



COUNCIL STAFF REPORT

CITY COUNCIL *of* SALT LAKE CITY

TO: City Council Members

FROM: Sean Murphy and Jennifer Bruno,
Deputy Director

DATE: February 20, 2015 at 11:50 a.m.

RE: Franchise Agreement for Google Fiber

Council Sponsor: **n/a**

PROJECT TIMELINE:

Briefing: 2/24/15

Public Hearing: not required

Potential Action: 3/3/15

[VIEW ADMINISTRATION'S PROPOSAL](#)

ISSUE AT-A-GLANCE

The Administration has forwarded an ordinance approving a non-exclusive franchise agreement that would allow Google Fiber Utah, LLC to provide video and broadband services within Salt Lake City. The agreement, which has been negotiated by Google, Administrative staff, and City attorneys over the last several months, allows Google Fiber Utah to place and maintain facilities in City rights-of-way (under certain conditions), and provides for the payment of the standard state-authorized franchise fee of five percent of **Google's gross revenue on video services**. **Approval of the ordinance would facilitate Google's next step in the process of determining whether or not it would locate fiber services in Salt Lake City.**

Goal of the briefing: Outline and discuss the proposed franchise agreement, prior to consideration at the March 3, 2015 formal meeting (note: Franchise Agreements do not require public hearings). Some contract items that have been negotiated may be discussed in Closed Session if the Council or Attorneys prefer.

POLICY QUESTIONS

1. Some Council Members have expressed concern over the approach to providing service to interested neighborhoods as opposed to covering the full City. The Council may wish to discuss this further with the Administration and/or representatives from Google Fiber. Some information is likely available about **marketing efforts, and some discussion could be held regarding Google's schedule to rollout services, and the Council's priorities for target areas of the City.**
2. Does the Council have concerns over the structure of the proposed agreement?
3. Would the Council like additional information related to **the Administration's approach, ideas, or City resources needed for the proposed "Community Connections" program, and/or for a "digital inclusion strategy" in general?**



4. **During the Council’s last conversations about Google Fiber, the Administration stated it was searching for ways to streamline the City’s permitting process.** The Council may wish to ask the Administration for an update on this area. (The Council also has a briefing scheduled related to utility boxes, that will also relate to City approval processes for Google installations.)
5. In Budget Amendment #1 of FY 2015, the Council approved funding of two new positions in CED to coordinate various activities related to fiber construction. The Council may wish to ask for an update on these positions? The Council may also wish to ask the Administration to address internal City staff capacity to address this project in general.

ADDITIONAL & BACKGROUND INFORMATION

- A. The **Administration will be at the Council’s work session discussion to outline and respond to any detailed** questions about what is included in the proposed Franchise agreement. Key elements include:
 1. The agreement is a 15 year non-exclusive Franchise Agreement with Google Fiber to access current and future City-owned right-of-way during the construction and maintenance of a fiber optic cable network to provide internet and video service to residential customers.
 2. The agreement outlines location, maintenance, access, mapping, and responsibility for facilities and infrastructure related to Fiber build out, along with standard language requiring Google to abide by City right-of-way guidelines, City indemnification, performance bonds and insurance matters.
 3. In exchange for allowing Google to place facilities in City rights-of-way, the City will receive the standard state-authorized franchise fee of 5% gross revenue (not including late fees) that Google collects for video services.
 - i. This is a standard fee that any cable/utility provider pays to the City for access and operations within City rights-of-way.
 - ii. Because the fee is calculated as a percentage of what potential future subscribers will end up paying, it is not possible to calculate the exact budget impact of this franchise agreement until Google determines the level and number of homes included in the initial build-out.
 - iii. **Fees are limited to Google’s video services revenue, because of** current limitations under federal law.
 4. The agreement calls for Google to provide 3 free Public, Education, Government channels (Article V) each of which will be locally administered through either the City or other designated entity such as the UofU. These include:
 - i. 1 Public access channel
 - ii. 1 Educational channel
 - iii. 1 Governmental channel
 5. Plans for roll-out of the network are covered in Article IV. Key points are as follows:
 - i. Google Fiber Utah has full discretion in determining where and when the network is built and when subscriptions will be available
 - ii. Google is under no obligation to provide access everywhere in the city
 - iii. Google is able to determine when potential subscribers are able to sign up for service
 - iv. Google will work with the City to reach out to develop a plan for reaching out to community organizations
 - v. Google plans to build a fiber ring around the City, connecting to various neighborhood-scale **“huts” that would be the backbone to providing fiber service to the full City. Once** neighborhoods reached a critical mass of interested parties, Google would then bring fiber from the huts to each home. (The locations of these huts have been mapped over the past several months with Administrative staff.)
 - vi. (This point is not stated in the agreement, **but is based on staff’s understanding.**) The way Google will decide which neighborhoods to go to is to indicate to the neighborhood a **“threshold” of interested subscribers that they must meet in order to become a “fiberhood”**. Real time progress of the number of people indicating interest is displayed on a central **website. In other Cities’ experience, key neighborhood organizations often become grass-**roots proponents encouraging neighbors to indicate interest. Once a threshold is reached, Google will provide fiber access to every home.
 6. The agreement also states (Article IV) that Google will work with the City to increase public benefit from fiber access. This could include:
 - i. Increasing access to broadband services
 - ii. Improving digital literacy
 - iii. **Bridging the “digital divide”** (as a digital inclusion policy or action plan)

7. The agreement states that Google will be responsible for relocating, or otherwise resolving, any future material conflicts that occur with fiber infrastructure in the event of future construction projects.
 8. **Because Google is not regulated as a “cable system”, there are a number of standard requirements** that other cable companies typically follow, that Google is not required to follow under the terms of the proposed franchise agreement:
 - i. Construction to any new development in the City (such as a new neighborhood), and Customer service standards for number of channels provided and customer response times *(The Administration notes that these two regulations were intended to ensure that early cable providers from the 1980s, which were effectively monopolies, met basic standards of service. These regulations may now be outdated as competition has grown and technology has advanced.)* (regulations – Section 5.20 and 5.21)
 - ii. Mandatory connections at all public buildings. *(The Administration suggests this regulation may not be applicable because Google Fiber is intended to be a residential product. The “Community Connections” program could be a potential solution to providing fiber access in key public places).*
 9. The agreement calls for a \$10,000 “administrative fee” to be paid to the city to cover the time necessary to negotiate and execute this agreement.
- B. Google has also **communicated to the City that they will tailor a “Community Connections” program to Salt Lake City, with the stated goal of bridging the “digital divide” and increasing broadband access to residents.**
1. Google will work with City partners and key stakeholders to identify key elements for success of this program.
 2. This program could take a variety of forms. In some communities, this program has identified key needs in certain areas and provided funding for addressing those gaps. Some cities have placed more emphasis on working with neighborhoods in poverty and addressing digital inclusion in that manner.
 3. Google has stated that the City will be a key partner in establishing specific goals for this program.
 4. There is a high likelihood that the Google Fiber network will also draw other donation or grant opportunities to the City.
- C. Potential positive economic benefits of fiber internet service – Regardless of which company is providing the service, many Cities are focusing on how to increase internet speeds as a backbone of their economic development strategy. It is difficult to calculate exact potential revenue benefits if Salt Lake City were to **become a “Gigabit City” (referring to superior internet speed of fiber), but it stands to reason that it’s likely** that the City would see positive results from an economic development perspective, at the very least potentially attracting new residents to the City. Other Cities have also reported increased in permitting activity and construction as a result of Google Fiber service.



