

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) is dated as of April 16, 2013, by and between Google Fiber Inc., a Delaware corporation (“**Purchaser**”), and Provo City Corporation, a Utah municipal corporation (“**Seller**”).

### RECITALS:

WHEREAS, Seller owns, and has contracted with Veracity Networks (as defined below) to operate, a Fiber-to-the-Premises communications network within the boundaries of Provo, Utah commonly known as iProvo (the “**Network**” and the provision of services through the operation of the Network, the “**Business**”);

WHEREAS, Purchaser and its Subsidiaries, are in the business of constructing and operating fiber-optic networks and providing video, data and other advanced communications services over such networks;

WHEREAS, Purchaser, or one of its designated Subsidiaries, desires to purchase from Seller, and Seller desires to sell to Purchaser, the Acquired Assets (as defined below), in exchange for the consideration set forth below; and

WHEREAS, at Closing of this Agreement, Purchaser and Seller will enter into:

(1) a Network Services Agreement, in a mutually agreeable form to be attached hereto as Exhibit A (the “**Network Services Agreement**”) which, among other things, will provide for the construction, deployment and delivery of the services described therein;

(2) a License Agreement, in a mutually agreeable form to be attached hereto as Exhibit B (the “**License Agreement**”), providing Seller with a right to use the Network, which may include fiber, dark fiber, dedicated capacity and collocation, on the terms and subject to the conditions set forth therein;

(3) a Network Operations Center Lease Agreement, in a mutually agreeable form to be attached hereto as Exhibit C (the “**Lease**”), granting Purchaser a leasehold interest in the building and associated real property known as the Provo City Network Operations Center, on the terms and subject to the conditions set forth therein; and

(4) a Pole Attachment and Conduit Occupancy Agreement, in a mutually agreeable form to be attached hereto as Exhibit D (the “**Pole Attachment Agreement**”), providing Purchaser with the right to use and access Seller’s poles, conduits and ducts, on the terms and subject to the conditions set forth therein;

(5) a Structure Attachment Agreement, in a mutually agreeable form to be attached hereto as Exhibit E (the “**Structure Attachment Agreement**”), providing Purchaser with the right to use space on Seller’s structures and improvements for the provision of communications services, on the terms and subject to the conditions set forth therein;

(6) a Franchise License Agreement, in a mutually agreeable form to be attached hereto as Exhibit F (the “**Franchise Agreement**”), providing Purchaser with a franchise to provide high-speed broadband Internet access services and Internet protocol video services within Provo, Utah, on the terms and subject to the conditions set forth therein;

(7) the Transaction Documents other than those described in the foregoing recitals.

NOW, THEREFORE, in consideration of the covenants, representations, warranties and mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## 1. DEFINITIONS

(a) Capitalized Terms. For purposes of this Agreement, the following terms shall have the following respective meanings:

“**Acquisition**” means the purchase of the Acquired Assets by Purchaser, or its designated Subsidiary, pursuant to the terms and conditions specified in this Agreement.

“**Action**” means any civil, criminal, investigative or administrative claim, litigation, application, demand, action, suit, charge, citation, complaint, investigation, decree, mediation, hearing, notice of violation, arbitration, inquiry, proceeding or investigation by or before any Regulatory Organization or Governmental Entity.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. For purposes of this definition, “control,” when used with respect to any specified Person, shall mean the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by Contract or otherwise, and the terms “controlling” and “controlled by” have correlative meanings to the foregoing.

“**Applicable Law**” means any applicable federal, state, national, local, municipal, foreign, international or other constitution, act, statute, law, principle of common law, code, edict, ordinance, treaty, rule, regulation or any official interpretation of, or judgment, injunction, order, decision, decree, Permit, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“**Contract**” means any note, bond, mortgage, indenture, lease, contract, covenant, plan, insurance policy, undertaking or other agreement, instrument, arrangement, obligation, understanding or commitment, permit, purchase order, concession, franchise or license, including any amendment or modifications made thereto, whether oral or written or express or implied.

“**Current Veracity Agreement**” means that certain Provo Network Operating and Lease Agreement, between Provo City, a municipal corporation, and Veracity Networks LLC, effective as of January 1, 2012, as the same may be extended pursuant to that certain Extension Agreement, dated as of March 1, 2013, by and between the parties thereto.

“**Employee**” means any current or former employee of Seller that provides or provided services to the Business.

“**Employee Liabilities**” means any and all Liabilities, whenever or however arising, including all costs and expenses relating thereto arising under Contract, Applicable Law, or Action before any Governmental Entity, Order or any award of any arbitrator of any kind relating to any Employee Plan, Contract with any Employee or otherwise relating to an Employee and his or her service (or potential service or termination of service) or employment (or potential employment or termination of employment) with Seller or any ERISA Affiliate.

“**Employee Plan**” means any plan, program, practice, Contract, agreement or other arrangement providing for employment, compensation, severance, change of control, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits, pension benefits, retirement, profit sharing, savings and thrift, group or individual health, dental, medical, retiree medical, life insurance, survivor benefit or similar plan, policy or arrangement or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each “employee benefit plan,” within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, which is maintained, contributed to, or required to be contributed to, by Seller or any ERISA Affiliate for the benefit of any Employee, or with respect to which Seller or any ERISA Affiliate has or may have any Liability.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder.

“**ERISA Affiliate**” means each Subsidiary of Seller and any other person or entity under common control with Seller or any of its Subsidiaries within the meaning of Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

“**Existing Veracity Agreements**” means the Current Veracity Agreement and all other agreements, documents, instruments and certificates entered into in connection therewith.

“**GAAP**” means generally accepted accounting principles, as promulgated by the GASB and in accordance with the guidance in *Governmental Accounting, Auditing, and Financial Reporting* published by the Government Finance Officers Association, in effect as of the date of the most recent balance sheet included in the Financial Statements, applied on a consistent basis.

“**Governmental Approval**” means a Permit of, with or to a Governmental Entity or Regulatory Organization (including the expiration of any waiting or other time period required to pass before such Permit may be assumed or relied on).

“**Governmental Entity**” means any federal, state, county, national, local, international or foreign court, administrative, regulatory or other governmental authority, agency, commission, instrumentality or arbitral tribunal.

“**Indebtedness**” of any Person means (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid

by such Person, other than trade credit incurred in the ordinary course of business, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (vi) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vii) all guarantees by such Person, (viii) all capital lease obligations of such Person, (ix) the notional amount of all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (x) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

**"Indemnified Party"** means a Purchaser Indemnified Party or Seller Indemnified Party, as the case may be.

**"Intellectual Property Rights"** means any and all intellectual property rights or other similar proprietary rights throughout the world and all rights associated therewith, whether registered or unregistered, including all (i) inventions, patents and applications therefor and all reissues, divisions, renewals, re-examinations, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), invention disclosures and improvements, (ii) trade secrets, proprietary information, know how, technology, technical data, proprietary processes and formulae, algorithms, and specifications, (iii) industrial designs, (iv) all trade names, logos, trademarks and service marks, including the goodwill associated with the foregoing, (v) Internet domain names, Internet and World Wide Web URLs or Internet Protocol addresses, (vi) all rights in works of authorship including copyrights, copyright registrations and applications therefore, and all other rights corresponding thereto, (vii) all computer Software, including any source code, object code, firmware, development tools, files, records and data, and all rights in prototypes, databases and data collections (including knowledge databases, customer lists and customer databases) and all rights therein, (viii) all social media accounts and services, (ix) any registrations or applications for registration for any of the foregoing, including any divisions, continuations, continuations-in-part, renewals, reissues and extensions (as applicable) and (x) any similar or equivalent rights to any of the foregoing.

**"Knowledge"** means, with respect to Seller, (i) for representations made as of the date hereof, the actual knowledge of John Curtis, Mayor; Wayne Parker, CAO; John Borget, Director Administrative Services; Dan Follett, Division Director of Finance; Joshua Ihrig, Division Director of Information Systems; Aaron Leach, Telecommunication Manager; Robert West, City Attorney; and Brian Jones, Deputy City Attorney; after each such Person has made reasonable inquiry consistent with the confidentiality restrictions requested by Purchaser; and (ii) for representations made as of the Closing Date, the actual knowledge of John Curtis, Mayor; Wayne Parker, CAO; John Borget, Director Administrative Services; Dan Follett, Division Director of Finance; Joshua Ihrig, Division Director of Information Systems; Aaron Leach, Telecommunication Manager; Robert West, City Attorney; and Brian Jones, Deputy City Attorney; after each such Person has made due and diligent inquiry of all relevant employees,

consultants and advisors of Seller, including, to the extent practicable, Veracity Networks, whom each such Person should reasonably believe would have actual knowledge of the matters represented.

**“Liability”** means all accounts payable, royalty payable, reserves, accrued bonuses, accrued and unaccrued paid time off, employee expense obligations (including severance obligations), liabilities for Taxes and all other liabilities of any kind, including Indebtedness, duty, expense, charge, warranty obligation or liability, cost, fee, claim, deficiency, commitment, loss, damage, guaranty, endorsement or other obligation of any type, whether known or unknown, asserted or unasserted, matured or unmatured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, incurred or consequential, determined, determinable or otherwise, due or to become due, whether or not required to be recorded on a balance sheet in accordance with GAAP, including those arising under any Contract, Applicable Law or Action.

**“Liens”** means any mortgage, pledge, lien, security interest, charge, claim, community or other marital property interest, equity, encumbrance, source code escrow, restriction on transfer (including, without limitation, a right of first refusal or offer or other similar right), use, voting or any other attribute of ownership or other material limitation on ownership, conditional sale or other title retention device or arrangement (including a capital lease), transfer for the purpose of subjection to the payment of any Indebtedness, encroachment, lease, license, option, purchase right, other rights of third parties, adverse claim of ownership or use, defect of title or other encumbrance of any kind, or restriction on the creation of any of the foregoing, whether relating to any property or right or the income or profits therefrom, but in each case excluding Liens granted, created or incurred by or on behalf of Purchaser.

**“Material Adverse Effect”** means any state of facts, condition, change, development, event or effect that, either alone or in combination with any other state of facts, condition, change, development, event or effect, is, or would be reasonably likely to be, materially adverse to the business, assets (whether tangible or intangible), liabilities, condition (financial or otherwise), operations or prospects of the Business and/or the Acquired Assets, taken as a whole, except for any such state of facts, condition, change, development, event or effect solely to the extent it results from (a) a natural disaster or the outbreak or escalation of war, hostilities or terrorist activities, either in the United States or abroad; provided, however, that such disaster, outbreak or escalation does not have a disproportionate or unique effect on the Business or the Acquired Assets, and (b) changes in any Applicable Law or GAAP or other accounting standards; provided, however, that such changes do not have a disproportionate or unique effect on the Business or the Acquired Assets.

**“Order”** means any order, writ, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Entity.

**“Permit”** means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, notice, certificate, filing, exemption or order.

**“Person”** means any individual, partnership, limited liability company, corporation, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Entity.

**“Registered IP”** means Intellectual Property Rights that have been registered, filed, certified or otherwise perfected or recorded with or by any Governmental Entity, or any applications for any of the foregoing.

**“Regulatory Organization”** means any commission, board, division, department, agency or body that is not a Governmental Entity but is charged with the supervision or regulation of the Business, or with respect to Seller, to the jurisdiction of which Seller is otherwise subject.

**“Software”** means any and all computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), design tools and user interfaces, in any form or format, however fixed. Software includes source code listings and documentation.

**“Subsidiary”** means, with respect to any Person, any corporation or other organization or Person, whether incorporated or unincorporated, of which (i) such Person or any other subsidiary of such Person is a general partner (excluding such partnerships where such Person or any subsidiary of such Person does not have a majority of the voting interest in such partnership) or (ii) at least a majority of the securities, equity or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization are directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries or Affiliates.

**“Tax”** and **“Taxes”** means (i) any and all U.S. federal, state, local and non-U.S. taxes, assessments, and other governmental charges, customs, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value-added, goods and services, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, stamp, escheat, excise and property taxes, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, together with all interest, penalties and additions imposed with respect to such amounts; (ii) any Liability for the payment of any amounts of the type described in item (i) as a result of being or having been a member of an affiliated, consolidated, combined or similar group for any period (including any arrangement for group or consortium relief or similar arrangement); and (iii) any Liability for the payment of any amounts of the type described in item (i) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person or entity with respect to such amounts and including any Liability for taxes of a predecessor or transferor or otherwise by operation of law.

**“Tax Returns”** means all declarations, reports, claims for refund, or information returns or statements, and any attachments, schedules, appendices or addenda thereto, and any amendments thereof, that are filed or required to be filed with respect to Taxes.

**“Technology”** means all tangible items related to, constituting, disclosing or embodying any or all of the following, including all versions thereof and all technology from which such items were derived, including (i) works of authorship including computer programs, whether in source code or in executable code form, architecture, algorithms and documentation, (ii) inventions (whether or not patentable), technology, discoveries and improvements, (iii)

proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections, and customer and technical data (v) methods, techniques and processes, and (vi) devices, prototypes, designs and schematics.

“**Transaction Documents**” means this Agreement, the Network Services Agreement, the License Agreement, the Lease, the Pole Attachment Agreement, the Structure Attachment Agreement, the Franchise Agreement, the Collateral Agreements and all other agreements, documents, instruments and certificates entered into in connection herewith or therewith.

“**Transfer Taxes**” means transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement.

“**Veracity Networks**” means Veracity Networks LLC, a Utah limited liability company.

“**Willful Breach**” means, with respect to any representation, warranty, agreement or covenant, an action or omission (including a failure to cure circumstances) that the breaching party knows, at the time of the act or omission, is or would constitute a breach, or would reasonably be expected to result in a breach, of such representation, warranty, agreement or covenant.

(b) Index of Defined Terms. For purposes of this Agreement, the following terms shall have the respective meanings ascribed thereto in the Section indicated opposite each such term.

Term	Section
Acquired Assets	2(a)
Acquisition	1(a)
Action	1(a)
Affiliate	1(a)
Agreement	Preamble
Allocation	3(f)
Alternative Transaction	6(p)
Assumed Liabilities	2(d)
Audited Financial Statements	4(r)
Business	Recitals
Business Services	4(j)(x)
Business Sites	4(j)(x)
Carryover Tax Returns	6(m)(iii)
Carryover Taxes	6(m)(iii)
Closing	3(a)
Closing Date	3(a)
Collateral Agreements	3(c)(i)
Confidential Information	6(c)
Confidential System Information	6(b)
Contract	1(a)

Term	Section
Current Veracity Agreement	1(a)
Cure	8(d)(iii)
Curable Breach	8(d)(iii)
Designated Employees	6(g)
Disclosure Schedule	4
Employee	1(a)
Employee Liabilities	1(a)
Employee Plan	1(a)
Environmental Claims	4(q)
Environmental Law	4(q)
Equipment	2(a)(i)
ERISA	1(a)
ERISA Affiliate	1(a)
Excluded Assets	2(c)
Excluded Liabilities	2(e)
Exclusivity Period	6(p)
Financial Statements	4(r)
FCC	2(e)
Franchise Agreement	Recitals
GAAP	1(a)
GASB	4(r)
General Assignment	3(c)(i)
Goodwill	2(a)(vii)
Governmental Approval	1(a)
Governmental Entity	1(a)
Hazardous Materials	4(q)
Indebtedness	1(a)
Indemnified Party	1(a)
Indemnifying Party	8(d)(i)
Intellectual Property Rights	1(a)
Inventory	2(a)(iv)
Knowledge	1(a)
Lease	Recitals
Liability	1(a)
License Agreement	Recitals
Lien	1(a)
Losses	8(b)
Material Adverse Effect	1(a)
Most Recent Balance Sheet	4(r)
Network	Recitals
Network Services Agreement	Recitals
New Operating Agreement	6(h)
Notice of Claim	8(f)
Officer's Certificate	8(d)(iv)
Order	1(a)



Term	Section
Permits	1(a)
Person	1(a)
Personally Identifiable Information	4(j)(x)
Pole Attachment Agreement	Recitals
Property Documents	2(a)(x)
Proposal	6(p)
Purchase Price	2(f)
Purchaser	Preamble
Purchaser Indemnified Parties	8(b)
Real Property Lease	4(h)(i)
Records	2(a)(ix)
Registered IP	1(a)
Regulatory Organization	1(a)
Release	4(q)
Representatives	6(p)
Restrictions	2(a)(viii)
Schedule Supplement	6(o)
Seller	Preamble
Seller Indemnified Parties	8(c)
Seller Power of Attorney	6(k)(iii)
Software	1(a)
Straddle Period	6(m)(iii)
Structure Attachment Agreement	Recitals
Subsidiary	1(a)
Tax and Taxes	1(a)
Tax Returns	1(a)
Technology	1(a)
Third Party Claim	8(f)
Threshold	8(d)(i)
Transaction Documents	1(a)
Transferred Contracts	2(a)(ii)
Transferred Intellectual Property	2(a)(iii)
Transferred Permits	2(a)(vi)
Transferred Real Property Interests	2(a)(v)
Transfer Taxes	1(a)
Unaudited Financial Statements	4(r)
Updated Asset Schedules	2(b)
Veracity Networks	1(a)

## 2. PURCHASE AND SALE

(a) Purchase and Sale of Acquired Assets. On the terms and subject to the conditions set forth in this Agreement including Section 2(b), Seller hereby agrees, at Closing, to irrevocably and perpetually sell, convey, transfer and assign to Purchaser, or a designated Subsidiary of Purchaser, and Purchaser, or its designated Subsidiary, hereby agrees to purchase

from Seller, all of Seller's right, title and interest in and to the following (collectively, the "**Acquired Assets**"):

(i) All equipment, fiber-optic cabling, computers, tools, supplies, furniture, and other tangible personal property and assets of Seller relating to the Business and/or the Network, as set forth on Schedule 2(a)(i) (collectively, the "**Equipment**");

(ii) All rights of Seller under those Contracts listed on Schedule 2(a)(ii) (collectively, the "**Transferred Contracts**");

(iii) Any Technology and other Intellectual Property Rights (other than any trademarks and domain names) used in the operation of the Business, as set forth on Schedule 2(a)(iii) (the "**Transferred Intellectual Property**");

(iv) All supplies and inventories of Seller relating to the Business (the "**Inventory**"), as set forth on Schedule 2(a)(iv) or that Seller acquires (or has title to or the right to acquire) under the Current Veracity Agreement and which Purchaser may choose to acquire pursuant to Section 2(b);

(v) All leases, easements, licenses, occupancy, use agreements and other estates, rights, title and interests relating to the Business as set forth on Schedule 2(a)(v) (the "**Transferred Real Property Interests**");

(vi) All Governmental Approvals listed on Schedule 2(a)(vi) (the "**Transferred Permits**");

(vii) All goodwill and going concern value specifically associated with the Business or the Acquired Assets (the "**Goodwill**");

(viii) All rights of Seller, if any, with respect to any restrictions on competition and obligations regarding confidentiality, non-disclosure or limited use imposed on third parties relating to the Business (the "**Restrictions**");

(ix) All books, records, files, data and other materials specifically relating to and used in connection with, or necessary to carry on, the Business or relating to or in connection with the Acquired Assets including, but not limited to, general books and records of the Business maintained by Veracity Networks to which Seller is entitled access (the "**Records**"). The Records include rights of Seller to any books of account, mailing lists, marketing materials, product orders, business plans, sales records, research data, business development materials, policy and procedure manuals, price lists, general financial, accounting and credit records, ledgers, files, invoices, customers and suppliers' lists, customer account information, technical documents, manuals, management software tools, databases, computer tapes and other data, drawings, notebooks, specifications, creative materials, advertising and promotional materials, studies, reports, equipment repair, maintenance or service records, in each case whether written or electronically stored or otherwise recorded and, to the extent legally possible, whether or not subject to confidentiality obligations. To the extent physical delivery of any of the Records has not

been requested by Purchaser at the time of Closing or any Records are not easily accessible or physically transferrable by Seller, Seller may retain physical possession of such Records, subject to Seller's normal record retention policies. Seller shall produce copies of any Records in the possession of Seller upon reasonable request of Purchaser. Seller agrees to treat any Records in its possession as Confidential Information under the requirements of Section 6(b), below;

(x) Any maps, surveys, copies of title assurances or title insurance policies, and engineering or architectural plans, specifications or drawings, and copies of all environmental impact, wetlands and similar surveys, approvals and similar information relating to the Network or the Transferred Real Property Interests (the "**Property Documents**"). To the extent physical delivery of any of the Property Documents has not been requested by Purchaser at the time of Closing or any Property Documents are not easily accessible or physically transferrable by Seller, Seller may retain physical possession of such Property Documents, subject to Seller's normal record retention policies. Seller shall produce copies of any Property Documents in the possession of Seller upon reasonable request of Purchaser. Seller agrees to treat any Property Documents in its possession as Confidential Information under the requirements of Section 6(b), below;

(xi) Passwords, business practices, trade secrets and other oral information of Seller disclosed to or requested by the Purchaser prior to Closing which are relevant to the operation of the Business after Closing;

(xii) All rights and interests of Purchaser under the Lease;

(xiii) All defenses, claims, deposits, prepayments, refunds, causes of action, credits, warranties (including manufacturer's warranties), rights of recovery, rights of set off and rights of recoupment relating to any right, property or asset included in the Acquired Assets, or against any party under the Transferred Contracts; and

(xiv) All rights to enforce such right, title and interest, including the right to sue and recover any sums whether due, payable, accrued or arising before, on or after the Closing with respect to any of the foregoing (it being understood that the transfers contemplated by this Section 2(a) are intended to be absolute transfers and not by way of security).

(b) Updated Asset Schedules. On the fifth (5th) business day prior to the Closing, Seller shall deliver to Purchaser revised Schedules 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv) and 2(a)(v), which shall set forth lists of assets of the type required to be disclosed thereon and relating to the Business that Seller owns or has the right to own as of such date, including any assets acquired by Seller after the date hereof or identified after the date hereof as being held by Veracity Networks but which Seller owns or has the right to own (the "**Updated Asset Schedules**"). No later than two (2) days prior to the Closing Date, Purchaser shall notify Seller whether it accepts or requires revisions to the Updated Asset Schedules. If Purchaser accepts the Updated Asset Schedules as delivered by Seller, then the Updated Asset Schedules shall amend, in their entirety, the corresponding schedules attached to this Agreement as of the date hereof

and all of the assets set forth on the Updated Asset Schedules shall be deemed to be Acquired Assets and shall be acquired by Purchaser at the Closing. If Purchaser requires revisions to, declines to acquire certain assets, or otherwise disputes the Updated Asset Schedules as delivered by Seller, then Purchaser shall deliver to Seller a written notice of its required revisions of the Updated Asset Schedules as delivered by Seller, which Updated Asset Schedules shall, upon Seller's reasonable approval of any such revisions other than those that relate to assets removed by Purchaser from the list of Acquired Assets, be revised to reflect Purchaser's revisions and thereafter shall amend, in their entirety, the corresponding schedules attached to this Agreement as of the date hereof and all of the assets set forth on the Updated Asset Schedules shall be deemed to be Acquired Assets and shall be acquired by Purchaser at the Closing.

(c) Excluded Assets. Except for the Acquired Assets specifically set forth in Sections 2(a) and 2(b), (i) Seller is not selling, transferring, assigning or conveying, and (ii) the Acquired Assets expressly exclude, all tangible and intangible personal property, real property, Intellectual Property Rights, goodwill, Tax attributes, books and records and any and all other property, rights or assets of any kind of Seller (collectively, the "**Excluded Assets**"), including any assets, claims, causes of action, Contracts or licenses to be listed in Schedule 2(c). The Excluded Assets shall remain for all purposes the properties and assets of Seller and Purchaser shall have no rights or obligations whatsoever thereto or thereunder. Notwithstanding anything to the contrary in the foregoing, the exclusion of the Excluded Assets shall in no way adversely affect Purchaser's rights to exploit the Acquired Assets. The Excluded Assets shall expressly include but not be limited to (i) the rights of Seller under this Agreement, (ii) the corporate seals, minute books and accounting records of Seller not directly related to the Business, (iii) assets owned by Veracity Networks which Seller does not have a right to acquire or transfer, (iv) video content and licenses and (v) Veracity's interest in any accounts receivable, customer prepayments or customer deposits held or owned by Seller or Veracity Networks as of or relating to any period on or prior to the Closing Date.

(d) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, as of the Closing, Purchaser hereby agrees to (i) assume and perform all executory obligations, if any, of Seller under the Transferred Contracts solely to the extent such obligations arise, or relate to a period beginning, after the Closing Date and (ii) assume all Liabilities arising from or relating to the Business and the Acquired Assets solely to the extent such Liabilities arise, or relate to a period beginning, after, or, as to Taxes, relate to taxable periods (or portions thereof) beginning after, the Closing Date (collectively, the "**Assumed Liabilities**"). The assumption of the Assumed Liabilities by Purchaser hereunder shall not enlarge any rights of third parties under any Contracts with Purchaser, or any of its Affiliates, or Seller.

(e) Excluded Liabilities. Other than the Assumed Liabilities specifically set forth in Section 2(d) above, Purchaser is not assuming any Liabilities of Seller or the Business, and Seller shall retain and be responsible for all such Liabilities of Seller and the Business (the "**Excluded Liabilities**"), including any of the following: (i) all Liabilities of Seller with respect to the activities of Seller that are not related to the Acquired Assets or the Business incurred or arising at any time; (ii) any Liabilities for tax, legal or other professional advisors advising Seller, and costs and expenses incurred in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby; and (iii) any

Liabilities arising from or related to: (A) Seller's and/or Veracity Network's operation of the Business through the Closing Date, or Seller's and/or Veracity Network's ownership of the Acquired Assets prior to and through the Closing Date, other than Assumed Liabilities; (B) any Excluded Asset; (C) any Employee Liabilities; (D) any of Seller's agents, consultants, independent contractors or other Employees, whenever arising, in each case including workers' compensation, severance, salary, bonuses or under any Employee Plan; (E) claims for death, personal injury, property damage or consequential, punitive, or other damages relating to or arising out of any business conducted by Seller; (F) the violation or alleged violation by Seller of any Applicable Law, including but not limited to laws relating to civil rights, health, safety, labor, discrimination, and protection of the environment; (G) claims by creditors against Seller for anything other than Assumed Liabilities; (H) claims for customer prepayments or customer deposits (x) not transferred to Purchaser or (y) if transferred to Purchaser, relating to any period prior to the Closing; (I) claims against Seller relating to the disposal or arrangement for disposal by Seller of any Hazardous Materials at any site, location or facility (whether or not owned or leased by Seller); (J) any obligation of Seller to indemnify any Person; (K) Taxes of Veracity Network, or that relate to Seller's and/or Veracity Network's operation of the Business, or ownership of the Acquired Assets, for any taxable period (or portion thereof) ending on or before the Closing Date; and (L) any Federal Communications Commission ("FCC") regulatory fees or contributions to programs administered by or at the direction of the FCC, the Universal Service Administrative Company, or other FCC designee, including contributions to the Universal Service Fund, FCC regulatory fees, the TRS Fund, North American Numbering Plan Administration and Local Number Portability, relating to Seller's and/or Veracity Network's operation of the Business, and ownership of the Acquired Assets, through the Closing Date. Excluded Liabilities shall remain the sole responsibility of Seller or others, as the case may be, and Purchaser shall not assume or be obligated to pay, perform, discharge or in any way be responsible for any Excluded Liability.

(f) Consideration; Payment. In consideration of the sale, assignment and transfer of the Acquired Assets, and on the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser (i) will pay to Seller in cash \$1.00 (One Dollar) (the "**Purchase Price**") and (ii) will enter into each of the other Transaction Documents to which it is a party, subject to such documents being in a form agreeable to Purchaser.

### 3. CLOSING

(a) Closing. On the terms and subject to the conditions set forth in this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**") will take place at the offices of Parsons Behle & Latimer, 201 South Main Street, Suite 1800, Salt Lake City, Utah, or at such other place as the parties may mutually agree to, as soon as reasonably practicable after the satisfaction or waiver of all of the obligations of the parties set forth in Section 7 (other than conditions to be satisfied at the Closing, but subject to the waiver or fulfillment of those conditions). The date upon which the Closing actually occurs shall be referred to herein as the "**Closing Date**."

(b) Closing Deliverables of Purchaser. On the terms and subject to the conditions of this Agreement and in addition to the obligations of Purchaser set forth in Section 2, Purchaser agrees to deliver, or cause to be delivered, to Seller at the Closing each of the

Transaction Documents, in each case duly executed by Purchaser. In addition, Purchaser shall deliver or cause to be delivered to Seller such other agreements, instruments, certificates and other documents as may otherwise be necessary or reasonably appropriate and reasonably requested by Seller to evidence the due execution, delivery and performance of this Agreement and effectuate completely the transactions contemplated hereby.

(c) Closing Deliverables of Seller. On the terms and subject to the conditions of this Agreement and in addition to the obligations of Seller set forth in Section 2, Seller shall deliver, or cause to be delivered, to Purchaser at Closing:

(i) Acquired Assets. Seller shall, in the manner and form reasonably specified by Purchaser, deliver to Purchaser or a designated Subsidiary of Purchaser, all of the Acquired Assets. Such delivery shall include conveyance documents in the mutually agreeable forms attached hereto as Exhibit G, including: (A) a Quit Claim Deed, lease or easement as to any Transferred Real Property Interest not owned in fee simple by the Seller; (B) Assignments as to any rights of way, easements or other Transferred Real Property Interests owned or held by Seller; (C) a General Assignment and Bill of Sale for the sale and transfer of all of the Acquired Assets (the “**General Assignment**”); (D) one or more Grants of Easement (Hut Site) for the portion of the Acquired Assets consisting of Seller-owned hut sites and a Grant of Easement (Satellite Dish Site) for the portion of the Acquired Assets consisting of Seller’s satellite dish site; and (E) one or more Assignments of Commercial Easement for the portion of the Acquired Assets consisting of Hut Sites that are not Seller-owned. In addition, Seller shall provide: (1) physical delivery of such documents, keys and other tangible property relating to the Business as Purchaser may reasonably request; (2) such other instruments of conveyance, assignment and transfer as may reasonably be requested by Purchaser to vest in Purchaser good and valid title in and to the Acquired Assets; and (3) electronic copies of any Software included in the Acquired Assets. All such conveyance documents shall collectively be referred to herein as the “**Collateral Agreements.**”

(ii) Other Deliverables. Seller shall deliver or cause to be delivered to Purchaser (A) each of the other Transaction Documents, in each case duly executed by Seller, and (B) such other agreements, instruments, certificates and other documents as may otherwise be necessary or reasonably appropriate and reasonably requested by Purchaser to evidence the due execution, delivery and performance of this Agreement and effectuate completely the transactions contemplated hereby.

(d) Transfer Taxes. Seller represents that no Transfer Taxes will be imposed or levied by reason of, in connection with or attributable to this Agreement and the Acquisition. To the extent any such Transfer Taxes are imposed or levied, all Liabilities in respect of such Transfer Taxes shall be borne solely by Seller.

(e) Tax Withholding. Seller represents that Purchaser is not required to deduct or withhold from any consideration payable or otherwise deliverable pursuant to this Agreement and the other Transaction Documents any amounts under any provision of federal, state, local or non-U.S. tax law or under any Applicable Law. To the extent that any such deduction or withholding is required, all Liabilities in respect of such deduction or withholding

requirement shall be borne solely by Seller. Notwithstanding any other provision in this Agreement, Purchaser shall have the right to obtain from Seller, and Seller shall promptly provide upon request by Purchaser, any necessary Tax forms, including Form W-9, and any similar information, necessary to reduce or eliminate the withholding of Tax upon payments made to Seller.

(f) Allocation of Purchase Price. The Purchase Price and the Assumed Liabilities shall be allocated among the Acquired Assets in accordance with their respective fair market values (the “**Allocation**”) in a manner consistent with Section 1060 of Code, as determined by the Purchaser. The Purchaser shall deliver a copy of the Allocation to the Seller within ninety (90) days of the Closing. The Allocation shall be conclusive and binding upon Purchaser and Seller for all Tax purposes, and the parties agree that all Tax Returns (including IRS Form 8594) shall be prepared in a manner consistent with the Allocation and that the parties shall not take a position in any Tax Return or audit or any proceeding before any Governmental Entity or otherwise that is inconsistent with the Allocation, unless and to the extent required to do so pursuant to a final determination (as defined in Section 1313(a) of the Code or any similar state or local law), and each shall use commercially reasonable efforts to assist the other in any proceedings before any Governmental Entity in respect of such Allocation.

(g) Technology Retention. Seller represents and warrants that, following the Closing, it will not, to its Knowledge, retain copies of any Software or other Technology included in the Transferred Intellectual Property or any other Technology included in the Acquired Assets, even if such Acquired Assets are such that more than one copy may exist. If Seller becomes aware of its retention of any such Software or other Technology, it will, as soon as reasonably practicable, inform Purchaser thereof and, upon the request of Purchaser, either destroy or send to Purchaser such Software or other Technology. Seller hereby waives, solely for the benefit of Purchaser and its Subsidiaries and Affiliates, any rights to which Seller is entitled under any Employee confidential information and intellectual property assignment agreement or similar Contract or arising under Applicable Law with respect to the subject matter thereof.

(h) Efforts. Each party shall use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under Applicable Law or otherwise to promptly consummate and make effective the transactions contemplated by this Agreement, (ii) obtain all Governmental Approvals and third party consents or approvals that are or may be or become necessary for the performance of its obligations under this Agreement and the consummation of the transactions contemplated by this Agreement and (iii) fulfill all conditions to such party’s obligations under this Agreement as promptly as practicable. Each party shall cooperate fully with the other party to this Agreement in promptly seeking to obtain all such Governmental Approvals and third party consents or approvals. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, in connection with obtaining any of the foregoing, (x) no party to this Agreement shall be required to commence any Action or agree to material modifications of the terms and conditions of any agreements with third parties or concede any other items of value and (y) neither Purchaser nor any of its Affiliates shall be under any obligation to make proposals, execute or carry out agreements or submit to Orders providing for the sale, license (whether pursuant to an exclusive or nonexclusive license) or other disposition or holding

separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Purchaser or any of its Affiliates as a result of the consummation of the Acquisition. The parties shall not take any action that is reasonably likely to have the effect of unreasonably delaying, impairing or impeding the receipt of any required Governmental Approvals or third party consents or approvals.

#### **4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as specifically disclosed in the disclosure schedules provided by Seller to Purchaser and attached hereto, and as may be updated pursuant to Section 6(o) (collectively, the “**Disclosure Schedule**”), Seller hereby represents and warrants to Purchaser that, as of the date hereof and as of the Closing Date:

(a) Organization of Seller. Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Utah. Seller has all requisite corporate power and authority to own and operate its assets and properties, including the Network, and to carry on its business, including the Business, as currently conducted by the City and by Veracity Networks through the Current Veracity Agreement. Seller is duly qualified or licensed to do business, and is in good standing in each jurisdiction where the failure to be so qualified or licensed and in good standing could reasonably be expected to have a Material Adverse Effect. Seller has provided to Purchaser a true and complete copy of its charter and/or other organizational documents, including all amendments thereto, and each such document is in full force and effect. There are no approved or proposed amendments to any of such documents not reflected therein. The Business is currently operated by Veracity Networks, subject to such supervision and control of Seller as is permitted under the Current Veracity Agreement, and has never been operated by Seller or Veracity Networks under any names other than iProvo, Veracity and Broadweave.

(b) Authority. Seller has all requisite power and authority to enter into this Agreement and each of the other Transaction Documents and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents. The execution, delivery and performance of this Agreement and each of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby has been duly authorized by all necessary corporate action on the part of Seller. As of the Closing, this Agreement and each of the other Transaction Documents, to the extent required, shall have been approved and ratified by the Provo City Municipal Council. This Agreement has been, and each of the other Transaction Documents will be, duly executed and delivered by Seller and shall constitute (or will constitute when executed and delivered by Seller and each other party thereto) the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be subject to laws of general application relating to bankruptcy, insolvency and relief of debtors, and rules of law governing specific performance, injunctive relief, or other equitable remedies.

(c) No Conflict. The execution and delivery by Seller of this Agreement and each of the other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or result in any violation of, or default under, or give rise to a right of termination, cancellation, modification or acceleration of any



obligation or loss of any benefit under (A) any law, ordinance or documents governing Seller, including its organizational documents, (B) any Contract to which Seller or any of its properties or assets (including intangible assets) is subject or bound, or (C) any Applicable Law, Permit or Order applicable to Seller or any of its properties or assets (tangible and intangible) or (ii) result in the creation or imposition of any Lien on any assets of Seller. Seller is not a party to any Contract with a third party, whether oral or written, pursuant to which Seller has granted or agreed to grant access or usage rights, ownership (or other equity participation) rights, operational rights, rights of first offer or first refusal, or other similar rights in or to the Network.

(d) Transferred Contracts.

(i) True and complete copies of each of the Transferred Contracts listed on Schedule 2(a)(ii) have been delivered to Purchaser.

(ii) The Transferred Contracts constitute all of the Contracts between Seller, on the one hand, and any third party, on the other hand, relating to the Business and/or the Acquired Assets. Each Transferred Contract is in full force and effect and is a valid and binding agreement of Seller, and, to Seller's Knowledge, each other party thereto, enforceable against Seller, and, to Seller's Knowledge, each other party thereto, in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and relief of debtors, and rules of law governing specific performance, injunctive relief, or other equitable remedies. To the Knowledge of Seller, no party (other than Seller) to any such Transferred Contract is in breach, violation or default under the terms and conditions of any Transferred Contract, and Seller is in compliance with and has not breached, violated, or defaulted under, or received notice of any breach, violation, or default of, the terms and conditions of each Transferred Contract. To the Knowledge of Seller, no event has occurred that would constitute such a breach, violation or default (with or without notice or lapse of time, or both) under any Transferred Contract by it. As of the date hereof and as of the Closing Date, Seller has fulfilled all material obligations required to have been performed by Seller pursuant to each Transferred Contract.

(iii) Seller will have obtained by Closing all necessary consents, waivers and approvals of each party to any Transferred Contract as are required thereunder in connection with the Closing, or for any such Transferred Contract to remain in full force and effect without adverse limitation, modification or alteration after the Closing. Seller has the right to assign and transfer to Purchaser all of Seller's rights in and under the Transferred Contracts without incurring, or causing Purchaser to incur, any obligation to any third party, including any royalty obligations, other than those obligations that Seller would have had, had such transfer not taken place. Following the Closing, Purchaser will be permitted to exercise all of the rights of Seller under the Transferred Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which Seller would otherwise be required to pay pursuant to the terms of such Transferred Contracts had the transactions contemplated by this Agreement not occurred.

(iv) Schedule 4(d)(i) lists Seller's rights under each Contract Known to Seller to which Veracity Networks is a party in connection with its provision of services under the Current Veracity Agreement.

(e) No Consents. No Governmental Approval, or registration, declaration or filing with any Governmental Entity, Regulatory Organization, or Permit of any third party, including a party to any Contract with Seller, is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby and thereby.

(f) Restrictions on Business Activities. There is no Contract (not to compete or otherwise) or Order to which Seller is a party relating to the Acquired Assets and/or the Business or otherwise binding upon Seller, the Business, Purchaser's intended use of the Network after the Closing as described herein and in the Network Services Agreement or the Acquired Assets which has or may have the effect of prohibiting or impairing (i) the transactions contemplated by this Agreement or the other Transaction Documents, (ii) carrying out the Business or Purchaser's intended use of the Network after the Closing as described herein and in the Network Services Agreement, (iii) Purchaser from competing with any Person or (iv) ownership and use of any of the Acquired Assets. Seller has not entered into any agreement under which Purchaser's use and operation of the Network after the Closing, as contemplated herein and in the Network Services Agreement, would be materially impaired or restricted.

(g) Title to Properties; Absence of Liens.

(i) Seller is the sole and exclusive owner of and has good and marketable title to or, with respect to the Acquired Assets identified as leased assets on Schedule 2(a)(ii), a valid leasehold interest in, the Acquired Assets, free and clear of any and all Liens. After the Closing, Purchaser will obtain good and valid title to, or with respect to the Acquired Assets identified as leased assets on Schedule 2(a)(ii), a valid leasehold interest in, the Acquired Assets, free and clear of any and all Liens other than Liens created by Purchaser, and, after the Closing, Purchaser shall be able to use, and exercise and enjoy the benefits of, the Acquired Assets in substantially the same manner as Seller prior to the Closing, subject to any restrictions arising under any Contract to which Purchaser may be a party or pre-existing legal requirements applicable to Purchaser. The consummation of the transactions contemplated by this Agreement will not result in any breach or violation of, default under or noncompliance with, or any forfeiture or impairment of any rights under, any Lien or other obligation relating to any of the Acquired Assets.

