Introduced 10/27/2016

ORDINANCE NO. - 16-832

WHEREAS, Google Fiber, Inc., a Delaware corporation, which is qualified to do business in the State of Alabama ("Google Fiber"), has requested to use the public rights-of-way in the corporate limits of the City of Huntsville, Alabama, ("City") in order to construct, operate, and/or maintain a communications network in order to provide certain communications services to subscribers in the corporate limits of the City; and

WHEREAS, Google Fiber has the legal, technical, and financial qualifications to construct and operate that network and to provide those communications services to subscribers in the corporate limits of the City; and

WHEREAS, the City has considered Google Fiber's request and its qualifications and is desirous of granting a non-exclusive franchise to Google Fiber in accordance with and subject to the terms and conditions of that certain *Video Service Franchise Agreement between the City of Huntsville, Alabama and Google Fiber*.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, as follows:

1. Google Fiber is hereby granted a franchise to use the City's rights-of-way to construct, operate, and/or maintain its communications network in order to provide certain communications services to subscribers in the corporate limits of the City in accordance with and subject to the terms and conditions of the *Video Service Franchise Agreement between the City of Huntsville, Alabama and Google Fiber* to be entered into by and between the City and Google Fiber ("Franchise Agreement").

2. The Mayor of the City of Huntsville, Alabama, is hereby authorized, for and on behalf of the City, to enter into and execute the Franchise Agreement with Google Fiber, which said Franchise Agreement shall be in a form substantially similar to that certain agreement attached hereto and identified as "*Video Service Franchise Agreement between the City of Huntsville, Alabama and Google Fiber*" consisting of thirty (34) pages, including Exhibit A, and the date of _____ appearing on the margin of the first page, together with the signature of the President or President Pro Tempore of the City Council, with an executed copy of said Franchise Agreement being kept on file permanently in the Office of the City Clerk-Treasurer of the City of Huntsville. The City Clerk-Treasurer is authorized to attest thereto.

3. The Franchise Agreement shall become effective in accordance with its terms.

4. Google Fiber shall assume all publication costs with respect to this Ordinance, including the Franchise Agreement, or a synopsis thereof, as such publication is required by law.

ADOPTED this the ___ day of _____, 2016.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the ___ day of _____, 2016.

_____
Mayor of the City of Huntsville,
Alabama

VIDEO SERVICE FRANCHISE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA AND GOOGLE FIBER

This **VIDEO SERVICE FRANCHISE AGREEMENT** (hereinafter referred to as "Agreement" or "Franchise") is made and entered as of the 17 day of October, 2016, by and between the City of Huntsville, a municipal corporation of the State of Alabama, and Google Fiber Inc., a Delaware corporation, which is qualified to do business in Alabama ("Company"), (individually, "Party" and collectively, "Parties").

WHEREAS, Company desires to use the Rights-of-Way in the corporate limits of the City in order to construct, operate, or maintain a Network to provide Broadband, Video and VoIP Services to Subscribers in the City; and

WHEREAS, the City has the authority to grant the right to use and occupy the Rights-of-Way for such use, to manage and control the Rights-of-Way, and to obtain fair and reasonable compensation for such use; and

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police powers and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City has considered the Company's request and is desirous of granting a non-exclusive franchise to the Company to use the City's Rights-of-Way for the purposes hereinafter set forth, subject to the terms and conditions of this Agreement; and

WHEREAS, the Company has agreed to accept the use of the Rights-of-Way in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

Section 1 NATURE AND TERM OF GRANT

1.1 Grant of Franchise. The City hereby grants to Company, and, subject to Section 13, to its successors and assigns, a franchise to construct, operate or maintain in the Rights-of-Way a Network to provide Video Services and, subject to Section 6.10, Broadband Services and VoIP Services.

1.2 Term of Franchise; Renewal.

A. This Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be for a term of twenty (20) years from the Effective Date ("Term"), unless terminated sooner as provided in this Franchise. At the end of the Term, the Franchise shall automatically extend for an additional five (5) years on the same terms and conditions

Legal Dept FJK Google

President of the City Council of the City of Huntsville, Alabama
Date:

("Extension Term") unless either Party provides written notice of non-extension to the other Party at least ninety (90) days prior to expiration of the Term. At the end of the Term and any Extension Term, the City shall have the right, at its election, to (i) renew or extend the Franchise (on the same or renegotiated terms and conditions), or (ii) decline to grant a renewed Franchise. Company shall have the right to terminate this Franchise upon giving ninety (90) days' written notice to City.

B. Notwithstanding anything to the contrary contained in this Agreement, in the event Company, at the sufferance of the City, holds over beyond the Term or Extension Term of this Agreement and continues to operate all or any part of the Network to provide its Video Service, Broadband Service, and VoIP Service using the Rights-of-Way, then Company shall continue to comply with all applicable provisions of this Agreement, including all compensation and other payment provisions, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Agreement, except to the extent an extension is necessary to comply with Applicable Law. In the event the Term or Extension Term has expired and the Parties are in the process of re-negotiating a renewal of this Agreement or negotiating a new agreement relative to Company's Video Service, Broadband Service, and VoIP Service or as they may otherwise agree, this Agreement shall continue on a month-to-month basis.

1.3 Effective Date; Publication.

A. The effective date of this Franchise shall be 30 days after publication of this Franchise ("Effective Date").

B. This Agreement, or a synopsis of this Agreement in accordance with applicable state law, shall be published in the Huntsville Times, a newspaper having general circulation in the City. Such publication shall be done by or at the direction of the City Clerk-Treasurer of the City and the expenses thereof shall be paid in advance by Company or Company shall make arrangements with the Huntsville Times to be billed directly.

1.4 Franchise Not Exclusive; Limitations.

A. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, permits or other rights to other Persons, as well as the right in its own name as a municipality, to use the Rights-of-Way for similar or different purposes than are allowed Company under this Franchise.

B. This Franchise does not constitute authorization from the City to the Company to use the Rights-of-Way to provide any Service other than Broadband Service, Video Service or VoIP Service. To the extent the Company uses its Network to provide Services other than Broadband Service, Video Service or VoIP Service, this Agreement shall not be construed to waive or otherwise forfeit any rights the City otherwise has with respect to the franchising of such Services. Notwithstanding the foregoing, nothing in this Franchise shall be deemed to prevent the Company from using its Network to provide Services other than Video Service,

Broadband Service and VoIP Service to the extent federal or Alabama law so requires the Franchise to permit.

C. To the extent that the Company provides a Service that is subject to regulation under Title II of the federal Communications Act of 1934, as amended, it shall, prior to providing any such Services, apply for and obtain such authority as may be necessary from the Alabama Public Services Commission or from the Federal Communications Commission, and Company shall provide the City with documentation of any such necessary authority.

D. By granting this Franchise the City makes no express or implied representation or warranty regarding the location or dimensions of any particular segment of the Rights-of-Way.

E. This Agreement shall not convey title, equitable or legal, in the Rights-of-Way. This Agreement and the rights granted hereunder do not excuse the Company from obtaining appropriate access or attachment agreements before locating its Network on another Person's facilities.

1.5 Compliance with Laws; Police Power.

A. The Company shall comply with all Applicable Law.

B. Notwithstanding anything to the contrary in this Franchise, Company and its provision of Services under this Agreement are subject to the lawful police powers of the City to adopt and enforce ordinances, resolutions, rules and regulations necessary to preserve or protect the health, safety and general welfare of the public, including the City's continuing authority over the construction and operation of facilities in the Rights-of-Way. The Company shall comply with all Applicable Law enacted by the City pursuant to its police powers, to the extent that they are not preempted by applicable federal or state law.

C. Subject to Section 1.5.B, in the event of an irreconcilable conflict between a contractual right granted to Company by this Franchise and a City ordinance, rule, or regulation, the terms of this Franchise shall prevail. Nothing in this Section 1.5.C shall be deemed a waiver by either of the Parties of their rights under Applicable Law.

