

## CONDUIT OCCUPANCY AGREEMENT

THIS CONDUIT OCCUPANCY AGREEMENT (“Agreement”), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (“Commencement Date”), by and between the City of Mesa, Arizona, (“City”) and Google Fiber Arizona, LLC (“Google Fiber”). City and Google Fiber may be referred to individual as a “Party” and collectively as the “Parties.”

### RECITALS

**WHEREAS**, City owns an underground conduit system and associated communications network Facilities;

**WHEREAS**, In exchange for a fee, and as set forth in this Agreement, Google Fiber desires to occupy portions of the City-Owned Conduit and Facilities with fiber optic cable;

**WHEREAS**, The Parties intend to make provision for Google Fiber to identify occupancy pathways at or around the time occupancy, and to allow for an in-kind exchange to offset occupancy fees along certain alignments that Google Fiber may construct;

**NOW THEREFORE**, for good and valuable consideration, the Parties agree as follows:

### TERMS AND CONDITIONS

#### 1. DEFINITIONS.

“Access Manholes” means a structure placed in the ground and accessible from the surface that is used to provide pass-through access to conduits, ducts and/or fiber optic cables; typically, 4’ x 4’ (approx. size).

“Conduit” means a pipe-like structure which may consist of polyvinyl chloride (PVC), high density polyethylene (HDPE), and other materials placed underground to contain Ducts and/or Fiber Optic Cables as part of a communications network.

“City-Owned Conduit” mean portions of City Conduit and Facilities for which a license for conduit occupancy is granted to Google Fiber under this Agreement,

“Duct” means a single enclosed raceway for Fiber Optic Cable and is sometimes installed in a Conduit. The term Duct may include micro-duct, inner duct, or other industry standard duct-like materials.

“Facility” and “Facilities” means the various elements or components of an underground communications network, including without limitation Conduit, Ducts, handholes, Manholes, microduct, Slack Coils, and other ancillary materials, items, equipment, pull rope, mule tape, buried locate tape, markers and structures (*e.g.*, pedestals and vaults).

“Fiber Optic Cable” means fiber optic communications cable.

“Operational Vaults” means a structure placed in the ground and accessible from the surface that is used to provide pass-through access to Conduits, Ducts and/or Fiber Optic Cables; typically, 7’ x 13’ (approx. size).

“Pull Boxes” means a small structure placed in the ground and accessible from the surface that is used to provide pass-through access to Conduits, Ducts and/or Fiber Optic Cables.

“Manhole” means a structure large enough to admit a person’s entire body through an opening at ground level and accessible from the surface that is used to provide access to Conduits, Ducts and/or



Fiber Optic Cables for the purpose of installing, operating, maintaining and repairing communications Facilities.

“Requirements and Standards” means laws, rules, regulations, codes, ordinances, permit conditions, the National Electric Code, the National Electrical Safety Code, The City’s Engineering and Design Standards, the City’s codes and ordinances, including Mesa City Code Title 9 and the specifications promulgated by the Maricopa Association of Governments, that govern, address, or apply-to construction of underground Conduit systems in public rights-of-way in the City.

“Slack Coils” mean extra fiber optic cable that is coiled up and placed in an Operational Vaults for future use.

## 2. Google Fiber **CONDUIT REQUEST AND INSTALLATION**

a) Determining Availability. Upon Google Fiber’s request, the City will provide information to Google Fiber regarding availability of City-Owned Conduit, such as maps, capacity, future requirements, and other information. Google Fiber may conduct surveys of City-Owned Conduit to determine condition, available capacity, or any other parameters of City-Owned Conduit subject to receipt of applicable traffic control and right-of-way permits.

b) Make-Ready Work. Google Fiber acknowledges that City’s available record drawings of existing City-Owned Conduit and Facilities are for reference only and are not considered “as-built” guarantee. The City’s available record drawings are provided to Google Fiber for Google Fiber’s own investigations and use. City does not guarantee that the drawings provided to Google Fiber are accurate or complete. Google Fiber may be required to complete work on City-Owned Conduit where such City facilities are incomplete or inadequate in order to install, operate and maintain Google Fiber’s fiber optic cable. At a minimum, Google Fiber may need to complete the following before occupying any City-Owned Conduit:

