

## STRUCTURE ATTACHMENT AGREEMENT

This Structure Attachment Agreement (the "Agreement"), is dated February 12, 2014 (the "Effective Date"), by and between the City of Mountain View, California ("Licensor"), California charter city and municipal corporation duly organized under laws of the State of California, and Google Fiber Inc., on behalf of itself and its subsidiaries, ("Licensee") (each a "Party" and collectively, the "Parties").

### RECITALS

A. Licensor now owns, leases, or operates, or may own, lease or operate in the future, non-decorative light poles, buildings, and other structures and improvements ("Structures") on real property in Mountain View, California ("City"); and

B. Licensor, as the municipal government of City has the ownership of land or other property ("Public Property"); and

C. Licensor has the right to use and provide access to Public Property to place Structures and other facilities and equipment ("Attachment Locations") and

D. Licensee proposes to furnish wireless communications services ("WiFi Services") in the City's downtown area and desires to place and maintain antennas, cables, wires, fiber optics, insulators, connectors, fasteners, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort necessary or desirable for Licensee to operate its businesses as such businesses may evolve, develop, or change at any time while this Agreement remains in effect ("Equipment") on Licensor's Structures, and to access those Structures on or in Public Property at the Attachment Locations in the City's downtown area; and

E. In consideration for Licensee agreeing to provide Free Public WiFi ("Free Public WiFi") in the downtown area of the City, Licensor desires to provide Licensee with a non-exclusive license for the use of space on or in its Structures and, for purposes of access to its Structures, on or in Public Property.

In consideration of the mutual covenants, terms, and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

### ARTICLE I. SCOPE OF AGREEMENT

#### Section 1.01 Service Areas

This Agreement will apply to Licensor Structures, Public Property and Attachment Locations now existing throughout the city or hereafter constructed or obtained in order to provide Free Public WiFi in the Downtown Area, including portions of Castro Street.

#### Section 1.02 Authorization

Subject to the provisions of this Agreement, Licensor grants to Licensee, and Licensee accepts from Licensor, a non-exclusive license to occupy, place, repair, upgrade, and maintain Licensee's Equipment on certain Licensor owned, leased, or operated Structures.

#### Section 1.03 No Property Right

No use of Licensor's Structures, however extended, or payment of fees or charges required under this Agreement, will create or vest in Licensee any ownership of property rights in such Structures.

#### Section 1.04 Neutrality

Licensor will treat Licensee in a competitively neutral, non-discriminatory manner as compared with other attachers to its Structures for the provision of Free Public WiFi. Licensor will provide Licensee with any agreement where Licensor makes access to its Structures available to third-parties for the provision of

Free Public WiFi. In the event that Licensor makes available any terms or conditions for Structures which are, in the context of the same or similar circumstances, more favorable to one or more other attachers than to Licensee, Licensor will, upon request from Licensee, enter into an amendment to this Agreement to make those same terms and conditions applicable to Licensee.

#### Section 1.05 Authorizations Required

Licensee will secure all authorizations, franchises, licenses, permits, and consents ("Permits") required for the construction, operation, and maintenance of its Equipment. If any required Permit obtained by Licensee is subsequently revoked or denied for any reason, Licensee will retain the right to pursue and exhaust all legal, administrative, and equitable remedies, in any available forum, before Licensor may revoke Licensee's right to attach the Equipment requiring such Permit to Licensor's Structures.

#### Section 1.06 Electricity

Licensor will provide electricity to Licensee on its Structures for Licensee's use in providing the Free Public WiFi.

#### Section 1.07 Post-Termination Rights

Upon termination of this Agreement for any reason (other than failure to pay any fees), Licensee, at the request of Licensor, may maintain its Equipment on and in Licensor's Structures, but may no longer apply to add new Equipment. Except as set forth in Section 2.15, existing Equipment will continue to be subject to the terms of this Agreement until such Equipment is removed by Licensee from Licensor's Structures.

#### Section 1.08 Term

This Agreement will commence on the Effective Date and will continue in effect for five (5) years. This Agreement will automatically renew for successive one (1) year periods, unless Licensee is no longer operating its Free Public WiFi within City or one of the parties provides notice of termination of this Agreement as set forth in Section 1.09.

#### Section 1.09 Termination

At any time after the first year of this Agreement, Licensee may terminate this Agreement for convenience upon ninety (90) days prior written notice, without cause and without further liability or obligation. After the first five (5) years of this Agreement, Licensor may terminate this Agreement for convenience upon ninety (90) days prior written notice, without cause and without further liability or obligation except as set forth in Sections 2.15 and 11.09.

