

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into between Level 3 Communications, LLC (“Level 3”), a Delaware corporation qualified to do business in Oregon with its principal place of business in Broomfield, Colorado and the City of Portland, Oregon, (“the City”), a duly incorporated home rule municipality organized and existing under Oregon law. Level 3 and the City may be individually referred to as “the Party” and jointly as “the Parties”.

RECITALS:

1. The Parties have been in dispute concerning the extent of Level 3’s obligations to pay franchise fees to the City for use of City streets for its telecommunications facilities pursuant to Ordinance No. 173930, as subsequently extended by City Council (“the Level 3 Franchise”).

2. The Parties have also been in dispute concerning the franchise fee payments made by Level 3’s subsidiaries, WilTel (fka Williams Communications, Inc.) and FTV Communications, LLC.

3. The City contends that Level 3 has not fully paid the franchise fees due and owing to the City from Level 3, WilTel and FTV Communications, LLC. Level 3 disputes such claims.

4. The Portland City Council authorized its City Attorney to file suit against Level 3 to recover past due franchise fees and interest. Resolution No. 36639.

5. The Parties now wish to settle the franchise fee dispute between the City, Level 3, WilTel and FTV Communications, LLC.

6. In order to resolve other franchise issues between Level 3 and the City, Level 3 will provide the City with an Innerduct IRU agreement, allowing the City the use of one innerduct

located approximately between the Steel Bridge to Lawnfield Road in Clackamas County (a distance of approximately 58,000 feet), as well as entering into a mutual IRU agreement with the City which will cover Level 3's use of a City-owned innerduct crossing the Steel Bridge in exchange for the City's use of a Level 3-owned innerduct under the Willamette River between the Broadway Bridge and the Fremont Bridge.

7. In anticipation of providing the Innerduct IRU agreement to the City, Level 3 has recorded with Multnomah County a perpetual easement deed, evidencing Level 3's authority to access the property within which the innerduct is located. The City has also received a letter from the Union Pacific Railroad Company indicating that Level 3 has authority to provide an IRU to the City in the railroad's right of way. Level 3 has separately provided documentation of its rights to exchange the IRU for the City's use of the innerduct crossing under the Willamette River. Access to, and use of, these conduits by the City constitute a material component of this Settlement Agreement for the City.

8. The City shall separately proceed with initiating the formal Portland City Charter process for publishing and filing for the City Council's consideration an ordinance to issue a renewal franchise to Level 3. The renewal franchise shall incorporate the facilities owned and operated within the City by Level 3's wholly owned subsidiary companies: tw telecom of Oregon operating under Ordinance No. 171566; Broadwing Communications Services Inc. operating under Ordinance No. 175060; WilTel (fka Williams Communications, Inc.) operating under Ordinance No. 175063; and, FTV Communications, LLC operating under Ordinance No. 172863 (the "Level 3 Subsidiaries").

NOW THEREFORE, in consideration of the mutual promises and other valuable consideration exchanged herein, the Parties agree as follows:

1. Within five (5) business days of full execution of this Settlement Agreement by the City (which execution by the City is authorized only by ordinance approved by the City Council), Level 3 shall pay to the City \$2,750,000.00 (Two Million Seven Hundred Fifty Thousand Dollars).

2. a. Upon receipt of the payment from Level 3 and except as provided in Section 2.b, 2.c and 2.d, below, the City shall hereby waive, release and forever discharge Level 3 and Level 3 Subsidiaries, as well as their respective partners, parents, subsidiaries, affiliates, successors, assigns, officers and directors (collectively, the “Level 3 Releasees”), from any and all actions, causes of action, suits, complaints, arbitrations, debts, liens, contracts, agreements, promises, liabilities, claims, demands, collections, damages, losses, costs or expenses or other relief of any nature whatsoever, whether known or unknown, matured or unmatured, in law or in equity, which the City has had, now has or may have hereafter against any of the Level 3 Releasees for, upon, or by reason of, any matter, cause, or thing whatsoever arising out of or relating to franchise fees, interest, or penalties due or claimed to be due from the beginning of time up to and including October 31, 2016. Except as expressly provided in this Settlement Agreement, the City otherwise waives any claim to past due franchise fees, interest, or penalties through October 31, 2016.

b. For the period between December 31, 2014 and October 31, 2016, Level 3 and Level 3 Subsidiaries have represented to the City that they have made franchise fee payments to the City consistent with the methodology set forth in the letter from Steven C. Gordon, Senior Director, Network Infrastructure Services, Level 3 to Deputy City Attorney Terence L. Thatcher, on the subject of Level 3 Communications, LLC Franchise Agreement with the City of Portland (dated May 2, 2014). For the period between December 31, 2014 and October 31, 2016, the City

Settlement Agreement – City of Portland, Oregon and Level 3

reserves the right to audit the franchise fee payments made by Level 3 and Level 3 subsidiaries, in accordance with the audit procedures set forth in Section 3 of the Level 3 franchise. Any such audits shall occur, if at all, within the time frame set forth in Section 3 of the Level 3 franchise.

c. The release provided in Section 2.a. of this Settlement Agreement does not otherwise waive, release or discharge the City's separate on-going franchise fee audit dispute with tw telecom of Oregon for the period between October 1, 2013 and September 30, 2015 as identified in the July 27, 2016 Revenue Division Audit Report for Account #91020354 (the "tw telecom franchise fee dispute"). The tw telecom franchise fee dispute shall be resolved between the City and tw telecom of Oregon separate and apart from this Settlement Agreement.

d. The release provided in Section 2.a. of this Settlement Agreement does not waive, release, or discharge Level 3's non-payment related obligations under the Level 3 Franchise, nor the obligations of any of the Level 3 subsidiaries to comply with their respective non-payment related franchise obligations.

3. During the remainder of the Level 3 Franchise, until superseded by the grant of a renewal franchise by the City, Level 3 agrees to pay franchise fees on revenues derived by Level 3 from the provision of telecommunications services in accordance the methodology set forth in the franchise fee report submitted by Level 3 attached as Exhibit 1 to this Settlement Agreement.

4. Except as provided in Section 2.b and in this Section 4, Level 3 and Level 3 Subsidiaries, as well as their respective partners, parents, subsidiaries, affiliates, successors, assigns, officers and directors (collectively, the "Level 3 Releasors") hereby waive, release and forever discharge the City from any and all actions, causes of action, suits, complaints, arbitrations, debts, liens, contracts, agreements, promises, liabilities, claims, demands, collections, damages, losses, costs or expenses or other relief of any nature whatsoever, whether known or unknown, matured or

unmatured, in law or in equity, which any of the Level 3 Releasers has had, now has or may have hereafter against the City for, upon, or by reason of, any matter, cause, or thing whatsoever arising out of or relating to the amount or refund of franchise fees, interest, or penalties due or claimed to be due by City from the beginning of time up to and including October 31, 2016.

5. The releases described herein shall be effective upon the City's receipt of the payment from Level 3 provided for in Section 1 of this Settlement Agreement.

6. The Parties acknowledge that they have carefully read and understand the provisions of this Settlement Agreement. The Parties enter into this Settlement Agreement freely, knowingly and voluntarily. The Parties have participated equally in the preparation of this Settlement Agreement, and have had the opportunity to consult with their respective legal counsel before executing this Settlement Agreement.

