

## RIGHT-OF-WAY USE AGREEMENT

This RIGHT-OF-WAY USE AGREEMENT (“Use Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **Douglas County, Colorado** (the “County”), and **Google Fiber Colorado LLC**, a Delaware corporation (the “Company”).

WHEREAS, the Company intends to construct and own, maintain, operate, and control a fiber-based communications Network or Networks serving the Company’s customers; and

WHEREAS, for the purpose of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined in Section 1 below).

WHEREAS, provided that the presence of the Network within the ROW does not interfere with the use of the ROW for intended road and travel purposes and does not unreasonably interfere with the repair, maintenance, or operation of the Public Way, the road, County Infrastructure, or other public infrastructure within the Public Way, and does not otherwise cause a hazard or threat to the public health or safety, the County is willing to consent to the Network in the Public Way subject to the terms and conditions set forth in this Right of Way Use Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**Section 1. Definitions.** The following definitions shall apply generally to the provisions of this Use Agreement.

- 1.1 “**County**” means Douglas County, Colorado.
- 1.2 “**Conventional Boring**” means the deployment of fiber optic cables or underground conduits using trenchless underground methods.
- 1.3 “**Conventional Trenching**” means the deployment of fiber optic cables or underground conduits using open trench cuts; excavation; placement of conduit bundles or duct banks, and other elements; backfill and restoration.
- 1.4 “**Equipment**” means aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities.
- 1.5 “**Installation Date**” shall mean the date that the first Equipment is installed in the Public Way by the Company pursuant to this Use Agreement.
- 1.6 “**Laws**” means any and all statutes, constitutions, ordinances, resolutions,

regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

1.7 “**Micro-Trenching**” means the deployment of fiber optic cables or underground conduits using open trench cuts in asphalt, concrete or softscape that are no less than 8 inches and no greater than 24 inches deep, and no greater than 2 inches wide.

1.8 “**Network**” or collectively “**Networks**” means the fiber optic communication or telecommunications systems operated by the Company to serve its customers in the County.

1.9 “**Public Way**” means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, and bicycle lanes, including all public rights-of-way, utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the County. This term shall not include County parkland, trails, state or federal rights of way, or any property owned by any person or entity other than the County, except as provided by applicable Laws or pursuant to an agreement between the County and any such person or entity.

1.10 “**Services**” means the communications services provided through the Network by the Company to its customers. Services also includes the lease of a Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the System to another person or entity, provided that the Company at all times retains exclusive control over the System and remains responsible for locating, servicing, repairing, relocating, or removing its System pursuant to the terms of this Agreement.

1.12 “**Work**” means the construction, installation, repair, maintenance, operation, and if necessary, the removal of any Equipment or Network system.

**Section 2. Term.** This Use Agreement shall be effective as of the Effective Date and shall extend for a term of twenty (20) years. Thereafter, the Agreement will automatically renew for successive 5-year terms (each a “Renewal Term”) unless a party provides at least six (6) months’ prior written notice to the other party of its intent not to renew. Provided, however, that Company must use commercially reasonable efforts to commence construction of the Company’s Network within the County within two (2) years of the Effective Date of this Use Agreement.

**Section 3. Scope of Use Agreement.** Any and all rights expressly granted to the Company under this Use Agreement, which shall be exercised at the Company’s sole cost and expense, shall be subject to the County’s lawful exercise of its police powers and the prior and continuing right of the County under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all valid deeds, easements, dedications, conditions, covenants,

restrictions, encumbrances, and claims of title of record in existence on the date of permit approval under this Use Agreement which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in the Company a real property interest in land, including any fee, leasehold interest, or easement. Company will obtain County's approval of required individual encroachment, construction, and other necessary permits before placing its Equipment in the Public Way. Any work performed pursuant to the rights granted under this Use Agreement shall conform with applicable laws and regulations. Nothing in this Use Agreement shall be deemed to grant a franchise or other right to utilize the Public Way to construct a cable system or provide cable or other video programming services.