### **ARTICLE II. PLACING, TRANSFERRING, OR REARRANGING ATTACHMENTS**

#### Section 2.01 Application; Confidentiality

Before attaching any Equipment to any Licensor Structure, Licensee will submit a written request to Licensor for consent for such attachment or placement. Licensee will clearly mark any materials it considers to be confidential or proprietary with a clear designation. All materials submitted by Licensee that are marked confidential and/or proprietary in connection with such written request will be handled and reviewed only by those Licensor employees and contractors directly responsible for the coordination and administration of such requests. Licensee's plans, designs, drawings or specifications are of a confidential, proprietary, and commercially sensitive nature and will not be disclosed by Licensor or its employees or contractors for any reason other than (a) as required by the applicable law and (b) as necessary in connection with processing and administering the Licensee's application to attach Equipment to Structures.

## Section 2.02 Permit Application Process

Licensee agrees to provide Licensor with the following information in order to complete the application to permit the placement of Licensee's Equipment on Licensor's Structures:

- a. A drawing of a typical installation of the equipment that will be mounted on the Structures; and
- b. A map showing the locations of the Structures
- c. A list of the Structures by address and type (i.e. non-decorative light pole, building)
- d. Submit removal plan for existing equipment from Structures

Licensee will obtain an excavation permit as required to perform services within the street right-of-way or a building permit for any Structures other than non-decorative lightpoles as required by the City. Licensee will pay all appropriate and normal permit fees.

## Section 2.03 Grant or Denial of Access

Except as otherwise provided by law, Licensor reserves the right to deny or modify Licensee access to any Structure, on a competitively neutral, non-discriminatory basis, where Licensor demonstrates that Licensee's proposed attachment will (a) materially harm the public health, safety or welfare, (b) unreasonably limit or harm the capacity, functionality, safety, reliability or aesthetics of Licensor's facilities, (c) place Licensor in violation of generally applicable zoning restrictions, or (d) unreasonably interfere with a reasonable governmental purpose; provided, however, that before Licensor denies access, Licensor will explore potential accommodations in good faith and take all reasonable steps to accommodate Licensee's request for access. Licensor will either grant or deny access to a Structure within thirty (30) calendar days once Licensee has submitted a complete application for a permit to place Equipment on Licensor's Structures (either an excavation and/or a building permit).

## Section 2.04 Make Ready Survey

Licensee has the right to undertake a make-ready-survey (the "Make Ready Survey"), at Licensee's cost, to determine the adequacy of an existing Structure to accommodate Licensee's Equipment without jeopardizing the safety of Licensor's facilities or placing Licensor in violation of generally applicable zoning restrictions. Licensee may perform a field inspection as part of the Make Ready Survey. Licensee will provide reasonable advance notice of such a field inspection and a representative of Licensor has the right to be present for the inspection.

## Section 2.05 Make Ready

- (a) Whenever any Structure to which Licensee seeks attachment requires modification or replacement to accommodate Licensee's Equipment and Licensor's existing attachments or equipment and the attachments and equipment of other pre-existing attachers, Licensee, at Licensee's sole cost, will provide a detailed, good faith estimate of make ready work (the "Make Ready Estimate") it believes to be necessary to prepare the Structure for Licensee's Equipment (the "Make Ready Work"). All Make Ready Work will be performed at the sole cost and expense of Licensee.
- (b) If Licensee still desires to make the Structure attachment, Licensee may elect by written notice to Licensor any of the following alternatives:
  - (i) Licensee may retain its own contractors to perform all the Make Ready Work. The contractors will be approved by Licensor to work on or in its Structures. Contractor approval will be based upon reasonable and customary criteria employed by the Licensor in the selection of its own contract labor
  - (ii) Licensee may retain its own contractors to perform part of the Make Ready Work and utilize Licensor to perform part of the Make Ready Work. The Licensee is responsible for

determining what portion of the Make Ready Work it will perform through this joint-build option and to notify Licensors of its choices.

- (c) If Licensee submits an application that requires rearranging or moving existing attachments, Licensors will notify third-party attachers and coordinate the work of such third-party attachers to move or rearrange such attachments. The Licensors will be responsible for moving or rearranging any third-party attachments as necessary. In the event the Licensors or the applicable-third party fails to move or rearrange such attachments on or prior to the deadline for completion of Make Ready Work, the Licensee may move or rearrange such attachments at Licensee's sole risk.

