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FIBER NETWORK AGREEMENT

This Fiber Network Agreement (the “**Network Agreement**”) is entered into as of February 23, 2016 (the “**Effective Date**”) by and between the Huntsville Electric Utility Board, a municipal public utility board created by the City of Huntsville, Alabama, with its principal place of business at 112 Spragins Street, Huntsville, Alabama 35801 (“**HU**”), and Google Fiber Inc., a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043 (“**Google Fiber**”).

RECITALS

WHEREAS, HU desires to expand its fiber-optic network (the “**HU Network**”) in its electrical service area (the “**HU Service Area**”) in order to improve its ability to manage its electric distribution system;

WHEREAS, HU anticipates that it will have optical fibers in excess of its reasonable expected needs, and HU will benefit from leasing such excess unlit Dark Fiber to third parties;

WHEREAS, HU and Google Fiber are contemporaneously entering into the Dark Fiber Lease Agreement dated the same date as this Network Agreement attached as Exhibit A hereto (the “**Lease Agreement**”); the Colocation Agreement dated the same date as this Network Agreement attached as Exhibit B hereto (the “**Colocation Agreement**”); and a Pole Attachment Agreement (the “**Pole Attachment Agreement**”) in substantially the same form as Exhibit C attached hereto; and

WHEREAS, HU and Google Fiber desire to establish the respective rights and obligations of HU and Google Fiber in connection with the anticipated expansion of the HU Network and the lease by Google Fiber of certain excess strands of unlit dark fiber-optic cable in the HU Network (“**Leased Dark Fiber**”) under the Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Network Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HU and Google Fiber do hereby agree as follows:

1. DEFINITIONS

- 1.1. “**Colocation Agreement**” has the meaning ascribed thereto in the Recitals.
- 1.2. “**Colocation Space**” has the meaning ascribed thereto in the definitions section of the Colocation Agreement.
- 1.3. “**Colocation Structure**” has the meaning ascribed thereto in the definitions section of the Colocation Agreement.
- 1.4. “**Confidential Information**” means all strategic, functional, technical, financial, marketing, sales, promotional and other information (including all related know-how, implementation, operational methods and procedures) related to the business of a



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Party, which is disclosed by one Party to the other Party, to the extent that such information is marked or identified as confidential or proprietary or would normally be considered confidential under the circumstances. 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 by breach of this Network Agreement, shall not be considered Confidential Information.

- 1.5. “**Dark Fiber**” means the optical fiber in the HU Network through which no light is transmitted and no signal is carried. Dark Fiber is unactivated deployed fiber that is left dark, i.e., with no necessary equipment, such as opto-electronics or optronics attached to light the fiber to carry a signal to serve customers.
- 1.6. “**Delivery Delay Credit**” has the meaning ascribed thereto in Section 2.2.5(a).
- 1.7. “**Delivery Milestone Date**” has the meaning ascribed thereto in Section 2.2.2.
- 1.8. “**Demarcation Points**” means the end points of each segment of Leased Dark Fiber as assigned in the applicable Network Delivery Form as connection points to Equipment, including without limitation the end points located in a Colocation Structure or at a multipoint service terminal or a network access point.
- 1.9. “**Effective Date**” has the meaning ascribed thereto in the Recitals.
- 1.10. “**End User**” means an end user or potential end user of Google Fiber communications services provided using the Leased Dark Fiber and Equipment.
- 1.11. “**Equipment**” means communications and networking electronics, facilities used for service drops, and other equipment owned or leased from third parties by Google Fiber and used in connection with lighting the Leased Dark Fiber and providing its communications services. Equipment does not include Dark Fiber or any equipment, facilities, or property owned or leased from third parties by HU.
- 1.12. “**First Section Design**” has the meaning ascribed thereto in Section 2.1.1(a).
- 1.13. “**Force Majeure Event**” means an event or circumstance that prevents one Party from performing its obligations under this Network Agreement, which event is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of commercially reasonable efforts, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, acts of public enemies, terrorism or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above.
- 1.14. “**Franchise**” has the meaning ascribed thereto in Section 5.4.2.
- 1.15. “**HU Network**” has the meaning ascribed thereto in the Recitals.