3.1 Permission to Use and Occupy the Public Way. The County grants the Company permission to use and occupy the Public Way for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary, removing the Network and the related Network Equipment. This Agreement does not authorize the Company to use any property other than the Public Way as agreed herein. The Company's use of the Public Way is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public Way. The Company will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

3.2 Nothing in this Right of Use Agreement or by the privileges and authorizations contained herein is intended to, or shall be interpreted to, convey any ownership interest in any of the County's Public Way underlying or surrounding a Network. Nothing in this Right of Way Use Agreement is -intended to limit any rights or obligations the Company may have under the federal or Colorado state laws, or other applicable County ordinance, resolution, or regulation.

3.3 No Interference. Company, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights of way (except in the case where the Company's rights are prior or superior to such private right of way), sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other communications, utility, or municipal property, except as permitted by applicable Laws, this Use Agreement, or mutual agreement with any affected party.

3.4 Compliance with Laws. The Company shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

3.5 Utility Notification Center. Prior to undertaking any work pursuant to this Agreement, the Company shall take all actions necessary to become a tier 1 member of the Utility Notification Center of Colorado, and comply with and adhere to local procedures, customs and practices relating to the one call locator service program established in C.R.S. Section 9-1.5-101, et seq., as such may be amended from time to time.

3.6 Fees. The Parties agree that the nature of the Work is such that application of the County's standard fee schedules would be unreasonably burdensome for both Parties. Thus, the Parties agree that Company shall pay to the County a fee of \$0.75 per linear foot.

- (a) No other ROW Permit or street cut permit fees will be assessed against Company in connection with the Work. Notwithstanding the foregoing, however, the Performance Bond required pursuant to Section 7 below is not a fee and is not subject to the provisions of this Section.

3.7 No Warranties of Title. The rights granted to the Company under this Right of Way Use Agreement are granted without any covenant of title or warranty of quiet possession. These rights are further subject to any prior agreements, licenses, easements, conveyances, recorded or unrecorded, and it shall be the Company's sole responsibility to determine the existence of any other rights, uses or facilities affecting or conflicting with the Company's use of the County's Public Ways; provided that, if the County is aware of any unrecorded agreement, license, easement or conveyance that may adversely impact Company's Network, the County shall disclose such information to Company.

**Section 4. Construction.** Company intends to install its Equipment at the locations set forth on the plans approved by the County. The installation of the Equipment may be completed through a variety of different deployment methods, including Conventional Trenching, Boring and Micro-Trenching. Company shall comply with all applicable federal and State technical specifications and requirements related to the construction, installation, operation, maintenance, and control of the Company's Equipment installed in the Public Way in the County in effect at the time of ROW permit application, regardless of the Effective Date hereof. Company shall also comply with all applicable County ordinances and requirements, except for any deviations permitted by an authorized County designee.

4.1 Obtaining Required Right of Way Permits. Company shall apply for and obtain all required Right of Way Permits and pay all lawful associated review and inspection fees as described in Section 3.5. The County shall respond to the Company's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Company in facilitating the deployment of the Network in the Public Way in a reasonable and timely manner. As a condition of obtaining any permit that involves digging or other excavation in the Public Way, the Company shall provide plans in the specified format based on the method of deployment and further explained in Exhibit A. Such drawings and plans shall be provided to the County with each request for a construction permit. Review and approval of the construction plans is only for general compliance with the standards. All responsibility for existing conditions, correctness of dimensions, details, concepts, quantities, and safety during construction shall remain with those designing, developing, and constructing the project. Construction inspection by the County in no way reflects any responsibility on the part of the County for safety, quality, or quantity control, and in no way implies acceptance of the work, or any part thereof, by the County.