7. Miscellaneous.

a. The terms set forth in this Settlement Agreement are contractual and not merely recitals. There is no other agreement, promise or inducement for this Settlement Agreement other than as expressed in this Settlement Agreement. This Settlement Agreement contains the full and entire understanding of the Parties. There are no other prior or contemporaneous representations, warranties, statements or agreements, oral or written, between the Parties except as expressly set forth in this Settlement Agreement. The Parties agree no other promises have been made by either Party, either express or implied, in order to induce them to settle that are not set forth in this Settlement Agreement.

b. The Parties understand and agree that this Settlement Agreement is a settlement and compromise of disputed claims. Except as otherwise explicitly set forth in this Settlement

Agreement, this Settlement Agreement does not constitute an admission of liability, or of any alleged fact or defense, by any Party.

c. This Settlement Agreement shall be binding upon the Parties' respective successors and assigns.

d. Neither Party shall be relieved of its respective obligations to comply with any of the terms and conditions of this Settlement Agreement by reason of any failure of the other Party to require prompt compliance, nor does either Party waive or limit any of its rights under this Settlement Agreement by reason of such failure or neglect.

e. Any litigation arising under or regarding this Settlement Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

f. This Settlement Agreement shall be construed according to the law of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different jurisdiction.

g. This Settlement Agreement may not be amended, except in writing and signed by duly authorized representatives of both Parties and subject to approval by the City Attorney's Office. Level 3 acknowledges that City employees have no actual or apparent authority to waive the approval of the City Attorney's Office.

h. The persons below, by their signatures, acknowledge they have full legal authority to execute this Settlement Agreement as binding upon the Parties.

i. Each Party agrees to cooperate with the other in the execution of any documents necessary and related to the Parties' settlement of the various disputes as described in this Settlement Agreement.

k. This Settlement Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Settlement Agreement.

IN WITNESS WHEREOF, the Parties have set their hands on the date and year of the last signature affixed hereto.

City of Portland, Oregon

Level 3 Communications, LLC

By: _____

By: [Signature]

Title: _____

Title: SVP Access Mgmt

Date: _____

Date: 12-6-16

STATE OF _____)
) ss.
County of _____)

This instrument was acknowledged before me on _____, by _____, as the _____ of the City of Portland, Oregon, an Oregon municipality, as a duly authorized representative of the City.

Notary Public

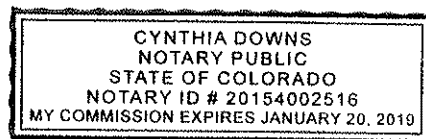
STATE OF Colorado)
) ss.
County of Broomfield)

This instrument was acknowledged before me on 12/16/16, by Mike Riederer, as the Senior Vice Pres of Level 3 Communications, LLC a Delaware corporation, as a duly authorized representative of the corporation.

[Signature]
Notary Public

Approved as to Form:

City Attorney





CITY OF PORTLAND, OREGON

Office for Community Technology
111 SW Columbia St, Suite 600, Portland, OR 97201
PO Box 745, Portland, OR 97207-0745

Exhibit 1

FORM B

FORM B - For entities with a franchise agreement requiring quarterly reports and a separate treatment of lease, sales, and IRU revenue.

1. a. Name of Company: _____
 b. Account #: _____
 c. House #: _____ Street Name: _____ Suite #: _____
 City: _____ State: _____ Zip: _____

2. Reporting Period: _____ ☐ Minimum Annual Fee report (skip to line 16)

3. Total Revenues Earned in Portland for Reporting Period: _____
 (Include total of all revenues, including sales, leases and IRUs)

4. Revenues Earned in Portland Not Subject to Fee (list all by source and amount):

a. Uncollectibles/bad debt.....	4 a	\$0.00
b. Customer late fees & interest.....	4 b	\$0.00
c. Federal, state or local law limitations.....	4 c	\$0.00
d. Other (specify)		

Description	Amount
Other Total:	

TOTAL \$0.00

5. Subtotal of revenues subject to fee \$0.00

Instructions for Lines 6-9: This section is for franchises, temporary revocable permits, and other agreements that specify separate treatment of revenues from system sales, system leases, or Indefeasible Rights of User Interest (IRUs).

6. Revenue derived from Portland portion of system sales \$0.00
 Compensation Rate on sales revenue 0 %
 Fee on sales revenue \$0.00

7. Revenue derived from Portland portion of system leases \$0.00
 Compensation Rate on lease revenue 0 %
 Fee on lease revenue \$0.00

8. Revenue derived from Portland portion of IRUs \$0.00
 Compensation Rate on revenue from IRUs 0 %
 Fee on IRU revenue \$0.00



CITY OF PORTLAND, OREGON

Office for Community Technology
111 SW Columbia St, Suite 600, Portland, OR 97201
PO Box 745, Portland, OR 97207-0745

FORM B

9.	Subtotal of sales, lease, and IRU derived fees	\$0.00						
10.	Subtotal of revenues subject to gross revenues fee	\$0.00						
11.	Compensation rate	0%						
12.	Gross revenues fee	\$0.00						
13.	Subtotal of all fees due	\$0.00						
14.	Other Credits/Adjustments (list all by source and amount):							
	a. Franchise Fees previously paid for this period.....14 a	\$0.00						
	b. Other (specify)							
	<table border="1"> <thead> <tr> <th>Description</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td>Other Total:</td> <td></td> </tr> </tbody> </table>	Description	Amount			Other Total:		<div>Add Line</div> <div>Remove Last Line</div>
Description	Amount							
Other Total:								
	TOTAL	\$0.00						
15.	TOTAL FEE	\$0.00						
16.	MINIMUM ANNUAL FEE DUE	\$0.00						
17.	TOTAL DUE	\$0.00						

Name: _____ Title: _____ Phone: _____ Date: _____
Email: _____

☐ I hereby certify I am an officer or other authorized representative of the entity listed above and all statements made in this report and any of its attachments are true, complete and accurate to the best of my knowledge.

I would like to pay by: ☐ ACH ☐ Check



PLEASE INCLUDE THIS PORTION WITH YOUR PAYMENT

Name of Company:	<input type="text"/>	Due Date:	<input type="text" value="Pay immediately"/>
Account #:	<input type="text"/>	Amount Due:	<input type="text" value="\$0.00"/>
Reporting Period:	<input type="text"/>		

Make check payable to: City of Portland
Office for Community Technology
PO Box 745
Portland, OR 97207-0745

Exhibit B

CITY OF PORTLAND INDEFEASIBLE RIGHT TO USE INNERDUCT AGREEMENT

THIS INDEFEASIBLE RIGHT TO USE (IRU) INNERDUCT AGREEMENT (“**Agreement**”) is made and entered into as of the _____ day of _____, 2016 (the “**Effective Date**”), by and between Level 3 COMMUNICATIONS, LLC, a Delaware limited liability company (“**Level 3**”) and the City of Portland, a duly incorporated Oregon municipal corporation (“**CITY**”). The signatories to this Agreement are individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

Recitals

WHEREAS, Level 3 owns a conduit system in Portland, OR, including the Innerduct (defined below and further described in Exhibit A) (the “**LEVEL 3 Conduit**”) which is contained in Level 3 Conduit along the length of the route identified in the map attached to this Agreement as Exhibit B;

WHEREAS, Level 3 is the successor in interest to FTV Communications, LLC (“FTV”). FTV was obligated to provide the City with franchise required assets pursuant to FTV’s franchise with the City, Ordinance No. 172863, but failed to deliver such conduit to the CITY pursuant to the terms thereof (“CONDUIT SALE”); and

WHEREAS, Level 3 and the CITY desire to cure such failed CONDUIT SALE by granting the CITY the right to use the Innerduct pursuant to the terms and conditions herein.

WHEREAS, Level 3 has provided assurances in various forms to the City regarding Level 3’s rights and authority to assign Innerduct rights to the City in Level 3 Conduit, as further described in Article 2 of this Agreement, and the City is entering into this Agreement in reliance upon those assurances.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the parties to this Agreement do hereby agree as follows:

ARTICLE 1. RECITALS AND DEFINED TERMS.