RALPH BECKER
MAYOR

SALT LAKE CITY CORPORATION
OFFICE OF THE MAYOR

David Everitt, Chief of Staff

CITY COUNCIL TRANSMITTAL

SCANNED TO: *MAYOR*
SCANNED BY: *HOLLY*
DATE: *2/9/2015*

Date Received: *2/9/2015*
Date Sent to Council: *2/9/2015*

TO: Salt Lake City Council
Luke Garrott, Chair

DATE: February 3, 2015

FROM: David Everitt

SUBJECT: Google Fiber Video and Broadband Franchise Agreement

STAFF CONTACT: David Everitt, Deputy Mayor
Jessica Thesing, CED
Nole Walkingshaw, CED
Ryan McFarland, Property Management
Brian Roberts, Senior City Attorney

COUNCIL SPONSOR: Exempt

DOCUMENT TYPE: Ordinance

RECOMMENDATION: That the City Council adopts the Ordinance approving the Video and Broadband Services Franchise Agreement with Google Fiber Utah, LLC.

BUDGET IMPACT: Unknown at this time as budget impact depends upon implementation of Google Fiber within Salt Lake City, customer uptake, and other factors. See below in paragraph 8.

BACKGROUND/DISCUSSION:

Overview

On February 19, 2014, Mayor Ralph Becker announced that Salt Lake City was among a short list of 34 cities working with Google through a feasibility process to explore the possibility of bringing the ultra high-speed Google Fiber broadband network to residents. Salt Lake City was successful in supporting the Google Fiber feasibility process by gathering, reviewing, and responding by the company's May 1, 2014 deadline.

Google Fiber Utah, LLC (“Google Fiber”) has requested a non-exclusive franchise to provide video and broadband services within Salt Lake City. The Franchise Agreement allows Google Fiber to place and maintain its facilities within the City rights-of-way, governed by certain conditions and after securing permits, and provides for the payment of a five percent gross revenue franchise fee on video services. Staff and attorneys for Google Fiber and the City negotiated the terms of the Franchise Agreement, attached as Exhibit “A” to the proposed Ordinance.

Upon approval of the Ordinance, Google Fiber will first conclude its analysis of the feasibility of constructing a network in Salt Lake City under the terms of the Franchise Agreement. If Google Fiber chooses to move forward, which Google Fiber has assured us is its ultimate goal, it will pursue the construction of a high-speed Google Fiber broadband network in Salt Lake City. This will include the construction of a fiber optic backbone that encircles the City and allows for service access to neighborhoods. The fiber optic network will require the construction of fiber huts that house the backbone infrastructure for transmitting signals between home computers and/or television set-top boxes and the internet. Google Fiber will run fiber optic cables along existing telephone poles or in underground conduit to reach customers’ homes.

Regulatory Framework

Google Fiber characterizes its service as broadband internet and Internet Protocol Television (“IPTV”) and not as a “cable system” subject to regulation under Title VI of the Federal Telecommunication Act of 1934 (as amended by the 1996 Cable Act). The FCC has provided no specific guidance on this issue despite it being a source of confusion for municipalities for nearly 15 years. Regardless, as Google Fiber (or any other potential entrant) would be a non-incumbent, new entrant into a competitive market, as opposed to a monopoly franchisee, the purposes behind such legacy cable regulations are not as applicable in the current circumstances as they may have once been. The proposed Franchise Agreement therefore exempts Google Fiber from City Ordinances governing “cable systems,” Sections 5.20 and 5.21 of the Salt Lake City Code. Nonetheless, the City and Google Fiber have agreed, via the proposed Franchise Agreement, to several aspects of the regulatory framework with which the City has regulated cable systems in the past, including but not limited to the following: Google Fiber has agreed to the same five percent gross revenue franchise fee on video services (franchise fees are not paid for internet access service by any provider), has agreed to abide by the City’s right-of-way regulations and all other applicable City, State, and Federal laws, and has agreed to provide access for so-called “PEG” channels for public, educational, and governmental programming.

Regulations that are currently in 5.20 and 5.21 that will not be applicable via the proposed Franchise Agreement are primarily the “build-out” requirements (i.e. a requirement to build a cable system out to any new development within the City), customer service standards (i.e.

minimum standards for number of channels and customer service response times, etc.), and mandatory connections to all public buildings. The first two have become less and less necessary from a regulatory perspective with the introduction of multiple providers in the market. These regulations, implemented in the late-80's, were designed to ensure that the cable franchisee, at the time a virtual monopoly, made its service available to all residents and met certain minimum service standards. Currently, with multiple providers in the marketplace, both cable-based and satellite-based in addition to "cord cutting" options, such concerns are not as warranted, as there are multiple avenues for customers to both access content and exercise market pressure for better customer service.

As to the third, the Google Fiber broadband service and IPTV network contemplated in this Franchise are designed primarily for residential use and not for institutional use. Google Fiber has stated that it intends to provide alternative public benefit through its "Community Connections" program that will be specifically designed for Salt Lake City should Google Fiber enter the market. The goal of the Community Connections program, in consultation and partnership with the City and key community partners, would be, in part, to bridge the "Digital Divide" and provide greater access to broadband for City residents.

In light of the changing nature of technology and the cable television market landscape, the Administration will be further exploring these issues with other providers and will likely propose revisions to the existing cable television Ordinances to both update them for the current environment and also ensure competitive equity among providers.

Budget Impact

It is unclear at this time what the budgetary impact of granting the Franchise will be as it is dependent upon multiple unknown factors. First, granting Google Fiber a Franchise does not guarantee that it will choose to enter into the Salt Lake City market, so budgetary impact is currently somewhat theoretical. Second, should Google Fiber enter the market, the budgetary impact of additional franchise fees is dependent upon the market penetration of Google Fiber's video services and whether such customers are additive from a franchise fee perspective (i.e. customers previously without cable television or satellite television subscribers that do not currently pay franchise fees) or are customers that have simply switched from a current provider that already pays a franchise fee. Third, the Franchise Agreement excludes late fees from the definition of "gross revenue" to which the franchise fee is applied. Such fees are currently included in such definition for Comcast and other providers. In the interest of equity this exclusion would likely need to be applied to other providers as well when they renew their franchises. This would result in a reduction in revenue from Comcast of approximately \$20,000-\$25,000 per year. Whether this is offset by any increase in revenue from additional franchise fees from new Google Fiber customers remains to be seen. Finally, Google Fiber has asserted that evidence from other markets suggests that if it were to build a fiber optic network in Salt

Lake City, the City would benefit from broader economic effects such an increased investment and, as a result, increased tax revenues.

