

CONDUIT NETWORK LICENSE AGREEMENT

This Conduit Network License Agreement, including the attached Exhibits (the “**Agreement**”), is entered into as of the date of last signature below (the “**Effective Date**”) by and between the City of West Des Moines, a municipal corporation in the State of Iowa (“**City**”), and Google Fiber Inc., a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043 (together with its direct and indirect subsidiaries, “**Google Fiber**”).

BACKGROUND

A. In 2016, the City set a goal of universal broadband access for all residents and businesses. Ever since, the City has actively pursued that goal through shared resources and collaborations between the public and private sectors, including shared or joint fiber conduit systems.

B. Four years later, the City recognizes how COVID-19 has laid bare the importance of universal broadband access -- for the City of West Des Moines and for the country. Indeed, broadband access is fundamental to life in the 21st Century. Among other things, it unlocks new opportunities for learning from home, working from home, and the expanding services provided by tele-health.

C. Over the last four years, the City has worked with several carriers in the area to understand their needs and develop opportunities for collaborative network builds. The City has learned that there is presently limited interest in the private market for providing citywide broadband access. It has also experienced resistance to concepts such as "one dig" policies or municipal open trench ordinances that could entail one company making private investments that increase access to facilities that can increase potential competition.

D. The City wishes to expand its underground conduit network, attract additional private sector companies as licensees in the network, and encourage the deployment of a citywide, high-speed broadband network for the residents and businesses in the City, all in an effort to bring high-speed broadband connectivity to the residents and businesses in the City.

E. Google Fiber wishes to support the City’s goals by becoming the inaugural, Citywide Licensee in the City’s multi-user underground conduit network, committing to make monthly license payments, and deploying its high-speed network to residents and businesses throughout the City.

F. With this Agreement, the City and Google Fiber establish their respective rights and obligations in connection with the multi-tenant conduit network, Google Fiber’s position as the inaugural Citywide Licensee, and the occupancy and use by Google Fiber of portions of the Conduit Network.

AGREEMENT

In consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Google Fiber agree as follows:

1. DEFINITIONS

- 1.1. “**Acceptance Date**” is defined in Section 4.2.4.
- 1.2. “**Acceptance Testing**” is defined in Section 4.2.2.
- 1.3. “**Access Point**” means a physical point in the Conduit Network: (a) where Google Fiber can readily and safely access the inside of the Licensed Conduit and the fiber and Equipment for installation, repair, maintenance, replacement, and removal, without the need for excavating a road, sidewalk, or other surface, including without limitation at the vaults, pedestals, cabinets,



and other conduit termination or junction locations; and (b) is connected through Local Access Conduit to the Meet-Me Point.

- 1.4. **“Acquired Conduit Network”** means interconnected conduits that are not constructed as contemplated by any Network Section Design but that, following the Effective Date, are installed beneath the public right-of-way or private property in the City in connection with any newly developed residential or commercial real estate development, meet the Specifications, are connected to the Local Access Conduit, and are dedicated, gifted, or otherwise transferred to the City by the developer of residential or commercial properties.
- 1.5. **“Agreement”** means this Conduit Network License Agreement including attached Exhibits.
- 1.6. **“Adjusted Unit Rate”** is defined in Section 5.1.2.
- 1.7. **“Arterial Conduit Network”** means the portions of the Local Access Conduit that are designed to contain the Trunk Cables.
- 1.8. **“Authorizations”** means all permits and authorizations from all third parties that have the right to grant or withhold its authorization, permission, or consent, which authorization, permission, or consent is required under applicable law for: (a) constructing the Conduit Network, (b) traversing, occupying, and accessing the property on, in, or under which the Conduit Network is constructed and maintained, (c) maintaining and repairing the Conduit Network, and (d) granting to Google Fiber the license, access, and usage, and all other rights set out in, or contemplated by, this Agreement.
- 1.9. **“Business Day”** means each calendar day, excluding Saturdays, Sundays, and federally recognized holidays.
- 1.10. **“City”** is defined in the preamble to this Agreement.
- 1.11. **“City Bonds”, or “Bonds”**, mean the general obligation urban renewal bonds to be issued by the City in one or more series for the purpose of funding the design and construction of the Conduit Network.
- 1.12. **“City Indemnified Party”** is defined in Section 12.1.
- 1.13. **“Citywide Licensee”** means a licensee that licenses at least ninety percent (90%) of the Conduit Network measured by linear route feet of licensed conduit.
- 1.14. **“Commencement Date”** is defined in Section 5.1.1.
- 1.15. **“Conduit Network”** means the underground conduit network currently existing in the City and which the City plans to expand within the Municipal Authority Area as contemplated by this Agreement. For the avoidance of doubt, Conduit Network does not include any City-owned conduit that currently exists or is subsequently constructed or acquired that is not included in a Network Section Design, except with respect to Drop Conduits, any Acquired Conduit Network, and any Extended Conduit Network.
- 1.16. **“Confidential Information”** means all strategic, functional, technical, financial, marketing, sales, promotional and other information (including all related know-how, implementation, operational methods and procedures) related to the business of a Party, which is disclosed by one



Party to the other Party, to the extent that such information is marked or identified as confidential or proprietary or would normally be considered confidential under the circumstances, excluding information that: (a) is independently developed by the receiving Party, (b) is lawfully received by the receiving Party free of any obligation to keep it confidential, or (c) becomes generally available to the public other than by breach of this Agreement. Disclosure of Confidential Information is subject to the Iowa Open Records Law and Section 13.2.

- 1.17. **“Constructible Address”** means a residential or commercial address within the Municipal Authority Area that the City designates in a Network Section Design as either: (a) a Designed Address, or (b) as having the potential to be served by a Drop Conduit at some point after the Acceptance Date of the Network Section such that when it is served by a Go-Back Drop Conduit it converts into a Go-Back Address.
- 1.18. **“Costs”** means all actual, documented, and reasonable costs incurred and computed in accordance with generally accepted accounting principles and include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs (the overhead allocation will not exceed twenty percent (20%) of the labor costs computed without such overhead); and (b) other direct costs and out-of-pocket expenses on a pass-through basis (including without limitation equipment, materials, supplies, contract services, sales, use or similar taxes, and professionals’ fees).
- 1.19. **“Damage”** is defined in Section 6.1.1.
- 1.20. **“Delivery Delay Credit”** is defined in Section 3.3.
- 1.21. **“Delivery Milestone Date”** is defined in Section 3.3.
- 1.22. **“Delivery Date”** means the date on which the City actually completes the installation of the Licensed Conduit for a Network Section and the Licensed Conduit is ready for Acceptance Testing.
- 1.23. **“Designed Address”** means a Constructible Address that the City intends to be served by a Drop Conduit as of the Acceptance Date of the Network Section in which such Constructible Address is located in accordance with the Network Section Design. A Designed Address will convert to a Servable Address as of the later of (a) Acceptance Date of the Licensed Conduit in the applicable Network Section and (b) the actual Acceptance Date of the Drop Conduit serving the SxU or MxU associated with such Designed Address.
- 1.24. **“Draft Network Section Design”** is defined in Section 2.1.1.
- 1.25. **“Drop Conduit”** means a segment of Licensed Conduit that is connected through Local Access Conduit to the Meet-Me Point, and that begins from the edge of the public right-of-way or private road and runs along a lateral pathway ending at an Access Point located inside or on the exterior wall of a residential or commercial structure.
- 1.26. **“Effective Date”** is defined in the preamble to this Agreement.
- 1.27. **“Equipment”** means communications and networking facilities used for fiber service drops, and other equipment owned or leased from third parties by Google Fiber and used in connection with providing its communications services.

- 1.28. “**Evaluation Period**” means the period of twenty (20) Business Days after Google Fiber receives the Acceptance Testing results.
- 1.29. “**Existing Third-Party User**” is defined in Section 4.5.2.
- 1.30. “**Extended Conduit Network**” means interconnected conduits that: (a) are installed by the City beneath the public right of way or private property in the City after the City has achieved Initial Network Completion, (b) were not included in a Network Section Design, (c) meet the Specifications, and (d) are connected to the Local Access Conduit.
- 1.31. “**Extension Term**” is defined in Section 9.5.
- 1.32. “**First Delivery Milestone Date**” is defined in Section 3.2.1.
- 1.33. “**First Section Design**” is defined in Section 2.2.
- 1.34. “**Force Majeure Event**” means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of commercially reasonable efforts, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, acts of public enemies, pandemic, terrorism or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above. Notwithstanding the foregoing, each Party acknowledges and agrees that it is entering into this Agreement and committing to perform its respective obligations with an awareness of the effects of the COVID-19 outbreak, as of the Effective Date, the continuation of which the Parties agree will not be deemed a Force Majeure Event, absent changes in circumstances or occurrence of events, as of the date hereof, beyond the Parties’ reasonable control which would independently meet the definition of a Force Majeure Event.
- 1.35. “**Franchise Fee Credit**” is defined in Section 4.7.1.
- 1.36. “**Go-Back Address**” means a Constructible Address for which Google Fiber has received a request for Google Fiber’s services or permission to install a Drop Conduit after the Acceptance Date for the applicable Network Section. A Go-Back Address will convert to a Servable Address as of the Acceptance Date of the Drop Conduit serving such Go-Back Address.
- 1.37. “**Go-Back Drop Conduit**” means a Drop Conduit serving a Go-Back Address.
- 1.38. “**Google Fiber**” is defined in the preamble to this Agreement.
- 1.39. “**Google Fiber Indemnified Party**” is defined in Section 12.1.
- 1.40. “**Google Fiber Network**” means the fiber and Equipment installed by Google Fiber in the Licensed Conduit, or any portion thereof.
- 1.41. “**Initial Network Completion**” is defined in Section 3.4.
- 1.42. “**Initial Network Completion Date**” is defined in Section 3.4.