4.2 Obtaining Required Stormwater Management Plan Permits. Company shall obtain a State of Colorado Stormwater Discharge Permit prior to obtaining any permit from the County. A copy of the Stormwater Discharge Permit shall be provided to the County upon the County's request. Company will utilize best management practices as identified in the Stormwater Management Plan. The County is authorized to require additional Best Management Practices or erosion methods if the County determines they are necessary.

4.3 Relocation and Displacement of Equipment. Company understands and acknowledges that County may require the Company to relocate one or more of its Equipment installations. Company shall at County's direction relocate such Equipment at the Company's sole cost and expense not later than ninety (90) days, excluding any time required for permitting approval, after receiving written notice that the County determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a County facility or public way; (b) because the Equipment is interfering with or adversely affecting proper operation of street lights, traffic signals, governmental communications networks, storm sewer infrastructure or other County property; or (c) to protect or preserve the public health or safety. In any such case, County shall use its best efforts (but shall not be required to incur financial costs) to afford the Company a reasonably equivalent alternate location. If the Company shall fail to relocate any Equipment as requested by the County within ninety (90) days after the above-referenced notice in accordance with the foregoing provision, County shall be entitled to remove the Equipment at the Company's sole cost and expense, without further notice to the Company. Upon the receipt of a demand for payment by the County that documents the actual costs of the work performed, the Company shall promptly reimburse the County for such costs. If payment is not received within forty-five (45) days, the County may draw on the Performance Bond, specified in Section 7 below, for the costs incurred. To the extent, the County has actual knowledge thereof, the County may attempt promptly to inform the Company of the displacement or removal of any pole on which any Equipment is located.

4.4 Damage to Public Way. Whenever the installation, removal or relocation of Equipment is required or permitted under this Use Agreement, and such installation, removal or relocation shall cause the Public Way to be damaged, the Company, at its sole cost and expense, and within thirty (30) days after such damage occurs, repair the damage and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws. If the Company does not repair the damage and Public Way as just described within thirty (30) days, then the County shall have the option, upon fifteen (15) days' prior written notice to the Company, to perform or cause to be performed such reasonable and necessary work on behalf of the Company and to charge the Company for the proposed costs to be incurred or the actual costs incurred by the County at County's standard rates. Upon the receipt of a demand for payment by the County that documents the actual costs of the work performed, the Company shall promptly reimburse the County for such costs. If payment is

not received within forty-five (45) days, the County may draw on the Performance Bond, specified in Section 7 below, for the costs incurred.

4.5 Removal of Equipment. Upon one hundred and eighty (180) days', or any other time frame mutually agreed by the Parties, written notice by the County pursuant to the expiration or earlier termination of this Use Agreement for cause, the Company shall promptly, safely, and carefully remove the Equipment from all Facilities in the Public Way. If the Company fails to complete this removal work on or before the one hundred and eighty (180) days, or other mutually agreed time frame, subsequent to the issuance of notice pursuant to this Section, then the County, upon written notice to the Company, shall have the right at the County's sole election, but not the obligation, to perform this removal work and charge the Company for the actual costs and expenses, including, without limitation, actual administrative costs. The Company shall pay to the County actual and documented costs and expenses incurred by the County in performing any removal work and any storage of the Company's property after removal within ninety (90) days after the date of a written demand for this payment from the County. After the County receives the reimbursement payment from the Company for the removal work performed by the County, the Company shall coordinate with the County the return of the Company's property and removed by the County pursuant to this Section at no liability to the County. If the County does not receive reimbursement payment from the Company as set forth above, or if County does not elect to remove such items at the County's cost after the Company's failure to so remove, any items of the Company's property remaining on or about the Public Ways may, at the County's option, be deemed abandoned and the County may dispose of such property in any manner permitted by Law. Alternatively, the County may elect to take title to abandoned property, provided that the Company shall submit to the County an instrument satisfactory to the County transferring to the County the ownership of such property. The provisions of the Section shall survive the expiration or earlier termination of this Use Agreement. Unless removed by the County as set forth herein, the Company may remove its Equipment from the Public Ways at any time at its discretion, provided that any such removal is in compliance with applicable zoning and permitting requirements.

