



CITY OF NORTH SALT LAKE

CITY COUNCIL MEETING

NOTICE & AGENDA

JUNE 29, 2021

Special Meeting of the City Council 6:00 pm

Posted June 24, 2021

Notice is given that the City Council of the City of North Salt Lake will hold a special meeting on **JUNE 29, 2021** at City Hall, 10 East Center Street, North Salt Lake, Utah. Some members may participate electronically. The public can view the meeting electronically via Zoom link below.

The following items of business will be discussed; the order of business may be changed as time permits.

SPECIAL SESSION - 6:00 p.m.

1. Consideration of **Resolution 2021-24R**: a resolution approving **Agreement 2021-22A**, a non-exclusive License Agreement Between the City of North Salt Lake and Google Fiber Utah, LLC for the installation of network facilities in the City public right-of-way.
2. Adjourn

The public is invited to attend all City Council meetings. This meeting will be held electronically via Zoom, with joining information below:

You are invited to a Zoom webinar.

When: Jun 29, 2021 06:00 PM Mountain Time (US and Canada)

Topic: 6-29-21 NSL City Council Meeting - Special

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83543403547>

Or One tap mobile :

US: +16699006833,,83543403547# or +12532158782,,83543403547#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 436 2866 or +1 301 715 8592 or +1 312 626 6799

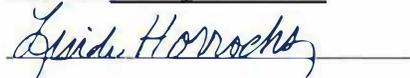
Webinar ID: 835 4340 3547

International numbers available: <https://us02web.zoom.us/j/83543403547>

Notice of Posting:

I, the duly appointed City Recorder for the City of North Salt Lake, hereby certify that the foregoing agenda was posted on the Utah Public Notice website, at city hall, and sent to the required newspapers this 24th day of June 2021.

Dated this 24th day of June 2021.







CITY OF NORTH SALT LAKE

10 East Center Street
North Salt Lake, Utah 84054
(801) 335-8700
(801) 335-8719 Fax

Len Arave
Mayor

Ken Leetham
City Manager

MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Ken Leetham, City Manager

DATE: June 29, 2021

SUBJECT: Consideration of Resolution 2021-23R: A resolution approving a non-exclusive License Agreement Between the City of North Salt Lake and Google Fiber Utah, LLC for the installation of network facilities in the City public right-of-way.

RECOMMENDATION

I recommend approval of Resolution 2021-23R: A resolution approving a non-exclusive License Agreement Between the City of North Salt Lake and Google Fiber Utah, LLC for the installation of network facilities in the City public right-of-way.

BACKGROUND

We have been working for several weeks with Google Fiber Utah, LLC on a license agreement for the installation of network facilities within the City. The attached agreement is similar to agreements that have been entered into by other communities along the Wasatch Front such as Millcreek, South Salt Lake and Holladay. The agreement is favorable to the City and will provide excellent access to high speed internet services to our residents.

The principal issue that the City staff has been concerned with is the construction methodology and its impact on our public street systems. I have attached some photos of trenching within public streets in other communities. Essentially, the plan is to install fiber in a two-inch trench parallel and next to the curb on one side of every street. There is also a transverse trench that crosses the street at approximately 300 foot intervals. These trenches are then filled with flowable fill (concrete) and in some cases of parallel trenches which are offset from the curb will also be treated with a mastic or crack seal material. Google will add a color to the flowable fill if we request it to more fully match the streets, but there will be an aesthetic impact on our roads regardless of the coloration of the fill.

Google Fiber Utah will abide by the City's adopted restrictions that prohibit road cuts where roads are new or recently reconstructed. The City will provide them with a list of streets that should not be disturbed. In those cases, they will place their cable within public parkstrips.

All construction will be pre-approved by the City and require a permit. We discussed inspections and Google suggested that there be a full-time inspector for the period of 6-9 months in order to manage the permitting and construction that will be rapid and extensive within the City's rights-of-way. I believe that the best way to accomplish this is to hire a consulting inspector (engineering inspector) and pay them out of the proceeds of the permitting fees and the license fee. City staff is also discussing this issue with other cities who have experience with Google Fiber Utah.

The project will begin from the south nearest Salt Lake City and move north. Until the license agreement is approved, Google will not invest in a detailed engineering plan that would reveal a roll out schedule to various neighborhoods. This product is primarily for residential customers, though City staff did inform Google of our large industrial area and over 900 businesses in the City. At this time, there is not a commercial product offering.