- 1.43. “**Initial Term**” is defined in Section 9.1.
- 1.44. “**Interfering Use**” is defined in Section 4.6.
- 1.45. “**Licensed Conduit**” is defined in Section 4.1.1.
- 1.46. “**Local Access Conduit**” means conduit in the Conduit Network that is installed in the public rights-of-way and connects the Meet-Me Point to Drop Conduit Vaults or Drop Demarc Vaults (each as defined in the Specifications).
- 1.47. “**Material Change**” means, with respect to a Network Section: (a) a modification to the Network Section from the applicable Network Section Design, whether or not such modification is first recorded as such in the corresponding Network Section Design, made during or prior to construction of such Network Section that would materially affect the ability of the Licensed Conduit in the Network Section to meet the Specifications; or (b) a change of more than thirty percent (30%) of the number or locations of Designed Addresses contained in the Network Section.
- 1.48. “**Meet-Me Point**” means a point on the Conduit Network at which the Conduit Network connects to a facility or network designated by Google Fiber, at which Google Fiber may interconnect the Google Fiber Network to optronics and other facilities, and to other networks, for purposes of aggregating and backhauling the data carried on the Google Fiber Network and for connecting the Google Fiber Network to the public Internet.
- 1.49. “**Municipal Authority Area**” means the geographic area within the corporate boundaries of the City and areas not farther than ten (10) miles outside of the corporate boundaries of the City where the City owns the public right-of-way and has the authority under applicable law to grant any licensee of the Conduit Network the right to install, repair, maintain, operate, and replace fiber and other communications facilities under the public right-of-way in which such licensed portion of the Conduit Network is located.
- 1.50. “**MxU Development**” means a residential multi-dwelling development, or commercial multi-tenant development, in each case containing one or more MxU Buildings. Multiple MxU Buildings that share a single address will be deemed to be a single MxU Development.
- 1.51. “**MxU Building**” means a residential multi-dwelling unit building or a multi-tenant commercial building. Notwithstanding the foregoing, a residential multi-dwelling unit building or multi-tenant commercial building that is structurally separate from, or does not share an interior connection to, an adjacent building is deemed to be a separate MxU Building, notwithstanding its having common ownership with an adjacent building.
- 1.52. “**Network Delivery Form**” is defined in Section 4.2.1.
- 1.53. “**Network Section**” means each of the sections of the Conduit Network as described in the First Section Design, and includes the Licensed Conduit as described in one or more Network Delivery Forms in accordance with the applicable Network Section Design.
- 1.54. “**Network Section Design**” means the final network design for each Network Section, including any subsequent updates and modification thereto, prepared by the City in accordance with the Specifications and approved by Google Fiber, and used in connection with the construction of the applicable Network Section.

- 1.55. **“Network Validation Period”** means, with respect to any Network Section, the period of time beginning on the date on which the Network Section Design for such Network Section is deemed validated and ending on the date that is eighteen (18) months following the date on which such Network Section is accepted in accordance with Section 4.2.
- 1.56. **“Non-Standard Address”** is a residential or commercial address served by a Non-Standard Drop Conduit for which the City elects to install the Drop Conduit in consideration for a monthly License Payment at the Unit Rate in accordance with Section 3.6.
- 1.57. **“Non-Standard Drop Conduit”** means a Drop Conduit for which the Parties have agreed for the City to install in accordance with Section 3.6.
- 1.58. **“Open Records Law”** means Iowa Code chapters 21 and 22.
- 1.59. **“Party”** means the City or Google Fiber and **“Parties”** means the City and Google Fiber.
- 1.60. **“Person”** means a natural person, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a governmental authority.
- 1.61. **“Pro-Rated Operating Cost”** means, with respect to each calendar year during the Extension Term, the City’s budgeted out-of-pocket costs for performing the operations and maintenance on the Conduit Network in accordance with Section 6, Exhibit F and Exhibit G, plus twenty percent (20%) for shared overhead and administrative expenses, pro-rated by the total linear footage of the Licensed Conduit utilized by Google Fiber compared to the sum of (a) the total linear footage of the Conduit Network used respectively by Google Fiber and by each Third-Party Users and (b) the linear footage of the Conduit Network that has capacity for additional licensees. A Third-Party User will be included for purposes of calculating the following year’s Pro-Rated Operating Cost if such Third-Party User has an agreement with the City to use the Conduit Network or any portion thereof for at least one hundred and eighty (180) days during such following year.
- 1.62. **“Rate Chart”** is defined in Section 5.1.3.1.
- 1.63. **“Service Credit”** is defined in Exhibit G.
- 1.64. **“Servable Address”** means a residential or commercial address that is (a) located within the Municipal Authority Area and (b) assigned to a SxU that is served by a Drop Conduit, or to a MxU Development in which every MxU Building in such MxU Development is served by a Drop Conduit. A SxU is deemed to be served by a Drop Conduit if there is an Access Point on the Drop Conduit, both meeting the Specifications, located on the exterior wall of the SxU. A MxU Building is deemed to be served by a Drop Conduit if there is an Access Point on a Drop Conduit, both meeting the Specifications, located (x) inside the telecom closet or similar space at which there are existing fiber communications cables or ducts connecting to the individual units located in the MxU Building; or (y) if there is no available telecom closet or similar location, on the exterior wall of the MxU Building. Subject to the foregoing, the number of Servable Addresses in a single building with multiple tenants will be the higher of (i) the number of suites, units, or other subdivided portions of a building that are designed for permitting purposes to be used by separate tenants, (ii) the number of suites, units, or other subdivided portions of the buildings that are actually separately leased to tenants; provided, however, that multiple suites or units made available by a single entity operating a co-working space business will be deemed to be one Servable Address.

- 1.65. “**Shortfall Credit**” is defined in Section 5.1.2.
- 1.66. “**Specifications**” means the minimum viable architecture and other specifications for the Conduit Network as set out in Exhibit A, which Specifications may be altered by mutual written consent of the Parties and pursuant to a written, agreed-upon process, when appropriate to achieve value engineering or cost savings.
- 1.67. “**SxU**” means a single-family residential building or a single-tenant commercial building. In any series of physically connected row houses, townhouses, terrace houses or similar buildings, separate dwelling units or commercial units that are individually owned will be deemed separate SxUs.
- 1.68. “**Term**” means the Initial Term plus the Extension Term (if applicable).
- 1.69. “**Third-Party Revenue**” is defined in Section 5.5.
- 1.70. “**Third-Party User**” means any third party that installs or maintains any facilities or equipment in the Licensed Conduit pursuant to a license, lease, or other agreement with the City.
- 1.71. “**Trunk Cables**” means the fiber cables in the Google Fiber Network designated as critical routes in accordance with the Specifications.
- 1.72. “**Unit Rate**” is defined in Section 5.1.1.
- 1.73. “**Universal Access Credit**” is defined in Section 5.5.
- 1.74. “**Up-Front Address**” is defined in Section 5.1.4.

2. CONDUIT NETWORK DESIGN

2.1. General.

- 2.1.1. Network Section Designs. The City shall design the Conduit Network, which may consist of separate designs for each Network Section (each a “**Draft Network Section Design**”), consistent with the Specifications. Upon Google Fiber’s validation in accordance with Section 2.3, a Draft Network Section Design will be deemed the Network Section Design for purposes of this Agreement.
- 2.1.2. Design Contents. Each Draft Network Section Design will include the information mutually agreed upon by the Parties for First Section Design, and at a minimum will include the list of all Designed Addresses and other Constructible Addresses within the Network Section corresponding to such Draft Network Section Design. Each Draft Network Section Design will designate no fewer than the number of Constructible Addresses (including Designed Addresses) as set out in Exhibit B for the applicable Network Section. The City will designate no fewer than 34,000 addresses as Constructible Addresses (including Designed Addresses) collectively across all Network Section Designs for the Conduit Network.
- 2.1.3. Access Points. Without limiting the Specifications, each Draft Network Section Design will require, and specify the design for, the construction of at least one (1) Drop Conduit Vault or Drop Demarc Vault (each as defined in the Specifications) located no further



than five (5) feet from the property line of, and on the same side of the street crossing as, each of at least ninety percent (90%) of the parcels or lots that have one or more residential or commercial addresses associated with the building or buildings on such parcel or lot.