- i) Clean City-Owned Conduit, Operational Vaults, and Access Manhole.
- ii) Replace or repair City-Owned Conduit, etc. that are no longer functional.
- iii) Protect in place within City-Owned Conduit existing fiber and/or microducts during any installation, construction or maintenance performed by Google Fiber.
- iv) Submit plans for all repairs, make-ready work, and modifications to City-Owned Conduit. Google Fiber will obtain City’s approval before commencing any make-ready work, repairs, modifications, installation, or construction on City-Owned Conduit during the permitting process.

c) Google Fiber shall have the right, but not the obligation, at its sole cost and expense, to perform make-ready work on City Facilities as deemed reasonably necessary by Google Fiber to prepare such City Facilities for occupancy by Google Fiber under this Agreement. Google Fiber shall reimburse the City and any other authorized occupants of City Facilities for make-ready costs they incur as a result of Google Fiber’s proposed occupancy. Google Fiber shall not be obligated to obtain consent or approval from any authorized occupant of City Facilities in connection with any activities authorized under this Agreement.

d) Google Fiber Conduit Requests:

- i) Google Fiber may submit requests for conduit occupancy to the City designated point of contact by submitting a request via email in a form substantially similar to the attached Schedule 1 (a “Google Fiber Conduit Request”). The request shall identify the actual location of the desired Conduit within the existing conduit banks, and a list of the Google Fiber Facilities to be placed therein.

- ii) City shall promptly review the Google Fiber Conduit Request and respond with any initial questions, suggestions and requests for additional information or clarifications within six (6) business days.
  - iii) City shall work cooperatively with Google Fiber to approve or deny each Google Fiber Conduit Request within eight (8) business days of its submittal. City shall have sole and absolute discretion to deny a Google Fiber Conduit Request.
  - iv) When a Google Fiber Conduit Request is approved, City thereby grants to Google Fiber a non-exclusive license for the Term of the Agreement, to access and enter the City-Owned Conduit and Facilities identified in the Google Fiber Conduit Request (and in any related permits) in order to place, occupy, operate, lease, repair, restore, protect, maintain, and remove Google Fiber Duct or Fiber Optic Cable or both (as space may allow) and related Google Fiber Facilities. The license includes the right for Google Fiber to create new access points in the City Owned Conduit and Facilities (“breakouts”) and to interconnect Google Fiber Conduit and Facilities (all only with the City’s prior written consent and pursuant to standard specifications approved by the City Engineer).
  - v) Any Google Fiber Conduit Request that is approved shall be added as an administrative addendum to this Agreement.
  - vi) Google Fiber accepts the City Facilities in an “as is” and “where is” condition. City does not warrant or represent that the City-Owned Conduit or Facilities are adequate or sufficient for Google Fiber’s use or occupancy. Except to the extent it is permitting Google Fiber to use and occupy the City Facilities, there shall be no restrictions on the City’s rights to use or permit third parties to use, occupy, maintain, modify and repair any City-Owned Conduit and Facilities related to this Agreement.
- e) All Google Fiber work shall be promptly undertaken in accordance with all applicable Requirements and Standards. If Google Fiber fails or refuses to actually occupy the City-Owned Conduit or Facilities within eighteen (18) months of the approval of a Google Fiber Conduit Request, the license and permission granted pursuant to this Section 2 shall terminate at the City’s sole discretion; at such time, all occupancy fee obligations end upon termination, and no balloon occupancy fee payment will be owed for any periods beyond the termination date. All work shall be performed by licensed contractors and in compliance with all applicable Federal, State and local laws.
- f) Google Fiber will comply with the MAG Specifications, Mesa Amendments to MAG Specifications, Mesa Details M-66.01.1 through M-66.10, and the ITD/ITS Technical Specifications and City’s Approved Products List with respect to work Google Fiber performs on City-Owned Conduit. Requirements and Standards may be revised from time to time.
- g) Prior to submitting for permits to install Google Fiber Facilities within City Facilities, Google Fiber shall prepare and submit plans to the City for review. The submittals shall include plans, profiles, and contain details and detailed specifications for the installation of Google Fiber’s Facilities.
- h) The City may be present and inspect all installation work. Google Fiber shall participate as a member of the Arizona Blue Stake Center. Google Fiber shall provide a copy of Google Fiber’s proof of Arizona Blue Stake membership to City’s Right-of-Way Manager. Google Fiber shall provide locate services for Google Fiber Facilities placed in City-Owned Conduit in accordance with applicable law. The City will comply with A.R.S. §§ 40-360.21 through 40-360.32m, and will continue to blue stake its own facilities in compliance with state law.
- i) No use of the City-Owned Conduit by Google Fiber shall vest in Google Fiber any easement, ownership interest, or other real property right in such City-Owned Conduit or Facilities. Nor shall