4.6 Fire, Disaster or Other Emergency. In the case of fire, disaster or other emergency, or when the County determines the Equipment poses an immediate threat to the health and safety of the public, the County may relocate, remove, or disconnect the Company's Equipment located in the Public Way or on any other property of the County. The County shall provide reasonable notice to the Company prior to taking such action and shall provide the Company with the opportunity to perform such action within twenty-four (24) hours unless, in the County's reasonable discretion, the imminent threat to public health safety or welfare makes such notice impractical. Any removal, disconnection, or relocation performed by the County under this provision shall be at the Company's sole cost and expense. Upon the receipt of a demand for payment by the County, the Company shall promptly reimburse the County for such costs. If payment is not received within forty (45) days, the County may draw on the Performance Bond, specified in Section 7 below, for the costs incurred.

4.7 Company's Sole Cost and Expense. Company will perform the Work at its sole cost and expense. Company shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the Network and Equipment, excluding damage caused by third parties, and County shall have no obligation to repair such damage, except where the damage arises from the negligence or willful misconduct of County, its employees, agents, or contractors.

4.8 Clean Up of Public Ways/Damages. Upon completion of construction of a Network or upon performance of any maintenance, repair, alteration, or modification of a Network, the Company shall remove all construction debris from the County's Public Ways and restore such area to its pre-existing condition, with the exception of the presence of the installed Facility, as nearly as may be possible, within sixty (60) days from the date of completion. However, at no time shall any construction debris or materials be left within the traveled surface of the right of way or otherwise in any manner that creates a hazard to pedestrians or traffic. The Company shall be responsible for the cost to repair any damages to the Public Ways, public infrastructure, County Infrastructure, or other County property caused by any of the Company's activity with respect to the installation, replacement, repair, modification, or operation of the Network or Network facility. If a facility is damaged by the actions of the County, the County shall pay for the prompt repair of the facility. If a facility is damaged by the actions of a third party, the County will promptly cooperate with the Company to permit its repair in order to allow for uninterrupted service to the public. In order to facilitate continuation of the provision of Services, the Company shall be entitled to also place a temporary facility at an alternate or adjacent location previously approved by the County pending completion of such repairs, so long as such temporary facility or the location thereof does not create a hazard or public safety concern.

4.8 Reasonable Care. Company shall exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.

4.9 No Nuisance. Company shall maintain its Network and Equipment in good and safe condition so that its Network and Equipment do not cause a public nuisance.

4.10 As-Built Drawings and Maps. Company shall maintain accurate as-built drawings and maps of its Network and Equipment located within the County and shall provide electronic, as requested by the County, following the completion of construction for a permitted segment. Company shall cooperate with the County to furnish such information in an electronic mapping format compatible with the then-current County electronic mapping format.

4.11 Network Design. Nothing in this Agreement requires the Company to build to all areas of the County, and the Company retains the discretion to determine the

scope, location, and timing of the design and construction of the Network. However, the Company will consider community need and areas without significant access to alternative fiber optic communications systems in developing plans for the Network.

4.12 Construction Forecast. Following the Effective Date, the Company shall provide the County, on an annual basis, a construction forecast for the upcoming one-year period. The County recognizes that the Company cannot guarantee the construction forecast, but the Company agrees to keep the County informed of the progress of its schedule.

4.13 Work Hours. Company shall abide by all County requirements regarding authorized work hours. Company shall obtain any necessary nighttime work exemptions from the County Engineer for all work outside of those authorized work hours.

**Section 5. Contractors and Subcontractors.**

5.1 Use of Contractors and Subcontractors. Company may retain contractors and subcontractors to perform the Work on the Company's behalf.

5.2 Contractors to be Licensed. Company's contractors and subcontractors used for the Work will be properly licensed under applicable law.