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- 1.16. **“HU Service Area”** has the meaning ascribed thereto in the Recitals.
- 1.17. **“Initial Network Completion”** has the meaning ascribed thereto in Section 2.2.3.
- 1.18. **“Interconnection Location”** has the meaning ascribed thereto in the definitions section of the Lease Agreement.
- 1.19. **“Lease Agreement”** has the meaning ascribed thereto in the Recitals.
- 1.20. **“Leased Dark Fiber”** has the meaning ascribed thereto in the Recitals.
- 1.21. **“Metro Fiber Ring”** means the Leased Dark Fiber connecting the Colocation Structures together in a ring network topology.
- 1.22. **“Network Agreement”** means this Fiber Network Agreement.
- 1.23. **“Network Delivery Form”** has the meaning ascribed thereto in the definitions section of the Lease Agreement.
- 1.24. **“Network Section”** means each of the sections of the HU Network as described in the First Section Design and includes the segments of Leased Dark Fiber as described in one or more Network Delivery Forms in accordance with the applicable Network Section Design.
- 1.25. **“Network Section Design”** means the final network design for each Network Section, including any subsequent updates and modification thereto, prepared by HU based on the Preliminary HU Network Design and the Specifications, and used in connection with the construction of the applicable Network Section.
- 1.26. **“Parcel”** means a parcel of land the boundaries of which are recorded by the Tax Assessor of Madison County.
- 1.27. **“Party”** means HU or Google Fiber and **“Parties”** means HU and Google Fiber.
- 1.28. **“Person”** means a natural person, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a governmental authority.
- 1.29. **“Pole Attachment Agreement”** has the meaning ascribed thereto in the Recitals.
- 1.30. **“Preliminary HU Network Design”** means the preliminary design for the HU Network attached hereto as Exhibit D.
- 1.31. **“Qualifying Address”** means an address that is (a) recorded in HU’s geographic information system (GIS) address database and (b) located on a Qualifying Parcel Passed.
- 1.32. **“Qualifying Parcel”** means a Parcel that is zoned for residential dwelling or for commercial use or such other Parcel reflected in a Network Section Design accepted in



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accordance with Section 2.1.1. For clarification purposes, Qualifying Parcels may include Parcels that do not have residential or business structures or End Users located on the applicable Parcel, including vacant lots.

- 1.33. “**Qualifying Parcels Passed**” means Qualifying Parcels (a) in the case of Qualifying Parcel with an existing or potential End User’s residential or business premises located thereon, for which the existing or potential End User’s business or residential premise is located within three hundred feet (300’) of a Demarcation Point, with allowance that up to seven percent (7%) of the total Qualifying Parcels at any time may be up to five hundred and fifty feet (550’) from the Demarcation Point (any longer distance will be subject to approval by the Parties or otherwise reflected in a Network Section Design accepted in accordance with Section 2.1.1) or (b) in the case of Qualifying Parcel that does not contain a residential or business premise located hereon, for which a Demarcation Point is within two hundred feet (200’) from any property line of that Qualifying Parcel (any longer distance will be subject to approval by the Parties or otherwise reflected in a Network Section Design accepted in accordance with Section 2.1.1).
- 1.34. “**Space Specifications**” has the meaning ascribed thereto in the Colocation Agreement.
- 1.35. “**Specifications**” has the meaning ascribed thereto in the Lease Agreement.
- 1.36. “**Target QA Count**” has the meaning ascribed thereto in Section 2.2.3.

2. NETWORK CONSTRUCTION

2.1. Design.

2.1.1. Network Section Design Acceptance.

- (a) HU will use commercially reasonable efforts to deliver, within 6 months of the Effective Date for the first Network Section, and from time to time for subsequent Network Sections, a Network Section Design for each Network Section based on the Preliminary HU Network Design and the Specifications, and will provide each such Network Section Design to Google Fiber prior to commencing construction on that Network Section. Each Network Section Design will include the information mutually agreed upon by the Parties for the Network Section Design for the first Network Section (the “**First Section Design**”), and at a minimum will include the list of all Qualifying Addresses within such Network Section. The First Section Design will also include: (i) the geographic boundaries of each of the Network Sections in the HU Network, (ii) addresses, maps and other information that may be reasonably requested by Google Fiber relating to the location of each Colocation Structure, (iii) the specific zoning designation pursuant to the Zoning Ordinance of the City of Huntsville associated with each address, (iv) the Space Specifications, (v) the design for the Metro Fiber Ring, (vi) the design for the Colocation



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Structures, and (vii) the design for Leased Dark Fiber connecting to two (2) Interconnection Locations to be agreed upon between HU and Google Fiber.