1.1 The above referenced recitals are incorporated in this Agreement as if fully set forth herein.

1.2 Capitalized terms that have not been otherwise defined herein shall have the meanings set forth below:

(a) “**Access Point**” shall mean a manhole/handhole where LEVEL 3 will provide the CITY with access to the Innerduct conveyed to it hereunder. Access Points are set out in Exhibit A, attached to this Agreement. Additional Access Points may also be requested by the CITY in writing and provided in the sole discretion of LEVEL 3. Level 3 shall not unreasonably deny the City’s requests for Access Points. The CITY will be responsible for all costs associated with Access Points, including, but not limited to, splice and test fees, splice enclosures, fiber, escort charges, permit fees, traffic control and related costs. Additional Access Points requested by the City and brought to the edge of the public right of way (or within the public right of way) will be owned by the City.

(b) **“Innerduct”** shall mean a single, enclosed 1 ¼” HDPE tube and space within a LEVEL 3 Conduit designated by LEVEL 3 and used to enclose and carry cable.

(c) **“Manhole/Handhole”** shall mean the subsurface enclosures that personnel may enter or use for accessing the Innerduct.

ARTICLE 2. GRANT OF IRU.

2.1 Upon the CITY’s final acceptance of the Innerduct from LEVEL 3, LEVEL 3 shall sell, convey, transfer, assign and deliver to the CITY and the CITY shall accept and acquire from LEVEL 3 all of LEVEL 3’s assignable interest in and to the Innerduct, including without limitation an exclusive, indefeasible right of use in the Innerduct (**“IRU”**). Notwithstanding the foregoing, LEVEL 3 shall otherwise retain legal title to all of the LEVEL 3 Conduit. Level 3’s assignable interest does not include the right to own or transfer title.

2.2 The CITY’s right to own, control, maintain, modify or revise the Innerduct, the right of physical access to the Innerduct, or the right to encumber the Innerduct is limited to those rights expressly set forth in this Agreement.

2.3 Notwithstanding anything to the contrary herein, the Parties agree that upon the Acceptance Date, the grant of the IRU in the Innerduct shall be fully performed and shall be deemed severable and non-executory, and shall not be subject to assumption or rejection in any proceeding, notwithstanding any maintenance or other obligations contemplated to occur in the future pursuant to this Agreement, which obligations are ancillary to the main purpose of this Agreement.

2.4 The CITY may use the IRU and the Innerduct being conveyed to it hereunder for any lawful purpose, subject to the terms and conditions of this Agreement.

2.5 The CITY agrees not to take any action or inaction that will result in a lien being placed on the Level 3 Conduit.

ARTICLE 3. TERM.

3.1 Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall be for the shorter of the useful economic life of the Innerduct or until the termination of Level 3’s use of the railroad right of way (**“Term”**), commencing on the Acceptance Date, as defined in Section 4.2 below.

3.2 If at anytime after the Effective Date the CITY determines that the Innerduct has reached the end of its economic useful life, or otherwise desires not to retain the IRU, the CITY shall have the right to terminate the IRU by providing sixty (60) days written notice to LEVEL 3. Upon any such notice of termination by the CITY, the term of this Agreement shall expire with respect to such the Innerduct and all rights in and use of such the Innerduct shall revert to LEVEL 3 without reimbursement of any fees or other payments previously made with respect to this Agreement, and from and after such time, the CITY shall have no further rights or obligations hereunder with respect to such Innerduct.

3.3 This Agreement shall become effective on the date hereof and shall terminate on the expiration of the Term or any earlier termination provided for hereunder.

ARTICLE 4. TESTING AND ACCEPTANCE.

4.1 Upon the Effective Date, LEVEL 3 shall provide the CITY with records and documents, to the extent they exist in LEVEL 3's possession, regarding the results of any prior testing that LEVEL 3 may have conducted on the construction, installation and performance of the Innerduct that LEVEL 3 proposes to convey. The CITY may, at the CITY's expense, test the Innerduct to be conveyed to the CITY to determine if it was constructed, installed and is performing in accordance with prevailing industry standards as set forth in Exhibit E attached to this Agreement. Level 3 shall use best efforts to ensure the City's access to the Innerduct so that the City may test the Innerduct within a reasonable period of time after the Effective Date.

4.2 The CITY shall within sixty (60) days of the Effective date or the date of the CITY's testing, whichever is later, either accept the LEVEL 3 Innerduct by delivering a notice of acceptance to LEVEL 3 ("**Notice of Acceptance**") or reject the LEVEL 3 Innerduct by delivering a notice of rejection ("**Notice of Objection**") to LEVEL 3 specifying the material defect or failure to meet prevailing industry standards as set forth in Exhibit E. If LEVEL 3 receives a Notice of Objection, LEVEL 3 shall repair the Innerduct and notify the CITY in writing that the Innerduct is again ready for testing ("**Notice of Repair**") and the foregoing procedure shall apply again and successively thereafter until the CITY accepts the Innerduct or undertakes to remedy the unsatisfactory conditions as set forth in the next sentence. In the event the CITY delivers two (2) Notices of Objection for the same defect or failure and LEVEL 3 fails to find or cannot confirm or refuses to correct any such defect or failure, then the CITY may select another Innerduct in consultation with LEVEL 3 as its sole remedy hereunder. In addition, LEVEL 3 recognizes that its failure to successfully provide an acceptable Innerduct within two (2) Notices of Objection for the same defect or failure may have a material adverse impact on the CITY's business and operations, and that the damage caused by such delay may not be susceptible of precise determination. If the acceptance of the Innerduct by the CITY has not occurred within two (2) Notices of Objection for the same defect or failure, then the CITY shall be entitled to a daily pro rata credit of \$50.00 for each day after second Notice of Objection that acceptance has not occurred, until the Innerduct has been accepted by the CITY. The credit is agreed upon as liquidated damages and not as a penalty. The Parties to this Agreement have computed, estimated and agreed upon the sum as an attempt to make a reasonable forecast of probable actual loss because of the difficulty of estimating the damages that will result. Any failure of the CITY to timely deliver a Notice of Objection shall be deemed to constitute acceptance of the Innerduct for purposes of this Agreement and the CITY shall be deemed to have delivered a Notice of Acceptance on the sixty-first (61st) day after the Effective Date or the date the CITY receives a Notice of Repair from LEVEL 3. In addition, any use by the CITY of the Innerduct other than solely for the purpose of testing the performance of the Innerduct shall be deemed to constitute Acceptance. The date on which the CITY delivers a Notice of Acceptance, or on which the CITY's acceptance is deemed, shall be the "**Acceptance Date**".

ARTICLE 5. MAINTENANCE AND REPAIR.

5.1 Wholly separate from conveyance of the IRU to the Innerduct, LEVEL 3 will provide maintenance and repair services necessary to maintain the Innerduct in accordance with the terms and conditions set forth below. It is the intent of the Parties that the maintenance and repair obligations hereunder constitute a separate and severable portion of this Agreement from the conveyance of the Innerduct.

5.2 From and after the Acceptance Date, LEVEL 3 shall maintain and repair the Innerduct granted by it in accordance with prevailing industry standards. When performing

maintenance and repairs, LEVEL 3 shall in all cases use commercially reasonable efforts to minimize disruption of the CITY's business operation. LEVEL 3 shall perform all Preventive Maintenance and Reactive Maintenance (as defined in Exhibit C attached to this Agreement). The CITY shall be responsible and pay LEVEL 3 for its proportionate share (based on the proportion of the Innerduct to the total number of innerducts so affected) of all Preventive Maintenance and Reactive Maintenance affecting the Innerduct, except to the extent the need for such maintenance is caused by the negligence or willful misconduct of the CITY or LEVEL 3 in which case such party shall bear all costs for such maintenance. In order to process payments to LEVEL 3 through the CITY's accounts payable system, LEVEL 3 must provide to the City copies of all invoices and other documentation showing computation of maintenance to which City is a party. LEVEL 3 shall also be responsible for all "one-call" and locate services for the Innerduct conveyed to the CITY. In the event of an emergency requiring repair, restoration and/or replacement of the Innerduct, LEVEL 3 will commence such repair, restoration and/or replacement within four (4) hours of the City notifying a Level 3 network operation control center of such condition. In the event LEVEL 3 does not commence emergency maintenance within four hours, the CITY shall have the right to perform the necessary maintenance at LEVEL 3's sole cost and expense.