You'll note that Google will generate a 2% license fee payable to the City on their gross revenues. For instance, if a customer pays \$70 per month, an average bill for this service, the City would receive \$1.40 per month payable quarterly. I believe that this fee should be added to the City's road maintenance efforts. It will take a year or two before the City knows and understands just what this fee will generate, but its use should be related to maintenance and repair of the City's streets, particularly surface treatments that will extend the collective life of our roads.

The agreement has a provision for Google to make repairs to their trenching system. If the City determines that there is a surface failure of some kind, then there is a process for requesting action at Google's expense to correct those failures.

PROPOSED MOTION

I move that the City Council approve Resolution 2021-23R: A resolution approving a non-exclusive License Agreement Between the City of North Salt Lake and Google Fiber Utah, LLC for the installation of network facilities in the City public right-of-way.











RESOLUTION NO. 2021-24R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORTH SALT LAKE APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF NORTH SALT LAKE AND GOOGLE FIBER UTAH LLC FOR THE INSTALLATION OF NETWORK FACILITIES IN THE CITY PUBLIC RIGHT-OF-WAY

WHEREAS, it has been proposed by Google Fiber Utah, LLC to provide network facilities and services to residential areas within the City of North Salt Lake; and

WHEREAS, in order to provide these service, it is necessary for Google Fiber Utah, LLC to obtain an agreement with the City to install its facilities within the public rights-of-way belonging to the City; and

WHEREAS, the City Council finds further that these services will contribute to the health, safety and general welfare of the citizens of the City by potentially improving connectivity to the internet at large.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF NORTH SALT LAKE AS FOLLOWS:

Section 1. The attached **Agreement 2021-22A** approving a non-exclusive license agreement between the City of North Salt Lake and Google Fiber Utah is hereby approved.

Section 2. Immediately after its adoption, this resolution shall be signed by the appropriate officers of the City of North Salt Lake, shall be recorded in the official records of the City of North Salt Lake and shall take immediate effect.

APPROVED AND ADOPTED by the City Council of North Salt Lake this 29th day of June, 2021.

CITY OF NORTH SALT LAKE

By:

Len Arave, Mayor

Attest:

By:

Linda Horrocks, City Recorder

City Council Vote as Recorded

Council Member Baskin _____
Council Member Gordon _____
Council Member Horrocks _____
Council Member Mumford _____
Council Member Porter _____

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN
CITY OF NORTH SALT LAKE AND GOOGLE FIBER UTAH LLC
FOR THE INSTALLATION OF NETWORK FACILITIES
IN THE CITY PUBLIC RIGHT-OF-WAY**

This License Agreement (“**Agreement**”) is by and between the City of North Salt Lake, a Utah municipality (“**City**”), and Google Fiber Utah, LLC, a Delaware limited liability company, and its subsidiaries, successors, or assigns (“**Licensee**”).

RECITALS

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

AGREEMENT

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

1. **Permission to Encroach and Occupy.**

- 1.1. **Permission to Encroach on and Occupy Public ROW.** Subject to the conditions set forth in this Agreement, City grants Licensee permission to encroach on and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.
- 1.2. **Subject to State and Local Law.** This Agreement and the License are subject to City’s valid authority under State and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.

- 1.3. Subject to City's Right to Use Public ROW. This Agreement and the License are subject and subordinate to City's prior and future and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.4. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests. Licensee shall be responsible to verify Public ROW boundaries.
- 1.5. No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a municipality to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.7. Non-Discrimination. City's grant of the License will be open, comparable, nondiscriminatory, and competitively neutral and City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent providers offering facilities-based Broadband Internet Services.

2. Licensee's Obligations.

- 2.1. Individual Permits Required. Licensee will obtain an excavation permit from the City and pay the appropriate fees to the City and obtain other necessary permits before placing its Network Facilities in the Public ROW or other property of City. Licensee will provide to City any information reasonably requested by City. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City.
- 2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
- 2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work.