SALT LAKE CITY ORDINANCE

No. ___ of 2015

(Granting to Google Fiber Utah, LLC, a Video and Broadband Services Franchise)

WHEREAS, Google Fiber Utah, LLC (the “Company”) desires to provide certain video and broadband services within Salt Lake City, Utah (the “City”), and in connection therewith to establish a network in, under, along, over, and across present and future streets, alleys and rights-of-way of the City, consisting of fiber optic cable, together with all necessary and desirable appurtenances; and

WHEREAS, the City, in the exercise of its police power, ownership, use or rights over and in the public rights-of-way, and pursuant to its other regulatory authority, believes it is in the best interest of the public to provide to the Company, and its successors, a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company propose to enter into a Franchise Agreement, the substantially final form of which has been presented to the City Council at the meeting at which this Ordinance is being considered for adoption; and

WHEREAS, the City desires to approve the execution and delivery of such Franchise Agreement and to otherwise take all actions necessary to grant the referenced Franchise to the Company; and

WHEREAS, the City believes this Ordinance to be in the best interest of the citizens of the City,

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Purpose. The purpose of this Franchise Ordinance is to grant to the Company, and its successors and assigns, a non-exclusive right to use the present and future streets, alleys, viaducts, bridges, roads, lanes and public way within and under control of the City for its business purposes, under the constraints and for the compensation enumerated in the Franchise Agreement attached hereto as Exhibit A, and by this reference incorporated herein, as if fully set forth herein (the “Franchise Agreement”).

SECTION 2. Short Title. This Ordinance shall constitute the Google Fiber Franchise Ordinance.

SECTION 3. Grant of Franchise. There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Franchise Agreement, the right, privilege, and franchise (collectively, the “Franchise”), to construct, maintain and operate in, under, along, over and across the present and future streets, alleys, and rights-of-way and other property of the City, all as more particularly described in the Franchise Agreement.

SECTION 4. Term. The term of the Franchise is for a period of fifteen (15) years from and after the effective date of this Ordinance and its acceptance by the Company. The Company shall pay all costs of publishing this Ordinance.

SECTION 5. Acceptance by Company. Within thirty (30) days after the effective date of this Ordinance, the Company shall file an acceptance of this Ordinance, in a form approved by the City Attorney, with the City Recorder of Salt Lake City; otherwise, this Ordinance and the rights granted hereunder shall be null and void.

SECTION 6. No Franchise revocation or termination, as provided for in the Franchise Agreement, may be effected until the City Council shall first adopt an ordinance terminating the Franchise and setting forth the reasons therefor, following not less than thirty (30) days prior written notice to the Company of the proposed date of the ordinance adoption. The Company shall have an opportunity on said ordinance adoption date to be heard upon the proposed termination.

SECTION 7. This Ordinance shall take effect immediately upon publication.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2015.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

ATTEST:

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2015.
Published: _____.

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 2-2-15
By [Signature]

EXHIBIT "A"

VIDEO AND BROADBAND SERVICES FRANCHISE AGREEMENT

By and Between

SALT LAKE CITY CORPORATION

and

GOOGLE FIBER UTAH, LLC

THIS VIDEO AND BROADBAND SERVICE FRANCHISE AGREEMENT, dated as of the Effective Date set forth in Section 1.6 hereof, is by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah (hereinafter called “Municipality”), and GOOGLE FIBER UTAH, LLC, a Utah limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043 (hereinafter called “Company”).

WITNESSETH

A. Company wishes to provide Broadband Services and Video Services in Municipality and has requested a franchise for such purpose.

B. Municipality is authorized to grant one or more non-exclusive franchises for the provision of Broadband Services and Video Services within Municipality.

C. Municipality has determined that granting the requested franchise on the terms set forth herein is in the best interests of Municipality and its residents and other potential users of the proposed Broadband Services and Video Services within Municipality, and will assist in meeting the broadband and video-related needs and interests of the community.

D. In recognition of the separation of powers inherent in Municipality’s Council—Mayor optional form of government, the Mayor has negotiated this Agreement for legislative and policy approval by Municipality’s legislative body.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Affiliate** (and its variants) shall mean any entity controlling, controlled by or under common control with the entity in question.

1.2 **Agreement** shall mean this Video and Broadband Services Franchise Agreement and, unless the context clearly indicates otherwise, the Ordinance.

1.3 **Authorized Area** shall mean the entire area from time to time situated within the corporate limits of Municipality.

1.4 **Broadband and Broadband Services** means existing and future broadband Internet access service offerings delivered to Subscribers using Company’s Network.

1.5 **City Council** shall mean Municipality's legislative body consisting of seven elected council members.

1.6 **Effective Date** shall mean the later of (a) the date on which the Ordinance becomes effective in accordance with its terms and State law, and (b) the date on which this Agreement, having been fully executed by both parties, is recorded in the office of the Salt Lake City Recorder.

1.7 **Emergency** shall mean any disaster, including earthquakes, fires, and floods, or other publicly and officially declared emergency or unforeseen situation that presents an imminent threat to life or property.

1.8 **Event of Default** shall have the meaning set forth in Section 10.1.

1.9 **Franchise** shall have the meaning set forth in Section 2.2.

1.10 **Franchise Fee** shall have the meaning set forth in Section 7.

1.11 **Municipality** shall have the meaning set forth in the introduction to this Agreement, and unless expressly stated to the contrary herein, where actions are permitted or allowed by Municipality and for the administration of this Agreement, shall mean the City Representative (as defined in Section 13.15).

1.12 **Normal Business Hours** shall mean 9:00 a.m. to 5:00 p.m. Mountain Time, Monday to Friday, excluding state and federal holidays.

1.13 **Ordinance** means the [X] Ordinance, Salt Lake City Ordinance No. [X], adopted by the City Council on [X], granting the Franchise and authorizing this Agreement.

1.14 **Public Ways** shall mean any present and future public rights-of-way, streets, highways, alleys, viaducts, bridges, roads, sidewalks, and lanes within Municipality (including the surface, subsurface and airspace), which are owned by Municipality, or which have been dedicated to public use and which are controlled and operated by Municipality. "Public Ways" shall also include public rights-of-way, streets, highways, alleys, viaducts, bridges, roads, sidewalks, and lanes within Municipality (including the surface, subsurface and airspace) which are not owned by Municipality and have not been dedicated to the public to the extent that despite such non-dedication Municipality has the ability to grant the rights set forth herein.

1.15 **Subscriber** shall mean a person or entity lawfully receiving Broadband Services or Video Services from Company in the Authorized Area.

1.16 **System** shall mean Company's network (and all associated equipment and facilities) used to provide Broadband Services or Video Services to Subscribers.

1.17 **Uncured Event of Default** shall have the meaning set forth in Section 10.2.1.

1.18 **Video Gross Revenues** shall mean any and all revenues of Company derived from the sale of Video Services to Subscribers within the Municipality, without regard to the billing address of the Subscriber, and to the extent such Video Services utilize the Video System described in this Franchise. "Video Gross Revenues" do not include: (i) revenue from sources excluded by law; (ii) revenue derived by Company from services provided to its Affiliates; (iii) late payment fees; or (iv) charges, other than those described above, that are aggregated or bundled with amounts billed to Video Service Subscribers, such as charges for Broadband Services. Video Gross Revenues shall include the revenue collected from a Subscriber to recover the five percent Franchise Fee, if applicable.