- 2.1.4. **Sequencing.** The Parties will mutually agree on the sequence of the design, construction, and delivery of the Network Sections in the Conduit Network as soon as practicable following the Effective Date, with the goal of reducing the cost to the City of construction while maximizing the number of Servable Addresses. Once agreed upon in writing, the sequence of Network Sections will be memorialized in an amendment to Exhibit B, and may be revised thereafter only if (a) the City can reasonably articulate how such revisions would have a material positive impact on the cost or speed of the City's construction of the Conduit Network and such revisions are made prior to the delivery of the First Section Design under Section 2.2; or (b) by mutual agreement of the Parties.
- 2.2. **First Section Design.** The City will deliver the first Draft Network Section Design ("First Section Design") to Google Fiber for review and validation by December 31, 2020. The First Section Design will also include: (a) the design for the Arterial Conduit Network, and (b) the design for the connections between the Conduit Network and the Meet-Me Points at the locations indicated in Exhibit A.
- 2.3. **Review, Comment, and Validation.** Google Fiber will review each Draft Network Section Design and will reasonably determine whether the Draft Network Section Design meets the Specifications, the requirements of Section 2.1, and the Network Section sequencing set out in Exhibit B (including any modifications made thereto in accordance with Section 2.1.4). Google Fiber will notify the City in writing of the result of its evaluation and provide written comments and proposed revisions, including notifications of any deficiencies to the Draft Network Section Design as compared to the Specifications and Exhibit B within ten (10) Business Days of receiving such Draft Network Section Design. The City will provide Google Fiber with a revised Draft Network Section Design within twenty (20) Business Days following receipt of Google Fiber's comments and identified deficiencies, and Google Fiber will have an additional ten (10) Business Days to review and reasonably determine whether the revised Draft Network Section Design meets the Specifications and is consistent with Exhibit B. The Parties will cooperate in good faith to address and resolve any comments and deficiencies identified by Google Fiber. Each Draft Network Section Design will be deemed validated by Google Fiber: (a) upon written notice provided by Google Fiber to the City of such validation, (b) at the end of the ten (10) Business Days following Google Fiber's receipt of such Draft Network Section Design, or of revised versions of such Draft Network Section Design, unless Google Fiber has either provided written proposed revisions on the Draft Network section Design to the City, or has provided written notice to the City of Google Fiber's reasonable need for up to an additional ten (10) Business Days for its review (only one such extension is allowed per Network Section Design).
- 2.4. **Material Change to Network Section.** If the City intends to make any Material Change to a Network Section or a portion thereof prior to or during its construction, the City will promptly notify Google Fiber in writing of such Material Change and provide Google Fiber with the proposed design changes. Google Fiber and the City will follow the procedures set forth in Section 2.3 with respect to the review, comment, and validation of such design changes. The City will not implement any Material Change to a Network Section unless the proposed design modification is validated, or deemed validated under Section 2.3, by Google Fiber.



- 2.5. **Ownership of Designs.** To the extent the City has the legal right to do so, the City (a) will grant to Google Fiber a nonexclusive and irrevocable (during the Term of this Agreement) license to use the Draft Network Section Designs and the Network Section Designs for purposes of designing, installing, maintaining, or removing the Google Fiber Network; and (b) will provide Google Fiber with a nonexclusive license to use or share the designs for purposes unrelated to the Google Fiber Network. Google Fiber acknowledges and agrees that the City may share the Draft Network Section Designs and the Network Section Designs with potential Third-Party Users and said designs may be subject to review and comment by potential Third-Party Users, provided such review and comment does not interfere with Google Fiber's rights hereunder and does not negatively affect the review, comment, and validation process set out in Section 2.3 or the schedules set out in Section 3 and in Exhibit B.

3. CONSTRUCTION TIMEFRAME AND PROJECTED DELIVERY MILESTONES.

- 3.1. **Progress Updates.** The City will meet and confer with Google Fiber, including Google Fiber's third-party engineering or other contractors, to discuss the construction progress of the Conduit Network on at least a monthly basis, such meetings to take place by telephone, videoconference, at the construction site, or at such location mutually agreed to by the Parties.

3.2. **First Network Section.**

- 3.2.1. The City will deliver the first Network Section meeting the Specifications and the First Section Design and containing the number of Servable Addresses equal to or exceeding 50% of the number of Designed Addresses in such Network Section by July 31, 2021 ("**First Delivery Milestone Date**").

- 3.2.2. In the event that, by the Acceptance Date (as described in Section 4.2.4) for the First Network Section, fewer than 50% of the Designed Addresses for the First Network Section have become Servable Addresses, then either Google Fiber or the City may terminate this Agreement in accordance with Section 9.4.2.

- 3.3. **Delivery Schedule for Additional Network Sections.** Exhibit B sets out the agreed upon delivery schedule dates for the Network Sections after the first Network Section (each date a "**Delivery Milestone Date**"). If the City anticipates that it will not be able to deliver a Network Section by the applicable Delivery Milestone Date, the City will notify Google Fiber in writing at least thirty (30) Business Days prior to such Delivery Milestone Date. If the City fails, by a Delivery Milestone Date, to deliver the corresponding Network Section that has been accepted in accordance with Section 4.2, and such failure is reasonably attributable to either the City's construction contractors' failure to complete construction in accordance with the timeframes set out in Exhibit B or the City's failure to take steps reasonably within its control to meet the applicable Delivery Milestone Date, then the City will provide a credit to Google Fiber (a "**Delivery Delay Credit**") against Google Fiber's then-current total monthly License Payment. The amount of the Delivery Delay Credit will be equal to Five Hundred Dollars (\$500) for each day completion is delayed beyond the applicable Delivery Milestone Date.

- 3.4. **Initial Network Completion.** The City will achieve Initial Network Completion by the 2nd (second) anniversary of the date on which the First Section Design is deemed validated under Section 2.3 (the "**Initial Network Completion Date**"). "**Initial Network Completion**" means the City has delivered to Google Fiber the agreed upon number of Network Sections that meet the Specifications and corresponding Network Section Designs and have been validated by Google Fiber pursuant to Section 4.2.



- 3.5. **Go-Back Drop Conduits.** The City will install Drop Conduits to serve Constructible Addresses in accordance with the timeframe set out in Exhibit G, provided that this requirement will cease to apply once the total number of Servable Addresses equals or exceeds 42,000.
- 3.6. **Non-Standard Drop Conduit Installations.** In the event that Google Fiber notifies the City in writing that Google Fiber has received a request for service for a residential or commercial address within a Network Section that is not already served by a Drop Conduit and is not a Constructible Address, the City will: (a) provide Google Fiber with a firm estimate of the cost for installing a Drop Conduit to serve such address, (b) notify Google Fiber that the City elects to install the Drop Conduit in consideration for a monthly License Payment at the Unit Rate for the Servable Address served by such Drop Conduit, or (c) decline to install a Drop Conduit. If the City provides an estimated cost for such Drop Conduit, Google Fiber will either accept or reject the estimate within twenty-four (24) hours after receiving the estimate. Failure to reply within 24 hours shall be deemed a rejection by Google Fiber. If Google Fiber accepts the City's estimate, or if the City elects to install the Drop Conduit in consideration for a monthly License Payment at the Unit Rate, then the City will install such Drop Conduit in accordance with the timeframe set out in Exhibit G. If the City elects to install the Drop Conduit in consideration for a monthly License Payment at the Unit Rate or if Google Fiber accepts the City's estimate, then the address served by such Drop Conduit will be deemed a Servable Address in accordance with Section 5.1.4. If Google Fiber rejects the City's estimate or the City declines to install a Drop Conduit, neither Party will have any obligation to the other Party with respect to such address, without prejudice to Google Fiber's right to make future requests for the same address under this Section 3.6.
- 3.7. **Financing and Contracting Contingency.** In the event that the City is unable to complete one or more offerings of Bonds required to finance the construction of the Conduit Network as contemplated, or if the City does not execute an agreement with a construction contractor for the construction of some or all of the Conduit Network following the completion of the competitive bid process, and either such event continues for a period of three (3) months following the Effective Date, City will notify Google Fiber of whether the City intends to complete construction of the Conduit Network, and if it so intends, will also provide reasonable assurances to Google Fiber that it is able to do so. If the City indicates that it does not intend to complete the construction of the Conduit Network under the preceding sentence or the City's inability to complete the contemplated Bonds offering or execute an agreement with a construction contractor continues for a period of six (6) months after the Effective Date, either Party may terminate this Agreement in accordance with Section 9.4.3. For the avoidance of doubt, unless and until this Agreement is terminated in accordance with this Section 3.7 and Section 9.4.3., the City's inability to complete one or more offerings of Bonds for any reason or its inability to execute an agreement with a construction contractor, in each case other than as a result of a Force Majeure Event, will not suspend, toll, or otherwise affect either Party's obligations under the rest of this Agreement.

4. LICENSING CONDUIT NETWORK

4.1. **Grant of License: Limit on Obligation to License.**

- 4.1.1. The City hereby grants to Google Fiber a license for, and the right to access and use, for purposes of installing, maintaining, operating, repairing, and replacing the Google Fiber Network and providing any lawful service that does not constitute an Interfering Use, such conduit space and dedicated ducts in the Conduit Network consistent with the Specifications and as further described in one or more Network Section Designs and one



or more Network Delivery Forms, to be delivered by the City and accepted by Google Fiber in accordance with Section 4.2 (the “**Licensed Conduit**”). The license for Licensed Conduit in each Network Section will be deemed to begin upon Google Fiber’s acceptance of the applicable Network Section and will end upon the expiration of the Term. The parties acknowledge and agree that the Licensed Conduit constitutes a license and right of use of the City’s personal property, and that the rights granted by the City to Google Fiber under this agreement is not a conveyance of any interest in any real property.