- 2.4. Undergrounding. Licensee will use its best efforts to install or relocate its Network Facilities underground. If after utilizing such best efforts and if any third-party electricity or communications transmission or distribution facilities remain above ground, Licensee may install or keep and retain its Network Facilities above ground but only to the same extent that such third-party electricity or communications transmission or distribution facilities remain above ground.
- 2.5. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.6. Non-Interference. Licensee will place its Network Facilities in conformance with the permits, plans, and drawings approved by City. Licensee will not place its Network Facilities in such a fashion as to unduly burden the present or future use of Public ROW and the Network Facilities shall be installed and maintained by Licensee so as to cause the minimum interference with the use of Public ROW and with the rights or reasonable convenience of property owners that adjoin Public ROW.
- 2.7. No Nuisance/Graffiti. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance. Licensee will remove all graffiti from the identified Network Facilities forthwith, but in no event longer than five (5) days from written notice from the City.
- 2.8. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's Work and no other Person is solely responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by State law). Where trenching or micro-trenching is undertaken by Licensee or its contractors, the repair method to be utilized must be approved by the City Engineer, such approval not be unreasonably withheld, conditioned or delayed, and shall be undertaken and completed in accordance with the obligations in each applicable permit. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.8 shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Licensee's restoration work will start promptly but not more than (i) twenty-four (24) hours from City notifying Licensee of damage that poses an imminent threat to public health or safety, (ii) seventy-two (72) hours from City notifying Licensee of damage that affects roads or highways, or (iii) fourteen (14) days from City notifying Licensee of all other types of damage. City must notify Licensee of damage in writing. Notwithstanding anything to the contrary in Section 13, if sent by electronic mail, the City's written notice in subsection (i) above will be effective upon transmittal.
- 2.9. Identification of Network Facilities. Licensee will identify its Network Facilities using an identification method mutually agreed upon by the parties, or as established by standard industry practices and reasonably directed by City if the parties cannot

- mutually agree on an identification method. For underground facilities, the identification will be detectable without opening the street or sidewalk.
- 2.10. Cooperation in Joint Trench Opportunities. Licensee will cooperate with City in identifying ways to minimize the amount of construction in the Public ROW through joint trenching, sharing duct banks, and cost sharing with City and third parties undertaking similar construction projects involving the installation of underground communications facilities. Licensee's cooperation obligation is subject to any such proposed joint trenching, duct sharing, and cost sharing opportunities being sufficiently compatible with Licensee's plans, as reasonably determined by the Licensee. Without limiting the foregoing, (i) the cooperation opportunity would not be deemed sufficiently compatible with Licensee's plan where the opportunity involves different areas of the Public ROW than Licensee has permission to occupy under this Agreement, or would unreasonably delay or otherwise hinder Licensee's construction plans, and (ii) Licensee is not obligated to cooperate if Licensee enters into a commercial cooperation agreement reasonably satisfactory to the Licensee with respect to such joint trenching or other cooperation with City or the third-party, as applicable. Licensee will make good faith efforts to enter into any such commercial cooperation agreement in connection with fulfilling the foregoing cooperation obligation.
 - 2.11. Notice of Commencement of Work. Licensee shall provide to the City's Public Works Director notice of the intent to commence work under any permit granted at least twenty-four (24) hours in advance of the commencement of work.
 - 2.12. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them as shapefiles and PDF to the City subject to applicable confidentiality protections claimed by Licensee under the Government Records and Management Act, Chapter 2, Title 63, Utah Code Ann., or its successor ("GRAMA").
 - 2.13. Utility Notification Program. Licensee shall participate in and be a member of the State's utility notification program, whether provided for by statute or otherwise.
 - 2.14. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network. Licensee, at its sole discretion, may determine separately defined geographic areas with City where its Network Facilities will be deployed, and City will be available to consult with Licensee regarding the boundaries of City's recognized neighborhood associations and City's goals of equity and inclusion.
 - 2.15. Access to Services. Licensee shall not deny service or access, or otherwise discriminate on the availability, rates, terms, or conditions of Broadband Internet Services provided to residential subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Licensee shall comply at all

- times with all applicable Federal, state, and local laws and regulations relating to nondiscrimination. Licensee shall not deny or discriminate against any group of actual or potential residential subscribers in City on access to or the rates, terms, and conditions of Broadband Internet Services because of the income level or other demographics of the local area in which such group may be located.
- 2.16. Public Benefits. Licensee agrees to use good faith efforts to consult with City on developing initiatives designed to benefit the public, which may include increasing access to Broadband Internet Services, improving digital literacy, and bridging the digital divide.