(ii) With respect to any cable, utility, access or other easements (including prescriptive easements), servitudes, leaseholds or property interests directly used for or serving the Network and owned or used by Seller in connection with the Business: (1) Seller either has the contractual right to use or is the exclusive or nonexclusive legal or beneficial owner or interest holder of the respective easement and leasehold established thereunder; (2) such leaseholds, easements, servitudes and the rights and interests of Seller thereunder are in full force and effect; and (3) no defaults by Seller exist thereunder and no events or conditions exist which, with or without notice or

lapse of time or both, would constitute a default by Seller thereunder or result in a termination. The easements, rights-of-way, surface leases, fee interests and licenses on which or under which the Network is located (other than work sites adjacent to or near the Network as to which public and/or private ingress and egress rights adequate for their present use exist) in combination with each other form a contiguous and continuous right of way for the Network from its point(s) of origin to point of termination. A schematic diagram of the Network is set forth in Schedule 4(g)(ii). Seller has delivered to Purchaser available documents reflecting surveys and legal descriptions of easements relating to the Network. As of the Closing Date hereof, Seller has delivered to Purchaser maps and descriptions reasonably acceptable to Purchaser of all easements relating to the Network existing on real property owned by Seller, and Seller has used commercially reasonable efforts to deliver to Purchaser maps and descriptions reasonably acceptable to Purchaser identifying by type and location all easements relating to the Network existing on real property not owned by Seller. The easements transferred by Seller to Purchaser at Closing, together with the Transferred Contracts and other Transferred Real Property Interests, will grant Purchaser requisite access to operate the Business as conducted on the date of Closing. The transactions contemplated hereby will not in and of themselves result in (i) any modification in the term of any lease, easement, license or access right, (ii) any increase in any amounts due under any lease, easement, license or access right, (iii) the elimination or modification of any applicable renewal option or (iv) any modification in any requirements relating to any applicable security deposit, assuming Purchaser provides suitable replacements for any and all security deposits or letters of credit in the current amount of said security deposits or letters of credit.

(iii) No Acquired Asset is subject to any Action or Order that materially restricts the ownership, use, transfer or licensing thereof or may affect the validity, use, operation or enforceability of the Acquired Assets. To the Knowledge of the Seller, no condemnation, taking, federal, state or local statute, ordinance, order, requirement, law or regulation (including, but not limited to, zoning changes) or other matters which may adversely affect the current use of any Acquired Asset is threatened or contemplated.

(h) Real Property Leases.

(i) The Acquired Assets do not include any real property that is owned by Seller. Schedule 2(a)(v) sets forth a complete and correct list of all Transferred Real Property Interests in which Seller holds any leasehold, easement, license, occupancy, access, use, estate or other right or interest relating to the Business, as well as the date of the lease, easement, sublease, license or other occupancy agreement constituting a particular leasehold interest, and the date of any amendments, restatements and supplements thereto (each, a “**Real Property Lease**”), as well as the names of the parties thereto, a brief description of the premises demised thereby (e.g., the entire building or land and building or specified portions of a building), the square footage thereof, the improvements thereon, the uses being made thereof, the expiration date of the Real Property Lease and the extent of any unexercised renewal options thereunder. A true and complete copy of each Real Property Lease has been delivered to Purchaser.

(ii) Each Real Property Lease is in full force and effect and neither Seller nor any of the other parties to such Real Property Lease has received or given any notice of default thereunder which was not cured within the applicable grace period and, to the Knowledge of Seller, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default under, permit the termination of or permit the modification of rent under any Real Property Lease.

(iii) Each such Real Property Lease is a legal, valid and binding agreement, enforceable in accordance with its terms, to the Knowledge of the Seller, against each other person that is a party thereto.

(iv) The current use and improvements on each parcel subject to the Real Property Leases is in compliance with the terms of the respective Real Property Lease relating thereto.

(v) Seller enjoys peaceful and undisturbed possession under all such Real Property Leases and no person other than the Seller is in possession of any portion of the Real Property Leases that is necessary for, or could reasonably interfere with, the operation of the Business as of Closing or as contemplated herein and in the Network Services Agreement after Closing, and there are no agreements or other documents governing or affecting Seller's occupancy or tenancy of any of the Real Property Leases by any person other than Seller.

(vi) The leasehold or other interest of Seller in any of the Real Property Leases is not subject or subordinate to any Liens.

(vii) All facilities, structures, equipment and infrastructure related to the Acquired Assets and the operation of the Business (x) have received all Governmental Approvals required of Seller and, to Seller's Knowledge, Veracity Networks for the operation of the Business as of the Closing and (y) have been operated and maintained by Seller and Veracity Networks in substantial compliance with all Applicable Law.

(i) Sufficiency; Working Order.

(i) The Acquired Assets include all assets, properties and rights (other than video content and licenses, Seller's Network Operations Center, assets and rights held or owned by Veracity Networks and rights relating to Seller's Employees and Veracity Network's employees and Seller's and Veracity Network's legal existence and governance) material to, used or held for use in, or necessary for the operation of the Business in the manner conducted immediately prior to the Closing.

(ii) All Acquired Assets that are tangible personal property are (i) in reasonable operating condition for the intended purpose of providing broadband and video services to current customers. Without limiting the foregoing, Seller warrants that the Network, as of the Closing Date, will (x) operate consistently with the Network's standard of performance during the six months prior to Closing, and (y) operate generally as advertised, represented and marketed to customers currently receiving services through the Network.

(iii) The schematic diagram of the Network set forth in Schedule 4(g)(ii) and the “as built” map of the Network set forth in Schedule 4(i)(iii) delivered on or before the Closing Date are complete and accurate in all material respects, and provide a description of the Network sufficient to identify the fiber assets comprising the Network. Seller is not aware of any material and enforceable breach by current service providers on the Network of the terms of their network lease agreements in relation to marketing of available services.

(iv) Seller has all pole attachment and conduit use rights necessary to operate the Network as currently operated.

(j) Intellectual Property. To Seller’s Knowledge:

(i) Each item of the Transferred Intellectual Property is free and clear of any Liens. Seller owns exclusively, and has good and marketable title to, all works of authorship and all associated copyrights that are used or embodied in, and all other Intellectual Property Rights in and to, the Transferred Intellectual Property, and no other Person has any other rights thereto. All Transferred Intellectual Property shall be fully transferable and alienable by Purchaser.

(ii) To the extent that any Transferred Intellectual Property is subject to any third party rights or restrictions: (A) Seller has a written agreement with such third party or parties with respect thereto, pursuant to which Seller has obtained the right to use such Technology and Intellectual Property Rights by valid assignment or otherwise and (B) the transfers and licenses from Seller to Purchaser hereunder will not violate or cause any adverse consequences under such third party agreements. Seller has not transferred ownership of, or granted any license of or right to use, or authorized the retention of any rights to use, any Transferred Intellectual Property to any other Person.

(iii) There are no provisional patent applications, patent applications or patents or Registered IP owned or purported to be owned by Seller and material to, used or held for use in, or necessary for the operation of the Business in the manner currently conducted.

(iv) The Transferred Intellectual Property and any Intellectual Property Rights held by Veracity Networks constitute all of the Intellectual Property Rights related to, used or held for use in, necessary to the operation of, or that would be infringed by the current use of, the Business or the Acquired Assets or Purchaser’s operation of the Business immediately after Closing as contemplated by the Network Services Agreement (and in a manner consistent with the manner in which Seller and/or Veracity Networks operated the Business prior to the Closing).

(v) The operation of the Business by Seller, or Veracity Networks, and the use of the Acquired Assets as of the Closing and Purchaser’s operation of the Business immediately after Closing as contemplated by the Network Services Agreement (and in a manner consistent with the manner in which Seller and/or Veracity Networks operated the Business prior to the Closing) have not, do not and will not: (A) infringe or

misappropriate the Intellectual Property Rights of any Person (except where such use or operation would not have infringed but for Intellectual Property Rights obtained by Purchaser in connection with its operation of the Business after Closing), (B) violate the rights of any Person (including rights to privacy or publicity) (except where such use or operation would not have so violated but for Intellectual Property Rights obtained by Purchaser in connection with its operation of the Business after Closing) or (C) constitute unfair competition or trade practices under the laws of any jurisdiction, and there is no basis for any such claims. Seller has not received notice from any Person claiming that the pre-closing Business or the Acquired Assets infringe or misappropriate the Intellectual Property Rights of any Person or constitute unfair competition or trade practices under the laws of any jurisdiction.

(vi) No Person is infringing, misappropriating, or violating any of the Transferred Intellectual Property or any of the Technology included within the Transferred Intellectual Property.

(vii) Schedule 4(j)(vii) identifies all Contracts relating to the Transferred Intellectual Property which are material to the Business. Seller has made available to Purchaser copies of all agreements identified on Schedule 4(j)(vii). Seller is not obligated to pay royalties (for purposes of this provision, “royalties” shall mean the obligation to pay money to the creator of editorial content based upon the Business’s exploitation of such content) to any Person, including creators of editorial content related to the Business, following the date hereof pursuant any Contract. Seller is not obligated to pay licensing fees to any licensor of software included in the Transferred Intellectual Property in connection with any Contract.

(viii) Seller has delivered to Purchaser all copies of the source code and any other Software and data contained within the Technology that is included within the Transferred Intellectual Property and all documentation related thereto, as well as any other Technology included within the Transferred Intellectual Property, and after the Closing, neither Seller nor any third party (other than Purchaser and its representatives) will be in possession of any copy of the source code or such Software or documentation, or any other Technology transferred to Purchaser hereunder. Seller has taken reasonable steps to protect Seller’s rights in any confidential information and trade secrets of Seller associated with or related to the Acquired Assets. No Employee or other Person who has been involved in the creation, invention or development of Transferred Intellectual Property for or on behalf of Seller owns or has any rights in the Transferred Intellectual Property, nor has any such Employee or other Person made any assertions with respect to any alleged ownership or rights, nor to the Knowledge of Seller threatened any such assertion.

(ix) To the Knowledge of Seller, any Software included in the Acquired Assets is free of all (A) time bombs, disabling features, drop dead devices or other software routines designed to disable computer software automatically with the passage of time; (B) viruses, Trojan horses, back-door, worms or other software routine or hardware component designed to permit unauthorized access, disable or erase or otherwise harm software, hardware or data; or perform any other such harmful actions;

and (C) other malicious code or data. All Software included in the Acquired Assets will substantially conform to, and perform in accordance with, relevant specifications and documentations.

(x) Schedule 4(j)(x) identifies all categories of Personally Identifiable Information collected by Seller through Internet websites owned, maintained or operated by Seller and used in the Business (“**Business Sites**”), and through any services provided to customers of the Business (“**Business Services**”). “**Personally Identifiable Information**” shall mean any information that alone or in combination with other information held by Seller can be used to specifically identify a Person. With respect to the Business, Seller has complied with all Applicable Laws, contractual and fiduciary obligations relating to (A) the privacy of users of Business Sites owned, maintained or operated by Seller and used in the Business and (B) the collection, storage, use, transfer and any other processing of any Personally Identifiable Information collected or used by Seller in any manner or, to the Knowledge of Seller, maintained by third parties having authorized access to such information. The execution, delivery and performance of this Agreement complies with all Applicable Laws relating to privacy.

(xi) With respect to the Business and its service providers that have access to Personally Identifiable Information (other than Veracity Networks and its service providers), Seller has at all times taken all steps reasonably necessary (including implementing and monitoring compliance with adequate measures with respect to technical and physical security) to ensure that all Personally Identifiable Information is protected against loss and against unauthorized access, use, modification, disclosure or other misuse, and there has been no unauthorized access to or misuse of such Personally Identifiable Information.

(k) Litigation. There is no Action of any nature pending or, to the Knowledge of Seller, threatened relating to the Business or the Acquired Assets (or the use thereof by Seller) or that questions the validity of this Agreement or any of the other Transaction Documents or any action taken or to be taken pursuant to or in connection with this Agreement or any of the other Transaction Documents, and Seller has no Knowledge of, and has no reasonable basis for knowing of, any of the same that could affect the Business or the Acquired Assets after the Closing. There are no Orders, citations, fines or penalties heretofore assessed against Seller that could affect the Business or the Acquired Assets after Closing.

(l) Tax Matters.

(i) Seller is not required to pay any Taxes or to file any Tax Returns relating to the Acquired Assets or the Business, other than employment Taxes with respect to compensation paid to Seller’s employees. As between Seller and Purchaser, Seller (1) shall pay when due all Taxes it is required to pay, and shall be solely responsible for any Liabilities associated with the non-payment of all other Taxes, in either case relating to the ownership or use of the Acquired Assets or the operation of the Business (whether by Seller or Veracity Networks) for all taxable periods (or portions thereof) through the Closing Date, and (2) shall file when due any Tax Returns that it is required to file, and shall be solely responsible for any Liabilities associated with the

non-filing of any other Tax Returns, in either case relating to the ownership or use of the Acquired Assets or the operation of the Business (whether by Seller or Veracity Networks), for all taxable periods ending on or before the Closing Date. Purchaser (A) shall pay when due, and shall be solely responsible for any Liabilities associated with the non-payment of, all Taxes relating to the ownership or operation of the Acquired Assets or the Business for all taxable periods (or portions thereof) beginning after the Closing Date, and (B) shall file when due, and shall be solely responsible for any Liabilities associated with the non-filing of, all Tax Returns relating to the ownership or use of the Acquired Assets or the operation of the Business for all taxable periods (or portions thereof) ending after the Closing Date. There is no Tax deficiency outstanding, assessed or proposed against Seller that could affect the Acquired Assets or the Business.

(ii) Seller does not have and knows of no basis for the assertion of any claim or liability for delinquent or unpaid Taxes that could affect the Acquired Assets or the Business.

(iii) There are no Liens on the Acquired Assets relating to or attributable to Taxes.

(iv) Seller knows of no basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien on the Acquired Assets.

(v) Seller is a political subdivision of the State of Utah, within the meaning of Treasury Regulation Section 31.3406-1(a)(iii), and accordingly is exempt from United States federal backup withholding.

(m) Power of Attorney. There are no outstanding powers of attorney executed on behalf of Seller in respect of the Acquired Assets or which would affect the post-closing Business, except as granted to Purchaser hereunder.

(n) Compliance with Laws.

(i) Seller has at all times complied with, is not in violation of, and has not received any notices of violation with respect to, any Applicable Law with respect to its ownership of the Acquired Assets or Veracity Network's operation of the Business, or the use of the Acquired Assets by Seller or Veracity Networks.

(ii) Seller validly holds all Governmental Approvals required for it to own, lease or operate the Acquired Assets and to carry on the Business as currently conducted, and such Governmental Approvals are in full force and effect. Seller is in full compliance in all material respects with all of the terms and conditions of each such Governmental Approval, and any necessary application for renewal of any such Governmental Approval has been timely filed. To the Knowledge of Seller, there has occurred no violation of, or default (with or without notice or lapse of time, or both) under, any such Governmental Approval. No Action is pending or, to the Knowledge of Seller, threatened to revoke or limit any such Governmental Approval. There is no event which could reasonably be expected to result in the revocation, cancellation, non-renewal



or adverse modification of any such Governmental Approval and the Acquisition, in and of itself, and the other transactions contemplated by this Agreement and the other Transaction Documents (alone or in combination with any other event) will not cause the revocation, cancelation, non-renewal or adverse modification of any such Governmental Approval in a manner that could affect the Business or the Acquired Assets. To Sellers' Knowledge, Veracity Networks has all Governmental Approvals required of it to operate the Business.

(iii) The Network, and the components thereof, complies with and conforms in all material respects with Applicable Law, including specifically the applicable provisions of the Provo City Municipal Code.

(o) Bulk Transfer Laws. There are no current or past creditors of Seller to whom any law, rule or regulation requires the delivery of notice or from whom any form of consent is required in conjunction with undertaking the transactions contemplated by this Agreement, and the "bulk transfer laws" of the State of Utah do not apply to the transfer of the Acquired Assets under this Agreement.

(p) Employee Matters.

(i) With respect to the Business, Seller is in compliance in all material respects with all Applicable Laws respecting employment, employment practices, worker classification, Tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, terms and conditions of employment, employee health and safety, wages and hours (including overtime wages), compensation, and hours of work. None of the current Employees is a member of, represented by or otherwise subject to any (1) labor union, works council or similar organization or (2) collective bargaining agreement, in each case with respect to such Employee's employment by Seller.

(ii) All Employee Plans offered to any Employee who spends part or all of his time on activities of the Business (and each related trust, insurance contract, or fund) have been maintained, funded and administered in accordance with the terms of such Employee Plan. All contributions (including all employer contributions and employee salary reduction contributions) that are due have been timely made to each such Employee Plan and all contributions for any period ending on or before the Closing Date which are not yet due have been made to each such Employee Plan or accrued in accordance with the past custom and practice of Seller. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee Plan.

(iii) Schedule 4(p)(iii) contains an accurate and complete list of (A) all current independent contractors and Persons that have a consulting or advisory relationship with Seller with respect to the Business, (B) the location at which such independent contractors, consultants and advisors have been or are providing services, and (C) the rate of all regular, bonus or any other compensation payable to such current

independent contractors, consultants and advisors. Purchaser shall not have any obligation relating to any such independent contractors, consultants and advisors.

(q) Environmental Matters. Seller is in compliance with all Environmental Laws (as defined below) in relation to the Business and the Acquired Assets, and has not received any (i) communication alleging that Seller is in violation of, or may have Liability under, any Environmental Law or (ii) currently outstanding written request by any Governmental Entity for information pursuant to any Environmental Law in relation to the Business and the Acquired Assets. To Seller's Knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans that could reasonably be expected to form the basis of an Environmental Claim (as defined below) against Seller in relation to the Business and the Acquired Assets and Seller has not retained or assumed, either contractually or by operation of law, any Liabilities that could reasonably be expected to form the basis of such claim, including by way of Release (as defined below) of any Hazardous Material (as defined below). To Seller's Knowledge, there are no underground or aboveground storage tanks or known or suspected asbestos-containing materials on, at, under or about any of the Transferred Real Property Interests, nor, to the Knowledge of Seller, were there any underground storage tanks on, at, under or about any such Transferred Real Property Interest in the past. For all purposes of this Agreement, (i) "**Environmental Claims**" means any and all administrative, regulatory or judicial actions, suits, orders, demands, directives, claims, Liens, investigations, proceedings or written or oral notices of noncompliance or violation by or from any person alleging (A) liability of any kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resource damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from the presence or Release of, or exposure to, any Hazardous Material at any location, or (B) the failure to comply with any Environmental Law; (ii) "**Environmental Law**" means any Applicable Law or Order concerning pollution, the environment, natural resources, human health and safety or the protection of endangered or threatened species safety including (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the regulations promulgated thereunder, (2) the Resource Conservation and Recovery Act of 1976, and the regulations promulgated thereunder, (3) the Federal Water Pollution Control Act, (4) the Federal Clean Air Act, (5) the Toxic Substances Control Act, (6) the Safe Drinking Water Act, (7) the Pollution Control Act of 1990, (8) the Federal Insecticide, Fungicide and Rodenticide Act, (9) Applicable Laws related to releases, threatened releases of or exposure to Hazardous Materials into the environment (including ambient air, indoor air, surface water, groundwater, land, soil, and other subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport, disposal or handling of Hazardous Materials, and (10) comparable state and local laws, as each of the foregoing may be amended from time to time, and any rules or regulations promulgated pursuant to any of the foregoing; (iii) "**Hazardous Materials**" means any petroleum or petroleum products, radioactive materials or wastes, asbestos in any form, polychlorinated biphenyls, perchlorate and any other chemical, material, substance or waste that is defined as "hazardous substances" under or prohibited, limited or regulated under any Environmental Law; and (iv) "**Release**" means any actual or threatened release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within any building, structure, facility or fixture.

(r) Financial Statements. Schedule 4(r) contains the following: (i) Seller's unaudited balance sheet relating to the Network as of March 31, 2013 (the "**Most Recent Balance Sheet**") and (ii) Seller's unaudited statement of income relating to the Network for the six month period ended March 31, 2013 (items (i) and (ii) together the "**Unaudited Financial Statements**"), and (iii) audited financial statements of Seller as of and for the year ended June 30, 2012 (the "**Audited Financial Statements**"). The Unaudited Financial Statements and the Audited Financial Statements are sometimes collectively referred to herein as the "**Financial Statements.**" The Financial Statements are true and correct in all material respects and were prepared (1) from the books and records kept by Seller and (2) in accordance with applicable provisions of GAAP, as promulgated by the Governmental Accounting Standards Board ("**GASB**"), consistently applied (except with respect to interim statements which are subject to normal year-end adjustments and matters that would be included in notes thereto). The Unaudited Financial Statements and, as they relate to the Network, the Audited Financial Statements, fairly present Seller's interest in the Network as of their respective dates and for the periods related thereto (except with respect to interim statements which are subject to normal year-end adjustments and matters that would be included in notes thereto). With respect to Seller's interest in the Network, the statements of income included in the Financial Statements do not contain any material items of special or non-recurring income or other income not earned in the ordinary course of business.

(s) No Undisclosed Liabilities. Seller has no Liability of any type that is related to the Business, except (i) those required to be reflected in financial statements in accordance with applicable provisions of GAAP, as promulgated by GASB, and reflected in the Most Recent Balance Sheet, (ii) those arising in the ordinary course of the Business since the date of the Most Recent Balance Sheet consistent with past practices and (iii) as is expressly set forth in the Current Veracity Agreement, the Network Operation Center Lease Agreement, dated as of January 1, 2012, by and between Provo City and Veracity Networks LLC or the Lockbox Agreement dated April 25, 2012, among Provo City, Veracity Networks LLC and Central Bank.

(t) Absence of Changes. As of the Closing, since the date of the Most Recent Balance Sheet to the Closing Date (i) there has not been, occurred or arisen with respect to the Acquired Assets or the Business any Material Adverse Effect and (ii) Seller has conducted the Business in the ordinary course as conducted on that date and consistent with past practices.

(u) Brokers' or Finders' Fees. Seller has not incurred, nor will it incur, directly or indirectly, any Liability for brokerage or finders' fees, investment banking fees or agents' commissions or any similar charges, fees or commissions in connection with this Agreement, the other Transaction Documents or any transaction contemplated hereby or thereby.

(v) Representations Complete. To Seller's Knowledge, none of the representations or warranties made by Seller herein (as modified by the Disclosure Schedule), nor any statement made in any Schedule or certificate furnished by Seller pursuant to this Agreement, contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which made, not misleading.

(w) Suppliers. To Seller's Knowledge, Schedule 4(w) includes a list of all suppliers of significant materials or services to the Business. To Seller's Knowledge, there exists no actual or threatened termination, cancellation, or limitation of, or any modification or change in, the business relationship of the Business with any supplier or group of suppliers listed in on Schedule 4(w).

(x) Complete Copies of Materials. To the Knowledge of Seller, Seller has delivered or made available true and complete copies of each document that has been requested in writing by Purchaser, other than documents that do not exist, that are subject to confidentiality restrictions in favor of Veracity Networks in connection with the General Assignment, Bill of Sale and Representations, dated January 1, 2012, by Veracity Networks LLC, Veracity Communications, Inc., Broadweave Networks of Provo, LLC and Broadweave Networks, Inc., in favor of Provo City, or that are not in Seller's possession, custody or control (which, for the avoidance of doubt, shall not include documents in the possession, custody or control of Veracity Networks).

## **5. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller that, as of the date hereof and as of the Closing Date:

(a) Organization, Good Standing and Qualification. Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Purchaser has all requisite corporate power and authority to own and operate its assets and properties and to carry on its business as currently conducted. Purchaser is duly qualified or licensed to do business, and is in good standing in each jurisdiction where the failure to be so qualified or licensed and in good standing could reasonably be expected to have a material adverse effect on Purchaser. Purchaser has provided to Seller a true and complete copy of its certificate of incorporation and other organizational documents, including all amendments thereto, and each such document is in full force and effect.

(b) Authority. Purchaser has all requisite corporate power and authority to enter into this Agreement and each of the other Transaction Documents and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents. The execution, delivery and performance of this Agreement and each of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby has been or by the Closing will have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been, and each of the other Transaction Documents will be, duly executed and delivered by Purchaser and shall constitute (or will constitute when executed and delivered by Purchaser and each other party thereto) the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be subject to laws of general application relating to bankruptcy, insolvency and relief of debtors, and rules of law governing specific performance, injunctive relief, or other equitable remedies.

(c) No Conflict. The execution and delivery by Purchaser of this Agreement and each of the other Transaction Documents to which it is a party, and the consummation of the

transactions contemplated hereby and thereby, will not conflict with or result in any violation of, or default under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (A) any law, ordinance or documents governing Purchaser, including its organizational documents, (B) any Contract to which Purchaser or any of its properties or assets (including intangible assets) is subject or bound, or (C) any Applicable Law, Permit or Order applicable to Purchaser or any of its properties or assets (tangible and intangible).

(d) No Consents. To the knowledge of Purchaser, no Governmental Approval, or registration, declaration or filing with any Governmental Entity, Regulatory Organization, or Permit of any third party, including a party to any Contract with Purchaser, is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby and thereby.

(e) Litigation. There is no Action of any nature pending or, to the Knowledge of Purchaser, threatened that questions the validity of this Agreement or any of the other Transaction Documents of any action taken or to be taken pursuant to or in connection with this Agreement or any of the other Transaction Documents.

(f) Brokers' or Finders' Fees. Purchaser has not incurred, nor will it incur, directly or indirectly, any Liability for brokerage or finders' fees, investment banking fees or agents' commissions or any similar charges, fees or commissions in connection with this Agreement, the other Transaction Documents or any transaction contemplated hereby or thereby.

(g) Representations Complete. To the knowledge of Purchaser, none of the representations or warranties made by Purchaser herein, nor any statement made in any certificate furnished by Purchaser pursuant to this Agreement, contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which made, not misleading.

## **6. COVENANTS AND AGREEMENTS**

(a) Access. During the period commencing on the date of this Agreement and continuing through the Closing, Seller, upon reasonable prior notice from Purchaser to Seller, will, in each case relating to the Acquired Assets and the Business: (i) afford to Purchaser and its representatives, at all reasonable times during normal business hours, full and complete access to Seller's personnel, professional advisors, properties, Contracts, and other documents and data, (ii) furnish Purchaser and its representatives with copies of all such Contracts and other existing documents and data as Purchaser may reasonably request, and (iii) furnish Purchaser and its representatives with such additional financial, operating, and other data and information as Purchaser may reasonably request. No information or knowledge obtained in any investigation pursuant to this Section 6(a) shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties hereto to consummate the transactions contemplated hereby.

(b) Seller Confidentiality. Subject to Applicable Law, Seller shall, and shall cause its agents, representatives, employees, managers, officers and directors to: (i) treat and hold as confidential (and not disclose or provide access to any Person to) all confidential or proprietary information relating to the Business and/or the Acquired Assets that it has treated as confidential prior to the date hereof, including information relating to finances, trade secrets, processes, non-public patent and trademark applications, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, operations methods, product development techniques, business acquisition plans, personnel, personnel acquisition plans and any analyses, compilations, studies or other documents prepared, in whole or in part, on the basis of any of the foregoing (“**Confidential System Information**”), (ii) in the event that Seller or any such agent, representative, employee, manager, officer or director becomes legally compelled to disclose any such Confidential System Information, provide Purchaser with prompt written notice of such requirement, and provide reasonable cooperation to Purchaser (at Purchaser’s expense), so that Purchaser may seek a protective order or other remedy, (iii) if such protective order or other remedy is not obtained, furnish only that portion of such Confidential System Information which is legally required to be provided and exercise its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded such information, and (iv) promptly furnish upon request (prior to, at, or as soon as practicable following, the Closing) to Purchaser any and all copies (in whatever form or medium) of all such Confidential System Information then in the possession of Seller or any of its agents, representatives, employees, managers, officers and directors and maintain in strict confidence as corporate records any and all additional copies then in the possession of Seller or any of its agents, representatives, employees, managers, officers and directors of such information; provided, however, that this section shall not apply to any information that, at the time of disclosure, is available publicly other than as a result of a breach of this Agreement by Seller, its agents, representatives, employees, managers, officers or directors or is disclosed by Purchaser without a duty of confidentiality; provided further, that specific information shall not be deemed to be within the foregoing exception merely because it is embraced in general disclosures in the public domain. Notwithstanding the foregoing, Seller shall have no obligation to maintain as confidential any information or materials that are (1) already publicly available prior to Closing, (2) made publicly available without a breach of this Agreement or (3) disclosed by Purchaser without a duty of confidentiality.

(c) Treatment of Confidential Information. Subject to Applicable Law, each party shall, and shall cause its agents, representatives, Affiliates, employees, managers, officers and directors to: (i) treat and hold as confidential (and not disclose or provide access for any Person to) all confidential or proprietary information about or from the other party learned in the course of contract negotiations, due diligence review or performance under this Agreement, the terms and conditions of this Agreement and the other Transaction Documents and all agreements, transactions and documents associated herewith and therewith and any analyses, compilations, studies or other documents prepared, in whole or in part, on the basis of any of the foregoing (“**Confidential Information**”), but excluding Confidential System Information and any other information in which Seller, as part of this transaction, transfers an ownership interest to Purchaser (which information is governed by Section 6(b), above); provided, however, that nothing in this Section 6(c) shall restrict the rights of either party to enforce this Agreement or the other Transaction Documents against the other party; (ii) in the event that either party or any such agents, representatives, Affiliates, employees, managers, officers and directors becomes

legally compelled to disclose any Confidential Information of the other party, provide the other party with prompt written notice of such requirement, and provide reasonable cooperation to the other party (at the other party's expense) so that the other party may seek a protective order or other remedy; (iii) if such protective order or other remedy is not obtained, furnish only that portion of such Confidential Information which is legally required to be provided and exercise its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information, and (iv) maintain in strict confidence as corporate records any and all copies in the possession of such party or any of its agents, representatives, Affiliates, employees, managers, officers and directors of any such Confidential Information; provided, however, that this section shall not apply to any information that, at the time of disclosure, is available publicly other than as a result of a breach of this Agreement or the disclosure by the disclosing party of such information without a duty of confidentiality; provided further, that specific information shall not be deemed to be within the foregoing exception merely because it is embraced in general disclosures in the public domain. Notwithstanding the foregoing, neither party shall have an obligation to maintain as confidential any information or materials that are (1) already publicly available, (2) made publicly available without a breach of this Agreement or (3) disclosed without a duty of confidentiality. The restrictions of this Section 6(c) shall not apply to Purchaser after the Closing with respect to Confidential Information transferred from Seller to Purchaser pursuant to this Agreement.

(d) Press Releases. Neither party shall, or permit any of its agents, representatives, employees, managers, officers and directors to, directly or indirectly, issue any public release, statement or communication regarding the existence or subject matter of this Agreement, the Network Services Agreement or any other Transaction Document or the transactions contemplated hereby and thereby (including any claim or dispute arising out of or related to this Agreement, the Network Services Agreement or any other Transaction Document or the transactions contemplated hereby and thereby, or the interpretation, making, performance, breach or termination hereof) without the prior written consent of the other party; provided, however, that nothing in this Agreement shall restrict either party from (i) issuing such public releases, statements or communications regarding this Agreement, the Network Services Agreement or any other Transaction Document or the transactions contemplated hereby and thereby as may be required by Applicable Law or the rules and regulations of the Securities and Exchange Commission or any national securities exchange; (ii) disclosing information that has been made publicly available (other than by a breach of such party's obligations under this Agreement or the other Transaction Documents); or (iii) making factually accurate statements approved by the other party in advance or that reflect the communications guidelines agreed by Seller and Purchaser in connection with the Acquisition.

(e) GRAMA. Notwithstanding Sections 6(b), 6(c) and 6(d), above, because Seller is a municipal corporation, certain disclosures of Confidential Information or Confidential System Information may be required by state law or may be ordered by a court of competent jurisdiction to comply with Government Records Access and Management Act (GRAMA) or similar laws. Seller agrees to promptly notify Purchaser of any inquiry or demand made, the response to which may require it to divulge Confidential Information or Confidential System Information of Purchaser. Seller will not disclose any such Confidential Information or Confidential System Information in response to any such inquiry or demand unless required to do so by Applicable Law or compulsory process of a Governmental Entity. Prior to any such

disclosure, Seller will allow Purchaser a reasonable opportunity to attempt to secure confidential treatment of any such Confidential Information or Confidential System Information by such Governmental Entity and shall cooperate with Purchaser in such effort.

(f) Use of Confidential Information. Purchaser shall have the right after Closing to use, disclose and exploit any information disclosed to, or learned by, Purchaser in connection with the transactions contemplated hereby, disclosed by or embodied in any of the Acquired Assets, or known to any Designated Employee, other than Confidential Information of Seller not reasonably necessary to the continued operation by Purchaser of the Business, and subject to the terms of the Transferred Contracts and Section 6(c) above. To the extent that any Designated Employee hired by Purchaser may be bound by any agreement or policy of Seller that would in any way limit or restrict the rights of Purchaser to Confidential Information that Seller transferred to Purchaser, Seller shall not assert, enforce or otherwise exercise its rights under such agreement or policy against any such Designated Employee or Purchaser after the Closing.

(g) Employment Matters. Seller agrees that after the execution of this Agreement, Purchaser may interview, discuss employment terms and issues with, and attempt to employ any of those Employees identified on Schedule 6(g) (the “**Designated Employees**”). An offer of employment by Purchaser to any Designated Employees may be made prior to, but with employment contingent upon and beginning after, the Closing. Nothing in this Agreement shall be construed as a commitment or obligation of Purchaser to accept for employment, or otherwise continue the employment of, any of Seller’s Employees, and no Employee shall be a third party beneficiary of this Agreement. Seller acknowledges and agrees that Purchaser shall not acquire any rights or interests of Seller in, or assume or have any obligations or liabilities of Seller under, any Employee Plan maintained by, or for the benefit of any Employees of Seller, including, without limitation, obligations for pension, retiree medical, severance or paid time off accrued. No Designated Employee that accepts employment with Purchaser, following the Closing, shall continue to serve as an Employee of or consultant to Seller during the period of such Designated Employee’s employment with Purchaser.

(h) Seller Actions; Operation of the Business of Seller.

(i) Promptly after the date hereof, Seller shall (1) seek the Provo City Municipal Council’s approval of Seller’s execution of this Agreement and performance of Seller’s obligations hereunder, and the authorization and approval of the sale of all Acquired Assets and the entering into of all agreements and licenses contemplated in this Agreement (collectively, the “**Council Approval**”), (2) commence any necessary public hearings relating to the approval referred to in item (1), (3) expeditiously process and act on a review of Purchaser’s video franchise application with the appropriate Governmental Entities, (4) facilitate reviews of applications for the Governmental Approvals (including construction and operation Permits) necessary to buildout and upgrade the Network as contemplated by the Network Services Agreement, (5) seek the Provo City Municipal Council’s approval of an amendment to the City Code authorizing the grant of permits under Chapter 15 of the Code to Purchaser and (6) cooperate with and assist Purchaser in the negotiation of a new Contract with a network operator for the continued operation of the Network after the Closing (the “**New Operating**”).



**Agreement**”). All of Seller’s actions under this Section 6(h)(i) shall be consistent with its status as a Governmental Entity and its treatment of similarly situated applicants.

(ii) Between the date of this Agreement and the earlier of the Closing or the termination of this Agreement, unless otherwise agreed in writing by Purchaser, Seller shall:

(A) except as otherwise allowed or required pursuant to the terms of this Agreement, conduct, and use commercially reasonable efforts to cause Veracity Networks to conduct, the Business in the ordinary course and in a manner consistent with past practice;

(B) use commercially reasonable, good faith efforts to preserve, and to cause Veracity Networks to preserve, intact the current Business, keep available the services of the current managers, Employees, consultants, independent contractors and agents of Seller with respect to the Business, comply with the terms and conditions of each of the Existing Veracity Agreements and enforce Veracity Network’s compliance with the terms and conditions of each of the Existing Veracity Agreements and maintain, and use commercially reasonable efforts to cause Veracity Networks to maintain, the relations and goodwill with the suppliers, customers, landlords, trade creditors and others having relationships with Seller and/or Veracity Networks relating to the Business;

(C) use commercially reasonable, good faith efforts to maintain, and to cause Veracity Networks to maintain, all of the Acquired Assets in their current condition (ordinary wear and tear excepted), including by way of making repairs to the Acquired Assets as may be reasonably necessary to keep them in good working order and in a manner that is consistent with past practice;

(D) pay any Indebtedness and Taxes of Seller with respect to the Business or the Acquired Assets when due and pay and perform other obligations of Seller with respect to the Business and the Acquired Assets when due;

(E) maintain, and use commercially reasonable, good faith efforts to cause Veracity Networks to maintain, the books and records of the Business in the usual, regular and ordinary manner, on a basis consistent with prior practice;

(F) maintain, and use commercially reasonable, good faith efforts to cause Veracity Networks to maintain, in full force all insurance policies relating to the Business currently in effect;

(G) upon request of Purchaser, use its reasonable best efforts to cause each current employee of Seller or Veracity Networks involved in the creation, invention or development of any Intellectual Property Rights relating to the Network or Business to execute a customary and reasonable form of confidential information and intellectual property assignment agreement

substantially similar to the form provided by Purchaser to Seller, effective as of Closing;

(H) upon request of Purchaser, use its reasonable best efforts to cause Veracity Networks to assign to Seller all Contracts, Technology and other Intellectual Property Rights, Governmental Approvals, equipment, supplies and inventory, real property interests and other rights and interests related to the Network which Seller is entitled to cause Veracity to assign to it, effective as of Closing; and

(I) report periodically to Purchaser upon request concerning the status and the operation of the Business and the Acquired Assets, and promptly notify Purchaser of any material event involving Seller and concerning any matters related to the Business and the Acquired Assets that arises during the period commencing on the date of this Agreement and continuing until the earlier of the Closing or the termination of this Agreement.