5.3 LEVEL 3 shall operate and maintain one or more network operation control centers staffed twenty-four hours a day, seven days a week by trained and qualified personnel beginning with the Acceptance Date. Level 3 maintenance personnel shall be available for dispatch twenty-four hours a day, seven days a week. The CITY shall promptly report the need for any maintenance in accordance with the procedures set forth in Exhibit D.

ARTICLE 6. ACCESS TO THE INNERDUCT.

6.1 LEVEL 3 shall have the right to control all activities concerning access to the Innerduct, except for activities in vaults located in the public right of way that only involve repairs or modifications to existing slack fiber cable or splice cases related to the CITY conduit, or as to activities regarding installation or maintenance of any optronics, electronics, electrical, optical, or other equipment or related facilities within Access Points located in or brought to the edge of the public right of way under the CITY's control.

6.2 Any work requested by the CITY to be performed on the Innerduct, including, without limitation, the installation of handholes or other Access Points, shall be undertaken only by LEVEL 3 at the CITY's request. All such work shall be performed in a timely manner consistent with standard industry practices. LEVEL 3 shall supply a proposed scope of work and cost estimate in reasonable detail prior to performance of any such work. The CITY shall reimburse LEVEL 3 for the actual, reasonable direct costs incurred in the performance of such work plus a management fee of ten percent (10%), within thirty (30) days after receipt of invoice therefore.

6.3 The CITY will be entitled to access to the Innerduct at any of the Access Points provided it gives LEVEL 3 twenty-four (24) hours advance notice of the location to be accessed, and provided further that any such access is subject to the provisions of applicable underlying authorizations. LEVEL 3 may, at its expense, observe all activities of the CITY associated with such access. The CITY does not have the right to access any portion of the INNERDUCT that is outside the public right-of-way.

ARTICLE 7. OPERATIONS.

7.1 LEVEL 3 shall not interfere with or materially or adversely affect, or permit any other party under the control of LEVEL 3 to interfere with or materially or adversely affect, the CITY's use of the Innerduct and/or any optronics, electronics, electrical, optical, or any other

equipment or related facilities owned, operated or used by the CITY in connection with the Innerduct. CITY shall not interfere with or materially or adversely affect, or permit any other party under the control of City to interfere with or materially or adversely affect, LEVEL 3's use, or any other party permitted by Level 3 to use the Level 3 Conduit, and/or any optronics, electronics, electrical, optical, or any other equipment or related facilities owned, operated or used by LEVEL 3 in connection with the Level 3 Conduit.

7.2 The CITY acknowledges and agrees that LEVEL 3 is not supplying nor is LEVEL 3 obligated to supply to the CITY any optronics or electronics or optical or electrical equipment, any related facilities, or any space for the placement thereof (except as may be agreed in any agreement executed by the Parties), all of which are the sole responsibility of the CITY.

ARTICLE 8. RELOCATION, REPLACEMENT AND CONDEMNATION

8.1 If LEVEL 3 receives notice of any request, intent or plan by any third party ("**Relocation Request**"), including but not limited to any Governmental Authority (as defined below), to relocate any part of the Innerduct, LEVEL 3 shall notify the CITY of such Relocation Request and shall keep the CITY advised of the status of any such proceedings and negotiations related thereto. If relocation is required as a result of a Relocation Request, LEVEL 3 shall give the CITY at least sixty (60) days prior written notice of any relocation, provided that LEVEL 3 receives at least that much advance notice of the Relocation Request ("**Relocation Notice**") including an estimate of the cost. LEVEL 3 shall relocate the Innerduct and to the extent LEVEL 3 is not reimbursed for the costs of such relocation by a third party or Governmental Authority, the CITY shall pay its pro rata share (based on the proportion of the Innerduct to the total number of innerducts so affected) of the actual, reasonable direct costs incurred by LEVEL 3 in relocating the Innerduct. Upon request by the CITY, Level 3 shall provide the CITY with copies of any underlying documentation relating to the relocation costs. In order to process payments to LEVEL 3 through the CITY's accounts payable system, LEVEL 3 must provide to the City copies of all invoices and other documentation showing computation of cost of relocation to which City is a party. The term "**Governmental Authority**" shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and other authorities.

8.2 In the event a part of the Innerduct requires replacement during the IRU Term or Renewal Term, if applicable, prior to the end of the Innerduct's useful life, such replacement shall be made as soon as commercially reasonable at LEVEL 3's sole cost and expense; except, however, if the replacement of the Innerduct is required as a result of the negligence or willful misconduct of the CITY or LEVEL 3, LEVEL 3 shall replace the Innerduct at such party's sole cost and expense.

8.3 If any portion of the Innerduct shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, the CITY shall be entitled to participate in any condemnation proceedings and to seek to obtain compensation for the economic value of its interest in the facilities so condemned, provided that LEVEL 3's recovery for any exclusive property rights that it holds are not reduced by any compensation paid to the CITY. In order to allow the CITY reasonable opportunity to appear and meaningfully participate in such proceedings, LEVEL 3 shall provide written notice to the CITY immediately of any condemnation action brought or threatened against any part of the Innerduct, or any private easements within which the Innerduct is located. LEVEL 3 also agrees not to convey any site on which is located any equipment or building of the CITY to such condemning authority

in lieu of condemnation without reasonable prior notice to the CITY.

ARTICLE 9. TITLE AND TAXES.

9.1 The Parties acknowledge and agree that Level 3 shall be considered the owner of the Innerduct and the CITY shall have the exclusive right of use of the Innerduct, subject to the terms thereof. LEVEL 3 agrees that it will not take any action that is inconsistent with the CITY's interest in the IRU other than as expressly provided for herein. Except as otherwise required by law, the Parties shall file (or cause to be filed with respect to any consolidated returns) their respective tax returns and other returns and reports for their respective taxes. The Parties acknowledge that the IRU constitutes an indefeasible grant to the CITY of an exclusive beneficial ownership interest in the Innerduct and that the grant of the IRU is intended to be non-executory in nature.

9.2 Intentionally Omitted.

9.3 The CITY shall be responsible for, and shall timely pay directly to the taxing authority, any and all personal property taxes attributable to the Innerduct, except to the extent that the CITY is a tax exempt entity under Oregon law. The CITY shall apply for exemption from any applicable personal property taxes attributable to the Innerduct, and to the extent that the CITY is determined to be a tax exempt Oregon municipality, the CITY shall not be obligated to pay taxes under this section.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES.

10.1 The CITY represents and warrants that it will use the Innerduct and the IRU granted hereunder in compliance with all applicable codes, ordinances, laws, rules and regulations of any applicable Governmental Authority and underlying authorizations.