Section 2 DEFINITIONS

2.1 Captions. Throughout this Franchise, captions to Sections are intended solely to facilitate reading and to reference the Sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

2.2 Definitions and Rules of Construction. For the purpose of this Franchise, the following terms and their derivations shall have the meanings or rules of construction given in this Section 2 unless the context indicates otherwise.

A. "Affiliate" or "Affiliated Entity" means any legal entity directly or indirectly controlling, controlled by, or under common control with Company.

B. "Applicable Law" means any or all federal, state or municipal statutes, ordinances, rules, regulations, standards, and other laws, including City laws, that are now existing or hereafter adopted or amended from time to time, which apply to Company's Services or other matters covered by this Agreement.

C. "Broadband" and "Broadband Services" mean existing and future broadband Internet access service offerings delivered to Subscribers using Company's Network.

D. "City" means the City of Huntsville, a municipal corporation in the State of Alabama, and where necessary for the purposes of the administration and enforcement of this Agreement includes those City officers and employees performing their delegated or assigned duties.

E. "Confidential Information" means written, non-verbal, information or communication for which there is a sound legal basis under Applicable Law to assert that such information or communication is confidential or proprietary in nature and which has been clearly and conspicuously marked as such by the Party asserting its proprietary or confidential status. Information that (a) is independently developed by the receiving Party, (b) is lawfully received by the receiving Party free of any obligation to keep it confidential, or (c) becomes generally available to the public other than through the receiving Party, shall not be considered Confidential Information. Notwithstanding the foregoing, the contents of this Agreement, including consideration flowing to either Party under this Agreement, is not considered to be Confidential Information.

F. "Company Facility" means (1) any Facility owned by the Company, or (2) any Facility leased by Company for which Company, or its contractors or others working on its behalf, have the right, pursuant to its agreement or agreements with the lessor of such Facility, to physically access, modify, repair, replace, or remove, and whether or not such lessor is in breach of its obligations under the terms of the agreement or agreements between lessor and Company.

G. Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

(1) "and" indicates that all the connected terms, conditions, provisions or events apply.

(2) "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

H. "Facility" means any tangible component of the Network.

I. "Franchise" or "Agreement" means this franchise agreement, as fully executed by the City Council and the Company.

J. "Franchise Area" means the territory within the boundaries of the City of Huntsville.

K. "Gross Revenues" means any and all consideration of any kind or nature, including cash, credits, property, and in-kind contributions (services or goods) arising from or attributable to the Company's provision of Video Services over the Network within the City to Subscribers (including fees attributable to Video Service when sold individually or as part of a package or bundle, with Services other than Video Services), without regard to the billing address of the Subscriber. By way of example, Gross Revenue shall include: fees charged Subscribers for any basic, optional, premium, per-channel or per-program Video Service; installation and re-connection fees; converter rentals or sales; late or administrative fees exclusively related to the sale of Video Service; upgrade, downgrade or other change-in-service fees. Subject to exclusions below, Gross Revenues shall also include all revenue collected by Company for the sale of video advertising that is inserted into linear programming streams by Company as part of the Video Service that is delivered to Subscribers within the City (allocated on a pro rata basis).

The term "Gross Revenues" shall not include the following:

a. Any revenue not actually received, even if billed, provided that uncollectible fees written off as bad debt which are subsequently collected shall be included in gross revenues in the period collected;

b. Refunds, rebates, credits or discounts to Subscribers or the City to the extent not already offset by (a) immediately above and to the extent such refund, rebate, credit, or discount is attributable to Video Service;

c. Subject to Sections 1.4.B and 6.10, any revenues received by Company or its Affiliates from the provision of Services or capabilities other than Video Service, including Telecommunications Services, Information Services, VoIP Service, and Broadband Service;

d. Subject to Sections 1.4.B and 6.10, any revenues received by Company or its Affiliates for the provision of Internet advertising, including banner advertisement and electronic publishing;

e. Any amounts attributable to the provision of Service to customers at no charge, including the provision or such Service to public institutions without charge;

f. Any tax of general applicability imposed on the customer or the transaction (but not on Company) by a federal, state, or local government or any other governmental entity, collected by Company, and required to be remitted to the taxing

entity, including sales and use taxes, and utility user taxes (the Video Franchise Fee and PEG Support Fee imposed herein are not such a tax);

g. Any forgone revenue from the provision of Service at no charge to any Person, except that any forgone revenue exchanged for trades, barters, services, or other items of value shall be included in gross revenue;

h. Sale of capital assets or surplus equipment;

i. Reimbursement by programmers of marketing costs actually incurred by Company for the introduction of new programming; and

j. The sale of Video Service for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the City with respect hereto.

k. Advertising revenue other than those specified above.

L. "Include". Use of the word include, or its derivations, does not limit a term to a specified example.

M. "Information Service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a Telecommunications Service.

N. "Network" means the entirety of Company's wireline system, whether owned or leased, with all Facilities, used to provide Services.

O. "Person" means any individual, sole proprietorship, partnership, association, corporation, limited liability company, or other form of organization or legal entity, and includes any natural person.

P. "Rights-of-Way" means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive, public utility easement (to the extent of the City's interest or authority), or public rights of way now or hereafter held by the City which shall, within its proper use and meaning, entitle Company to the use thereof for the purpose of constructing and operating its Network and providing its Services. This term shall not include any state or federal rights-of-way or any property owned or controlled by any Person other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such Person. The term shall also not include property owned or leased by the City that is neither used nor typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility facilities, such as City parks, City property, or public works facilities.

Q. "Service" means Broadband Service, Video Service, VoIP Service, Telecommunications Service, Information Service, and various existing and to-be-developed services delivered by Company to Subscribers over the Network within the Franchise Area.

R. "Subscriber" means any Person who is lawfully receiving Services provided by Company.

S. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

T. "Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. This term does not include Video Service.

U. "Video Programming" means programming provided by, or which would generally be considered comparable to programming provided by, a television broadcast station or cable programming network.

V. "Video Service" means the provision to Subscribers of multichannel video service through wireline Facilities located at least in part in the Rights-of-Way, without regard to the delivery technology used, including Internet protocol technology. Video Service includes the transmission to Subscribers of (i) Video Programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Video Service does not include (a) any Video Programming provided exclusively as part of and via a service that enables users to access content, information, electronic mail or other services solely over the public Internet, (b) Broadband Service, or (c) VoIP Service.

W. "VoIP Service" means the provision to Subscribers of any service delivered to Subscribers using Company's Network that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Section 3 FRANCHISE AREA

Subject to the provisions of this Franchise, Company may operate its Network and provide those Services authorized by this Franchise and Applicable Law within the Franchise Area.

Section 4 PEG CHANNELS

4.1 PEG Channels. Within a commercially reasonable amount of time, not to exceed one hundred and eighty (180) days, after the delivery by Huntsville Utilities and acceptance by Company of two (2) dark fiber strands connecting one or more aggregation points on the Network to be designated by Company to the originating point(s) of PEG programming, Company shall provide in its lowest tier of service two (2) channels, each known as a "PEG Channel" and collectively known as "PEG Channels" and initially allocated as follows:

A. One (1) educational channel administered by educational entities or institutions designated by City, or their designees, such channel to be provided upon written request by the City; and

B. One (1) government channel administered by the City or its designee, such channel to be provided upon written request by the City.

C. The City may request, and Company shall provide, a third PEG Channel within a reasonable amount of time following Company's receipt of advance written notice by the City, not to exceed one hundred and eighty (180) days following delivery by Huntsville Utilities and acceptance by Company of two (2) dark fiber strands connecting one or more aggregation points on the Network to be designated by Company to the point originating the PEG programming for such third PEG Channel. PEG programming for such third PEG Channel shall be available on the basic tier of service.