(i) Covenants Pending Closing. Between the date of this Agreement and the earlier of the Closing or the termination of this Agreement, unless otherwise agreed in writing by Purchaser, Seller shall not:

(i) and shall use commercially reasonable efforts to cause Veracity Networks not to, take any action that Seller should reasonably expect would make the Acquired Assets or the operation of the Business materially less valuable under a single provider model, including: entering into any exclusive license agreements (or other exclusive arrangements); encumbering, selling or otherwise disposing of material Intellectual Property Rights or Technology assets associated with the Network; or extending or entering into any agreements that allow third parties to use the Network at wholesale rates, discounted rates or rates less than full retail value of the services as currently offered by retail providers;

(ii) sell, transfer, pledge, lease, license, mortgage, encumber, cancel, abandon or dispose of any of the Acquired Assets, except for the dispositions of obsolete or immaterial personal property in the ordinary course of business;

(iii) (A) terminate or extend or (B) amend, waive, modify or violate, in any material respect, the terms of any Transferred Contract (or agree to do so), or enter into any Contract relating to, and necessary to the operation of, the Business, in each case other than in the ordinary course of business and consistent with past practice;

(iv) (A) transfer or license to any Person any rights to any of the Transferred Intellectual Property or enter into any agreement with respect to any of the Transferred Intellectual Property with any Person (other than non-exclusive agreements to license or provide products of the Business to end-users pursuant to agreements that have been entered into in the ordinary course of business consistent with past practices that do not differ in substance from the standard form of agreement utilized by Seller with respect to the Business prior to the date hereof), (B) buy or license any Intellectual

Property Rights or Technology or enter into any agreement with respect to any Intellectual Property Rights or Technology of any Person (other than non-exclusive end user license agreements entered into in the ordinary course of business consistent with past practices), (C) enter into any agreement with respect to the development of any Intellectual Property Rights or Technology with a third party (other than consulting agreements that do not differ in substance from the standard form of agreement utilized by Seller with respect to the Business prior to the date hereof), or (D) terminate, fail to renew, abandon, cancel, let lapse or fail to continue to prosecute or defend any Intellectual Property Rights of Seller relating to the Business;

(v) acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any Person or otherwise acquire any material assets, in each case with respect to the Business;

(vi) enter into any Contract to purchase or sell any interest in real property or grant any security interest in real property, in each case with respect to the Business;

(vii) incur or guarantee any Indebtedness or any other Liabilities outside the normal and ordinary course of business with respect to the Business and/or the Acquired Assets;

(viii) permit the creation of any Lien over any of the Acquired Assets;

(ix) terminate any Designated Employee, or encourage any Designated Employee to resign from Seller, or enter into or negotiate to enter into any collective bargaining, works council or other labor agreement or arrangement with or covering any Designated Employee;

(x) enter into any employment Contract, pay or agree to pay any special bonus or special remuneration to any Designated Employee, consultant or independent contractor, or increase or agree to increase the salaries, wage rates or other compensation or benefits of any Designated Employee, consultant or independent contractor, except in the ordinary course of business and consistent with past practice or pursuant to this Agreement or a standard written agreement outstanding on the date hereof and disclosed in Schedule 6(i)(x);

(xi) revalue any of the Acquired Assets, including writing off notes or reversing any reserves other than in the ordinary course of business and consistent with past practice;

(xii) engage in or enter into any material transaction or commitment or relinquish any material right outside the ordinary course of business consistent with past practice;

(xiii) make or change any Tax election with respect to the Business or the Acquired Assets, or adopt or change any Tax accounting method with respect to the Business or the Acquired Assets unless Purchaser has been notified of such change in

election or accounting method within a reasonable period prior to the effective date thereof and Purchaser has consented to such change (the decision with respect to which will not be unreasonably delayed);

(xiv) initiate, settle, or offer or propose to settle any Action with respect to any Acquired Asset or Assumed Liability or otherwise settle any Action instituted against it and relating to the Business if such settlement would impact the Acquired Assets or limit Purchaser's ability to operate the Business after the Closing, other than the payment of monetary damages by Seller; provided, that any such settlement shall include as a term thereof the unconditional release by the claimant or the plaintiff of the Acquired Assets and the Business from all liability and shall not include any statement of culpability or fault by any defendant therein;

(xv) take any action the purpose of which would be to cause any of the conditions to the Closing set forth in Section 7 to not be satisfied or to delay their satisfaction; or

(xvi) offer to discuss entering into, negotiate entering into, authorize the entrance into, or enter into any Contract to do any of the foregoing.

(j) Testing. Purchaser and Seller agree to use commercially reasonable efforts to complete the installation and testing of Purchaser's (or Purchaser's contracted entities') video, data and other advanced communications services on the Network as soon as reasonably practicable.

(k) Further Assurances; Post-Closing Cooperation.

(i) At any time and from time to time after the Closing, at Purchaser's request and without further consideration, Seller shall promptly: (A) execute and deliver to Purchaser such other instruments of sale, transfer, conveyance, assignment and confirmation; (B) provide such materials and information; and (C) take such other actions, as Purchaser may reasonably request in order to give Purchaser the full benefit of this Agreement, more effectively transfer, convey and assign to Purchaser, or to confirm Purchaser's title to, all of the Acquired Assets and, to the fullest extent permitted by law, to put Purchaser in actual possession and operating control of the Acquired Assets and to assist Purchaser in exercising all rights with respect thereto, to remedy to the extent reasonably practicable any event, circumstance or condition resulting in the failure of any representation of Seller to be accurate and complete, and otherwise to cause Seller to fulfill its obligations under this Agreement and the other Transaction Documents.

(ii) Nothing in this Agreement or the other Transaction Documents nor the consummation of the transactions contemplated hereby or thereby shall be construed as an attempt or agreement to assign any Acquired Asset, including any Contract or Governmental Approval, which by its terms or by law is not capable of being sold, assigned, transferred, delivered or subleased without the consent or waiver of a third party or a Governmental Entity or is cancelable by such Person in the event of any such sale, assignment transfer, delivery or sublease unless and until such consent or waiver

shall be given. Seller shall use its reasonable best efforts to obtain such consents and waivers and to resolve any impediments to the sale, assignment, transfer, delivery or sublease required by this Agreement or the other Transaction Documents and to obtain any other consents and waivers necessary to convey to Purchaser all of the Acquired Assets. Seller shall not obtain any consent that modifies any Contract, business record, Governmental Approval or other right unless Purchaser expressly approves in writing the obtaining of such consent on such basis. In the event any such consents or waivers are not obtained on or prior to the Closing Date but the Closing occurs, and Purchaser so requests, Seller shall continue to use its reasonable best efforts to obtain any such consents or waivers after the Closing Date until such time as such consents or waivers have been obtained, and Seller will cooperate with Purchaser in any lawful and economically feasible arrangement to provide that Purchaser shall receive the interest of Seller in the benefits under any such consents or waivers; provided, that Purchaser shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Purchaser would have been responsible therefor hereunder if such consent or waiver had been obtained. To the extent Purchaser cannot be granted possession by Seller of certain Acquired Assets at Closing, Seller shall hold those assets on behalf of Purchaser until such time that Purchaser can be granted possession of such assets. During the period that Seller holds any assets on behalf of Purchaser, Seller shall bear all risk of loss with respect to such Acquired Assets.

(iii) Effective on the Closing Date, to the extent permitted by Applicable Law, Seller hereby appoints Purchaser as its true and lawful attorney-in-fact, with full power of substitution: (A) to demand and receive from time to time any and all of the Acquired Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (B) to institute, prosecute, compromise and settle any and all Actions that Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Acquired Assets; (C) to defend or compromise any or all Actions in respect of any of the Acquired Assets or the Business, to the extent the same involve Assumed Liabilities; and (D) to do all such acts and things in relation to the matters set forth in the preceding clauses (A) through (C) as Purchaser shall reasonably determine to be desirable; provided, however, that if any of the actions authorized by this Section could reasonably be expected to result in a claim for indemnification by Purchaser against Seller, then Purchaser shall not take any such actions without complying with the procedures set forth in Section 8 of this Agreement. Seller hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Seller shall deliver to Purchaser at the Closing an acknowledged power of attorney to the foregoing effect executed by Seller (the “**Seller Power of Attorney**”).

(iv) Following the Closing, Seller will afford Purchaser, its counsel and its accountants copies of Seller’s books, records and other data relating to the Business and the Acquired Assets and the right to make copies and extracts therefrom, to the extent that copies of such books, records and other data may be reasonably required by Purchaser in connection with: (A) the preparation of Tax Returns; (B) the determination or enforcement of rights and obligations under this Agreement, including without

limitation by any Indemnified Party (as defined below); (C) compliance with the requirements of any Governmental Entity; or (D) in connection with any actual or threatened Action.

(l) Legislation and Regulation. Nothing in this Agreement or any other Transaction Document, nor the consummation of the transactions contemplated hereby or thereby, shall be construed as limiting the authority the Provo City Municipal Council otherwise possesses to exercise its police powers through the enactment of generally applicable legislation and nondiscriminatory telecommunications regulation. It is recognized, however, that Purchaser's Internet services are interstate services that may not be regulated by Seller, and Seller's authority regarding Purchaser's video services is subject to limitations of federal and state law. Notwithstanding the foregoing but subject to Applicable Law, Seller acknowledges and agrees that, to the extent the Network, or any component thereof, does not comply with or conform to any applicable provision of the Provo City Municipal Code as of the date hereof, the Network, or such component thereof, shall be deemed to be in compliance with or to conform to such provision of the Provo City Municipal Code, and Seller shall not institute any Action against Purchaser relating to any such failure to comply with or conform to the Provo City Municipal Code.

(m) Post-Closing Tax Covenants.

(i) Seller represents that it is not required to file any Tax Returns relating to the Acquired Assets or the Business, other than those relating to employment Taxes with respect to compensation paid to its employees. As between Seller and Purchaser, and subject to Section 6(m)(iii) below, Seller (A) will be solely liable for paying any Taxes it is required to pay, and shall be solely responsible for any Liabilities associated with the non-payment of any other Taxes, in either case relating to the operation of the Business or the use or ownership of the Acquired Assets (whether by Seller or Veracity Networks) for any taxable period (or portion thereof) ending on or prior to the Closing and (B) will file any Tax Returns it is required to file, and will be solely responsible for any Liabilities associated with the non-filing of any other Tax Returns required to be filed, in either case relating to the operation of the Business or the use or ownership of the Acquired Assets (whether by Seller or Veracity Networks), for any taxable period ending on or prior to the Closing Date.

(ii) Subject to Section 6(m)(iii) below, Purchaser (A) will be responsible for the preparation and filing of all Tax Returns it is required to file with respect to Purchaser's ownership or use of the Acquired Assets or Purchaser's operation of the Business, in each case attributable to a taxable period that begins after Closing, and (B) will pay all Taxes it is required to pay with respect to Purchaser's ownership or use of the Acquired Assets or Purchaser's operation of the Business, in each case attributable to a taxable period (or portion thereof) that begins after the Closing.

(iii) Purchaser shall be responsible for filing any Tax Returns relating to real property Taxes, personal property Taxes or any other similar Taxes to the extent that the filing obligation in respect of such Taxes, or the payment thereof, would become an obligation of Purchaser by virtue of the transactions contemplated pursuant to this

Agreement, and that in each case relate to the operation of the Business or the ownership or use of the Acquired Assets, for a taxable period that begins on or before, but ends after, the Closing (such taxable period, a “**Straddle Period**,” such Tax Returns, “**Carryover Tax Returns**,” and such Taxes “**Carryover Taxes**”). Seller represents that Seller owes no Carryover Taxes relating to Seller’s ownership or use of the Acquired Assets or operation of the Business for any taxable period (or portion thereof) ending on or prior to the Closing. In the event that any such Taxes are found to be payable (whether by Seller or by Veracity Networks), Seller shall be solely responsible for all Liabilities associated with any such Taxes. Responsibility for personal property, real property or other similar Carryover Taxes imposed on a per diem or periodic basis in respect of a Straddle Period shall be pro-rated between the Seller and the Purchaser based on the number of days in the portion of each Straddle Period through the Closing, or after the Closing, as applicable; provided, that if such Taxes are imposed only in respect of the pre-Closing or post-Closing portion of such Straddle Period, or are first imposed in the post-Closing portion of such Straddle Period as a result of the transactions contemplated by this Agreement, responsibility for such Taxes shall be allocable entirely to such portion. In the case of any other Carryover Taxes related to the ownership or use of the Acquired Assets or the operation of the Business and that are attributable to a Straddle Period, as between Seller and Purchaser, the responsibility for any Liabilities associated with such Taxes shall be pro-rated to the pre-Closing and post-Closing portion of such Straddle Period based on an interim closing of the books. In the case of any Taxes governed by this subsection (iii) which are paid by Seller or Veracity Networks but properly are attributable to the portion of the Straddle Period beginning after Closing, Purchaser shall promptly reimburse Seller or Veracity Networks for such Taxes following receipt by Purchaser of documentation from Seller evidencing that such Taxes relate to the portion of the Straddle Period beginning after Closing and that such Taxes have been paid by Seller or Veracity Networks. In the case of any Taxes governed by this subsection (iii) which are required to be paid by Purchaser but properly are attributable to the portion of the Straddle Period ending on or prior to Closing, Seller or Veracity Networks shall promptly reimburse Purchaser for such Taxes following receipt of documentation from Purchaser evidencing that such Taxes relate to the portion of the Straddle Period ending on or prior to Closing and that such Taxes have been paid by Purchaser.

(iv) To the extent relevant to the Business or the Acquired Assets, each party shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any Governmental Entity or in connection with judicial or administrative proceedings relating to any liability for Taxes and (ii) retain and provide the other with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit or examination, or other proceeding relating to Taxes. Each party shall retain all such records and documents for at least 7 years.

(n) Acknowledgement; Waivers; Release of Claims. Effective as of the Closing, Seller, on its own behalf, and on behalf of its respective successors, agents and permitted assigns, hereby fully and forever releases and discharges Purchaser, its Affiliates and each of Purchaser’s and its Affiliates’ respective representatives, investors, stockholders,

Affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns, from, and agrees not to sue the foregoing parties concerning, any Excluded Liabilities. In addition, Seller on its own behalf, and on behalf of its respective agents and permitted assigns, hereby fully and forever releases and discharges Purchaser, its Affiliates, the Designated Employees and each of Purchaser's, its Affiliates' and the Designated Employees' respective representatives, investors, stockholders, Affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns, from, and agrees not to sue the foregoing parties concerning, any rights (including, without limitation, under confidentiality agreements, proprietary information agreements, employment agreements, noncompetition undertakings and all similar or related agreements) to restrict any of the Designated Employees from entering into any and all arrangements with, and providing any and all services and information to, and performing any and all services and activities on behalf of and for the benefit of, Purchaser and its Affiliates and their respective representatives. Seller acknowledges that it has been advised and is familiar with the provisions of California Civil Code Section 1542, which provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS, HER OR ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, HER OR IT MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. Seller, being aware of said code section, agrees to expressly waive any rights it may have thereunder, as well as under any other statute or common law principles of similar effect. Nothing in this Section 6(n) shall restrict the rights of Seller to enforce this Agreement and the other Transaction Documents against Purchaser.

(o) Notification of Certain Matters; Schedule Update. From time to time prior to the Closing, Seller shall promptly supplement or amend the Disclosure Schedule hereto with respect to any matter hereafter arising, or of which it becomes aware, after the date hereof, which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedule (each, a "**Schedule Supplement**"), and each such Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedule as of the Closing Date; provided, however, that if any supplement or amendment to the Disclosure Schedule (either alone or together with prior supplements and/or amendments) would cause the condition set forth in either Section 7(c)(i) or 7(c)(ii) (in each case, without giving effect to such supplement or amendment) to fail to be satisfied, then Purchaser shall have the right to terminate this Agreement; provided further, that, in any event, if Purchaser has the right, but does not elect, to terminate this Agreement pursuant to this Section 6(o), Purchaser shall not be deemed to have waived its right to indemnification under Section 8(b) with respect to such matter following the Closing, unless (A) the matter giving rise to the such indemnity claim resulted from an act or omission of Veracity Networks or a material breach by Veracity Networks of the Existing Veracity Agreements or (B) at the time of execution of this Agreement, (x) Seller had no Knowledge of the matter giving rise to such indemnity claim and could not reasonably have learned of such matter through due diligence and the exercise of Seller's continuing rights under the Existing Veracity Agreements, after giving due consideration to Purchaser's confidentiality restrictions in connection with the negotiation of this Agreement, but solely to the extent such confidentiality restrictions have limited Seller's ability to be actively engaged in monitoring the maintenance and operation of the Network or to solicit input from Veracity Networks and Seller's Employees from and after February 17, 2011 and but for such limitation Seller would have had Knowledge of such matter; (y) such indemnity



claim is not asserted with respect to Losses resulting from or related to the items referenced in Section 8(d)(ii); and (z) to the extent Veracity Networks is responsible for the same under the Existing Veracity Agreements, Seller has reasonably exercised its rights to cause Veracity Networks to remedy the matter giving rise to such indemnity claim.

(p) Exclusivity. In consideration of the time, effort and expense incurred and anticipated to be incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby, commencing on the date of this Agreement and ending on the earlier of the Closing Date and the date of termination of this Agreement (the “**Exclusivity Period**”), Seller shall not, to the fullest extent permitted by Applicable Law, and shall not authorize or permit any of its officials, officeholders, officers, directors, members, employees, agents, advisors (including financial advisors, attorneys and accountants), consultants or other representatives (collectively, “**Representatives**”) to, directly or indirectly, (i) solicit, initiate or encourage any inquiry, proposal or offer relating to an Alternative Transaction (each, a “**Proposal**”), (ii) participate in or encourage any discussions or negotiations relating to, or disclose, furnish or afford access to any Person any information (including Seller’s businesses, properties (including, for the avoidance of doubt, the Assets and the Network), books or records) in connection with, or assist, or cooperate with any Person in making or proposing, or take any other action to facilitate, any Proposal or Alternative Transaction, or (iii) authorize, enter into any agreement, arrangement or understanding (whether binding or nonbinding, written or oral) relating to, or engage in or consummate, any Proposal or Alternative Transaction. Seller shall immediately advise Purchaser of any Proposal that has been submitted, directly or indirectly, to Seller or any of its Representatives during the Exclusivity Period, and will promptly advise Purchaser of any request for disclosure or access described in subclause (ii) above. Seller represents and warrants to Purchaser that any discussions or negotiations previously commenced between Seller or its Representatives and a third party relating to any Proposal or Alternative Transaction have been terminated. As used herein, “**Alternative Transaction**” means (i) any direct or indirect acquisition or transfer (in each case regardless of the form of transaction) of either all or any substantial portion of the Acquired Assets, (ii) any joint venture or investment in or involving the Acquired Assets or the Business or (iii) any transaction by Seller outside the ordinary course of business the consummation of which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(q) SONET Services. For the avoidance of doubt, except as set forth in the Network Services Agreement or License Agreement, Purchaser shall not be required, and shall have no obligation, to provide any products or services (including SONET services or any similar or related services) to Seller through the Network.

## 7. CONDITIONS TO CLOSING

(a) Conditions to Obligations of Each Party to Effect the Acquisition. The respective obligations of each party to this Agreement to close and effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of the following conditions, any of which may be waived in writing:

(i) No Order; Illegality. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Applicable Law or Order that has the effect

of making the transactions contemplated hereby illegal or otherwise prohibiting or preventing the consummation of the Acquisition.

(ii) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other Order issued by any court, or brought by or before any Governmental Entity, prohibiting or preventing the consummation of the transactions contemplated by this Agreement shall be in effect, nor shall any Action brought by any Governmental Entity seeking any of the foregoing be pending or threatened.

(b) Additional Conditions to Obligations of Seller. The obligation of Seller to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Seller:

(i) Representations, Warranties and Covenants. The representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though such representations and warranties were made on and as of Closing Date, except for those representations and warranties that refer to facts existing at a specific date, which shall be true, correct and complete in all material respects as of such date. Purchaser shall have performed and complied in all material respects with all covenants and obligations of this Agreement and each of the other Transaction Documents required to be performed and complied with by it as of or prior to the Closing.

(ii) Claims. There shall be no Action of any nature pending or threatened against Purchaser, its properties or any of its officers or directors arising out of, or in any way connected with, (A) the transactions contemplated hereby, or (B) the Acquired Assets.

(iii) Certificate of Purchaser. Seller shall have been provided with a certificate executed on behalf of Purchaser by an appropriate officer of Purchaser to the effect that, as of the Closing the conditions set forth in Section 7(b)(i)-(ii) have been satisfied.

(iv) Resolution of Provo City Municipal Council. The Provo City Municipal Council shall have duly adopted and approved binding resolutions approving and ratifying Seller's execution of this Agreement and the other Transaction Documents and the performance of Seller's obligations hereunder and thereunder, which resolutions shall include the authorization and approval of the sale of all Acquired Assets and the entering into of all agreements and licenses contemplated in this Agreement.

(v) Opinion of Bond Counsel. Seller's bond counsel shall have delivered to Seller an opinion letter to the effect that the execution of the Agreement and the other agreements contemplated hereby, together with all transactions contemplated hereby and thereby, are permitted by and will not adversely affect any bond documents or any obligations or rights of the Seller thereunder.

(vi) Certificate of Officer. Seller shall have received certificates, validly executed by appropriate officials of Purchaser and any entity in whose name title to the Acquired Assets will be transferred at Closing certifying (A) that Purchaser has delivered to Seller true, correct and complete copies of Purchaser's articles of incorporation, bylaws, articles of organization, operating agreement or other relevant organizational documents and similar documents for any entity in whose name title to the Acquired Assets will be transferred at Closing; and (B) as to the valid adoption of resolutions by the board of directors, managing member or other governing Person or board duly approving Purchaser's execution and delivery of and performance under all of the Transaction Documents.

(vii) Ownership and Maintenance of Underground Conduit. Arrangements reasonably satisfactory to Seller shall have been reached regarding ownership and maintenance of underground conduit utilized by Seller for both live power and the Network.

(viii) Purchaser Closing Deliverables. Seller shall have received from Purchaser all of Purchaser's deliverables specified in Section 3(b).

(c) Additional Conditions to Obligations of Purchaser. The obligation of Purchaser to close and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Purchaser:

(i) Representations, Warranties and Covenants. The representations and warranties of Seller in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on and as of the Closing as though such representations and warranties were made on and as of the Closing, except for those representations and warranties that refer to facts existing at a specific date, which shall be true, correct and complete in all material respects as of such date, and Seller shall have performed and complied with in all material respects all covenants and obligations of this Agreement required to be performed and complied with by it as of the Closing.

(ii) No Material Adverse Effect. There shall not have occurred any event or circumstance that has had or may have a Material Adverse Effect.

(iii) Claims. There shall be no action or proceeding of any nature pending or threatened against Seller, its properties or any of its officers or council members arising out of, or in any way connected with, (A) the transactions contemplated hereby, or (B) the Acquired Assets.

(iv) Certificate of Seller. Purchaser shall have been provided with a certificate executed on behalf of Seller by an appropriate officer of Seller to the effect that, as of the Closing, the conditions set forth in Sections 7(c)(i)-(iii) have been satisfied.

(v) Resolution of Provo City Municipal Council. Seller shall have delivered to Purchaser certified copies of validly adopted and approved binding resolutions by the Provo City Municipal Council approving and ratifying the execution of

this Agreement and the other Transaction Documents and performance of Seller's obligations hereunder and thereunder, which resolutions shall include the authorization and approval of the sale of all Acquired Assets and the entering into of all agreements and licenses contemplated in the Agreement.

(vi) Issuance of Franchise. Seller shall have issued to Purchaser a non-cable video franchise or other similar regulatory authority (which may be conditioned upon the Closing) for a number of years and on other terms reasonably satisfactory to Purchaser, which shall include a recognition of (i) Purchaser's Internet services as unregulated, interstate services; and (ii) Purchaser's video service as (A) not a cable service for purposes of the federal Communications Act of 1934, as amended; (B) not a multi-channel service or multi-channel programming service for purposes of the Provo City Code; and (C) not a cable television service for purposes of the Utah Code.

(vii) Approvals and Consents. Seller shall have obtained and delivered, or caused to be obtained and delivered, to Purchaser all consents (or, in lieu thereof, waivers) to the performance by Seller of its obligations under this Agreement or to the consummation of the transactions contemplated hereby as are required under any Contract or Governmental Approval to which Seller is a party or by which any of the Acquired Assets are bound or by Applicable Law or from any Employee, consultant or independent contractor, including any such consents required in connection with the transfer of the Transferred Real Property Interests, each of which is listed on Schedule 7(c)(vii).

(viii) Condition of Network. Except as otherwise expressly provided herein, the Network shall be sold in an as-is condition, but acceptable to Purchaser, in Purchaser's sole discretion, at Closing.

(ix) Legal Opinion. Seller shall have delivered to Purchaser (A) an opinion of its legal counsel with respect to such matters, and in form and substance, reasonably satisfactory to Purchaser and (B) a copy of the opinion delivered to Seller described in Section 7(b)(v) which opinion shall state that Purchaser is entitled to rely on such opinion.

(x) Certificate of Officer. Purchaser shall have received a certificate, validly executed by an appropriate and authorized official of Seller, certifying (A) that Seller has delivered to Purchaser true, correct and complete copies of Seller's organizational documents and (B) as to the valid adoption of resolutions by the Provo City Municipal Council duly approving Seller's execution and delivery of and performance under this Agreement and each of the other Transaction Documents to which Seller is a party.

(xi) New Operating Agreement. Purchaser and its chosen network operator shall have entered into the New Operating Agreement.

(xii) Disposition of Existing Network Services. To the satisfaction of Purchaser: (A) Purchaser shall have established a satisfactory process or plan for the

cessation of voice services provided through the Network (which shall include, to the extent deemed necessary by Purchaser, obtaining necessary agreements or cooperation from relevant third parties), (B) Seller and Purchaser shall have agreed upon and arranged for the maintenance of the underground conduit utilized by Seller for both live power and the Network and (C) Seller and Purchaser shall have agreed upon and arranged for the disposition of existing commercial customers receiving services through the Network, in each case including the grant of any Governmental Approval required thereby.

(xiii) Transition of City Services. To the satisfaction of Purchaser, Seller shall have successfully completed the mutually agreed transition plan.

(xiv) Network Upgrade. In connection with the Network Services Agreement, to the reasonable satisfaction of Purchaser, Purchaser shall have received all requested Governmental Approvals (including construction and operation Permits) necessary for the initial phases of the buildout and upgrade of the Network as contemplated by the Network Services Agreement.

(xv) Due Diligence. Purchaser shall be satisfied in all respects with the results of its due diligence investigation of Seller, the Network, the Acquired Assets, the Business and the Transferred Intellectual Property, including its review of operating and financial information and all environmental, organizational and legal issues.

(xvi) Repairs at 4800 North. Seller shall have repaired, or have caused the repair of, the fiber damage on 4800 North to the reasonable satisfaction of Purchaser.

(xvii) Third Party Licenses. Each third party that is party to an agreement, whether oral or written, with Seller for access to the Network shall have, in the sole and absolute discretion of Purchaser, either (1) consented to the assumption of such license by Purchaser, (2) amended such license, (3) terminated such license, or (4) entered into a new agreement.

(xviii) Seller Closing Deliverables. Purchaser shall have received from Seller all of Seller's deliverables specified in Section 3(c).

(xix) Pole Attachment Rights. Seller shall have determined and notified Purchaser of any poles owned by private parties (excluding Rocky Mountain Power and CenturyLink) to which Network fiber is currently attached and shall have assigned (or obtained and then assigned) to Purchaser pole attachment rights reasonably acceptable to Purchaser from the private owners of any such poles.

## **8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

(a) Survival of Representations, Warranties and Covenants. Notwithstanding any investigation conducted at any time with regard thereto by or on behalf of any party, all of the representations and warranties of each party contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall survive the Closing and continue indefinitely. All of the covenants set forth in this Agreement shall survive the Closing and

continue indefinitely, unless they expire earlier in accordance with the express terms of this Agreement.

(b) Indemnification by Seller. If the Closing occurs, Seller agrees to indemnify and hold harmless Purchaser and its representatives, officers, directors, employees and Affiliates (the “**Purchaser Indemnified Parties**”), against all claims, Actions, losses, Liabilities, damages, diminution in value, judgments, awards, penalties, deficiencies, costs and expenses, including reasonable attorneys’ fees and expenses of investigation and defense or settlement (hereinafter individually a “**Loss**” and collectively “**Losses**”) incurred or sustained by the Purchaser Indemnified Parties, or any of them, directly or indirectly, arising out of, in connection with or as a result of:

(i) any breach or inaccuracy of a representation or warranty of Seller contained in this Agreement or any other Transaction Document or in any certificate, instrument, or other document delivered pursuant to this Agreement;

(ii) any failure by Seller to perform or comply with any covenant applicable to it contained in this Agreement;

(iii) any Excluded Asset or Excluded Liability; or

(iv) any and all costs and expenses (including reasonable fees and expenses of legal and other advisors) incurred in connection with successfully enforcing rights under this Section 8.

(c) Indemnification by Purchaser. If the Closing occurs, Purchaser agrees to indemnify and hold harmless Seller and its representatives, officers, council members and employees (the “**Seller Indemnified Parties**”), against all Losses incurred or sustained by the Seller Indemnified Parties, or any of them, directly or indirectly, arising out of, in connection with or as a result of:

(i) any breach or inaccuracy of a representation or warranty of Purchaser contained in this Agreement or any other Transaction Document or in any certificate, instrument, or other document delivered pursuant to this Agreement;

(ii) any failure by Purchaser to perform or comply with any covenant applicable to it contained in this Agreement;

(iii) any Assumed Liability; or

(iv) any and all costs and expenses (including reasonable fees of legal and other advisors) incurred in connection with successfully enforcing rights under this Section 8.

(d) Indemnification Limitations; Procedure.

(i) Subject to Section 8(d)(ii), the liability of the party from whom indemnification is sought (the “**Indemnifying Party**”) for indemnification to the

Indemnified Parties for Losses will be limited to \$20,000,000. No claim for indemnification may be made under Section 8(b) or Section 8(c) unless and until the aggregate amount of Losses of the Indemnified Parties that may be claimed thereunder exceeds \$500,000 (the “**Threshold**”). Once the Threshold amount of Losses has been reached, the Indemnifying Party shall be liable to the Indemnified Parties for the full amount of all Losses, including those which comprised any portion of the Threshold. Except with respect to Losses which result from or are related to the items referenced in Section 8(d)(ii), no claim for indemnification may be commenced under Section 8(b) or Section 8(c) on or after the third anniversary of the Closing Date.

(ii) Notwithstanding anything herein to the contrary, (i) the limitations set forth in Section 8(d)(i) will not apply to Losses which result from or are related to (A) fraud, (B) a Willful Breach, (C) a breach of the representations and warranties contained in Sections 4(a), (b), (c), (e), (g), (l), (n)(iii) or (u), Sections 5(a), (b), (c), (d) or (f) or the covenants in Section 6(m).

(iii) In the event an Indemnified Party concludes that an event, circumstance or condition has triggered or may trigger an indemnification obligation of an Indemnifying Party under this Section 8, other than an event, circumstance or condition that by its nature cannot be cured (each, a “**Curable Breach**”), prior to seeking indemnification hereunder, an Indemnified Party shall notify the Indemnifying Party of such Curable Breach and allow the Indemnifying Party a reasonable opportunity to cure such Curable Breach, which cure may include reasonable alternative solutions or work-arounds (each, a “**Cure**”). Any proposed Cure shall be subject to the reasonable approval of the Indemnified Party in its sole discretion, including as to the time, manner and method of any proposed Cure. Both parties agree to cooperate in good faith to evaluate and implement reasonable potential Cures before seeking indemnification hereunder.

(iv) An Indemnified Party seeking indemnification under this Section 8 for an uncured, partially cured or non-curable breach shall deliver an Officer’s Certificate (as defined below) to the Indemnifying Party. An Indemnifying Party may object to such claim by written notice to such Indemnified Party specifying in reasonable detail the basis for the Indemnifying Party’s objection, within 30 days following receipt by the Indemnifying Party of notice from such Indemnified Party regarding such claim. If no objection is made, then such failure shall be deemed to be an irrevocable acknowledgement by the Indemnifying Party that the Indemnified Party is entitled to indemnification for the full amount of Losses sought, and the Indemnifying Party shall promptly pay the claim. For the purposes hereof, “**Officer’s Certificate**” shall mean a certificate signed by any officer or authorized official of the Indemnified Party: (i) stating that the Indemnified Party has paid, sustained, incurred, or properly accrued, or reasonably anticipates that it will have to pay, sustain, incur, or accrue Losses, and (ii) specifying, to the extent then known, the aggregate amount of Losses included in the amount so stated, the date each such item was paid, sustained, incurred, or properly accrued, or the basis for such anticipated liability, and the specific indemnification obligation under Section 8(b) or Section 8(c), as the case may be, to which such item is related.

(e) Resolution of Conflicts.

(i) In case the Indemnifying Party shall object in writing to any claim or claims made in any Officer's Certificate to recover Losses within 30 days after delivery of such Officer's Certificate, Seller and Purchaser shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If Seller and Purchaser should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and the Indemnifying Party shall promptly pay to the Indemnified Party the amount of the claim agreed upon, if any.

(ii) Except as provided for in Section 10(e) with respect to specific performance and injunctive relief, after the Closing the indemnification provisions set forth in this Section 8 shall be the sole and exclusive remedy of the Indemnified Parties for any Losses incurred by any Indemnified Parties in connection with this Agreement or the transactions contemplated by this Agreement, including, without limitation, for any breach of any of the terms, conditions, warranties, representations or covenants herein or any right, claim or cause of action arising out of the transactions contemplated hereby; provided, however, that nothing in this Agreement shall limit the rights or remedies of any Indemnified Party in connection with any Transaction Document, fraud or Willful Breach by any party. The procedures set forth in Sections 8(d), 8(e) and 8(f) shall be the sole and exclusive process by which the Indemnified Parties may make claims for indemnification pursuant to this Section 8.

(f) Third-Party Claims.

(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 Article 8 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 (i) 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, (ii) 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, (iii) such Third Party Claim involves a claim for damages other than monetary damages or (iv) the Third Party Claim relates to or otherwise arises in connection with any criminal or regulatory enforcement Action, then in each case (A) 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 (B) 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 (1) obligates the other party to pay money, perform obligations or admit liability or (2) does not contain a full release of all claims against such other party.

(g) Other Indemnification Matters.

(i) For purposes of the indemnity set forth in Sections 8(b)(i) and 8(c)(i) above, the amount of Losses resulting or arising therefrom, (x) shall be determined without reference to any materiality qualifiers (“Material Adverse Effect,” “in all material respects” and similar qualifiers) contained in the text of the applicable representation or warranty, and (y) shall be adjusted to reflect any remedial action taken or caused to be taken by Seller pursuant to Section 6(k)(i). If any matter could be asserted as an indemnification claim under one or more of the clauses set forth above in Section 8(b) or Section 8(c), the Indemnified Parties may select the clauses under which they assert such claim, and may assert such claim under multiple clauses, but will not be entitled to collect multiple recoveries for the same underlying matter.

(ii) Notwithstanding anything else contained in this Agreement or any other document in connection with the transactions contemplated hereby, the representations, warranties, covenants and obligations of Seller and Purchaser, and the rights and remedies that may be exercised by the Indemnified Parties, based on such representations, warranties, covenants and obligations, will not be limited or affected by any investigation conducted by Purchaser or Seller or any agent of Purchaser or Seller with respect to, or any knowledge acquired (or capable of being acquired) by Purchaser or Seller or any agent of Purchaser or Seller at any time, whether before or after the Closing, with respect to the accuracy or inaccuracy of or compliance with or performance of any such representation, warranty, covenant or obligation, and no Indemnified Party shall be required to show that it relied on any (and each Indemnified Party shall be deemed to have relied on each) such representation, warranty, covenant or obligation of Seller or Purchaser, as applicable, in order to be entitled to indemnification pursuant to this Section 8.

(h) Appropriations. In connection with any claim for Losses for which a Purchaser Indemnified Party is entitled to indemnification under this Section 8, Seller shall use its reasonable best efforts, and take all such actions as may be necessary, to satisfy such indemnification claim.

## 9. TERMINATION; EXTENSION

(a) Termination. Except as provided in Section 9(b) hereof, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(i) by mutual consent of Purchaser and Seller;

(ii) by Purchaser or Seller if (A) the Closing shall not have occurred on or before December 31, 2013 for any reason; provided, however, that the right to terminate this Agreement under this Section 9(a)(ii) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes breach of this Agreement; (B) there shall be a final non-appealable Order in effect preventing consummation of the transactions contemplated hereby; or (C) there shall be any Applicable Law enacted, promulgated or issued or deemed applicable to the transactions contemplated hereby, or the operation of the Business, by any Governmental Entity that would make illegal the consummation of the transactions contemplated by this Agreement or the operation of the Business as contemplated by the Transaction Documents;

(iii) by either party if there shall be any action taken, or any Applicable Law or Order enacted, promulgated or issued or deemed applicable to the transactions contemplated hereby by any Governmental Entity, which would: (A) prohibit or preclude Seller's sale or Purchaser's acquisition, ownership or operation of any portion of the Business or the Acquired Assets including failure of a vote of the Provo City Municipal Council to approve this Agreement; or (B) compel Purchaser to dispose of all or any portion of its assets or the Acquired Assets as a result of the transactions contemplated hereby;

(iv) by Purchaser if it is not in material breach of its obligations under this Agreement and either (A) there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and such breach has not been cured within 30 calendar days after written notice to Seller of such breach; provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured; or (B) any of the conditions to Closing in Section 7 for the benefit of Purchaser are incapable of being satisfied on or before the date specified in Section 9(a)(ii);

(v) by Purchaser in accordance with Section 6(o);

(vi) by Purchaser if it is not in material breach of its obligations under this Agreement and either (A) the condition set forth in 7(c)(v) hereof has not been

satisfied within eight (8) days of the date hereof or (B) the Council Approval is not obtained at the first meeting of the Provo City Municipal Council that is held following the date hereof; or

(vii) by Seller if it is not in material breach of its obligations under this Agreement and either (A) there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Purchaser and such breach has not been cured within 30 calendar days after written notice to Purchaser of such breach; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured; or (B) any of the conditions to Closing in Section 7 for the benefit of Seller are incapable of being satisfied on or before the date specified in Section 9(a)(ii).

Where action is taken to terminate this Agreement pursuant to this Section 9(a), it shall be sufficient for such action to be authorized by the board of directors, or other governing board for Purchaser and by the Mayor of Seller.

(b) Effect of Termination. In the event of termination of this Agreement as provided in Section 9(a) hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of any party, or such party's respective Affiliates, officers, directors, council members or shareholders (as applicable); provided, that each party shall remain liable for any breaches of this Agreement prior to its termination; provided further, that the provisions of Section 6(c) (Treatment of Confidential Information), Section 6(d) (Press Releases), 6(e) (GRAMA), Section 8(b)-(g) (Indemnification), Section 10 (General Provisions) and this Section 9(b) shall remain in full force and effect and survive any termination of this Agreement.

(c) Extension; Waiver. At any time prior to the Closing, Purchaser and Seller may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. No delay or failure by any party to assert any of its rights or remedies shall constitute a waiver of such rights or remedies.

## **10. GENERAL PROVISIONS**

(a) Amendment. This Agreement may be amended by the parties hereto at any time only by execution of an instrument in writing referencing this Agreement signed on behalf of each of the parties hereto.

(b) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given, delivered and received (i) when delivered personally to the party and any Person that is to receive a copy thereof as set forth below, (ii) when delivered by commercial messenger or courier service to the party and any Person that is to receive a copy

thereof at the addresses set forth below, (iii) on the 3rd business day following the mailing thereof by registered or certified mail (return receipt requested) to the party and any Person that is to receive a copy thereof at the addresses set forth below or (iv) when sent via facsimile (with acknowledgment of complete transmission) to the party and any Person that is to receive a copy thereof at the facsimile numbers set forth below (or, in each case at such other address for a party as shall be specified by like notice):

(i) if to Purchaser, to:

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

and, with a copy to:

Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Christine Flores  
Tim Reusing  
Facsimile No.: (650) 887-1790

and, with a copy to:

Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022  
Attn: Benjamin C. Burkhart  
Facsimile No.: (212) 702-3678

(ii) if to Seller, to:

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

with a copy to:

Provo City Attorney's Office  
PO Box 1849  
Provo, Utah 84603  
Attention: City Attorney

(c) Entire Agreement; Assignment. This Agreement, the Network Services Agreement, the exhibits and the Disclosure Schedule and other schedules hereto and thereto and the documents and instruments and other agreements among the parties hereto referenced herein: (i) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof; (ii) except as set forth in Section 8, are not intended to confer upon any other Person any rights or remedies hereunder; and (iii) shall not be assigned by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably delayed or withheld and which consent shall be based on the financial strength of the assignee and the ability of the assignee to adequately operate and maintain the Network and provide a level of service to subscribers that meets or exceeds the level of service provided by incumbent franchised providers within the City, except that Purchaser may assign its rights and delegate its obligations hereunder to one or more of its Affiliates as long as Purchaser remains ultimately liable for all of Purchaser's obligations hereunder.

(d) Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

(e) Other Remedies; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity or under this Agreement.

(f) Interpretation. Unless a clear contrary intention appears: (a) the singular number shall include the plural, and vice versa; (b) reference to any gender includes each other gender; (c) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (d) "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation"; (e) all references in this Agreement to "Schedules," "Sections" and "Exhibits" are intended to refer to Schedules, Sections and Exhibits to this Agreement, except as otherwise indicated; (f) the table of contents and headings in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement, and shall not be referred to in connection with the construction or interpretation of this Agreement; (g) "or" is used in the

inclusive sense of “and/or”; (h) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and (i) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof.

(g) Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(h) Fees and Expenses. Whether or not the transactions contemplated herein are consummated, all expenses, including without limitation all legal, accounting, financial advisory, consulting and other fees, incurred in connection with the negotiation or effectuation of this Agreement or consummation of such transactions, shall be the obligation of the respective party incurring such expenses.

(i) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. Any signature page delivered electronically or via facsimile (including transmission by Portable Document Format or other fixed image form) shall be binding to the same extent as an original signature page.

(j) 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.

[Signature Page Follows]

IN WITNESS WHEREOF, this Asset Purchase Agreement has been executed by the parties hereto as of the date first above written.