- (b) Google Fiber will review each Network Section Design prior to the commencement of construction of the applicable Network Section and will reasonably determine whether the Network Section Design meets the Specifications, and in the case of the First Section Design only, whether the locations of the Colocation Structures and the Space Specifications would enable Google Fiber to provide its communications services to End Users. Google Fiber will provide written notice to HU of the result of its evaluation and provide written comments and suggested revisions including notifications of any deficiencies to the Network Section Design within twenty (20) days of receiving such Network Section Design. The Parties will cooperate to address and resolve any deficiencies identified by Google Fiber. Each Network Section Design will be deemed accepted by Google Fiber (i) upon written notice provided by Google Fiber to HU of such acceptance, (ii) at the end of the twenty (20) days following Google Fiber's receipt of such Network Section Design if Google Fiber does not provide any written notice to HU, or (iii) at the end of the twenty (20) days following Google Fiber's receipt of any revised Network Section Design pursuant to the next sentence if Google Fiber does not provide any written notice to HU. If HU makes any revisions to the Network Section Design in response to Google Fiber's comments and suggested revisions, it will provide Google Fiber with the revised Network Section Design for Google Fiber's review in accordance with the procedure set forth in this Section 2.1.1.

- 2.1.2. Material Change to Network Section Design. Prior to or during the construction of each Network Section, HU will promptly notify Google Fiber in writing if HU makes any modification to the Network Section Design after the completion of the review process set forth in Section 2.1.1 for such Network Section, if such modification materially affects the ability of the Network Section Design to meet the Specifications, or if modifications to the locations of the Colocation Structures or to the Space Specifications from the locations specified in the First Network Design would materially affect the ability of Google Fiber to deliver its communications services to End Users, and will promptly provide Google Fiber with the modified Network Section Design. Google Fiber and HU will follow the procedures set forth in Section 2.1.1 with respect to the review, evaluation, further revision, and acceptance of such modified Network Section Design.
- 2.1.3. Ownership of Network Section Design. Google Fiber has no ownership interest in the Preliminary HU Network Design, any Network Section Design, or the HU Network. Nothing in this Section 2.1 shall be construed to prohibit or restrict HU from constructing or utilizing the HU Network, irrespective of Google Fiber's determination under Sections 2.1.1 or 2.1.2, or of the



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termination of this Network Agreement, the Lease Agreement, or the Colocation Agreement.

2.2. Construction Timeframe and Projected Delivery Milestones.

- 2.2.1. Progress Updates. HU will have meetings to discuss the construction progress of the HU Network on at least a monthly basis, such meetings to take place by telephone, videoconference, at the construction site, or at the principal office of HU in Huntsville, Alabama. Google Fiber, third-party lessees, and additional invitees at HU's sole discretion, may attend such progress meetings.
- 2.2.2. First Network Section. HU will use commercially reasonable efforts to deliver the first Network Section, which meets the Specifications as set forth in the Lease Agreement, and the acceptance criteria in the Colocation Agreement, within six (6) months following acceptance by Google Fiber of the First Section Design ("**Delivery Milestone Date**"). In the event HU anticipates that it will not be able to deliver the first Network Section by the Delivery Milestone Date, HU will provide notification to Google Fiber at least thirty (30) days prior to the Delivery Milestone Date, and the Delivery Milestone Date will be extended by an additional ninety (90) days or such other period of time as the Parties may set by mutual agreement. The first Network Section will include the Metro Fiber Ring, the Colocation Structures, and Leased Dark Fiber connecting to two (2) Interconnection Locations as set forth in the First Section Design.
- 2.2.3. Initial Network Completion. HU will use commercially reasonable efforts to achieve Initial Network Completion by the date that is the later of (a) the third anniversary of the date on which Google Fiber accepts the First Section Design, or (b) the date that Google Fiber's Franchise is granted by the City of Huntsville. "**Initial Network Completion**" means HU has delivered to Google Fiber such number of Network Sections that: (x) meet the Specifications and the Colocation Structure acceptance criteria set forth in the Colocation Agreement, and (y) together cover an area within the boundaries of the City of Huntsville and the HU Service Area that includes one-hundred-and-five thousand (105,000) Qualifying Addresses (the "**Target QA Count**").
- 2.2.4. Target QA Count Adjustment. If, after Google Fiber's acceptance of the last Network Section specified in the First Section Design, HU notifies Google Fiber that, after exercising best efforts to construct all Network Sections, there are an insufficient number of Qualifying Addresses within such last Network Section to enable HU to achieve the Target QA Count, then the Target QA Count will be reduced to the maximum number of Qualifying Addresses (not to exceed one-hundred-and-five thousand (105,000)) that HU is able to achieve without modification of any Network Section Design for which the corresponding Network Section has previously been accepted by Google Fiber pursuant to the Lease Agreement.