#### Section 2.06 Installation

Licensee, at its own expense and risk and by the terms of this Agreement, will place, transfer, and rearrange its own Equipment on Licensors's Structures. Licensee at all times will perform such work in such manner as not to interfere with the service of Licensors or any other Structure attacher.

#### Section 2.07 Structure Maintenance

The expense of maintaining the Structures will be borne exclusively by Licensors and Licensors will maintain its Structures in a safe and serviceable condition, and will replace, reinforce, or repair such Structures as appropriate or necessary to maintain them in a safe and serviceable condition. Licensors will be responsible for routine and periodic tree trimming and brush cutting as appropriate or necessary to avoid contact with, or jeopardizing the functionality of, Structures utilized by Licensee. Licensors will be solely responsible for collection of costs of damages for Structures broken or damaged by third-parties. Licensee will be responsible for repair, maintenance and collection of costs of damages to its own Equipment.

#### Section 2.08 Structure Replacement

- (a) During the Initial Term, Licensors will have the right to cause Licensee to relocate Licensee's Equipment on Licensors's Structure provided that such relocation: (i) is required as a result of any major capital projects or improvements deemed necessary for public health and safety or other reasonable governmental purpose; (ii) does not adversely affect the accessibility, reliability, or protective safety features of Licensee's Equipment; and (iii) does not adversely affect Licensee's WiFi Services; provided however, if Licensors cannot provide an alternate location that meets (i), (ii), and (iii) above, Licensors understands and agrees that Licensee may determine, in its sole but reasonable discretion, that it cannot continue to provide the Free Public WiFi and in such event, Licensee may terminate this Agreement and Licensors will pay all costs to remove Equipment from the Structures. Licensors will ensure that Licensee will have reasonably equivalent access to and ability to maintain any relocated Equipment.
- (b) Other than in cases of Emergency as set forth in Section 2.12, Licensors will provide Licensee with thirty (30) days' advance notice of any such relocation. Upon receipt of notification by Licensors to Licensee that Licensee's equipment needs to be relocated, the Parties will, within five (5) business days, mutually agree upon the length of time it will take for Licensee to accommodate such request, and in accordance with the terms of such agreement, Licensee will proceed with the relocation. Licensee will bear the cost of any relocation permitted by paragraph (a). If Licensee permits Licensors to relocate Licensors's equipment, Licensors will mark or tag any relocated Equipment with appropriate identification of Licensee.

#### Section 2.09 Rights of Third Parties

The rights of any third-parties to whom Licensors confers Structure attachment rights after the Effective Date of this Agreement will be subject to the rights of the Licensee as set forth herein. The Licensors will not license any Structure attached to by Licensee, or for which an application for attachment from Licensee has been received by Licensors and is pending, for use by any other person or entity where such third-party use would interfere with Licensee's Equipment or Free Public WiFi, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a

third-party to a Structure used by Licensee pursuant to the terms hereof, then Licensor will give Licensee reasonable time to undertake any rearrangement of equipment required in connection with such third party's access.

#### Section 2.10 Subsequent Attachment by Third-Party Attachers

If at any time subsequent to Licensee's attachment to a Structure, a third-party requests that Licensor provide access to that same Structure, the following procedures will apply:

- (a) Licensee will bear no expense, including but not limited to preparation of cost estimates associated with any Make Ready Work and the Make Ready Work, for any third- party attachment.
- (b) Licensee will communicate with Licensor with respect to the rearrangement of Licensee's Equipment, and Licensor will be responsible for communicating such information to and from third parties.
- (c) Licensee will not be responsible for paying any charges attributable to the rearrangement of its Equipment, and will be reimbursed by Licensor (whether or not Licensor is reimbursed by the applicable third party) for any costs incurred by Licensee in connection with such rearrangement.
- (d) Licensee will make all rearrangements of its Equipment within a reasonable period of time based on the number and complexity of rearrangements necessary and minimizing the chances for service interruption or service denial to users of the Free Public WiFi.

#### Section 2.11 Compliance with Safety Codes

Licensee will place and maintain its Equipment attached to Licensor Structures in good and safe condition and in thorough repair, and in compliance with applicable law, permits, codes and with such requirements and specifications as required by any regulatory agency or other authority having jurisdiction.

