

NON-EXCLUSIVE PUBLIC ROW LICENSE AGREEMENT

This Non-Exclusive Public ROW License Agreement (“**Agreement**”) is by and between River Heights City, a Utah municipality (“**City**”), and Google Fiber Utah, LLC, a Utah limited liability company and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Licensee**”).

RECITALS

- A. City has jurisdiction over the use of the public rights-of-way in City (“**Public ROW**”).
- B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services, including broadband Internet access service as defined in 47 C.F.R. §8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services, but excluding multichannel video programming services that would be subject to a video services franchise and telecommunications services as defined in 47 U.S.C. §153(53), to residents and businesses in City (“**Customers**”).
- C. The Network consists of equipment and facilities that may include fiber optic cables, lines, wires, or strands; conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”).

AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

1. Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. City grants Licensee permission to use and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.
- 1.2. Subject to State and Local Law. This Agreement and the License are subject to City’s valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.
- 1.3. Subject to City’s Right to Use Public ROW. This Agreement and the License are subject and subordinate to City’s prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.4. Subject to Pre-Existing Property Interests. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances,

claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

- 1.5. No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever (“**Person**”), as well as the right in its own name as a municipality to use Public ROW for similar or different purposes allowed Licensee under this Agreement.

2. Licensee’s Obligations.

- 2.1. Individual Permits Required. Licensee will obtain City’s approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City as authorized. A new encroachment permit/fee shall be filed with the City for each individual project in connection with the Work in accordance with the City’s applicable standards and practices. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City. In addition, upon prior written approval of Licensee, the City may contract with a qualified, licensed third party for all construction inspection services, and all reasonable, actual, and documented construction inspection costs directly borne by such services shall be borne by the Licensee. Licensee will collaborate with the City in good faith should the processing, field marking, engineering, and inspection associated with the issuance of individual permits exceed the City’s staffing capacity.
- 2.2. Licensee’s Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
- 2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City, including, but not limited to applicable OSHA and State of Utah stormwater legal standards and regulations.
- 2.4. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.5. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.6. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee’s Work and no other Person is responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law).

Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.6 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.

- 2.7. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them to City (in SHP format) upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections claimed by Licensee under the Government Records and Management Act, Chapter 2, Title 63G, Utah Code Ann., or its successor ("**GRAMA**").
- 2.8. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.

3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City under this section will be separate from Licensee's obligation to pay the License Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City may not require Licensee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice.
- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with (a) City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities

- 3.4. Non-Discrimination. City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent holders of local or state franchise authority offering facilities-based broadband Internet access services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City.
4. **Contractors and Subcontractors**.
- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A** ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.
5. **License Fee**. Licensee will pay City a fee ("**License Fee**") to compensate City for Licensee's use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee's use and occupancy of Public ROW and other City property as authorized. The License Fee will begin accruing on the Effective Date (as defined herein) and will be calculated as set forth in Section 5.1.
- 5.1. License Fee. Licensee will pay City two percent (2%) (the "**Revenue Percentage**") of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the first date on which Licensee receives any Gross Revenues (as defined below).
- 5.1.1. As used herein, "**Gross Revenues**" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.
- 5.1.2. Gross Revenues do not include:
- (i) any revenue not actually received, even if billed, such as bad debt;
 - (ii) refunds, rebates, or discounts made to Customers or City;
 - (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees

- from the purchaser's customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
 - (v) any forgone revenue from Licensee's provision of Broadband Internet Services to Customers at no charge if required by state law;
 - (vi) any revenue derived from advertising;
 - (vii) any revenue derived from Services other than Broadband Internet Services, including without limitation, any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
 - (viii) any revenue derived from referral or marketing agreements with third party providers of online services which Licensee may make available to Customers;
 - (ix) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement);
 - (x) any forgone revenue from Licensee's provision, in Licensee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
 - (xi) sales of capital assets or sales of surplus equipment.
- 5.2. Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the License Fee.
- 5.3. Government Records Access and Management Act. City is subject to the requirements of GRAMA. All materials submitted to City by Licensee pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure will rest solely with Licensee, and Licensee will comply with the requirements of GRAMA in asserting any such exemption. Such materials may be classified as "protected" by City under GRAMA. City will make reasonable efforts to notify Licensee of any requests made for disclosure of documents submitted under a claim of confidentiality. Licensee may, at Licensee's sole expense, take any appropriate actions to prevent disclosure of such material.

5.4. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within sixty (60) days from the specified due date will be assessed interest at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.

6. **Defense and Indemnity.**

6.1. Obligations. Licensee will defend City, its officers, elected representatives, and employees, and indemnify them against any (a) settlement amounts approved by Licensee; and (b) damages and costs finally awarded against the indemnified party by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement (“Third Party Legal Proceeding”).

6.2. Exclusions. Section 6 (Defense and Indemnity) will not apply to the extent the underlying allegation (a) arises from or is related to the negligence or willful misconduct of an indemnified party or (b) is made by City’s employee and covered under applicable workers’ compensation laws.

6.3. Conditions. Section 6.1 (Obligations) is conditioned on the following: (a) City must promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegation(s) that preceded the Third Party Legal Proceeding no later than fifteen (15) business days after City became aware of the Third Party Legal Proceeding; (b) City must reasonably cooperate in the defense at Licensee’s request; and (c) City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City’s prior written consent, not to be unreasonably withheld, conditioned, or delayed.

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

8. **Performance Bond.** Licensee will, promptly after the Effective Date, provide City with a performance bond in the amount of ten thousand dollars (\$10,000) naming City as obligee and guaranteeing Licensee’s faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the Term of this Agreement.

9. **Insurance.**

9.1. Licensee will carry and maintain:

9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than two million dollars (\$2,000,000) in aggregate and two million dollars (\$2,000,000) for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, and officers as additional insureds. Licensee will increase the commercial general liability limits contained herein to cover

any increase in City's potential liability under the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, et. seq.) or successor provision.

- 9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be sent directly to City's insurance compliance representative upon City's written request.
10. **Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Agreement will expire automatically on the twentieth (20th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement will automatically renew for successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.
11. **Termination.**
- 11.1. Termination by City. City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.
- 11.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.
12. **Assignment.** 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, except as set forth in Section 12.2.
- 12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement or any or all of its rights and obligations under this Agreement:
- 12.1.1. to any Affiliate (as defined below) of Licensee;
- 12.1.2. to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or
- 12.1.3. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.
- 12.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (b) "control" for purposes of this section means, with respect to: (i) a

U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

13. **Notice.** All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

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

14. **General Provisions.** This Agreement is governed by the laws of the State of Utah and any litigation arising out of this Agreement shall be held in Cache County, Utah. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

[Signature page follows]

Signed by authorized representatives of the parties on the dates written below.

Google Fiber Utah, LLC

River Heights City

(Authorized Signature)

(Authorized Signature)

(Name)

(Name)

(Title)

(Title)

Address:
1600 Amphitheatre Parkway
Mountain View, CA 94043

Address:
520 S. 500 E
Logan, UT 84321

Email address: _____

Date: _____

Date: _____

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

River Heights City

[Addressee]

[Address]

Re: Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Non-Exclusive Public ROW License Agreement dated _____ between River Heights City and Google Fiber Utah, LLC ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to City on behalf of Google Fiber.

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

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

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

Kind regards,

[Name]

Manager, Google Fiber Utah, LLC