D. To the extent feasible, PEG Channels shall not be separated numerically from other channels carried on the lowest service tier.

E. On request by the City, and if the City makes PEG Channel programming available in high definition (HD) format, Company shall deliver the PEG Channel programming to Subscribers in HD format.

F. In order to preserve continuity to Subscribers with respect to PEG Channels and programming, Company shall not be required to provide greater PEG Channel capacity, PEG Channel support, or different PEG Channel programming than any cable operator or other Video Service operator franchised by the City.

4.2 Lines and Facilities. Company is responsible, at its sole cost and expense, for obtaining PEG Channel programming at that programming's origination point(s) and any equipment or electronics necessary for delivering the PEG Channel programming from its origination point(s) to Company's Subscribers.

4.3 PEG Support Fee. Company shall pay to the City an amount equal to one percent (1%) of Company's Gross Revenues ("PEG Support Fee"). The PEG Support Fee will be in addition to, and not offset against, any other payments owed by Company under this Franchise. Company will submit payment of the PEG Support Fee in accordance with the payment provisions of Section 6.

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Section 5 NON-DISCRIMINATION

Company shall not deny Service, deny access, or otherwise discriminate in the availability, rates, terms or conditions of Services provided to residential Subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, gender identity, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Company shall comply at all times with all Applicable Law relating to nondiscrimination with respect to the provision of Services. Company shall not deny access to Video Service to any group of potential subscribers because of the income of the residents of the local area in which such group resides.

Section 6 VIDEO FRANCHISE FEE

6.1 Franchise Fee. For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by Company of the Rights-of-Way to provide Video Service, Company shall pay the City throughout the term of this Franchise an amount equal to five percent (5%) of Company's Gross Revenues ("Video Franchise Fee"). Such payments shall be made quarterly, and are due within forty-five (45) days after the end of each calendar quarter.

6.2 Allocation of Fees. Company shall not allocate revenue between Video Service subject to the Video Franchise Fee and Services not subject to the Video Franchise Fee for the purpose of evading or reducing Company's Video Franchise Fee obligations to the City. Revenue of an Affiliate of the Company shall be included in the calculation of Gross Revenues only to the extent the treatment of such revenue as revenue of the Affiliate rather than as revenue of the Company has the effect (whether intentional or unintentional) of evading the of payment of fees herein which would otherwise be paid on Video Service revenues.

6.3 Report. Each Video Franchise Fee payment shall be accompanied by a written report to the City containing an accurate statement in summarized form of Company's Gross Revenues, the basis for the computation of the payment amount, and such other information relevant to determining compliance with Agreement as may reasonably be required by the City pursuant to Section 8.1.

6.4 Inspection and Audit.

A. The City shall have the right to inspect and audit, upon reasonable written notice but no more than once per calendar year, at any time up to three (3) years from the date that the payment was due or actually paid, whichever is later, all relevant financial statements and financial books and records of the Company in the format customarily kept by Company in order to verify Company's compliance with the Video Franchise Fee or other payment requirements of this Agreement. Any additional amount due to the City as a result of the audit, including any applicable interest, shall be paid by the Company within forty-five (45) days after the Company receives a written notice from the City accompanied by a copy of the audit report and any other supporting document necessary to determine the alleged amount due is correct. Each Party shall pay its own costs and expenses incurred in connection with any such audit, except in the event

there is a final and unappealable determination of an underpayment of fifteen percent (15%) or more of the amount that was due and payable to the City, in which case Company will pay, within forty-five (45) days, the City's actual, documented costs and expenses associated with the audit including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, Company obligations to pay such costs and expenses shall be capped at fifteen thousand dollars ($15,000.00) for any one audit. The City may not retain any Person for performing any such audit whose compensation that is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

6.5 No Waiver of City Rights. No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City in accordance with this Agreement.

6.6 Application of Interest. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

6.7 City Office for Payment. Unless otherwise provided for, all remittances for the monies due according to the terms of this Agreement are to be made payable to the City Clerk-Treasurer and mailed or delivered to:

City of Huntsville, Alabama
Office of City Clerk-Treasurer
ATTN: City Clerk-Treasurer
308 Fountain Circle
Huntsville, AL 35801

Such remittances shall clearly identify or reference this Agreement.

6.8 Liability for Licenses and Taxes.

A. Payment of the Video Franchise Fee and other financial obligations under this Franchise shall not exempt Company from the payment of any other lawful license fee, tax or charge on the business, occupation, property or income of Company that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge; provided, however, that, subject to Section 6.10, any such fee, tax or charge may not be imposed on Company as compensation to City for the use of the public Rights of Way to provide Video Service pursuant to this Agreement. The City's right to impose any such license fee, tax or charge shall be subject to any limitations on the City under Applicable Law.

B. To the extent taxes or other assessments are imposed on the City by taxing authorities other than the City on the use of City property by Company, Company shall be

responsible for payment of such taxes. Where Company has the right to do so under Applicable Law, nothing in this Agreement shall be construed to prevent Company from passing through to or collecting from its Subscribers taxes paid by it under Applicable Law.

6.9 Application Fee. In addition to all other fees, permits or charges required by the City, Company shall pay to the City, within forty-five (45) days after the Effective Date, one thousand dollars ($1,000.00) as a non-refundable fee in order to defray in whole or part the City's costs in the review and processing of Company's request and the negotiations and preparations of the Agreement.

6.10 Franchise Fees on other Services. Notwithstanding anything to the contrary in any other provision of this Agreement, the Parties agree that by entering into this Agreement with the Company and granting Company the right to operate and maintain in the Rights-of-Way a Network to provide Broadband, Video Services and VoIP Service, the City has not waived any right, and reserves whatever right it may have under Applicable Law, to impose, through adoption of a resolution or ordinance, a franchise fee on Company's use of the City's Rights-of-Way to provide Broadband Service, VoIP Service or any other Service other than Video Service; provided, however, that (1) the City shall impose the same franchise fee(s) in a nondiscriminatory manner on all similarly situated Persons using wireline facilities in the City's Rights-of-Way to provide any services within the City that are the same as, or substantially similar to, the Services for which the City imposes such franchise fee(s) with respect to Company; and (2) the fee imposed pursuant to Subsection 6.10(1) is lawful under Applicable Law.

Section 7 PUBLIC BENEFITS

7.1 Public Benefits. Company agrees to engage in initiatives designed to benefit the residents of the City, such initiatives to be based generally on programs deployed by Company in other geographic service areas. Such initiatives may focus on increasing access to Broadband Services, improving digital literacy, and bridging the digital divide. Company further agrees to use good faith efforts to consult with the City in designing and implementing such initiatives.

7.2 Public Benefits Program not Franchise Fees. Company agrees that the requirements of this Section 7 shall in no way modify or otherwise affect Company's obligations to pay Video Franchise Fees or any other fees or taxes owed to the City.

Section 8 RECORDS AND REPORTS

8.1 General Reports. Company agrees to cooperate with the City with respect to the administration of this Agreement. To this end, and subject to the provisions of this Section 8 concerning Confidential Information, Company will furnish or make available to the City upon request such records, reports and other information reasonably necessary for the administration or enforcement of this Agreement and in such form and manner, and at such place, as reasonably prescribed by the City.

8.2 Public Records.

A. Company acknowledges and understands that the City, as a municipality, is subject to laws governing the disclosure of public records including disclosure of the contents of this Agreement.

B. Where the disclosure of Confidential Information to a third party is necessary for Rights-of-Way management purposes, the City and Company shall mutually agree on what, if any, such information can be disclosed to the third party. To the greatest extent practicable, the City will confer with Company prior to disclosing any Confidential Information.

C. Notwithstanding anything to the contrary in this Agreement, the City may disclose, as necessary, any Confidential Information to its officials, officers, boards, commissions, agencies, employees, agents, representatives and contractors in order to administer and enforce this Agreement, or otherwise for Rights-of-Way management purposes.