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2.2.5. Failure to Achieve Initial Network Completion; Exclusive Remedies. In the event that HU fails to achieve Initial Network Completion by the date calculated in accordance with Section 2.2.3, the following provisions will apply and will be Google Fiber's exclusive remedies in the event of such failure.

- (a) If HU has failed to deliver to Google Fiber Network Sections that: (a) have been accepted by Google Fiber in accordance with the procedures set forth in the Lease Agreement and the Colocation Agreement, and (b) together cover an area within the boundaries of the City of Huntsville and the HU Service Area that includes at least ninety-five thousand (95,000) Qualifying Addresses (such number to be reduced by the same proportional percentage as the reduction, if any, to the number in Section 2.2.3 in accordance with Section 2.2.4), HU will provide a credit to Google Fiber (a "**Delivery Delay Credit**") against Google Fiber's then-current total monthly lease payment under the Lease Agreement. The amount of the Delivery Delay Credit will be equal to one percent (1%) of the then-current total monthly lease payment under the Lease Agreement for each day past the date calculated in accordance with Section 2.2.3 that HU has failed to achieve Initial Network Completion. HU's obligation to provide the Delivery Delay Credit to Google Fiber will cease upon the achievement of Initial Network Completion.
- (b) If HU has failed to deliver to Google Fiber Network Sections that: (a) have been accepted by Google Fiber in accordance with the procedures set forth in the Lease Agreement, and (b) together cover an area within the boundaries of the City of Huntsville and the HU Service Area that includes fewer than seventy-five thousand (75,000) total Qualifying Addresses, Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement in accordance with Section 5.4.5 herein. For avoidance of doubt, nothing in this Section 2.2.5(b) will be affected by a reduction, if any, to the number of Qualifying Addresses as set forth in Section 2.2.3 and modified by Section 2.2.4.
- (c) Notwithstanding anything to the contrary in Section 2.2.5(a), HU will have no obligation to provide a Delivery Delay Credit to the extent that HU's failure to achieve Initial Network Completion by the date calculated in accordance with Section 2.2.3 is due solely to HU's inability, after the exercise of reasonable diligence, to obtain access to rights of way over privately owned property which are necessary to place Demarcation Points at locations that would enable Google Fiber to connect to a customer premises using a service drop not exceeding three hundred feet (300') in length.

2.3. Authorizations and Permits. HU will obtain (or cause to be obtained) and comply with all permits required for constructing the HU Network.



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- 2.4. **Suspension and Tolling of Obligations.** Anything else to the contrary herein notwithstanding, each Party's obligations and rights under this Network Agreement (other than in respect of Sections 6 and 7) will be suspended and tolled during the pendency of any legal action challenging the authority of HU to construct the HU Network or to perform its obligations under this Network Agreement, provided that such action prevents HU from continuing construction of the HU Network and performing its obligations under this Network Agreement. If a governmental authority enters an order or takes any other action prohibiting HU's construction of the HU Network in accordance with the terms of this Network Agreement, then upon exhaustion of all administrative and judicial rights of appeal by HU, this Network Agreement will immediately terminate and neither Party will have any liability to the other Party. Without limiting the foregoing, HU will have no liability to Google Fiber for any breach of Section 4.1 that results from a suspension or termination of this Network Agreement pursuant to this Section 2.4.

3. LEASE COMMITMENT

- 3.1. In the event that HU begins construction of the HU Network as contemplated by the Parties under this Network Agreement, Google Fiber will lease certain Dark Fiber in the Network Sections pursuant to the terms of the Lease Agreement, and will lease the Colocation Structures pursuant to the terms of the Colocation Agreement; provided, however, that Google Fiber will have no obligation under this Section 3.1 to lease (a) Dark Fiber in any Network Section for which the Network Section Design was not accepted by Google Fiber pursuant to Section 2.1.1, or (b) any additional Dark Fiber subsequently installed or constructed by HU following Initial Network Completion.
- 3.2. Nothing in this Network Agreement will be construed to limit HU's right of use of, or right to lease or license to others HU's remaining leasable Dark Fiber.