1.19 **Video Programming** shall mean programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.20 **Video Services** shall mean provision of Video Programming without regard to delivery technology, including Internet protocol technology. This definition does not include any (a) video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, messaging or other services offered over the public Internet, or (b) Internet access service.

1.21 **Video System** shall mean Company's network (and all associated equipment and facilities) used to provide Video Services to Subscribers.

ARTICLE II

FRANCHISE DESCRIPTION;

REQUIREMENTS

2.1 **Ordinance.** The City Council has adopted the Ordinance. Execution of this Agreement constitutes the unqualified acceptance of the Ordinance by Company. Such Ordinance is incorporated herein by reference, and made an integral part of this Agreement.

2.2 **Franchise Description.**

2.2.1 The Ordinance confers upon Company, subject to all of the terms and conditions of this Agreement, and applicable State law and Municipality ordinances in effect from time to time, the right, privilege and franchise (collectively, the "Franchise"), to erect, construct, install, maintain and operate in, under, along, over, across and through portions of the Public Ways, a System to

provide Broadband Services and Video Services and/or other lawful services in the Authorized Area. Notwithstanding the foregoing, this Franchise does not authorize Company to offer a service other than Broadband Service or Video Service if such additional service is subject to regulation under Title II of the Communications Act of 1934, as amended, or the Utah Municipal Telecommunications Tax, without first obtaining a separate franchise from Municipality. Upon the annexation of any territory to Municipality, all rights hereby granted, and the Franchise, shall automatically extend to the territory so annexed, to the extent Municipality has authority to so extend the Franchise. All facilities owned, maintained or operated by Company within such annexed territory shall thereafter be subject to all of the terms and conditions of this Agreement.

2.2.2 The Franchise and all rights granted hereunder are nonexclusive. Municipality reserves the right to grant such other and future franchises as it deems appropriate. This Agreement does not establish any priority for the use of the Public Ways by Company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Ways, the first priority shall be to the public generally, the second priority to Municipality in the performance of its various functions, and thereafter, as between Company and other franchisees and permit holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Utah.

2.3 Alert Systems. The Video System shall include an emergency alert system (“EAS”) as required by federal laws and regulations. Company shall transmit on such EAS Federal, State and local EAS messages.

2.4 Compliance with Applicable Law and Regulations.

2.4.1. In constructing, maintaining, and operating the System, Company shall comply with all applicable Federal, State, and local laws, regulations, and ordinances. Company shall comply in all respects with all applicable codes, including the National Electrical Safety Code (latest edition) and National Electric Code (latest edition). Nothing in this Agreement shall be construed as a waiver by Municipality of its general police powers, and Municipality has the right to amend its local rules and regulations related to its general police powers in management of the Public Ways. Except in connection with the exercise of its general police powers, Municipality may not enact an ordinance, or amend the Ordinance, where such amendment unilaterally alters a material provision of this Agreement.

2.4.2 For the avoidance of doubt, Company is not constructing a “Cable System” subject to the provisions of Chapter 5.20 and Chapter 5.21 of the Salt Lake City Code. In the event of a change in federal law expressly stating, or the Federal Communications Commission or a court of competent jurisdiction determining, that the provision of Video Services over the Video System constitutes the provision of “Cable

Service” over a “Cable System” for purposes of the Communications Act of 1934, as amended, this Franchise will be renegotiated in good faith to reflect as such.

2.5 Other Permits. Neither the Franchise nor this Agreement relieves Company of the obligation to obtain permits, licenses and other approvals from Municipality necessary for the construction, repair or maintenance of the System or provision of Video Services, and to pay the standard cost or charges therefor, or compliance with other Municipality codes, ordinances and permissions relating to construction, repair or maintenance, such as compliance with necessary right-of-way permits, building permits and the like.

2.6 Backup Power. Company shall not use a permanent or semi-permanent internal combustion engine (such as a gasoline or natural gas powered electric generator) to provide backup power at any point or points on the System without Municipality’s prior written approval. Such approval may be granted subject to conditions, such as relating to testing times (e.g., not in the middle of the night), screening, noise levels, and temperature and safe discharge of hot exhaust gases. Municipality hereby grants Company approval to use backup power generating devices, including devices with permanent or semi-permanent internal combustion engines, at its network hut sites and inside buildings or on land owned by Company subject to the specific conditions provided for in the network hut leases entered into between Company and Municipality for the use of land owned by Municipality, and any applicable building code requirements.

2.7 Bond.

2.7.1 Company shall provide Municipality no later than thirty (30) days after the date Municipality issues the first permit to Company for the purposes of constructing the System, a performance bond from a surety company meeting the standards of Section 6.8 in the amount of Fifty Thousand Dollars (\$50,000), and in a form reasonably acceptable to Municipality, as security for the faithful performance by Company of the provisions of this Agreement, and compliance with all orders, permits and directions of any agency of Municipality having jurisdiction over its acts or defaults under this Agreement, and the payment by Company of any claims, liquidated damages, liens or taxes due Municipality which arise by reason of the construction, operation, maintenance or repair of the System or provision of Video Services.

2.7.2 The condition of such bond shall be that if Company (a) fails to make timely payment to Municipality or its designee of any undisputed amount or sum due under this Agreement, (b) fails to make timely payment to Municipality of any taxes due, or (c) fails to repay to Municipality within ten (10) days of written notification that such repayment is due, any undisputed damages, costs or expenses which Municipality shall be compelled to pay by reason of any act or default of Company in connection with this Agreement.

2.7.3 The rights provided Municipality by this Section and its bond are in addition to all other rights of Municipality whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or guarantee shall affect any other rights Municipality may have, except that Municipality shall not be entitled to multiple remedies for the same violation.

2.8 Municipality Use Rights.

2.8.1 Use of Trenches. Whenever Company proposes to install new underground conduits or replace existing underground conduits within or under the Public Ways, it shall notify the City Representative as soon as practical and shall allow Municipality, at its own expense, and without charge, to utilize any such trench opened by Company to lay Municipality's facilities therein; provided that such action will not unreasonably interfere with System facilities or delay the accomplishment of Company's project; and provided further that Company may require Municipality to agree to reasonable terms and conditions of such use.

2.8.2 Limitation on Use Rights. Nothing in this Section 2.8 shall be construed as requiring Company to alter the manner in which Company attaches equipment to the poles, or alter the manner in which it operates and maintains its equipment. Municipality may attach to or otherwise utilize System facilities only after written approval by Company. Such approval may include requirements regarding maintenance of such Municipality facilities, either to be done for a reasonable fee by Company or by a qualified party who shall fully indemnify and hold Company harmless from any liability and whose service would not materially prejudice Company's interests in safety and insulation from liability.