- 4.1.2. Notwithstanding anything else to the contrary in this Agreement, Google Fiber will not be required to accept for delivery or to license, and no such delivery will be deemed accepted by operation of Section 4.2.3, any conduit, in the Conduit Network or otherwise, delivered by the City after Google Fiber has accepted Drop Conduits connecting 42,000 Servable Addresses. Upon the occurrence of the event described in Section 4.1.2, Google Fiber will have the right, but not to the obligation, to license additional Drop Conduits for Servable Addresses pursuant to the terms of this Agreement

4.2. **Delivery and Acceptance of Licensed Conduit.**

- 4.2.1. **Notice of Delivery.** The City will provide written notice to Google Fiber no later than sixty (60) days prior to the date, on or after the completion of installation of the Licensed Conduit in a Network Section, on which the City anticipates delivering the Licensed Conduit for Acceptance Testing (the “**Estimated Delivery Date**”). The written notice will include, at a minimum, the information listed in Exhibit C in a format and medium to be agreed upon in good faith by the Parties as part of the Network Section Design for the first Network Section (the “**Network Delivery Form**”). The City will also provide a completed Network Delivery Form for Drop Conduits delivered after the Acceptance Date of the Network Section in which they are located.
- 4.2.2. **Acceptance Testing.** On or after the Delivery Date of the Licensed Conduit in a Network Section, the City will conduct testing in accordance with the conduit testing procedures specified in Exhibit D to verify that the Licensed Conduit in such Network Section was installed in accordance with the Specifications and with the applicable Network Section Design (“**Acceptance Testing**”). In the event of a conflict between the Specifications and the applicable Network Section Design, the Specifications will control. The City will give Google Fiber at least two (2) days’ prior notice of the date, time, and location of Acceptance Testing and Google Fiber will have the right to have representatives present to observe the Acceptance Testing. The City will provide the Acceptance Testing results with its notification to Google Fiber that the Licensed Conduit in such Network Section has been installed in accordance with the Specifications. Nothing in this Section 4.2.2 will limit the City’s discretion to provide Third-Party Users with the same notice prior to such Third-Party User’s acceptance of its licensed conduit in the Conduit Network.
- 4.2.3. **Google Fiber’s Evaluation.** If Google Fiber does not notify the City during the Evaluation Period that the Licensed Conduit delivered for Acceptance Testing under Section 4.2.2 was not installed in accordance with the Specifications and with the applicable Network Section Design, then such Licensed Conduit will be deemed accepted. If Google Fiber determines that a portion of the Licensed Conduit delivered by the City is not installed in accordance with both the Specifications and the applicable Network Section Design, then during the Evaluation Period, Google Fiber will notify the City and specify in reasonable detail the portions of such Licensed Conduit that are out of



compliance. The City will, at no additional cost to Google Fiber, promptly take such action as is reasonably necessary to bring the installation of such Licensed Conduit within the Specifications and applicable Network Section Design, and the acceptance process set out in Sections 4.2.2 and 4.2.3 will apply to the redelivered Licensed Conduit. During the Evaluation Period, Google Fiber may request by notice to the City the opportunity to independently verify the compliance of the Licensed Conduit with the Specifications and applicable Network Section Design, and the City will provide Google Fiber with escorted access to any intermediate points on the Conduit Network for the purpose of such independent verification, where such access is technically feasible and where an interface point can be made available for testing without adversely affecting the condition or operation of the Conduit Network. Nothing in this Agreement shall be interpreted as preventing the City from making similar access available to Third Party Users, provided such access does not infringe upon Google Fiber's rights hereunder.

- 4.2.4. Acceptance Date. The "**Acceptance Date**" with respect to Licensed Conduit delivered under Section 4.2.2 is the earlier of the date Google Fiber confirms its acceptance, or the last day of the Evaluation Period, provided that the Evaluation Period will be suspended for the duration of any corrective action or retesting pursuant to Section 4.2.3. However, no acceptance or deemed acceptance will constitute a waiver by Google Fiber of the City's obligations of maintenance and repair of the Licensed Conduit in accordance with the Specifications, the operations and maintenance procedures (Exhibit F), or the Service Level Agreement (Exhibit G).

4.3. Ownership.

- 4.3.1. Ownership of Conduit. Unless and until the City sells the Conduit Network pursuant to Section 10, the City will remain the legal and beneficial owner of the Licensed Conduit. This Agreement does not give or convey to Google Fiber any ownership property right, or any title or interest of ownership in such Licensed Conduit. Subject to Google Fiber's rights under this Agreement, including without limitation Section 4.5, the City may use the Conduit Network for any lawful purpose, provided that such use is not an Interfering Use and does not require Google Fiber to share the dedicated ducts assigned to Google Fiber within the Licensed Conduit.
- 4.3.2. Ownership of Fiber and Equipment. All ownership or other property interests, rights, and titles in and to any Equipment and any fiber cables installed by or at the direction of Google Fiber in the Licensed Conduit remain with Google Fiber, even if it may be or become attached to or embedded in realty. The City will not access, use, move, modify, or dispose of any Equipment or any portion thereof except as expressly permitted by this Agreement. As between the Parties, Google Fiber is responsible for installing, maintaining, and replacing the fiber cables and associated Equipment in the Licensed Conduit.

- 4.4. Access and Use of Licensed Conduit. During the Term and subject to and in accordance with the terms and conditions of this Agreement, Google Fiber will have the right to use the Licensed Conduit including the exclusive right to use designated ducts within the Licensed Conduit, and will have unrestricted rights of access to the Conduit Network at the Access Points, without prior notice to the City and without payment or posting of any addition permitting fee or bond, for the purposes of installing, testing, maintaining, replacing, or removing its fiber and Equipment, and for purposes of connecting its own conduit to the Licensed Conduit to the extent allowed in this Agreement, and to provide any lawful service provided that such use is not an Interfering Use for



any other Third Party User within the Conduit Network. If the Access Points are physically situated such that appropriately trained personnel cannot reasonably and safely access the Access Points to perform their tasks, the City will, at Google Fiber's request, promptly relocate, at the City's sole expense, such Access Points, or to install new Access Points, to enable such access by Google Fiber and its contractors. Google Fiber also has the right to interconnect the Licensed Conduit at any Access Point to conduit that Google Fiber may own, lease, or otherwise acquire for its own use, provided: (a) Google Fiber receives written permission from the City in advance (such permission shall not be unreasonably withheld provided such connection is consistent with the City's stated purposes for constructing the Conduit Network); (b) such connection does not damage or impair the Conduit Network or other property of the City; and (c) such connection does not constitute an Interfering Use.

4.5. **Network Validation Period; Right-of-Way Access Equity.**

4.5.1. The City acknowledges and agrees that the City stands to benefit from Google Fiber's work inspecting and validating the Leased Conduit, the prompt and orderly deployment of the Google Fiber Network so as to allow for Third Party Users to deploy efficiently, and from building an accurate inventory of excess space in the Licensed Conduit. Google Fiber acknowledges and agrees with the City's objective of ensuring that access to the public right-of-way is available in a fair and equitable manner.

4.5.2. During the Network Validation Period, the City may require Google Fiber to share space in the Licensed Conduit installed in any portion of the public right-of-way designated as congested or approaching congested as indicated in Exhibit E, provided that: (a) the total amount of the Licensed Conduit, measured in linear feet, used by all such Third-Party Users may not exceed ten percent (10%) of the total linear footage of the Licensed Conduit accepted by Google Fiber in accordance with Section 4.2; (b) the City will not permit any Third-Parties Users to use any portion of the Licensed Conduit which is not subdivided into separate ducts; and (c) the City will notify Google Fiber as soon as practicable after the City enters into an agreement for the license, lease or other use of the Licensed Conduit with each Third-Party User, and the City will not schedule or permit the scheduling of any work on the Licensed Conduit by such Third-Party User until thirty (30) days following the date of the City's notification to Google Fiber described in clause (c). Except as otherwise provided in the preceding sentence, the City will not require Google Fiber to share space in the Licensed Conduit in a given Network Section, irrespective of whether such Licensed Conduit is subdivided into ducts, with any Third-Party User during Network Validation Period for such Network Section. This Section 4.5.2 shall not be construed to limit the rights of any person that, as of the Effective Date, has entered into an agreement with the City for the use by such person of existing conduit ("**Existing Third-Party User**") that may be subsequently incorporated into the Conduit Network, from exercising such Existing Third-Party User's rights under such agreement with the City with respect to such existing conduit.

4.6. **Interfering Use.** Google Fiber shall not, and the City shall not permit any Third-Party User of the Conduit Network to, install, store, place, or operate any cables, wires, or other powered or unpowered facilities or equipment in, or to otherwise use or to take any other action with respect to, the Licensed Conduit if such installation, storage, placement, operation, or other use or action constitutes an Interfering Use. For purposes of this Agreement, an "**Interfering Use**" means any use of, or action with respect to, the Conduit Network that (a) causes any physical or electromagnetic interference in violation of any applicable Federal Communications Commission rule or the National Electrical Safety Code; (b) physically damages the Google Fiber Network or



a Third-Party User's fiber or facilities installed in the Licensed Conduit; or (c) impedes Google Fiber's or a Third-Party User's ability to access, install, repair, replace, or remove the Google Fiber Network or such Third-Party User's facilities, or any portion thereof, due to the placement of facilities and equipment in intermediate vaults or other shared spaces in the Conduit Network, in excess of the space allocated by the City. In the event that Google Fiber determines that a Third-Party User is engaging in an Interfering Use, Google Fiber may notify the City and the City will promptly cooperate with Google Fiber to determine the source of and remediate such Interfering Use. In the event that a Third-Party User notifies the City that it has determined that Google Fiber is engaging in an Interfering Use, Google Fiber will cooperate in good faith with the City and any Third-Party User to promptly determine the source of and remediate such Interfering Use.

4.7. **No Additional Fees or Charges.** During the Term of this Agreement, unless and until expressly and affirmatively compelled by federal or state statute or by a final, non-appealable order of a court with competent jurisdiction, the City will not charge Google Fiber any additional charge, license, encroachment or franchise fee, or any in-kind service or any other consideration, other than the License Payment or other payments expressly described in this Agreement, for the use of the Licensed Conduit as and to the extent set forth in this Agreement.