4. REPRESENTATIONS AND WARRANTIES

- 4.1. **Mutual Representations.** Each Party represents and warrants to the other Party that: (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Network Agreement, (b) it will comply with all applicable laws in connection with its obligations under this Network Agreement, and (c) this Network Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the effect of bankruptcy, insolvency, and similar laws affecting the rights and remedies of creditors, and general equitable principles.
- 4.2. **HU Warranty.** HU represents and warrants that the construction of the HU Network will be performed in a professional workmanlike manner using qualified personnel, and that the equipment and materials used in construction of the HU Network are installed and constructed in all material respects in accordance with applicable building, construction and safety codes for such construction and installation, as well as any and all other applicable laws.



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- 4.3. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF THE DARK FIBER, EITHER EXPRESS, IMPLIED OR STATUTORY, AND THE PARTIES HEREBY EXPRESSLY EXCLUDE AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARISING BY A COURSE OF DEALING, USAGE, OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

5. TERM AND TERMINATION

- 5.1. **Term.** The term of this Network Agreement begins on the Effective Date and expires upon the expiration or termination of the Lease Agreement, unless earlier terminated pursuant to the provisions herein.
- 5.2. **Google Fiber Default.**
- 5.2.1. Google Fiber will be in default of this Network Agreement if it fails to cure any material breach of any term of this Network Agreement within thirty (30) days of receiving written notice of the breach from HU; provided that if the breach is not reasonably curable within thirty (30) days then the period for cure shall be extended for up to an additional thirty (30) days so long as Google Fiber is diligently pursuing a cure at the end of the first thirty (30) days.
- 5.2.2. In the event of a default by Google Fiber under Section 5.2.1, HU may terminate the Network Agreement after providing thirty (30) days' written notice to Google Fiber, in addition to any other remedies available at law or in equity, subject to the express limitations set forth in Section 6.
- 5.2.3. Anything else in this Network Agreement to the contrary notwithstanding, any event that gives rise to a right of HU to terminate this Network Agreement under Section 5.4 will not be deemed a default by Google Fiber.
- 5.3. **HU Default.**
- 5.3.1. HU is in default of this Network Agreement if it fails to cure any material breach of any term of this Network Agreement within thirty (30) days of receiving written notice of the breach from Google Fiber; provided that if the breach is not reasonably curable within thirty (30) days then the period for cure shall be extended for up to an additional thirty (30) days so long as HU is diligently pursuing a cure at the end of the first thirty (30) days.
- 5.3.2. In the event of a default by HU under Section 5.3.1, Google Fiber may terminate the Network Agreement after providing thirty (30) days' written notice to HU, in addition to any other remedies available at law or in equity,



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subject to the express limitations set forth in Section 6. Any such termination does not relieve Google Fiber of its obligations to pay all charges incurred hereunder prior to such termination.

- 5.3.3. Anything else in this Network Agreement to the contrary notwithstanding, any event that gives rise to a right of Google Fiber to terminate this Network Agreement under Section 5.4 will not be deemed a default by HU.

5.4. Early Termination.

- 5.4.1. If Google Fiber, pursuant to Section 2.1.1, does not accept the First Section Design, including any material modifications thereto, and HU has not been able to address and resolve the deficiencies identified in the comments and suggested revisions provided by Google Fiber within thirty (30) days after Google Fiber provides its comments and suggested revisions, then Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement without any liability to HU, provided, however, that if such suggested revisions cannot reasonably be resolved within thirty (30) days and HU is diligently attempting to resolve such suggested revisions, then HU will have an additional thirty (30) to resolve such comments and suggested revisions.
- 5.4.2. If Google Fiber is unable to obtain a franchise necessary to provide video services containing reasonable and customary terms and conditions (the “**Franchise**”) from the City of Huntsville within three (3) months of the Effective Date of this Network Agreement, then Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement without any liability to HU. Google Fiber may exercise its termination right under this Section 5.4.2 only after providing thirty (30) days’ prior written notice to HU. Google Fiber’s right to terminate this Network Agreement under this Section 5.4.2 will expire upon the earliest of (a) Google Fiber’s receipt of the Franchise, (b) Google Fiber’ acceptance of the first Network Section, or (c) the date that is six (6) months from the Effective Date.
- 5.4.3. If the City of Huntsville cancels, or revokes the Franchise during the Lease Term (except as a result of Google Fiber’s violation of a Franchise condition) and Google Fiber is unable, after making best efforts, to obtain a replacement Franchise of substantially equivalent scope as the cancelled or revoked Franchise, then Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement without any liability to HU; provided, however, that Google Fiber may not terminate under this Section 5.4.3 if Google Fiber either (a) is no longer required to obtain a Franchise in order to provide video services (or any other services for which a franchise is required) to End Users or (b) determines in its sole discretion that it will not provide video services to any End Users. Google Fiber will provide thirty (30) days’ written notice to HU



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prior to exercising its right to terminate the Network Agreement pursuant to this Section 5.4.3.