D. Upon receiving a public records request to inspect or copy any City records that includes records clearly and conspicuously marked by the Company as confidential or proprietary, the City promptly shall provide Company with written notice of the request, including a copy of the request. Company shall have five (5) working days within which to provide a written response to the City. Thereafter, if the City determines that it is required by Applicable Law to disclose the information marked by the Company as confidential or proprietary, the City shall promptly notify Company, and do so at least five (5) working days prior to the information being disclosed so that Company may seek an appropriate protective order or waive compliance with this Section 8.2(D). It shall be the responsibility of the Company to seek judicial protective order prohibiting, limiting, or conditioning said disclosure. If Company chooses to seek appropriate judicial protection, Company shall notify the City of its intent to do so before the expiration of the 5-working day period set forth in the third sentence of this paragraph, and the City shall (a) refrain from disclosing such Confidential Information (unless legally compelled to do so) until the request for a protective order is resolved; and (b) comply with any validly-issued protective order.

E. Notwithstanding anything in this Section 8 to the contrary, the City may disclose Confidential Information in response to a judicial or administrative order (other than an order by an administrative division of the City) requiring such disclosure. Upon receipt of a judicial or administrative order to disclose Confidential Information, the City will provide the Company a copy of same, and it shall be the responsibility of the Company to seek judicial protection against the disclosure.

F. The provisions of this Section 8 shall survive expiration, termination or revocation of this Agreement.

Section 9 GENERAL INDEMNIFICATION

9.1 Hold Harmless and Indemnification.

A. Company, by its acceptance of this Agreement, agrees to and does thereby indemnify, defend and hold the City and its present and future elected or appointed officials, officers, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees (collectively referred to hereinafter as "Indemnitees") whole and harmless from and against all third-party claims, costs, losses, expenses (including reasonable attorneys' fees and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities and judgments for personal injury, death or damage to property resulting from or arising out of: (1) Company actions pursuant to this Agreement and the rights awarded hereunder, or the procedures leading thereto, any act or omission of Company, its agents, employees, representatives, contractors or sub-contractors in the construction, operation, maintenance, repair, relocation, removal or service of its Network in the City, or any portion thereof, or of any failure by the Company to comply with any Applicable Law; or (2) the presence of any hazardous substance or environmental hazard brought into the Rights-of-Way by Company or anyone acting on its behalf. Company's indemnification obligation under this Section 9 shall not extend to liability to the extent caused by the negligence or willful misconduct by any Indemnitee.

B. The foregoing obligations of this Subsection 9.1(A) shall survive the expiration, termination or revocation of the Agreement.

9.2 Notice. The City shall notify Company in writing as soon as reasonably practicable after receiving written notice of any third-party action or other claim against it, and Company shall be relieved of its indemnification obligations to the extent compromised by the City's failure to provide timely notice of any such action or claim. The notice shall describe the claim, the amount thereof (if known and quantifiable) and the basis thereof.

9.3 Defense. With respect to Company's indemnity obligations set forth above, Company shall provide the defense of any claims brought against the City by selecting counsel of Company's choice to represent the City and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with Company and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with the City, Company shall have the right to defend, settle or compromise at its cost and expense any claim or action arising hereunder, and Company shall have the authority to decide the appropriateness and the amount of any such settlement, and any such settlement shall include at a minimum a full and final release of all applicable claims against the City and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the City. In the event that the terms of any such settlement do not include the release of the City, Company shall not settle the claim or action. Company's right to enter a settlement shall entail only payment of monetary amounts by Company or obligations to be performed fully by Company, and under no circumstances shall Company have the power to bind the City to any obligation to pay any

monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition).

9.4 Indemnification Not Limited. The indemnification obligation is not limited in any way by limitation of the amount or type of damages or compensation payable by or for Company under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required by this Agreement, or the terms, applicability or limitations of any insurance held by Company.

9.5 No Waiver of City Rights. The City does not and shall not waive any rights against Company which it may have by reason of this indemnification, or because of the acceptance by the City of Company's proof of insurance or self-insurance described in this Agreement.

9.6 Limitation of Liability; Immunity.

A. The City or the Indemnities, to the extent allowed by Applicable Law, shall be responsible for their own acts of negligence, intentional or willful misconduct, subject to defenses and limitations of liability provided by law; provided, however, in no event shall the City or Indemnitees be liable to Company, its Affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors or assigns for any indirect, incidental, special, punitive or consequential damages, including any loss, expense or damage to profits, business, revenue or income (whether arising out of the damage to or destruction of the Network, in whole or in part, transmission interruptions or problems, any interruption or degradation of service or otherwise).

B. In addition to all other defenses and limitations of liability provided by Applicable Law, the City and all past, current and future elected or appointed officials, members, employees, and agents of the City shall be entitled to immunity from damages related to any claim by Company in relationship to this Agreement, or any activity directly or indirectly related to performance under this Agreement, in the same manner and to the same extent as is provided to a franchising authority or other governmental entity in relation to franchises for cable service, as provided by 47 U.S.C. § 555a.

Section 10 INSURANCE AND SECURITY

10.1 General Liability. Subject to Subsection 10.8 below, Company shall maintain, throughout the term of this Agreement, Commercial General Liability Insurance using carriers licensed in the State of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, contractual, personal and advertising injury, and broad form property damage and shall name as Additional Insureds the City, and its present and future elected or appointed officials, officers, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees. Such insurance shall be in the amount of one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate covering bodily injury, including death, and property

damage. If Company employs independent contractors, Company shall ensure that these contractors maintain appropriate levels of insurance and that the City is named as an additional insured under each policy. Insurance will be written on an occurrence basis.

10.2 Automobile Liability. Company shall maintain during the term of this Agreement Comprehensive Automobile Liability insurance with a limit of three million dollars ($3,000,000) per occurrence combined single limit for bodily injury, including death, and property damage covering owned, non-owned and hired automobiles used in conjunction with its operations under this Agreement. Such insurance shall name the City, and its present and future elected or appointed officials, officers, council, boards, commissions, agents, representatives, volunteers performing authorized city functions, and employees as Additional Insureds.

10.3 Workers' Compensation. Company shall maintain, during the course of this Agreement, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than one million dollars ($1,000,000).

10.4 Evidence of Insurance. On or prior to the beginning of the provision of Service under this Agreement, Company shall furnish to the City Certificates of Insurance (or proof of self-insurance) upon each policy renewal evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require complete, certified copies of all required insurance policies or proof of self-insurance at any time and from time to time.

10.5 Maintenance of Insurance Policies. The liability insurance policies required under this section, if any, shall be maintained by Company through the term of this Agreement.

10.6 No Limit of Liability. The legal liability of Company to the City and any Person for any of the matters that are the subject of the insurance policy(ies) required by this section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

10.7 Certificate of Insurance. Certificates of Insurance, if any, shall name the City, and its officers, boards, commissions, City Council, elected and appointed officials, agents and employees as Additional Insureds and all policies shall waive rights of subrogation in favor of the City. Each insurance certificate shall state that the issuer of the insurance certificate will give the City written notice of any cancellation, modification, or expiration of any insurance policy referred to in the certificate in accordance with the insurer's notice policies. All subsequent notices or certificates shall be delivered to the City Clerk of the City of Huntsville at 308 Fountain Circle, Huntsville, Alabama 35801. All deductibles under said policy shall be the sole responsibility of Company.

10.8 Self-Insurance. Notwithstanding any other provision to the contrary, Company is given the option, at any time throughout the term of this Agreement, and the City acknowledges that Company may employ such option, to self-insure any or all of the types or limits of insurance coverage described in this section. If Company does elect to self-insure, it shall provide the City with a statement certifying such self-insurance, which self-insurance must be approved by the City and which approval will not be unreasonably withheld, conditioned, or delayed.