10.2 LEVEL 3 represents and warrants that it has obtained or will obtain all regulatory approvals, as well as any franchises, permits, orders, easements, title or other consents, either by contract, franchise or some other agreement, and all other rights necessary (for purposes of Article 10 collectively, "**Authorizations**") to be obtained by LEVEL 3 to enable it to construct, install and provide the Innerduct, grant the IRU to the CITY, and perform all other rights and obligations hereunder. LEVEL 3 shall cause such Authorizations to remain effective through the Term or to replace such Authorizations with suitable replacement Authorizations as applicable. In the event that any Authorizations are discontinued and not replaced and the loss of such Authorizations prohibits the use of the Innerduct, LEVEL 3 will notify the CITY of the loss of such Authorizations. LEVEL 3 will determine whether LEVEL 3 possesses substitute assets that will be of comparable utility. If LEVEL 3 does not have such assets or is not able to deliver such assets, then LEVEL 3 and the CITY shall consult to determine which of LEVEL 3's available remaining assets will be delivered to the CITY to achieve a transfer of comparable utility. In the event the Parties are unable to reach agreement within thirty (30) days after the delivery of LEVEL 3's notice, the matter shall be resolved according to the dispute resolution steps provided below. LEVEL 3 will provide the CITY copies of all Authorizations upon request.

(a) In the event that representatives from LEVEL 3 and the CITY cannot resolve the matter, it shall be referred to persons with higher authority on the part of the CITY and the LEVEL 3, who also shall have the authority to resolve the dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after

having had a sufficient time to review the matter. If the matter is not resolved after this meeting, the CITY and LEVEL 3 agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon the CITY and LEVEL 3 agree to present the matter to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the LEVEL 3 and CITY. If the matter is not resolved by mediation, the LEVEL 3 and CITY may mutually agree to resolve the dispute by arbitration.

(b) The CITY may initiate arbitration by resolution of its City Council, while LEVEL 3 may choose to initiate arbitration by sending written notice to the City. After arbitration has been initiated, the CITY and LEVEL 3 may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court. If either the CITY or LEVEL 3 does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(1) If the CITY initiates arbitration, the CITY, by written notice, shall select one arbitrator and LEVEL 3 by written notice shall select one arbitrator within 15 days after passage of the resolution. If LEVEL 3 initiates arbitration, it shall identify its selected arbitrator in its written notice, and the CITY shall select one arbitrator, within 15 days after receiving the notice.

(2) The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(c) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the CITY and LEVEL 3. The arbitrator(s) shall make a written report to the CITY and LEVEL 3 on the final determination within 60 days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. Once initiated by the parties, the arbitration shall be conducted according to the Uniform Arbitration Act, ORS 36.600 to ORS 36.740 (2011). The CITY shall pay the arbitration fee required to initiate the arbitration. The CITY and LEVEL 3 shall otherwise share equally the fees and costs of the arbitrator(s).

(d) The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to

this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this Agreement.

(e) If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution of the matter through litigation.

10.3 The CITY represents and warrants that it has obtained or will obtain prior to the Acceptance Date all Authorizations to be obtained by it that are necessary to enable it to use, operate, or access the Innerduct and the IRU granted hereunder and to perform all other rights and obligations hereunder. The CITY shall cause such Authorizations to remain effective through the IRU Term or to replace such Authorizations with suitable replacement Authorizations as applicable.

10.4 Each Party represents and warrants that: (i) it has the power and authority to enter into, execute, and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; (iv) it shall not commit a breach of any other agreement as a result of executing this Agreement or as a result of the obligations imposed upon it hereunder; and (v) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any Governmental Authority.

10.5 Each Party represents and warrants to the other that there are no pending, or to the knowledge of such Party, threatened actions, suits, claims, condemnations or other proceedings (i) which would materially and adversely affect the Innerduct being delivered hereunder by LEVEL 3, the LEVEL 3 Conduit, or the ability of either Party to consummate the transactions and perform the obligations contemplated hereby, (ii) which would result in any charge being levied against, or lien assessed on the Innerduct being delivered by LEVEL 3 hereunder which lien would materially and adversely affect the CITY's use of the Innerduct, or (iii) in which either Party is or will be a party by reason of either Party's interests in the Innerduct.

10.6

(a) If LEVEL 3 receives notice from any grantor or provider of an underlying Authorization that LEVEL 3 has failed to observe or perform its obligations under such underlying Authorization, and LEVEL 3 is not contesting in good faith the validity of such claimed or alleged failure, LEVEL 3 shall give written notice to the CITY and the CITY may, at its option (subject to the terms and provisions of the underlying Authorization and the ability of third parties to cure defaults of LEVEL 3 thereunder), cure or correct such failure and LEVEL 3 shall reimburse the CITY for the costs and expenses incurred by the CITY in connection therewith. The CITY shall promptly inform LEVEL 3 in writing of its decision on whether to obtain reimbursement.

(b) LEVEL 3 agrees to defend, indemnify, and hold harmless the CITY from and against, any and all losses arising from:

(1) Any failure by LEVEL 3, its or their employees or agents to comply with any obligation imposed on any of them under any underlying Authorization;

(2) Any claims or actions concerning any of the LEVEL 3 Conduit or any railroad right of way by a lessor or other grantor, including without limitation any attempt by such lessor or other grantor to revoke such lease or other grant or to possess the associated facilities;

(3) Any claims or actions concerning any of the LEVEL 3 Conduit by a

person with a third party interest, including without limitation any attempt by such third party to take title to or possession of LEVEL 3 Conduit, or eject or dispossess LEVEL 3; or,

(4) Any claims or actions concerning LEVEL 3's rights in the underlying Authorization, including without limitation that LEVEL 3 is trespassing.

ARTICLE 11 INSURANCE.

11.1 At all times during the Term (or Renewal Term if applicable) each Party shall procure and maintain in force, at its own expense:

(a) not less than \$2,000,000 combined single limit liability insurance, on an occurrence basis, for personal injury and property damage, including, without limitation, injury or damage arising from the operation of vehicles or equipment and liability for completed operations;

(b) workers' compensation insurance in amounts required by applicable law and employers' liability insurance with a limit of at least \$1,000,000 per occurrence; and

(c) automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$1,000,000 per occurrence.

11.2 LEVEL 3 acknowledges that, in lieu of the insurance requirements set forth in Section 11, the CITY is self-insured under ORS 30.282(2). In addition, the CITY is qualified for self-insurance under ORS 806.130 of the Oregon Vehicle Code. The CITY is a subject employer under ORS 656.017 and provides Oregon workers' compensation coverage for all its subject workers. Upon written request from LEVEL 3, the CITY shall submit a certified copy of the CITY's most recent audited financial statements, and other evidence demonstrating its qualifications to act as a self-insurer under Oregon law.

11.3 If either Party self-insures, fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, such Party shall indemnify and hold harmless the other Party from any and all claims for which the required insurance would have provided coverage. Further, other than the case of self-insurance, in the event of any such failure which continues after seven (7) days' written notice thereof by the other Party, such other Party may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Party failing to obtain such insurance.

11.4 In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided above, the Party carrying such coverage shall make good-faith efforts to pursue such claim with its carrier.

11.5 Each Party hereby waives their respective rights of recovery against each other and the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of either Party, for any loss arising from any cause covered or that would be covered by fire, extended coverage, All Risks or other insurance required to be carried under this Agreement or now or hereafter existing for the benefit of the respective Party. The Parties will cause from time to time their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with their respective property.

11.6 In the event a claim exceeds insurance amounts set forth in this Article, the amount of insurance shall in no way be construed as limiting a Party's liability to the amount of such insurance. The City's legal responsibilities to indemnify and hold harmless, beyond the limits of the insurance provided under this Article, shall be subject to the applicable conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

ARTICLE 12. DEFAULT AND TERMINATION.

12.1 In the event either Party (a "**Breaching Party**") fails to perform an obligation or observe a term or condition of this Agreement and such failure continues for a period of thirty (30) days after written notice of such failure to the Breaching Party from the other Party ("**Non-Breaching Party**"), the Breaching Party shall be in breach of this Agreement. In the event such failure cannot reasonably be cured within such 30-day period, if the Breaching Party proceeds promptly to cure the same within the aforesaid period and continues to prosecute such cure with due diligence, the time for curing such failure shall be extended for such period of time as may reasonably be necessary to complete such cure; provided, however, that in no event shall any such failure remain uncured more than sixty (60) days after written notice of such failure to the Breaching Party. In the event the Breaching Party fails to cure in accordance with this provision, the Breaching Party shall be in material default of this Agreement and the Non-Breaching Party may resort to the remedies set forth below.