any easement, ownership, or other form of property right in the Google Fiber Fiber Optic Cable or Facilities vest in the City or a third party such easement, ownership, or another property right by virtue of the activities contemplated by this Agreement.

j) This Agreement shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required to access any City Facilities subject to occupancy by Google Fiber under this Agreement. City will place no restrictions on Google Fiber's ability to construct, maintain, access and monitor its Fiber Optic Cable and Facilities that are more restrictive than those the City places on itself or are placed on City by the owner of the rights-of-way.

k) City will permit Google Fiber to pull through and utilize City's Access Manholes and Pull Boxes, as may be required to install Google Fiber's Facilities. Google Fiber is not permitted, however, to store Slack Coils, fiber optic cables, or splice enclosures in the Access Manholes or Pull Boxes. For clarity, pursuant to City Standards, Google Fiber fiber optic cables are allowed to be routed through City access manholes and pull boxes as long as Google Fiber is not using City access manholes and pull boxes for storage. Nevertheless, Google Fiber may store Slack Coils in Operational Vaults pursuant to the applicable City standards and specifications, and payment of the City's storage fee. Google Fiber shall identify the exact locations of termination points for conduit, fiber, and microducts during the permitting process for City's review and approval before installation or construction.

l) In the event that Google Fiber chooses to install in-kind conduit or fiber optic cables in connection with a Conduit Request, Google Fiber shall install the in-kind conduit or fiber pursuant to an approved City plan and standards listed in section 2(f) of this agreement. In-kind Fiber Optic Cable shall be spliced pursuant to City's ITS/ITD Technical Specifications and Details. Additionally, Google Fiber shall provide a fiber optic splice detail map of all in-kind facilities as approved by City.

m) Google Fiber shall maintain accurate records and as-built drawings of Google Fiber's facilities, including City-Owned Facilities, new installations, repairs, modifications, and make-ready work before City's final acceptance of facilities. Google Fiber shall furnish a copy electronically and in hardcopy form.

### **3. RATES AND CHARGES; BILLING; PAYMENT**

a) **Occupancy Fees:** The annual cost shall be negotiated upon request, plus a two percent (2%) annual escalation fee, provided that the License Fee shall not be increased in any calendar year by more than the increase in the average Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics. Pricing for conduit greater than 2" in diameter and bridge and canal crossings, etc. will be negotiated upon request for the use of any such facility. There shall be no more than one License Fee owed for any length of City-Owned Conduit irrespective of the amount of Google Fiber Fiber Optic Cable or Facilities installed in that City-Owned Conduit.

b) **Payment.** The License Fee shall be due and payable annually, in advance, with the fee for each new Google Fiber Conduit Request calculated from the date the request is finalized and the conduit becomes subject to this License. Google Fiber may pay pro-rated License Fees (less than the full twelve months) for additional approved Google Fiber Conduit Requests for the purpose of synchronizing the annual payment cycle of all License Fees under the Agreement.

c) **Adjustments to License Fees.** Google Fiber may credit (offset) against any License Fees due and payable under this Agreement any costs or expenses for which Google Fiber is entitled to reimbursement from the City, provided that the Parties agree in writing that Google Fiber is entitled to such reimbursement. If the Google Fiber Conduit Request terminates or expires during the annual payment cycle (and is not renewed), Google Fiber may take a credit on its next payment of License Fees of the portion of the License Fee that would have been payable for the period of time subsequent

to the termination or expiration of the approved Google Fiber Conduit Request that was terminated or expired, or a refund equal to the value of such a credit.