10.9 Security.

A. Prior to the submittal of its first request for a City permit or the acquisition of its first Subscriber, whichever is earlier, Company shall post either an irrevocable standby letter of credit or performance bond (hereinafter "Security") running to the City in content and form reasonably approved by the City, in the sum of one hundred thousand dollars ($100,000) to guarantee the timely completion and faithful performance of all work required in connection with the Network, including the construction and operation of the Network, and to secure performance of Company's obligations and faithful adherence to all requirements of this Agreement. Notwithstanding the foregoing, during periods when Company is engaged in substantial construction, including re-construction or removal, of its Network, the City may require the amount of the Security to be increased commensurate with the level of the construction activity involved.

B. Company shall pay all costs charged for the Security required under this Section 10.9 and shall keep the same in full force and effect at all times during the Term, Extension Term, and hold-over period of this Franchise and for one hundred and twenty-one (121) days thereafter, unless the City agrees to release Company from the Security required under this Section 10.9.

Section 11 GENERAL STREET USE AND CONSTRUCTION

11.1 Construction. Any and all construction or other work in the Rights-of-Way by Company or its contractors shall be governed by Exhibit A, attached hereto and made a part of this Agreement. Company shall be responsible for any construction or other activity, including restoration and repairs of the Rights-of-Way, performed by Company's contractors on its behalf.

11.2 Reservation of City Rights. Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing or altering any Rights-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. Subject to the provisions of Exhibit A hereto, all such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Company's Network.

11.3 Discontinuing Use of Company Facilities. Except in connection with a sale or assignment pursuant to Section 13, if Company decides to discontinue use of Company Facilities within all or a portion of the Rights-of-Way and does not intend to use those Company Facilities again in the future, the City may direct Company to remove the Company Facilities or may permit the Company Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Company is permitted to abandon its Company Facilities in place, upon written consent of the City, the ownership of Company Facilities in the City's Rights-of-Way shall transfer to the City, and Company shall have no further obligation therefor. Notwithstanding Company's request that any such Company Facility to remain in place, the City may require Company, at its sole cost and expense, to remove the Company Facility from the street area or modify the Company Facility in order to protect the public health and safety or otherwise serve the public interest. Company shall complete any such removal or modification in accordance with a reasonable schedule set by the City.

Section 12 OPERATIONS

12.1 Emergency Alert System. Company shall comply with all applicable federal and state regulations regarding emergency alert messaging.

12.2 Customer Service. Company shall maintain commercially reasonable systems and procedures for receiving, and promptly responding to and resolving Subscriber complaints and customer service issues. Company shall make information available to its Subscribers regarding customer service and how they may submit service complaints or inquiries. Company shall consult with the City and establish a process for working with the City to address resident complaints that the City receives. Company shall maintain a business office in the Franchise Area for Subscribers to address billing-related or service-related issues. Such office shall be conveniently located and shall be open during normal business hours Monday through Friday, and shall include evening and weekend hours to meet customers' needs.

Section 13 ASSIGNMENT OR TRANSFER OF COMPANY'S FRANCHISE

13.1 Restriction on Sale or Transfer of Franchise. Neither this Agreement, nor a controlling interest in the Company, shall be sold, assigned or transferred, directly or indirectly, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person other than Company without full compliance with the procedure set forth in this section. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised, including the creation or transfer of decision-making authority to a new or different board of directors.

13.2 Exceptions; Security of Financing. This Section 13 shall not apply to transactions involving the pledging or other encumbrance of any of Company's assets to secure financing. Nor shall this Section 13 shall apply to pro forma transfers and transfers to Affiliates or other Persons under common control with Company (intra-corporate transfers).

13.3 Procedure. The parties to the proposed sale or transfer shall make a written request to the City for its approval of a sale or transfer. The written request shall not be deemed complete until all information required by the City and reasonably necessary to conduct the review under Subsection 13.4, and by applicable FCC regulations is provided to the City. Upon receipt of a complete written request with all such application information, as reasonably determined by the City, the City shall have one hundred twenty (120) days to approve or deny such request for transfer of the Agreement. If City fails to render a decision either approving or denying the request for approval within one hundred twenty (120) days following receipt of application information, such approval shall be deemed granted.

13.4 Review of Sale or Transfer by City. In reviewing a request for sale or transfer pursuant to Subsection 13.3 above, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, and Company shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems

reasonably appropriate to satisfy said qualifications; provided, however, the City shall not unreasonably withhold its approval. As a condition of approval of a transfer or assignment of ownership or control, the City may require that the transferee become a signatory to the Agreement.

Section 14 FRANCHISE VIOLATIONS AND REMEDIES

14.1 Remedies for Franchise Violations.

A. In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess at law or equity, the City reserves the right to apply any of the following remedies, alone or in combination, in the event Company violates any material provision of this Franchise, receives written notice of such violation, and fails to cure such violation in accordance with this Section. For any uncured violation, the City may:

1. Recover specific damages from all or any part of the security provided pursuant to this Franchise, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;

2. Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available; or

3. Terminate the Franchise, but only after the City conducts a hearing of which the Company is given adequate notice and at which the Company is given adequate opportunity to present evidence and argument against termination.

14.2 Violation Notice and Opportunity to Cure. If the City believes Company has violated a provision of this Franchise, the City shall deliver written notice ("Violation Notice") to Company describing the violation with sufficient detail to adequately identify the nature of the dispute. Company shall remove or otherwise cure the asserted violation within the longer of (i) thirty (30) days of receipt of the Violation Notice, or (ii) a period of time reasonably necessary to cure the asserted violation, but in no event exceeding ninety (90) days absent the City's consent to a longer period. If Company fails to remove or otherwise cure the asserted violation within the applicable time period, the City may exercise any or all of the remedies described in Section 14.1 or such other rights as the City may possess; provided, however, if the violation is not of a material provision of this Franchise, then the City's remedies shall not include a termination of this Franchise.

14.3 Minor Variances. The City may, at its sole discretion and upon request of Company or its own motion, permit the Company to vary its manner of performance under this Franchise, so long as the variance does not result in a substantial change in the terms of this Franchise.

14.4 Limitation on Liability. Subject to Company's obligation to indemnify the City and Indemnitees pursuant to Section 9.1.A and to Company's liability to pay fees and taxes to the City as provided in this Agreement or by Applicable Law, Company shall not be liable to the

City for any indirect, incidental, special, punitive or consequential damages whatsoever arising out of, or in connection with, this Agreement. The foregoing limitation does not apply to actual and direct damages.

Section 15 MISCELLANEOUS PROVISIONS

15.1 Severability and Survivability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such Section, provision or clause was material to the City's agreement to issue the Franchise. All provisions concerning indemnification, or removal of Company Facilities from the Rights-of-Way, shall survive the expiration of this Franchise or termination of this Franchise for any cause. Expiration or termination of this Franchise shall not extinguish, prejudice or limit either Party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

15.2 Non-enforcement by the City. Company shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

15.3 Action by Agencies or Courts. Company shall promptly notify the City in the event that any agency of the federal government or the State of Alabama or any court with competent jurisdiction requires Company to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or Company may determine if a material provision of this Franchise has been affected. Upon such determination, the City or Company may seek to modify or amend this Franchise, pursuant to this Section 15.3, as may be necessary to carry out the Parties' intentions and purposes under this Franchise.

15.4 Choice of Forum. Any litigation between the Parties arising under or regarding this Franchise shall occur, if in the state courts, in the county court of Alabama having jurisdiction thereof, and if in the federal courts, in the United States District Court for the Northern District of Alabama.

15.5 Choice of Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Alabama, even if Alabama's choice of law rules would otherwise require application of the law of a different state.