12.2 (a) Subject to the dispute resolution procedures described in Section 10.2 of this Agreement, upon the occurrence of any material default and following written notice to the other Party, the Non-Breaching Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default and recover from the Breaching Party its reasonable costs incurred in correcting such default or (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including specific performance.

(b) Notwithstanding the occurrence of a material default by a Party to this Agreement, LEVEL 3 shall have no right to revoke or restrict in any manner or to any degree whatsoever, through injunctive relief or otherwise, the use by the CITY of the Innerduct rights granted to it herein, it being understood and agreed that each such breach shall be compensable, if at all, by a remedy at law; provided, however, that Level 3 shall have the right to seek injunctive relief if the City's use of the Innerduct rights is otherwise in breach of this Agreement, and such breach is materially interfering with use of the Level 3 Conduit, causing harm to Level 3 that is not otherwise compensable by damages.

ARTICLE 13. MISCELLANEOUS.

13.1 Force Majeure. Except for any payments that may be due hereunder, neither Party shall be liable for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is directly caused by an event of force majeure, including but not limited to, fire, flood, explosion, accident, war, strike, embargo, governmental requirement, inability to obtain governmental authorization where no fault can be attributable to the Party seeking such authorizations, civil or military authority, act of God, inability to secure necessary materials, labor or transportation, acts or omissions of a common carrier, warehouseman, act of terrorism or other third party or any other cause beyond a Party's reasonable control. Any such delay or failure shall suspend the Agreement until the Force Majeure condition ceases.

13.2 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state. Any litigation between the CITY and LEVEL 3 arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

13.3 Public Records.

(a) LEVEL 3 acknowledges that information submitted by LEVEL 3 to the CITY may be open to public inspection under the Oregon Public Records Law. LEVEL 3 is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(b) LEVEL 3 may identify information submitted to the CITY as confidential, if LEVEL 3 reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. LEVEL 3 shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to the CITY. When submitting such information to the CITY, LEVEL 3 shall submit documentation to the CITY that specifically identifies the applicable exemption under the Oregon Public Records Law, and stating the reason(s) LEVEL 3 believes the information is exempt from public inspection. After reviewing the LEVEL 3's request for confidentiality, and determining whether the identified exemptions are applicable, the CITY shall take reasonable steps to protect the confidential nature of any such information, consistent with the Oregon Public Records Law, including only disclosing such information to employees, representatives, and agents thereof that have a need to know or in order to enforce the provisions of this Agreement.

(c) Within five (5) business days of receiving a public records request to inspect any such request, the CITY shall provide LEVEL 3 with written notice of the request, including a copy of the request. LEVEL 3 shall have five (5) business days within which to provide a written response to the CITY, before the City may disclose any of the requested confidential information. If the CITY determines that it will be necessary to reveal the information, the CITY shall promptly notify LEVEL 3, and do so at least five (5) business days prior to the information being released. The CITY shall retain final discretion to determine whether to release the requested information in response to any public records request, as recognized under the Oregon Public Records Law.

13.4 Public Announcements. The Parties acknowledge that the City's authority to enter into this Agreement must be approved by the Portland City Council by consideration and adoption of an ordinance, incorporating this Agreement and its exhibits, at a public meeting. Otherwise, neither Party shall issue any press release or make any public announcement relating to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party to this Agreement.

13.5 Further Assurances. Each of the Parties to this Agreement agrees to furnish such information, to do all acts and things, and to execute and deliver such agreements, documents, certificates, and instruments as shall from time to time be reasonably required to effectuate the transfers contemplated by this Agreement. Without limiting the generality of the foregoing, the Parties agree to cooperate with one another in completing documentation of the accounting, tax and regulatory aspects of the exchanges and/or payments made or to be made under this Agreement.

13.6 Binding Effect; Assignment. This Agreement will be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, personal representatives,

successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either Party to this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, provided, however, that each Party may freely assign this Agreement to any affiliate, subsidiary or purchaser of substantially all of the assets of the assigning Party, or to a successor in reorganization pursuant to a Plan or Plans of Reorganization in the Bankruptcy Court cases. Nothing contained in this Section 13.6 shall be deemed or construed to prohibit the CITY from leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements respecting the CITY fiber optic cable(s) installed in the Innerduct; provided, however, that any such grant shall be subordinate to this Agreement and shall not exceed the Term hereof.

13.7 No Third-Party Beneficiaries. This Agreement and all of its provisions are for the sole and exclusive benefit of the Parties to this Agreement and nothing contained or referred to in this Agreement shall be deemed to confer upon any person other than the Parties to this Agreement any right (whether legal or equitable), benefit, claim, or remedy. Under no circumstances shall this section be applied or construed to restrict or impair the CITY in entering into contracts with other governmental entities for sharing construction costs or rights of usage of any aspects of the CITY's Innerduct rights.

13.8 Severability. The transfer of the Innerduct shall be deemed to be a separate transaction from any other provisions of this Agreement. Notwithstanding anything to the contrary herein, the agreement to grant an IRU pursuant to this Agreement shall be deemed severable, and such grant and the sale, assignment and transfer to the CITY of all of LEVEL 3's beneficial right and interest in and to the Innerduct shall be fully performed and non-executory within the meaning of the 11 U.S.C. Section 365.

13.9 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement: (i) references to the singular include the plural, and references to the plural include the singular; (ii) words of the masculine gender include correlative words of the feminine and neuter genders; (iii) the headings or captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect; and (iv) the term "person" means any individual, corporation, partnership (whether general or limited), limited liability company, joint venture, estate, trust, association, organization, or other entity or governmental body. In addition, the Parties to this Agreement acknowledge and agree that each Party has retained counsel in connection with the negotiation and preparation of this Agreement, and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any schedule or exhibit to this Agreement.

13.10 Notices. All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the LEVEL 3:

Level 3 Communications LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Attn: Manager, Network Infrastructure Services

With a copy to:

Attn: General Counsel (same address)

If to the City:

The City of Portland, Oregon
Office for Community Technology
111 SW Columbia Street, Suite 600
Portland, OR 97201

With a copy to:

City Attorney's Office,
Room 430 City Hall
1221 SW Fourth Avenue,
Portland, OR 97204

Or such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by overnight air courier or on the third business day after posting if sent by registered or certified mail.

13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13.12 Incorporation of Recitals, Schedules and Exhibits. All Recitals, schedules and exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

13.13 Entire Agreement; Amendment; Waiver. This Agreement, together with all schedules and exhibits to this Agreement, contains the entire understanding and agreement among the Parties to this Agreement with respect to the subject matter hereof, and supersedes all prior discussions, understandings, and agreements (whether oral or written) between them with respect thereto. No amendment to, or modification or waiver of, any of the terms of this Agreement shall be valid unless in writing and signed by the Party against whom enforcement of such amendment, modification or waiver is sought. No failure or delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and

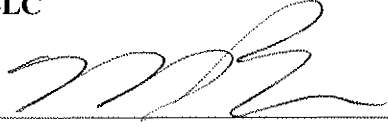
no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

IN WITNESS WHEREOF, LEVEL 3 and the CITY have executed this Agreement as of the date first above written.