d) One Time Charges. All one-time charges for reimbursement, make-ready, or other such work shall be invoiced by and between the Parties upon completion of the work to which the charges relate. All such invoices are due and payable within thirty (30) days of receipt. Failure to invoice such charges within twelve months from completion of the work to which such charges related shall result in a full and complete waiver of such charges.

e) Permits. Google Fiber shall pay all charges, fees, and taxes required by the Mesa City Code, including without limitation, all required application and permit fees, and the applicable fees under Schedule of Fees and Charges (as amended for time to time) including traffic barricading fees.

f) Disputes; Late Payment Charges. Each Party shall pay all undisputed amounts when due and provide a detailed description of any amounts that are in dispute. The Parties shall cooperate in good faith to resolve any billing disputes. Any and all late payments shall accrue a late payment charge of one percent (1%) per month.

g) No Accord and Satisfaction. No acceptance of any payment hereunder by either Party shall be deemed to constitute any accord or satisfaction with respect thereto, and each Party reserves all rights with respect to any such matters.

#### **4. MAINTENANCE AND REPAIR; DECOMMISSIONING**

a) City shall maintain and repair City-Owned Conduit and Facilities at no charge to Google Fiber and keep them in good working order according to applicable Requirements and Standards. When conducting these activities, City shall be responsible for any verifiable and documented damages it causes to Google Fiber Fiber Optic Cable and Facilities.

b) Google Fiber shall maintain and repair its Fiber Optic Cable and Facilities at no charge to City and keep them in good working order according to applicable Requirements and Standards. If any damage to City-Owned Conduit and Facilities or the facilities of other authorized users of City-Owned Conduit occurs when conducting these activities, Google Fiber shall immediately notify the City, and shall be responsible for the cost of repairing any such damage.

c) Google Fiber shall have the right, but not the duty or obligation, to undertake emergency repair to the City-Owned Conduit and Facilities if there is a significant impact from such emergency on the Google Fiber Fiber Optic Cable or Facilities. When conducting these activities, Google Fiber shall be responsible for any damages it causes to the City-Owned Conduit and Facilities.

d) For excavation damage not caused by Google Fiber, the City shall reimburse Google Fiber for the reasonable cost of Google Fiber's repair to City-Owned Conduit and Facilities under this subsection.

e) During the term of this License, the City may inspect the City Facilities. Such inspections or the failure to do so shall not relieve Google Fiber of any responsibility, obligation or liability assumed under this License.

f) Each Party shall use reasonable efforts to provide at least one week prior written notice of all maintenance and repair activity by sending notice to the contacts listed in Schedule 2 (attached). Emergency repair activity may be undertaken without prior notice, if necessary, provided continued efforts will be made to notify the other Party as soon as practicable under the circumstances. Each Party shall provide and staff an on-call, all-hours telephone number, listed on Schedule 2 for the other Party to use to provide such notification.

g) City shall comply with all applicable Requirements and Standards with respect to its use and occupation of City Facilities and cooperate with Google Fiber in good faith to address any interference



or other such issues. City shall require all other authorized users of City Facilities to comply with all applicable Requirements and Standards with respect to their use and occupation of City Facilities and to cooperate with Google Fiber in good faith to address any conflict or other such issues.

h) Google Fiber may decommission and abandon Google Fiber Facilities in City-Owned Conduit in its sole discretion, provided that Google Fiber must first notify City of any such action at least sixty (60) days prior, and work with City in good-faith to address any desire on the part of City to have Google Fiber Facilities removed from City-Owned Conduit. Ownership of any Google Fiber Facilities abandoned in-place shall automatically vest in the City sixty (60) days after the date of Google Fiber's notice of abandonments delivered pursuant to this Section. The City will have no obligation to notify Google Fiber before making a disposition of such Google Fiber Facilities.