Seller:

**PROVO CITY CORPORATION**



By: *John Curtis*  
John Curtis  
Its Mayor

ATTEST:

*Janeene Hirst*  
Provo City Recorder

Purchaser:

**GOOGLE FIBER INC.**

By: \_\_\_\_\_  
Name:  
Title:

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, this Asset Purchase Agreement has been executed by the parties hereto as of the date first above written.

Seller:

**PROVO CITY CORPORATION**

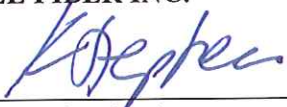
By: \_\_\_\_\_  
John Curtis  
Its Mayor

ATTEST:

\_\_\_\_\_  
Provo City Recorder

Purchaser:

**GOOGLE FIBER INC.**

By:  \_\_\_\_\_  
Name: Katherine Stephens  
Title: CEO, President and Secretary

[Signature page to Asset Purchase Agreement]



**Exhibit A - Network Services Agreement**

See attached.

## NETWORK SERVICES AGREEMENT

This Network Services Agreement (the "Agreement"), entered into as \_\_\_\_\_, 2013 (the "Effective Date"), is by and between Provo City Corporation, a Utah municipal corporation situated in Provo, Utah (the "City"); and Google Fiber Utah, LLC, a Utah limited liability company ("Google Fiber").

### 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 are entering into a certain Asset Purchase Agreement (the "Asset Purchase Agreement"), whereby, among other things, the City agreed to sell and Google Fiber agreed to purchase certain "Acquired Assets," as such term is defined in the Asset Purchase Agreement, associated with the City's existing fiber network ("City Network").
- D. The Parties wish to provide for the terms and conditions upon which Google Fiber will provide high speed broadband Internet access services to the City and certain residents of Provo, free of charge.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound, hereby enter this Agreement as set for the below:

#### 1. **Completion of Network and Repurchase Rights.**

1.1. **Upgrade and Expansion of Network.** Conditioned upon the closing of this Agreement contemporaneous with the closing of the Asset Purchase Agreement and the other Transaction Documents contemplated therein and each of the conditions and limitations set forth in this Agreement, Google Fiber agrees to expend considerable funds and resources to upgrade the existing footprint of the City Network to a 1 Gigabit capable fiber network (the "Upgraded Network"). The term Upgraded Network shall include the Acquired Assets, as such assets have been modified or upgraded by Google Fiber. For the avoidance of doubt, the Upgraded Network shall only cover the existing layout and footprint of the City Network. Following completion of such upgrades to the existing footprint of the City Network, Google Fiber agrees to expand the deployment of the Upgraded Network by connecting the network to those dwelling units that are located along and adjacent to the existing City Network and that are not currently served by the existing City Network (the "Service Expansion"). The expansion of the Upgraded Network to each new dwelling unit shall be (i) based on the timing of the deployment to each Fiberhood (as defined below) and (ii) subject to reasonable technical, construction and cost requirements and considerations as reasonably determined by Google Fiber. The City agrees and acknowledges that Google Fiber may not be able to extend the Upgraded Network to each and every dwelling unit due to such considerations. Following the substantial completion of the Upgraded Network or during construction of the Upgraded Network, Google Fiber may, in its sole discretion, also construct a WiFi network (the "WiFi Network") within the incorporated boundaries of the city of Provo, Utah (the "Market Area"). Google Fiber may then deploy the WiFi Network within limited sections of the Market Area to be used for public and/or commercial WiFi access.

1.2. **Continued Services; Network Deployment and Fiberhoods.** Google Fiber intends to enter into a definitive agreement with a third party ("Contract Operator") to enable the Contract Operator to continue to make available through such Contract Operator those services currently provided to residents of the City through the City

Network (the "Current Services"). Google Fiber will use commercially reasonable efforts to continue to provide such Current Services until such time that any resident subscribes to the Google Services or the date Google Fiber generally ceases to provide any type of Current Service. Following completion of the Upgraded Network, Google Fiber will offer a new set of broadband and video services to residents of the City (the "Google Services"). Google Fiber may subsequently offer additional services through the Upgraded Network that are the same or similar to those services it offers in the future to subscribers in other geographic markets. Google Fiber intends to define separate geographical areas (each, a "Fiberhood") within the Market Area for purposes of scheduling deployment of the Upgraded Network. Google Fiber will then identify the specific Fiberhoods for, and the timing of deployment of, the Upgraded Network. Deployment of the Upgraded Network and Google Services within a Fiberhood will be designed to enable each resident of a single-family home, condominium or unit within a multiple-family dwelling unit to receive Google Services from Google Fiber. Google Services will be provided to subscribing residents pursuant to the terms of Google Fiber's then standard terms of service for the Google Services ("Terms of Service") and at then current standard fees established by Google Fiber, other than the Free Residential Services and City Services as described below.

**1.3. Network Completion Timeline.** In consideration for the City's fulfillment of its obligations hereunder and under the Asset Purchase Agreement, Google Fiber will use commercially reasonable efforts to complete the Upgraded Network and begin the Service Expansion within a reasonable timeframe, and except upon the occurrence of an event more fully described in Section 9.6 (**Force Majeure**), no later than the fifth (5th) anniversary of the Effective Date (the "Network Upgrade Deadline"). Google Fiber shall undertake and complete construction of the Upgraded Network and begin the Service Expansion in compliance with all applicable regulatory and permitting requirements and processes. When Google Fiber reasonably determines that the Upgraded Network has been substantially completed and the Service Expansion has begun, Google Fiber shall deliver to the City a written certification to that effect (the "Completion Notice").

#### **1.4. City Limited Repurchase Right.**

**1.4.1. Repurchase Right.** Although it is Google Fiber's good-faith intent to complete the Upgraded Network and deploy the Google Services (as defined above) within the Market Area as soon as reasonably practicable, the City agrees and acknowledges that Google Fiber's plans for the completion may be subject to changes due to various business and market considerations and could result in delay, deferment or complete cancellation of the project, in Google Fiber's sole discretion. In the event Google Fiber ever determines not to proceed with or complete the Upgraded Network or Service Expansion as contemplated herein, Google Fiber may terminate this Agreement by providing written notice to the City ("Expansion Termination Notice"). Subject to the conditions and limitation set forth in Section 1.4.4, in the event Google Fiber delivers an Expansion Termination Notice, or otherwise fails to substantially complete deployment of the Upgraded Network and begin the Service Expansion on or prior to the Network Upgrade Deadline, the City shall have the right to repurchase the Repurchased Network (as defined below) for an aggregate purchase price of One Dollar (\$1.00) in cash (the "**Repurchase Right**"). The Repurchase Right shall be the City's sole and exclusive remedy for (i) the unexcused failure by Google Fiber to complete the Upgraded Network and begin the Service Expansion; or (ii) termination of this Agreement by Google Fiber that is not permitted pursuant to Section 6.2.2 of this Agreement. For the avoidance of doubt, the City may not exercise the Repurchase Right in the event that Google Fiber terminates this Agreement in accordance with Section 6.2.2 of this Agreement. The City must exercise the Repurchase Right within one hundred eighty (180) days after receiving the Expansion Termination Notice or notice of termination of this Agreement by Google Fiber that is not permitted pursuant to Section 6 of this Agreement. The closing of the transactions constituting the Repurchase Right and re-transition of services shall occur in accordance with Section 1.4.3.

**1.4.2. Network as of Transfer; Third Party Contracts.** The assets that may be re-conveyed to the City under this Section 1.4 (the "Repurchased Network") includes all (i) the Upgraded Network in its then current condition; and (ii) all other changes, improvements and upgrades made to the Upgraded Network; and (iii) all permits, contracts, subscriber contracts, records and other assets or rights used by Google Fiber in connection with operation of the Upgraded Network (the "Repurchased Network Contracts") all as of the date of transfer from Google Fiber back to the City (the "Transfer Date"). Any disclosure or transfer of the Repurchased Network Contracts shall be subject and limited to (i) Google Fiber's rights to transfer such Repurchased Network Contracts; (ii) Google Fiber's obligations to third parties related to confidential information; (iii) Google Fiber's privacy policies; and (iv) applicable law related to disclosure and transfer of personally identifiable information. In the

event Google Fiber is prohibited from disclosing or transferring any subscriber contracts or records to the City due to the limitations set forth in items (i) and (ii) of the preceding sentence, Google Fiber will use commercially reasonable efforts to secure rights to facilitate the transfer of such contracts and records. Any assignments and transfers of Repurchased Network Contracts shall be subject to the City accepting and assuming all obligations related to such Repurchased Network Contracts and any liabilities that may arise following the Transfer Date. Following the Transfer Date, Google Fiber shall have the right to terminate any contracts or rights related to that Repurchased Network that were not effectively assigned and assumed by the City, without any liability to the City for such termination. For the avoidance of doubt, the Repurchased Network and Repurchased Network Contracts will not include any Intellectual Property Rights of Google or Google Fiber that existed prior to the Effective Date (“Pre-existing IP”), or that were acquired or created by or for Google or Google Fiber after the Effective Date but prior to the Transfer Date and that are not necessary for the operation of the Repurchased Network (“Unrelated IP”). To the extent that an Intellectual Property Right of Google or Google Fiber is not Pre-existing IP or Unrelated IP and is necessary for the operation of the Repurchased Network, Google or Google Fiber will not assign or transfer such Intellectual Property Right but will instead provide the City with a license to such Intellectual Property Right on terms and conditions set forth in a separate license agreement comparable to what Google and Google Fiber have provided to similarly situated licensees. Google Fiber represents and warrants to City that, as of the Transfer Date, the Repurchased Network shall (i) be free of liens and encumbrances and; (ii) be in reasonable operating condition for the intended purpose of providing broadband and video services to residents within the Market Area, subject to any conditions, defects and errors as of the date the Acquired Assets were acquired by Google Fiber. Other than the foregoing, Google Fiber does not warrant or guarantee that the Repurchase Network, or any individual components thereof, or operation of the Repurchase Network, shall be free of faults or errors or free of capacity limitations.

**1.4.3. Transfer Date; Transition Services Following Notice of Repurchase.** The closing of the transactions constituting the Repurchase Right shall occur on a date reasonably agreed upon by Google Fiber and the City, but no later than one hundred eighty (180) days after the City’s delivery of its Notice of Repurchase. Following receipt of the City’s Notice of Repurchase, Google Fiber and the City agree to meet and negotiate in good faith a written transition plan (“Repurchase Transition Plan”) to facilitate transfer of the Repurchased Network from Google Fiber to the City or its designees and the continued operation of the Repurchased Network. Google Fiber agrees to provide reasonable support services to the City and its representative, as set forth in any mutually agreed upon transition plan, for a period not to exceed one hundred eighty (180) days from the Transfer Date.

**1.4.4. Upgrade and Repurchase Conditions and Limitations.** For the avoidance of doubt, the City shall have no right to exercise its Repurchase Right if: (i) Google Fiber completes the Upgraded Network and begins the Service Expansion on or prior to the Network Upgrade Deadline; (ii) Google Fiber delivers the Expansion Termination Notice, but the City elects not to exercise its Repurchase Right; or (iii) Google Fiber fails to complete the Upgraded Network and begin the Service Expansion prior to the Network Upgrade Deadline but the City elects not to exercise its Repurchase Right within the earlier of (a) one hundred eighty (180) days after the Network Upgrade Deadline, and (b) the date Google Fiber completes the Upgraded Network and begins the Service Expansion. Google Fiber’s obligation to begin or complete construction or deployment of the Upgraded Network and begin Service Expansion on or prior to the Network Upgrade Deadline shall be subject to each of the following conditions and events: (i) the closing of the sale and transfer of the Acquired Assets pursuant to the terms of the Asset Purchase Agreement (the “Asset Closing”); (ii) Google Fiber securing and maintaining a franchise license with the City and all other applicable regulatory requirements and consents required to construct and operate the Network; (iii) Google Fiber entering into agreements with third parties granting Google Fiber the right to place and maintain cables, equipment and facilities within the Market Area and to install fiber, WiFi cables, equipment, and facilities on various utility poles, street lights, traffic signals and similar infrastructure required to construct, deploy and operate the Upgraded Network (“Third Party Attachment Agreements”), and compliance of such third parties with the terms of the Third Party Attachment Agreements; (iv) Google Fiber and the City entering into the City Attachment Agreements (as defined in Section 3.3 below); (v) Google Fiber’s ability to secure ongoing and regular access to the utility poles and other infrastructure owned and operated by the City and third parties pursuant to existing easements; (vi) the absence of any material breach or Default by the City, as applicable, under the terms of this Agreement or the City Attachment Agreements; and (vii) the absence of any uncured material breach of its representations and warranties or default by the City under the terms the Asset Purchase Agreement that causes or reasonably could cause any material impediment to or delay in Google Fiber’s ability to complete the construction of the Upgraded Network or begin the Service Expansion.

**1.5. Limited Right of First Consideration.** Following the date that the City's Repurchase Right expires, terminates or is otherwise waived or forfeited in accordance with the terms set forth in Section 1.4 above, Google Fiber agrees that it shall provide the City with written notice of any "Sale Event" that may arise after such date ("Sale Notice"). The term "Sale Event" shall mean (i) a determination by the board of directors of Google Fiber to sell all or substantially all of the Upgraded Network on a standalone basis to an unaffiliated third party; or (ii) the receipt by Google Fiber from an unaffiliated third party of a written offer to purchase all or substantially all of the Upgraded Network on a standalone basis, which offer the board of directors of Google Fiber has determined to pursue. Following the delivery of any Sale Notice, Google Fiber and the City shall enter into good faith negotiations regarding the sale of the Upgraded Network to the City. In the event the parties do not reach a binding written agreement providing for such sale of the Upgraded Network to the City within thirty (30) days of the date of the initial Sale Notice, Google Fiber will have no further obligations under this Section 1.5. Google Fiber's obligation to notify the City of any Sale Event and enter into any discussions regarding the sale of the Upgraded Network shall terminate on the earlier of (i) expiration of the City Service Term; and (ii) ten (10) years from the date of the Asset Closing.

## **2. Broadband and WiFi Services.**

**2.1. Scope of City Services.** In consideration for those rights related to the WiFi Network granted to Google Fiber under the terms of the City Attachment Agreements (as defined below), Google Fiber agrees to provide the City with City Broadband Services, City WiFi Services and Public WiFi Services (all as defined below), as described below and subject to the limitations and conditions set forth below. The City Broadband Services, City WiFi Services and Public WiFi Services may be referred to collectively as the "City Services."

**2.2. City Broadband Services.** Google Fiber shall use commercially reasonable efforts to provide broadband Internet services, which shall be up to 1 Gigabit capable, through the Upgraded Network ("City Broadband Services") to approximately twenty-five (25) public facilities agreed upon by the City and Google Fiber, based on a list of proposed sites created by the City ("Public Sites"). The Public Sites that receive City Broadband Services shall be subject to the conditions and requirements set forth below. The City Broadband Services will be similar to those broadband services to be made available to residential customers under Section 1.1 and are solely intended to supplement any broadband and similar services that are currently provided or otherwise may be required for any Public Sites. The City Broadband Services may not be used for any emergency or mission critical services or functions. The Public Sites shall primarily be public or non-profit facilities that provide access and services directly to citizens. The selection of each Public Site shall be subject to reasonable acceptance of Google Fiber during the construction of the Upgraded Network based on (i) the proximity of the Upgraded Network to each Public Site within a Fiberhood; and (ii) technical requirements and cost considerations as reasonably determined by Google Fiber. In the event Google Fiber determines at any time that delivery of City Broadband Services to any Public Site is not feasible for any reason, Google Fiber shall so notify the City and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution to enable Google Fiber in its sole discretion, to deliver services to that Public Site or to an alternative Public Site. The City shall be responsible for any drop costs for each Public Site and other construction, upgrade and configuration costs related to each Public Site that may be required to enable a Public Site to receive the City Broadband Services.

**2.3. WiFi Networks Within Public Sites.** The City currently operates or may wish to install and operate a WiFi network within Public Sites that may receive City Broadband Services. In the event Google Fiber offers products and services for such internal WiFi networks, the City shall cooperate with Google Fiber in order to deploy the Google Fiber's WiFi network solution at such Public Sites.

**2.4. Public WiFi Services.** In the event Google Fiber constructs a WiFi Network, Google Fiber shall use commercially reasonable efforts to deploy the WiFi Network ("Public WiFi Services") within up to five (5) publicly accessible areas within the Market Area to be identified by the City and Google Fiber ("Public WiFi Areas"). Each Public WiFi Area shall be subject to reasonable acceptance of Google Fiber during the design and construction of the WiFi Network based on (i) the design and proximity of the WiFi Network to each public area; and (ii) technical requirements and cost considerations, all as reasonably determined by Google Fiber. Google Fiber's obligations under this Section 2.4 are conditional upon the City agreeing to be responsible for any construction and make ready costs or infrastructure required with respect to the Public WiFi Areas to enable Google Fiber to install and operate the Public WiFi Services. In the event Google Fiber determines that delivery of Public WiFi Services to any Public

WiFi Area is not reasonably feasible for any reason, Google Fiber shall so notify the City and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution to enable Google Fiber to deliver services to any specific Public WiFi Area or to an alternative area. The City agrees and acknowledges that Google Fiber may elect to not construct the WiFi Network or may not begin or complete the design, construction or deployment of the WiFi Network until it has fully completed construction and deployment of the Upgraded Network. Following deployment of the WiFi Network within the five initial Public WiFi Areas, as described above, Google Fiber may, in its sole discretion, consistent with the requirements of all applicable governmental permits, deploy the WiFi Network within other areas throughout the Market Area and utilize such WiFi Networks to provide free and commercial services.

**2.5. Terms of City Services.** Google Fiber agrees to begin deployment of City Broadband Services as soon as reasonably practicable following the date Google Fiber completes deployment of Google Services in the Fiberhood where the applicable Public Site is located. The City Broadband Services shall be provided for a term of seven (7) years from the date of installation of the City Broadband Services at each Public Site or until this Agreement is terminated in accordance with its terms (the “City Service Term”). Other than drop, construction or similar costs to be covered by the City, all City Services delivered by Google Fiber hereunder shall be provided free of charge to the City, and in accordance with Google Fiber's standard practices and subject to Google Fiber's then applicable Terms of Service, subject to any reasonable changes that may be required by applicable law or agreed upon in writing by Google Fiber and the City. Following expiration of the City Service Term, to the extent Google Fiber continues to generally operate the Upgraded Network and deliver Google Services in the Market Area, City may elect to continue to receive broadband and WiFi services from Google Fiber at its then current rates for comparable commercial services, subject to mutual written agreement of the City and Google Fiber.

**2.6. Offer of Free Residential Broadband Services.** In connection with deployment of the Upgraded Network within each Fiberhood, Google Fiber agrees that it will offer to the inhabitant(s) of each residential dwelling within each Fiberhood (each, a “Resident,” and collectively, “Residents”) the right to (i) subscribe to and purchase some or all of the Google Services; and (ii) subscribe to and receive free of charge broadband residential Internet access services comparable to the free internet services currently offered by Google Fiber and its Affiliates to residents in other markets (the “Free Residential Services”). The Free Residential Services will be made available to Residents of single family homes, single family units within a common interest development (“CID”) and single family units within multiple dwelling units (each, an “MDU”) (collectively, “Dwellings”) located along and immediately adjacent to the Upgraded Network. In order to make the Free Residential Services available to subscribing Residents, the Resident of each Dwelling shall be required to pay a reasonable one-time connection fee of thirty dollars (\$30.00), provided that such payment may be paid on behalf of such Residents by the CID homeowners association or the owner of the MDU. The physical connection of any Dwelling or MDU to the Upgraded Network shall be subject to reasonable acceptance of Google Fiber based on (i) the proximity of the Upgraded Network to each Dwelling and MDU within a Fiberhood; and (ii) technical requirements and connection costs as reasonably determined by Google Fiber. In the event Google Fiber determines that delivery of Free Residential Services to any Dwelling or MDU is not feasible for these reasons, Google Fiber shall so notify the Resident or MDU owner and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution to enable Google Fiber, in its sole discretion, to deliver services to such Dwelling or MDU. The Residents of any Dwelling or owner of any MDU shall be responsible for any additional connection costs agreed upon by the parties for any non-standard physical connections required to enable such Dwelling or MDU to receive the Free Residential Services.

**2.7. Terms of Free Residential Services.** Google Fiber agrees to begin deployment of the Free Residential Services as soon as reasonably practicable following completion of the Upgraded Network and its deployment plans to each Fiberhood. Free Residential Services shall be provided to the Residents of each Dwelling for a term of seven (7) years beginning on the date that Google Services are first delivered to that Dwelling (the “Free Service Term”). Residents within a Fiberhood must determine whether to subscribe to Google Services within the limited period identified by Google Fiber. Google Fiber shall provide reasonable notice, in a manner and form determined by Google Fiber, to all Residents of the availability and terms of Google Services offered within a Fiberhood, including Free Residential Services, and shall provide each Resident a reasonable period of time within which to subscribe to the Free Residential Services or other Google Services (the “Initial Offer Period”). In the event any Resident of a given Dwelling subscribes to Free Residential Services or other Google Services during the Initial Offer Period, that Resident shall be and remain eligible for Free Residential Services at that Dwelling during the entire Free Service Term for such Dwelling, in accordance with Google Fiber's standard processes and timeframe,

as communicated to the Residents. In the event a subscribing Resident moves from such a Dwelling, all future Residents of that Dwelling shall remain eligible to subscribe to Free Residential Services for the balance of the Free Service Term for such Dwelling, in accordance with Google Fiber's then standard practices and policies. A subscription for Free Residential Services may not be transferred by a subscribing Resident to any other Dwelling and shall not otherwise be transferable. In the event no Resident of a given Dwelling subscribes to the Free Residential Services or any other Google Services during the Initial Offer Period, all then-current and future Residents of that Dwelling shall permanently lose the right to receive or be eligible for Free Residential Services at that Dwelling. However, Residents of such Dwellings may later subscribe to other available Google Services, when and if Google offers such Google Services to such Residents in accordance with Google Fiber's standard practices and prices. In the event that Google Fiber ceases to operate the Upgraded Network or transfers the Repurchased Network back to the City and thus fails to deliver Free Residential Services for all of any part of the full Free Service Term, neither the Residents nor the City shall be entitled to receive from Google Fiber any damages or termination payment of any kind. All Free Residential Services delivered to Residents by Google Fiber shall be provided in accordance with Google Fiber's standard practices and be subject to Google Fiber's then current applicable Terms of Service. Following expiration of the Free Service Term for each Dwelling, to the extent Google Fiber continues to generally operate the Upgraded Network and deliver Google Services in the Market Area, Google Fiber may continue to provide to the Residents broadband Internet access services at its then current rates for such comparable services, subject to mutual agreement of such Resident and Google Fiber.

### **3. City Support and Commitments.**

#### **3.1. Permit Processing and Inspections.**

3.1.1. **Permit Processing.** The City will facilitate expeditious review of all applications for permits submitted by Google Fiber in connection with the Upgraded Network and WiFi Network, including requests for any approvals necessary for construction, maintenance or other work within City's rights-of-way and easements or related to access to City's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

3.1.2. **Inspections.** In order to facilitate continuity and efficiency of inspections, the City will continue to employ qualified and knowledgeable inspectors to inspect construction, maintenance and related work in connection with each applicable permit to be issued by the City and will expeditiously process such inspections in accordance with applicable ordinances and the City's standard processes and practices made available to all third parties.

3.2. **Rights of Way, Easements and Infrastructure for Construction.** Google Fiber will be given access to applicable assets and infrastructure of the City in accordance with the terms of the franchise license agreement entered into between Google Fiber and the City (the "Franchise License") and in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

3.3. **Pole Attachment and Infrastructure Rights.** Contemporaneously herewith, the City and Google Fiber will enter into mutually acceptable arrangements (each, a "City Attachment Agreement") granting Google Fiber the right to place and maintain cables, equipment and facilities within the Market Area and to install fiber, WiFi cables, equipment, and facilities on various utility poles, street lights, traffic signals and similar infrastructure. The City Attachment Agreements will provide for infrastructure attachment and use rights and related obligations related to the Upgraded Network and WiFi Network, all in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

3.4. **Map Data and Valid Address Data.** The City agrees and acknowledges that Google Fiber may require certain map data and address data in order to complete construction and deployment related to the Upgraded Network. The City agrees to promptly provide Google Fiber with publicly available map and address information, in the form and content reasonably acceptable to Google Fiber that may be reasonably requested by Google Fiber from time to time (collectively, the "Map and Address Data"). Google Fiber shall pay reasonable fees that may be generally assessed to third parties for copying or data reproduction for Map and Address Data provided to Google Fiber. Google Fiber agrees and acknowledges that the City will provide Map and Address Data in accordance with

all applicable laws, regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

### **3.5. Public Outreach and Announcements.**

3.5.1. **Public Outreach.** Google Fiber intends to independently promote and market the Network within the Market Area. The City shall offer Google Fiber reasonable assistance in informing Residents about proposed Network activities in the City's rights of way and educational programs concerning Upgraded Network build-out and deployment and potential resulting impacts on the community. Such City assistance shall be offered in accordance with applicable law and its common practices. Use and distribution of Google Fiber's name and marks shall be subject to Google Fiber's prior written consent, which consent may be withheld in Google Fiber's sole discretion.

3.5.2. **Public Announcements.** The City and Google Fiber will cooperate on a joint publicity and public relations initiative related to the announcement of this Agreement and the Upgraded Network ("Initial Public Announcement"). The City agrees that it shall not, prior to the Public Announcement, issue any press releases or make any public announcements related to this Agreement or the Upgraded Network without the prior written consent of Google Fiber, which consent may be withheld in Google Fiber's sole discretion.

3.6. **Fees and Charges.** Except for and for so long as Google Fiber pays any applicable franchise fees under the Franchise License and attachment fees under the applicable City Attachment Agreements, the City agrees that it shall not impose on Google Fiber any other fees or charges for the City's support and services described in this Agreement, all in accordance with applicable ordinances, the Franchise License and the City's common processes and practices made available to all third parties.

4. **Intellectual Property Rights.** Google Fiber shall be the owner of and will retain all Intellectual Property Rights (as defined below) created, conceived, prepared, made, discovered or produced in connection with the Upgraded Network, the WiFi Network and the Google Services. "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 other 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.

## **5. Confidentiality.**

5.1. **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 Upgraded Network, WiFi Network and Google Services, including the existence of discussions regarding and nature of the Upgraded Network, WiFi Network and Google Services, and this Agreement. 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 agree to similar confidentiality obligations. These confidentiality obligations shall not 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.

5.2. **GRAMA Disclosures.** Notwithstanding the foregoing, because the City is a municipal corporation, certain disclosures of Confidential Information may be required by law or may be ordered by a court of competent jurisdiction to comply with the Government Records Access and Management Act (GRAMA) or similar laws. The City agrees to promptly notify Google Fiber of any inquiry or demand made, the response to which may require it to



divulge Google Fiber's Confidential Information. The City will not disclose any such Confidential Information in response to any such inquiry or demand unless required to do so by Law or compulsory process of a Governmental Entity. Prior to any such disclosure, the City will allow Google Fiber a reasonable opportunity to attempt to secure confidential treatment of any such Confidential Information by such Governmental Entity and shall cooperate with Google Fiber in such effort.

**5.3. 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 5. 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.

**5.4. 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.

**5.5. Term of Restriction.** Each party's obligations under this Section 5 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.

## **6. Term and Termination.**

**6.1. Initial Term and Renewal.** The term of this Agreement shall begin on the Effective Date and shall expire after the City Service Term and the Free Service Term for all Residents have expired, unless earlier terminated in accordance with the terms of this Agreement or renewed by mutual written agreement of the parties. The rights and obligations of Google Fiber and the City set forth in Sections 1 and 2 of this Agreement are conditioned upon the Asset Closing.

### **6.2. Termination.**

**6.2.1. Termination for Convenience.** Google Fiber may terminate this Agreement (i) at any time prior to the date of the Asset Closing by providing written notice to the City; and (ii) at any other time by providing sixty (60) days' advance written notice to the City if (a) Google Fiber has completed the Upgraded Network and begun the Service Expansion as of the date of such termination, and (b) Google Fiber intends to generally cease offering the Google Services within the Market Area or intends to sell or transfer the Upgraded Network to a third party that is not an Affiliate.

**6.2.2. Termination for Default.** 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 by the City is incapable of remedy by City; (ii) such Default by Google Fiber is incapable of remedy by Google Fiber or Google Fiber, Inc.; or (iii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party breaches a material term or provision of this Agreement; (ii) such party breaches any material term or provision of the City Attachment Agreements; (iii) such party becomes insolvent or ceases to operate as a going concern; (iv) 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; (v) such party makes a general assignment for the benefit of creditors; or (vi) a receiver, whether temporary or permanent, is appointed for the property of such party or any material part thereof. Google Fiber, Inc., parent company to Google Fiber, agrees that it shall remain responsible for Google Fiber's performance under the terms of this Agreement in the event of a Default by Google Fiber.

6.2.3. **Effect of Termination.** For the avoidance of doubt, the City's Repurchase Right shall be the City's sole and exclusive remedy in the event of any termination of this Agreement by Google Fiber pursuant to Section 6.2.1 or pursuant to Section 9.6. However, in the event of termination for Default of the City pursuant to Section 6.2.2, the City shall not be entitled to the Repurchase Right.

6.2.4. **Survival.** The following provisions shall survive any expiration or termination of this Agreement: Sections 1.4.3 (related to the Repurchase Transition Plan), 4, 5, 6.2.3, 7.2 and 8.

## **7. Representations and Warranties; Disclaimer of Warranties.**

7.1. **Limited 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) 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.

7.2. **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 CITY NETWORK, UPGRADED NETWORK, WIFI NETWORK, THE GOOGLE SERVICES OR THIS AGREEMENT. GOOGLE FIBER DOES NOT WARRANT THAT IT SHALL COMPLETE THE UPGRADED NETWORK OR WIFI NETWORK UPGRADE OR OPERATE THE UPGRADED NETWORK OR WIFI NETWORK OR OFFER THE CURRENT SERVICES OR GOOGLE 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 UPGRADED NETWORK, WIFI NETWORK, CURRENT SERVICES AND THE ANY GOOGLE 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 RELATED TO THE UPGRADED NETWORK, WIFI NETWORK, THE CURRENT SERVICES, GOOGLE SERVICES OR THIS AGREEMENT.

8. **Limitations of Liability.** EXCEPT FOR ANY UNAUTHORIZED USE OR DISCLOSURE OF GOOGLE'S INTELLECTUAL PROPERTY RIGHTS, OR A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, 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, AND EXCEPT AS SET FORTH AT THE BEGINNING OF THIS SECTION, 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. EXCEPT FOR ANY BREACH OF GOOGLE'S INTELLECTUAL PROPERTY RIGHTS, OR A PARTY'S CONFIDENTIALITY, OBLIGATIONS HEREUNDER, 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 LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 8 IS A FUNDAMENTAL BASIS OF THIS AGREEMENT; AND EACH PARTY UNDERSTANDS AND AGREES THAT THE OTHER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS LIMITATION OF LIABILITY.**

**9. General Terms.**

**9.1. 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.

**9.2. Dispute Resolution.** Except as otherwise specifically provided in this Agreement, the parties will attempt to resolve all disputes, disagreement or controversies arising in connection with this Agreement through good faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or equity.

**9.3. Notices.** All notices must be in writing and delivered to the addresses and persons specified below. Notice will be deemed delivered (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.

If to Google Fiber, to:

Google Fiber Utah, LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attention: General Manger  
Email: googlefibernotices@google.com  
Facsimile: (650) 253-0001

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

ATTN: Google Fiber Legal Department  
Email: legal-notices@google.com

If to Seller, to:

Provo City Corporation  
Provo City Mayor's Office  
351 West Center St., Provo, UT 84603  
Attention: Mayor

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

Provo City Corporation  
Provo City Attorney  
351 West Center St.  
Provo, UT 84603  
Attention: City Attorney

9.4. **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. Google Fiber may, upon written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate (as defined below) of Google Fiber; (ii) any successor in interest to Google Fiber in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of Google Fiber's assets related to the Network. 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. "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.

9.5. **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.

9.6. **Force Majeure.** Neither party will be deemed in Default under 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 other similar 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. Following any effective termination by the City related to a Force Majeure event, the City may exercise its Repurchase Right in accordance with Section 1.4, provided that the Google Fiber has not fulfilled its obligations to complete the Upgraded Network and begin the Service Expansion or the City has not otherwise forfeited or waived its Repurchase Right under the terms of this Agreement.

9.7. **Independent Contractors.** 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.

9.8. **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.

9.9. **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.

9.10. **Joint Drafting.** The Parties acknowledge that this Agreement 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.

9.11. **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.

9.12. **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.

9.13. **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. 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 to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).

9.14. **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 blank]

IN WITNESS WHEREOF, The parties agree to the terms of this Agreement and have caused this Agreement to be signed by their duly authorized representatives.

**Google Fiber Utah, LLC**

**Provo City Corporation**

\_\_\_\_\_  
**(Authorized Signature)**

\_\_\_\_\_  
**(Authorized Signature)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Title)**

Acknowledged and agreed (solely for the purposes of Section 6.2.2):

**Google Fiber, Inc.**

\_\_\_\_\_  
**(Authorized Signature)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

**Exhibit B - License Agreement**

See attached.

## LICENSE AGREEMENT

**THIS FIBER LEASE AGREEMENT** ("Agreement") shall become effective as of the Closing Date of the Asset Purchase Agreement, as defined below (the "Effective Date"), by and between Provo City Corporation, a Utah municipal corporation ("City"), and Google Fiber Utah LLC, a Utah limited liability company ("Google Fiber").

**WHEREAS**, contemporaneous herewith, Google Fiber and City are entering into a certain Asset Purchase Agreement dated April \_\_\_\_\_, 2013 ("Asset Purchase Agreement"), whereby, among other things, the City agreed to sell and Google Fiber agreed to purchase certain "Acquired Assets," as such term is defined in the Asset Purchase Agreement,

**WHEREAS**, contemporaneous herewith, Google Fiber and City are entering into a Network Services Agreement dated April \_\_\_\_\_, 2013 ("Network Services Agreement") to provide for the terms and conditions upon which Google Fiber will provide high speed broadband Internet access services to certain City's public facilities and certain residents of Provo, free of charge,

**WHEREAS**, City desires and Google Fiber is willing to provide City an exclusive license to reasonably access and use certain portions of the Acquired Assets ("Licensed Assets") for the limited purposes and subject to the terms and conditions set forth in this Agreement,

**NOW THEREFORE**, in consideration of the mutual promises set forth below and in the Asset Purchase Agreement, the parties hereby agree as follows:

### 1. Definitions.

- (a) Unless otherwise defined in the Agreement, capitalized terms have the same meaning as that in the Asset Purchase Agreement or Network Services Agreement, as applicable.
- (b) "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. For purposes of this definition, "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.
- (c) "Confidential Information" is defined in Section 21 of this Agreement.
- (d) "Costs" means all actual, documented and reasonable on-site costs incurred and computed in accordance with: (i) the established accounting procedures used by Google Fiber to bill City for reimbursable projects, and (ii) generally accepted accounting principles. Such Costs include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).
- (e) "Effective Date" is defined in the first paragraph of this Agreement.
- (f) "Force Majeure" is defined in Section 20 of this Agreement.



(g) "Licensed Assets" means:

- (1) The dedicated fibers selected by Google Fiber for City's exclusive use in support of governmental services ("City's Allocated Fibers") as shown on "Exhibit A" which exhibit is attached hereto and by this reference incorporated herein and made a part hereof; and
- (2) Collocation space ("Collocation Space") within Google Fiber's network operations center and the telecommunications huts listed in "Exhibit B" which exhibit is attached hereto and by this reference incorporated herein and made a part hereof, located within the City of Provo, Utah, that is designated by Google Fiber for exclusive use by City to reasonably support City's use of City's Allocated Fibers. Collocation space will be temperature-conditioned and include the following:
  - (a) Twenty (20) amp A/C circuit;
  - (b) Uninterruptible power supply to support fifteen minutes of uptime and protected by backup generator power; and
  - (c) Unless mutually agreed to otherwise in writing, at least one half of a standard secured networking rack. Google Fiber will use commercially reasonable efforts to expand rack space to include one full standard secured networking rack within two years of the Effective Date.

(h) "Renewal Term" is defined in Section 3 of this Agreement.

(i) "Taxes" include, but are not limited to, business and occupation, commercial, deaf, district, excise, high cost fund, lease, lifeline assistance, low income, occupational, privilege, Public Utility Commission, sales, telecommunications relay service, telephone assistance, universal service funding, use, utility user, value-added, 911, or other similar taxes, fees and surcharges as is or may be levied against Google Fiber.

## **2. License.**

- (a) Effective on the Closing Date of the Asset Purchase Agreement, and subject to the requirements and processes set forth in Section 6 of this Agreement and the termination rights set forth in Section 13 of this Agreement, Google Fiber hereby grants to City a license ("License") for secure and exclusive access to and an uninterruptable right to use the Licensed Assets for the limited purposes of carrying out its obligations as a municipal corporation, including providing municipal electric services to its customers.
- (b) City may not sublease, assign or transfer the License or any rights granted hereunder except in connection with a sale of all or substantially all of its electric utility assets. Notwithstanding the above, nothing herein shall prevent City from using the Licensed Assets to provide services to the following entities: Provo School District, United Way, Wasatch Mental Health, the Utah Department of Transportation (UDOT), and Utah Valley University.
- (c) As between the parties, the Licensed Assets will remain the sole and exclusive property of Google Fiber, and nothing contained herein shall be interpreted to give or convey to City any property right, title or interest in such Licensed Assets, which will at all times be and remain Google Fiber's personal property notwithstanding that it may be or become attached to or embedded in realty.

## **3. Term.**

The term of this Agreement shall begin on the Effective Date. Unless otherwise terminated in accordance with the provisions of this Agreement, the License granted to City by Google Fiber herein will continue for fifteen (15) years from the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, the Agreement will renew for additional one-year terms (each a "Renewal Term") unless otherwise terminated in accordance with the provisions of this Agreement.

#### **4. Payment of Fees**

For the Initial Term, Google Fiber agrees to maintain the Licensed Assets at no cost to City. After the Initial Term, Google Fiber may require City to pay commercially reasonable fees associated with providing access, support, and maintenance of the Licensed Assets within forty-five (45) calendar days of Google Fiber providing City an invoice for such costs ("Due Date").

#### **5. Taxes, Fees, Surcharges and Other Governmental Impositions.**

- (a) City will pay any and all properly invoiced and applicable national, federal, state, county and local taxes, fees, surcharges and all other related charges that may be imposed or levied on City by any appropriate statute or regulation that provides the authority for the imposition of taxes, fees, surcharges and all other charges (collectively, "Taxes") with respect to City's access to and use of the Licensed Assets.
- (b) Google Fiber and City agree to make commercially reasonable efforts to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale or use of purchases, activities or transactions arising from or under this Agreement, which may be required or initiated from or by Google Fiber, City or any duly authorized governmental authority.

#### **6. Access and Use of the Licensed Assets.**

- (a) To the extent commercially feasible, Licensed Assets must remain physically separated from non-Licensed Assets. At a minimum, this obligation includes separate patch panels for City access and use of City's Allocated Fibers. Google Fiber and City shall use commercially reasonable efforts to migrate City's use of the Licensed Assets to a separate fiber network.
- (b) City may not allow third parties to access or use the Licensed Assets without the express written consent of Google Fiber. This will not prevent City from providing services to the limited set of third-party entities identified in Section 2.b. Notwithstanding the foregoing, City's use of the Licensed Assets in providing services to such third-party entities will not, in any case, confer any rights to such parties as third-party beneficiaries.
- (c) Except in case of emergency, Google Fiber may not access Licensed Assets that are physically separate from non-Licensed Assets without being escorted by City or City's designee. City agrees to provide escorted access upon advance written request from 8 a.m. to 5 p.m., Monday through Friday. Google Fiber will request escorted access at least twenty-four hours in advance of any non-emergency requested access to the Licensed Assets. In case of emergency, City will provide Google Fiber access to the Licensed Assets as soon as reasonably practicable.
- (d) City may not access the Licensed Assets without being escorted by Google Fiber or Google Fiber's designee. Google Fiber agrees to provide escorted access upon advance written request from 8 a.m. to 5 p.m., Monday through Friday. City will request escorted access at least twenty-four hours in advance of any non-emergency requested access to the Licensed Assets. In case of emergency, Google Fiber shall provide City access to the Licensed Assets as soon as

reasonably practicable. The parties shall use commercially reasonable efforts to prepare for emergencies using commercially reasonable best practices.

