

NON-EXCLUSIVE PUBLIC ROW LICENSE AGREEMENT

This Non-Exclusive Public ROW License Agreement (“**Agreement**”) is by and between **Lee’s Summit**, a municipal charter city organized and existing under the laws of the State of Missouri (“**City**”), and **Google Fiber Missouri, LLC**, a Missouri limited liability company with its principal place of business at 1600 Amphitheatre Place, Mountain View, CA 94043 (“**Licensee**”). The City and Licensee may be referred to as the “Parties” collectively and the “Party” individually.

RECITALS

- A. City has jurisdiction over the use of the public rights-of-way in City (“**Public ROW**”).
- B. Licensee owns, maintains, operates, and controls a fiber optic infrastructure network in Public ROW (“**Network**”).
- C. The Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”).
- D. Prior to the Effective Date (as defined herein), Licensee operated the Network pursuant to an appropriate state or local video services franchise. Licensee may desire to, and City may desire to license Licensee to, continue to use and occupy Public ROW in order to install, operate, and maintain its Network for the purposes of offering certain communications services (“**Services**”), including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services, but excluding multichannel video programming services that would be subject to a video services franchise and telecommunications services as defined in 47 C.F.R. § 153(53), to residents and businesses in City (“**Customers**”).

AGREEMENT

In consideration of the mutual promises made below, and the recitals set forth above, which are incorporated into this Agreement, City and Licensee agree as follows:

1. Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. Upon the License Commencement Date, City grants Licensee a revocable right to use and occupy the Public ROW (the “**License**”) for the sole purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.
- 1.2. License Commencement Date. The License will be effective upon the later of the date on which (a) (i) Licensee has discontinued provision of facilities-based linear video

services to Customers, (ii) Licensee has taken all actions necessary under its state or local video services franchise to terminate such franchise and such franchise has terminated, and (iii) Licensee has notified the City of (i) and (ii); or (b) the Effective Date (“**License Commencement Date**”).

- 1.3. 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, including but not limited to Chapter 26 of the Code of Ordinances of the City of Lee’s Summit, Missouri (“Code of Ordinances”), and subject to the conditions set forth in this Agreement. If any terms or conditions of this Agreement or the License conflict with the Code of Ordinances, such term shall be subordinate to the requirements set forth in the Code of Ordinances.

Licensee affirms and agrees that Licensee is not a public utility or public utility right-of-way user as such terms are defined by Section 67.1830, RSMo., as amended, and accordingly Sections 67.1832 through 67.1848, RSMo, do not apply to this Agreement and Licensee’s use of the City right-of-way.

If a court of competent jurisdiction determines that Licensee is a public utility or public utility right-of-way user as defined by Section 67.1830, RSMo., as amended, and finds this Agreement and the License to be invalid (“Court Order”) Licensee knowingly and voluntarily waives any right it has to recover any fees, including but not limited to Licensee Fees, permit fees, or any other fee, paid to City pursuant to or arising out of this Agreement or the License prior to the date of the Court Order. Licensee further knowingly and voluntarily agrees that its sole remedy after such Court Order is the right to use the City right-of-way in accordance with valid state and local laws in effect at the time of the court order.

- 1.4. Subject to City’s Right to Use Public ROW. This Agreement and the License are subject and subordinate to City’s prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing streets, sidewalks, lighting, sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines, and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, licenses, claims of title, or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest. The License does not grant or convey any temporary or permanent property interest to Licensee.
- 1.7. 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 city, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.

2. Licensee's Obligations.

- 2.1. Individual Permits Required. Licensee will obtain City's approval of required individual encroachment, construction, and other necessary permits before doing any Work its Network Facilities in the Public ROW or other property of City as authorized. 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. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.
- 2.4. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted industry practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.5. No Nuisance. Licensee will maintain and keep its Network Facilities in good and safe condition so that its Network Facilities do not (i) cause a public nuisance or (ii) create a risk to the public health, safety, or welfare.
- 2.6. 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. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage and shall comply with all state and local laws and regulations regarding the restoration and repair of the Public ROW. Licensee's obligation under this Section 2.6 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 2.7. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them to City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.
- 2.8. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.

3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities, provided City provides as much prior notice as practicable to Licensee before making an emergency removal or relocation. In any event, City will provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities as soon as

practicable following such removal or relocation. Licensee shall reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City under this section will be separate from and in addition to Licensee's obligation to pay the License Fee (as defined below).

- 3.2. Relocation to Accommodate Governmental Purposes. Licensee shall remove, relocate, or adjust its facilities in accordance with Chapter 26 of the Code of Ordinances; provided, however, that if the relocation is requested by City for a non-governmental (e.g., commercial) purpose and such is not governed by Chapter 26 of the Code of Ordinances, Section 3.4 of this Agreement shall govern such relocation or adjustment.
- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with (a) City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities, but shall work in good faith with the third-party to accommodate the third-party's use of the Public ROW. City shall not be responsible for any cost or expense to relocate Licensee's Network Facilities under this Section, and such costs and expenses shall be paid in the manner agreed to by Licensee and the third-party.
- 3.4. Non-Discrimination. City will at all times treat Licensee in a non-discriminatory manner with regard to access, use, and occupancy of the Public ROW as compared to other non-incumbent holders of local or state franchise authority offering facilities-based broadband Internet access services.
- 3.5. Post-Removal Restoration of Public ROW. When removal, adjustment, or relocation at Licensee's cost is required under this Agreement, Licensee will, after the removal, adjustment, or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City, and Chapter 26 of the Code of Ordinances.