## **5. NETWORK RELOCATION**

a) If City Facilities are required to be relocated for reasons other than a request by Google Fiber, the Parties shall work together to jointly plan for and agree-upon the performance of such relocation work. City shall bear 100% of its own individual costs of relocating City Facilities. In the absence of any rights to reimbursement Google Fiber may otherwise have under applicable law or any other agreement, Google Fiber shall bear 100% of its individual costs of relocating Google Fiber Fiber Optic Cable and Facilities.

b) If City Facilities are required to be relocated at the request of Google Fiber, the Parties shall work together to jointly plan for and agree upon the performance of such relocation work. Google Fiber shall bear 100% of the costs of such relocation. The City reserves the right to refuse to relocate City Facilities at Google Fiber's request.

## **6. TERM; TERMINATION**

a) The Agreement begins on the Commencement Date and will continue until the expiration or termination of all approved Google Fiber Conduit Requests. The term for each individual approved Google Fiber Conduit Request shall be twenty (20) years.

b) The Agreement and any individual approved Google Fiber Conduit Request may be terminated by mutual agreement of the Parties, or for uncured material breach as set forth in this Section, or by Google Fiber for convenience upon ninety (90) days' prior written notice to the City.

c) Termination for Public Need. The City may terminate any approved Google Fiber Conduit Request no sooner than ten years following the Commencement Date, provided the City can show that termination is necessary to satisfy a public need or to accommodate public infrastructure. If requested at the time of application for an individual Google Fiber Conduit Request, the City Engineer may, in her sole and absolute discretion, lengthen the ten-year period described above to up to twenty (20) years for that specific Google Fiber Conduit Request. Prior to any termination pursuant to this Section 6(c), City and Google Fiber shall confer to determine whether commercially reasonable alternatives exist to relocate, modify, or expand the existing conduit in a manner that will satisfy both the public need and permit Google Fiber's continued use of the facilities.

d) Termination for Material Breach. In the event that either Party commits a material breach or default under this Agreement or with respect to any individual approved Google Fiber Conduit Request, then the other Party shall give the breaching Party written notice of the breach or default (including, but not limited to, a statement of the facts relating to the breach or default, the provisions of the Agreement or the approved Google Fiber Conduit Request that are in breach or default, and the action required to cure the breach or default) and indicate in the notice that the Agreement or approved Google Fiber Conduit Request will terminate pursuant to this paragraph if the breach or default is not cured within thirty (30) days after receipt of notice (or such later date as may be specified in the notice).

If the breaching Party fails to cure the specified breach or default within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the Agreement or approved Google Fiber Conduit Request, as applicable, will terminate without any further notice or action by the terminating Party; provided that if said breach is not susceptible of being cured within said 30-day period, the Agreement or approved Google Fiber Conduit Request shall not terminate as long as the breaching Party is exercising all commercially reasonable efforts to pursue implementation of a cure.

e) Termination of any approved Google Fiber Conduit Request granted hereunder shall not effect a termination of the Agreement or of any other approved Google Fiber Conduit Request. Termination of the Agreement for an uncured, material breach, does not result in the termination of any approved Google Fiber Conduit Request unless the reasons giving rise to termination of the Agreement for uncured, material breach, specifically implicate and involve an uncured, material breach of the terms of an approved Google Fiber Conduit Request.

## **7. CONFIDENTIAL INFORMATION**

a) “Confidential Information” means Google Fiber materials, Google Fiber trade secrets, and other Google Fiber proprietary or business information provided to City that is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information.” Confidential Information shall not include information that was in the public domain at the time of disclosure; becomes generally known or available through no act or omission on the part of Google Fiber; is known, or becomes known, to City from a source other than Google Fiber or its representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with Google Fiber; or is independently developed by City without violating any of its obligations under this Agreement;

b) City agrees to only disclose Confidential Information to employees, elected officials, agents and contractors of the City with a need to know the Confidential Information or as otherwise required by code, statute, rule or regulation.