5.3 Authorized Individuals. Company's contractors and subcontractors may submit individual permit applications to the County on the Company's behalf, so long as the permit applications are signed by individuals that the Company has authorized to act on its behalf via a letter of authorization provided to the County in the form attached as Exhibit B ("Authorized Individuals"). The County will accept permit applications under this Agreement submitted and signed by Authorized Individuals and will treat those applications as if they had been submitted by the Company under this Agreement.

**Section 6. Indemnification and Waiver.** To the extent allowed by law, the Company agrees to indemnify, defend, protect, and hold harmless the County, its elected officials, officers, and employees from and against any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from the Company's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the conduct of the County, its elected officials, officers, employees, agents, or contractors as determined by a court or by mutual agreement of the parties.

6.1 Waiver of Claims. Company waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the County.



6.2 Limitation of County's Liability. To the extent permitted by law, the County shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of County, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. The County does not waive any of the benefits of the Colorado Governmental Immunity Act.

6.3 Limitation of Company's Liability. In no event shall the Company be liable to the County for indirect or consequential damages.

6.4 Conditions. Company's obligations under this Section 6 are conditioned on the following:

(a) County must promptly notify Company in writing of the third party proceeding no later than fifteen (15) days after County became aware of it;

(b) County must tender sole control of the indemnified portion of the third party proceeding to Company, subject to the following:

(i) County may appoint its own non-controlling counsel, at its own expense; and

(ii) any settlement requiring County to admit liability, pay money, or take (or refrain from taking) any action, will require County's prior written consent, not to be unreasonably withheld, conditioned, or delayed; and

(c) County must reasonably cooperate in the defense at Company's request as referenced above in section 6.4(b).

**Section 7. Performance Bond.** Company will, promptly after the Effective Date and before the Installation Date, provide the County with a performance bond in the amount of fifty thousand dollars (\$50,000) naming the County as obligee and guaranteeing the Company's faithful performance of its obligations under this Agreement. A single performance bond in the full amount shall remain in full force at all times during the Term of this Agreement and shall cover all work and permits issued. This performance bond may be used to cover actual costs incurred by the County as stated in Section 4 of this Agreement including, but not limited to, covering any costs incurred to repair any damage to the Public Way not corrected by the Company.

**Section 8. Insurance.** Company shall obtain and maintain at all times during the term of this Use Agreement (a) Commercial General Liability insurance protecting the Company in an amount of Five Million Dollars (\$5,000,000) per occurrence (combined single limit), for bodily injury and property damage, and Five Million Dollars (\$5,000,000) general aggregate including personal and advertising injury liability and products-completed operations; (b) Commercial Automobile Liability covering all owned, hired, and non-owned autos in an amount of Five Million Dollars (\$5,000,000) combined single limit

each accident for bodily injury and property damage; All required insurance policies shall include the County, its council members, officers, and employees as additional insureds as their interest may appear under this Agreement for any covered liability arising out of the Company's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Upon receipt of notice from its insurer(s), the Company shall use commercially reasonable efforts to provide the County with thirty (30) days' advance written notice of cancellation.

8.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, the Company shall file with the County the required original certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

(a) The policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) That the Company's insurance policies are primary as respects any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have; and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) That the Company's insurance policies waive any right of recovery the insurance company may have against the County.

The certificate(s) of insurance shall be emailed to the County at the address specified in Section 9 below and shall be updated annually within thirty (30) days of the anniversary of the Effective Date of this Agreement.

Douglas County Risk Management  
100 Third Street  
Castle Rock, Colorado 80104  
[risk@douglas.co.us](mailto:risk@douglas.co.us)

8.2 Workers' Compensation Insurance. Company shall obtain and maintain, at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount of One Million Dollars (\$1,000,000) each accident/disease/policy limit and shall furnish the County with a certificate showing proof of such coverage.