15.6 Notice. Any notice provided for under this Franchise shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier; (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be

deemed effective at the beginning of the next working day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City: Director of ITS Department of the City of Huntsville
101 Church Street, Suite 201
Huntsville, AL 35801

Facsimile: 256-427-6775
Electronic Mail: bill.steiner@huntsvilleal.gov

With a copy to: City Attorney
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

Facsimile: 256-427-5043
Electronic Mail: trey.riley@huntsvilleal.gov

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

Facsimile: 650-618-1806
Electronic Mail: legal-notices@google.com

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

15.7 Reasonability of Actions. In any matter provided for in this Franchise involving discretionary acts by the City or the Company, including the giving of consent, approval or instructions, the Parties agree that they will each act in a manner that is reasonable under the circumstances.

15.8 Force Majeure. With respect to the violation or noncompliance with any provision of this Franchise, the violation or noncompliance will be excused where the violation or noncompliance is the result of Acts of God, war, work stoppages, or similar events that were not reasonably foreseeable and are beyond a Party's reasonable control.

15.9 Integration and Written Modification. Except as otherwise expressly provided in this Franchise, this Agreement, together with its exhibits, contains the entire agreement between

the Parties. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the Parties.

15.10 Changes in Law or Unenforceability of Franchise Provisions. The Parties have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The Parties reserve the right to mutually agree on modifications to this Franchise to account for changes in the law during the term of this Franchise, or to negotiate modifications in this Franchise if any provision of this Franchise becomes, or is declared, invalid or unenforceable.

15.11 Company Warranty. Company, by its execution of this Agreement, warrants and covenants that it has all requisite authority to enter into the Agreement and provide the Services authorized hereunder. Company agrees that the foregoing covenants and warranties are a material condition of the Agreement.

15.12 No Third-party Rights. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any Person not a Party to this Agreement.

15.13 Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile, and any signature transmitted by facsimile will be given the same force and effect as an original signature.

15.14 Relationship of the Parties. The Parties understand, acknowledge and agree that by making and entering into this Agreement, the City is not in any way or for any purpose a partner of or joint venturer with Company.

15.15 Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns and Affiliated Entities, as applicable.

[This space intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the date first set forth above.

Google Fiber Inc., a Delaware corporation

By: _____ Date: 10/17/16
Name: Chris Levendos
Title: Authorized Signatory

[Acknowledgements on next page]

Legal Dept FJK Google

STATE OF _____ §
§
COUNTY OF _____ §

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____, whose name as _____ of Google Fiber Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as of the day the same bears date.

Given under my hand and official seal this ____ day of October, 2016.

_____
NOTARY PUBLIC

See attached notary certificate

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara)

On October 17, 2016 before me, Jenna Wandres
(insert name and title of the officer)

personally appeared Chris Levendos,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jenna Wandres (Seal)

JENNA WANDRES
Commission # 2147015
Notary Public - California
Santa Clara County
My Comm. Expires Mar 20, 2020

City of Huntsville, Alabama,
a municipal corporation

By: _____ Date: _____
Tommy Battle, Mayor
City of Huntsville, Alabama

Attest:

_____ Date: _____
Kenneth Benion, City Clerk-Treasurer
City of Huntsville, Alabama

[Acknowledgements on next page]

STATE OF ALABAMA §
§
COUNTY OF MADISON §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville is signed to the foregoing instrument, and Kenneth Benion, whose name as City Clerk-Treasurer of the City of Huntsville is signed to the foregoing instrument, both of whom being known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their respective capacities as Mayor of the City of Huntsville and City Clerk-Treasurer of the City of Huntsville, executed the same voluntarily for and as the act of the City of Huntsville, Alabama, a municipal corporation, as of the day the same bears date.

Given under my hand this the _____ day of October, 2016.

_____
NOTARY PUBLIC

EXHIBIT A

Sec. 1. Construction.

(a) *Definitions and coverage.*

(1) For the purposes of this Exhibit A, the word "construct", including its derivations, means to construct, re-construct, excavate for, repair, rehabilitate, replace, erect, maintain, install, relocate, or remove all or any portion of the Network.

(2) The requirements set forth in this Exhibit A are intended to apply to the Company and those portions of its Network that are a Company Facility.

(b) *Performance.* Company may perform all construction necessary for the operation and maintenance of its Network within the Rights-of-Way. Company shall be responsible for any construction or other activity, including restoration and repairs of the Rights-of-Way, performed by Company's contractors or others on its behalf.

(c) *Construction standards.*

(1) Construction of Company's Network shall be in accordance with Applicable Law, industry standards, the requirements of other lawful authority, as such may be amended or superseded from time to time, including applicable sections of the Occupational Safety and Health Act of 1970, as amended. Company shall, at its sole cost, expense, and risk, be responsible for ensuring that the construction of its Network in the Rights-of-Way are, at all times, in compliance with the Americans with Disabilities Act of 1990, as amended or as may be amended from time to time.

(2) All of Company's Network shall be located, constructed, and function in accordance with good engineering practices and so as to avoid unreasonable interference with or causing damage to public infrastructure or improvements or the facilities of others in the Rights-of-Way and in a manner that will not unreasonably interfere with the usual and customary uses in the Rights-of-Way, including pedestrian and vehicular traffic, utilities, and traffic control systems. All such work must be performed by qualified maintenance and construction personnel.

(3) All installation of electronic service equipment shall be done in accordance with the applicable provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

(4) Company shall at all times employ ordinary care and shall install, maintain, and use commonly accepted methods and devices for preventing accidents which are likely to cause damage or injury to the public, and, where applicable, shall comply with the latest edition of the Manual on Uniform Traffic Control Devices.

(d) *Least disruptive technology.* Company is encouraged to perform construction of its Network in a manner resulting in the least amount of damage and disruption of the Rights-of-

Way including facilities therein and improvements thereto. Company may be required to use trenchless technology for projects, within roadway limits, which encompasses the roadway and its shoulder, in arterial and other high volume streets and in roadways constructed or resurfaced within the last five (5) years. The City Engineer may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Company may use either the open cut method or trenchless technology for projects outside roadway limits, except as otherwise provided for in this subsection (d).

(e) *Above-ground facilities installation and placement; undergrounding.*

(1) The City desires to promote the undergrounding of facilities in the Rights-of-Way, their judicious siting, and the use of the least obtrusive facilities in order to reduce or eliminate their impact or potential impact to the public health, safety and general welfare or otherwise for Rights-of-Way management purposes. To this end each of the following shall apply relative to Company's Network:

a. Company shall install its Network underground without cost to the City: (i) in accordance with the subdivision regulations of the City, (ii) where a majority of the facilities of the City d.b.a. Huntsville Utilities or other utilities or service providers in a given area are underground, or (iii) where the City adopts an underground plan and primarily all utility facilities or other facilities are placed underground. Except in the case of an emergency, Company is not authorized to place above ground any of its Network that has previously been underground without prior approval from the City and subject to the applicable provisions of this Agreement or Applicable Law. Nothing herein shall be construed to prevent the above-grounding of those types of Facilities which, due to technical limitations must be placed above ground.

b. In the construction or upgrading of its Network, Company shall use the smallest, reasonably available equipment then in use by Company or any of its Affiliates.

c. Company shall select locations for its above-ground Facilities, both outside and in the Rights-of-Way, which comply with the then-current version of the City's visibility obstruction regulations; which are not within the paved or traveled portions of existing or platted Rights-of-Way, including the sidewalks, or which do not otherwise block or impede vehicle or pedestrian traffic; which do not block or impede existing public drainage facilities or channels or are otherwise in a designated floodway; or which otherwise raise a reasonable public health, safety, or welfare concern.

d. Company shall, subject to City approval which shall not be unreasonably withheld, select locations and methods of installation and screening for its above-ground Facilities which eliminate or reduce the impact to residential uses including those immediately adjacent to or on the same lot as the proposed Facilities.

(2) Where there is a conflict between the rights-of-way construction and administration ordinance referred to in section 8 herein below and the foregoing provisions of subsection (c)(1), such conflict shall constitute a basis for waiving the requirements of the rights-of-way ordinance to the point of the conflict, except where granting the waiver is likely to raise a reasonable public health, safety, or welfare concern.