- 5.4.4. If HU fails to deliver to Google Fiber the first Network Section in accordance with the timeframes set forth in Section 2.2.2, then Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement without any liability to HU. Notwithstanding the foregoing, Google Fiber may exercise its termination right under this Section 5.4.4 only after providing thirty (30) days' prior written notice to HU and after Google Fiber has made reasonable efforts to cooperate with HU in respect of revising the Delivery Milestone Date to the Parties' mutual satisfaction.
- 5.4.5. If HU fails to make the delivery required by Section 2.2.5(b), then Google Fiber may terminate this Network Agreement, the Lease Agreement, the Colocation Agreement, and the Pole Attachment Agreement without any liability to HU. Notwithstanding the foregoing, Google Fiber may exercise its termination right under this Section 5.4.5 only after providing thirty (30) days' written notice to HU and after Google Fiber has made reasonable efforts to cooperate with HU in respect of revising the date by which HU is to achieve Initial Network Completion to the Parties' mutual satisfaction.
- 5.4.6. HU may terminate this Network Agreement without liability to Google Fiber in the event that HU does not secure approval from the Huntsville City Council, within three (3) months of the Effective Date, for the capital expenditures necessary to begin construction of the HU Network, as required pursuant to Section 26-61 of the Code of Ordinances of the City of Huntsville, Alabama. HU will provide thirty (30) days' written notice to Google Fiber prior to exercising its right to terminate the Network Agreement pursuant to this Section 5.4.6.

6. LIMITATION ON LIABILITY

- 6.1. **IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS NETWORK AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 6.2. **EXCEPT IN RESPECT OF ANY CREDITS AGAINST GOOGLE FIBER'S LEASE PAYMENTS THAT ARE PROVIDED PURSUANT TO THE TERMS OF THIS NETWORK AGREEMENT, IN NO EVENT WILL HU BE LIABLE**



FOR DAMAGES FOR INTERRUPTION OF ANY TRANSMISSION THROUGH THE LEASED DARK FIBER, OR FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE UNLESS CAUSED BY HU'S WILLFUL CONDUCT.

- 6.3. **CONTENT OF TRANSMITTED DATA OR COMMUNICATIONS.** HU DISCLAIMS ALL LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT (INCLUDING THE NATURE OF MATERIALS, OPINIONS AND VIEWS) OF ANY AND ALL DATA OR COMMUNICATIONS TRANSMITTED, OTHER THAN BY HU OR A PERSON ACTING AT HU'S DIRECTION OR ON HU'S BEHALF, IN, ACROSS, ON, THROUGH OR OVER THE LEASED DARK FIBER AFTER THE ACCEPTANCE DATE. GOOGLE FIBER AGREES THAT IT WILL MAKE NO CLAIM WHATSOEVER AGAINST HU RELATING TO THE CONTENT OF ANY DATA OR COMMUNICATIONS TRANSMITTED, OTHER THAN BY HU OR A PERSON ACTING AT HU'S DIRECTION OR ON HU'S BEHALF, IN, ACROSS, ON, THROUGH OR OVER THE LEASED DARK FIBER.
- 6.4. **PERSONAL IMMUNITIES.** NO PERSONAL RECOURSE SHALL BE HAD FOR THE CREATION OF THIS NETWORK AGREEMENT, FOR ANY CLAIM ARISING OUT OF THIS NETWORK AGREEMENT, NOR FOR ANY REPRESENTATION, OBLIGATION, COVENANT, OR AGREEMENT SET FORTH IN THIS NETWORK AGREEMENT AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, MEMBER, EMPLOYEE, OR AGENT OF HU UNDER ANY RULE OF LAW OR EQUITY, ANY STATUTE OR CONSTITUTION, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY, OR OTHERWISE, AND ANY LIABILITY OF ANY SUCH OFFICER, MEMBER, EMPLOYEE, OR AGENT IS HEREBY EXPRESSLY WAIVED AND RELEASED BY GOOGLE FIBER AS A CONDITION OF AND IN CONSIDERATION FOR THE EXECUTION OF THIS NETWORK AGREEMENT. FURTHERMORE, GOOGLE FIBER AGREES THAT NO PAST, PRESENT, OR FUTURE OFFICER, MEMBER, OR AGENT OF HU SHALL BE PERSONALLY LIABLE TO GOOGLE FIBER, OR ANY SUCCESSOR IN INTEREST OF GOOGLE FIBER, FOR ANY DEFAULT OR BREACH OF THIS NETWORK AGREEMENT BY HU.