8.3 Insurer Criteria. Any insurance provider of the Company shall be admitted and authorized to do business in the State of Colorado and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A-" Overall and a Financial Size Category of "VII". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

8.4 Severability of Interest. “Severability of interest” or “separation of insureds” clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**Section 9. Notices**. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered (a) through the United States mail, by first class mail, postage prepaid; or (b) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

*If to the County:*  
Department of Public Work Engineering  
100 Third Street, Suite 250  
Castle Rock, CO 80104  
Attn: Public Works Engineering Director  
Engineering@douglas.co.us

*If to the Company:*  
Google Fiber Colorado LLC  
Attn: Google Fiber Legal  
600 Amphiteatre Parkway  
Mountain View, CA 94043  
googlefibernotices@google.com

and

legal-notices@google.com

9.1 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**Section 10. Termination**.

10.1 Termination Upon Default. This Use Agreement may be terminated by either party upon one hundred eighty (180) days prior written notice to the other party upon an uncured default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion). Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10.2 Termination for Convenience. Company may terminate this Use Agreement for convenience upon one hundred eighty (180) days’ written notice to County. Upon termination under this clause, the Company shall follow the removal requirements under Section 4.5 of this Agreement. The removal of the Network shall be at the Company’s sole expense.

**Section 11. Assignment/Transfer of Ownership or Control**.

11.1 Except as set forth below, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

11.2 Notwithstanding the foregoing, Company may at any time, on written notice to County, assign this Agreement or any or all of its rights and obligations under this Agreement:

- (a) to any Affiliate (as defined below) of Company;
- (b) to any successor in interest of Company's business operations in County in connection with any merger, acquisition, or similar transaction; or
- (c) to any purchaser of all or substantially all of Company's Network Facilities in County.

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

**Section 12. Miscellaneous Provisions.** The provisions that follow shall apply generally to the obligations of the parties under this Use Agreement.

12.1 Non-exclusive Use. Company understands that this Use Agreement does not provide the Company with exclusive use of the Public Way and that County shall have the right to permit other providers of communications services to install equipment or devices in the Public Way. Company and the County acknowledge that any agreement for placement of facilities or equipment in the Public Way will be a public record, and will always be accessible to the Company, upon request.

12.2 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

12.3 Severability of Provisions. If any one or more of the provisions of this Use

Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

12.4 Contacting the Company. Company shall be available to the staff employees of any County department having jurisdiction over the Company's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The County may contact by telephone the 24-hour emergency operator at telephone number [\(866\) 954-1572](tel:8669541572) or by email to [gfiber-nocleads@google.com](mailto:gfiber-nocleads@google.com) regarding such problems or complaints. Company shall provide to the County a new 24-hour telephone number pursuant to Section 9 prior to changing telephone numbers.

12.5 Federal and State Authorizations. Company has obtained all government licenses, permits and authorizations by the Federal Communications Commission which are required in order to provide the Services.

12.6 Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Colorado or in the United States District Court for the District of Colorado.

12.7 Consent Criteria. In any case, where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

12.8 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

12.9 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

12.10 Entire Agreement. This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

12.11 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the County and the Company shall be deemed to be only an incidental beneficiary under this Agreement.

12.12 Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

12.13 Confidentiality; Public Document. Company hereby acknowledges that the County is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure thereunder. In the event the provisions of any exhibit or attachment hereto, or of any other document, including any electronic document, purport to require protection from public disclosure of any so-called “confidential” or “proprietary” information or data, such provisions shall be null and void to the extent inconsistent or in conflict with the Act, and the County’s good faith disclosure of any such information or data pursuant to the Act shall not constitute a breach of this Agreement.

12.14 No Binding Dispute Resolution. Any exhibit or attachment hereto, or any other document, including any electronic document, governing the provision of the Services that requires binding arbitration, or any other binding extra-judicial dispute resolution process in which the final resolution is not determined by the County, shall be void and unenforceable. Those final resolutions determined by the County are subject to review by court action pursuant to County code and Rule 106 of the Colorado Rules of Civil Procedure.