(f) *Private rights.* Nothing in this Agreement shall be construed to affect any private property rights or the rights of third parties. Company shall be responsible for compliance with Applicable Law relative to private property or the rights of third parties.

(g) *Construction approval.*

(1) At its own expense and cost and concurrent with submission of permit requests for construction of its Network or prior to the commencement of construction, including reconstruction, of its Network, Company will submit to the City Engineer for her approval construction schedule, plans, and drawings suitable in form and content to the City Engineer. The submittal shall include a schedule and location of work, plans and drawings for construction and restoration acceptable to the City Engineer. The City Engineer's prior approval shall not be required for accessing existing Facilities in such a manner so as to: (i) not interfere with the use of, or other facilities in, the Rights-of-Way, (ii) not have the likelihood of creating a threat to the public health or safety, or (iii) require restoration or repair of the Rights-of-Way. Provided the foregoing conditions are met, such accessing includes accessing existing subsurface Facilities through existing manholes or handholes; routine repair and maintenance of existing Facilities; running aerial or underground service lines or drops outside the roadway limits, which encompasses the roadway and its shoulder, to individual customers; running overhead lines on existing poles; replacement of existing Facilities that does not appreciably alter their location, or enlarge or expand their occupancy of the Rights-of-Way; or installing lines of wire, cable, or fiber through existing conduits.

(2) As Company undertakes and completes the incremental construction of its Network, Company shall provide updated "as-built" maps to the City showing the location of Company's installed Facilities in the Rights-of-Way. Company's "as-built" maps shall be provided in the format set forth in subsection (b) below. The level of detail in maps provided by Company shall be limited to that which is needed for the City's administration of the Rights-of-Way in order to protect Company's confidential business information and the security of Company's Network.

(3) Submittals shall be prepared in a Microstation V7, 2D, .dgn or compatible format, or ESRI compatible format, with working master units in feet, and 1,000 positional units, geo-referenced to the Alabama State Plane Coordinate System, NAD 1983, Alabama East Zone as described in the Code of Alabama (1975), section 35-2-1 and NGVD 1988 and showing a tie to the Public Land Survey.

(h) *Repair of property.*

(1) In its performance of any construction activity relative to its Network, Company shall use its reasonable efforts to protect the Rights-of-Way and all public and private property located therein or otherwise on or near the Company's Network from damage or destruction.

(2) Company shall promptly repair and restore public property, including the Rights-of-Way, and private property which may be damaged or destroyed as a result of the construction, repair or maintenance of Company's Network. Subject to subsection (3) below, any such public property, including the Rights-of-Way, or private property damaged or destroyed shall be promptly repaired and restored by Company, at Company's sole cost and expense, to its condition as it existed immediately prior to being damaged or shall be replaced by Company with equivalent property. Unless Company provides to the property owner photographs of the condition of the property prior to its construction activity it shall be presumed that the property was in good condition, order and repair and without defect and that any damage to or destruction of all or any portion of the property was caused by Company's construction activity.

(3) Notwithstanding anything to the contrary in this Agreement, Company agrees that with regard to Company's restoration or repair obligations of public property, including the Rights-of-Way, the City Engineer shall have the right, but not the obligation, to require restoration or repair of public property, including the Rights-of-Way and public infrastructure, improvements, or facilities, to be in accordance with construction standards for public infrastructure and improvements adopted by the City or standards required by the City Engineer, which may include, but not necessarily be limited to, restoration to the roadway, including sidewalks and curbing, that minimizes deterioration.

(4) Company shall be responsible for coordinating with affected private property owners when crossing driveways and other private infrastructure or property. Notification to property owners will be the responsibility of Company. Company will be responsible for notifying the City Engineer at least 72 hours in advance of any road closures so that appropriate notices and press releases may be issued by the City in a timely manner.

(5) Company will be responsible for locations of all existing utilities prior to beginning work on a site in accordance with applicable local, state, and federal laws.

(i) *Relocation or removal of network.*

(1) For purposes of this subsection (i) the term "Relocate", including its derivations, means to protect, support, disconnect, relocate in, or remove from the Rights-of-Way, all or any portion of Company Facilities when required by the City pursuant to this subsection (i).

(2) The City may require Company to, either temporarily or permanently, promptly Relocate Company Facilities for any lawful purpose, which includes the City's exercise of its police powers for the public health, safety convenience, necessity, or general

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welfare, and City-funded public works, building, or improvement projects, upon reasonable notice applicable to the conditions warranting such Relocation and as then reasonably determined by the City Engineer. The City will use its reasonable efforts to coordinate such activity with Company upon the request of Company, including discussions of the least disruptive process.

(3) The costs and expenses for the Relocation shall be borne by Company except if: (i) subject to Section 1(e) hereinabove, the City requests such removal solely for aesthetic purposes, in which case the City shall be responsible for the costs and expenses of Relocation; and (ii) the Relocation is required by the City to accommodate facilities in the Rights-of-Way owned by a third party, in which case the third party shall be responsible for the cost and Company may require advance payment of such costs and expenses.

(4) Nothing in Subsection (i)(3) above shall be construed to prevent Company from receiving cost reimbursement or funds under federal or state grants or programs so long as such reimbursement or funds are not at City expense, except as may be required otherwise by Applicable Law. If Applicable Law requires that the City request such funds on behalf of Company, the City shall do so, upon written request of Company and Company's agreement to reimburse the City for any reasonable costs associated with such request. The availability of such public funds shall not provide Company an excuse for a delay in performing the required action.

(5) Subject to the cost provisions of this subsection (i), in the event the City relocates the Rights-of-Way where a portion of Company's Network is located, the City will use its reasonable efforts to provide Company with a reasonable alternative location for the affected portion of Company's Network to be Relocated from the relocated Rights-of-Way.

(6) Nothing in this Agreement shall be construed to hinder the right or authority of the City to perform or carry on any public works project, public improvement project, or public building project.

(7) Notice of the requirement to Relocate shall be given by the City Engineer to Company and shall contain the basis for the Relocation, the required commencement and completion dates, and a description of the Relocation to be performed. The time allowed for Company's performance shall be as reasonably determined by the City Engineer and shall take into account, among other things, the nature and scope of the request, any relevant information or limitations provided to the City Engineer by Company, whether any emergency exists, and the requirements of the lawful purpose necessitating the Relocation. Company may request, and the City Engineer may grant, reasonable extensions of Company's performance period based on then-current relevant factors.

(8) The City retains the right and privilege to Relocate any Company Facility located in the Rights-of-Way or other areas of the City as the City may determine to be necessary, appropriate, or useful in response to any life-threatening emergency. The City will use its reasonable efforts to notify and consult with Company's technical point of contact if

there is a potential that Facilities will be impacted and if there is an opportunity to do so. Nothing herein shall be construed to create any duties or obligations on the City to so notify Company nor shall the City, its officials, agents, employees, or volunteers be in any way be liable to Company for any failure to notify Company.

(9) In the event that after notice from the City, and absent any extensions granted by the City pursuant to this Agreement, Company fails to perform the Relocation within the specified time, Company shall have thirty (30) days to cure the noncompliance, except in the case of an emergency. Thereafter, if Company fails to so perform, the City may, at the sole cost, expense, and risk of Company, perform or have performed the Relocation, without assuming or having any liability to Company, and invoice Company therefor. In addition to or in the alternative, the City may invoice Company, for any costs or expenses, including construction delays, suffered by the City that are attributable to said failure. Invoiced amounts shall be paid by Company within forty-five (45) days from notice of same. Notwithstanding anything in this Agreement to the contrary, Company shall not be afforded a cure period in the case of an emergency condition that, in the City's opinion, poses a likelihood of: (a) endangering life or health, (b) causing a significant loss of property or services, or (c) causing significant damage to or destruction of the Rights-of-Way.