- (e) City warrants that its use of the Licensed Assets shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and restrictions.
- (f) City shall not use the Licensed Assets in a way that interferes in any way with or adversely affects the use of the Acquired Assets by Google Fiber. In the event of interference caused by City's use or equipment, Google Fiber will provide notice and a reasonable amount of time for City to take reasonable steps to end the interference. If City is unsuccessful in doing so, Google Fiber may take reasonable steps to end the interference to the extent necessary and may charge the City for the reasonable costs of doing so. Notwithstanding the foregoing, City's access and use of the Licensed Assets will remain uninterrupted except as specified in Section 13.
- (g) The parties agree to cooperate with and support each other in complying with any requirements applicable to the Licensed Assets by any governmental or regulatory agency or authority. The parties agree to execute such further instruments as may be necessary or appropriate to carry out the intent of this Agreement.
- (h) City shall not cause or permit any part of the Licensed Assets to become subject to any mechanic's, materialman's, or vendor's lien, or any similar lien. If City breaches its obligations under this Section, it shall immediately notify Google Fiber in writing, and shall promptly take all steps needed to cause such lien to be discharged and released of record without cost to Google Fiber.

#### **7. Maintenance.**

City shall promptly notify Google Fiber of any matters pertaining to any damage or impending damage to or loss of the use of the Acquired Assets that are known to it and that could reasonably be expected to adversely affect the Acquired Assets.

#### **8. Relocation.**

Google Fiber will give City reasonable notice of any necessary relocation. City will cooperate in good faith with Google Fiber to facilitate such relocation.

#### **9. Warranty.**

EXCEPT AS OTHERWISE PROVIDED HEREIN, GOOGLE FIBER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE LICENSED ASSETS.

#### **10. Indemnification.**

- (a) City shall indemnify and hold harmless Google Fiber, its employees, officers, directors, subcontractors and agents (the "Indemnitees") from and against all third-party liability, loss, cost, damage, expense or cause of action of any nature whatsoever (including, but not limited to, the infringement of any third-party intellectual property right and personal injury to the Indemnitees) together with expenses (including reasonable attorney's fees and court costs through appeal) to the extent caused by or resulting from the acts or omissions of City, its employees, subcontractors or agents.

- (b) In connection with such indemnification, Google Fiber will (a) promptly notify City in writing of any such claim and grant City control of the defense and all related settlement negotiations, and (b) cooperate with City, at City's expense, in defending or settling such claim; provided that if any settlement results in any ongoing liability to, or prejudices or detrimentally impacts Google Fiber, and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require Google Fiber's written consent. In connection with any such claim, Google Fiber may have its own counsel in attendance at all public interactions and substantive negotiations at its own cost and expense.

**11. Limitation of Liability.**

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. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. GOOGLE FIBER'S LIABILITY FOR DAMAGES IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO AN AGGREGATE OF TWO MILLION U.S. DOLLARS (US\$2,000,000). THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL NOT APPLY TO OBLIGATIONS RELATED TO SECTION 10 (INDEMNIFICATION) AND SECTION 21 (CONFIDENTIALITY).

**12. Insurance.**

During the Agreement Term, the parties shall maintain not less than the following insurance:

Type of Coverage	Amount of Coverage
Worker's Compensation Insurance	Statutory Amount
Employer's Liability Occupational Disease and Bodily Injury Insurance	\$2 million each accident \$2 million disease each employee \$2 million disease-policy limit
Commercial General Liability Insurance, combined single limit personal injury and property damage on an occurrence policy form	\$2 million per occurrence
Automobile Liability Insurance for owned, hired and non-owned autos	\$2 million combined single limit bodily injury/property damage

**13. Default and Termination.**

(a) Unless otherwise provided herein, a "default" shall include, but not be limited to, the following events: (i) 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; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) such party breaches any material term or provision of this Agreement which remains uncured beyond the time period provided herein for curing the default; (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) In the event of a default, the non-defaulting party must provide written notice of such default, including reasonable detail and an opportunity to cure the default (i) within sixty (60) days after receipt of such notice; or (ii) within twenty-four (24) hours for any default that causes (X)

material damage to the Network; (Y) a physical or Network security breach; or (Z) any interruption or degradation to the quality of the services provided by Google Fiber through the Network (each of the defaults referenced in Section 13(b)(ii) is referred to herein as a "Network Event").

(c) Upon the failure by the defaulting party to cure any material default in accordance with Section 13(b), the non-defaulting party may (i) take such actions as are commercially reasonably necessary to correct the default, at the expense of the defaulting party and (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

(d) City may terminate this Agreement at any time by providing sixty (60) days' advance written notice to Google Fiber.

(e) Google Fiber may temporarily suspend the City's physical access to the Colocation Space by providing written notice to the City in the event of a default caused by the negligence of the City or the City's representative that is not cured in accordance with the terms of this Agreement. The City's access may be suspended until such time that the default is cured by the City or Google Fiber, provided that any actions taken by Google Fiber shall be subject to the terms of this Agreement. In the event of a default caused by the repeated or similar negligent acts or omissions of the City or the City's representative ("Repeated Default"), Google Fiber may suspend the City's access to the Licensed Assets as described above. Immediately following the date such Repeated Default is cured, the City agrees that it shall meet with Google Fiber to identify the root cause of such Repeated Default and propose a reasonable written plan to prevent such Repeated Default from recurring (the "City Remediation Plan").

(f) Google Fiber may terminate this Agreement by providing written notice to the City in the event of any of the following:

- (i) a material incurable default under the terms of this Agreement caused by City or City's representative's gross negligence or willful misconduct;
- (ii) a default under the terms of this Agreement caused by City or City's representative's gross negligence or willful misconduct that causes a Network Event;
- (iii) in the event of any Repeated Default (as defined above) caused by City or City's representative's that causes any Network Event;
- (iv) in the event that Google Fiber is not reasonably satisfied with any City Remediation Plan and the City is not willing to accept a remediation plan reasonably acceptable to Google Fiber following any Repeated Default; or
- (v) in accordance with a sale or transfer of the Network by Google Fiber under Section 19(c).

(g) Notwithstanding the foregoing, Google Fiber agrees that, for a period of one hundred eighty (180) days from the Effective Date, it shall not exercise its termination rights set forth above except in the case of any default that results in a Network Event.

(h) Following the Initial Term, Google Fiber may terminate this Agreement by providing ninety (90) days' advance written notice.

(i) Upon termination, City will promptly disconnect and remove its equipment in a neat and orderly manner, and repair all damage directly caused by such removal at City's sole expense, excluding normal wear and tear.

(j) Notwithstanding the provisions of this Section, the expiration or termination of this Agreement shall not affect the rights or obligations of either party hereto with respect to the Sections of this Agreement entitled Indemnification, Limitation of Liability, Insurance, Taxes, and Confidentiality with respect to matters or claims arising or accruing prior to expiration or termination hereof, or pursuant to any other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

**14. 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 shall 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.

**15. Governing Laws.**

Any action related to this Agreement will be governed the laws of the State of Utah (except that body of law controlling conflict of laws) and the United Nations Convention on the International Sale of Goods shall not apply.

**16. Relationship of the parties**

The relationship between the parties shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. In performing any of their obligations hereunder, the parties shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

**17. Notices.**

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by first class mail (or its equivalent), postage prepaid, registered or certified, return receipt requested, transmitted by facsimile (with the original to immediately follow), or by hand delivery (including by means of a professional messenger service or overnight mail) to each party at its Notice Address. Any such notice or other communication shall be deemed effective when actually received or refused. Either party may, by similar notice given, change the Notice Address to which future notices or other communications shall be sent.

**Google Fiber Utah, LLC:**

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

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

Google Fiber Inc.

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

**Provo City Corporation:**

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

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

Provo City Attorney's Office  
PO Box 1849  
Provo, UT 84603  
ATTN: City Attorney

**18. Waiver.**

No failure, forbearance, neglect, or delay by either party in regard to enforcing this Agreement or exercising any rights contained in this Agreement shall affect or limit such party's right to strictly enforce same, and shall not constitute or be implied as a waiver of any right to enforce same in the future.

**19. Assignment.**

- (a) City may not assign or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any third party without the prior written consent of Google Fiber.
- (b) Google Fiber may, upon written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Google Fiber; (ii) any successor in interest to Google Fiber in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of Google Fiber's assets related to the Network. 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.
- (c) In the event of any sale or transfer of the Network by Google Fiber to a third party other than an Affiliate ("Network Sale"), City shall have the right, pursuant to the terms of a separate agreement between Google Fiber and City, to purchase the City's Allocated Fibers for a purchase price of \$1.00. The City's purchase of the City's Allocated Fibers must be exercised within thirty of days of receipt of notice of the Network Sale ("Sale Notice") and shall not be effective until the closing date of the Network Sale transaction. If City does not exercise its right to purchase City's Allocated Fibers, then Google Fiber may terminate this Agreement upon written notice to City.
- (d) If City exercises its right to purchase City's Allocated Fibers pursuant to Section 19(c), the City shall have a minimum period of at least one hundred and eighty (180) days from the Sale Notice (the "Minimum Transition Period") to allow the City time to disconnect and remove its equipment in a neat and orderly manner, and to transition necessary City services to other assets not owned or operated by Google Fiber. The City's rights and License under this Agreement shall remain in full force and effect during the Minimum

Transition Period. Google Fiber shall use commercially reasonable efforts to assist the City with such transition. Following the sooner of the expiration of the Minimum Transition Period or upon City completing the removal of its equipment from the Colocation Space, Google Fiber may terminate this Agreement by providing written notice to the City.

**20. Force Majeure.**

Neither party shall 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, 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 shall 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 shall give notice to the other party.

**21. Confidentiality.**

The parties understand and agree that the existence, terms and conditions of this Agreement and all confidential and proprietary documents referenced herein, confidential and proprietary communications between the parties regarding this Agreement or the subject of this Agreement, as well as any financial or business information of either party are confidential ("Confidential Information"). Such Confidential Information shall not be disclosed by either party to any individual other than the directors, officers, employees and attorneys of such party or agents of such party who have a need-to-know and who have specifically agreed to nondisclosure of the terms and conditions hereof. However, neither party shall be required to keep confidential any information that (i) becomes publicly available other than through the receiving party; (ii) is required to be disclosed pursuant to law, including the Utah Government Records Access and Management Act (GRAMA), a governmental or judicial rule, order or regulation; (iii) the recipient of the Confidential Information independently develops without access to or use of the Confidential Information; (iv) becomes rightfully available to the disclosing party without restriction from the third party; or (v) is required by its lender and is given to such lender on a confidential basis. If either party is required by law or similar process to disclose any Confidential Information, 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 21. The party whose consent to disclose information is requested shall respond to such request, in writing, within five (5) working days of the request, by either authorizing the disclosure or advising of its election to seek a protective order, or if such party fails to respond within the prescribed period the disclosure shall be deemed approved. If a party chooses to seek an appropriate protective order, the other party shall refrain from disclosing such information (unless legally compelled to do so) until the request for a protective order is resolved, and shall then comply with any validly-issued protective order.

**22. Miscellaneous.**

(a) The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the parties or their respective successors or permitted assigns.

(b) Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.

(c) The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof.



(d) In the event any term of this Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected. The parties shall cooperate in trying to replace the invalid, illegal or unenforceable term with a valid term that attempts to achieve the same result.

(e) This Agreement may be amended only by a written instrument executed by the parties.

(f) This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument

**23. No Publicity.**

City will not issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to Google Fiber or its trade names, trademarks, or service marks without the prior written approval of Google Fiber

**24. Entire Agreement.**

This Agreement supersedes any and all other agreements and representations respecting City's access to and use of the Licensed Assets.

[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: \_\_\_\_\_

## EXHIBIT A

### City Allocated Fibers Data subject to confirmation upon City provisioning of final Network Map

#### CITY SITES TO HUTS

Description: These are distribution fibers or last mile fibers that terminate at Hut sites within a given service area.

Segment Begin Point	Segment End Point	Fiber Count For Provo's Use	Panel Fiber ID Info	Address Of City/School Site	Notes
Hut 9	Fire Station #2	1		2737 N Canyon Road	
Hut 9	Rock Canyon Elementary School	1		2405 North 650 East	
Hut 8	Timpview High School	1		3570 North 650 East	
Hut 8	Edgemont Elementary School	1		566 East 3650 North	
Hut 8	Canyon Crest Elementary School	1		4664 N. Canyon Road	
Hut 8	Gillespie Weir and Booster SCADA	1		5501 N. Canyon Rd.	This could tie to Gillespie device at substation
Hut 8	Sherwood Booster SCADA	1		4450 N. Foothill Dr.	
Hut 8	Water SCADA Timpview	1		800 E. 3500 N.	
Hut 7	Canyon Rd. Well SCADA	1		2741 N. Canyon Rd.	
Hut 5-6	Wasatch Elementary School	1		1080 North 900 East	
Hut 5-6	Main Reservoir SCADA	1		950 E. Templeview Dr.	
Hut 5-6	Rock Canyon Well SCADA	1		2100 N. West Temple Dr.	
Hut 5-6	City Camera 9th East	1			
PP Hut	Library Phone Room	6		550 North University Ave	Uses non-Backbone 72 Count cable that heads east from PP Hut on 7th North to 2nd East. From 2nd East it heads south to 6th North. There is a Fiber Enclosure that a 12 Count fiber ties to that heads west on 6th North to the Library.
Hut 3-4	BYU Allen Hall Bldg.	1			

Hut 3-4	Recreation Center	6		270 W 500 N	
Hut 3-4	Fire Station #5	1		275 South 700 East	
Hut 3-4	Provo School Community Learning Center	1		962 South 1100 West	
Hut 3-4	Provo Schools Transportation	1		1531 North Freedom Blvd.	
Hut 3-4	City Center Wireless #1	1		Center St./University Ave Intersection	
Hut 3-4	City Center Wireless #2	1		Center St./100 W. Intersection	
Hut 3-4	City Center Wireless #3	1		Center St./200 W. Intersection	
Hut 25	Provo City Airport Facilities	4		1100 S 3110 W Airport	
Hut 25	Amelia Earhart Elementary School	1		2585 West 200 South	
Hut 24	Slate Canyon School	1		1991 South State	
Hut 24	Spring Creek Elementary School	1		1740 S. Nevada Avenue	
Hut 23	City Cemetery	1		610 S. State	
Hut 23	Provost Elementary School	1		629 South 1000 East	
Hut 23	Oak Spring School	1		1300 East Center	
Hut 23	Provost Valve SCADA	1		550 S. Utah Ave.	
Hut 22	Rail Road Crossing Monitor	1		600 S. Freedom Blvd.	
Hut 22	Community Action- United Way	1		815 S. Freedom Blvd	
Hut 15	Community Action- United Way	1		148 N. 100 W.	
Hut 3-4	Community Action- United Way	1		Undisclosed Address	
Hut 21	SunsetView Elementary School	1		525 South 1600 West	
Hut 21	Ferric Chloride Dosing SCADA	1		1500 S. 300 W.	
Hut 2	Fire Station #3	1		601 W Columbia Lane	
Hut 2	Fire Training Bldg.	1		603 W Columbia Lane	
Hut 2	Grandview Elementary School (CAS)	1		1591 N. Jordan Ave	
Hut 19	Fire Station #4	1		95 S 2050 W	
Hut 19	Independence High School	1		636 N Independence Avenue	
Hut 19	Lakeview Elementary	1		2899 West 1390 North	
Hut 18	Wasatch Mental Health	1		1163 E. 300 N.	
Hut 15	Fire Station #1	1		80 S 300 W	

Hut 15	Provo Justice Court	1		310 W. Center St.	
Hut 15	Franklin Elementary School	1		350 South 600 West	
Hut 15	City Center Well SCADA	1		50 S. 300 W.	
Hut 14	Dixon Middle School	1		750 West 200 North	
Hut 14	Timpanogos Elementary School	1		449 North 500 West	
Hut 13	Farrer Elementary	1		665 East Center	
Hut 12	East Bay Post High (CUE)	1		1170 South 350 East	
Hut 12	East Bay # Lift SCADA	1		1325 S. 290 E.	
Hut 12	Plant Lift SCADA	1		1685 S. East Bay Blvd.	
Hut 10	Centennial Middle School	1		305 East 2320 North	
Hut 10	Hillside	1		243 East 2320 North	
Hut 10	5600 North Well SCADA	1		5600 N. 100 W.	
Hut 10	4800 North Well SCADA	1		210 W. 4800 N.	
Hut 10	University Ave. Well SCADA	1		4650 N. University Ave.	
Hut 10	3700 North Well SCADA	1		560 W. 3700 N.	
Hut 10	North Well SCADA	1		2250 N. 300 W.	
Hut 10	Brough Well SCADA	1		880 Columbia Lane	
Hut 1	Westridge Elementary	1		1720 West 1460 North	
Hut 1	Grandview Lift SCADA	1		2100 W. 1500 N.	
Hut 1	Grandview Repeater SCADA	1		1591 N. Jordan Ave.	
Hut 18	Provo Ice Rink	1		10 N. Seven Peaks Blvd.	
Hut 22	Boulders Police Station	1		750 S. 650 W.	
Hut 16	Electrical SCADA	1		150 E. 100 S.	
Hut 16	Electrical SCADA	1			
Hut 12	Electrical SCADA	8	12C-25-36	2559 S. 950 E.	

### BACKBONE TO SPUR HUTS

Description: There are multiple hut sites that are non-intermediate backbone huts. These sites do not have backbone fiber directly tied to the hut, but rather have a fiber cable that ties to the backbone at a

Fiber Enclosure. This table shows the fiber path from the Fiber Enclosure to the hut. All these leased fibers would then splice to Backbone Intermediate Huts fiber allocations.

<u>Segement Begin Point</u>	<u>Segement End Point</u>	<u>Fiber Count For Provo's Use</u>	<u>Address Of Fiber Enclosure</u>	<u>Notes</u>
Hut 16	Fiber Enclosure	2		Ties to Backbone 288 Count Between Hut 5-6 and PP Hut
Hut 16	Fiber Enclosure	2		Ties to Backbone 288 Count Between Hut 12 and Headend
Hut 17	Fiber Enclosure	4		Ties to Backbone 288 Count Between Hut 5-6 and PP Hut
Hut 9	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 5-6 and Hut 8
Hut 7	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 8 and Hut 10
Hut 11	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 10 and Hut 19
Hut 2	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 10 and Hut 20
Hut 1	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 10 and Hut 21
Hut 14	Fiber Enclosure	4		Ties to Backbone 288 Count Between Hut 19 and PP Hut
Hut 20	Fiber Enclosure	4		Ties to Backbone 288 Count Between Hut 19 and Hut 21
Hut 25	Fiber Enclosure	2		Ties to non-Backbone 72 Count From Airport Path to Hut 19
Hut 25	Fiber Enclosure	2		Ties to Backbone 144 Count Between Hut 19 and Hut 21
Hut 15	Fiber Enclosure	4		Ties to Backbone 288 Count Between Hut 12 and Headend
Hut 15	Headend	4		Uses 72 Count Between Hut 15 and Headend
Hut 22	Fiber Enclosure	4		Ties to Backbone 288 Count Between Hut

				12 and Headend
Hut 13	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 5-6 and Hut 24
Hut 18	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 5-6 and Hut 25
Hut 23	Fiber Enclosure	4		Ties to Backbone 144 Count Between Hut 5-6 and Hut 26

\*We Need All Fiber Enclosure Addresses

## BACKBONE INTERMEDIATE HUTS

Description: Fibers that Google has allocated to City for City/School Network use over backbone fiber connections.

<b>Segement Begin Point</b>	<b>Segement End Point</b>	<b>Fiber Count For Provo's Use</b>	<b>Notes</b>
PP Hut	Hut 5-6	14	Uses 288 Count Between Huts
PP Hut	Hut 19	14	Uses 288 Count Between Huts
PP Hut	Hut 10	6	Uses 288 Count Between Huts
PP Hut	Hut 15	4	Uses 72 Count Between Huts; currently only 36 are spliced
PP Hut	HeadEnd	144	Undetermined Cable; this could be less based on need; depends on if Google does remote hands on cross connects at PP Hut
HeadEnd	Hut 12	6	Uses 288 Count Between Huts
Hut 12	Hut 21	10	Uses 144 Count Between Huts
Hut 19	Hut 21	10	Uses 144 Count Between Huts
Hut 19	Hut 10	10	Uses 144 Count Between Huts
Hut 10	Hut 8	10	Uses 144 Count Between Huts
Hut 5-6	Hut 8	10	Uses 144 Count Between Huts
Hut 5-6	Hut 24	10	Uses 144 Count Between Huts
Hut 12	Hut 24	10	Uses 144 Count Between Huts
Headend	Fiber Enclosure	96	Uses 288 Count Between Hut 12 and Headend; Dedicated to UDOT/Traffic

## NON-BACKBONE TO HUT

Description: Fibers that are non-backbone cables that are needed for City services that Google is leasing to City

<b>Segement Begin Point</b>	<b>Segement End Point</b>	<b>Fiber Count</b>	<b>Notes</b>
Hut 19	UVU	16	Uses non-Backbone 72 Count cable from Hut 19 to UVU north on Geneva Rd.
Hut 19	Airport	18	Uses non-Backbone 72 Count from Hut 19 to Airport south on Geneva then west on Center St.
Hut 24		10	South Of Hut On 72 Count

## ADDITIONAL FIBERS

Seller to provide a number of additional dark fibers to be mutually agreed by Seller and Purchaser in the mutual good faith delivery of a working City Network.



## EXHIBIT B

### Colocation Space (Colocation Space subject to address verification)

<u>HUT</u>	<u>Description</u>	<u>Address</u>
Hut 1	Westridge Elementary	1460 N 1780 W
Hut 2	Grandview Elementary	1460 N 1076 W
Hut 3 & 4	Head End	744 N 300 W
Hut 5 & 6	900 East Substation	892 N 900 E
Hut 7	Wills Pit Stop	3820 N Edgewood
Hut 8	Timpview Substation	4525 N 650 E
Hut 9	Centennial Middle School	245 E 2320 N
Hut 10	Plumtree Substation	272 W 2230 N
Hut 11	Carterville	1910 N Carterville Rd
Hut 12	City Water Treatment Site	1455 S 350 E
Hut 13	Farrer Middle School	151 N 700 E
Hut 14	Dixon Middle School	320 N 800 W
Hut 15	Underground Parking @ City Admin Bldg	351 W Center St
Hut 16	250 E Substation	262 E 200 S
Hut 17	Joaquin Elementary	550 E 600 N
Hut 18	Wasatch Mental Health	1151 E 300 N
Hut 19	Westgate Substation	568 N Geneva Rd
Hut 20	Fort Utah Park	1835 W 150 N
Hut 21	1500 S Substation	1500 S 300 W
Hut 22	Community Action/United Way of Provo	811 S Freedom Blvd
Hut 23	Provost Elementary	701 S State St
Hut 24	Tanner Substation	1651 S State St
Hut 25	Amelia Earhart Elementary	2710 W 200 S

**Exhibit C - Lease**

See attached.

## NETWORK OPERATION CENTER LEASE AGREEMENT

THIS NETWORK OPERATION CENTER LEASE AGREEMENT (this “**Lease**”), effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the “**Effective Date**”), is made by and between PROVO CITY CORPORATION, a Utah municipal corporation (together with its successors and assigns, the “**Landlord**”), and GOOGLE FIBER UTAH, LLC, a Utah limited liability company (together with its successors and assigns, the “**Tenant**”).

A. Landlord and Tenant are parties to that certain Asset Purchase Agreement dated \_\_\_\_\_, 2013 (the “**Purchase Agreement**”), wherein Landlord has agreed to sell and Tenant has agreed to purchase certain assets of Landlord related to the Fiber-to-the-Premises communications network within the boundaries of Provo, Utah commonly known as iProvo.

B. Pursuant to the Purchase Agreement, Landlord and Tenant agreed to enter into this Lease for the network operation center building and related facilities upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants, representations, warranties and mutual agreements hereinafter set forth, the parties hereto agree as follows:

### 1. LEASE

1.1 Lease of Premises. Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord that certain land (the “**Land**”) legally described on Exhibit A attached hereto, the Buildings (defined below) and other equipment and personal property described on Exhibit B attached hereto (hereinafter collectively, the “**Premises**”), known as the network operations center. This Lease is subject to the terms, covenants, and conditions set forth herein.

1.2 Delivery; Condition. Tenant is leasing the Premises “as is” and except as provided herein it shall be the responsibility of Tenant to make necessary improvements, if any, to facilitate its intended use. Landlord shall not be required to make any improvements to the Premises. Further, Landlord shall not provide Tenant with any allowance or funds for any Tenant improvements.

1.3 Subdivision. Landlord agrees, at its sole cost and expense, to use its best efforts to take any and all actions necessary to subdivide or adjust boundary lines of the Land and Landlord’s adjacent property (the “**Subdivision**”) from any larger tract or tracts of which the Land may presently be a part, all in accordance with applicable governmental zoning and subdivision regulations, if any, and if required a subdivision plat acceptable to Tenant, so that the Land will be and comprise a valid, conforming and separate legal parcel, and such Subdivision will be final without appeal and without being subject to further appeal, as soon after the Closing Date (as such term is defined in the Purchase Agreement) as is reasonably possible. The Subdivision shall be subject to Tenant’s review and written approval and provide adequate parking, frontage, access, setbacks and otherwise conform to all applicable zoning and subdivision ordinances. Tenant agrees to cooperate with Landlord’s efforts to obtain the Subdivision. Tenant shall have the right to obtain a survey of the Land prepared by a licensed

surveyor setting forth the boundaries, configuration and size of the Subdivision and in such case, such survey shall be attached to this Lease as Exhibit C.

## 2. **TERM; TERMINATION**

2.1 Term. This Lease shall have a ninety-nine (99) year term (the “**Term**”) commencing on the Closing Date and terminating on the earlier to occur of (a) the last day of the ninety ninth (99<sup>th</sup>) anniversary of the Closing Date, or (b) the date of Tenant elects to terminate this Lease as set forth herein.

2.2 Termination by Tenant. Tenant shall have the right in its sole and absolute discretion to terminate this Lease by written notice to Landlord not less than sixty (60) days prior to the effective date of such termination.

2.3 Termination by City. Unless otherwise defined herein, the defined terms set forth in this Section 2.3, shall have the meanings set forth in the Network Services Agreement entered into between Landlord and Tenant (the “**Network Services Agreement**”). In the event Landlord exercises the Repurchase Right set forth in Section 1.4 of the Network Services Agreement and title to the Upgraded Network is transferred to Landlord, then Landlord shall have the right to terminate this Lease following the effective date of such purchase and transfer of title.

3. **RENT**. The rent for the Premises shall be \$1.00 per year (“**Base Rent**”). Landlord acknowledges receipt of Tenant’s full payment for Base Rent for the Term. The parties acknowledge and agree Landlord has pursuant to the Purchase Agreement and related agreements received good and valuable consideration for the Premises equivalent to the current fair market value of the Premises.

## 4. **NET LEASE**

4.1 Tenant to Bear Costs. It is the intent of both parties hereto that the Base Rent shall be absolutely net to Landlord throughout the Term and except for the items mentioned below, that all costs, expenses and obligations of every kind relating to the Premises which may arise or become due during the Term shall be paid by Tenant and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations; provided, however, that, notwithstanding anything to the contrary in this Lease, Tenant shall not be responsible to pay any portion of any costs, expenses and obligations arising out of the negligence or intentional act of Landlord or its agents, contractors and employees.

### 4.2 Taxes.

(a) Tenant shall pay all real estate taxes or fees in lieu of taxes levied or assessed by lawful taxing authorities against the Land, buildings or improvements comprising the Premises.

(b) As used herein, “**Real Estate Taxes**” shall mean all real estate or rental taxes, assessments, ordinary or extraordinary, foreseen or unforeseen, which may be levied on,

assessed against, or charged with respect to the ownership of, or other equivalent interest in the Premises.

(c) Tenant shall pay all Real Estate Taxes, if any, for the current tax year when due upon forty-five (45) day notice from Landlord. Landlord shall promptly deliver to Tenant any notices and bills for taxes assessed or levied it receives from taxing authorities, as well as the items taxed with respect to the Premises. Notwithstanding the foregoing, Tenant shall not have the obligation to pay any tax, assessment, or charge that Tenant is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Premises.

(d) Tenant shall also be solely responsible for and shall pay before delinquency all municipal, county, state or federal taxes assessed during the Term against any personal property of any kind, owned by or placed in, upon or around the Premises by Tenant, including, without limitation, leasehold improvements, trade fixtures, inventory, equipment, machinery, furniture and furnishings.

4.3 Utilities. Tenant shall activate and use the utilities under accounts in Tenant's name. Tenant agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities unless Tenant installs at Tenant's expense the necessary equipment to handle such increased capacity, as determined by Tenant at Tenant's reasonable discretion.

4.4 Insurance. Tenant shall maintain the following insurance coverages: (a) commercial general liability insurance, including, but not limited to contractual liability, covering the Premises against claims for bodily injury, personal injury, and damage to property with minimum limits of Two Million Dollars (\$2,000,000) combined single limit; and (b) fire and other hazard insurance policies, on any buildings erected upon the Premises, in an amount equal to the full insurable value thereof (i.e., replacement cost, excluding excavation, footing and foundation costs). Any insurance required to be maintained by Tenant may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing blanket coverage to or for Tenant or its affiliates. Before taking possession of the Premises, Tenant shall provide Landlord with a certificate of insurance evidencing that such policies are in place.

5. **PERMITTED USE.** It is understood that during the first ten (10) years of the Term, Tenant's use of the Premises shall be solely for operating a fiber-optic communication system and delivering communication products and services including, but not limited to, voice video, data, and home security services over the system, and any related activities carried on in such a business. From and after the tenth anniversary of the Term, Tenant may use the Premises for any lawful purpose.

6. **USES PROHIBITED.** Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the building in which the Premises are located or any of its contents, or cause a cancellation of any insurance policy covering said building or any part thereof or any of its contents. Tenant

shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the buildings in which the Premises are located or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

7. **COMPLIANCE WITH LAW.** Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar bodies not or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. Landlord, at its sole cost, shall be responsible for any alterations or modifications necessary to ensure that the Premises, Buildings and any improvements comply as of the Closing Date with the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines promulgated thereunder (collectively, the "ADA") as all the same may be amended and supplemented from time to time. Tenant shall be responsible for ADA compliance after the Closing Date.

8. **HAZARDOUS SUBSTANCES AND TOXIC WASTE.** As used herein, the term "Hazardous Material" is defined as any hazardous or toxic substance, material or waste which now is or becomes regulated or restricted by any local, governmental authority, the State of Utah, or the United States Government. Tenant agrees to obey all laws and regulations concerning such Hazardous Materials and agrees to indemnify and hold Landlord harmless from and against all loss, claims, damages, suits (including reasonable attorneys' fees and costs) in connection with any Hazardous Material Tenant, its agents, employees, sublessees, concessionaires or others shall bring upon or release in the Premises. Notwithstanding the foregoing, Tenant shall have no responsibility for preexisting contamination or conditions at the Premises or for any cause of action, expense, damage, liability, claim or injury arising from the negligence or intentional act of Landlord or its agents, contractors and employees. In the event Tenant, in the normal course of operation of its business deals with the substances which may be considered Hazardous Material, Tenant shall be solely responsible for the proper use and disposal of such Hazardous Material in accordance with all applicable laws, and Tenant hereby agrees to indemnify Landlord with respect to the use and disposal of such Hazardous Materials (both during and after the Term) and shall provide Landlord with sufficient evidence of its compliance with the foregoing.

9. **ALTERATIONS AND ADDITIONS.** Tenant shall have the right to make or allow to be made alterations, additions or improvements to or of the Premises or any part thereof provided that Tenant shall deliver to Landlord reasonable notice of any material alterations, additions or improvements to the Premises. Without limiting Tenant's ability to make alterations, additions or improvements to or of said Premises, permanent alterations, additions, or improvement to or of said Premises that become and are a part of the realty at the termination of this Lease shall be surrendered with the Premises at the termination of the Lease.

10. **REPAIRS.** Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in a condition that meets or exceeds the condition of the Premises upon commencement of the Term of this Lease, normal wear and tear excepted, and repair, maintain, or replace, without limitation, any storefront, doors, window casements, glazing, and all plumbing, utility, and electrical systems, and shall be responsible for lawn maintenance and snow removal. Tenant shall, upon the expiration or earlier termination of this Lease hereof, surrender the Premises to the Landlord in a condition that meets or exceeds the condition of the Premises at the commencement of the Term of this Lease, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted, and additionally, upon such surrender, all plumbing, utility, electrical and HVAC systems in the Premises at that time shall be in a condition that meets or exceeds the condition of the Premises at the commencement of the Term of this Lease, normal wear and tear excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

11. **LIENS.** Tenant shall keep the Premises free from any liens arising out of any work performed or materials furnished on or to the Premises, federal or state taxes, or obligations incurred by or on behalf of Tenant.

12. **ASSIGNMENT AND SUBLETTING.**

12.1 Except as provided in Section 12.2, Tenant shall have the right to assign this Lease provided that Tenant delivers advance written notice to Landlord of any such assignment and the assignee agrees in writing to assume all of the obligations of Tenant hereunder. Tenant shall have the right to sublet the Premises or any part thereof, enter into license agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant provided that any such agreement shall not relieve Tenant of any of its obligations hereunder.

12.2 During the first ten (10) years of the Term, Tenant shall obtain Landlord's consent to any assignment of this Lease or sublease of the Premises if the use of the Premises by the assignee or sublessee, will be materially different than the use permitted under Section 4. Landlord shall not unreasonably withhold, delay or condition its consent.

13. **HOLD HARMLESS.** Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done permitted or suffered by the Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against any and all claims arising from and breach or default in the performance or any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, attorney's fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought against Landlord by reason of such claim. Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonable satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby agrees to insure against, and assumes all risk of, damage to property or injury to persons in, upon or about the Premises, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of any injury, casualty or accidents on or in the Premises.

Notwithstanding the foregoing, Tenant shall have no responsibility for any cause of action, expense, damage, liability, claim or injury arising from the negligence or intentional act of Landlord or its agents, contractors and employees.

14. **SUBROGATION.** Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss to the extent covered by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties.

15. **HOLDING OVER.** If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereto with the express written consent of Landlord, such occupancy shall be a tenancy from month to month.

16. **ENTRY BY LANDLORD.** Upon three (3) business days advance written notice to Tenant, Landlord reserves, and shall at any and all times have the right, except as provided herein, to enter the Premises to inspect the same, to show the Premises to prospective purchasers or tenants, to post notices of non-responsibility, to repair the Premises and any portion of the Buildings of which the Premises are a part that Landlord may deem necessary or desirable. Tenant shall have the right to have a representative accompany Landlord during any such entry of the Premises. Landlord agrees to treat and protect any proprietary information gained from any inspection as confidential information.

17. **TENANT'S DEFAULT.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

17.1 Tenant abandoning the Premises for a period of twelve (12) consecutive months and failing to maintain the Premises in accordance with Section 10 hereof.

17.2 The failure by Tenant to make any payment required pursuant to Section 4 hereof, other than Base Rent.

17.3 The failure by Tenant to keep current the policies of insurance required by Section 4.4 within thirty (30) days of receipt of written notice from Landlord.

17.4 The failure by Tenant to remove any tax or other liens within ninety (90) days.

17.5 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be performed by the Tenant.

17.6 The filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy not dismissed within ninety (90) days after it is begun.

Except as otherwise set forth in Sections 17.3, 17.5 and 17.6, to cure any other default, Tenant shall have sixty (60) days after receipt of written notice by Landlord to cure the default provided however, that if the nature of Tenant's default is such that more than sixty (60) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant promptly commences such cure and thereafter diligently prosecutes such cure to completion.



18. **LANDLORD'S REMEDIES.** Upon the occurrence of any of the events set forth in Section 17, Landlord shall have the option to take any or all of the following actions, without further notice or demand of any kind to Tenant, or to any guarantor of this Lease, or to any other person:

18.1 Landlord may immediately reenter and remove all persons and property from the Premises, storing such property in a public place, warehouse, or elsewhere at the cost and risk of the Tenant, all without service of notice or resort to legal process (unless required by law) and without being deemed guilty of, or liable in, trespass, forcible entry or in damages resulting from such reentry and removal. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given by Landlord to Tenant. All property of Tenant which is stored by Landlord pursuant hereto may be redeemed by Tenant within sixty (60) days after Landlord takes possession thereof upon payment to Landlord of all amounts due hereunder and of all cost incurred by Landlord in moving and storing such property.

18.2 Landlord may terminate this Lease immediately upon Tenant's failure to cure within the cure periods described in Section 17. In the event of such termination, Tenant agrees to immediately surrender possession of the Premises. Such termination shall not relieve Tenant of any obligations hereunder which has accrued prior to the date of such termination and in addition to such accrued rent and other obligations, Landlord may recover from Tenant all damages it has incurred by reason of Tenant's breach, including the cost of recovering the Premises and reasonable attorney's fees.

18.3 These remedies given to Landlord shall be cumulative and shall be in addition and supplemental to all other rights or remedies which Landlord may have at equity or under the laws then in force.

19. **DEFAULT BY LANDLORD.** Subject to the provisions in this Lease, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance, then Landlord shall not be in default if Landlord commenced performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

20. **CASUALTY.** If the Buildings or any of Tenant's other improvements on the Premises are damaged or destroyed during the Term by a casualty loss, Tenant at its option may elect to (a) rebuild and restore the Buildings and improvements, or (b) terminate this Lease by written notice to Landlord within ninety (90) days after the occurrence of such damage or destruction. Tenant shall have full use of and the right to apply any insurance proceeds available for such rebuilding and restoration. In the event of any such termination by Tenant, insurance proceeds from the insurance policy required under Section 4.4(b) shall be paid to Landlord by Tenant and this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination.

21. **PARKING.** During the Term, Landlord shall provide Tenant with at least four (4) parking stalls for Tenant and its employees, customers and subcontractors. Tenant and its employees, customers and subcontractors shall have the right to utilize the parking areas located on the Land. During the Term, Landlord may relocate the designated parking areas to other sites in close proximity to the Buildings. The new parking areas will include an equivalent number of parking stalls as the old parking areas. Landlord will give the Tenant advance notice of any change in designated parking areas and the parties will coordinate in a manner to minimize disruption to business operations. With respect to any vehicles owned or operated by Tenant or Tenant's employees, customers and contractors that are parked in parking areas that have not been designated or approved for such use by Landlord. Landlord shall have the right to (1) remove any such vehicles; and/or (2) assess Tenant a parking fee of \$200 per parking stall per month.

22. **SIGNS.** Tenant may affix and maintain such signs, names, and descriptive materials as shall be approved by the applicable governmental authority. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof. Such signs must comply with any sign criteria governed by any applicable city or country laws, regulations and ordinances. Any signs erected on the Premises by Tenant shall be removed, and all damage corrected by Tenant upon termination of this Lease.

23. **BROKERS.** Each party warrants to the other that no brokerage fees or commissions are due as a result of this Lease arising by virtue of actual or claimed agreements or obligations and each party agrees to indemnify and hold the other harmless from and against any and all claims, liabilities and expense (including reasonable attorney's fees) imposed upon, asserted or incurred as a consequence of any breach of this representation.

#### 24. **CONDEMNATION**

24.1 Total Taking. If the entire Premises shall be taken under power of eminent domain by any public or private authority or conveyed to said authority in lieu of such taking, then this Lease shall terminate on the date of such taking or conveyance, subject, however, to the right of Tenant, at its election, (i) to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part, as Tenant may determine, of the period between the date of such taking or conveyance and the date when possession of the Premises shall be taken by or conveyed to the appropriating authority; or (ii) to keep this Lease in full force and effect, if termination hereof would reduce any award to Tenant for a taking. In the event of any such termination, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination.