4.7.1. If the City implements a franchise fee under Iowa Code section 364.2 (or other applicable law) in connection with Google Fiber's use of the Google Fiber Network to provide data, communications, or dark fiber services, then Google Fiber shall be eligible for a "**Franchise Fee Credit.**" The Franchise Fee Credit shall be equal to the amount of franchise fees collected by the City based on Google Fiber's revenue from its customers' purchase of Google Fiber's data, communications, or dark fiber services provided through the Google Fiber Network during the preceding calendar year; provided, however, that (a) the amount of any such credit must be established and substantiated by Google Fiber to the reasonable satisfaction of the City; and (b) under no circumstances shall such credit reduce Google Fiber's monthly license payment after Initial Network Completion to an amount below the Minimum License Payment set forth in Section 5.1.5.

4.7.2. Notwithstanding the foregoing, in the event that Google Fiber offers "cable service" or "video service," as those terms are defined in Chapter 477A of the Iowa Code, as amended, over the Google Fiber Network, Google Fiber will comply with the requirements with Chapter 477A of the Iowa Code including without limitation the payment of any applicable franchise fees to the City and such fees, as well as any franchise fees implemented by the City related to the provision of "cable television" services under Iowa Code section 364.2, shall not result in the provision of any credit to Google Fiber under Section 4.7.1.

4.8. **Authorizations.** The City will obtain (or cause to be obtained) and comply with and maintain the Authorizations for the Term of this Agreement.

4.9. **Additions to the Conduit Network.**

4.9.1. **Acquired Conduit Network.** Should the City from time to time acquire ownership of any Acquired Conduit Network, Google Fiber will have the right, but not the obligation, to license space in the Acquired Conduit Network on the same terms as those that apply to the Licensed Conduit, subject to exclusions in this Section 4.9.1, and the conduit licensed by Google Fiber in the Acquired Conduit Network will be deemed Licensed Conduit for



purposes of this Agreement, except that the monthly License Payment for the Licensed Conduit in the Acquired Conduit Network will be equal to the Pro-Rated Operating Cost as applied to the Acquired Conduit Network. Notwithstanding the foregoing, the provisions of Section 2 (Conduit Network Design) and Section 3 (Construction Timeframe and Projected Delivery Milestones), will not apply to any Licensed Conduit in any Acquired Conduit Network.

- 4.9.2. Extended Conduit Network. Should the City from time to time install any Extended Conduit Network, Google Fiber will have the right, but not the obligation, to license space in the Extended Conduit Network on the same terms as those that apply to the Licensed Conduit, subject to exclusions in this Section 4.9.2, and the conduit licensed by Google Fiber in the Extended Conduit Network will be deemed Licensed Conduit for purposes of this Agreement. Notwithstanding the foregoing, the provisions of Section 2 (Conduit Network Design) and Section 3 (Construction Timeframe and Projected Delivery Milestones) will not apply to any Licensed Conduit in any Extended Conduit Network.
- 4.10. Permitting. In recognition of the value and benefit of a streamlined permitting process for the efficient and rapid deployment of facilities by private users in the Conduit Network, the Parties will cooperate in good faith on executing a master permitting agreement or similar protocol that will be available for users of the Conduit Network in connection with installing and maintaining their respective facilities therein. Where excavation (as defined in the West Des Moines City Code) of the street or sidewalk surface is not required, the master permitting agreement will enable users of the Conduit Network to obtain permission from the City upon submission of a prior electronic, consolidated notice containing the scheduled time and location of work, and identifying information previously provided by the City to such user about the portions of the Conduit Network to be accessed. If the City determines that an ordinance is required to adopt such streamlined permitting process, it will take steps consistent with applicable law and procedures to adopt such an ordinance prior to executing a master permitting agreement or similar protocol.

5. PAYMENTS

5.1. License Payments.

- 5.1.1. Amount. Google Fiber will pay a monthly license fee (the “**License Payment**”) for the Licensed Conduit equal to \$2.25 (such amount, the “**Unit Rate**”), subject to adjustments, if any, under Section 5.1.2, multiplied by the number of Servable Addresses in the Network Sections that have been accepted and that have been reconciled in accordance with this Section 5.1.1. The date on which each Servable Address will begin to be counted for purposes of calculating the License Payment (such date the “**Commencement Date**”) will be three (3) months after the Acceptance Date for the Network Section containing the Drop Conduit for the Servable Address. No later than ten (10) Business Days before the Commencement Date for the Servable Addresses in a Network Section, Google Fiber will provide the City with the total number of Servable Addresses Google Fiber believes should be counted for purposes of calculating the License Payment. In the event of any discrepancy between the Parties’ count of the number of Servable Addresses, the City will verify the actual number of Servable Addresses at the relevant locations and the Parties will reconcile their respective lists. If a Drop Conduit is added to convert a Designed Address, Constructible Address, or Non-standard Address in a Network Section to a Servable Address after the Acceptance Date



for the Network Section, then the acceptance process set forth in Section 4.2 shall be applied to the added Drop Conduit and the Commencement Date for the new Servable Address shall be three (3) months after the Acceptance Date for the added Drop Conduit. The City will provide a Network Delivery Form with an updated list of the total number of Servable Addresses (such updated list subject to Section 5.1.4) no later than ten (10) Business Days before the Commencement Date for such Servable Addresses, and the Parties will reconcile any differences between their respective lists of Servable Addresses prior to the City's issuance of its next invoice.

- 5.1.2. Shortfall Adjustments. If, by the Initial Network Completion Date, the City has delivered Network Sections that have been accepted in accordance with Section 4.2 containing fewer than 37,610 Servable Addresses (including any Servable Addresses added to a Network Section after the particular Network Section was accepted), then beginning with the following month's invoice and thereafter for the remainder of the Initial Term (until further revised in accordance with this Section 5.1.2 if applicable), the Unit Rate will be adjusted in accordance with the following table based on the total number of Servable Addresses, and as adjusted will be the "**Adjusted Unit Rate**":

Number of Servable Addresses	Adjusted Unit Rate
37,610 or greater	\$2.25 (same as Unit Rate)
Less than 37,610, greater than 36,000	\$2.00
Less than 36,001, greater than 35,000	\$1.75
Less than 35,001, greater than 34,000	\$1.50
Less than 34,001, greater than 33,000	\$1.25
Less than 33,001, greater than 32,000	\$1.00
Less than 32,001, greater than 31,000	\$0.75
Less than 31,001	\$0.50

The City may deliver additional Servable Addresses after the Initial Network Completion Date, and Google Fiber will accept such additional Licensed Conduit provided that they otherwise meet the acceptance criteria in Section 4.2 (up to the a total of 42,000 Servable Addresses), and any such additional Servable Addresses will be added to the total number of Servable Addresses for purposes of calculating the License Payment in accordance with Section 5.1.1 and Section 5.1.2. In the event that the City has not delivered at least 37,610 Servable Addresses within two (2) years after the Initial Network Completion Date, the City will provide an additional credit to Google Fiber (the "**Shortfall Credit**") in an amount equal to: (a) the total amount of the License Payments that had accrued through the month prior to the month of the Initial Network Completion Date, after adjusting for any Delivery Delay Credits or Service Credits, minus (b) the total amount in License Payments that Google Fiber would have been charged, after adjusting for any applicable Delivery Delay Credits and Service Credits, had the Unit Rate been equal to



the Adjusted Unit Rate, calculated as of the second anniversary of the Initial Network Completion Date, for the period prior to the Initial Network Completion Date.

5.1.3. Rate Structure/Adjustment for More Favorable Pricing.

5.1.3.1. Upon the Initial Network Completion Date, the City shall prepare a rate chart (“**Rate Chart**”) evidencing the minimum per linear foot rate to be charged for users of the Conduit Network. The Rate Chart shall have a declining rate structure so that the per linear foot rate decreases as the percentage of Conduit Network licensed by the user increases. The lowest per linear foot rate in the Rate Chart shall be 20% less than the per linear foot rate calculated in Section 5.1.3.2, without taking into account any credits described in this Agreement.

5.1.3.2. Upon the Initial Network Completion Date, the City and Google Fiber shall work cooperatively to translate the License Payment calculated under Sections 5.1.1, 5.1.2., and 5.1.5, exclusive of any credits available under this Agreement, into a per linear foot of Licensed Conduit rate.

5.1.3.3. Unless the Third-Party User licenses more linear feet of the Conduit Network than Google Fiber, the monthly License Payment amount will at all times during the Term be equal to or less, on a per-linear-foot of Licensed Conduit basis, than the lowest amount that the City charges any Third Party User of the Conduit Network when the amount charged to such other user is calculated in or converted to a per-linear foot basis of the Conduit Network licensed or otherwise used by such user. In the event the City offers a Third Party User the use of the Conduit Network at a price that, upon conversion of such pricing to a per-linear-foot of licensed conduit basis, is lower than the per-linear-foot amount of the License Payment, and the Third-Party User is not licensing more linear feet of the Conduit Network than Google Fiber, the City will immediately notify Google Fiber in writing and Google Fiber may accept such more favorable pricing in lieu of the amount of the License Payment established under this Agreement by providing written notice to the City. The transition to the more favorable pricing shall be effective as of the second License Payment date after the City’s receipt of the written notice from Google Fiber and continue through the earlier of the date when the more favorable rate is no longer being provided to a Third Party User (after which date the Google Fiber License Payment shall be calculated pursuant to Sections 5.1.1, 5.1.2, and 5.1.5) or the end of the Initial Term.