c) When a third party (“Requestor”) not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to City for access to Google Fiber Confidential Information (“Request”), City will promptly notify Google Fiber of the Request. Google Fiber shall then be solely responsible for taking whatever steps Google Fiber deems necessary to protect Google Fiber Confidential Information in a timely manner. Google Fiber shall be responsible for all costs associated with its pursuit of such steps, including the pursuit of any legal remedies. Notwithstanding the foregoing, Google Fiber acknowledges that the City is subject to public records requirements set forth in Arizona law.

d) Upon termination or expiration of this Agreement, City shall make reasonable efforts to either return or destroy all Confidential Information; provided, however, any Confidential Information in electronic format as part of City’s off-site or on-site data archival process system, will be held by City and kept subject to the terms of this provision or destroyed at City’s option. The obligations of this provision will survive termination or expiration of this Agreement.

## **8. INDEMNITY, LIABILITY AND LIMITED WARRANTY**

a) Each Party (an “Indemnifying Party”) will defend the other Party, at the Indemnifying Party’s expense, against any claim, demand, suit, or proceeding (“Claim”) brought against the other Party by a third party arising out of or relating to the Indemnifying Party’s negligent acts or omissions under this Agreement that result in personal injury (including death) or damage to tangible property and will indemnify the Party for and hold it harmless from any damages finally awarded to the third party claimant or agreed to in settlement of the Claim, provided that the indemnified Party promptly (a) gives the Indemnifying Party written notice of the Claim; and (b) gives the Indemnifying Party sole control of the defense and settlement of the Claim (provided that it may not settle any Claim that

imposes liability on, or contains any admission of fault by, the indemnified Party without its consent); (c) provides to the Indemnifying Party all available information and reasonable assistance necessary for it to defend or settle the Claim; and (d) has not compromised or settled the Claim without the Indemnifying Party's written approval.

b) Each Party warrants it will comply with all applicable statutes, laws, rules and regulation in the exercise of its rights the performance of its obligations under this Agreement.

c) NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY THEORY FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

d) EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO THE EXTENT PERMITTED BY LAW; AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, TITLE, AND IMPLIED WARRANTIES ARISING FROM CUSTOM OR USAGE OF THE TRADE.

## 9. GENERAL PROVISIONS

a) This Agreement is limited to placement and construction of underground Facilities in public and private rights-of-way in the City. Placement or construction of Facilities in any other location shall be undertaken only with the advance written consent of both Parties.

b) Any notice under this Agreement shall be given in writing and directed to the applicable Party below. Notice shall be deemed to have been delivered: (i) on the delivery date if delivered personally; or (ii) one (1) business day after deposit with a commercial overnight carrier. Either Party may from time to time change its address for purposes of this paragraph by providing the other Party notice of the change in accordance with this paragraph.

### If to the City:

City of Mesa  
Attn: Right-of-Way Manager  
P.O. Box 1466  
Mesa, Arizona 85211-1366

### If to Google Fiber:

Google Fiber  
1600 Amphitheatre Parkway 94043  
Email: googlefibernotices@google.com,  
with a copy to legal-notices@google.com

c) At all times during the Term of this Agreement and any approved Google Fiber Conduit Request, Google Fiber, at its sole expense, shall obtain and keep in force the required insurance as set forth in the attached Schedule 3 (Insurance Requirements).