**ARTICLE III
PUBLIC WAYS**

3.1 No Burden on Public Ways; Minimum Interference. Company shall not erect, install, construct, repair, replace or maintain the System in such a fashion as to unduly burden the present or future use of the Public Ways. The System shall be erected and maintained by Company so as to cause the minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners who adjoin any of the Public Ways. Except for the stringing of overhead lines on existing poles, the location of System facilities within, on, over, under, across or through the Public Ways shall, in all cases, be subject to prior Municipality approval through the permitting process.

3.2 Limitation on Franchise Rights. The rights granted to Company herein do not include the right to (i) excavate in, occupy or use any Municipality park, recreational areas or other property owned by Municipality other than Public Ways, or (ii) attach or locate any System facilities to or on, or otherwise utilize any of, any Municipality-owned property or facilities or structures other than Public Ways, including

without limitation light poles, towers, buildings and trees. The use of such Municipality-owned property or facilities by Company shall be considered by Municipality on a case-by-case basis, and shall be subject to payment of additional compensation to Municipality. Similarly, the rights granted herein by Municipality to Company do not include the right to situate any System facilities on poles or other property owned by entities other than Municipality and situated in the Public Ways. It shall be the responsibility of Company to negotiate any pole-attachment agreements or similar agreements with the owners of such poles or facilities, and to pay to such owners any required compensation.

3.3 Preconstruction Meetings. Company shall attend all preconstruction meetings as mutually agreed with Municipality.

3.4 Restoration of Property. Company shall restore and replace at its sole cost and expense, in a manner approved by Municipality, any public or private property, real or personal, or portion of the Public Ways, that is in any way disturbed, damaged or injured by the construction, operation, maintenance or removal of the System to at least as good condition as that which existed prior to the disturbance. Company's obligation in this subsection shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Company's restoration work shall start promptly but not more than 30 days from Company being notified of the problem in question. Upon the failure of Company to effect such repair or restoration, Municipality may effect the same, and Company shall promptly reimburse Municipality for Municipality's actual, reasonable, and documented costs in connection with such repair or restoration.

3.5 Company Duty to Relocate.

3.5.1 Municipality may require the relocation of any System facilities for any lawful purpose, including, without limitation, the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the Public Ways, regardless of whether such conflicts arise in connection with a Municipality project or a project undertaken by some other person or entity, public or private. Whenever Municipality shall require the relocation of any System facilities situated within the Public Ways, it shall be the obligation of Company, upon notice of such requirement and written demand made of Company, to commence the relocation within a reasonable time, but no more than thirty (30) days after the date of notice. In the event Municipality permits for such work are required, "commencement" of relocation will mean a good faith application for such permits and the beginning of work promptly after issuance of the permits by Municipality. Company shall complete such relocation within a reasonable period of time, but no more than one hundred twenty (120) days from the date of permit issuance (if applicable) or the beginning of work, whichever is sooner, unless such time is extended by the City Engineer exercising his reasonable discretion in light of the circumstances. Municipality agrees to

cooperate with Company to provide alternate space where available, within the Public Ways, at no additional cost to Company.

3.5.2 Except as otherwise provided in this Section 3.5.2, any relocation required by subsection 3.5.1 shall be accomplished by Company at the expense of Company. Company shall not be required to pay for the relocation of System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by Municipality through the permitting process. In the event the relocation is required by Municipality to accommodate facilities owned by an entity other than Municipality or Company, the cost and expense of such relocation shall be borne by such other entity, and Company may require advance payment of such costs and expenses. Any money and all rights to reimbursement from the State of Utah or the Federal government to which Company may be entitled for work done by Company pursuant to this paragraph, shall be the property of Company. Municipality shall assign or otherwise transfer to Company all rights it may have to recover costs for such work performed by Company and shall reasonably cooperate with Company's efforts to obtain reimbursement.

3.5.3 Upon the failure of Company to relocate any System facilities within a reasonable period of time in accordance with subsection 3.5.1 above, Municipality may effect such relocation, and Company shall promptly reimburse Municipality for all actual, reasonable, and documented costs and expenses incurred by Municipality in connection with such relocation.

3.6 Emergency Notification. Company shall provide Municipality with a twenty-four (24) hour emergency telephone number at which a representative of Company (not voicemail or a recording) can be accessed in the event of an Emergency.

3.7 Duty to Underground. It is the policy of Municipality to have lines and cables placed underground to the greatest extent reasonably practicable. In furtherance of this policy, Company agrees as follows:

3.7.1 Company shall place newly constructed lines and cables underground in (a) new residential subdivision areas, if required by subdivision regulations adopted by Municipality, and (b) within the Central Business District of Municipality, to the extent there are no available existing aerial facilities.

3.7.2 In any area of Municipality in which there are no aerial facilities other than antennas or other facilities required to remain above ground in order to be functional, or in any portion of the Public Ways in which all telephone, electric power wires and cables reasonably capable of undergrounding have been placed underground, Company shall not be permitted to erect poles or to run or suspend wires, cables, or other facilities thereon, but shall lay such wires, cables, or other facilities underground in the manner required by Municipality.

3.8 Temporary Relocation. Company shall, at the request of any person holding a building moving permit issued by Municipality, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and Company shall have the authority to require such payment in advance. Municipality agrees to cause prior written notice of the necessity to move wires to be given as far in advance as possible, provided that in no event shall less than forty-eight (48) hours advance notice be given.

3.9 Vacation. If a street or Public Way where Company has facilities is vacated, eliminated, discontinued or closed, Company shall be notified of same. At that time, the Company shall have the right to continue using such Public Way until Municipality, or other governing body, requires that Company remove its facilities. Company shall be responsible for the actual, reasonable, and documented cost of removing and relocating such facilities in the event Municipality retains ownership of the vacated street. In all other cases, Company shall not be responsible for the cost of removing and relocating such facilities. In cases where Company is not responsible for the cost, Company may require an advance payment prior to removing and relocating such facilities. When Company is required to relocate its facilities, Company shall promptly remove the System from such street or Public Way unless Company obtains all necessary easements from the affected property owners to use the former street or Public Way or a court orders the provision of such easements.

3.10 Discontinuance and Removal of the System. Upon the revocation, termination, or expiration of this Agreement, unless an extension is granted, Company shall (subject to the notice provision of Section 13.2) discontinue the provision of Services and all rights of Company to use the Public Ways for the provision of Services shall cease. Company, at the direction of Municipality, shall remove any portion of the System, including all supporting structures, poles, transmission and distribution system and other appurtenances, fixtures or property from the Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration of this Agreement. This provision shall not apply to facilities constructed and owned by an Affiliated entity of Company, where such facilities are used by such Affiliated entity to lawfully provide other services. Company shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its System, including any improvements made to such property subsequent to the construction of the System. Restoration of municipal property including but not limited to the Public Ways shall be in accordance with the directions and specifications of Municipality, and all applicable laws, ordinances and regulations, at Company's sole expense. If such removal and restoration is not completed within six (6) months after the revocation, termination, or expiration of this Agreement, all of Company's property remaining in the affected Public Ways shall, at the option of Municipality, be deemed abandoned and shall, at the option of Municipality, become its property or Municipality may obtain a court order compelling Company to remove same. In the event Company fails or refuses to remove the System or to satisfactorily restore all

areas to the condition in which they existed prior to the original construction of the System, Municipality, at its option, may perform such work and collect the actual, reasonable, and documented costs thereof from Company. No surety on any performance bond nor any letter of credit shall be discharged until Municipality has certified to Company in writing that the System has been dismantled, removed, and all other property restored, to the satisfaction of Municipality.

