and the Indemnifying Party in such Third Party Claim, (C) such Third Party Claim involves a claim for damages other than monetary damages or (D) the Third Party Claim relates to or otherwise arises in connection with any criminal or regulatory enforcement Action, then in each case (I) the Indemnified Party may retain counsel of its own choosing, with the reasonable fees and expenses of one law firm for the Indemnified Parties and any required local counsel being at the expense of the Indemnifying Party, and the Indemnified Party may control and assume the defense of such Third Party Claim and (II) the Indemnifying Party may participate in such defense with counsel of its choice and at its own expense. Without the consent of the other party, neither the Indemnifying Party nor the Indemnified Party may settle any Third Party Claim which settlement either (aa) obligates the other party to pay money, perform obligations or admit liability or (bb) does not contain a full release of all claims against such other party.

(c) Notwithstanding the foregoing, the Indemnified Party shall not be indemnified against any Third Party Claim for damage arising out of the Indemnified Party's (i) fraud, (ii) negligence, or (iii) willful acts arising out of its performance under this Agreement.

(d) In connection with any claim for losses for which a party is entitled to indemnification under this Section 10, the other party shall use its reasonable best efforts, and take all such actions as may be reasonably necessary to satisfy such indemnification

claim.

11. Limitation of liability

EXCEPT FOR ANY UNAUTHORIZED USE OR DISCLOSURE OF GOOGLE FIBER'S INTELLECTUAL PROPERTY RIGHTS OR A PARTY'S CONFIDENTIAL INFORMATION OR ANY INDEMNIFICATION OBLIGATIONS HEREUNDER (1) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS; (2) EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, COUNCIL MEMBERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM FOR SUCH TYPES OF DAMAGES; AND (3) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY FOR ANY BREACH OF THIS AGREEMENT EXCEED TWO MILLION DOLLARS (\$2,000,000.00). IN PARTICULAR WITH RESPECT TO CONSTRUCTION, GOOGLE FIBER'S ENTIRE LIABILITY FOR ANY DAMAGE CAUSED TO THE CITY BY ANY CONSTRUCTION WORK PERFORMED BY OR FOR GOOGLE FIBER WILL BE LIMITED TO THE COST OF REPAIRING PHYSICAL PROPERTY DAMAGE THAT OCCURS AT THE SITE OF CONSTRUCTION. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 ARE A FUNDAMENTAL BASIS OF THIS AGREEMENT, AND EACH PARTY UNDERSTANDS AND AGREES THAT THE OTHER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY.

12. Representations and Warranties; Disclaimer of Warranties

(a) Limitation of Warranties

Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; and (iii) and that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party. Google Fiber and the City each agree to comply with all applicable laws and regulations relevant to this Agreement. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time. The City warrants that, after

the date hereof, it shall not enter into any agreement or understanding that contravenes, conflicts with or results in a violation of any provision of this Agreement, or that prevents Google Fiber from performing its obligations hereunder or otherwise complying with the terms of this Agreement.

(b) Disclaimer of Warranties

EXCEPT AS OTHERWISE SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THE PROJECT CONTEMPLATED BY THIS AGREEMENT. GOOGLE FIBER DOES NOT WARRANT THAT IT SHALL COMPLETE THE PROJECT OR OPERATE THE NETWORK OR OFFER SERVICES FOR ANY SPECIFIED TERM. EACH PARTY ACKNOWLEDGES THAT IT IS TECHNICALLY IMPRACTICABLE TO PROVIDE NETWORKS OR SERVICES FREE OF FAULTS AND FREE OF CAPACITY LIMITATIONS AND THE PARTIES DO NOT UNDERTAKE TO DO SO. UNLESS OTHERWISE SET FORTH IN GOOGLE FIBER'S TERMS OF SERVICE, THE NETWORK AND THE SERVICES WILL BE PROVIDED BY GOOGLE FIBER ON AN "AS IS" AND "AS AVAILABLE" BASIS. GOOGLE FIBER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT, IN CONNECTION WITH THE PROJECT. GOOGLE FIBER MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PROJECT.

13. Insurance

(a) Each party will maintain in full force and effect during the term of this Agreement insurance that will include at a minimum: (a) Worker's Compensation in accordance with all federal, state and local requirements; (b) Commercial General Liability - coverage for bodily injury and property damage liability, including contractual liability coverage - \$2,000,000 each occurrence bodily injury and property damage combined; and (c) Business Automobile Liability Insurance – coverage for bodily injury and property damage liability, including coverage for all non-owned, hired and rented automotive equipment - \$2,000,000 each occurrence, bodily injury and property damage combined. If either party self-insures, it shall provide appropriate protection equivalent to the limits described above.