#### Section 2.12 Nonconforming Equipment and Emergencies

- (a) If any Equipment is not placed and maintained in accordance with Section 2.11 above, upon notice by Licensor, Licensee will use commercially reasonable efforts to timely perform all work reasonably necessary to correct Licensee's noncompliance. For purposes of this paragraph, compliance will be deemed timely if performed pursuant to a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below).
- (b) Notwithstanding anything else set forth herein, in the event Licensor determines in good faith that a particular condition or situation is an Emergency, Licensor may arrange to relocate, replace, remove, renew, or disconnect Licensee's Equipment and transfer them to substituted Structures or perform any other work in connection with Licensee's Equipment that may be required during the Emergency. Licensor will also endeavor to provide Licensee with the best practicable notice of the situation so that Licensor and Licensee, if possible, may coordinate their responses to the Emergency. If notice is impossible during the Emergency, Licensor will notify Licensee of any Emergency and any relocation, replacement, or removal affecting Licensee's Equipment as soon as reasonably practicable. An "Emergency" is conditions that (i) pose an immediate threat to the safety of workers or the public; (ii) materially and adversely interfere with the performance of Licensor's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of Licensor's or other attachers' equipment.

#### Section 2.13 Reasonable Precautions

Each Party will exercise reasonable precautions to avoid damage to the facilities of the other Party.

#### Section 2.14 Removal of Equipment by Licensee

Licensee, at any time, may remove its Equipment from any Structure of Licensors, and will give Licensors written notice within seven (7) days of such removal and Licensee will obtain any applicable permits from Licensors.

#### Section 2.15 Abandonment

Licensee will have the right to abandon Equipment on Licensors's Structures only by written agreement of Licensors. Licensee will remove Equipment from Licensors's Structure within one hundred eighty (180) days of the later of (i) the termination of this Agreement and (ii) issuance of any applicable permit for removal.

#### Section 2.16 Interference

Licensee will not allow its Equipment or operations to impair the Licensors's ability to place, locate, operate, use or repair Licensors's Structures.

### **ARTICLE III. INSPECTIONS**

#### Section 3.01 Post-Installation and Safety Inspections

Licensors reserves the right to inspect each new placement of Licensee Equipment on Licensors Structures. Licensors also reserves the right to make periodic inspections, as conditions may warrant, to determine if Licensee's construction complies with the approved application and/or applicable law.

#### Section 3.02 Inventory

Licensors will have the right to require a jointly conducted physical inventory, with costs of such inventory to be jointly shared, by a mutually agreed upon vendor of Licensee's Equipment on Licensors Structures upon ninety (90) days' advance written notice. A jointly conducted physical inventory will be taken no more frequently than once every two years. If the Equipment of more than one joint-user is inventoried, Licensors, Licensee, and each such joint-user will contribute a proportionate share of the costs of such inventory.

As an alternative to performance of the jointly conducted physical inventory, the Parties may mutually agree to determine the number of attachments from existing maps and/or attachment records provided that such maps or records exist and provided that each Party agrees that results with reasonable accuracy can be achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties and utilized to count attachments will be made available to the other Party and the number of attachments will be determined through a mutual and cooperative effort of both Parties. The results of attachment counts performed in this manner will be treated, for the purpose of determining charges due for unauthorized attachments, as if results were achieved by an actual jointly conducted physical inventory.

#### Section 3.03 Inventory Disparity

- (a) Upon thirty (30) days' notice from Licensors to Licensee of an unauthorized attachment of Licensee's Equipment on Licensors's Structure, Licensee will either apply for consent to such attachment or remove such attachment.

### **ARTICLE IV. LICENSOR ABANDONMENT OF STRUCTURES**

If Licensors desires at any time to abandon any Structure which is being used by Licensee pursuant to this Agreement, then it will give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Structure.

## **ARTICLE V. ACCESS TO PROPERTY**

### **Section 5.01 Access to Public Property**

In connection with performance of this Agreement, Licensee and any of its employees or contractors will have reasonable access to the parts of any Public Property, including but not limited to stairways, elevators, hallways, pathways, ladders, lobbies, and entryways, which Licensee must use to access the location of any attachment and related Equipment on any Structure. Licensors may place reasonable restrictions on Licensee's access to Licensors' Property, provided that such restrictions do not unreasonably interfere with Licensee's ability to access its attachments and related Equipment, and provided that such restrictions do not unreasonably interfere with Licensee's ability to transport Equipment to its attachment locations.

### **Section 5.02 Access to Attachment Locations**

Licensors will provide Licensee with access to and use of Attachment Locations, including but not limited to access for ingress, egress, or other access and to construct, utilize, maintain, modify, and remove Equipment for which an Excavation Permit or building permit, as the same may be required, have been issued, provided that any agreement with a third-party under which Licensors holds such rights expressly or impliedly grants Licensors the right to provide such rights to others. Where Licensors notifies Licensee that Licensors' agreement with a third-party does not expressly or impliedly grant Licensors the ability to provide such access and use rights to others, upon Licensee's request, Licensors will use its best efforts to obtain the consent of the owner or grantor and to otherwise secure such rights for Licensee.