3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City. Licensee's obligation to reimburse City under this section is separate from Licensee's obligation to pay the License Fee (as defined below).
- 3.2. Removal of Abandoned Network Facilities. If Licensee abandons or fails to use any portions of its Network Facilities for one year or more ("**Abandoned Network Facilities**"), Licensee will notify City and will remove any aboveground facilities at its own expense at City's request within a commercially reasonable period of time. City and Licensee will discuss whether underground facilities should be abandoned in place or transferred to City, at City's option. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.
- 3.3. Relocation to Accommodate Governmental Purposes. If Licensee's existing Network Facilities would interfere with City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as construction, installation, repair, maintenance, or operation of water, sewer, or storm drain line/facilities, public roads or curb, gutter and sidewalk, parks, and recreational facilities, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's sole cost and expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances,

except that City may not require Licensee to relocate or remove its Network Facilities with less than one hundred and eighty (180) days' notice.

- 3.4. Relocation to Accommodate Non-Governmental Purposes. If Licensee's existing Network Facilities would interfere with City's planned use of the Public ROW or City property for a commercial purpose, or with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless City or the third party enters into an agreement with Licensee under which City or the third party would, at a minimum: (a) identify and arrange for a new location for Licensee's Network Facilities that is acceptable to Licensee, (b) agree to a commercially reasonable period of time for the relocation, which in no event will be less than one hundred and eighty (180) days; and (c) agree to reimburse all of Licensee's reasonable direct and indirect costs, expenses, and losses associated with the requested relocation.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost (except to the extent subject to reimbursement pursuant to Section 3.4 hereof), repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City. Before proceeding with removal or relocation work, Licensee will obtain from the City a street encroachment permit.
- 3.6. Inspection by City. Installation of the Network Facilities shall be subject to inspection by City as provided in the City's municipal code.

4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A ("Authorized Individuals")**. City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.
- 4.4. City Contractors. In circumstances where Licensee requires processing of permit applications within a time frame that the City cannot reasonably accommodate, the City shall be authorized to utilize the services of outside contractors and/or consultants at Licensee's expense. Prior to utilizing such services, the City shall advise Licensee of its intent, with an estimate of the cost of the required services.

Cost for additional services must be reasonable and consistent with the City's cost for such services on similar projects. Within two (2) business days of such notice, Licensee shall either approve the proposal or revise the required processing timeline.

5. **Compensation for Use of Public ROW.** Licensee will pay City a fee (“**License Fee**”) to compensate City for Licensee’s use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee’s use and occupancy of Public ROW and other City property as authorized. The License Fee will begin accruing on the Effective Date (as defined below) and will be calculated as follows:

- 5.1. **License Fee.** Licensee will pay City two percent (2%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted on a quarterly basis, commencing upon the first date on which Licensee receives any Gross Revenues (as defined below). Such payments are due forty-five (45) days after the end of the calendar quarter.

5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser’s customer;
- (iv) any forgone revenue from Licensee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (v) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement); and
- (vi) any forgone revenue from Licensee’s provision, in Licensee’s discretion or otherwise, of free or reduced cost Broadband Internet Services to any Person; provided, however, that any forgone revenue

which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues.

- 5.2. Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that customer's pro rata amount of the License Fee.
- 5.3. Audit. City may examine the business records of Licensee as permitted under state or local law, but in any event only during reasonable times and following reasonable notice, and only to the extent reasonably necessary to ensure compliance with this Section 5. Licensee will keep all business records reflecting its Gross Revenues for at least two (2) years. City may, in the event of a dispute concerning compensation under this Section 5, bring an action in a court of competent jurisdiction.
- 5.4. Government Records Access and Management Act. City is subject to the requirements of GRAMA. All materials submitted to City by Licensee pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Licensee, and Licensee shall comply with the requirements of GRAMA in asserting any such exemption. Such materials may be classified as "protected" by City under GRAMA. City shall make reasonable efforts to notify Licensee of any requests made for disclosure of documents submitted under a claim of confidentiality. Licensee may, at Licensee's sole expense, take any appropriate actions to prevent disclosure of such material.
- 5.5. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within fifteen (15) days from the due date will be assessed interest compounded at the rate of 18% per annum from the due date. All sums paid with interest within thirty (30) days of the due date shall not constitute a material breach under Section 11.1.
- 5.6. Change in Law. Notwithstanding anything to the contrary herein, in the event of a change in local, state, or federal law that (i) prohibits collection of any right-of-way-access fee from any provider of video programming or communications services, including Broadband Internet Services or (ii) reduces the percentage of revenue on which the right-of-way-access fee paid by any provider of video programming or communications services is based to a percentage that is lower than the Revenue Percentage, then Licensee will have no obligation to pay the License Fee or to pay a License Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which a right-of-way-access fee may be based, the Revenue Percentage will be commensurately reduced. In the case of specific statutory authorization at either the federal or state level for a license fee based on a Revenue Percentage which exceeds the License Fee of this Agreement, and which preempts the ability of the City and Licensee to enter into an agreement that provides for a Revenue Percentage that is lower than authorized by such statute, the City may