3.11 Tree Trimming. Company may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the System. Company shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of the System. Except in Emergencies, (i) all trimming of trees in the Public Way or on Municipal property shall have the prior approval of Municipality and shall be done under the direction of the Municipality's Urban Forester, and (ii) all trimming of trees on private property shall require the consent of the property owner. All trimming shall be done at the expense of Company.

3.12 Location of Facilities. Company shall keep accurate, complete and current maps and records of the System and all Company facilities and, subject to applicable confidentiality provisions, shall make available electronic copies of such maps and records to Municipality, as set forth below.

3.12.1 Company shall furnish "as-built" maps and records to Municipality in electronic, ESRI-compatible format (or in another mapping format mutually agreed to by the Parties). Company shall provide Municipality copies of any new or revised "as-built" or comparable drawings as and if they are generated for portions of the System facilities located within Municipality and in no event later than ninety (90) days after construction (or reconstruction) and activation of any portion of the System. Upon request by Municipality in an Emergency, Company as soon as reasonably possible shall inform Municipality of any changes from such maps and records previously supplied and shall mark up any maps provided by Municipality so as to show the location of the System.

3.12.2 The "as built" maps shall include at a minimum all System and facility routings and shall be drawn to scale.

3.12.3 Municipality agrees that Company may provide route maps rather than the as-built maps specified above. "Route maps" means "as-built" maps with only the following information removed: information on the number of lines, whether the lines are copper or fiber and the nature of any electronics. Concrete pads for pedestals and enclosures for equipment or pedestals shall be shown on route maps.

3.13 Municipality Duty to Obtain Approval to Move Company Property; Emergency Exception. Except as otherwise provided herein, Municipality shall not, without the prior written approval of Company, intentionally alter, remove, relocate or otherwise interfere with any portion of the System. Any written approval required shall

be promptly reviewed and processed by Company and approval shall not be unreasonably withheld. However, if it becomes necessary, in the judgment of Municipality, to cut or move any System facilities because of an Emergency, such reasonable acts may be done without prior written approval of Company and the repairs thereby rendered necessary shall be made by Company, without charge to Municipality, and neither Municipality nor any agent, contractor or employee thereof shall be liable to Company or its customers or third parties for any damages caused to Company or the System.

3.14 Common Use of Facilities. In order to minimize the adverse impact to the Public Ways and to Municipality facilities, and inconvenience to the public, caused by construction, repair and maintenance activities of multiple utility franchisees, it is the policy of Municipality to encourage and require the shared use of utility and utility type facilities by Municipality franchisees and permittees whenever practicable. Company shall use good faith efforts to determine the location and existence of excess capacity on existing poles or existing conduit and utilize such capacity to the extent possible under such terms and conditions as Company may negotiate with the owners of such poles or conduits. Municipality shall cooperate with Company in locating, negotiating, and obtaining permission to use such facilities. Company further agrees to use good faith efforts to provide access to its own excess conduit, if any, to another franchisee or permittee on mutually acceptable terms and conditions.

3.15 Identification of the System. Portions of the System installed after the Effective Date that are located in conduit, including conduit of others used by Company, shall be marked at the entrance into and exit from each manhole and handhole with Company's name and toll-free telephone number to call for assistance.

3.16 Utility Notification Program. Company shall participate in and be a member of the State's utility notification program, whether provided for by statute or otherwise.

3.17 Inspection by Municipality. System facilities shall be subject to inspection by Municipality to the extent reasonably necessary to assure compliance by Company with the terms of this Agreement. Municipality shall inspect System facilities at reasonable times and upon reasonable notice to Company; provided, however, the inspection shall not interrupt or interfere with any services provided by Company.

ARTICLE IV PROVISION OF SERVICES

4.1 Access to Service. Company shall not deny service, deny access, or otherwise discriminate on the availability, rates, terms or conditions of Broadband Services or Video Services provided to residential Subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Company shall comply at all times with all applicable Federal, State and local laws and regulations relating to nondiscrimination. Company shall not deny or discriminate against any group

of actual or potential residential Subscribers in Municipality on access to or the rates, terms and conditions of Broadband Services or Video Services because of the income level or other demographics of the local area in which such group may be located.

4.2 Network Design. Nothing in Section 4.1 requires Company to build to all areas of the Municipality. Company retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for Broadband Services or Video Services, so long as such decisions are consistent with Section 4.1. Company, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, and Municipality will be available to consult with Company regarding the boundaries of the Municipality's recognized neighborhood associations and the Municipality's goals of equity and inclusion.

4.3 Public Benefits. Company agrees to engage in initiatives designed to benefit the public based on an assessment of the particular needs of the community. 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 Municipality in designing and implementing such initiatives. Nothing in this subsection 4.3 shall modify, offset, or otherwise affect Company's obligation to pay franchise fees as provided for in this Franchise.

ARTICLE V PUBLIC, EDUCATIONAL, AND GOVERNMENT CHANNELS

5.1 PEG Channels. Within a commercially reasonable amount of time, Company shall provide on the Video System in its the lowest tier of service three (3) channels collectively known as "PEG Channels" and initially allocated as follows:

5.1.1 One (1) public access channel for use by members of the general public, to be administered by an institution or institutions designated by Municipality, such channel(s) to be provided upon written request by Municipality; and

5.1.2 One (1) educational channel administered by the Salt Lake City School District, University of Utah, and/or other educational entities or institutions designated by Municipality, or their designees, such channel to be provided upon written request by Municipality; and

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

5.1.4 In order to preserve continuity to Subscribers with respect to PEG, in no event shall Company be required to provide more or different PEG content, support, or programming than any franchised cable or other video operator.

5.2 Lines and Facilities. Company shall provide and maintain at its expense the lines and facilities necessary for it to receive PEG Channel programming for simultaneous distribution on the Video System. This shall include Company providing the lines, modulators and facilities (such as two-way activated drops) necessary to provide live program origination capability from the studios (or other similar fixed signal origination point) for the PEG Channels (but not video production or playback equipment).

ARTICLE VI INDEMNITY AND INSURANCE

6.1 Indemnification. Company shall indemnify, defend, and hold harmless Municipality and all associated, Affiliated, allied and subsidiary entities of Municipality, now existing or hereinafter created, and their respective officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys) arising from any third-party claim of personal injury or property damage that may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Company, its personnel, employees, agents, contractors, subcontractors or Affiliates, which may arise out of or be in any way connected with (i) the construction, installation, operation, maintenance or condition of the System, or (ii) the Company's failure to comply with any Federal, State or local statute, ordinance or regulation. Company's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct by any Indemnitee or any other third party.

6.2 Assumption of Risk. Company undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Municipality-owned or controlled property, including Public Ways.

