

THIS LICENSE AGREEMENT ("License") made and entered into this the day of execution of the agreement, by and between the **CITY OF DURHAM**, a municipal corporation ("the City"), and **GOOGLE FIBER NORTH CAROLINA LLC**, ("the Licensee" or "GOOGLE FIBER");

WITNESSETH:

In consideration of the performance of the conditions hereinafter set forth on the part of the Licensee, the City of Durham hereby grants to the Licensee, a license to construct and maintain a fiber optic network within City limits right-of-way. GOOGLE FIBER will offer Internet and video services. Hereinafter, the fiber optic network shall be referred to as "the System" which is made a part of this License Agreement.

The Licensee expressly agrees:

(1) This License only permits the Licensee, upon obtaining required approvals and permits, to place the System in those portions of the Public Way approved by the City.

(2) The work is to be inspected by and shall conform to the requirements of the City of Durham.

(3) The Licensee will assume the cost of installation, maintenance, repair, restoration, and removal including the cost of repairs and restoration to the street, pavement, curb and gutter, sidewalk, water lines and services, fire hydrants, valves, sewer manholes, sewer lines and services, storm water structures and lines, right of way grades, associated landscaping, and nearby utilities associated with the installation, maintenance, and repair of the System. The Licensee shall in all cases restore the right of way to same or better condition.

(4) Nothing in this License shall be deemed or construed to estop or limit the City from exercising any regulatory, police, governmental, or legislative function pursuant to applicable law, which powers include, but are not limited to, the authority to enact regulations, ordinances, rules, and orders not prohibited by state or federal law that affect the Public Way or Licensee's use of the Public Way.

(5) Indemnity:

A. To the maximum extent allowed by law, Licensee shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this license (including but not limited to the constructing, maintaining, or repairing the pavement, street, curb and gutter, sidewalk, water lines and services, fire hydrants, valves, sewer manholes, sewer lines and services, storm water structures and lines, and in the installation,



preparation, maintenance, repair, or removal of the System) as a result of acts or omissions of Licensee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "A", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City of Durham ("City").

B. Definitions. As used in subsections "A" above and "C" below--"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are (a) interest and reasonable attorneys' fees assessed as part of any such item, and (b) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules or orders. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees.

C. Limitation of Licensee's Obligation. Subsection "A" above shall not require the Licensee to indemnify, defend, or hold harmless the City, its officers, officials, independent contractors, agents, employees, or Indemnitees against charges arising out or proximately caused by or resulting from the negligence or willful misconduct, in whole or in part, of the City, its officers, officials, independent contractors, agents, employees, or Indemnitees.

(6) If the City notifies Licensee that the City will change the grade of the street or perform any work within the right of way that may interfere with the System, Licensee shall make such changes and relocations at the Licensee's sole expense as may be necessary so that the System does not interfere with the work to be performed by the City.

(7) At its own expense, the Licensee shall, upon the request of the City, relocate the System in accordance with the terms and requirements of Durham Code § 62-55(9).

(8) This license conveys no real property right or interest in any street, sidewalk, or other portion of the right of way.

(9) All notices and other communications given under this Contract shall be written, and made by personal delivery, fax, Federal Express, or United States mail, addressed as follows. The parties are also requested to send a copy by email.

To the City:  
Public Works Director  
Department of Public Works  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
Fax: (919) 560-4316  
Email: marvin.williams@durhamnc.gov



To the Licensee:

Contact: General Manager

Google Fiber Inc.

1600 Amphitheatre Parkway

Mountain View, CA 94043

Licensee's contact information shall be kept up to date.

(10) Performance Bond

- A. Within thirty (30) days following the award of the License but prior to beginning any construction allowed by this License, Licensee shall deposit with the City a bond issued by a surety authorized to do business in North Carolina, in the amount of One Million Dollars (\$1,000,000.00). The form and content of the bond shall be approved by the City. The bond shall be used to insure the faithful performance of the Licensee of all provisions of this License Agreement, and compliance with all lawful orders, permits and directions of any agency, commission, board, department, division or office of the City exercising jurisdiction over the Licensee's acts or defaults, and payment by the Licensee of any claims, liens, or fees due the City. The bond shall be kept continuously in force for the time period of this License plus an additional year. The City may, in its discretion, decrease the amount of or eliminate this requirement in consideration of the financial stability of Licensee.
- B. If the Licensee fails to pay to the City any fees or compensation, penalties, claims, or liens owed to the City, then after thirty (30) days written notice of the obligation to the Licensee, the City may remedy such failure by making demand on the bond. Without limitation as to other bases for making demands on the bond, the City may also make demand on the bond if the City performs work or pays money that Licensee should have paid or performed pursuant to Licensee's obligations under this License. The City shall notify Licensee of the amount and date of any demand that the City makes on the bond.
- C. In the event that bond payments are made to the City pursuant to demands made under this Section, Licensee shall restore or replace the bond as needed to return the bond to its original penal sum within thirty (30) calendar days of written notification by the City of the sums withdrawn against the bond.
- D. In the event Licensee proposes construction activities which represent a level of construction activity greater than that anticipated under this License, then the City may, in its sole reasonable and good faith discretion, direct Licensee to post additional security. Such additional security shall be maintained until the City notifies Licensee that it is no longer necessary.
- E. The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by the License, or authorized by law, and no action, proceeding or exercise of a right with respect to such a bond shall affect any other right the City may have except to the extent payment fully satisfies a City claim.

(11) Insurance:



On or before the effective date of the License, Licensee shall provide proof of the required insurance set forth below. The Licensee shall maintain this insurance throughout the License term. Insurance shall include:

1. Workers' Compensation coverage for all employees with Statutory Limits In compliance with applicable state and federal laws. The policy shall Include Employers' Liability with a limit of one million dollars (\$1,000,000) for each occurrence.

2. Commercial General Liability with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence, two million (\$2,000,000) annual aggregate. Coverage shall include premises/operations and products/ completed operations, broad form property damage, XCU Coverage, contractual liability, and independent contractors.

3. Business Auto Policy with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. This shall include owned, hired, and non-owned vehicles.

4. The limits under subsections (2) and (3) above may be reached by any combination of primary and excess insurance. Self-insurance retentions in excess of one million dollars require approval of the City of Durham's Risk Manager

B. The City of Durham shall be named as an additional insured for any claims related to this License. An original of the endorsement to this effect must be submitted with insurance certificates. Certificates shall be mailed to City of Durham, Attention Risk Manager, 101 City Hall Plaza, Durham, North Carolina, 27701. Sixty (60) days' notice is required prior to any change in the coverage.

C. Licensee shall increase the amount of coverage and expand the types of coverage provided upon reasonable written request by the City. Primary insurance shall be provided by a company authorized to do business in North Carolina.

(12) This License incorporates the requirements of Sections 62-50 through 62-57 of the Durham City Code of Ordinances.

(13) This license shall remain in effect for a period of 20 years from the date the agreement is executed by both parties.



ATTEST:

GOOGLE FIBER NORTH CAROLINA LLC

\_\_\_\_\_  
Witness  
*(Affix corporate seal)*

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

**ACKNOWLEDGMENT**

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

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**(Seal)**



ATTEST:

CITY OF DURHAM

\_\_\_\_\_

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

preaudit certificate, if applicable \_\_\_\_\_