(j) *Conditions of use.*

(1) Company shall, at its own cost and expense, maintain Company Facilities in good working order, condition, and repair and free from graffiti. Company shall use its best efforts to keep the Rights-of-Way occupied by Company Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue interference to the use of the Rights-of-Way. Company Facilities, both outside of and in the Rights-of-Way, shall not be installed across or within public sewer or stormwater drainage facilities including ditches, pipes, or channels, or otherwise in such a manner so as to obstruct the flow of sewage or stormwater run-off. Company shall control its agents, contractors, and employees in such a manner so as to not create any nuisance and to otherwise comply with the requirements of this subsection (j).

(2) The City shall have no obligation to insure or safeguard Company Facilities against unauthorized access.

Sec. 2. Temporary movement of network. Upon the request of the City Engineer, Company shall temporarily move Company Facilities to permit the moving of large objects, vehicles, buildings, or other structures. Except where requested by the City for a City purpose, the expense of such temporary moves shall be paid to Company by the person requesting the same, and Company shall have the authority to require such payment in advance. In no event shall the City pay such expense. Nothing herein shall be construed to abrogate the provisions for moving facilities contained in any pole attachment agreement Company has with another person, including the City d.b.a. Huntsville Utilities.

Sec. 3. Trees. Company shall comply with all Applicable Laws with respect to the removal, trimming and cutting of trees and keeping Company Facilities clear of trees in the

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Rights-of-Way, including the tree regulations of the City, as such laws may be amended or superseded. Within fourteen (14) days' notice from the City Engineer or immediately in the case of an emergency, Company agrees that it will cooperate in the removal of any tree or branch which has fallen onto aerial facilities owned by Company. Except in emergency situations and except for routine trimming and then subject to the then-current tree regulations, in installing, maintaining, and removing Company Facilities, Company shall not remove, cut, or damage any trees in the Rights-of-Way that are greater than four (4) inches in diameter, as measured at twelve (12) inches above the ground, except with the prior consent of the City forester or his designee.

Sec. 4. Joint Trench Coordination; Planned Infrastructure.

(a) *Joint trenching.* Whenever it is possible and reasonably practicable to joint trench or share bores or cuts or joint share conduit, Company shall work with the City and other Rights-of-Way users, so as to reduce, as far as possible, the number of street cuts within the City.

(b) *Planned infrastructure.* If required of other users of the Rights-of-Way, when Company installs any new trench or conduit as part of Company Facilities, Company may, at the request of the City or its designee install, at the expense of the City, sufficient additional space or additional conduits or other related facilities. The cost to the City shall be the costs of material and labor attributable or proportional to said installation. The City shall have the option to lay its own conduit or place other public improvements, such as wiring for traffic signals and street lights, that do not cause significant cost, delay or redesign, in Company's open trenches during the initial construction and during any future rebuilds or repairs. Company shall provide written notice of the proposed construction to the City Engineer, and the City will then have five (5) business days after receipt to respond in writing to Company. Nothing in this subsection (b) shall be construed to require Company to share space within conduits occupied by its Facilities or the facilities of others.

Sec. 5. Advertising, signs, or extraneous markings.

Unless otherwise authorized by Applicable Law, Company shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to Company or any other person or entity in the Rights-of-Way including facilities therein, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the system for service, repair, maintenance, or emergency purposes, or as may be otherwise required or permitted by the City or state to be affixed by Applicable Law for such purposes.

Sec. 6. Abandonment of construction or network; removal.

(a) Upon abandonment, or where this Agreement expires, terminates, or is revoked, the City may, at its sole discretion, require Company, upon the City's written request and within a reasonable time as determined by the City Engineer, to remove from the City's Rights-of-Way, at Company's own cost and expense, all or any portion of Company Facilities; provided, however, the removal requirement shall not apply to buried Company Facilities which the City Engineer reasonably determines should not be removed or when the City Engineer otherwise

gives written consent to Company's written request to allow such Company Facilities to remain in place. If the City Engineer determines that the Company Facilities can or should be abandoned in place, the ownership of such Company Facilities in the City's Rights-of-Way shall transfer to the City, and Company shall have no further obligation therefor. Notwithstanding Company's request that any such Company Facility remain in place, the City may require Company, at its sole cost and expense, to remove the Company Facility from the street area or modify the Company Facility in order to protect the public health and safety or otherwise serve the public interest.

(b) In removing the Network, Company shall, at its own cost and expense, refill and compact any or all excavation that shall be made by it and restore the Rights-of-Way and other property to the reasonable satisfaction of the City to its condition as it existed immediately prior to the Company Facilities being removed or as otherwise provided for in section 1(h)(3) above. If Company fails to comply with the said removal or modification order pursuant to this Section, the City may, or may contract to, do so at Company's cost, expense, and risk, without assuming or having any liability to Company, and invoice Company therefor; which invoiced amount shall be paid by Company within forty-five (45) days from notice of same. Where Company abandons a portion of its Network during the Term or Extension Term of this Agreement, including any hold-over period, such abandoned portions shall be subject to removal, modification, or abandonment in place in accordance with this Section.

Sec. 7. Technical point of contact; authority of City Engineer; stop work order; City costs.

(a) *Point of contact.* Company shall designate a responsible technical contact person or persons including a telephone number available seven (7) days a week, twenty-four (24) hours a day, with whom representatives of the City can communicate with on all matters relating to Rights-of-Way management and in the case of an emergency.

(b) *Authority of City Engineer.* The City Engineer is hereby authorized to enforce and administer the construction and Rights-of-Way management provisions of this Agreement and may act through subordinates or designees. Where reference is made in this Agreement to the City Engineer it includes the City's Director of Engineering and her subordinates and designees.

(c) *Stop work order.* The City Engineer may, at any time and from time to time, issue a stop work order for construction of all or any portion of the Network when the City Engineer determines, in her sole discretion, that the activity has caused, or is likely to cause, a situation to exist that poses a clear and immediate danger: (a) to life or health, (b) of a significant loss of property or services, or (c) of significant damage to or destruction of the Rights-of-Way. The order may be issued, at the City Engineer's option, on the construction site or to Company's technical contact person. The City Engineer will lift any such stop work order as soon as possible after it determines that the situation giving rise thereto no longer exists.

(d) The City reserves the right to, at any time and from time to time, charge Company for the City's reasonable costs related to the administration and oversight of Company's construction-related activity in the Rights-of-Way, including plans review and inspection costs.

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Company shall pay the charge within forty-five (45) days of invoicing unless it contests the costs to the City Engineer within twenty (20) days of invoicing. The City Engineer shall have the right to adjust the contested charges as appropriate and re-invoice. Company may, at its option, deduct the invoiced charges that it has paid to the City under this subsection (d) from its Franchise Fee payment due for the next immediate quarter, provided that it itemize the deduction in its Franchise Fee payment statement.

Sec. 8. Rights-of-way construction and administration ordinance. Company acknowledges that the City may adopt a rights-of-way construction and administration ordinance pursuant to its police powers which is generally intended to regulate construction and other related activity in the Rights-of-Way. To the extent said ordinance as adopted or as may be amended from time to time regulates activity otherwise regulated by this Agreement and is in conflict herewith, then said ordinance shall apply in lieu of the provisions of this Agreement, except where this Agreement provides a basis for waiving the application of the rights-of-way ordinance in case of conflict.

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Oct 27, 2016

Action Requested By: Administration

Agenda Type: Ordinance

Subject Matter:

Video Franchise Agreement

Exact Wording for the Agenda:

Introduction of an ordinance adopting and authorizing the Mayor to enter into and execute a Video Service Franchise Agreement between the City of Huntsville, Alabama and Google Fiber. (City Attorney)

Note: If amendment, Please state title and number of the original

Item to be considered for: Introduction

Unanimous Consent Required: _____

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: $0.00

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: _____

Date: 10/27/16