(b) Insurance carriers used by the parties must be rated A- or better by A.M. Best Company. Upon request, each party will include the other party as an additional insured on its Commercial General Liability policy.

(c) All coverage will be considered primary without right of contribution of the other party's insurance policies.

(d) Each insurance policy must contain a severability of interests clause.

(e) Policies should provide thirty (30) days written notice prior to cancellation, except in the event of non-payment, which will require at least ten (10) days written notice.

14. Default and termination

(a) Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provided that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; or (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof.

(b) Google Fiber will have the right to terminate the Agreement for convenience at any time by providing written notice to the City.

15. Actions upon termination

Subject to the Pole Attachment and Conduit Occupancy Agreement and Structure Attachment Agreement, the parties agree that the following steps will be taken upon termination of the Agreement:

(a) Except for a termination under Section 14(b), Google Fiber will not remove its Project equipment and property from the City without the consent of the City. Any removal will be at Google Fiber's own cost, provided, however, that any property that is installed underground may be abandoned in place, except as otherwise provided in the Pole Attachment and Conduit Occupancy Agreement.

(b) To the extent that Google Fiber wishes to leave any equipment or property in City locations or rights-of-way at the time of termination, it will cooperate with the City in doing so and will not leave equipment or property in place if the City declines permission to do so. If, pursuant to the cooperation described in this subsection, Google Fiber leaves any equipment or property installed under this Agreement, Google Fiber will not incur any charges for doing so.

(c) Google Fiber will take all reasonable steps to restore the locations where it has operated under this Agreement to their original condition, ordinary wear and tear excepted.

(d) At the time of termination, Internet access and video services for end-users will be terminated, but in no case will such services be terminated on less than ninety (90) days notice.

16. Dispute resolution

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement will first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of thirty (30) days, or any agreed further period, the parties are unable to resolve the dispute, then the parties may seek resolution by exercising any rights or remedies available to either party at law or in equity.

17. Governing Law and Jurisdiction

This Agreement and any action related to this Agreement will be governed the laws of the State of Utah, excluding that body of law controlling conflict of laws and any application of the United Nations Convention on the International Sale of Goods. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of Utah, Utah County, or if it has or can acquire jurisdiction, in the United States District Court for the District of Utah. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum.

18. Relationship of the parties

The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership or joint venture between the parties.

19. Notices

All notices must be in writing and addressed as specified below. Notice will be deemed given (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

City:

Provo City Corporation
351 West Center Street
Provo, UT 84601
ATTN: Mayor

Google Fiber:

Google Fiber Utah, LLC
ATTN: General Manager
1600 Amphitheatre Parkway
Mountain View, CA 94043
fax no.: (650) 253-0001
Email: googlefibernotices@google.com

With a copy to (which copy will not constitute notice):

Provo City Attorney’s Office

With a copy to (which copy will not constitute notice):

Google Fiber, Inc.

PO Box 1849
Provo, UT 84603
ATTN: City Attorney

ATTN: Google Fiber Legal Department
1600 Amphitheatre Parkway
Mountain View, CA 94043
Email: legal-notices@google.com

20. Waiver

A waiver of any provision of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No failure or delay by either party in exercising any option, right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

21. Assignment

(a) Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

(b) Notwithstanding Section 21(a), Google Fiber may at any time, on written notice to the City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:

- (i) to any Affiliate (as defined below) of Google Fiber;
- (ii) to any successor in interest of Google Fiber's business operations in connection with any merger, acquisition or similar transaction if Google Fiber determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or
- (iii) to any purchaser of all or substantially all of Google Fiber's assets related to the Project if Google Fiber determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

Following any Assignment of this Agreement to an Affiliate, Google Fiber shall remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Section, (i) "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with Google Fiber; and (ii) "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; or (b) 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 (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

22. Use of Contractors/Sub-Contractors/Affiliates

Without releasing it from any of its obligations, Google Fiber is entitled at any time, and without notice, to utilize the services of one or more of its Affiliates or any contractors or sub-contractors in connection with the performance of its obligations under this Agreement.