6.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel reasonably acceptable to Municipality; provided, however, that Company shall not admit liability in any matter on behalf of the Indemnitees without the written consent of Municipality. If Municipality elects to defend such action or proceeding itself, and does not call upon Company to provide a defense pursuant to this provision, then Municipality shall be required to obtain consent from Company with regard to Municipality's engagement of counsel, experts, accountants or other consultants, such consent not be unreasonably withheld, in order for Company to be responsible for reasonable fees and expenses pursuant to Section 6.1 herein.

6.4 Notice, Cooperation and Expenses. Municipality shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be

deemed to prevent Municipality from cooperating with Company and participating in the defense of any litigation by Municipality's own counsel.

6.5 Insurance. At all times during the term of this Agreement, plus any time after the term is over during which removal of facilities or restoration is occurring, Company shall obtain, maintain, and pay all premiums for, all insurance policies described in this Section, so as to protect the public. Simultaneous with the execution of this Agreement, Company shall provide Municipality with certificates of insurance evidencing such coverage. In the event Company anticipates a significant delay between the execution of this Agreement and its initial construction of the System, Company shall notify Municipality and may instead provide the certificates of insurance prior to applying for its first permit. Failure to obtain and maintain any insurance policy required by this Section shall be deemed a material breach of this Agreement and may be grounds for termination of this Agreement and the Franchise.

6.5.1 Commercial General Liability. Commercial general liability insurance, including premises operations liability, completed operations liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, with a Five Million Dollar (\$5,000,000) aggregate and a Five Million Dollar (\$5,000,000) products completed operations aggregate.

6.5.2 Comprehensive Automobile Liability. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with the Municipality as an additional insured, in the minimum amount of a combined single limit of \$2,000,000 per occurrence, or \$1,000,000 liability per person, \$2,000,000 liability per occurrence, and \$250,000 property damage.

6.5.3 Workers' Compensation. Workers' compensation and employer's liability insurance sufficient to cover all of the Company's employees pursuant to Utah law. This requirement includes those who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, the Company shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

6.5.4 Umbrella Policies. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of

the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the term of this Agreement, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.6 Additional Insured/Claims Made Basis. Municipality shall be named as an additional insured on all policies (other than policies for workers' compensation and employer's liability), to the extent such coverage is commercially reasonably available. Any notice of cancellation of coverage will be delivered to Municipality in accordance with policy provisions, which shall include an endorsement indicating that the policy may not be canceled or modified without providing thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims-made basis, to the extent such coverage is commercially reasonably available.

6.7 No Limitation of Liability. No recovery by Municipality of any sum by reason of any insurance policy required by this Agreement shall be any limitation upon the liability of Company to Municipality or to other persons.

6.8 Qualified Carriers. All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of Utah or by surplus line carriers on the State Insurance Commissioner's approved list of companies qualified to do business in the State of Utah. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company.

6.9 Contractors. Company's contractors and subcontractors working in the Public Ways shall carry in full force and effect commercial general liability, automobile liability and workers' compensation and employer's liability insurance commensurate with the scope of their work. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company policies).

6.10 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"), but only for actions of Company and for whom Company is responsible. Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

6.11 Changes to Limits. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, the Company shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by Municipality, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount reasonably acceptable to Municipality, and commercially available.

ARTICLE VII FEES AND PAYMENTS

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

7.1.1 Each Franchise Fee payment shall be accompanied by a written report to Municipality containing an accurate statement in summarized form of Company's Video Gross Revenues and the computation of the payment amount.

7.1.2 Subject to Section 12.1, Municipality may review Company books and records on an annual basis that are reasonably necessary to verify the accuracy of Franchise Fees paid Municipality. After such review, any additional undisputed amount due Municipality shall be paid within forty-five (45) days of Municipality's submitting an invoice for such sum.

7.2 Allocation of Fees. Company shall not intentionally allocate revenue between Video Services subject to the Franchise Fee and services not subject to the Franchise Fee for the purpose of evading or reducing Company's Franchise Fee obligations to the Municipality.

7.3 Other Payments. The Franchise Fee payable pursuant to Section 7.1 is in addition to all sums which may be due Municipality under this Agreement. In addition to the Franchise Fee, Company shall pay:

7.3.1 Municipality's actual, reasonable, and documented cost of newspaper publication associated with adoption of the Ordinance; and

7.3.2 An administrative fee of \$10,000 ("Administrative Fee") to reimburse Municipality for all costs and expenses associated with the preparation and adoption of the Ordinance and this Agreement. The Administrative Fee shall be paid to Municipality within sixty (60) days of adoption of the Ordinance.

7.4 Interest. All sums not paid when due shall bear interest at the rate of ten percent (10%) per annum computed monthly or the highest lawful rate, whichever is less, and if so paid with interest within thirty (30) days of the due date, shall not constitute an Event of Default under Article 10.

ARTICLE VIII TERM

8.1 Term. The term of this Agreement, and the Franchise, shall be from the Effective Date for a period of fifteen (15) years.

8.2 Termination. This Agreement and the Franchise, and all rights of Company hereunder and under the Ordinance, shall automatically terminate on the expiration of the term described in Section 8.1, unless renewed or otherwise extended by Municipality. Subject to Section 3.10, Company may terminate this Agreement after providing written notice to Municipality at least ninety (90) days prior to termination.

ARTICLE IX TRANSFERS, OWNERSHIP AND CONTROL

9.1 Management of the System. Company or its Affiliate shall manage the System and the provision of Broadband Services and Video Services within Municipality.

9.2 Assignment. This Agreement shall not be assigned by Company, except to an Affiliate, without the prior written consent of Municipality. Municipality shall not unreasonably withhold such consent and shall respond to any request for consent as promptly as reasonably possible. If Municipality fails to respond to a request for consent within 30 days, such consent will be deemed granted.

9.3 Company shall pay Municipality for all actual, reasonable, and documented costs incurred by Municipality due to any proposed sale, assignment, or transfer of the System.

ARTICLE X DEFAULTS

10.1 Events of Default. The occurrence at any time during the term of the Franchise of any one or more of the following events shall constitute an Event of Default by Company under this Agreement.

10.1.1 The failure of Company to pay the Franchise Fee (and, in the case of delinquent payments, all required interest thereon) within thirty (30) days after the due dates specified herein.

10.1.2 Company's material breach or violation of any of the terms, covenants, representations or warranties contained herein or Company's material failure to perform any obligation contained herein.

10.1.3 Company's failure to pay or cause to be paid any governmentally imposed taxes of any kind whatsoever, including but not limited to real estate taxes, income taxes, and personal property taxes on or before the due date for same; provided, however, Company shall not be in default hereunder with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

10.1.5 The dissolution or termination, as a matter of law, of Company.

10.1.6 If Company files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Company, or any of Company's property and/or the Franchise and/or of any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Company's debts generally as they become due.