7. CONFIDENTIALITY

- 7.1. **Non-Disclosure of Confidential Information.** Neither Party will disclose the other Party's Confidential Information, except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Network Agreement. The Party receiving Confidential Information will ensure that any such additional recipients have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. Upon termination of the Network Agreement for any



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reason or upon request of a Party, each Party will return all Confidential Information, together with any copies of the same, to the other Party, or certify as to its destruction.

- 7.2. **Disclosures Required by Law.** The Parties acknowledge that HU is a public entity subject to the Alabama Open Records Act and other public records laws. To the extent there is a third-party request for Confidential Information, the Party receiving the request may disclose Confidential Information when required by applicable law after giving the notice set forth in this Section 7.2 to the other Party, if such notice is permitted by applicable law. If any Party is required by applicable law or similar process to disclose any Confidential Information, it will provide the other Party with prompt prior written notice of such request or requirement so that such Party may seek an appropriate protective order and/or waive compliance with this Section 7. The Party whose consent to disclose Confidential Information is requested will respond to such request in writing within five (5) days of the request by either authorizing the disclosure or advising of its election to seek a judicial or administrative protective order. If such Party fails to respond within the prescribed period, the disclosure will be deemed approved. If a Party chooses to seek an appropriate protective order, the other Party will (a) refrain from disclosing such Confidential Information (unless legally compelled to do so) until the request for a protective order is resolved; (b) make all reasonable efforts to cooperate with the Party seeking the protective order before the applicable judicial or administrative body; and (c) comply with any validly-issued protective order.

8. MISCELLANEOUS

8.1. **Assignment.**

- 8.1.1. Neither Party may transfer or assign, voluntarily or by operation of law, its rights and obligations under this Network Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that either Party may assign its obligations and rights under this Network Agreement upon notice and without the other Party's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with the assigning Party; (b) an entity resulting from any merger, consolidation or other reorganization involving the assigning Party; or (c) the purchaser of all or substantially all of assigning Party's assets.
- 8.1.2. Without limiting Google Fiber's rights under Section 8.1.1, Google Fiber may also assign its rights and obligations under this Network Agreement to the purchaser of all or substantially all of Google Fiber's assets used to provide communications services in and around Huntsville, Alabama, provided that HU gives its prior written consent, which consent (a) will not be unreasonably withheld, conditioned, or delayed and (b) may be denied only if HU reasonably determines that the proposed assignee does not have the financial capabilities to perform Google Fiber's obligations under this Network Agreement or has previously defaulted on an agreement with HU, and



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provides a written notification to Google Fiber setting forth the basis for such denial.

8.1.3. Prior to any assignment made pursuant to Section 8.1.2 becoming effective, the proposed assignee will provide to HU, at HU's request, a surety bond securing the proposed assignee's obligations to pay any amounts which are or may become due under the Lease Agreement, up to an amount equal to the sum of twenty-four (24) months' of monthly recurring payments that would be payable under the Lease Agreement if HU had achieved Initial Network Completion prior to the assignment. The surety bond furnished pursuant to this Section 8.1.3 will be issued by an entity (a) having a minimum corporate debt rating of A- by Standard & Poor's Financial Services LLC and A3 by Moody's Investor Services (or a respective successor thereto) at the time of issuance and at all times the bond is outstanding, and (b) who is and remains authorized to transact such business and maintains an agent for service of process in the State of Alabama. In the event that the proposed assignee provides a surety bond to HU pursuant to the terms of the Lease Agreement, such surety will be deemed to satisfy the requirement of this Section 8.1.3.

8.2. **Governing Law; Venue.** Any and all disputes arising out of this Network Agreement will be governed, construed and enforced according to the laws of the State of Alabama, excluding its conflict-of-law principles. A Party seeking to bring an action relating to the validity, construction, interpretation and enforcement of this Network Agreement will institute such action in any state or federal court in the State of Alabama where venue lies under applicable law as a result of Lessor providing electrical service in such venue.