upon twelve (12) months prior notice to Licensee, impose the statutorily authorized fee for Licensee's use of the City's right-of-way, up to a maximum of 5% of gross revenue as defined herein, and this Agreement shall be amended accordingly. If such specific statutory authorization does not preempt this Agreement, the terms of the Agreement will prevail.

6. **Indemnification.**

6.1. **Obligations.** Licensee will defend and indemnify City, its officers, elected representatives, and employees from any claims and liabilities (including reasonable attorneys' fees and court costs) related to any third-party claim for property damage, personal injury, or death to the extent caused by gross negligence, recklessness, or intentional wrongful conduct of Licensee or its contractors arising from this Agreement or the License ("**Claims**"); provided, however, that indemnification relating to personal injury of employees will not apply to any Claims made by City's employees that are covered under applicable workers' compensation laws; and provided, further, that Licensee's indemnification obligations shall not extend to liability to the extent caused by the negligence or willful misconduct by any Indemnitee.

6.2. **Notice of Claims.** City will give prompt written notice to Licensee of any Claim or threatened Claim no later than fifteen (15) calendar days after City receives written notice of the action, suit, or proceeding or threat of the same. City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent that, Licensee is materially prejudiced by such failure.

6.3. **Defense.** Licensee will have the right at any time, by notice to City, to participate in or assume control of, the defense of the Claim with counsel of its choice, which counsel must be reasonably acceptable to City. City agrees to cooperate fully with Licensee and City will have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any Claim, Licensee will be bound by the results obtained by City with respect to the Claim. If Licensee assumes the defense of a Claim, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any Claim without Licensee's prior written consent.

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

8. **Performance Bond.** Licensee will, promptly after the Effective Date, provide City with a performance bond in the amount of Fifty Thousand Dollars (\$50,000) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the Term of this Agreement.

9. **Insurance.**

- 9.1. Licensee will carry and maintain Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, and officers as additional insureds. Licensee shall increase the commercial general liability limits contained herein to cover any increase in the City's potential liability under the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, et. seq.) or successor provision.
- 9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to City's insurance compliance representative at the following address:

City of North Salt Lake
 Attn: City Manager
 10 East Center Street
 North Salt Lake, UT 84054

10. **Effective Date and Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The License will expire automatically on the fifteenth anniversary of the Effective Date ("**Original Term**"), unless Licensee provides written notice of its intent to renew to City at least six (6) months prior to expiration and City does not object after thirty (30) days. The renewal term will be for five (5) years, and the same renewal process may be used for successive 5-year terms.

11. **Termination.**

- 11.1. **Termination by City.** City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and ninety (90) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period shall continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.
- 11.2. **Termination by Licensee.** Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.
12. **Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:

12.1.1. to any Affiliate (as defined below) of Licensee;

12.1.2. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement;

12.1.3. Subject to City's consent, which will not be unreasonably withheld, conditioned, or delayed, Licensee may assign to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement.

12.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Agreement, (i) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (ii) "control" means, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

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

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

14. **General Provisions.** This Agreement is governed by the laws of the State of Utah. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The parties agree to meet at reasonable times on reasonable notice to discuss this Agreement or Licensee's provision of Broadband Internet Services during the term of the Agreement. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement

between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

[Signature page follows]

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

Google Fiber Utah, LLC

City of North Salt Lake

(Authorized Signature)

(Authorized Signature)

(Name)

(Name)

(Title)

(Title)

Address:
1600 Amphitheatre Parkway
Mountain View, CA 94043

Address:

Date: _____

Email address: _____
Date: _____

Attest:

Linda Horrocks, City Recorder

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

City of [Placeholder]

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section __ of the License Agreement dated [redacted] between the City of North Salt Lake and Google Fiber Utah, LLC. (“**Google Fiber**”), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber.

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

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

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

Kind regards,

[Name]

Manager, Google Fiber Utah, LLC.