- d) Except for disputes involving confidentiality, if a dispute arises between Google Fiber and City pertaining to this Agreement ("Dispute"), prior to the initiation of legal action and within ten (10) days of receipt of a notice of dispute, representatives of the Parties will promptly meet in an attempt resolve the Dispute. If the Parties are unable to resolve the Dispute after this meeting, then the Parties shall be free to pursue any remedies available to them at law or equity.
- e) This Agreement may not be assigned without the written prior consent of the other Party, provided however that either Party may assign this Agreement; (i) to any successor by way of any merger, consolidation or other corporate reorganization of such Party or sale of all or substantially all of the assets of such Party, provided that such subsidiary or parent or successor assumes or is otherwise fully bound by all of the obligations of the assigning party under this Agreement; (ii) or in whole or in part to an Affiliate.
- f) Neither Party will be responsible for delay of performance due to causes beyond its control. Such delay automatically extends the time for performance in an amount equal to the period of the delay.
- g) If any provision of this Agreement is held to be invalid or unenforceable, then such provision will be construed to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect.
- h) The failure of either Party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to in writing by the Party otherwise entitled to exercise and enforce it.
- i) This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the of the State of Arizona, without regard to its conflicts of laws provisions. Venue for any action under this Agreement shall be proper only in Maricopa County Superior Court.
- j) The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimile and portable document format (PDF) signatures shall be binding as if original.
- k) This Agreement is solely for the benefit of City and Google Fiber including Google Fiber Affiliates. It is not intended to benefit any third parties.
- l) Except as required by law, neither Party shall use the name or logo of the other party in marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements without receiving the prior written consent of the other Party.
- m) Each Party shall be an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating a joint venture, partnership or agency relationship between the Parties.
- n) In any legal proceeding pursuant to this Agreement, the prevailing Party shall be entitled to recover its costs and reasonable attorney fees incurred during such proceeding.
- o) Nothing contained herein shall preclude Google Fiber or its Affiliates from pursuing or bidding on any future City procurement opportunity or opportunities, and nothing in this Agreement is intended to limit future Google Fiber-City bids or business opportunities in any way.
- p) Except as otherwise set forth in this Agreement, each Party will remain solely and independently responsible for its own expenses under or arising from this Agreement.
- q) This Agreement, including all Exhibits and Schedules, sets forth the entire agreement between the Parties relating to the subject matter hereof, and supersedes any and all prior or contemporaneous

agreements and representations written or oral, of the Parties with respect to the subject matter set forth herein. Additions, variations or modifications to this Agreement may only be made in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the day and year first above written.

**Google Fiber Arizona, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF MESA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Engineer  
Date: \_\_\_\_\_



**Schedule 1**

**Google Fiber** Conduit Request Number \_\_\_\_\_

Pursuant to the terms of the Conduit Occupancy Agreement entered into by and between the City and Google Fiber, request is made for facilities, as described below:

Type of Request: Request for Conduit Occupancy by Google Fiber

Date of Request: \_\_\_\_\_

Location of Request (street names and/or A-Z locations, etc.):

Approximate footage (distance): \_\_\_\_\_

Project/Permit/Reference Number: \_\_\_\_\_

General Description of Request:  
\_\_\_\_\_

Requestor Contact Information: \_\_\_\_\_

Name Phone Email

General Description of In-Kind Request (if applicable):

Location of In-Kind Request:

Approximate In-Kind Quantity (footage):

Rates and Charges:

GOOGLE FIBER ARIZONA, LLC

CITY OF MESA

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Schedule 2**

Work Notification Contact Information

Google Fiber: PHONE NUMBER

City:



### **Schedule 3**

#### Insurance Requirements

Google Fiber shall procure and maintain and shall cause any sublicensee to procure and maintain substantially the same coverage with substantially the same limits as required of Google Fiber (Google Fiber and/or sublicensees shall be referred to hereinafter, as the context dictates, as “Contractor”), for the duration of the Agreement and any applicable sublicense entered into under and/or pursuant to the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Google Fiber or its employees.

#### **Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage or its substantial equivalent.

#### **Limits of Insurance**

Contractor shall maintain limits of:

1. General Liability: \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate.
2. Commercial Automobile Liability with combined single limit of \$1,000,000 each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles.
3. Workers Compensation and Employers Liability Insurance: \$1,000,000 for each accident and \$1,000,000 disease for each employee.

#### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, the following provisions:

1. City, its officers, employees and volunteers shall be included as additional insureds as their interest may appear under this Agreement as respects: liability arising out of activities performed by Google Fiber; products and completed operations of Google Fiber; premises owned, occupied or used by Google Fiber; or automobiles owned, leased or borrowed by Google Fiber. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees or volunteers.
2. For any claims related to this project, Google Fiber’s insurance coverage shall be primary insurance as respects City, its officers, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be in excess of Google Fiber’s insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees or volunteers.



4. Google Fiber's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City. Upon request, Google Fiber shall furnish City a certificate of insurance evidencing coverage required by this clause.

Google Fiber shall require any subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required by this Agreement.