8.3. **Disputes.** In the event a Party alleges a material breach of any provision of this Network Agreement, the Party will not give notice of breach or pursue any other remedy otherwise available to such Party unless and until the following dispute resolution process has been concluded:

8.3.1. On either Party's request, each Party will designate a knowledgeable representative, who will meet at the principal business office of HU, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.

8.3.2. If the Parties have not resolved the dispute fifteen (15) days after the first meeting of the representatives, each Party will designate a senior executive, who will meet at the principal business office of HU, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.

8.3.3. If the Parties have not resolved the dispute fifteen (15) days after the first meeting of the senior executives, the Party alleging breach may provide notice



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of breach to the other Party pursuant to Sections 5.2 and 5.3, and pursue any other remedy otherwise available to such Party.

- 8.4. **Attorney Fees and Costs.** Both Parties hereto agree that in any action to enforce the terms of this Network Agreement that each Party shall be responsible for its own attorneys' fees and costs.
- 8.5. **Force Majeure.** Neither Party will be liable for delays or any failure to perform under this Network Agreement due to causes that prevent the Party from performing its obligations under this Network Agreement by reason of a Force Majeure Event. The other Party will not be required to perform or resume performance of those of its obligations that correspond to the obligations of the Party excused by Force Majeure Event, until the end of such Force Majeure Event.
- 8.6. **Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth in this Network Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any third party or Person not a party to this Network Agreement.
- 8.7. **Non-Waiver.** The waiver by any Party hereto of a breach under any of the provisions of this Network Agreement, or the failure of any Party, on one or more occasions, to enforce any of the provisions of this Network Agreement or to exercise any right or privilege thereunder will not thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege thereunder. A waiver of any provision of this Network Agreement by a Party must be in writing to be effective.
- 8.8. **Notices.** Except as otherwise set forth, all notices of termination or breach will be in writing and addressed to the other Party's legal representative. All other notices will be in writing and addressed to the other Party's primary contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

HU (legal representative):

Bradley Arant Boult Cummings LLP
Attn: Warne Heath
200 Clinton Avenue West, Suite 900
Huntsville, AL 35801

fax no.: (256) 517-5200
email: wheath@babco.com

HU (primary contact):

Google Fiber (legal department):

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

fax no.: (650) 618-1806
email: legal-notices@google.com

Google Fiber (primary contact):



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Huntsville Utilities
Attn: Jay Stowe
112 Spragins Street
Huntsville, AL 35801

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

- 8.9. **Interpretation.** This Network Agreement has been negotiated by the Parties and their respective counsel. This Network Agreement will be interpreted without any strict construction in favor of or against either Party.
- 8.10. **Severability.** If any provision of this Network Agreement is found unenforceable or invalid, the remainder of this Network Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 8.11. **Captions/Headings.** Captions and section headings contained in this Network Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Network Agreement in any way.
- 8.12. **Counterparts.** This Network Agreement may be executed in any number of counterparts, each of which would be deemed to be original and all of which taken together will constitute one and the same agreement.
- 8.13. **Electronic Signatures.** Each Party to this Network Agreement agrees to use electronic signatures and be subject to the provisions of the applicable laws governing electronic signatures. Notwithstanding the foregoing, however, the Parties will execute and deliver any memorandum of lease or memorandum of assignment in a form acceptable for recording in the Office of the Judge of Probate of Madison County, Alabama.
- 8.14. **Survival.** The terms and provisions contained in this Network Agreement that by their nature and context are intended to survive the performance thereof by the Parties will so survive the completion of performance and termination or early termination of this Network Agreement, including, without limitation, provisions for indemnification and confidentiality.
- 8.15. **Entire Agreement.** This Network Agreement constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed therein. Any prior agreements, promises, negotiations or representations regarding the subject matter of this Network Agreement are of no force or effect. No alteration, modification, amendment, or variation of the terms of any provision will be valid unless made in writing and signed by duly authorized representatives of HU and of Google Fiber.

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IN WITNESS WHEREOF, each Party has caused this Network Agreement to be executed by its duly authorized representative.

Google Fiber



**Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043**

Date: 3/1/2016

Huntsville Utilities:



Jay Stowe

**CEO
Address: 112 Spragins Street, Huntsville,
Alabama 35801**

Date: 2/23/2016



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LIST OF EXHIBITS

Exhibit A – Dark Fiber Lease Agreement

Exhibit B – Colocation Agreement

Exhibit C – Pole Attachment Agreement

Exhibit D – Preliminary HU Network Design