10.2 Uncured Events of Default. Municipality shall give Company written notice of any Event of Default and Company shall have the following reasonable time period to cure same: For an Event of Default which can be cured by the immediate payment of money to Municipality or a third party, Company shall cure such default within thirty (30) days of written notice from Municipality to Company of the occurrence of such Event of Default; for an Event of Default by Company which cannot be cured by the immediate payment of money to Municipality or a third party, Company shall have the longer of (a) sixty (60) days from written notice from Municipality to Company of an occurrence of such Event of Default, or (b) if more than sixty (60) days is reasonably needed to cure the Event of Default, such additional time (not to exceed six (6) months) from written notice from Municipality to Company which is reasonably needed, as long as Company has commenced cure within such sixty (60) day period, and diligently pursues such cure to completion.

10.2.1 If any Event of Default is not cured within the time period allowed for curing the Event of Default, as provided for herein, such Event of Default shall, without notice, become an Uncured Event of Default, which shall entitle Municipality to exercise the remedies provided for in Article 11.

ARTICLE XI REMEDIES

11.1 Remedies. Upon the occurrence of any Uncured Event of Default as described in Section 10.2.1, Municipality shall be entitled to exercise any and all of the following cumulative remedies:

11.1.1 Municipality shall have the right to forfeit and terminate the Franchise and upon the forfeiture and termination thereof the Franchise, the Ordinance and this Agreement shall be automatically deemed null and void and have no force or effect; Company shall remove the System from Municipality as and when requested by Municipality; and Municipality shall retain any portion of the Franchise Fee and other fees or payments paid to it, or which are due and payable to it, to the date of the forfeiture and termination. Municipality's right to forfeit and terminate the grant of the Franchise pursuant to this Section is not a limitation on Municipality's right of revocation.

11.1.2 The commencement of an action against Company at law for monetary damages.

11.1.3 The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions which, as a matter of equity, are specifically enforceable.

11.2 Remedies Not Exclusive. The rights and remedies of Municipality set forth in this Agreement shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. Municipality and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Municipality of any one or more of such remedies shall not preclude the exercise by Municipality, at the same or different times, of any other such remedies for the same Uncured Event of Default.

ARTICLE XII PROVISION OF INFORMATION

12.1 Books and Records. Company shall prepare and maintain any records or reports that are required of it by federal, state or local law. Municipality shall have the right to obtain, in the format kept by Company in the ordinary course of business, copies of such records and reports as appropriate and reasonable to determine whether Company is in compliance with this Franchise. Company reserves the right to object to any request made under this Section 12.1 as unnecessary, unreasonable, or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to Municipality.

12.2 Government Records Access And Management Act. Municipality is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63, Utah Code Annotated, or its successor ("GRAMA"). All materials submitted to Municipality by Company pursuant to this Agreement are subject to

Mountain View, CA 94043
Email: legal-notices@google.com

All Notices shall be deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in this Section. Any notice given by a party hereunder must be signed by an authorized representative of such party.

13.3 Conferences. The parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Agreement, the provision of Video Services or the System during the term hereof.

13.4 Governing Law. This Agreement shall be construed pursuant to the laws of the State of Utah and the United States of America.

13.5 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

13.5.1 Municipality may waive any obligation of Company under this Agreement, in whole or in part, at any time.

13.6 Independent Contractor Relationship. The relationship of Company to Municipality is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Agreement, unless expressly stated in this Agreement.

13.7 Severability. If any section, paragraph, or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Agreement.

13.8 Captions. All captions are for convenience of use and have no substantive effect, except for those captions in the Definitions section of this Agreement.

13.9 Franchise Accepted. Company further acknowledges by execution and delivery of this Agreement that it has carefully read the terms and conditions of this Agreement and the Ordinance and accepts the obligations imposed hereby and thereby

regardless of whether such obligations are contained in this Agreement or the Ordinance, or both.

13.10 Binding Agreement. Subject to Section 2.4, the parties agree that this Agreement complies with State and Federal law as of the Effective Date and agree to be bound by the provisions hereof during the full term hereof, except that the parties also agree to recognize and be bound by any change in any State or Federal law, even if such law materially affects the terms of this Agreement. Notwithstanding the preceding sentence, if any change in law or regulation would have the effect of limiting, qualifying, or excusing payment by Company of the Franchise Fee provided for in Article 7 hereof, Company shall continue to pay such Franchise Fee in accordance herewith, during the full term of this Agreement, so long as (i) every other cable or video operator in the Municipality is paying an equal franchise fee for the provision of Video Service in the Municipality, and (ii) Company is not paying a fee for the provision of Video Services in Municipality to another entity, such as the State government, expressly designated as a replacement for municipal video franchise fees. To the extent any other Video Operator in the Municipality lawfully discontinues the payment of Franchise Fees in accordance with the terms of their respective franchise agreements or a change in State or Federal law, Company shall be entitled to discontinue payment as well.

13.11 Other Covenants. Company for itself and its Affiliates covenants that Company and its Affiliates shall not bring or support, directly or indirectly, any suit, claim, or proceeding (judicial or administrative) challenging any term of this Agreement or contending that Municipality or Company did not have the authority to impose or agree to such terms.

13.12 Non-Waiver, Preemption. Nothing in this Agreement shall be deemed an agreement by either party as to any claimed preemptive effect, nor shall it be deemed a waiver of either party's right to challenge any claimed preemptive effect, of any subsequent Federal law, regulation, or court ruling alleged to conflict with, alter, limit, or replace terms, requirements or conditions of this Agreement in effect as of the Effective Date.

13.13 Reserved Rights. Municipality reserves all rights and powers under (i) its police powers and (ii) powers conferred by Federal, State or local law of which Municipality may not legally and contractually divest itself. In particular, Municipality reserves the right to alter, amend or repeal its municipal code as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest; provided that any such alteration, amendment or repeal shall be applicable to all similarly situated franchisees of the City, in such a manner and to such an extent so as not to place Company at a material competitive disadvantage. Municipality agrees that by accepting this Agreement, Company has not waived its right to object to the application to it of actions by Municipality pursuant to its reserved rights or police powers.

13.14 Representation Regarding Ethical Standards for Municipality Officers and Employees and Former Municipality Officers and Employees.

Company represents that to the best of its knowledge, it has not (1) provided an illegal gift or payoff to a Municipality officer or employee or former Municipality officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) breached any of the ethical standards set forth in the Municipality's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) influenced, and hereby promises that it will not knowingly influence, a Municipality officer or employee or former Municipality officer or employee to breach any of the ethical standards set forth in the Municipality's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

13.15 City Representative. The Director of City's Department of Management Services (the "City Representative"), or his or her designee, shall be Municipality's representative for all purposes of this Agreement. Except where City Council action is required by this Agreement or by law, all decisions, judgments, approvals, requests, notices or other actions of Municipality required or permitted under this Agreement shall be made, obtained, issued or delivered or otherwise effected on behalf of Municipality by the City Representative, or his or her designee.

IN WITNESS WHEREOF, the parties have hereto set their hands as of the Effective Date.

SALT LAKE CITY CORPORATION

By: _____
RALPH BECKER, MAYOR

Attest and Countersign:

CHIEF DEPUTY CITY RECORDER

GOOGLE FIBER UTAH, LLC

By: _____
Its: _____