5.1.4. Up-Front Addresses: Non-Standard Addresses. The City will receive for a Go-Back Address, upon its conversion into a Servable Address, the License Payment in accordance with this Section 5, except that the City may, by notifying Google Fiber in writing prior to the Commencement Date for such Servable Address, elect to receive as license payment for such Servable Address for the remainder of the Initial Term a one-time payment of \$250 in the following invoice; provided, however, that such election is available only after the total number of Servable Addresses equals or exceeds 37,610. A Servable Address for which the City elects to receive this one-time payment will be deemed an “**Up-Front Address**.” In the event the Parties agree under Section 3.6 for the City to install a Non-Standard Drop Conduit in exchange for the quoted estimated cost, Google Fiber will pay the estimated amount in the invoice following the Commencement Date for such Non-Standard Drop Conduit. Up-Front Addresses and Non-Standard Addresses will not be counted as Servable Address solely for the purpose of determining the number of Servable Addresses to be multiplied by the Unit Rate or Adjusted Unit



Rate, and the Drop Conduits serving Up-Front Addresses or Non-Standard Addresses will be subject to the terms of this Agreement applicable to other Drop Conduits and will be counted as Servable Addresses for all other purposes including in determining the applicable Unit Rate or Adjusted Unit Rate.

- 5.1.5. Minimum License Payment Upon Initial Network Completion. Upon Initial Network Completion, irrespective of the number of Servable Addresses, the minimum monthly License Payment for the Initial Term, after accounting for any credits under Section 5.4, will be \$20,000.

5.2. Invoicing Process.

- 5.2.1. The City will invoice Google Fiber for the Licensed Conduit for any given Servable Address only on or after the Commencement Date for such Servable Address. The City will invoice Google Fiber for the License Payment on a monthly basis in arrears. The City will deliver invoices to Google Fiber at an address that Google Fiber specifies.

- 5.2.2. Google Fiber will tender payment of the amount of the License Payment due within forty-five (45) days of the date of Google Fiber's receipt of each invoice.

- 5.3. Audit Rights. Google Fiber will have a limited right to access the documents, records, and systems in the City's custody or control that the City relied upon and are sufficient to calculate the License Payments or other charges stated in an invoice, including the Pro-Rated Operating Cost during the Extension Term and any credits or Unit Rate adjustments due under this Agreement, and to calculate the amount of any credits due to Google Fiber. Google Fiber is responsible for the costs associated with any requested audit, provided, however, that if an audit reveals an overcharge of the License Payment or an underpayment of any credit, by more than twenty-five thousand dollars (\$25,000), then the City will reimburse Google Fiber for Google Fiber's Cost of the audit.

- 5.4. Credits. Google Fiber's License Payments will be subject to reductions for (a) Delivery Delay Credits, if any, calculated in accordance with Section 3.3; (b) Service Credits, if any, calculated in accordance with the Service Level Agreement (Exhibit G); (c) Franchise Fee Credits, if any, calculated in accordance with Section 4.7.1; (d) the Shortfall Credit, if any, calculated in accordance with Section 5.1.2; and (e) any credits due under Section 5.5. Notwithstanding the foregoing, under no circumstances shall credits reduce Google Fiber's monthly license payment after Initial Network Completion to an amount below the Minimum License Payment set forth in Section 5.1.5.

- 5.5. Citywide Licensee Credit. If, after the Initial Network Completion Date and during the Initial Term, (a) Google Fiber qualifies as a Citywide Licensee throughout the prior calendar year; and (b) Google Fiber has paid a per linear foot licensee rate that exceeds the lowest rate available on the Rate Chart; and (c) the City receives license fees from Third-Party Users that are neither Existing Third-Party Users nor a Citywide Licensee ("**Third-Party Revenue**"), then in the following calendar year Google Fiber will receive a Citywide Licensee credit against its License Payment equal to 50% of the Third-Party Revenues divided by the number of Citywide Licensees; provided, however, that the credit shall not, when utilized over the subsequent calendar year, reduce Google Fiber's per-linear-foot licensee rate below the greater of the lowest rate available on the Rate Chart or the Minimum License Payment provided for in Section 5.1.5, after taking into account any other available credits under this Agreement.



6. OPERATIONS AND MAINTENANCE

6.1. City's Responsibility for Maintenance.

- 6.1.1. During the Term, the City will be responsible for maintaining the structural integrity of the Licensed Conduit in good condition, utilizing sound engineering practices and in accordance with Exhibit F. If the City becomes aware of a blockage, cut, collapse, dislocation, destruction or other damage to the Licensed Conduit ("**Damage**"), the City will notify Google Fiber as soon as practicable, and will restore the Licensed Conduit to meet the Specifications and applicable Network Section Design in as timely and expedited a manner as reasonably possible and in accordance with the Service Level Agreement in Exhibit G. For the avoidance of doubt, the construction of an Access Point for Licensed Conduit at a location contrary to the location requirements in the Specifications and applicable Network Section Design will be deemed to be Damage to such Licensed Conduit.
- 6.1.2. The City will require Third-Party Users, if any, to: (a) provide Google Fiber no less than 72 hours' prior written notice before such Third-Party User accesses any portion of the Licensed Conduit for any purpose, including without limitation to repair, maintain, or replace such Third-Party User's facilities installed in the Licensed Conduit, and (b) permit Google Fiber to observe the work performed by or at the direction of the Third-Party User to ensure that the Google Fiber Network is not damaged in the process. Likewise, Google Fiber hereby agrees to: (x) provide Third Party Users no less than 72 hours' prior written notice before accessing any portion of the Licensed Conduit for any purpose, including without limitation to repair, maintain, or replace Google Fiber's facilities installed in the Licensed Conduit; and (y) permit Third Party Users to observe the work performed by or at the direction of Google Fiber to ensure the Third Party User's equipment is not damaged in the process.
- 6.1.3. Notwithstanding anything to the contrary in this Agreement or any Exhibit hereto, if Google Fiber or one of its contractors or agents causes Damage to the Conduit Network, Google Fiber will repair such Damage and restore the Conduit Network to its condition prior to such Damage to the extent allowed under Section 6.3, or reimburse the City for the City's Costs of repairing such Damage and restoring the Conduit Network to its condition prior to such Damage. Google Fiber's repair and restoration under this Section 6.1.3 will also be consistent with Section 6.1.1 if the portion of the Conduit Network that experienced Damage caused by Google Fiber or one of its contractors or agents is licensed to a Third-Party User or Existing Third-Party User. Notwithstanding the foregoing, the Parties may mutually agree in writing on a process for coordinating and cooperating on repairs for Local Access Conduit as needed.
- 6.2. **Use of Contractors.** Either Party may contract and subcontract for engineering, planning, testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated or permitted to provide hereunder. Both Parties will remain responsible for their respective obligations under this Agreement delegated to their contractors. Google Fiber may also use contractors to install its fiber and Equipment, and may also use contractors to perform maintenance under Section 6.3.
- 6.3. **Repairing Drop Conduit.** Google Fiber may elect to repair, either directly or through a third-party contractor, any Damage to any Drop Conduit and restore such Drop Conduit to the Specifications and Network Section Design. Google Fiber may not repair or restore any portion



of the Licensed Conduit other than Drop Conduits without the City's express prior written consent (including email). If Google Fiber elects to perform repairs and restoration, if permitted by this Section 6.3, it will follow all safety and guidelines and other requirements provided by the City that are generally applicable to repair and restoration work performed by the City or the City's contractors on the Conduit Network. Except as provided in Exhibit G, Google Fiber will be responsible for its own costs of such repairs and restoration. The City will provide Google Fiber's contractors with access to the Drop Conduit at points of the Conduit Network other than the Access Points for the purpose of performing the repairs and restoration of the Drop Conduit to meet the Specifications and Network Section Design, if permitted under this Section 6.3. Prior to performing repairs and restoration under this Section 6.3, Google Fiber will notify the City and make good faith efforts to notify Third-Party Users, if any, of the affected portions of the Licensed Conduit.

- 6.4. **Responsibility for Data Security.** As between the Parties, Google Fiber shall be responsible for compliance with all data privacy and other legal requirements associated with the Google Fiber Network and the transmission of data on or through its network or equipment.
- 6.5. **Improving Access.** Google Fiber agrees to use good faith efforts to consult with the City on developing City public programs and initiatives designed to bridge the digital divide by increasing affordability of and access to broadband internet services and improving digital literacy.

7. RELOCATION

- 7.1. **Emergency Relocations.** The City shall have the right at any time to remove or relocate any portion of the Conduit Network that presents an imminent danger to life or property, at the City's sole discretion without incurring any liability for such removal or relocation, other than as a result of the City's negligence or willful conduct, provided that the City will restore such affected Licensed Conduit that has been cut or removed as soon as reasonably possible. The City will not be responsible for reinstalling and repairing Google Fiber's fiber and Equipment nor paying Google Fiber's Costs of reinstalling and repairing its fiber and Equipment for relocations under this Section 7.1.
- 7.2. **Relocation for City's Convenience.** Other than in the case of an emergency relocation or removal described in Section 7.1, the City will give Google Fiber one hundred and eighty (180) days' prior written notice (unless Google Fiber consents to a shorter notice period in writing) before beginning any relocation or removal of any Licensed Conduit, and will provide for alternate pathways connected to the Conduit Network suitable for housing Google Fiber's fiber and Equipment in relocated portion of the Conduit Network no later than thirty (30) days prior to the schedule date of relocation. Google Fiber will cooperate in good faith with the City to facilitate such other relocation, including the removal or relocation of Google Fiber's fiber and Equipment installed in the Licensed Conduit. The City will be responsible for reinstalling and repairing Google Fiber's fiber and Equipment pursuant to Section 7.3 or shall pay Google Fiber's Costs of reinstalling and repairing its fiber and Equipment resulting from any such non-emergency relocation. Relocations required to bring any portion of the Licensed Conduit into compliance with the Specifications and applicable Network Section Design will be subject to this Section 7.2.
- 7.3. **Relocation of Equipment.** Except as provided by Section 7.1, the City may relocate Google Fiber's fiber and Equipment only with the prior written consent of Google Fiber, which may be withheld at Google Fiber's sole discretion. If Google Fiber does not consent to the City's



relocation or removal of Google Fiber's fiber and Equipment, then Google Fiber will be responsible for relocating or removing its fiber and Equipment during any relocation.