23. Force Majeure

Neither party will be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms, earthquakes or other natural occurrences, strikes or other labor unrest of third parties, power failures, terrorist activity, nuclear or other civil or military emergencies, acts of legislative, judicial, executive or administrative authorities, or any other circumstances that are not within its reasonable control and ability to prevent (a “Force Majeure” event). In event of a Force Majeure event, the party who first becomes aware of the event must promptly give written notice to the other party of such event. When either party becomes aware of the end of the Force Majeure event, it must give notice to the other party. If the period of non-performance exceeds one hundred eighty (180) days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been affected may terminate the Agreement on written notice to the other party, provided that (i) such Force Majeure event is incapable of remedy; or (ii) such Force Majeure event is capable of remedy and the delayed party fails to remedy such Force Majeure event within ninety (90) days of receipt of notice from the other party.

24. Confidentiality

(a) Confidential Information

The term “Confidential Information” shall include all written and verbal proprietary or confidential communications between the parties and all plans, documents, materials and data provided by each party to the other in connection with and related to the Project and this Agreement, as well as any financial or business information of either party and any material designated as confidential. Confidential Information may not be disclosed by either party to any person other than its trustees, directors, officers, council members, employees and attorneys of such party or agents of such party who have a need-to-know and are subject to similar confidentiality obligations. These confidentiality obligations shall no longer apply to the extent Confidential Information (i) becomes publicly available other than through the receiving party; (ii) is required to be disclosed pursuant to a governmental or judicial rule, order or regulation or the rule or regulation of a stock exchange; (iii) the recipient of the Confidential Information independently develops such information without access to or use of the Confidential Information; or (iv) becomes rightfully available to the receiving party without restriction from a third party.

(b) Legal Process

If either party is required by law or similar regulatory process to disclose any Confidential Information, to the extent permitted, it will provide the other party with prompt prior written notice of such request or requirement so that such party may seek an appropriate protective order and/or waive compliance with this Section 24. The recipient of such notice must respond in writing to such request as soon as possible, but in any event no later than within five (5) business days of receipt of such notice, and either consent to such disclosure or advise of its election to seek a protective order. If a party chooses to seek an appropriate protective order, the other party will refrain from disclosing such information (unless legally compelled to do so) until the request for a protective order is resolved, and will then comply with the terms of any validly issued protective order.

(c) Return of Confidential Information

Upon request of a party upon expiration or termination of this Agreement for any reason, the other party shall promptly return all Confidential Information of the other party, other than file copies that must be retained by its counsel or in accordance with applicable law, which shall permanently remain subject to the confidentiality requirements of this Agreement.

(d) Term of Restriction

Each party's obligations under this Section 24 shall remain in effect during the term of this Agreement and for a period of two (2) years after its termination for any reason, except with respect to file copies or information considered or deemed to be a trade secret under applicable law for which each party's obligations of confidentiality will remain in effect for so long as such information continues to constitute a trade secret under applicable law.

25. Prior agreements

This Agreement supersedes all prior communications and agreements, oral or written, between the parties regarding the subject matter herein contemplated.

26. Severability

If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the fullest extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

27. Compliance with laws

Google Fiber and the City shall, throughout the term of the Agreement, comply with all applicable laws and regulations.

28. Joint Drafting

The Parties acknowledge that this Agreement (including any Exhibits, Appendices and Annexes hereto) has been drafted jointly by the parties and agree that this Agreement will not be construed against either party as a result of any role such party may have had in the drafting process.

29. Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such party at law or in equity. The parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

30. Further Assurances

In addition to any other obligations set forth in this Agreement, each party agrees to take such actions (including the execution, acknowledgment and delivery of documents) reasonably requested by the other party for the implementation or continuing performance of this Agreement.

31. Entire Agreement; Amendment; Signatures

The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. In the event of a conflict between this Agreement and any of its Exhibits or Attachments, the terms and conditions of this Agreement shall take precedence. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement 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 both parties. This Agreement is for the exclusive benefit of the parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement and nothing herein shall be deemed to confer any right or benefit to any other person or entity, including the Residents. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. To the extent either party to this Agreement uses an electronic signature, the parties agree that such signature is binding and this Agreement constitutes a writing.

32. Valid and Binding Obligation.

This Agreement is the legal, valid and binding obligation of Google Fiber and the City, enforceable against Google Fiber and the City in accordance with its terms.

33. Governmental Immunity

To the extent lawful, the City hereby irrevocably waives any claim to governmental immunity in regard to any proceeding in connection with any claim, proceeding, award or order arising under this Agreement, including without limitation, immunity from service of process, immunity from pre- or post-judgment attachment, immunity from jurisdiction of any court or arbitral body and immunity of any of its property from execution.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Provo City Corporation

Google Fiber Utah, LLC

By: _____

By: _____

Printed name: _____

Printed name: _____

Title: _____

Title: _____

Date: _____

Date: _____