## **ARTICLE VI. FEES AND PROCEDURE FOR PAYMENTS**

### **Section 6.01 Fees**

The parties hereby understand and agree that any attachment and electricity fees are fully offset by Licensee's provision of Free Public WiFi.

### **Section 6.03 Incremental Personal Property Taxes and Other Taxes**

Licensee will pay any personal, real property or other taxes on Licensee's Equipment and any personal, real property or other taxes resulting from or associated with the use of the Licensors' Structures as set forth in this Agreement.

## **ARTICLE VII. BREACH AND REMEDIES**

If either Party will default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party will have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this Article VII the remedies available to each Party will include, without limitation, termination of this Agreement and injunctive relief.

## **ARTICLE VIII. INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **8.01 Indemnification**

Licensee Indemnification. Licensee, jointly and severally, for itself, its successor, agents, contractors and employees, agreed to indemnify, defend and hold harmless Licensors, its officers, employees and agents and any successors to Licensors' interest from and against any and all losses, liabilities, damages, fines, penalties, charges, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable attorneys' fees) (collectively, the "LOSSES") incurred by Licensors in connection with or as a result of the following: (i) any third party claim that the Free Public

WiFi provided by Licensee hereunder infringes or misappropriates that third party's U.S. patent, copyright, trademark, or trade secret; (ii) any third party claims for personal injury or property damage caused by Licensee's or its employees' or agents' gross negligence, willful misconduct, fraud, misrepresentation, or violation of law. In connection with such indemnification, Licensors shall (a) promptly notify Licensee in writing of any such claim, and grant Licensee control of the defense and all related settlement negotiations, and (b) cooperate with Licensee, at Licensee's expense, in defending or settling such claim, provided that any settlement shall require Licensors' written consent, which consent shall not be unreasonably withheld or delayed. In connection with such claim, Licensors may have its own counsel in attendance at all public interactions and substantive negotiations at its own cost and expense. Licensee shall employ competent counsel, reasonably acceptable to Licensors.

**Licensors Indemnification.** Licensors, jointly and severally, for itself, its successor, agents, contractors and employees, agreed to indemnify, defend and hold harmless Licensee, its officers, employees and agents and any successors to Licensee's interest from and against any and all losses, liabilities, damages, fines, penalties, charges, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable attorneys' fees) (collectively, the "LOSSES") incurred by Licensee in connection with or as a result of the following: (i) Licensors or its employees' or agents gross negligence, willful misconduct, fraud, misrepresentation, or violation of law. In connection with such indemnification, Licensee shall (a) promptly notify Licensors in writing of any such claim, and grant Licensee control of the defense and all related settlement negotiations, and (b) cooperate with Licensors, at Licensors' expense, in defending or settling such claim, provided that any settlement shall require Licensee's written consent, which consent shall not be unreasonably withheld or delayed. In connection with such claim, Licensee may have its own counsel in attendance at all public interactions and substantive negotiations at its own cost and expense.

#### 8.02 Limitation of Liability

EXCEPT FOR INDEMNIFICATION UNDER THIS SECTION, NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD-PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; (II) WILLFUL MISCONDUCT; AND (III) BREACH OF CONFIDENTIALITY AND/OR DATA SECURITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS, OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING. IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED ONE MILLION DOLLARS. THE PARTIES AGREE THAT THIS SECTION 8 REPRESENTS A REASONABLE ALLOCATION OF RISK.

### **ARTICLE IX. INSURANCE**

#### Section 9.01 Worker's Compensation and Employer's Liability Acts

Licensee will comply with all applicable workers' compensation and employer's liability acts and will furnish proof thereof satisfactory to Licensors prior to placing Equipment on Licensors' Structures.