- 7.4. **Minimizing Interruptions.** During any relocation, the City will, in cooperation with Google Fiber, use reasonable best efforts to minimize: (a) any material interruption to Google Fiber's use of the Licensed Conduit; (b) any material impact on the route diversity of the Licensed Conduit; and (c) any material impact on Google Fiber's ability to carry traffic on its fiber network installed in the Conduit Network.
- 7.5. **Restoration.** The City will replace the relocated Licensed Conduit at a different location with a quantity and quality materially equivalent to those of the Licensed Conduit before the relocation. If the relocation of such Licensed Conduit results in a change to the location of any Access Points, then the City will also deliver a map to Google Fiber that describes the changes and the new locations of the Access Points within ten (10) Business Days following the completion of the relocation.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. **Mutual Representations.** Each Party represents and warrants to the other Party that: (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, (b) it will comply with all applicable laws in connection with its obligations under this Agreement, and (c) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the effect of bankruptcy, insolvency, and similar laws affecting the rights and remedies of creditors, and general equitable principles.
- 8.2. **Authorizations.** The City represents and warrants that it has secured, or will have secured by the Delivery Date of the applicable Network Section, the Authorizations for the applicable Network Sections. The City will maintain the Authorizations through the Term. The City will provide prompt written notice to Google Fiber upon the City's becoming aware of any occurrence or event that could reasonably lead to the City losing any Authorization for any of the Licensed Conduit.
- 8.3. **Network Warranty.** The City represents and warrants that the construction of the Conduit Network will be performed in a professional workmanlike manner using qualified personnel following all applicable public bidding processes, and that the equipment and materials used in construction of the Conduit Network are installed and constructed in all material respects in accordance with applicable building, construction and safety codes for such construction and installation, as well as any and all other applicable laws.
- 8.4. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF THE LICENSED CONDUIT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND THE PARTIES HEREBY EXPRESSLY EXCLUDE AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARISING BY A COURSE OF DEALING, USAGE, OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

9. TERM, DEFAULT, AND REMEDIES



9.1. **Initial Term.** The initial term of this Agreement (“**Initial Term**”) begins on the Effective Date and expires at 11:59 PM Pacific time on the twentieth (20th) anniversary of the date on which the first Network Section is accepted under Section 4.2, unless earlier terminated pursuant to the provisions herein.

9.2. **Default.** A Party will be in default of this Agreement if it fails to cure any material breach of any term of this Agreement within thirty (30) days of receiving written notice of the breach from the other Party; provided that if the breach is not reasonably curable within thirty (30) days then the period for cure shall be extended for up to an additional thirty (30) days so long as the breaching Party is diligently pursuing a cure at the end of the first thirty (30) days.

9.3. **Remedies Upon Default.**

9.3.1. **Google Fiber Default.** In the event Google Fiber commits a material breach that remains uncured after the cure period specified in Section 9.2, and after the Parties have followed the process set out in Section 14.3, the City may pursue any remedies it may have against Google Fiber at law or in equity subject to the waivers in this Section 9.3.1.

Notwithstanding the foregoing, the City acknowledges that Google Fiber intends to make significant investments in reliance on its right to use the Conduit Network for its fiber network, and that a termination of its right to such use will result in a loss of its investment. Accordingly, as essential consideration for Google Fiber’s willingness to enter into this Agreement, the City hereby waives any right it may have under this Agreement, at law or in equity, to terminate this Agreement or to eject, evict, or otherwise dispossess Google Fiber of Google Fiber’s right to use and access the Licensed Conduit during the Term or any Extension Term, for any material breach by Google Fiber other than a failure of Google Fiber to pay the License Payments due and owing under this Agreement.

9.3.2. **City Default.** The City acknowledges that any default by the City under the Service Level Agreement in Exhibit G hereto, will result in lost revenue and harm to the reputation of Google Fiber and that actual damages resulting from any of the foregoing occurrences are difficult to ascertain. Accordingly, the City agrees to provide liquidated damages in the form of credits to Google Fiber as set forth in the Service Level Agreement in Exhibit G hereto. The availability of credits under the Service Level Agreement will be Google Fiber’s exclusive remedy for the City’s default thereunder, provided however that Google Fiber is not precluded from obtaining actual damages or from obtaining specific performance of the City’s other contractual obligations under this Agreement.

9.4. **Early Termination.**

9.4.1. If Google Fiber, pursuant to Section 2.2, does not validate the First Section Design, including any Material Change to the first Network Section, and the City has not been able to address and resolve the deficiencies identified in the comments and suggested revisions provided by Google Fiber within twenty (20) Business Days after Google Fiber provides its initial comments and suggested revisions, then either Party may terminate this Agreement without any liability to the other Party by providing written notice of the termination to the other Party within twenty (20) Business Days of the qualifying event, provided, however, that if such suggested revisions cannot reasonably be resolved within the first twenty (20) Business Days and the City is diligently attempting to resolve such suggested revisions, then the City will have an additional twenty (20) Business Days to



resolve such comments and suggested revisions before Google Fiber may terminate. If either Party terminates this Agreement under this Section 9.4.1, then neither Party shall have any further obligations to the other Party under the Agreement.

- 9.4.2. If by the Acceptance Date (as described in Section 4.2.4) for the First Network Section, fewer than 50% of the Designed Addresses for the First Network Section have become Servable Addresses, then either Google Fiber or the City may terminate this Agreement without any liability to the other Party by providing written notice of the termination to the other Party within twenty (20) Business Days of the qualifying event. If Google Fiber or the City terminates this Agreement under this Section 9.4.2, then neither Party shall have any further obligation to the other Party under the Agreement.
- 9.4.3. If the Agreement is terminable pursuant to Section 3.7, either Party may terminate this Agreement by providing written notice of the termination to the other Party within twenty (20) Business Days of the qualifying event. If a Party terminates this Agreement under this Section 9.4.3, then the other Party shall have no further obligation to the terminating Party under the Agreement.
- 9.4.4. If the City has failed to achieve Initial Network Completion by the Initial Network Completion Date, then Google Fiber may terminate this Agreement without any liability to the City by providing written notice of an intent to terminate to the City within twenty (20) Business Days after the Initial Network Completion Date, with such termination to become effective only if: (a) the City does not achieve Initial Network Completion within ninety (90) days after receipt of the notice of intent to terminate; or (b) the Initial Network Completion cannot be achieved during that ninety (90) day cure period and the City does not provide assurances reasonably satisfactory to Google Fiber that Initial Network Completion will be achieved within one hundred and eighty (180) days after the ninety (90) day cure period has elapsed. If Google Fiber terminates this Agreement under this Section 9.4.4, then the City shall have no further obligation to Google Fiber under the Agreement and Google Fiber shall remove all of its fiber and Equipment from the Conduit Network, at its own cost, within ninety (90) days of the effective date of the termination.

- 9.5. **Extension Terms.** Google Fiber has the option, exercisable upon written notice to the City at least six (6) months prior to the end of the Initial Term (or Extension Term), to extend the Term of this Agreement following the expiration of the Initial Term of this Agreement for up to three successive terms of ten (10) years each (such period the “**Extension Term**”). During the Extension Term, if any, all of the provisions of this Agreement will continue to apply, except that the amount of the monthly License Payment during the Extension Term will equal the lesser of (a) the Pro-Rated Operating Cost divided by twelve (12); (b) ten percent (10%) of the amount of the License Payment applicable to the last full month of the Initial Term, without consideration for any credits; and (c) the applicable rate in the City’s Rate Chart as then in existence. The City will provide the Pro-Rated Operating Cost for each calendar year in the Extension Term no later than three months prior to the end of the preceding calendar year.

10. SALE OF CONDUIT NETWORK DURING TERM

- 10.1. **Competitive Sale.** The City hereby agrees that it shall not sell the Conduit Network, or any portion thereof, without completing a competitive bid process and providing Google Fiber with written notice of the contemplated sale and the competitive bid process in advance of the start of the competitive bid process.