THE CITY OF PORTLAND

**LEVEL 3 COMMUNICATIONS,
LLC**

By: _____

By:  _____

Print
Name: _____

Print
Name: Mike Rodger _____

Its: _____

Its: SUP Access Mgmt _____

EXHIBIT A

1. Market: Portland, OR
2. Innerduct IRU: 58,080 linear feet of Innerduct, beginning on the east side of the Willamette River near the Steel Bridge and continuing south to Lawnfield Road, as set forth on the map set forth in Exhibit B-1.

Upon the City's request, LEVEL 3 shall construct lateral extensions from the Innerduct to the edge of the public ROW at the Access and Demarcation Points, as follows:

<u>Location</u>	<u>Sheet Number</u>	<u>Side of Track</u>	<u>Station</u>	<u>When</u>
<u>Steel Bridge</u>	<u>50</u>	<u>E</u>	<u>556+40</u>	<u>Phase 1</u>
<u>Glisan St/Sullivan Pump</u>	<u>49</u>	<u>E</u>	<u>550+00</u>	<u>approx. Phase 1</u>
<u>Stark St</u>	<u>47</u>	<u>E</u>	<u>527+00</u>	<u>Phase 1</u>
<u>Clay St</u>	<u>44</u>	<u>W</u>	<u>490+47</u>	<u>Phase 1</u>
<u>Lincoln St</u>	<u>43</u>	<u>W</u>	<u>481+00</u>	<u>Phase 2</u>
<u>Division Pl</u>	<u>41</u>	<u>E</u>	<u>445-94</u>	<u>approx. Phase 2</u>
<u>Clinton St</u>	<u>41</u>	<u>E</u>	<u>449+47</u>	<u>Phase 2</u>
<u>Powell Blvd</u>	<u>39</u>	<u>W</u>	<u>431+85</u>	<u>Phase 2</u>
<u>Holgate St</u>	<u>36</u>	<u>E at S pole</u>	<u>394+50</u>	<u>approx. Phase 2</u>
<u>Bybee Overpass</u>	<u>31</u>	<u>E</u>	<u>338+00</u>	<u>Phase 2</u>
<u>Tacoma Overpass</u>	<u>28</u>	<u>E</u>	<u>304+00</u>	<u>Phase 2</u>
<u>Harrison</u>	<u>22</u>	<u>W</u>	<u>235+63</u>	<u>Phase 2</u>
<u>37th</u>	<u>21</u>	<u>E</u>	<u>213+58</u>	<u>Phase 2</u>
<u>Harmony Rd</u>	<u>15</u>	<u>E</u>	<u>135+47</u>	<u>Phase 2</u>
<u>82nd Ave</u>	<u>10</u>	<u>E</u>	<u>64+89</u>	<u>Phase 2</u>
<u>Lawnfield Rd</u>	<u>8</u>	<u>W</u>	<u>40+30</u>	<u>Phase 2</u>

The City may request additional or alternative sites if a future need materializes. Such sites will be subject to Level 3 approval.

Sheet numbers reference as-built drawings attached to this IRU Innerduct Agreement as Exhibit B-2

3. Innerduct configurations on date of signing. See attached As-Built Drawing
4. Charges:
Costs for Access Points shall be in accordance with Section 6.2 of the Agreement.
5. Estimated Delivery Date: Lateral extension to the edge of the right of way will be performed within 180 days of the City's written requests for specific Access Points. Level 3 will use best efforts to deliver Access and demarcation Points within 180 days of receiving the written requests on the listed access points. If Level 3 determines the City's proposed Access Points are not feasible, Level 3 shall work with the City to propose and deliver alternative locations acceptable to both parties.

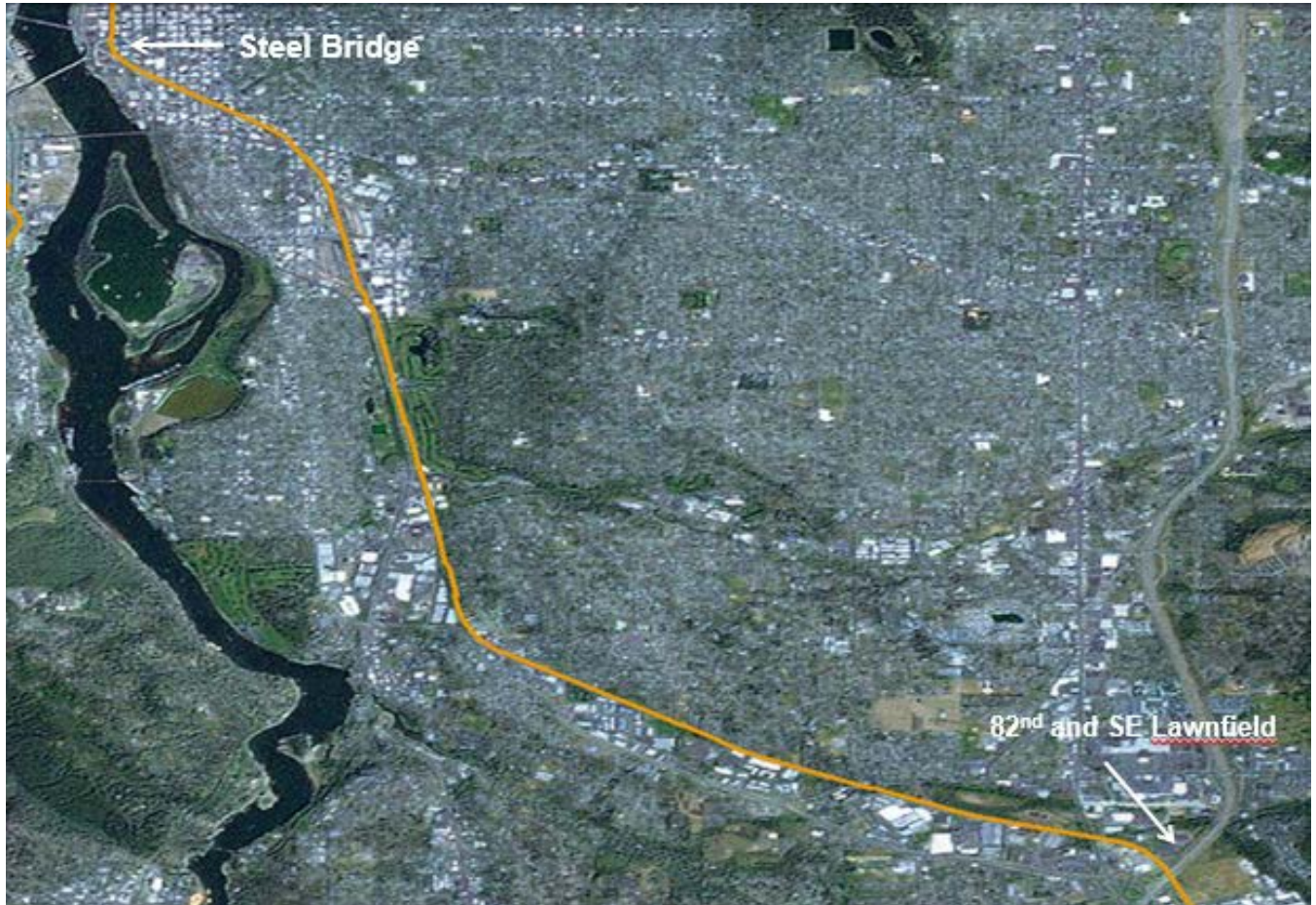
EXHIBIT B-1**IRU Route Map**

EXHIBIT B-2**INSERT AS-BUILTS SHOWING ACCESS POINTS**

EXHIBIT C

CONDUIT MAINTENANCE AND REPAIR PROCEDURES

LEVEL 3 will perform preventive maintenance on the Innerduct in accordance with current industry practices. The CITY will be notified in advance and may choose to be present during the performance of any Preventive Maintenance or Reactive Maintenance at its own expense. In the event that Preventive Maintenance is canceled or delayed, LEVEL 3 will notify the CITY at the earliest opportunity to reschedule the activity. Preventive Maintenance expected to produce any signal discontinuity must be coordinated between the Parties at least seven (7) business days prior to the event. Generally, this work is scheduled after midnight and before 6:00 a.m. local time.