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, provided the Licensee agrees Licensee's obligations pertaining to performing the Work, obtaining all permissions before starting the Work, shall apply its contractors and subcontractors are subject to the same obligations of Licensee as set forth in this Agreement.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A** ("**Authorized Individuals**"). City will accept permit applications under this Agreement

submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. **License Fee.** Licensee will pay City a fee (“**License Fee**”) to compensate City for Licensee’s use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee’s use and occupancy of Public ROW and the City’s actual costs for managing the Public ROW. The License Fee will begin accruing on the License Commencement Date (as defined herein) and will be calculated as set forth in Section 5.1.

5.1. **License Fee.** Licensee will pay City one percent (1%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted within forty-five (45) days of the end of each calendar quarter, commencing on the License Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by City to determine the accuracy of the payment.

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

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Licensee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;
- (vii) any revenue derived from Services other than Broadband Internet Services, including without limitation, any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (viii) any revenue derived from referral or marketing agreements with third party providers of online services which Licensee may make available to Customers;

- (ix) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement);
- (x) any forgone revenue from Licensee's provision, in Licensee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xi) sales of capital assets or sales of surplus equipment.

5.1.3 Not a Tax or in Lieu of Any Other Tax or Fee:

- (i) Payment of the License Fee shall not be considered in the nature of a tax.
- (ii) The License Fee is in addition to all other payments that the Licensee may be required to pay under any federal, state, or local law.

5.2. Payment Acceptance. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a License fee or for the performance of any other obligation of the Licensee.

5.3. Audit. The City may audit Licensee not more than once per every calendar year. The City shall have the right to inspect those books and records reasonably necessary to ensure compliance with this Section 5, and the right to audit and to recompute any amounts determined to be due and payable to the City under this Agreement. This audit right shall extend to books or records held by the Licensee, its affiliate, or any other entity that collects or receives funds related to the Licensee's operations in the City.

The Licensee shall be responsible for providing access to the books and records reasonably necessary to ensure compliance with this Section 5 to the City, at reasonable times, no later than thirty (30) days following receipt of written notice from City of its request to perform an audit. The books and records shall be maintained for at least two (2) years. The City's audit expenses shall be borne by the City unless the audit discloses an underpayment to the City in excess of five percent (5%) of the amount due, in which case the costs of the audit shall be borne by the Licensee. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Licensee by the City of the underpayment, which notice shall include a copy of the audit report.

The Licensee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the City to determine Gross Revenues.

5.4. 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. Notwithstanding anything to the contrary in this Agreement, Licensee shall not list, indicate, or attribute the License Fee as a tax, fee or other type of charge required or being imposed by the City under the Code of Ordinances or state law.

- 5.5. **Interest on Late Payments.** Any payments that are due and payable under this Agreement that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.
- 5.6. **Change in Law.** Notwithstanding anything to the contrary herein, in the event of a change in applicable law that (i) prohibits collection by any municipality or franchising authority of any fee, including franchise fees, from any provider of video programming or communications services, including broadband Internet services, or (ii) reduces the percentage of revenue on which the fee, including franchise 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 Licensee Fee or to pay a Licensee Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which such fees may be based, the Revenue Percentage will be commensurately reduced.

Licensee affirms and agrees that as of the Effective Date Licensee is not a public utility or public utility right-of-way user as such terms are defined by Section 67.1830, RSMo., as amended, and accordingly Section 67.1832 through 67.1848, RSMo, do not apply to this Agreement and Licensee's use of the City right-of-way.

6. **Defense and Indemnity.** Licensee shall comply with the indemnity requirements set forth in Chapter 26 of the Code of Ordinances and the City's Standard Insurance and Indemnification Requirements.
7. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.
8. **Performance Bond.** Licensee shall comply with the bonding provisions set forth in Section 26-212, as amended, of the Code of Ordinances. The performance bond will remain in full force during the Term of this Agreement. At Licensee's election, any performance bond previously provided by Licensee to City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph.
9. **Insurance.** Licensee shall comply with the insurance requirements set forth in Section 26-211 of the Code of Ordinances and the City's Standard Insurance and Indemnification Requirements.
10. **Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms ("**Effective Date**"). The Agreement will expire automatically on the twentieth anniversary of the License Commencement Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement may renew

upon written and signed agreement between the Parties for successive five (5) year terms (each a "Renewal Term").

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 will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.

11.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

12. Assignment. Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written and executed 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, and in compliance with the assignment provisions of Chapter 26 of the Code of Ordinances, assign this Agreement or any or all of its rights and obligations under this Agreement:

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

12.1.2. to any successor in interest of the majority of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines, after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

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

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

13. Notice. All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon

confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Licensee's e-mail address for notice is googlefibernotices@google.com, with copies to legal-notices@google.com and the Government and Community Affairs Manager for Licensee's operations in Missouri.

14. General Provisions. This Agreement is governed by the laws of the State of Missouri, and a suit pertaining to this Agreement or the License may be brought and maintained only in courts in Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that the other party may use electronic signatures. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

[Signature page follows]

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

Google Fiber Missouri, LLC

Lee's Summit

(Authorized Signature)

(Authorized Signature)

(Name)

(Name)

(Title)

City Manager

Address:
1600 Amphitheatre Parkway
Mountain View, CA 94043

Address:
220 SE Green St
Lee's Summit, MO 64081

Date: _____

Date: _____

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

Lee's Summit

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Non-Exclusive Public ROW License Agreement dated [redacted] between **Lee's Summit** and **Google Fiber Missouri, 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. *[If applicable: This letter amends and supersedes the Letter of Authorization dated [redacted].]*

[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 Missouri, LLC**