11. LIMITATION ON LIABILITY

- 11.1. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. INDEMNIFICATION

- 12.1. **Scope of Indemnity.** To the extent authorized by law, the City will indemnify, defend and hold harmless Google Fiber, its directors, officers, employees, and agents, successors and assigns (“**Google Fiber Indemnified Party**”), from all claims, damages, costs, expenses and liabilities, including reasonable attorneys’ fees and disbursements, sustained in any action commenced by any third party in connection with damage to property or personal injury resulting from any work performed by the City or the City’s agents and contractors in or around the Licensed Conduit, except to the extent (and only to the extent) any part of such claim, damage, costs, expenses and liability is caused by the Google Fiber Indemnified Party’s negligence or intentional misconduct. Google Fiber will indemnify, defend and hold harmless the City, its elected officials, employees, and agents, successors and assigns (“**City Indemnified Party**”), from all claims, damages, costs, expenses and liabilities, including reasonable attorneys’ fees and disbursements, sustained in any action commenced by any third party in connection with damage to property or personal injury resulting from any work performed by Google Fiber or Google Fiber’s affiliates, agents and contractors in or around the Licensed Conduit, except to the extent (and only to the extent) any part of such claim, damage, costs, expenses and liability is caused by the City Indemnified Party’s negligence or intentional misconduct.
- 12.2. **Indemnification Procedure.** The Google Fiber Indemnified Party will promptly notify the City in writing of any action or claim specified in Section 12.1, and will take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The City will have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the Google Fiber Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the City will not take any action in defense or settlement of the claim that would result in liability for the Google Fiber Indemnified Party or limit the Google Fiber Indemnified Party’s business or operations. The Google Fiber Indemnified Party will provide cooperation and participation of its personnel as required for the defense at the cost and expense of the City. The City Indemnified Party will promptly notify Google Fiber in writing of any action or claim specified in Section 12.1, and will take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. Google Fiber will have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the City Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that Google Fiber will not take any action in defense or settlement of the claim that would result in liability for the City Indemnified Party or limit the City Indemnified Party’s business or operations. The City Indemnified Party will provide cooperation and participation of its personnel as required for the defense at the cost and expense of Google Fiber.



13. CONFIDENTIALITY

- 13.1. **Non-Disclosure of Confidential Information.** Neither Party will disclose the other Party's Confidential Information, except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Agreement. The Party receiving Confidential Information will ensure that any such additional recipients have agreed in writing (or in the case of professional advisors are otherwise bound) to keep such information confidential. Upon termination of the Agreement for any reason or upon request of a Party, each Party will return all Confidential Information, together with any copies of the same, to the other Party, or certify as to its destruction; provided, however, that each Party may keep one (1) copy of any Confidential Information of the other Party to the extent reasonably required (as determined by the retaining Party) for such Party to perform its obligations or exercise its rights under this Agreement.
- 13.2. **Disclosures Required by Law.** To the extent there is a third-party request for Confidential Information, the Party receiving the request may disclose Confidential Information when required by applicable law, including without limitation for purposes of this Section 13.2 the Iowa Open Records Law, after giving the notice set forth in this Section 13.2 to the other Party, if such notice is permitted by applicable law. If any Party is required by applicable 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 13. The Party whose consent to disclose Confidential Information is requested will respond to such request in writing within five (5) days of the request by either authorizing the disclosure or advising of its election to seek a judicial or administrative protective order. If such Party fails to respond within the prescribed period, the disclosure will be deemed approved. If a Party chooses to seek an appropriate protective order or similar judicial relief, the other Party will (a) refrain from disclosing such Confidential Information (unless legally compelled to do so) until the request for a protective order or similar judicial relief is resolved; (b) make all reasonable efforts to cooperate with the Party seeking the protective order or similar judicial relief before the applicable judicial or administrative body; and (c) comply with any validly-issued protective order or similar judicial relief. Without limiting the foregoing, in the event that Google Fiber seeks judicial relief under Section 22.8 of the Open Records Law, it will be responsible for its own costs of obtaining such relief and will reimburse the City for the actual, reasonable, and documented costs incurred by the City as a result of the City's reasonable efforts to cooperate with Google Fiber during the pendency of a proceeding to determine if the relief sought will be granted.

14. MISCELLANEOUS

- 14.1. **Assignment/Sublicense.**
- 14.1.1. Neither Party may transfer or assign, voluntarily or by operation of law, its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that either Party may assign its obligations and rights under this Agreement upon notice and without the other Party's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with the assigning Party; (b) an entity resulting from any merger, consolidation or other reorganization involving the assigning Party; or (c) the purchaser of all or substantially all of assigning Party's assets.



- 14.1.2. Without limiting Google Fiber's rights under Section 14.1.1, after the one (1) year anniversary of the Initial Network Completion Date, the City will consent to Google Fiber's assignment of its rights and obligations under this Agreement to the purchaser of all or substantially all of Google Fiber's assets used to provide its services in West Des Moines, Iowa, provided, however, that the City's consent will be conditioned upon: (a) the assignee assuming all of Google Fiber's obligations under the Agreement in writing; (b) the assignee procuring a surety bond securing the assignee's obligations to pay any amounts which are or may become due under the Agreement for a period equal to the longer of (i) the remaining number of months in the Initial Term or then-current Extension Term, and (ii) five (5) years; (c) the assignee not being debarred from contracting with the City (for so long as the debarment is not removed); (d) the assignee does not have an outstanding liability to the City; and (e) the assignee is not in material breach of a contract with the City (for so long as the material breach remains uncured).
- 14.1.3. Google Fiber shall not have any right or authority to sublicense its right to use the Conduit Network under this Agreement to any party other than to a direct or indirect subsidiary of Google Fiber, Inc. For the avoidance of doubt, nothing in this Section 14 limits Google Fiber's ability to lease or otherwise use the Google Fiber Network in accordance with Section 4 of this Agreement.
- 14.2. **Governing Law; Venue.** Any and all disputes arising out of this Agreement will be governed, construed and enforced according to the laws of the State of Iowa, excluding its conflict-of-law principles. A Party seeking to bring an action relating to the validity, construction, interpretation and enforcement of this Agreement will institute such action in any state or federal court in the State of Iowa where venue lies under applicable law.
- 14.3. **Disputes.** In the event a Party alleges a material breach of any provision of this Agreement, the Party will not give notice of breach or pursue any other remedy otherwise available to such Party unless and until the following dispute resolution process has been concluded:
- 14.3.1. On either Party's request, each Party will designate a knowledgeable representative, who will meet at the principal business office of the City, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.
- 14.3.2. If the Parties have not resolved the dispute fifteen (15) days after the first meeting of the representatives, each Party will designate a senior executive, who will meet at the principal business office of the City, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.
- 14.3.3. If the Parties have not resolved the dispute within sixty (60) days after the first meeting of the senior executives, the Party alleging breach may provide notice of default to the other Party pursuant to Section 9.2, and pursue any other remedy otherwise available to such Party.
- 14.4. **Attorney Fees and Costs.** Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs.
- 14.5. **Force Majeure.** Neither Party will be liable for delays or any failure to perform under this Agreement due to causes that prevent the Party from performing its obligations under this



Agreement by reason of a Force Majeure Event. The other Party will not be required to perform or resume performance of those of its obligations that correspond to the obligations of the Party excused by Force Majeure Event, until the end of such Force Majeure Event.

- 14.6. **Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any third party or Person not a party to this Agreement.
- 14.7. **Non-Waiver.** The waiver by any Party hereto of a breach under any of the provisions of this Agreement, or the failure of any Party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege thereunder will not thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege thereunder. A waiver of any provision of this Agreement by a Party must be in writing to be effective.
- 14.8. **Notices.** Except as otherwise set forth, all notices of termination or breach will be in writing and addressed to the other Party's legal representative. All other notices will be in writing and addressed to the other Party's primary contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

City (legal representative):

City of West Des Moines
Attn: City Attorney
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

Google Fiber (legal department):

Google Fiber Inc.
Attn: General Counsel
1600 Amphitheatre Parkway
Mountain View, CA 94043

email: legal-notices@google.com
fax no.: (650) 618-1806

City (primary contact)

City of West Des Moines
Attn: Deputy City Manager
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

Google Fiber (primary contact):

Google Fiber Inc.
Attn: Vice President
1600 Amphitheatre Parkway
Mountain View, CA 94043

- 14.9. **Interpretation.** This Agreement has been negotiated by the Parties and their respective counsel. This Agreement will be interpreted without any strict construction in favor of or against either Party.
- 14.10. **Severability.** If any provision of this Agreement is found unenforceable or invalid, the remainder of this 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.
- 14.11. **Relationship of the Parties.** This Agreement does not make either Party the agent or legal representative of the other Party, and does not create a partnership or joint venture between the Parties.



- 14.12. **Captions/Headings.** Captions and section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way.
- 14.13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which would be deemed to be original and all of which taken together will constitute one and the same agreement.
- 14.14. **Electronic Signatures.** Each Party to this Agreement agrees to use electronic signatures and be subject to the provisions of the applicable laws governing electronic signatures.
- 14.15. **Survival.** The terms and provisions contained in this Agreement that by their nature and context are intended to survive the performance thereof by the Parties will so survive the completion of performance and termination or early termination of this Agreement, including, without limitation, provisions for indemnification and confidentiality.
- 14.16. **Entire Agreement.** This Agreement, including the attached Exhibits, constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed therein. Any prior agreements, promises, negotiations or representations regarding the subject matter of this Agreement are of no force or effect. No alteration, modification, amendment, or variation of the terms of any provision will be valid unless made in writing and signed by duly authorized representatives of the City and of Google Fiber.

[This space left intentionally blank]



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

Google Fiber Inc.

City of West Des Moines:

By: Fleur Knowsley
Its: Secretary

By:
Its:

Address: 1600 Amphitheatre Parkway Mountain
View, CA 94043

Address:

Date:

Date:



LIST OF EXHIBITS

Exhibit A – Specifications

Exhibit B – Network Section Sequence and Delivery Schedule

Exhibit C – Information Required for Network Delivery Form

Exhibit D – Acceptance Testing Procedure

Exhibit E – Right-of-Way Congestion Map

Exhibit F – Operations and Maintenance Procedures

Exhibit G – Service Level Agreement

