

## 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; (i) 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)**