#### Section 9.02 Licensee Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee and its agents or contractors will, at their sole expense and prior to placing Equipment on Licensors' Structures, secure and continuously carry with insurers reasonably acceptable to Licensors the following insurance coverage:

Commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, "broad form" property damage, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence;



Auto liability insurance coverage all owned, non-owned and hired vehicles with coverage limits of not less than \$1,000,000 per occurrence for bodily injury and property damage;

Workers compensation insurance as required by law in the state where the services will be provided, including employer's liability coverage for injury, disease and death, with coverage limits of not less than \$1,000,000 per accident and employee;

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

#### Section 9.03 Licensor Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor will, at its sole expense, secure and continuously carry with insurers reasonably acceptable to Licensee *Commercial General Liability insurance* Commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, "broad form" property damage, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence. The Commercial general liability insurance required herein will include a cross-liability and severability of interest clause. The insurance requirements in this Section may be met, in full or in part, by self-insurance. Licensor will e-mail all Certificates of Insurance and other documentation evidencing coverage to insurance@google.com.

### **ARTICLE X. CONFIDENTIALITY**

The Parties understand and agree that this Agreement is subject to requests under the Public Records Act. Except as otherwise required by applicable law, the Licensor will make a good faith effort to insure that competitive or sensitive information (either oral or written) relating to the business operations of Licensee obtained in connection with this Agreement are not inadvertently disclosed and Licensee will note such documentation as confidential.

### **ARTICLE XI. GENERAL PROVISIONS**

#### Section 11.01 Governing Law

ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

#### Section 11.02 Dispute Resolution

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

#### Section 11.03 Force Majeure

Neither Party will be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure will be due to causes beyond the reasonable control of such Party, including but not limited to the following: (a) the operation and effect of any rules, regulations, and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable,

such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure will make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein will be extended for the period during which Force Majeure was in effect.

#### Section 11.04 Notice

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

##### Licensor

City of Mountain View, CA  
500 Castro Street  
PO BOX 7540  
Mountain View, CA 94039  
ATTN:

##### Licensee

Google Fiber Inc.  
1600 Amphitheater Parkway  
Mountain View, CA 94043  
ATTN: General Manager  
Email: googlefibernotices@google.com  
Fax: (650) 253-0001

With a copy to:

[        ]  
[        ]  
[        ], [        ] [        ]

With a copy to:

ATTN: Google Fiber Legal Department  
Email: legal-notices@google.com  
Fax: (650) 618-1806

#### Section 11.05 Failure to Enforce Rights

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

#### Section 11.06 Interest

An interest charge at the rate of twelve percent (12%) per annum shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

#### Section 11.07 No Third-Party Beneficiaries

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

#### Section 11.08 Assignment of Rights

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

An "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with, a Party; and "control" will mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty

percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in such entity, or the power to direct the management of such entity.

#### Section 11.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement will not release either Party from any liability or obligation hereunder which may have accrued or may be accruing at the time of termination.

#### Section 11.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and will not affect the construction of this Agreement.

#### Section 11.11 Severability

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

#### Section 11.12 Prior Agreements; Amendments

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

#### Section 11.13 Additional Representations and Warranties

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

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it, or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

#### Section 11.14 Relationship of the Parties

Nothing contained herein will be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party.

#### Section 11.15 Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such Party at law or in equity. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that a Party will be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

#### Section 11.16 Further Assurances

In addition to any other obligations set forth in this Agreement, each Party agrees to take such actions (including the execution, acknowledgment, and delivery of documents) reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

#### Section 11.17 Streetlight Attachment Agreement

The parties agree that that certain Agreement entitled Streetlight Pole Attachment Agreement Between the City of Mountain View and Google Inc., as amended (collectively the "Streetlight Attachment Agreement") is hereby terminated upon the execution of this Agreement. The parties agree that any notice and removal obligations under the Streetlight Attachment Agreement are hereby waived and replaced with the following obligations:

- (a) Within one week of the Effective Date, Google will provide notice of the upcoming termination of the existing Free public WiFi network on the Mountain View WiFi website (<http://wifi.google.com>), such termination to be no earlier than 60 days from the date the notice is posted
- (b) Google will provide a plan for removal of existing equipment from Structures
- (c) In accordance with the removal plan, Licensee will remove all equipment installed on City-owned streetlight poles and any other City property pursuant to the Streetlight Attachment Agreement no later than one hundred eighty (180) days from the date Free Public WiFi are furnished pursuant to this Agreement

#### Section 11.18 Counterparts; Signatures

This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each Party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN), Pub.L. 106-229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).

**THIS AGREEMENT** has been executed as of the date first hereinabove written.

Google Fiber Inc.  
1600 Amphitheater Parkway  
Mountain View, California 94043

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

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

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

**City of Mountain View, California**

[                      ]  
[        ], [        ]

\_\_\_\_\_  
Daniel H. Rich, City Manager

FINANCIAL APPROVAL:

\_\_\_\_\_

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

$$[ \quad , \quad ]$$