24.2 Partial Taking. If any taking under the power of eminent domain by a public or private authority or any conveyance by Landlord in lieu thereof shall result in:

- (a) any reduction of the floor area of the Buildings;

(b) a taking of a portion of the access roads to the Premises which, in Tenant's discretion, impedes or interferes with access to the Premises or affects the conduct of Tenant's business as theretofore conducted at the Premises;

(c) the reduction of the parking serving the Premises;

(d) the closing of any entrance or exit to the Premises; or

(e) a material effect on Tenant's ability to operate its business;

(f) then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within sixty (60) days after Tenant shall receive actual written notice of such taking or conveyance. In the event of termination by Tenant under the provisions of this Section 24.2, this Lease shall terminate on the date of such taking, subject to the right of Tenant, at its election, to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part, as Tenant may determine, of the period between the date of such taking and the date when possession of the Premises shall be taken by the appropriating authority. In the event of any such termination, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties, or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. Notwithstanding anything in the foregoing to the contrary, if any condemnation award to Tenant for any taking would be reduced by the termination of this Lease with respect to a taking, as hereinabove set forth, then Tenant may elect to keep this Lease in full force and effect so as to obtain the highest possible award from the condemning authority.

24.3 Restoration. In the event of a taking or conveyance in respect of which Tenant shall not have the right to elect to terminate this Lease or, in the event Tenant, having such right, shall not elect to terminate this Lease, Tenant may elect to restore the remaining portions of the Premises.

24.4 Award. In the event of a condemnation of any portion of the Premises and the Lease is not terminated, the award paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows: (a) Tenant shall receive so much of the award as is necessary to restore the Premises and improvements; and (b) Landlord shall receive the balance, if any, of the award. In the event of a condemnation and this Lease is terminated as herein provided, the award paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows: (c) to the extent the award is allocable to the Premises and/or the leasehold estate under this Lease, including, without limitation, loss of business and goodwill, Tenant improvements, depreciation of merchandise and fixtures, fixture and equipment damage, removal and reinstallation costs, moving expenses, to Tenant the amount of the award for the value of the Premises and/or such leasehold estate taken; and (d) the balance of the award to Landlord.

24.5 Tenant Right to Participate. Whether or not the Lease is terminated pursuant to Section 24.1 or Section 24.2 above, Tenant shall be entitled to actively participate in and appear in any proceedings, and any negotiations with respect to a conveyance in lieu of such

proceedings, either separately or in conjunction with Landlord. Tenant's written consent shall be required for the compromise or settlement of any action to condemn or fixing compensation therefor. Landlord shall promptly deliver to Tenant copies of all documents and correspondence with regard to the condemnation and condemnation proceedings, and shall give advance notice to Tenant of any meetings with the condemning authority, its agents or representatives, and permit Tenant to attend such meetings. Landlord shall reasonably consult with Tenant so that reasonable business accommodations, if possible, can be made for Tenant as part of any consent or agreement concerning the condemnation or the manner and form in which such appropriation shall occur.

## 25. PURCHASE OPTION.

25.1 Option; Term. Landlord hereby grants to Tenant an option to purchase the Premises ("**Purchase Option**"). The term of the Purchase Option shall commence on the date that (i) the Subdivision becomes final without appeal and without being subject to further appeal; and (ii) Landlord's Repurchase Option in the Network Services Agreement expires, is terminated or otherwise waived or forfeited in accordance with the terms of the Network Services Agreement entered into between Landlord and Tenant (the "**Purchase Option Start Date**"). The Purchase Option in this Section 25 shall expire on the tenth (10<sup>th</sup>) anniversary following the Purchase Option Start Date (the "**Purchase Option Term**").

25.2 Purchase Price; Closing. The purchase price (the "**Purchase Price**") for the Premises shall be an amount equal to the costs normally incurred by a seller in connection with the Closing (defined herein) as set forth in Section 25.5 of this Lease. Base Rent paid under this Lease shall not be applicable to the Purchase Price. Tenant shall be entitled to exercise the Purchase Option by delivering written notice (the "**Option Notice**") to Landlord at any time during the Purchase Option Term, whereupon the closing (the "**Closing**") of the sale of the Premises shall take within thirty (30) days from the date of the Option Notice. At Closing, Tenant shall pay to Landlord the Purchase Price in certified funds. The Closing shall take place through an escrow established at a title company (the "**Title Company**") selected by Tenant.

25.3 Inspection. Landlord agrees to deliver to Buyer, within ten (10) days from the Option Notice all documents or information relating to Premises, including environmental studies, title opinions, title insurance policies, surveys, soils reports, architectural and engineering studies, grading plans, topographical maps, and notices from governmental agencies pertaining to the Premises or Landlord's operation thereof (collectively, "**Documents**"), if any, which are in Landlord's possession or control. If Tenant exercises the Purchase Option and purchase the Premises, Tenant shall be deemed to have the purchase the property on an "as is" basis upon its own review and inspection of the Premises.

25.4 Title. At Closing, Landlord shall convey good and marketable fee simple title in and to the Premises to Tenant, by special warranty deed, free and clear of any mortgages, deeds of trust, deeds to secure debt, mechanics' or materialmen's liens, judgment liens or similar monetary liens and encumbrances. Landlord shall deliver, as of the date of the Closing, vacant possession of the Premises free and clear of any tenants or other parties in possession of all or any portion of the Premises and/or claims to possession of all or any portion of the Premises.

Landlord shall cooperate with Tenant, at Landlord's expense, to clear any unacceptable title matters encumbering the Premises.

25.5 Closing Costs. On the date of Closing, Landlord shall provide Tenant with a standard owner's policy of title insurance covering the Premises in an amount reasonably determined by Tenant. Tenant shall pay all recording fees arising from the sale of the Premises. All other charges of the closing of the sale of the Premises shall be shared equally between Landlord and Tenant, with each party paying its own attorneys' fees.

## 26. GENERAL PROVISIONS.

26.1 Defined Terms. Unless otherwise indicated herein, all capitalized terms used in this Lease shall have the definitions assigned to them in the Purchase Agreement.

26.2 No Presumption. This Lease shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either party.

26.3 Recording. This Lease shall not be recorded. Upon Tenant's request, Landlord agrees to execute a Memorandum of this Lease in the form attached hereto as Exhibit D which Tenant may record with the Utah County Recorder.

26.4 Quiet Enjoyment. Landlord covenants that Tenant, on performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

26.5 Time. Time is of the essence under this Lease and each and all of its provisions in which performance is a factor.

26.6 Successors and Assigns. The covenants and conditions herein contained, subject to the limitations and restrictions as to assignment, apply to the heirs, successors, executors, administrators and assigns of the parties hereto.

26.7 Quiet Possession. Upon Tenant or Tenant's assignee paying the sums reserved hereunder, and observing and performing all of the covenants, conditions and provisions on tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term, subject to all the provisions of this Lease and excluding acts of God, including, but not necessarily limited to lightning, earthquakes, fires, explosions, floods, other natural catastrophes, sabotage, utility outages, terrorist acts, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots or civil disturbances.

26.8 Late Charges. If Tenant fails to pay sums due hereunder when due (except Base Rent), such overdue amount shall bear interest at the rate of one and one-half percent (1.5%) per month until paid.

26.9 Prior Agreements. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of

this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

26.10 Choice of Law. This Lease shall be governed by the laws of the State of Utah without regard to conflicts of law principles that would require the application of any other law.

26.11 Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs and fees incurred in appeal or in bankruptcy court, in such amount as the court may adjudge reasonable as attorneys' fees. In addition, should it be necessary for a party to employ legal counsel to enforce any of the provisions herein contained, the other party agrees to pay all attorneys' fees and court costs reasonably incurred.

26.12 Notices. Any notices under this Lease shall be given in writing by registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

To Landlord:

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

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

Provo City Attorney's Office  
PO Box 1849  
Provo, UT 84603  
ATTN: City Attorney

To Tenant:

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):

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

or to such other addresses as may hereafter be designated in writing by the respective parties hereto. The time of rendition or giving of notice shall be deemed to be the time when the same is actually received or delivery is attempted by certified or registered mail.

26.13 Authority of Tenant and Landlord. Each individual executing this Lease on behalf of the parties represents and warrants that such individual is duly authorized to execute and deliver this Lease in accordance with the bylaws or other governing documents, and that this Lease is binding upon said party.

26.14 Counterparts. This Lease may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, this Network Operations Center Lease Agreement has been executed by the parties hereto to be effective as of the Effective Date.

**LANDLORD:**

PROVO CITY CORPORATION, a Utah municipal corporation

By: \_\_\_\_\_

John R. Curtis, as Mayor

**TENANT:**

GOOGLE FIBER UTAH, LLC, a Utah limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Acknowledgment of Landlord**

STATE OF UTAH                                    )  
  :SS  
COUNTY OF UTAH                            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by John R. Curtis, as Mayor of PROVO CITY CORPORATION, a Utah municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_



**Acknowledgment of Tenant**

STATE OF \_\_\_\_\_ )  
  :SS  
COUNTY OF \_\_\_\_\_ )

    The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2013, by \_\_\_\_\_, as \_\_\_\_\_ of  
GOOGLE FIBER UTAH, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A  
TO  
NETWORK OPERATION CENTER LEASE AGREEMENT**

---

(Legal Description of Land)

[To be attached at time of execution]

**EXHIBIT B  
TO  
NETWORK OPERATION CENTER LEASE AGREEMENT**

---

(Description of Premises)

All buildings and structures (the “**Buildings**”) constructed on the Land located at 744 North 300 West, Provo, Utah, as shown on the attached plot plan;

(b) All leasehold improvements located at or on the Land or the Buildings, including, but not limited to, the specific parking spaces indicated on the attached plot plan. Additional parking spaces may be included within this Lease, upon advance written agreement of the parties as to additional rent to be paid;

(c) All trade fixtures that are physically attached to the Buildings, including, but not limited to racks and shelving; provided, however, that all computer, fiber optic, wiring and other communications equipment shall not be considered “trade fixtures” for purposes of this paragraph;

(d) All furnishings located in the Buildings: provided, however, that all computer, fiber optic, wiring and other communications equipment shall not be considered “furnishings” for purposes of this paragraph; and

(e) All heating, cooling, electrical, plumbing, mechanical, fire sprinkler, and all other equipment and systems of the Buildings, including, but not limited to, building electrical backup systems; provided, however, that all computer, fiber optic, wiring and other communications equipment shall not be considered “other equipment and systems of the Buildings” for purposes of this paragraph.

**EXHIBIT C  
TO  
NETWORK OPERATION CENTER LEASE AGREEMENT**

---

(Survey of Land)

*To Be Attached*

**EXHIBIT D  
TO  
NETWORK OPERATION CENTER LEASE AGREEMENT**

---

(Form of Memorandum of Lease)

**WHEN RECORDED, RETURN TO:**

PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attention: Kerry L. Owens

---

Space above for County Recorder's Use

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE ("**Memorandum**"), is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 (the "**Effective Date**"), by and between PROVO CITY CORPORATION, a Utah municipal corporation (together with its successors and assigns, the "**Landlord**"), and GOOGLE FIBER UTAH, LLC, a Utah limited liability company (together with its successors and assigns, the "**Tenant**"), with respect to the following:

2. TERM AND PREMISES. For the term of ninety nine (99) years and upon the provisions set forth in that certain Network Operation Center Lease Agreement dated \_\_\_\_\_, 2013 between Landlord and Tenant (the "**Lease**"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord those certain premises (the "**Premises**") located in Utah County, Utah as more particularly described on Exhibit "A" attached hereto.

2. OPTION TO PURCHASE. Reference is particularly made to Section 25 of the Lease wherein Tenant has the right to purchase the Premises pursuant to the terms and conditions set forth therein.

3. PURPOSE OF MEMORANDUM OF LEASE. This Memorandum of Lease is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control.

4. ADDITIONAL INFORMATION. Additional information regarding the Lease may be obtained by contacting any of the following:

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

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

Provo City Attorney's Office  
PO Box 1849  
Provo, UT 84603  
ATTN: City Attorney

To Tenant: 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):

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

5. COUNTERPARTS. This Memorandum may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this instrument as of the Effective Date.

**LANDLORD:**

PROVO CITY CORPORATION, a  
Utah municipal corporation

By: \_\_\_\_\_  
John R. Curtis, as Mayor

**TENANT:**

GOOGLE FIBER UTAH, LLC, a  
Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Acknowledgment of Landlord**

STATE OF UTAH )  
 :SS  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by John R. Curtis, as Mayor of PROVO CITY CORPORATION, a Utah municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment of Tenant**

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, as \_\_\_\_\_ of GOOGLE FIBER UTAH, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_



**EXHIBIT A  
TO  
MEMORANDUM OF LEASE**

---

LEGAL DESCRIPTION

[To be attached at time of execution]

**Exhibit D - Pole Attachment Agreement**

See attached.

## POLE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT

This Pole Attachment and Conduit Occupancy Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, 2013 (the “Effective Date”), between Provo City Corporation, a municipal corporation organized under the laws of the State of Utah, (“Licensor”) and Google Fiber Utah, LLC, a Utah limited liability company, (“Licensee”) (each a “Party” and collectively, the “Parties”).

### WITNESSETH

WHEREAS, Licensor is engaged in the business of providing electric distribution service to customers in Provo, Utah; and

WHEREAS, Licensor owns and operates Poles or Pole lines upon or along highways, streets or alleys and other public or private places for the purpose of supporting the wires and associated facilities used in Licensor’s business; and

WHEREAS, Licensor owns and operates a network of Conduit and Duct, some of which is for the purpose of routing electrical wiring used in Licensor’s business, and some of which is intended for telecommunications purposes; and

WHEREAS, Licensor desires to provide Licensee with the non-exclusive use of space on its Poles, Conduit, and Duct for the provision of communications services provided to residents and businesses located in Provo, Utah; and

WHEREAS, Licensor desires to continue the safe and reliable transmission and distribution of electricity to Licensor’s customers.

NOW, THEREFORE, in consideration of the mutual covenants and agreements made and contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

#### Section 1.01 Definitions

- (a) “**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 a Party; and “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; (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.
- (b) “**Attachment(s)**” means all equipment, and the devices used to attach the equipment, of Licensee within Licensee’s allocated pole attachment space or placed in Licensor’s Conduit System. A new or existing service wire drop that is attached to the same pole as an existing attachment of Licensee is considered a component of the existing attachment for purposes of this definition. Additional equipment that is placed within Licensee’s existing attachment space, and equipment

placed in the unusable space, which is used in conjunction with the attachments, is not an additional pole attachment. All equipment and devices shall meet applicable code and contractual requirements. Attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

- (c) “**Attachment Space**” means the space on a Pole above the minimum grade level to the top of the Pole, which includes the space occupied by Licensor owner and Attachment Space will be determined based on actual Pole dimensions, with typical dimensions expected to be approximately as follows:
- (i) Average Pole height equals 37.5 feet.
  - (ii) Usable space per Pole equals 13.5 feet.
  - (iii) Unusable space per Pole equals 24.0 feet.
  - (iv) Space used by an attaching entity:
    - 1) An electric Pole attachment equals 7.5 feet.
    - 2) Licensee’s Pole attachment equals 1.0 foot.
- (d) “**Audit**” means a periodic examination of Licensor’s Poles, or Conduit and Duct occupied by Licensee and any of Licensee’s Attachments or Equipment attached to such Poles, Conduit or Duct for the purpose of (i) verifying the presence or location of all Attachments and other Equipment of Licensee, or (ii) determining whether Licensee is in compliance with the requirements and specifications of Section 3.09 of this Agreement or any other obligation of Licensee under this Agreement.
- (e) “**Conduit**” means a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed. Unless expressly stated, Conduit does not include “Electric Conduit”, which is Conduit containing Licensor’s current bearing Equipment.
- (f) “**Conduit System**” means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term refers to Conduit Systems owned or controlled by Licensor.
- (g) “**Confidential Information**” means 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 this Agreement and Licensee’s Attachments.
- (h) “**Duct**” means a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Agreement, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels.
- (i) “**Electric Facilities**” means Licensor’s Equipment and Licensor’s Poles.
- (j) “**Electric Utility Space**” means the space on a Pole above and including Licensor’s Equipment

purposed for the provision of electricity.

- (k) “**Equipment**” means all devices, articles or structures necessary to operate the respective businesses of the Parties, as such businesses may exist as of the Effective Date and as such businesses may evolve, develop, or change at any time while this Agreement remains in effect, including, but not limited to, antennae, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories.
- (l) “**Fee Schedule**” means the fees and charges set forth in Licensor’s Pole Attachment and Conduit Occupancy Fee Schedule, attached hereto as Exhibit A.
- (m) “**Handholes**” means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Equipment in a Conduit. A Handhole is too small to permit personnel to physically enter.
- (n) “**Inner-Duct**” means a pathway created by subdividing a Duct into smaller channels.
- (o) “**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 other 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.
- (p) “**Make Ready Work**” means the changes to be made to Licensor’s Poles, its own Attachments, the Attachments of other attaching entities, or the existing additional equipment associated with such Attachments, which changes may be needed to accommodate Licensee’s proposed Attachment. Such make-ready work is to be approved by Licensor and performed by Licensee’s employees, Licensor’s employees, a certified contractor approved by Licensor but employed by Licensee, or a third party. Make Ready Work that involves Licensor’s Electric Facilities shall be done by Licensor, unless otherwise approved by Licensor. This definition includes all engineering, inspection, design, planning, construction, or other work reasonably necessary for the installation of Licensee’s Attachments on the Poles, including without limitation, work related to transfers, rearrangements and replacements of existing Poles or Equipment, and the addition of new Poles or Equipment, and the rearrangement of third party pole attachments.
- (q) “**Manhole**” means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Equipment in a Conduit.
- (r) “**National Electrical Safety Code**” or “**NESC**” means the current edition, and any supplements thereto and revisions or replacements thereof, of the publication so named, published by the Institute of Electrical and Electronics Engineers, Inc., for the purpose of safeguarding persons and

property during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

- (s) “**Non-recurring Charges**” means legally authorized and identifiable amounts payable by Licensee under this Agreement other than rental charges.
- (t) “**Pole**” means a utility pole, excluding towers, used by Licensor to support mainly overhead distribution wires or cables.

#### Section 1.02 Other Interpretative Provisions

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Section, Article, clause, Schedule, Exhibit and Appendix references are to this Agreement unless otherwise specified.
- (c) The terms “including” and “include” are not limiting and mean “including without limitation” and “include without limitation.”
- (d) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each means “to but excluding,” and the word “through” means “to and including.”
- (e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified.
- (f) Any reference herein to any person or entity shall be construed to include such person or entity’s successors and permitted assigns.
- (g) Any reference herein to “year,” “month” or “day” shall mean a calendar year, month, or day unless otherwise specified.

## **ARTICLE II. SCOPE OF AGREEMENT**

### Section 2.01 Poles; Geographic Scope

This Agreement shall cover all of Licensor’s Poles, which are presently used, as well as Poles which now exist or which shall hereafter be erected within Provo, Utah.

## Section 2.02 Conduit and Duct

This Agreement shall cover all of Licensor's Conduits and Ducts which are presently used, which now exist or which shall hereafter be constructed or obtained within Provo, Utah. This Agreement shall also cover only that portion of Licensor's Electric Conduit that contains telecommunications fiber as of the Effective Date.

## Section 2.03 Exclusions

This Agreement applies to the use of Licensor's Poles, Conduits, and Ducts only. Licensee's use of electric transmission facilities, other than Poles, Conduits, and Ducts, is expressly excluded from this Agreement, and nothing in this Agreement will be construed to authorize Licensee to use any such facilities.

## Section 2.04 Attachments; Purpose

Licensee's use of Licensor's Poles, Conduits, and Ducts shall be confined to the Attachments, which Licensor has granted Licensee written permission to install or as otherwise provided pursuant to the terms and conditions of this Agreement.

## Section 2.05 Reservation of Space

Licensor may reserve space on its Poles for electric distribution cables if such reservation is consistent with a development plan that reasonably and specifically identifies a need for that space in the provision of its core utility service. Licensor shall inform Licensee that such a reservation exists in Licensor's response to Licensee's application to place an Attachment on a Pole or set of Poles where Licensor has reserved space pursuant to a specific development plan. In the event that there is no other usable space on the Pole, Licensor shall permit Licensee to use its reserved space until such time as Licensor has an actual need for that space, when Licensor may recover the reserved space for its own use. Licensor shall give Licensee commercially reasonable notice of the reclamation of space as well as the opportunity to make alternate arrangements, if available, including but not limited to allowing Licensee to pay for any reasonable modifications needed to continue to accommodate the Attachments that would otherwise be displaced, including replacement of the affected Pole.

## Section 2.06 Discrimination

Licensor shall treat Licensee materially no less favorably than it treats other attachers to its Poles, Duct, and Conduits. In the event that Licensor makes available any terms or conditions materially more favorable to one or more third party attacher, Licensor shall promptly make those same terms available to Licensee. Upon Licensee's request, Licensor shall provide Licensee with a copy of all agreements where Licensor makes access to its Poles, Ducts, and Conduits available to third parties.

# **ARTICLE III. USE OF POLES**

## Section 3.01 Application for Permission to Install Attachment

With the exception of certain customer service drops as specified in Section 3.06 below, before Licensee places an Attachment upon any of Licensor's Poles, Licensee shall submit a Pole Attachment application to Licensor in writing. An application may be denied if:

- (a) The applicant fails to submit a complete application, provided that Licensor has notified Licensee that the application is incomplete and provided Licensee with a reasonable period of time to make the application complete;

- (b) The applicant fails to supplement its application with additional information reasonably requested by Licensor or otherwise cooperate with Licensor as reasonably requested in Licensor's evaluation of the application;
- (c) The applicant fails to pay fees as set forth on Exhibit A hereto as required under the terms of this Agreement, including any applicable notice and cure periods;
- (d) The proposed Attachments are of excessive size or weight or would otherwise subject Licensor's Electric Facilities to unacceptable levels of additional stress, as measured by applicable safety codes, provided that such application will not be denied where Licensee agrees to pay for such improvements as are necessary to eliminate the threat to the safety and reliability of Licensor's facilities;
- (e) Approval will jeopardize the reliability or integrity of Licensor's electric system or Electric Facilities, provided that such application will not be denied where Licensee agrees to pay for such improvements as are necessary to eliminate the threat to the reliability and integrity of Licensor's facilities;
- (f) Approval will present a safety hazard to Licensor's employees or the public, provided that such application will not be denied where Licensee agrees to pay for such improvements as are necessary to eliminate the safety hazard; or
- (g) Approval will require a change, upgrade or addition to Licensor's Electric Facilities, provided that such application will not be denied where Licensee agrees to pay for such change, upgrade, or addition.

If Licensor rejects the application, Licensor shall notify Licensee of the specific reason(s) for rejecting such application within fifteen (15) days. No Pole Attachment application is required for any Attachments existing on the Effective Date.

### Section 3.02 Form of Application

Licensee shall make its written application to Licensor at the address set forth in Article XIII below. The written application form is attached hereto as Exhibit B and may be revised from time to time.

### Section 3.03 Content of Application

Licensee's application shall contain the following information: (i) the specific Equipment to be installed; (ii) the map number (to the extent that it is identifiable or provided by Licensor and part of the Pole number); (iii) the Pole numbers (to the extent that the Pole numbers are on the Pole and identifiable); (iv) street address of nearest physical location identifier of the Poles in question; (v) the space desired on each Pole; and (vi) any additional information requested by Licensor as reasonably necessary to properly review the request for Attachment, including, but not limited to, that information described in Exhibit B. Licensor shall not unreasonably request such additional information and Licensee shall not unreasonably refuse to provide such additional information.

### Section 3.04 Overlapping

With the exception of construction on existing slack spans or on existing messengers attached to Poles carrying voltages at or above 34.5 kV, Licensee may, during the period of intended completion of the



network upgrade, as otherwise agreed between the parties, overlash a single ninety-six (96) or fewer count fiber cable, or coaxial cable of equivalent diameter(s) and weight(s) without submitting an application. For these specific instances of overlashing, Licensee will provide Licensor with Pole numbers (or other information identifying the Poles) no less than twenty (20) days prior to such overlashing. Such notice shall include an engineering analysis of the proposed overlashing demonstrating that the proposed overlashing will not pose a danger to Licensor's Electric Facilities. Within ten (10) days of receipt of said notice, Licensor may notify Licensee of an objection to the proposed overlashing and may require an application to be submitted for Licensor's review. Licensor shall not unreasonably demand such an application. Any other overlashing requires Licensee to submit an application to Licensor and receive approval prior to installation.

### Section 3.05 Licensee's Right to Install Equipment

To the extent that any installation, maintenance, and use of the Equipment is subject to an application requirement hereunder, Licensee shall have the right, subject to the terms of this Agreement, to install, maintain, and use the Equipment only as specified in the approved application, upon the Pole(s) identified therein.

### Section 3.06 Service Drops

Licensee shall have the right to install service drops, without prior approval by or prior notification to Licensor. For service drops where Licensee already has an approved Attachment (including service drops made from Poles adjacent to a Pole with an authorized Attachment), Licensee's service drop shall not incur any additional rental fees. For service drops where Licensee does not already have an approved Attachment (other than service drops made from Poles adjacent to a Pole with an authorized Attachment), Licensee will incur a fee as set forth in Section 6.01 below, and Licensee must include a completed application in the form of the attached Exhibit B with its notification of the relevant service drop, provided that such application will not require approval from Licensor. No notification or approval shall be required for service drops that are not directly attached to Poles.

### Section 3.07 Make Ready Work

Attachment applications shall be handled in accordance with the following:

- (a) Licensor shall respond to Licensee's application within thirty (30) days of receipt of a complete application. Licensee shall be free to request a two-alternative make ready bid that includes an estimate for self-building as an alternative to Licensor's performance of Make Ready Work. Under the self-building alternative, the Licensor will identify what Make Ready Work it will perform, if any, with an associated cost estimate, and also identify what Make Ready Work, if any, the Licensor is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option. Licensor's response shall include a survey of what time and materials are necessary as part of the Make Ready Work ("Make Ready Survey") and an estimate of the Make Ready Work ("Make Ready Estimate") necessary to prepare the Poles for Licensee's Attachments (together the "Make Ready Documents"). If a response to Licensee's application is not issued by Licensor within thirty (30) days of receipt, Licensee may retain a certified contractor approved by Licensor pursuant to Section 3.15 to conduct a Make Ready Survey at the cost of Licensor. A Make Ready Survey conducted by Licensee's contractor must be submitted to Licensor for review and approval prior to performing any Make Ready Work. Within thirty (30) days of submission of Licensee's contractor's Make Ready Survey, Licensor shall respond or said Make Ready Survey shall be deemed accepted and Licensee's certified contractor approved by

Licensee may begin the Make Ready Work.

- (b) Within thirty (30) days of receipt of Licensor's Make Ready Documents, Licensee shall notify Licensor if Licensee desires Licensor to proceed with the Make Ready Work in accordance with Licensor's Make Ready Documents, including Licensor's portion of the work, if any, under a self-build alternative. If within thirty (30) days of receipt of Licensor's Make Ready Documents, (i) Licensee's contractor does not commence the Make Ready Work in accordance with a self-build option, if any, and (ii) Licensee does not request that Licensor proceed with the Make Ready Work, Licensor may, at its discretion, require resubmission of Licensee's application.
- (c) In the event that the Make Ready Survey identifies work necessary to remedy any Pole's existing non-compliance with applicable safety codes (the "Safety Work"), Licensor will perform all Safety Work within thirty (30) days of completion of Licensor's Make Ready Survey.
- (d) Upon completion of all work performed by Licensor pursuant to subparagraphs (b) and (c), Licensor shall notify Licensee in writing ("Notice of Completion").
- (e) If Licensor is going to perform Make Ready Work pursuant to subparagraph (b), Licensee shall pay in advance, within thirty (30) days of requesting that Licensor proceed, eighty percent (80%) of Licensor's costs for the Make Ready Work specified by Licensor's Make Ready Estimate. Within thirty (30) days of receipt of Licensor's Notice of Completion, Licensee will reimburse Licensor any reasonable and documented costs for the Make Ready Work in addition to the amount already paid. Notwithstanding anything to the contrary in the foregoing, all costs associated with Safety Work will be paid by Licensor. Licensor will reimburse Licensee within thirty (30) days of completion of the Make Ready Work in the event that reasonable and documented costs are less than the amount paid by Licensee.
- (f) Within sixty (60) days of issuance of Licensee's request to proceed, Licensor shall complete its Make Ready Work pursuant to subparagraph (b), if any. If Licensor performs Make Ready Work pursuant to subparagraphs (b) or (c), then within sixty (60) days of issuance of Licensor's Notice of Completion, Licensee shall complete its approved Make Ready Work and the installation of the Attachments. If Licensor does not perform Make Ready Work pursuant to subparagraphs (b) or (c), then within ninety (90) days of issuance of the Make Ready Documents, Licensee shall complete its approved Make Ready Work and the installation of the Attachments.
- (g) Upon completion of the Attachment installation, Licensee shall notify Licensor in writing. Licensor will then, within thirty (30) days, inspect the work and notify Licensee of any failure of the Attachment installation to comply with the Make Ready Survey or applicable safety codes. Licensee shall make such changes to the Make Ready Work or its Attachments as are required within twenty-one (21) days of such notice, provided that Licensor will also remedy any Make Ready Work that it performed and that contributed to the failed inspection within twenty-one (21) days of such notice.
- (h) Licensee shall attempt to coordinate Make Ready Work needing to be performed by any third party attachers with pre-existing attachments to Licensor's Poles covered by Licensee's application, including providing all third party attachers with attachments to the Poles covered by Licensee's application a copy of the Make Ready Survey within five (5) days of (1) receipt of the Make Ready Documents or (2) issuance of Licensee's request to proceed, as applicable. In the event that Licensee has attempted to coordinate Make Ready Work with third party attachers but

such third party attachers are not timely undertaking or completing such Make Ready Work, Licensor will make all reasonable efforts to coordinate with the third party attachers and to cause the third party attachers to complete such work. In the event any such third party fails to complete its Make Ready Work within the ninety (90) day period, Licensor shall (at Licensee's sole cost and expense) complete such work within (ten) 10 days from the end of the ninety day (90) day period.

### Section 3.08 Labeling of Poles and Attachments

Licensor shall label its poles to indicate ownership. Licensor shall label any new pole installed, after the Effective Date of this Agreement, immediately upon installation. Poles installed prior to the Effective Date of this Agreement shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership. Licensee shall label its Pole Attachments to indicate ownership. Pole Attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility Pole. Licensee shall label any new Pole Attachment installed after the Effective Date of this Agreement immediately upon installation. Pole Attachments installed prior to the Effective Date of this Agreement shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable. Electrical power pole attachments do not need to be labeled. Upon Licensee's request, Licensor shall promptly provide current Pole numbers and locations to Licensee.

### Section 3.09 Conformance to Requirements and Specifications

The use by Licensee of Licensor's Electric Facilities shall at all times comply with all applicable federal, Utah, and local laws, rules, and regulations, the requirements of the National Electrical Code and the NESC, and Licensor's reasonable specifications and construction guidelines.

### Section 3.10 Access to Electric Utility Space

In the event that Licensee wishes to enter the Electric Utility Space on Licensor's Poles for any purpose, Licensee must receive prior written approval from Licensor, which may be subject to reasonable additional fees. When the Equipment sought to be installed on a Pole bearing electric facilities is a wireless antenna, which is to be installed at the Pole top or otherwise in the Electric Utility Space, Licensee shall make arrangements with Licensor for installation of the wireless antenna by a qualified third party electrical contractor pre-approved by Licensor (an "Approved Electrical Contractor"). Licensor shall provide a list of no less than three Approved Electrical Contractors. Licensee may request a specific third party electric contractor be added to Licensor's list of Approved Electrical Contractors. Licensor shall respond to such request within ten (10) days and shall not unreasonably refuse to add an electrical contractor requested by Licensee to the list of Approved Electrical Contractors, such addition to be made within such time period.

### Section 3.11 Grounding

If Licensee requires grounding on an existing Pole where a grounding conductor does not exist, Licensee shall request Licensor to install grounding at the sole expense of Licensee. If Licensor is unable to install the requested grounding within thirty (30) days of the date requested, Licensee may hire an Approved Electrical Contractor to perform this work. Licensee, its employees and its contractors, shall at all times exercise Licensee's rights and perform Licensee's responsibilities under the terms of this Agreement in a manner that treats all Electric Facilities of Licensor as energized at all times.

### Section 3.12 Nonconforming Equipment

If any Attachment is not, or has not been, placed and maintained in accordance with Section 3.09 above, upon notice by Licensor, Licensee shall use commercially reasonable efforts to timely perform all work reasonably necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed under a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below). Any such work will be performed at Licensee's sole risk and expense. Licensor reserves the right to perform or authorize work necessary to bring Licensee's Attachments into compliance upon Licensee's failure to timely do so. Licensor will notify Licensee electronically or in writing prior to performing such work.

However, if Licensor determines in good faith that such conditions (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of Licensor's or other Pole attachers' service obligations; or (iii) pose an immediate threat to the integrity of Licensor's or other Pole attachers' Poles or equipment (each, an "Emergency"), Licensor may perform or authorize such work and/or take such action that it deems necessary (acting reasonably) without first giving written or electronic notice to Licensee and without subjecting itself to any liability, except to the extent of Licensor's negligence or willful misconduct. As soon as practicable thereafter, Licensor will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for the accommodation of any affected Attachments. Licensee shall be responsible for paying Licensor or other Pole attachers, if applicable, upon demand, for all reasonable and documented costs actually incurred by Licensor or other Pole attachers for all work, action, and accommodation performed by Licensor or other Pole attachers under this Section.

### Section 3.13 Time to Complete Installation

Except as otherwise agreed to by the Parties in good faith, and subject to additional time caused by delays of third party attachers (so long as Licensee is in material compliance with 3.07(h)), Licensee shall complete the installation of its Attachments upon the Pole(s) covered by each approved application within ninety (90) days of approval by Licensor. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Licensor to place such Attachments upon Licensor's Pole or Poles shall terminate and Licensee shall not have the right to place such Attachments upon the Pole or Poles without first reapplying for and receiving permission to do so, all as prescribed in Section 1.01(a) above as applicable to the initial application.

### Section 3.14 Subsequent Attachment by Third Party Attachers

If at any time subsequent to Licensee's Attachment to a Pole, a third party requests that Licensor provide access to that same Pole(s) the following procedure shall apply:

- (a) If it is determined that Make Ready Work on Licensee's Attachment(s) will be necessary to accommodate the third party's equipment, the Licensee will provide an estimate to the attaching third party for Licensee or its contractor to complete the Make Ready Work, or, in Licensee's sole discretion, for Licensor or its contractor to complete the Make Ready Work.
- (b) Licensee shall be solely responsible for negotiating with persons or entities other than Licensor for the rearrangement of Licensee's Attachment or Equipment and, except where such rearrangement is for the benefit of Licensee, Licensee shall not be responsible for paying any charges attributable to the rearrangement of such Attachment or Equipment.

- (c) Licensee shall make all rearrangements of its Equipment within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or service denial to Licensee's customers.

If at any time subsequent to Licensee's placement of Equipment in Duct or Conduit, a third party requests that Licensor provide access to that same Duct or Conduit, Licensor will promptly notify Licensee.

### Section 3.15 Certified Contractors

Licensee shall perform any Make Ready Survey, Estimate or Work as permitted by this Agreement by arranging for the performance of such work by a contractor certified by Licensor to work on or in its Equipment. Certification shall be granted based upon reasonable and customary criteria employed by Licensor in the selection of its own contract labor. In addition to the requirements herein with respect to Approved Electrical Contractors, Licensor shall maintain at all times a list of at least five (5) contractors certified to perform Make Ready Work, including surveying Poles to determine what Make Ready Work is necessary.

### Section 3.16 Third party Consents, Permits, Licenses, Easements, Rights-of-way or Grants

If any Pole, Conduit, or Duct is located in private property not owned or controlled by Licensor, the Licensee's right of access to Licensor's Poles, Conduits, and Ducts granted by this Agreement does not include any right of access to the land upon which the Pole, Conduit, or Duct is situated nor does it include any right to cross the land from Pole-to-Pole with Licensee's Equipment, or to cross the land to access Manholes and Handholes, and such access rights are specifically disclaimed; provided, however, that solely to the extent Licensor may lawfully and without breaching or failing to comply with any consent, permit, license, easement, right-of-way, or grant to Licensor from private owners of real property, Licensor hereby grants or assigns (as applicable) Licensee the right of access to the land upon which any Pole, Conduit, or Duct is situated and the right to cross the land from Pole-to-Pole with Licensee's Equipment, or to cross the land to access Manholes and Handholes, in each case solely to the extent of Licensor's rights of access. To the extent Licensee requires a right of access to the land upon which any Pole, Conduit, or Duct is situated and the right to cross the land from Pole-to-Pole with Licensee's Equipment, or to cross the land to access Manholes and Handholes, and Licensor does not have the requisite right of access, Licensor will use its commercially reasonable efforts to assist Licensee in obtaining such right, provided that in the event that Licensor incurs any fees as a result of such assistance, Licensee will reimburse Licensor for the reasonable and documented expenses actually incurred. Except as otherwise provided herein, Licensee is solely responsible for obtaining from private owners of real property and maintaining in effect any and all consents, permits, licenses, easements, rights-of-way or grants that are necessary for the lawful exercise by Licensee of the permission granted by Licensor in response to any application approved hereunder.

### Section 3.17 Interference with Licensor's or other Licensees' Equipment

If, in Licensor's reasonable judgment, Licensee's existing Attachments on any Pole interfere with Licensor's or other Pole attachers' existing Equipment or prevent the placing of any additional Equipment by Licensor required for its core utility service and included in Licensor's development plan as described in Section 2.05 above, Licensor will notify Licensee of the rearrangements or transfers of Equipment or Pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If Licensee desires to continue to maintain its Attachments on the Pole and so notifies Licensor in writing within thirty (30) days, Licensee may perform the necessary work (subject to Licensor's reasonable approval), or Licensee shall authorize Licensor to

perform the work. Should Licensee authorize Licensor to perform the work, Licensor shall make such changes as may be required, and Licensee, upon demand, will reimburse Licensor for the reasonable and documented expenses actually incurred. If Licensee does not so notify Licensor of its intent to perform the necessary work or authorize Licensor to perform the work, Licensee shall remove its Attachments from the affected Pole or Poles within an additional sixty (60) days from such original notification by Licensor for a total of ninety (90) days; provided, however, that Licensor in any Emergency may require Licensee to remove its Attachments within the time required by the Emergency. If Licensee has not removed its Attachments at the end of the ninety (90) day period, or in the case of Emergencies within the period specified by Licensor, as Licensor's sole and exclusive remedy Licensor may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee will pay Licensor, upon demand, for all reasonable and documented costs actually incurred by Licensor.

### Section 3.18 Pole Replacement for Licensee's Benefit

Where an existing Pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new Pole for the sole benefit of Licensee, including where replacement is necessary to accommodate Licensee's Attachment, Licensee shall reimburse Licensor for the reasonable and documented actual cost of replacement. Licensor shall credit Licensee for salvage value of the existing Pole if it is not topped and it is less than ten years old. Licensor shall remove and may retain or dispose of such Pole as the sole owner thereof. Any payments for Poles made or work performed by Licensee shall not entitle Licensee to ownership of any part of said Poles. If Pole replacement under this Section is requested by both Licensee and other Pole attachers, the costs of replacing the Pole shall be pro-rated among all requesting attachers. If Pole replacement under this Section is requested by Licensee but also benefits other Pole attachers, Licensee shall make reasonable attempts to notify the other benefitting attachers and request payment of a pro-rated portion of the costs of replacing the Pole. If the other Pole attachers refuse to pay or acknowledge the benefit to them of Pole replacement, Licensee shall decide whether to proceed with replacement with the responsibility for any costs refused by other attachers, or withdraw the request to replace the Pole. Notwithstanding anything to the contrary in this Section, if Pole replacement under this Section constitutes Safety Work, the costs of replacing the Pole shall be born by Licensor.

### Section 3.19 Pole Placement or Replacement for Joint Benefit of Licensor and Licensee

Where Licensor requires a new Pole and Licensee requires extra height or strength on such new Pole exceeding a basic 40 foot Class 5 Pole to accommodate Licensee's new or existing Attachments, Licensee shall pay the reasonable and documented actual difference in cost and installation between a basic 40 foot Class 5 Pole and the Pole meeting Licensee's requirements.

### Section 3.20 Expense of Situating Pole Attachments

Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense except as otherwise expressly provided hereunder.