12.15 Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

12.16 Counterparts; Electronic Disposition. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately represent the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

*[Remainder of page intentionally blank – signatures follow.]*

**BOARD OF COUNTY  
COMMISSIONERS**

**DOUGLAS COUNTY, COLORADO**

\_\_\_\_\_  
, Chair

ATTEST:

\_\_\_\_\_  
, Clerk and Recorder

Approved as to form:

\_\_\_\_\_  
Douglas County Attorney's Office

**THE COMPANY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

Exhibit A – Douglas County Permitting Requirements and Allowances for the use of  
Microtrenching within the Public Way

Plans submitted to the County by the Company for the purpose of obtaining Public Way Permits shall comply with the following general requirements:

Micro-Trenching (Allowed only within Local Road right-of-ways, or as otherwise authorized by the County) - to be submitted via a Douglas County ROW Use and/or Construction Permit following the typical Douglas County Plan & Profile Example Plan.

- a. Base sheets need to include a readable (in focus) aerial photo with property lines, easements, address, and other basic information provided.
- b. It is recommended that the plan show existing utilities **but not required**. All Douglas County storm sewer and traffic fiber needs to be shown on the plan at Quality level A. Google may determine the appropriate quality level to avoid conflicts for microtrenching.
- c. The proposed utility can be shown schematically with specific details indicated by legend and/or notes to show the intended installation location.
- d. Pothole information does need to be included on the plans.
- e. Provide Douglas County Standard Erosion and Sediment Control Details for inlet protection, trenching and boring with each plan set.
- f. Provide agreed upon Google Fiber Details with each microtrenching plan set.

Conventional Trenching (Minimum Depth of 36 inches) - to be submitted via a Douglas County ROW Use and/or Construction Permit following the typical Douglas County Plan & Profile Example Plan.

- a. Base sheets need to include a readable (in focus) aerial photo with property lines, easements, address, and other basic information provided.
- b. The plan must show existing utilities at Quality Level B. All Douglas County storm sewer and traffic fiber needs to be shown on the plan at Quality Level A.
- c. The plan shall show existing pothole information.

Conventional Boring (48" Minimum depth for road crossings, 36" minimum depth for longitudinal profiles in the soft scape of a road) - to be submitted via a Douglas County ROW Use and/or Construction Permit following the typical Douglas County Plan & Profile Example Plan.

- a. Base sheets need to include a readable (in focus) aerial photo with property lines, easements, address, and other basic information provided.
- b. The plan must show existing utilities at a Quality Level B. All Douglas County storm sewer and traffic fiber needs to be shown on the plan at Quality Level A.
- c. A proposed profile will be shown for the bore.

Shallow Boring will not be allowed by Douglas County within the Public Way.

\*The above list of general requirements is not exhaustive. Additional information or steps will likely be requested during the permitting process.



Exhibit B – Douglas County Notes Specific to the use of Microtreching and missling within the County Public Way

- 1.) Microtrenching will be limited to the lip line between the curb and gutter and the asphalt roadway, nomicrotrenching will be allowed asphalt section of a roadway (other than is necessary to avoid a conflict with another utility appurtanence).
- 2.) Microtrenching shall only be allowed within Local Road right-of-ways, or as otherwise authorized by the County.
- 3.) Microtrenching will not be allowed through cross pans, sidewalks or concrete curbs. Missling or other subsurface methods will be required to cross concrete portions of the roadway. These areas will be required to be flow filled.
- 4.) Douglas County shall require a minimum depth of 8" to the top of conduit on all microtrench applications.
- 5.) Google shall not be allowed to lease any of the facilities constructed under this agreement to another provider and shall be for the sole use by Google.
- 6.) Minimize transverse cuts (1 per block).
- 7.) Final grade at back of curb should match the existing, do not leave below top of back of curb.