### Section 3.21 Relocation of Joint Poles at Request of Land Owner

Where a jointly used Pole is required to be replaced, moved or relocated due to a landowner request, Licensor shall provide notice to Licensee upon receipt of the land owner request and coordinate with Licensee and all other Pole attachers to provide a coordinated response with respect to timelines and costs to the land owner.

Licensee shall promptly arrange to transfer its Equipment to the new Pole and shall notify Licensor when such transfer has been completed. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by Licensor indicating that the Pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located above Licensee on the Pole have removed or moved their facilities), Licensor may transfer Licensee's Equipment from the replaced Pole to the replacement Pole in a reasonable manner consistent with industry practices, and Licensee will reimburse Licensor, or Licensor's contractor, for all reasonable and documented costs actually incurred.

When setting a Pole requires entering the Electric Utility Space, the setting of the Pole must be performed by an Approved Electrical Contractor, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of Licensor.

### Section 3.22 Mid-span Poles

Any Poles erected by Licensee shall not interfere with or be in-line with Licensor's Poles, and shall not create a structure conflict as defined in the NESC.

### Section 3.23 Removal of Attachments by Licensee

Licensee may at any time remove its Attachments from any of the Poles and, in each case Licensee shall promptly give Licensor notice of such removal. Removal of all Attachments from any Pole shall constitute a termination of Licensee's right to use such Pole unless a new application is submitted to Licensor. Licensee shall receive a pro-rata refund of any rental charges on account of any such voluntary removal, with such pro-rata refund calculated from the day the Attachment was removed from the Pole. Such refund shall occur as a credit granted in a given billing period for all refunds requested by Licensee during the prior billing period.

When Licensee performs maintenance to or removes or replaces its Equipment on a Pole, Licensee must chemically treat all field-drilled holes and plug any unused holes caused by Licensee, including those resulting from removal of Equipment; if Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense.

### Section 3.24 Limitations on Licensee's Rights to Use Poles

No use, of any sort or duration, of any Poles under this Agreement shall create or vest in Licensee any ownership or property rights therein; nor shall any such use constitute the dedication of Licensor's Poles or Equipment to the public or to Licensee.

### Section 3.25 Audits of Existing Attachments

Licensor may conduct an Audit of Attachments made to its Poles no more frequently than once every five (5) years. Licensor shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Licensor, Licensee and all other Pole attachers in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. The independent contractor appointed to conduct the Audit must not be reasonably believed by Licensor, Licensee, or any other Pole attacher to have a conflict of interest with respect to the accurate completion of that Audit. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Licensor shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Licensor if Licensee desires to

participate in the Audit with Licensor not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be apportioned among those attachers who own attachments on the Poles included in the audit in proportion to the number of Poles to which they are attached. The data from Audit shall be made available to Licensee and all other attachers on the Poles and used to update the Parties' records, provided that any information confidential to Licensee will not be distributed to other attachers. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

#### Section 3.26 Inspections

In addition to Audits as described in Section 3.25 above, Licensor shall have the right to inspect each of Licensee's Attachments and other Equipment attached to Licensor's Poles at any time.

#### Section 3.27 Tax Liability

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Licensor's Poles or property solely because of their use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Licensor, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Licensor for the full amount of tax and any penalties so paid. Nothing in this provision in any way limits either Party's rights to challenge such tax assessments.

#### Section 3.28 Payment for Licensee's Assistance

If Licensee performs any work approved by Licensor to facilitate Licensor's responsibilities in completion of work required to be undertaken by Licensor under this Agreement, including without limitation transferring equipment of Licensor, setting or lowering Poles, digging holes, or hauling Poles, Licensor shall pay to Licensee, upon receipt of an invoice, the reasonable and documented costs actually incurred for such work.

#### Section 3.29 Electricity for Wireless Facilities

Licensor shall supply electricity to Licensee's Wireless Facilities pursuant to and subject to the applicable electricity rates, terms and conditions for such electrical service, which, for the avoidance of doubt, shall be the same as (or less than) the rates charged to other similarly situated electricity users.

### **ARTICLE IV. MAINTENANCE OF POLES AND CONDUITS**

#### Section 4.01 Expense of Maintenance

The expense of maintaining the Poles and Conduits shall be borne exclusively by Licensor and Licensor shall maintain its Poles and Conduits in a safe and serviceable condition, and shall replace, reinforce, or repair such Poles as they become defective. Licensor shall be solely responsible for collection of costs of damages for Poles or Conduits broken or damaged by third-parties. Licensee shall be responsible for collection of costs of damages to its own Equipment.

#### Section 4.02 Relocation of Jointly Used Poles Required For Licensor Purposes

Whenever Licensor, in its reasonable discretion, determines that it is necessary to replace, move, reset, or relocate a jointly used Pole, Licensor shall, at least sixty (60) days prior to making such replacement, move, or relocation, give written notice thereof to Licensee (except in case of emergency, when verbal notice shall be given if practicable and subsequently confirmed in writing), specifying in such notice the work to be performed and the approximate time of such proposed replacement or



relocation. Licensee may request that a Pole be reset in the same location and Licensor shall attempt to do so when resetting in the same location will conform with applicable law and safety codes and good engineering practices, will be consistent with Licensor's development plan for its electric utility service, and will not subject Licensor to commercially unreasonable terms and conditions; provided, however, that the additional cost of accommodating this request shall be borne by Licensee.

Upon receiving notice, Licensee shall promptly arrange to transfer its Equipment to the new Pole and shall notify Licensor when such transfer has been completed. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by Licensor indicating that the Pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located above Licensee on the Pole have removed or moved their facilities), Licensor may transfer Licensee's Equipment from the replaced Pole to the replacement Pole in a reasonable manner consistent with industry practices upon Licensee's failure to transfer its Equipment within the above mentioned thirty (30) days, and Licensee will reimburse Licensor, or its contractor, for all reasonable and documented costs actually incurred.

When setting a Pole requires entering the Electric Utility Space, the setting of the Pole must be performed by an Approved Electrical Contractor, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of Licensor.

#### Section 4.03 Tree Trimming and Brush Cutting

All tree trimming and brush cutting in connection with the initial placement of wires or other Equipment shall be borne entirely by the Party placing the wires or other Equipment. Licensee shall be responsible for performing all tree and vegetation trimming necessary for the safe and reliable operation, use and maintenance of its Attachments, provided that Licensor agrees that Licensee is only required to trim that portion of tree or vegetation interfering with the relevant Licensee's Attachment, rather than in a balanced manner.

### **ARTICLE V. ACCESS TO CONDUITS AND DUCTS**

#### Section 5.01 Applications

Applications for the placing of Equipment in Licensor's Ducts and Conduits are subject to the same application and Make Ready Work process and timeline applicable to Poles as set forth in Article III.

#### Section 5.02 Access to Conduit and Duct

Licensee's Equipment placed in Licensor's Conduit System must meet all of the following physical design specifications:

- (a) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in Licensor's Conduit or Ducts.
- (b) The integrity of Licensor's Conduit System and overall safety of Licensor's personnel and other personnel working in Licensor's Conduit System requires that "dielectric cable" be placed when Licensee's cable Equipment utilizes an alternative Duct or route that is shared in the same trench by any current carrying Equipment of a power utility.
- (c) New construction splices in Licensee's fiber optic cables shall be located in Manholes, pull boxes or Handholes.

- (d) When Licensor performs maintenance on Electric Conduit that contains Licensee's Equipment, Licensor shall install new Conduit and shall transfer Licensee's Equipment from the Electric Conduit to the new Conduit. Once the transfer is complete, said Electric Conduit shall no longer be covered by this Agreement.
- (e) Licensee shall have no right to enter, utilize, or request the use of any of Licensor's Electric Conduit that does not contain Licensee's Equipment as of the date of this Agreement.

The following specifications apply to connections of Licensee's Conduit to Licensor's Conduit System:

- (a) Licensee will be permitted to connect its Conduit or Duct only at a Licensor Manhole. No attachment will be made by entering or breaking into Conduit between Manholes. All necessary work to install Licensee Equipment will be performed by Licensee or its contractor at Licensee's expense. In no event shall Licensee or its contractor "core bore" or make any other modification to Licensor Manhole(s) without the prior written approval of Licensor, which approval will not be unreasonably delayed, withheld or conditioned.
- (b) If Licensee constructs or utilizes a Duct connected to Licensor's Manhole, the Duct and all connections between that Duct and Licensor's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into Licensor's Conduit System. If Licensee's Duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into Licensor's Conduit System.

#### Section 5.03 Opening of Manholes

The following requirements apply to the opening of Licensor's Manholes and the authority of Licensor personnel present when work on Licensee's behalf is being performed within or in the vicinity of Licensor's Conduit System.

- (a) Licensor's Manholes shall be opened only as permitted by Licensor's authorized employees or agents, including authorized third party contractors, which permission shall not be unreasonably denied, delayed or conditioned.
- (b) Except in the event of an emergency, Licensee shall notify Licensor forty-eight (48) hours in advance of any routine work operation requiring entry into any of Licensor's Manholes.
- (c) Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes for Conduit work operations therein.

#### Section 5.04 Audits of Existing Equipment in Licensor's Duct and Conduit

Licensor may conduct an Audit of Equipment placed in its Duct and Conduit no more frequently than once every five (5) years. Licensor shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Licensor, Licensee and all other owners of Equipment in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. The independent contractor appointed to conduct the Audit must not be reasonably believed by Licensor, Licensee, or any other owner of Equipment to have a conflict of interest with respect to the accurate completion of that Audit. Regardless of whether

Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Licensor shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Licensor if Licensee desires to participate in the Audit with Licensor not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be apportioned among those owners of Equipment who own Equipment placed in the Conduit and Duct included in the audit in proportion to the feet of Conduit and Duct in which they have placed Equipment. The data from Audit shall be made available to Licensee and all other relevant owners of Equipment and used to update the Parties' records, provided that any information confidential to Licensee will not be distributed to other owners. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

#### Section 5.05 Inspections

In addition to Audits as described in Section 3.25 above, Licensor shall have the right to inspect Licensee's Equipment placed in Licensor's Conduit or Duct at any time.

#### Section 5.06 Removal

Licensee has the right to remove Equipment located within Licensor's Conduit by written notice to Licensor. Rental fees shall cease with respect to such Conduit as of the date of removal. In the event that (i) Licensee ceases to use certain Attachments placed in Licensor's Conduit, (ii) Licensee does not reasonably anticipate using such Attachments in the future, and (iii) Licensor needs to use the space occupied by Licensee within Licensor's Conduit, Licensee will remove the relevant Attachments from Licensor's Conduit. In the event that Licensee does not remove the relevant Attachments within thirty (30) days' of written agreement between Licensor and Licensee that Licensee is obliged to remove the Attachments pursuant to this Section 5.06, Licensor may remove the relevant Attachments from Conduit in a reasonable manner consistent with industry practices, and Licensee will reimburse Licensor, or Licensor's contractor, for all reasonable and documented costs actually incurred. Notwithstanding anything to the contrary in this Section 5.06 where Attachments that would otherwise need to be removed from Licensor's Conduit are located entirely or partially inside Licensor's Electric Conduit, Licensee shall not be required to remove that portion of the Attachments located inside the Electric Conduit. Nevertheless, Licensee shall be required to remove any portion of said Attachments that is located outside Electric Conduit and shall cut any connections that serve to connect that portion of the Attachments located inside the Electric Conduit to Licensee's other Equipment.

### **ARTICLE VI. RENTAL PAYMENTS**

#### Section 6.01 Rental Amount—Poles

For authorized Attachments covered under this Agreement, Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount per Pole as shown on Exhibit A, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's Attachments situated upon Licensor's Poles and Licensor's current records.

#### Section 6.02 Rental Amount—Conduit and Duct

For authorized Attachments placed in Licensor's Conduit or Duct covered under this Agreement, Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount per linear foot as shown on Exhibit A, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's Attachments situated upon Licensor's Conduit and Duct and Licensor's current records.

Section 6.03 Unauthorized Attachments

Licensee shall not make Attachments to Licensor's Poles or in Licensor's Conduits without obtaining Licensor's written permission as provided for in this Agreement. In the event Licensee becomes aware of any unauthorized Attachment, Licensee shall make an application to Licensor for such Attachment. Licensee shall pay a late fee for such application in an amount equal to five (5) times the rental fee set forth on Exhibit A. Pole and Conduit rental fees shall accrue as of the date of installation, whether Licensee's application is approved or rejected. If Licensor validly rejects the Licensee's application pursuant to the standards described in Section 3.01, Licensee shall remove the unauthorized Attachment within ninety (90) days of Licensor's valid rejection of the application. If Licensee does not remove the unauthorized Attachment within such ninety (90) days, then Licensor may remove the unauthorized Attachment at Licensee's expense.

Section 6.04 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually or semi-annually. Invoices for all Non-recurring Charges, Make Ready Work fees, and other obligations or amounts due under this Agreement other than rental charges will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement. Invoices for Non-recurring Charges will provide specific identifying information pertaining to each charge. Invoices for rental charges will provide summary information only. Licensee may obtain additional information pertaining to charges upon written request to Licensor. No charges may be billed by Licensor more than twelve (12) months after such charges were incurred.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within forty-five (45) days from the invoice date. Interest at the rate set forth in Section 8.04 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within one hundred and eighty (180) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed, with interest accruing at the rate specified in Section 8.04 below from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Licensor notice of the amount in dispute. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 8.04 on any unpaid disputed amounts, dating from the bill due date. If Licensee fails to pay any amounts owed within sixty (60) days after the resolution of a billing dispute, Licensee agrees that Licensor shall have the right to file a lien for the amounts owed against the Licensee's Attachments located within Provo. Licensor shall promptly take all actions necessary or appropriate to release any such lien upon payment by Licensee of amounts owed that were the subject of the billing dispute.

All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's Billing Address:

Provo City Corporation  
351 West Center Street  
Provo, UT 84601  
Attention: Finance Department

Licensee's billing address:

Google Fiber Utah, LLC  
Attn: General Manager  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

fax no.: (650) 253-0001  
Email: googlefibernotices@google.com

**With copies to (which shall not constitute notice):**

Provo City Attorney's Office, PO Box 1849  
Provo, UT 84603  
Attention: City Attorney

AND

Provo City Energy Department, PO Box 658  
Provo, UT 84603  
Attention: Energy Department Director

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

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

**ARTICLE VII. BREACH AND REMEDIES**

Section 7.01 Remedies for Default

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this section the remedies available to each Party shall include, without limitation: (i) refusal to grant any additional permission for Attachments to the other Party until the default is cured; (ii) termination of this Agreement; and (iii) injunctive relief, provided, however, that notwithstanding anything to the contrary in this Agreement, Licensor may only terminate this Agreement, and Licensee's rights to utilize its Attachments on Licensor's Poles and in Licensor's Conduit System granted herein, in the event that (i) Licensee fails to pay Licensor amounts owed for a minimum of ninety (90) days following receipt of invoice from Licensor or resolution of a payment dispute, whichever is later, or (ii) Licensee fails to cure a material breach of this Agreement in accordance with this Section 7.01 and Licensor is unable to cure that material breach using its best efforts, provided that monetary amounts necessary to cure that material breach shall not be considered so long as Licensee complies with the following sentence. In the event that Licensor remedies any breach by Licensee of this Agreement, Licensee shall (a) pay in advance, within thirty (30) days of notice of the breach by Licensor including a cost estimate, eighty percent (80%) of Licensor's costs for the remedy specified in the breach notice and (b) pay within thirty (30) days of receipt of an invoice following completion of the work any reasonable and documented costs in addition to the amount already paid. Licensor will reimburse Licensee within thirty (30) days of completion of the relevant work in the event that reasonable and documented costs are less than the amount paid by Licensee.

**ARTICLE VIII. GENERAL PROVISIONS**

Section 8.01 Governing Law

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.

#### Section 8.02 Dispute Resolution

Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or in equity.

#### Section 8.03 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect.

#### Section 8.04 Interest

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within forty-five (45) days of the invoice date. An interest charge at the rate of one percent (1%) per month shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

#### Section 8.05 Relationship to Third-parties

Nothing herein contained shall be construed as affecting, diminishing or interfering with any rights or privileges previously conferred by Licensor, by contract or otherwise, to others not parties to this Agreement to use any Poles covered by this Agreement; and, except as otherwise provided herein and to the extent not affecting Licensee's rights hereunder, Licensor shall have the right to continue, modify, amend, or extend such rights or privileges. The privileges herein granted to Licensee shall, at all times, be subject to the rights of other entities with attachments to Licensor's Poles under existing third party contracts and arrangements. Further, nothing herein contained shall be construed as conferring or granting to Licensee the exclusive privilege or right to use any of the Poles or other facilities of Licensor. Nothing in this Agreement is intended to confer rights on any third party, as a third party beneficiary or otherwise.

#### Section 8.06 Confidential Information

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 agree to similar confidentiality obligations. These confidentiality obligations shall not 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.

#### Section 8.07 Intellectual Property Rights

Licensee shall be the owner of and will retain all Intellectual Property Rights created, conceived, prepared, made, discovered or produced in connection with Licensee's Attachments.

#### Section 8.08 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party. Licensor may sell, transfer, or assign its ownership interest in the Poles, Conduit, or Duct provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may upon written notice to Licensor, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide communications services to residents and businesses located in Provo, Utah.

#### Section 8.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

#### Section 8.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement. Exhibits A and B are attached hereto and made a part hereof.

#### Section 8.11 Severability

In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

#### Section 8.12 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Licensor's Poles. Any Equipment of Licensee attached to Licensor's Poles shall be subject to the terms and conditions and rental rates of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

#### Section 8.13 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law

applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

#### Section 8.14 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

#### Section 8.15 Joint Drafting

The Parties acknowledge that this Agreement (including the 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.

#### Section 8.16 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 a Party 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.

#### Section 8.17 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.

#### Section 8.18 Counterparts; Signatures

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.

### **ARTICLE IX. CONTRACT TERM**

#### Section 9.01 Effective Date

This Agreement shall take effect on the Effective Date.

#### Section 9.02 Term and Termination

This Agreement shall remain in full force and effect for a period of ten (10) years from the Effective Date and will automatically renew for successive five (5) year periods, unless Licensee is no longer operating its network within Provo. Unless Licensee transfers its Attachments to a third party with which Licensor has a separate attachment agreement, upon termination, (i) existing Attachments will continue to be subject to the terms of this Agreement until such Attachments are removed from Licensor's Poles, (ii) Licensee shall use commercially reasonable efforts to commence removal of its



attachments, and (iii) unless Licensor grants an extension of time, all attachments must be removed at Licensee's cost within ninety (90) days after the effective date of termination.

## **ARTICLE X. INDEMNIFICATION; LIMITATION OF LIABILITY**

### **Section 10.01 Indemnification by Licensee**

Licensee shall defend, solely at Licensee's expense, Licensor and its officers, directors, managers, council members, personnel, permitted successors and permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") 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 Licensee, its personnel and its contractors; or (ii) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (b) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor written directions or requirements;
- (c) Claims arising from any failure by Licensee or its contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensee attached after the Effective Date;
- (d) Claims that any Licensee personnel is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor; and
- (e) Licensee's fraud, violation of law, wrongful misconduct or misrepresentations.

### **Section 10.02 Indemnification by Licensor**

Licensor shall defend, solely at Licensor's expense, Licensee, its Affiliates and each of their respective officers, directors, managers, members, personnel, permitted successors and their permitted assigns (collectively, the "Licensee Indemnified Parties"), against all Claims and shall indemnify and hold harmless Licensee Indemnified Parties from Losses 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 Licensor, its personnel and its contractors or (ii) resulting proximately from Licensor's failure to perform its obligations under this Agreement;
- (b) Claims arising from Licensor's breach of any representation or warranty in this Agreement;
- (c) Claims arising from any failure by Licensor to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor; and

(d) Licensor's fraud, violation of law, wrongful misconduct or misrepresentations.

#### Section 10.03 Procedure

A Party who seeks indemnification pursuant to this Agreement (the "Indemnified Party") shall give written notice thereof to the other Party (the "Indemnitor") promptly after the Indemnified Party learns of the existence of such Claim; provided, however, the failure to give such notice shall not affect the rights of such Indemnified Party, except and only to the extent the Indemnitor is prejudiced by such failure. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Claim. The Indemnitor must acknowledge in writing its obligation to indemnify the Indemnified Party for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnified Party other than for money damages. If such counsel will represent both Indemnitor and the Indemnified Party, there may be no conflict with such counsel's representation of both. The Indemnified Party will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the Indemnified Party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor (but only if indemnification is adjudged to be proper), in any way in which the Indemnified Party deems to be in its best interest.

#### Section 10.04 Disclaimer of Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; AND (II) WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING.

#### Section 10.05 Cap on Damages

EXCEPT AS PROVIDED IN THE PRECEDING SECTION, EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS, AND LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE), SHALL NOT EXCEED \$2,000,000.00.

### **ARTICLE XI. INSURANCE**

#### Section 11.01 Workers Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Poles or in Licensor's Conduit System.

### Section 11.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Poles or in Licensor's Conduit System, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$2,000,000 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third-parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

*Business Automobile Liability insurance* with a minimum single limit of \$2,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

*Umbrella liability* with a minimum limit of \$5,000,000 with up to a \$50,000 deductible.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its directors, officers and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensor. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

### Section 11.03 Licensor Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor shall, at its sole expense, secure and continuously carry with insurers possessing an A.M. Best rating of A or better, or meeting some other objective criteria mutually agreeable to Licensor and Licensee the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$2,000,000 to protect against and from all loss by reason of injury to persons, including Licensor's employees, Licensee's employees and all other third persons, or damage to property, including Licensee's property and the property of all other third-parties, based upon or arising out of Licensor's operations hereunder, including the operations of its contractors of any tier.

*Umbrella liability* with a minimum limit of \$5,000,000 with up to a \$500,000 deductible.

The policies required herein shall include (a) provisions or endorsements naming Licensee, its directors, officers, managers, and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensee and that any other insurance maintained by Licensee is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensee. A certificate in a form satisfactory to Licensee certifying the issuance of such insurance shall be furnished to Licensee by Licensor.

Licensor shall also self-insure by maintaining at all times liquidity of at least \$500,000.

**ARTICLE XII. FORCE MAJEURE**

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

**ARTICLE XIII. NOTICE**

Except as otherwise provided herein, any notice required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

To Licensor:

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

**With copies to (which shall not constitute notice):**

Provo City Attorney's Office, PO Box 1849  
Provo, UT 84603  
Attention: City Attorney

AND

To Licensee:

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):**

Google Fiber Inc.  
Attn: Google Fiber Legal Department  
1600 Amphitheatre Parkway

Provo City Energy Department, PO Box 658  
Provo, UT 84603  
Attention: Energy Department Director

Mountain View, CA 94043  
Email: legal-notices@google.com

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

**Provo City Corporation**

**Google Fiber Utah, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**FEE SCHEDULE**

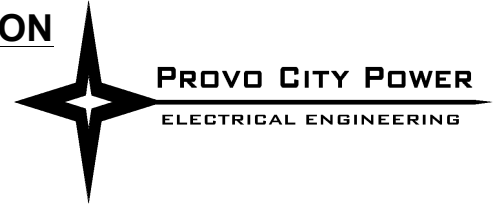
1) Poles.

- a. Except as otherwise agreed between the Parties, the rental rate for each Attachment to a Pole will be the same as, or less than, the lowest rate charged by Licensor of any other attacher to its Poles. In the event that Licensor makes available any rate more favorable to one or more third party attacher, Licensor shall make that same rate available to Licensee at the same time as to that third party attacher. Upon Licensee's request, Licensor shall provide Licensee with reasonable documentation showing the rate charged by Licensor of each third party attacher to its Poles.
- b. The lowest rental rate charged by Licensor per attachment to its Poles at the effective date is \$5.00, which is the amount that Licensee will pay per Attachment to a Pole from the Effective Date (the "Pole Rental Fee").
- c. Licensor may decrease the Pole Rental Fee at any time and in any amount.
- d. Licensor may only increase the Pole Rental Fee by way of an ordinance passed by the Provo Municipal Council, and only provided that the Pole Rental Fee may never be greater than the rental rate that would be charged under the pole rental formula contained in 47 C.F.R. 1.1409(e)(2).

2) Conduit and Duct.

- a. Except as otherwise agreed between the Parties, the rental rate for each Attachment in Conduit and Duct will be the same as, or less than, the lowest rate charged by Licensor of any other attacher in its Conduit or Duct. In the event that Licensor makes available any rate more favorable to one or more third party attacher, Licensor shall make that same rate available to Licensee at the same time as to that third party attacher. Upon Licensee's request, Licensor shall provide Licensee with reasonable documentation showing the rate charged by Licensor of each third party attacher in its Conduit and Duct.
- b. The lowest rental rate charged by Licensor per linear foot of attachment in its Conduit and Duct at the effective date is \$0.25 for Conduit that is not Electrical Conduit and \$0.52 for Electrical Conduit, which is the amount that Licensee will pay per linear foot of Attachment in Conduit and Duct from the Effective Date (the "Conduit and Duct Rental Fee").
- c. Licensor may decrease the Conduit and Duct Rental Fee at any time and in any amount.
- d. Licensor may only increase the Conduit and Duct Rental Fee by way of an ordinance passed by the Provo Municipal Council, and only provided that the Conduit and Duct Rental Fee may never be greater than the rental rate that would be charged under the pole rental formula contained in 47 C.F.R. 1.1409(e)(3).

**EXHIBIT B  
FORM OF ATTACHMENT APPLICATION  
POLE ATTACHMENT APPLICATION**



New Attachment  Conduit Lease in Electric Conduit   
 Overlash Attachment  Conduit Lease in Dedicated Conduit

Incomplete applications will be returned to the applicant without further action by Provo City Power. Required information includes the completed application, proposed schedule, prints and maps, proposed route, project description, and a copy of the Filing Fee check.

**APPLICATION INFORMATION (Applicant)**

Project Name \_\_\_\_\_  
 Applicant Name \_\_\_\_\_ Date \_\_\_\_\_  
 Corporate Rep \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
 Email Address \_\_\_\_\_

Project Description (Attach if necessary)	# of Provo poles	Liner feet of Conduit	Planned install date(s)

*Proposed Cable Installation* \_\_\_\_\_  
 # of cables to install \_\_\_\_\_  
 Fiber count \_\_\_\_\_  
 Cable diameter \_\_\_\_\_

*Existing Cable Installation* \_\_\_\_\_  
 Existing cable count \_\_\_\_\_  
 Existing pole count \_\_\_\_\_  
 Cable(s) diameter \_\_\_\_\_  
 Strand(s) diameter \_\_\_\_\_

Nearest street address of attachment	City Grid # (if available)

**APPLICATION APPROVAL (Provo City Power)**

Application Approved? Yes  No   
 Conditional  (see attached report)  
 Make Ready Required? Yes  No   
 Work Order # \_\_\_\_\_

Actual Provo City Power pole count \_\_\_\_\_ Actual foreign pole count \_\_\_\_\_ Actual Install Date \_\_\_\_\_

Comments \_\_\_\_\_  
 \_\_\_\_\_

Provo City Power Inspector (signature)	Phone	Fax	Email Address	Date

Provo City Power Representative

Licensee Representative

\_\_\_\_\_  
 Name Date

\_\_\_\_\_  
 Name Date



For Use with Pole Attachment Applications

Pole #	Address	Neutral Height	CATV Height	Phone Height	Other Height	Riser/Equip Height	Proposed Attachment Height

**Exhibit E - Structure Attachment Agreement**

See attached.

## STRUCTURE ATTACHMENT AGREEMENT

This Structure Attachment Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, 2013 (the “Effective Date”), between Provo City Corporation, a municipal corporation organized under the laws of the State of Utah (“Licensor”), and Google Fiber Utah, LLC, a Utah limited liability company (“Licensee”) (each a “Party” and collectively the “Parties”).

### WITNESSETH

WHEREAS, Licensor owns, leases, or operates streetlight poles, traffic signals, electric transmission towers, water towers, buildings, and other structures and improvements on real property in Provo, Utah, other than utility poles and conduits; and

WHEREAS, Licensor has the right to use land or other property of third parties to place certain structures and improvements, and to provide passage to access such structures and improvements; and

WHEREAS, Licensee proposes to furnish communications services in Provo, Utah, and desires to place and maintain, on Licensor’s structures and improvements, antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort necessary or desirable for Licensee to operate its businesses as such business may evolve, develop, or change; and

WHEREAS, Licensor desires to provide Licensee with the use of space on its structures and improvements for the provision of communications services in Provo, Utah, and to provide access to Licensor’s structures and improvements in connection with such use; and

WHEREAS, Licensor and Licensee are contemporaneously herewith entering into a Pole Attachment and Conduit Occupancy Agreement to govern Licensee’s attachments to Licensor’s utility poles and occupancy of Licensor’s conduits.

NOW, THEREFORE, in consideration of the mutual covenants and agreements made and contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

#### Section 1.01 Definitions

- (a) “**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 a Party; and “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; (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.
- (b) “**Attachment(s)**” means all Equipment, and the devices used to attach the Equipment, of Licensee to Licensor’s Structures. Additional equipment that is placed within Licensee’s existing attachment space is not an additional Attachment. All equipment and devices shall meet applicable code and contractual requirements. Attachments do not include items used for

decorations, signage, barriers, lighting, sports equipment, or cameras.

- (c) “**Confidential Information**” means 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 this Agreement and Licensee’s Attachments.
- (d) “**Equipment**” means all devices, articles or structures necessary to operate the respective businesses of the Parties, as such businesses may exist as of the Effective Date and as such businesses may evolve, develop, or change at any time while this Agreement remains in effect, including, but not limited to, antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories. For the avoidance of doubt, Equipment shall include Wireless Facilities.
- (e) “**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 other 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.
- (f) “**Make Ready Work**” means the changes to be made to Licensor’s Structures, Licensor’s Attachments, the Attachments of other attaching entities, or the existing additional equipment associated with such Attachments, which changes may be needed to accommodate Licensee’s proposed Attachment. Such make-ready work is to be approved by Licensor and performed by Licensee’s employees, a certified contractor approved by Licensor but employed by Licensee, or a third party. This definition includes all engineering, inspection, design, planning, construction, or other work reasonably necessary for the installation of Licensee’s Attachments on the Structures, including without limitation, work related to transfers or rearrangements of Equipment, and the addition of new Equipment, and the rearrangement of third party attachments.
- (g) “**National Electrical Safety Code**” or “**NESC**” means the current edition, and any supplements thereto and revisions or replacements thereof, of the publication so named, published by the Institute of Electrical and Electronics Engineers, Inc., for the purpose of safeguarding persons and property during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.
- (h) “**Permits**” means any authorization, franchise, license, permit, or consent required for the construction, operation, and maintenance of Equipment.
- (i) “**Rights of Way**” means Licensor’s right to use land or other property of third parties to place Structures and Equipment, or to provide passage to access such Structures and Equipment.

- (j) “**Structure**” means streetlight poles, traffic signals, electric transmission towers, water towers, buildings, and other structures and improvements on real property in Provo, Utah, other than utility poles and conduits.
- (k) “**Wireless Facilities**” means Equipment used for or associated with wireless communication or wireless data transmission, provided that such Wireless Facilities are not used to provide Commercial Mobile Radio Services as such term is defined in the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commissions. For the avoidance of doubt, Wireless Facilities include any Equipment used for backhaul of wireless communications or wireless data transmissions.

#### Section 1.02 Other Interpretative Provisions

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Section, Article, clause, Schedule, Exhibit and Appendix references are to this Agreement unless otherwise specified.
- (c) The terms “including” and “include” are not limiting and mean “including without limitation” and “include without limitation.”
- (d) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each means “to but excluding,” and the word “through” means “to and including.”
- (e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified.
- (f) Any reference herein to any person or entity shall be construed to include such person or entity’s successors and permitted assigns.
- (g) Any reference herein to “year,” “month” or “day” shall mean a calendar year, month, or day unless otherwise specified.

### **ARTICLE II. SCOPE OF AGREEMENT**

#### Section 2.01 Geographic Scope

This Agreement shall apply to Licensor Structures and Rights of Way now existing or hereafter constructed or obtained throughout Provo, Utah.

#### Section 2.02 Authorization

Subject to the provisions of this Agreement, Licensor grants to Licensee and Licensee accepts from Licensor a non-exclusive license to occupy, place, and maintain Licensee’s Equipment on Licensor’s Structures.

### Section 2.03 Exclusions

This Agreement applies to the use of Licensor's Structures only. Licensee's use of electric distribution poles and underground conduits and ducts is expressly excluded from this Agreement, and nothing in this Agreement will be construed to authorize Licensee to use any such facilities.

### Section 2.04 Attachments; Purpose

Licensee's use of Structures shall be confined to the Attachments, which Licensor has granted Licensee written permission to install or as otherwise provided pursuant to the terms and conditions of this Agreement.

### Section 2.05 No Property Right

No use of Licensor's Structures, however extended, or payment of fees or charges, if any, required under this Agreement shall create or vest in Licensee any ownership or property rights in such Structures.

### Section 2.06 Rights of Third Parties

The rights of any third parties to whom Licensor confers Structure attachment rights after Licensee shall be subject to the rights of Licensee set forth in this Agreement.

### Section 2.07 Discrimination

Licensor shall treat Licensee materially no less favorably than it treats other attachers to its Structures. In the event that Licensor makes available any terms or conditions materially more favorable to one or more third-party attachers to Licensor's Structures, Licensor shall promptly make those same terms available to Licensee. Upon Licensee's request, Licensor shall provide Licensee with a copy of all agreements where Licensor makes access to its Structures available to third parties.

### Section 2.08 Authorizations Required

Licensee shall secure all Permits required for the construction, operation, and maintenance of its Equipment. If any required Permit obtained by Licensee is subsequently revoked or suspended for any reason, Licensee retains the right to pursue and exhaust all legal, administrative, and equitable remedies, in any available forum, before Licensor may revoke Licensee's right to attach the Equipment requiring such Permit to Licensor's Structures.

## **ARTICLE III. USE OF STRUCTURES**

### Section 3.01 Application for Permission to Install Attachment

Before Licensee places an Attachment upon any of Licensor's Structures, Licensee shall submit an Attachment application to Licensor in writing. An application may be denied if:

- (a) The applicant fails to submit a complete application, provided that Licensor has notified Licensee that the application is incomplete and provided Licensee with a reasonable period of time to make the application complete;
- (b) The applicant fails to supplement its application with additional information reasonably requested by Licensor or otherwise cooperate with Licensor as reasonably requested in Licensor's evaluation of the application;
- (c) The applicant fails to pay fees as set forth on Exhibit A hereto as required under the terms of this

Agreement, including any applicable notice and cure periods;

- (d) The proposed Attachments are of excessive size or weight or would otherwise subject Licensor's Structures to unacceptable levels of additional stress, as measured by applicable safety codes, provided that such application will not be denied where Licensee agrees to pay for such improvements as are necessary to eliminate the threat to the safety of Licensor's facilities;
- (e) Approval will present a safety hazard to Licensor's employees or the public, provided that such application will not be denied where Licensee agrees to pay for such improvements as are necessary to eliminate the safety hazard; or
- (f) Approval will require a change, upgrade or addition to Licensor's Structures, provided that such application will not be denied where Licensee agrees to pay for such change, upgrade, or addition.

If Licensor rejects the application, Licensor shall notify Licensee of the specific reason(s) for rejecting such application within fifteen (15) days. No Attachment application is required for any Attachments existing on the Effective Date.

### Section 3.02 Content of Application

Licensee's application shall contain the following information: (i) the specific Equipment to be installed; (ii) identification of the Structure; (iii) the space desired on such Structure; and (iv) any additional information requested by Licensor as reasonably necessary to properly review the request for Attachment. Licensor shall not unreasonably request such additional information and Licensee shall not unreasonably refuse to provide such additional information.

### Section 3.03 Confidentiality

All materials submitted by Licensee in connection with a Structure application shall be handled and reviewed only by those Licensor employees and contractors directly responsible for the coordination and administration of such requests. Licensee's materials are of a confidential, proprietary, and commercially sensitive nature and shall not be disclosed by Licensor or its employees or contractors for any reason other than (i) as necessary in connection with processing and administering Licensee's application to attach Equipment to Structures, or (ii) as required by applicable law.

### Section 3.04 Make Ready Work

Attachment applications shall be handled in accordance with the following:

- (a) Licensor shall respond to Licensee's application within thirty (30) days of receipt of a complete application. Licensee's application shall include a survey of what time and materials are necessary as part of the Make Ready Work ("Make Ready Survey") and an estimate of the Make Ready Work ("Make Ready Estimate") necessary to prepare the Poles for Licensee's Attachments (together the "Make Ready Documents"). If Licensor does not respond within forty-five (45) days of receipt of a complete application, such application shall be deemed accepted and Licensee may retain a certified contractor approved by Licensor pursuant to Section 3.08 to perform the Make Ready Work.
- (b) If within thirty (30) days of (1) receipt of Licensor's approval of Licensee's application, or (2) expiration of forty-five (45) days following submission of Licensee's application if Licensor does not otherwise respond to Licensee's application, or (3) completion of the Safety Work (if

applicable), Licensee's contractor does not commence the Make Ready Work, Licensor may, at its discretion, require resubmission of Licensee's application.

- (c) In the event that the Make Ready Survey identifies work necessary to remedy any Structure's existing non-compliance with applicable safety codes (the "Safety Work"), Licensor will perform all Safety Work within thirty (30) days of completion of Licensor's Make Ready Survey. Upon completion of the Safety Work, Licensor shall notify Licensee in writing ("Notice of Completion").
- (d) Upon completion of the Attachment installation, Licensee shall notify Licensor in writing. Licensor will then, within thirty (30) days, inspect the work and notify Licensee of any failure of the Attachment installation to comply with the Make Ready Survey or applicable safety codes. Licensee shall make such changes to the Make Ready Work or its Attachments as are required within twenty-one (21) days of such notice, provided that Licensor will remedy any Safety Work that it performed and that contributed to the failed inspection within twenty-one (21) days of such notice.
- (e) Licensee shall attempt to coordinate Make Ready Work needing to be performed by any third party attachers with pre-existing attachments to Licensor's Structures covered by Licensee's application, including providing all third party attachers with attachments to the Structures covered by Licensee's application a copy of the Make Ready Survey within five (5) days of (1) receipt of Licensor's approval of Licensee's application or (2) expiration of thirty (30) days following submission of Licensee's application if Licensor does not otherwise respond to Licensee's application. In the event that Licensee has attempted to coordinate Make Ready Work with third party attachers but such third party attachers are not timely undertaking or completing such Make Ready Work, Licensor will make all reasonable efforts to coordinate with the third party attachers and to cause the third party attachers to complete such work. In the event any such third party fails to complete its Make Ready Work within the ninety (90) day period, Licensor shall (at Licensee's sole cost and expense) complete such work within (ten) 10 days from the end of the ninety day (90) day period.

### Section 3.05 Conformance to Requirements and Specifications

The use by Licensee of Licensor's Structures shall at all times comply with all applicable federal, Utah, and local laws, rules, and regulations, the requirements of the National Electrical Code and the NESC, and Licensor's reasonable specifications and construction guidelines.

### Section 3.06 Nonconforming Equipment

If any Attachment is not, or has not been, placed and maintained in accordance with Section 3.05, upon notice by Licensor, Licensee shall use commercially reasonable efforts to timely perform all work reasonably necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed under a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below). Any such work will be performed at Licensee's sole risk and expense. Licensor reserves the right to perform or authorize work necessary to bring Licensee's Attachments into compliance upon Licensee's failure to timely do so. Licensor will notify Licensee electronically or in writing prior to performing such work. Licensee shall be responsible for paying Licensor, upon demand, for all reasonable and documented costs actually incurred by Licensor for all work, action, and accommodation performed by Licensor under this Section.



However, if Licensor determines in good faith that such conditions (i) pose an immediate threat to the safety of Licensor's personnel or the public; (ii) materially and adversely interfere with the performance of Licensor's service obligations; or (iii) pose an immediate threat to the integrity of Licensor's Structures or Equipment (each, an "Emergency"), Licensor may perform or authorize such work and/or take such action that it deems necessary (acting reasonably) without first giving written or electronic notice to Licensee and without subjecting itself to any liability, except to the extent of Licensor's negligence or willful misconduct. As soon as practicable thereafter, Licensor will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for the accommodation of any affected Attachments. Licensee shall be responsible for paying Licensor, upon demand, for all reasonable and documented costs actually incurred by Licensor for all work, action, and accommodation performed by Licensor under this Section.

### Section 3.07 Time to Complete Installation

Except as otherwise agreed to by the Parties in good faith, and subject to additional time caused by delays of third party attachers (so long as Licensee is in material compliance with 3.04(e)), Licensee shall complete the installation of its Attachments upon the Structure(s) covered by each approved application within ninety (90) days of approval by Licensor. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Licensor to place such Attachments upon Licensor's Structure(s) shall terminate and Licensee shall not have the right to place such Attachments upon the Structure(s) without first reapplying for and receiving permission to do so, all as prescribed in Section 1.01(a) above as applicable to the initial application.

### Section 3.08 Subsequent Attachment by Third Party Attachers

If at any time subsequent to Licensee's Attachment to a Structure, a third party requests that Licensor provide access to that same Structure(s) the following procedure shall apply:

- (a) If it is determined that Make Ready Work on Licensee's Attachment(s) will be necessary to accommodate the third party's equipment, Licensee will provide an estimate to the attaching third party for Licensee or its contractor to complete the Make Ready Work.
- (b) Licensee shall be solely responsible for negotiating with persons or entities other than Licensor for the rearrangement of Licensee's Attachment or Equipment and, except where such rearrangement is for the benefit of Licensee, Licensee shall not be responsible for paying any charges attributable to the rearrangement of such Attachment or Equipment.
- (c) Licensee shall make all rearrangements of its Equipment within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for interruption of Licensee's services.

### Section 3.09 Approved Contractors

Licensee shall perform any Make Ready Survey or Make Ready Work as permitted by this Agreement by performing the work with Licensee's own employees or arranging for the performance of such work by a contractor approved by Licensor. Approval shall be granted based upon reasonable and customary criteria employed by Licensor in the selection of its own contract labor, with such approval made (or denied) within thirty (30) days of a written request by Licensee that includes information about the qualifications of such contractor. Once a contractor has been approved pursuant to the

preceding sentence, such contractor shall be eligible to perform a Make Ready Survey or Make Ready Work for other Structures.

### Section 3.10 Access to Rights-of-Way

If any Structure is located in private property not owned or controlled by Licensor, Licensee's right of access to Licensor's Structure granted by this Agreement does not include any right of access to the land upon which the Structure is situated, and such access rights are specifically disclaimed; provided, however, that solely to the extent Licensor may lawfully and without breaching or failing to comply with any consent, permit, license, easement, right-of-way, or grant to Licensor from private owners of real property, Licensor hereby grants or assigns (as applicable) Licensee the right of access to the land upon which any Structure is situated, solely to the extent of Licensor's rights of access. To the extent Licensee requires a right of access to the land upon which any Pole, Conduit, or Duct is situated and the right to cross the land from Pole-to-Pole with Licensee's Equipment, or to cross the land to access Manholes and Handholes, and Licensor does not have the requisite right of access, Licensor will use its commercially reasonable efforts to assist Licensee in obtaining such right, provided that in the event that Licensor incurs any fees as a result of such assistance, Licensee will reimburse Licensor for the reasonable and documented expenses actually incurred. Except as otherwise provided herein, Licensee is solely responsible for obtaining from private owners of real property and maintaining in effect any and all consents, permits, licenses, easements, rights-of-way or grants that are necessary for the lawful exercise by Licensee of the permission granted by Licensor in response to any application approved hereunder.

### Section 3.11 Interference with Licensor's or other Licensees' Equipment

If, in Licensor's reasonable judgment, Licensee's existing Attachments on any Structure interfere with Licensor's or other Structure attachers' existing Equipment, Licensor will notify Licensee of the rearrangements or transfers of Equipment or other changes required in order to continue to accommodate Licensee's Attachments. If Licensee desires to continue to maintain its Attachments on the Structure and so notifies Licensor in writing within thirty (30) days, Licensee may perform the necessary work (subject to Licensor's reasonable approval), or Licensee shall authorize Licensor to perform the work. Should Licensee authorize Licensor to perform the work, Licensor shall make such changes as may be required, and Licensee, upon demand, will reimburse Licensor for the reasonable and documented expenses actually incurred. If Licensee does not so notify Licensor of its intent to perform the necessary work or authorize Licensor to perform the work, Licensee shall remove its Attachments from the affected Structure or Structures within an additional sixty (60) days from such original notification by Licensor for a total of ninety (90) days; provided, however, that Licensor in any Emergency may require Licensee to remove its Attachments within the time required by the Emergency. If Licensee has not removed its Attachments at the end of the ninety (90) day period, or in the case of Emergencies within the period specified by Licensor, as Licensor's sole and exclusive remedy Licensor may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee will pay Licensor, upon demand, for all reasonable and documented costs actually incurred by Licensor. An "Emergency" is a condition (i) that poses an immediate threat to the safety of municipal workers or the public; (ii) materially and adversely interferes with the performance of Licensor's municipal obligations; or (iii) poses an immediate threat to the integrity of Licensor's or other Structure attachers' Structures or attachments.

Without limiting the foregoing, Licensee will use and operate any Wireless Facilities in a manner that will not cause radio frequency interference with the Wireless Facilities of third parties, provided that such other third party's installation of Wireless Facilities predates Licensee's installation of its

Wireless Facilities. In the event any such interference occurs, Licensee will cease operations immediately upon receiving notice from Licensor and will not resume operations until Licensee has eliminated such interference. In the event Licensee does not cease interfering operations, then the Attachments constituting such Wireless Facilities shall become unauthorized attachments. Licensor agrees that in the event Licensor allows any third party to use and operate Wireless Facilities on a Structure, Licensor will require such third party to agree (i) not to cause radio frequency interference to Licensee's Wireless Facilities on the Structure, provided that Licensee's installation of Wireless Facilities predates the third party's installation of its Wireless Facilities; (ii) in the event such interference occurs, to cease operations immediately upon receiving notice from Licensor or Licensee and not resume operations until the third party has eliminated such interference; and (iii) that failure to cease interfering operations will cause such third party's Attachments to become unauthorized attachments.

#### Section 3.12 Expense of Situating Structure Attachments

Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense except as otherwise expressly provided hereunder.

#### Section 3.13 Relocation of Structure at Request of Land Owner

Where a Structure is required to be replaced, moved or relocated due to a landowner legally enforceable requirement, Licensor shall provide notice to Licensee upon receipt of the land owner requirement and coordinate with Licensee and all other Structure attachers to provide a coordinated response with respect to timelines and costs to the land owner.

Licensee shall promptly arrange to transfer its Equipment to another (either new or otherwise) Structure and shall notify Licensor when such transfer has been completed. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by Licensor indicating that the Structure is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located blocking Licensee on the Structure have removed or moved their facilities and the replacement Structure has been identified and made ready), Licensor may transfer Licensee's Equipment from the replaced Structure to the replacement Structure in a reasonable manner consistent with industry practices, and Licensee will reimburse Licensor, or Licensor's contractor, for all reasonable and documented costs actually incurred.

#### Section 3.14 Removal of Attachments by Licensee

Licensee may at any time remove its Attachments from any of the Structures and, in each case Licensee shall promptly give Licensor notice of such removal. Removal of all Attachments from any Structure shall constitute a termination of Licensee's right to use such Structure unless a new application is submitted to Licensor. Licensee shall receive a pro-rata refund of any rental charges, if any, on account of any such voluntary removal, with such pro-rata refund calculated from the day the Attachment was removed from the Structure. Such refund shall occur as a credit granted in a given billing period for all refunds requested by Licensee during the prior billing period.

#### Section 3.15 Audits of Existing Attachments

Licensor may conduct an Audit of Attachments made to its Structures no more frequently than once every five (5) years. Licensor shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Licensor, Licensee and all other Structure attachers in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting

of the Audit results. The independent contractor appointed to conduct the Audit must not be reasonably believed by Licensor, Licensee, or any other Structure attacher to have a conflict of interest with respect to the accurate completion of that Audit. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Licensor shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Licensor if Licensee desires to participate in the Audit with Licensor not less than thirty (30) days prior to the scheduled date of such Audit. To the extent that Licensor has the right to audit third party attachers to any Structure, the cost of the Audit shall be apportioned among those attachers who own attachments on the Structures included in the audit and Licensor, split equally among all the parties, if not, the cost of the Audit of such Structure shall be equally apportioned as between Licensor and Licensee. The data from Audit shall be made available to Licensee and all other attachers on the Structures and used to update the Parties' records, provided that any information confidential to Licensee will not be distributed to other attachers. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

### Section 3.16 Inspections

In addition to Audits as described in Section 3.15 above, Licensor shall have the right to inspect each of Licensee's Attachments and other Equipment attached to Licensor's Structures at any time.

### Section 3.17 Structure Maintenance

The expense of maintaining Structures shall be borne exclusively by Licensor and Licensor shall maintain its Structures in a safe and serviceable condition, and shall replace, reinforce, or repair such Structures as they become defective.

### Section 3.18 Relocation of Structures Required For Licensor Purposes

Whenever Licensor reasonably determines that it is necessary to replace, move, reset, or relocate a Structure used by Licensee for reasonable city planning purposes, Licensor shall, at least sixty (60) days prior to making such replacement, move, or relocation, give written notice thereof to Licensee (except in case of emergency, when verbal notice shall be given if practicable and subsequently confirmed in writing), specifying in such notice the work to be performed and the approximate time of such proposed replacement or relocation. Licensee may request that a Structure be reset in the same location and Licensor shall attempt to do so when resetting in the same location will conform with applicable law and safety codes and good engineering practices and will not subject Licensor to commercially unreasonable terms and conditions; provided, however, that the additional cost of accommodating this request shall be borne by Licensee. Licensor shall attempt to relocate Licensee's transferring Equipment to a Structure very near the original Structure location, without additional cost to Licensee.

Upon receiving notice, Licensee shall promptly arrange to transfer its Equipment to the new Structure and shall notify Licensor when such transfer has been completed, and Licensor will reimburse Licensee, or its contractor, for half of all reasonable and documented costs actually incurred. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by Licensor indicating that the Structure is ready for Licensee to transfer its Equipment, Licensor may transfer Licensee's Equipment from the replaced Structure to the replacement Structure in a reasonable manner consistent with industry practices upon Licensee's failure to transfer its Equipment within the above mentioned thirty (30) days, and Licensee will reimburse Licensor, or its contractor, for half of all reasonable and documented costs actually incurred.

### Section 3.19 Tax Liability

Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Licensor's Attachments or property solely because of their use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Licensor, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Licensor for the full amount of tax and any penalties so paid. Nothing in this provision in any way limits either Party's rights to challenge such tax assessments.

### Section 3.20 Payment for Licensee's Assistance

If Licensee performs any work approved by Licensor to facilitate Licensor's responsibilities in completion of work required to be undertaken by Licensor under this Agreement, Licensor shall pay to Licensee, upon receipt of an invoice, the reasonable and documented costs actually incurred for such work.

### Section 3.21 Electricity for Wireless Facilities

Licensor shall supply electricity to Licensee's Wireless Facilities pursuant to and subject to the applicable electricity rates, terms and conditions for such electrical service.

## **ARTICLE IV. RENTAL PAYMENTS**

### Section 4.01 Rental Amount—Structures

For authorized Attachments covered under this Agreement, Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount per Pole as shown on Exhibit A, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's Attachments situated upon Licensor's Poles and Licensor's current records. Licensor agrees that for any Attachment by which Licensee provides wireless services to the public without charge (if any), such provision of wireless services shall constitute payment in full by Licensee to Licensor of any otherwise applicable rental charge for the relevant Attachment.

### Section 4.02 Unauthorized Attachments

Licensee shall not make Attachments to Licensor's Structures without obtaining Licensor's written permission as provided for in this Agreement. In the event Licensee becomes aware of any unauthorized Attachment, Licensee shall make an application to Licensor for such Attachment. Licensee shall pay a late fee for such application in an amount set forth on Exhibit A. Structure rental fees, if any, shall accrue as of the date of installation, whether Licensee's application is approved or rejected. If Licensor validly rejects Licensee's application pursuant to the standards described in Section 3.01, Licensee shall remove the unauthorized Attachment within ninety (90) days of Licensor's valid rejection of the application. If Licensee does not remove the unauthorized Attachment within such ninety (90) days, then Licensor may remove the unauthorized Attachment at Licensee's expense.

### Section 4.03 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges, if any, will be sent annually or semi-annually. Invoices for all other obligations or amounts due under this Agreement other than rental charges will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement. Invoices for non-recurring charges will provide specific

identifying information pertaining to each charge. Invoices for rental charges, if any, will provide summary information only. Licensee may obtain additional information pertaining to charges upon written request to Licensor. No charges may be billed by Licensor more than twelve (12) months after such charges were incurred.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within forty-five (45) days from the invoice date. Interest at the rate set forth in Section 6.04 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within one hundred and eighty (180) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed, with interest accruing at the rate specified in Section 6.04 below from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Licensor notice of the amount in dispute. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 6.04 on any unpaid disputed amounts, dating from the bill due date.

All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's billing address:

Provo City Corporation  
351 West Center Street, Provo, UT 84601  
Attention: Finance Department

**With copies to (which shall not constitute notice):**

Provo City Attorney' Office, PO Box 1849  
Provo, UT 84603  
Attention: City Attorney

AND

Provo City Energy Department, PO Box 658  
Provo, UT 84603  
Attention: Energy Department Director

Licensee's billing address:

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):**

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

## **ARTICLE V. BREACH AND REMEDIES**

### Section 5.01 Remedies for Default

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this

section the remedies available to each Party shall include, without limitation: (i) refusal to grant any additional permission for Attachments to the other Party until the default is cured; (ii) termination of this Agreement; and (iii) injunctive relief, provided, however, that notwithstanding anything to the contrary in this Agreement, Licensor may only terminate this Agreement, and Licensee's rights to utilize its Attachments on Licensor's Structures granted herein, in the event that (i) Licensee fails to pay Licensor amounts owed for a minimum of ninety (90) days following receipt of invoice from Licensor or resolution of a payment dispute (including any dispute resolution pursuant to Section 6.02), whichever is later, or (ii) Licensee fails to cure a material breach of this Agreement in accordance with this Section 5.01 and Licensor is unable to cure that material breach using its best efforts, provided that monetary amounts necessary to cure that material breach shall not be considered so long as Licensee complies with the following sentence. In the event that Licensor remedies any breach by Licensee of this Agreement, Licensee shall (a) pay in advance, within thirty (30) days of notice of the breach by Licensor including a cost estimate, eighty percent (80%) of Licensor's costs for the remedy specified in the breach notice and (b) pay within thirty (30) days of receipt of an invoice following completion of the work any reasonable and documented costs in addition to the amount already paid. Licensor will reimburse Licensee within thirty (30) days of completion of the relevant work in the event that reasonable and documented costs are less than the amount paid by Licensee.

## **ARTICLE VI. GENERAL PROVISIONS**

### **Section 6.01 Governing Law**

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.

### **Section 6.02 Dispute Resolution**

Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or in equity.

### **Section 6.03 Failure to Enforce Rights**

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect.

### **Section 6.04 Interest**

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within forty-five (45) days of the invoice date. An interest charge at the rate of one percent (1%) per month shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

### **Section 6.05 Relationship to Third parties**

Nothing herein contained shall be construed as affecting, diminishing or interfering with any rights or privileges previously conferred by Licensor, by contract or otherwise, to others not parties to this Agreement to use any Structures covered by this Agreement; and, except as otherwise provided herein and to the extent not affecting Licensee's rights hereunder, Licensor shall have the right to continue, modify, amend, or extend such rights or privileges. The privileges herein granted to Licensee shall, at

all times, be subject to the rights of other entities with attachments to Licensor's Structures under existing third party contracts and arrangements. Further, nothing herein contained shall be construed as conferring or granting to Licensee the exclusive privilege or right to use any of the Structures or other facilities of Licensor. Nothing in this Agreement is intended to confer rights on any third party, as a third party beneficiary or otherwise.

#### Section 6.06 Confidential Information

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 agree to similar confidentiality obligations. These confidentiality obligations shall not 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.

#### Section 6.07 Intellectual Property Rights

Licensee shall be the owner of and will retain all Intellectual Property Rights created, conceived, prepared, made, discovered or produced in connection with Licensee's Attachments.

#### Section 6.08 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party. Licensor may sell, transfer, or assign its ownership interest in the Structures provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may upon written notice to Licensor assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of Licensee's assets used to provide services to residents and businesses located in Provo, Utah.

#### Section 6.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

#### Section 6.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement. Exhibit A is attached hereto and made a part hereof.

#### Section 6.11 Severability

In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.



#### Section 6.12 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Licensor's Structures. Any Equipment of Licensee attached to Licensor's Structures shall be subject to the terms and conditions and rental rates, if any, of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

#### Section 6.13 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

#### Section 6.14 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

#### Section 6.15 Joint Drafting

The Parties acknowledge that this Agreement (including the 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.

#### Section 6.16 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 a Party 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.

#### Section 6.17 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.

## Section 6.18 Counterparts; Signatures

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.

## **ARTICLE VII. CONTRACT TERM**

### Section 7.01 Effective Date

This Agreement shall take effect on the Effective Date.

### Section 7.02 Term and Termination

This Agreement shall remain in full force and effect for a period of ten (10) years from the Effective Date and will automatically renew for successive five (5) year periods, unless Licensee is no longer operating its network within Provo. Unless Licensee transfers its Attachments to a third party with which Licensor has a separate attachment agreement, upon termination, (i) existing Attachments will continue to be subject to the terms of this Agreement until such Attachments are removed from Licensor's Poles, (ii) Licensee shall use commercially reasonable efforts to commence removal of its attachments, and (iii) unless Licensor grants an extension of time, all attachments must be removed at Licensee's cost within ninety (90) days after the effective date of termination.

## **ARTICLE VIII. INDEMNIFICATION; LIMITATION OF LIABILITY**

### Section 8.01 Indemnification by Licensee

Licensee shall defend, solely at Licensee's expense, Licensor and its officers, directors, managers, council members, personnel, permitted successors and permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") 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 Licensee, its personnel and its contractors; or (ii) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (b) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor written directions or requirements;
- (c) Claims arising from any failure by Licensee or its contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensee attached after the Effective Date;
- (d) Claims that any Licensee personnel is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor; and
- (e) Licensee's fraud, violation of law, wrongful misconduct or misrepresentations.

### Section 8.02 Indemnification by Licensor

Licensor shall defend, solely at Licensor's expense, Licensee, its Affiliates and each of their respective officers, directors, managers, members, personnel, permitted successors and their permitted assigns (collectively, the "Licensee Indemnified Parties"), against all Claims and shall indemnify and hold harmless Licensee Indemnified Parties from Losses 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 Licensor, its personnel and its contractors or (ii) resulting proximately from Licensor's failure to perform its obligations under this Agreement;
- (b) Claims arising from Licensor's breach of any representation or warranty in this Agreement;
- (c) Claims arising from any failure by Licensor to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor; and
- (d) Licensor's fraud, violation of law, wrongful misconduct or misrepresentations.

### Section 8.03 Procedure

A Party who seeks indemnification pursuant to this Agreement (the "Indemnified Party") shall give written notice thereof to the other Party (the "Indemnitor") promptly after the Indemnified Party learns of the existence of such Claim; provided, however, the failure to give such notice shall not affect the rights of such Indemnified Party, except and only to the extent the Indemnitor is prejudiced by such failure. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Claim. The Indemnitor must acknowledge in writing its obligation to indemnify the Indemnified Party for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnified Party other than for money damages. If such counsel will represent both Indemnitor and the Indemnified Party, there may be no conflict with such counsel's representation of both. The Indemnified Party will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the Indemnified Party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor (but only if indemnification is adjudged to be proper), in any way in which the Indemnified Party deems to be in its best interest.

### Section 8.04 Disclaimer of Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; AND (II) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING.

Section 8.05 Cap on Damages

EXCEPT WITH RESPECT TO A PARTY'S OBLIGATION UNDER THE PRECEDING SECTION, EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS, AND LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE), SHALL NOT EXCEED \$2,000,000.00.

**ARTICLE IX. INSURANCE**

Section 9.01 Workers Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Structures.

Section 9.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Structures, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$2,000,000 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

*Business Automobile Liability insurance* with a minimum single limit of \$2,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

*Umbrella liability* with a minimum limit of \$5,000,000 with up to a \$50,000 deductible.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its directors, officers and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensor. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

Section 9.03 Licensor Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor shall, at its sole expense, secure and continuously carry with insurers possessing an A.M. Best rating of A or better, or meeting some other objective criteria mutually agreeable to Licensor and Licensee the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$2,000,000 to protect against and from all loss by reason of injury to persons, including Licensor's employees, Licensee's employees and all other third persons, or damage to property, including Licensee's property and the property of all other third parties, based upon or arising out of Licensor's operations hereunder, including the operations of its contractors of any tier.

*Umbrella liability* with a minimum limit of \$5,000,000 with up to a \$500,000 deductible.

The policies required herein shall include (a) provisions or endorsements naming Licensee, its directors, officers, managers, and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensee and that any other insurance maintained by Licensee is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensee. A certificate in a form satisfactory to Licensee certifying the issuance of such insurance shall be furnished to Licensee by Licensor.

Licensor shall also self-insure by maintaining at all times liquidity of at least \$500,000.

#### **ARTICLE X. FORCE MAJEURE**

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

#### **ARTICLE XI. NOTICE**

Except as otherwise provided herein, any notice required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

To Licensor:

Provo City Corporation

To Licensee:

Google Fiber Utah, LLC

351 West Center Street, Provo, UT 84601  
Attention: Mayor

**With copies to (which shall not constitute notice):**

Provo City Attorney's Office PO Box 1849  
Provo, UT 84603  
Attention: City Attorney

AND

Provo City Energy Department, PO Box 658  
Provo, UT 84603  
Attention: Energy Department Director

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):**

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

**Provo City Corporation**

**Google Fiber Utah, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
FEE SCHEDULE**

- 1) Generally.
  - a. Subject to the provisions of this Exhibit, Licensor agrees to charge Licensee a reasonable rental fee in relation to each of Licensee's Attachments to Licensor's Structures, which, in the absence of a rate otherwise stipulated by this Exhibit, will be negotiated between Licensee and Licensor on a case-by-case basis.
  - b. The rental rate for each Attachment to a Structure will be the same as, or less than, the lowest rate charged by Licensor of any other attacher to the same or a materially similar Structure. In the event that Licensor makes available any rate more favorable to one or more third party attacher, Licensor shall make that same rate available to Licensee at the same time as to that third party attacher. Upon Licensee's request, Licensor shall provide Licensee with reasonable documentation showing the rate charged by Licensor of each third party attacher to its Structures.
  - c. Licensor may decrease the applicable rental fee at any time and in any amount.
- 2) Poles.
  - a. Except as otherwise agreed between the Parties, the lowest rental rate charged by Licensor per attachment to a utility or light pole (each a "Pole") at the effective date is \$5.00, which is the amount that Licensee will pay per Attachment to a Pole from the Effective Date (the "Pole Rental Fee").
  - b. Licensor may decrease the Pole Rental Fee at any time and in any amount.
  - c. Licensor may only increase the Pole Rental Fee by way of an ordinance passed by the Provo Municipal Council, and only provided that the Pole Rental Fee may never be greater than the rental rate that would be charged under the pole rental formula contained in 47 C.F.R. 1.1409(e)(2).



**Exhibit F - Franchise Agreement**

See attached.

## 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: \_\_\_\_\_

**Exhibit G - Collateral Agreements**

See attached.



**EXHIBIT A  
TO  
QUITCLAIM DEED**

---

**(Legal Description of Property)**

[to be inserted]

**WHEN RECORDED, RETURN TO:**

PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attention: Kerry L. Owens

---

Space above for County Recorder's Use

**ASSIGNMENT OF EASEMENTS**

THIS ASSIGNMENT OF EASEMENTS (“**Assignment**”) is made effective as of \_\_\_\_\_, 2013 (the “**Effective Date**”), by PROVO CITY CORPORATION, a Utah municipal corporation (together with its successors and assigns, the “**Assignor**”), having an address of 351 West Center Street, Provo, UT 84603, Attn: Mayor in favor of GOOGLE FIBER UTAH, LLC, a Utah limited liability company (together with its successors and assigns, the “**Assignee**”), having an address of c/o Google Fiber Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, Attn: General Manager.

**RECITALS:**

A. Assignor and Assignee are parties to that certain Asset Purchase Agreement dated \_\_\_\_\_, 2013 (the “**Purchase Agreement**”), wherein Assignor agreed to sell and Assignee agreed to purchase certain assets of Assignor related to the Fiber-to-the-Premises communications network within the boundaries of Provo, Utah commonly known as iProvo.

B. Assignor owns certain easements and rights of way for telecommunication facilities, utility lines and related equipment (collectively, the “**Easements**”) upon certain parcels of real property located in Utah County, Utah (collectively, the “**Easement Parcels**”) as more particularly described on Exhibit A attached hereto and made a part hereof.

C. Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee the Easements together with all of Assignor’s right, title and interest in and to the Easement Parcels.

1. Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, conveys and grants to Assignee the Easements and all right, title and interest of Assignor in and to the Easement Parcels. Assignor represents and warrants the Easements are free and clear of any liens, charges, claims or encumbrances arising by, through or under Assignor.

2. Repair of Adjacent Property; Indemnity. As a condition for this Assignment, Assignee agrees to repair any damage to the adjacent property caused by Assignee, its agents, employees, contractors, subcontractors, successors and assigns that arises out of the construction, installation, removal, operation, or maintenance of Assignee’s use of the Easements, and to indemnify, defend and hold Assignor harmless from and against all claims, damages, losses and

liabilities, arising out of or resulting from personal injury or property damage, provided that any such claim, damage, loss and liability is caused in whole or in part by any intentional or negligent act or omission of Assignee, its employees, agents, contractors, subcontractors, successors and assigns.

3. Further Assurances. Assignor shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be necessary in order to complete and evidence the assignment, conveyance and transfer herein provided and to do all things as may be reasonably requested in order to carry out the intent and purpose of this Assignment.

4. No Third Party Beneficiaries. This Assignment is made solely and specifically among and for the benefit of the parties hereto and their successors and assigns, and no other person is to have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this Assignment as a third-party beneficiary or otherwise.

5. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns. All provisions of this Assignment, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective assigns and successors of the parties.

6. Attorney's Fees. In the event of any litigation by a party to enforce the terms of this Assignment, the prevailing party in such litigation shall be entitled to receive from the other party payment of attorneys' fees incurred (whether before or after commencement of such litigation) by the prevailing party.

7. Authority. The execution, delivery, and performance of this Assignment has been duly authorized by all necessary action of Assignor, and when duly executed and delivered, will be a legal, valid and binding obligation, enforceable in accordance with its terms.

8. Governing Law. This Assignment shall be construed in accordance with and governed by the laws in the State of Utah.

9. Counterparts. This Assignment may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment to be effective as of the Effective Date.

**ASSIGNOR:**

PROVO CITY CORPORATION,  
a Utah municipal corporation

By: \_\_\_\_\_  
John R. Curtis, as Mayor

**ASSIGNEE:**

GOOGLE FIBER UTAH, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF UTAH )  
 :SS  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by John R. Curtis, as Mayor of PROVO CITY CORPORATION, a Utah municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, as \_\_\_\_\_ of GOOGLE FIBER UTAH, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A  
TO  
ASSIGNMENT OF EASEMENTS**

---

(List of Easements)

1. [Easement Agreement(s)] dated \_\_\_\_\_, 2013 by and between Provo City and Provo School District recorded with the Utah County Recorder's Office on \_\_\_\_\_, 2013 as Entry No. \_\_\_\_\_, affecting real property located in Utah County, Utah more particularly described as:

[to be inserted]

2. Easement Agreement dated September 21, 2005 by and between Provo City and Wasatch Mental Health Services Special Service District recorded with the Utah County Recorder's Office on September 28, 2005 as Entry No. 109610:2005, affecting real property located in Utah County, Utah more particularly described as:

[to be inserted]

3. Utility Line Easement dated February 22, 2007 by United Way of Central and Southern Utah in favor of Provo City Corporation recorded with the Utah County Recorder's Office on February 28, 2007 as Entry No. 29561:2007, affecting real property located in Utah County, Utah more particularly described as:

[to be inserted]

**WHEN RECORDED, RETURN TO:**

PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attention: Kerry L. Owens

---

Space above for County Recorder's Use

**ASSIGNMENT OF RIGHT-OF-WAYS**

THIS ASSIGNMENT OF RIGHT-OF-WAYS (“**Assignment**”) is made effective as of \_\_\_\_\_, 2013 (the “**Effective Date**”), by PROVO CITY CORPORATION, a Utah municipal corporation (together with its successors and assigns, the “**Assignor**”), having an address of 351 West Center Street, Provo, UT 84603, Attn: Mayor, in favor of GOOGLE FIBER UTAH, LLC, a Utah limited liability company (together with its successors and assigns, the “**Assignee**”), having an address of c/o Google Fiber Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, Attn: General Manager.

**RECITALS:**

A. Assignor and Assignee are parties to that certain Asset Purchase Agreement dated \_\_\_\_\_, 2013 (the “**Purchase Agreement**”), wherein Assignor agreed to sell and Assignee agreed to purchase certain assets of Assignor related to the Fiber-to-the-Premises communications network within the boundaries of Provo, Utah commonly known as iProvo.

B. Assignor owns certain right of ways (collectively, the “**Right-of-Ways**”) upon certain parcels of real property located in Utah County, Utah (collectively, the “**Right-of-Way Parcels**”) as more particularly described on Exhibit A attached hereto and made a part hereof.

C. Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee the Right-of-Ways together with all of Assignor’s right, title and interest in and to the Right-of-Way Parcels.

1. Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, conveys and grants to Assignee the Right-of-Way and all right, title and interest of Assignor in and to the Right-of-Way Parcels. Assignor represents and warrants the Right-of-Ways are free and clear of any liens, charges, claims or encumbrances.

2. Repair of Adjacent Property; Indemnity. As a condition for this Assignment, Assignee agrees to repair any damage to the adjacent property caused by Assignee, its agents, employees, contractors, subcontractors, successors and assigns that arises out of the construction, installation, removal, operation, or maintenance of Assignee’s use of the Right-of-Ways, and to indemnify, defend and hold Assignor harmless from and against all claims, damages, losses and liabilities, arising out of or resulting from personal injury or property damage, provided that any

such claim, damage, loss and liability is caused in whole or in part by any intentional or negligent act or omission of Assignee, its employees, agents, contractors, subcontractors, successors and assigns.

3. Further Assurances. Assignor shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be necessary in order to complete and evidence the assignment, conveyance and transfer herein provided and to do all things as may be reasonably requested in order to carry out the intent and purpose of this Assignment.

4. No Third Party Beneficiaries. This Assignment is made solely and specifically among and for the benefit of the parties hereto and their successors and assigns, and no other person is to have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this Assignment as a third-party beneficiary or otherwise.

5. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns. All provisions of this Assignment, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective assigns and successors of the parties.

6. Attorney's Fees. In the event of any litigation by a party to enforce the terms of this Assignment, the prevailing party in such litigation shall be entitled to receive from the other party payment of attorneys' fees incurred (whether before or after commencement of such litigation) by the prevailing party.

7. Authority. The execution, delivery, and performance of this Assignment has been duly authorized by all necessary action of Assignor, and when duly executed and delivered, will be a legal, valid and binding obligation, enforceable in accordance with its terms.

8. Governing Law. This Assignment shall be construed in accordance with and governed by the laws in the State of Utah.

9. Counterparts. This Assignment may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment to be effective as of the Effective Date.

**ASSIGNOR:**

PROVO CITY CORPORATION,  
a Utah municipal corporation

By: \_\_\_\_\_  
John R. Curtis, as Mayor

**ASSIGNEE:**

GOOGLE FIBER UTAH, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH )  
 :SS  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by John R. Curtis, as Mayor of PROVO CITY CORPORATION, a Utah municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, as \_\_\_\_\_ of GOOGLE FIBER UTAH, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A  
TO  
ASSIGNMENT OF RIGHT-OF-WAYS**

---

(List of Right-of-Ways)

1. [Right-of-Way dated \_\_\_\_\_, 2013 by \_\_\_\_\_ recorded with the Utah County Recorder's Office on \_\_\_\_\_, 2013 as Entry No. \_\_\_\_\_, affecting real property located in Utah County, Utah more particularly described as:]

[to be inserted]

2. [Right-of-Way dated \_\_\_\_\_, 2013 by \_\_\_\_\_ recorded with the Utah County Recorder's Office on \_\_\_\_\_, 2013 as Entry No. \_\_\_\_\_, affecting real property located in Utah County, Utah more particularly described as:]

[to be inserted]

- 3.

## GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE (this "Agreement"), dated [\_\_\_\_], 2013, is by and between Provo City Corporation, a Utah municipal corporation ("Seller") and Google Fiber Inc., a Delaware corporation ("Purchaser").

### W I T N E S S E T H

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of April 16, 2013, by and among Seller and Purchaser (the "Purchase Agreement"), Seller has agreed to sell, convey, transfer, assign and deliver to Purchaser the Acquired Assets;

WHEREAS, the Purchase Agreement requires that Purchaser assume and agree to pay and perform when due the Assumed Liabilities; and

WHEREAS, the terms of the Purchase Agreement are incorporated herein by reference and capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Purchase Agreement.

NOW, THEREFORE, subject to the terms and conditions of the Purchase Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Seller hereby irrevocably and unconditionally sells, conveys, transfers, assigns and delivers to Purchaser and its successors and permitted assigns, for its and their own use and benefit forever, and Purchaser hereby purchases, acquires and accepts all of Seller's right, title and interest in, to and under all of the Acquired Assets on the terms and conditions set forth in the Purchase Agreement. Nothing in this Agreement shall be deemed to sell, convey, transfer, assign or deliver any of the Excluded Assets to Purchaser and Seller shall retain all right, title and interest in, to and under the Excluded Assets.

2. Purchaser hereby irrevocably and unconditionally assumes, and agrees to timely perform in accordance with their respective terms, all of the Assumed Liabilities. It is expressly agreed that Seller shall retain and Purchaser shall not assume any of the Excluded Liabilities, and all such Excluded Liabilities shall remain the sole responsibility of Seller.

3. All of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon Seller and Purchaser and their respective successors and permitted assigns.

4. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings both written and oral, among the parties hereto with respect to the subject matter hereof (other than the Purchase Agreement). To the extent any term or provision herein is inconsistent with the Purchase Agreement, the terms and provisions of the Purchase Agreement shall control.



5. Nothing in this Agreement, express or implied, is intended to confer upon any Person, other than the parties hereto or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

6. This Agreement may be amended by the parties hereto at any time only by execution of an instrument in writing referencing this Agreement signed on behalf of each of the parties hereto.

7. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. Any signature page delivered electronically or via facsimile (including transmission by Portable Document Format or other fixed image form) shall be binding to the same extent as an original signature page.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

GOOGLE FIBER INC.

By: \_\_\_\_\_  
Name:  
Title:

PROVO CITY CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to General Assignment and Bill of Sale]

**WHEN RECORDED MAIL TO:**

PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attn: Kerry L. Owens

---

Space above for County Recorder's Use

**GRANT OF EASEMENT**  
(Hut Site)

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, PROVO CITY CORPORATION, a Utah municipal corporation, its successors and assigns (“**Grantor**”), whose address is 351 West Center, Provo, Utah 84601, hereby grants and conveys to GOOGLE FIBER UTAH, LLC, a Utah limited liability company, its successors and assigns (“**Grantee**”), having an address of c/o Google Fiber Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, Attn: General Manager, a perpetual easement and right-of-way for the installation, operation, inspection, maintenance, repair, replacement, alteration, upgrade, protection and removal of telecommunications distribution shelter and associated power and communications distribution circuits (overhead and underground) and electronic equipment together with foundation, environmental controls, security, wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, vaults and cabinets, and all necessary or desirable accessories and appurtenances thereto, on, over, across and under Grantor’s real property in Utah County, State of Utah, more particularly described on Exhibit A attached hereto and made a part hereof.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including but not limited to, the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with Grantee’s use, occupation or enjoyment of this easement. The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns.

The easement and rights set forth herein may be terminated if (a) the improvements are abandoned for a period of twenty-four (24) consecutive months (excluding events of force majeure); provided however, that the improvements shall not be deemed abandoned as a result of maintenance, repairs, replacement or temporary shut-downs, and (b) Grantee fails within six (6) months of written notice by Grantor to undertake action to use the improvements.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

**PROVO CITY CORPORATION**

\_\_\_\_\_  
City Recorder

By: \_\_\_\_\_  
Title: Mayor



**EXHIBIT A  
TO  
GRANT OF EASEMENT  
(Hut Site)**

---

**(Legal Description of Property)**

[to be inserted]

**WHEN RECORDED MAIL TO:**

PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attn: Kerry L. Owens

---

Space above for County Recorder's Use

**GRANT OF EASEMENT**  
(Satellite Dish Site)

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, PROVO CITY CORPORATION, a Utah municipal corporation, its successors and assigns (“**Grantor**”), whose address is 351 West Center, Provo, Utah 84601, hereby grants and conveys to GOOGLE FIBER UTAH, LLC, a Utah limited liability company, its successors and assigns (“**Grantee**”), having an address of c/o Google Fiber Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, Attn: General Manager, a perpetual easement and right-of-way for the installation, operation, inspection, maintenance, repair, replacement, alteration, upgrade, protection and removal of telecommunications facilities, satellite dishes, antennas, receiver and transmitter units, poles and towers, security fencing, generators, outbuildings, propane tanks, power and communications distribution circuits (overhead and underground) and electronic equipment together with foundations, environmental controls, security, wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, vaults and cabinets, and all necessary or desirable accessories and appurtenances thereto, on, over, across and under Grantor’s real property in Utah County, State of Utah, more particularly described on Exhibit A attached hereto and made a part hereof.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including but not limited to, the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with Grantee’s use, occupation or enjoyment of this easement. The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns.

The easement and rights set forth herein may be terminated if (a) the improvements are abandoned for a period of twenty-four (24) consecutive months (excluding events of force majeure); provided however, that the improvements shall not be deemed abandoned as a result of maintenance, repairs, replacement or temporary shut-downs, and (b) Grantee fails within six (6) months of written notice by Grantor to undertake action to use the improvements.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

**PROVO CITY CORPORATION**

\_\_\_\_\_  
City Recorder

By: \_\_\_\_\_  
Title: Mayor





**EXHIBIT A  
TO  
GRANT OF EASEMENT  
(Satellite Dish Site)**

---

**(Legal Description of Property)**

[to be inserted]

**WHEN RECORDED MAIL TO:**

Provo City Corporation  
351 West Center Street, P.O. Box 1849  
Provo, Utah 84601  
Attn: Property Manager

---

Space above for County Recorder's Use

**GRANT OF EASEMENT**

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Provo City School District, a District of Education, and body corporate and politic of the State of Utah, its successors and assigns (“**Grantor**”), whose address is 280 West 940 North, Provo, Utah, hereby grants and conveys to PROVO CITY CORPORATION, a Utah municipal corporation, its successors and assigns (“**Grantee**”) whose address is 351 West Center, Provo, Utah 84601, a perpetual easement and right-of-way for the installation, operation, inspection, maintenance, repair, replacement, alteration, upgrade, protection and removal of telecommunications distribution shelter and associated power and communications distribution circuits (overhead and underground) and electronic equipment together with foundation, environmental controls, security, wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, vaults and cabinets, and all necessary or desirable accessories and appurtenances thereto, on, over, across and under Grantor’s real property in Utah County, State of Utah, more particularly described on Exhibit A attached hereto and made a part hereof:

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including but not limited to, the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with Grantee’s use, occupation or enjoyment of this easement. The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns.

The easement and rights set forth herein may be terminated if (a) the improvements are abandoned for a period of twenty-four (24) consecutive months (excluding events of force majeure); provided however, that the improvements shall not be deemed abandoned as a result of maintenance, repairs, replacement or temporary shut-downs, and (b) Grantee fails within six (6) months of written notice by Grantor to undertake action to use the improvements.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH            )  
                                      :SS.  
COUNTY OF UTAH        )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, as the \_\_\_\_\_ of the Provo City School District, a District of Education and body corporate and politic of the State of Utah.

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
TO  
GRANT OF EASEMENT**

---

(Legal Description of Easement)