Preventive Maintenance

Preventive Maintenance is defined as the routine maintenance and repair of conduits. LEVEL 3 will perform routine maintenance, repair checks and services, including preventative inspections, as determined necessary by LEVEL 3 to maintain the Innerduct within current industry standards. Normal Preventive Maintenance activities performed by LEVEL 3 include:

- Patrol and monitoring of the LEVEL 3 Conduit on a regularly scheduled basis
- Regular testing to establish thresholds for quality assurance on the LEVEL 3 Conduit
- Establishment and operation of a “Call-Before-You-Dig” program
- Perform all required locates and record-keeping on the LEVEL 3 Conduit

Reactive Maintenance

Reactive Maintenance is any non-routine maintenance and repair of conduits not identified as Preventive Maintenance, including repairs required as a result of conduit cuts or natural or man-made disasters. Reactive Maintenance is generally divided into two categories as outlined below:

Emergency Reactive Maintenance is repair activity performed in response to any of the following:

- Alarm identification by LEVEL 3’s network operations center
- Notification by the CITY or notification by third party of any failure
- Interruption or impairment of conduits
- Any event likely to cause the failure, interruption or impairment of conduits

Demand Maintenance is repair activity performed in response to any potential integrity-affecting situation so as to prevent any failure, interruption or impairment of conduits.

The CITY will report any failure, interruption or impairment in operation of the Innerduct to LEVEL 3 and LEVEL 3 will use commercially reasonable efforts to correct such failure, interruption or impairment as soon as commercially practicable. In the event LEVEL 3 fails to commence Reactive Maintenance within four (4) hours of notification by the CITY that such maintenance is required, the CITY will have the right to perform the maintenance at LEVEL 3’s sole cost and expense, and with Level 3’s assistance to the extent necessary, which shall be the CITY’s sole remedy for any outage or interruption. Within fourteen (14) days of any outage, LEVEL 3 will provide a post mortem report detailing the cause of the outage and the actions taken.

EXHIBIT D

MAINTENANCE REPORTING PROCEDURES AND ESCALATION LISTS

MAINTENANCE REPORT PROCEDURES

Trouble Calls

When contacting the LEVEL 3 Global Network Management Center (“GNOC”), the CITY is requested to provide the following information:

- 1) Name, and primary phone numbers for the CITY’s designated point-of-contact, (POC).
David Miner – OSPE - (503) 416-1522 – David.Miner@level3.com
- 2) The CITY’s ID Number Not applicable
- 3) Innerduct identifier(s). **(INSERT)**
- 4) Description of problems or interruptions (Innerduct continuity, Innerduct failure, etc.).
- 5) Site addresses of the Innerduct endpoints.
 1. Near the East side of the Steel Bridge on the UP ROW.
 2. Near SE 82nd and Lawnfield on the UP ROW

It is advised that the CITY provide a second Point of Contact (“POC”) for backup. All designated POC’s should be familiar with LEVEL 3 product and informed of the specific problem being experienced. Additionally, the POC’s must be authorized to act on the CITY’s behalf with respect to the reported problem. LEVEL 3 shall not accept liability for any actions authorized by the POC.

Trouble Tickets

The CITY will be provided a Trouble Ticket number. This number should be used by the POC when inquiring about the status of the repair.

If the NMC engineer is unable to resolve a CITY issue directly, they will reassign the ticket to the responsible party and drive that organization or vendor to resolve the issue.

NMC engineers will update the Trouble Ticket for each material action taken in response to a service call.

The NMC will make reasonable effort to contact the POC to confirm problem resolution prior to closing any trouble ticket.

REPORTING AND ESCALATION LISTS

Level 3 Reporting List

1. Global Network Operations Center
877.453.8359

Level 3 Escalation Contact List

Should the CITY feel that they are not receiving adequate response, support or progress, the following list is provided for escalation to GNOC management. The City may contact the GNOC to request escalation or make contact directly.

Tier	Contact Name	Title	Tel. #	Cell Phone	Email Address
1	NMC Technician	Surveillance Engineer	877.453.8359	N/A	N/A
2	Manager on Duty	Infrastructure	720-888-6481	N/A	N/A
3	Mike Young	Sr Manager	720-888-7233	N/A	Michael.Young@level3.com
4	Chris Noble	VP, Operations	720-888-6988	N/A	Christopher.Noble@level3.com

City Escalation List**24/7 On-Call Contacts to Report an Outage**

1. Call 503-823-1000, and leave a voice mail with a call back number. This will page the on-call Fiber Network Engineer. *When leaving the voice mail, speak clearly to ensure the number is recorded correctly.*

If no response within an hour proceed to option 2.

2. Call the City of Portland helpdesk at 503-823-5199. If speaking to a person, ask for BTS Network Support for a Fiber Optic Network issue. If the call is after hours or is not answered, select Option 4, BTS Telecommunication, and then select Option 3. I-Net and Data.

Contacts for Fiber Maintenance

Send maintenance notifications to the following three contacts:

1. E-mail BTSNetworkNotifications@portlandoregon.gov
2. E-mail or call the Fiber Optic Network Construction Project Manager, call Rob Durkin at 503-823-3055, or e-mail rob.durkin@portlandoregon.gov
3. E-mail or call the BTS Network Engineering and Support Manager, call David Berg, 503-823-4765, or e-mail david.berg@portlandoregon.gov

EXHIBIT E

CONSTRUCTION SPECIFICATIONS

The intent of this Exhibit is to delineate the manufacturer specifications for the Lessee Conduit. Deviations from these specifications may occur if Lessor acquires a portion of the Lessor System from a third party.

Conduit

OSP Conduit SDR 11

1-1/4" (inside diameter)

High density polyethylene (HDPE) duct

Tensile yield 3200 psi

Flexural modulus 110,000 psi

Smoothwall inside & outer

Empty (no rope or tape)

Unlubricated

Plugs

Conduit Construction

- ♦ Conduits may be placed by means of trenching, plowing, jack and bore, or directional bore. Conduit will generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- ♦ Steel conduit will be joined with threaded collars, Zap-Lok or welding.
- ♦ Railroad crossings will be encased in steel conduit where required.
- ♦ All underground crossings of major streams, rivers, bays and navigable waterways will be placed in either HDPE or steel conduit at a minimum depth of 20 feet below the bottom of the waterway.
- ♦ All conduits placed on DOT bridges will be bullet-proof fiberglass where allowed by the authority and all other bridges galvanized steel conduit shall be installed.
- ♦ All conduits placed on bridges shall have expansion joint placed at each structural (bridge) expansion joint or at least every 100 feet, whichever is the shorter distance.

Innerduct Installation

- HDPE innerducts, where utilized, shall be 1-1/4 inches.
- HDPE innerduct(s), where utilized, shall be encased by a HDPE or steel conduit
- HDPE innerduct(s) shall extend beyond the end of all conduits a minimum of 18 inches.

Exhibit C

**CITY OF PORTLAND AND LEVEL 3 COMMUNICATIONS MUTUAL INDEFEASIBLE
RIGHT TO USE INNERDUCT AGREEMENT**

THIS MUTUAL INDEFEASIBLE RIGHT TO USE (IRU) INNERDUCT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2016 (the "Effective Date"), by and between Level 3 COMMUNICATIONS, LLC, a Delaware limited liability company ("Level 3") and the City of Portland, a duly incorporated Oregon municipal corporation ("CITY"). The signatories to this Agreement are individually referred to herein as a "Party" and collectively as the "Parties".

Recitals

WHEREAS, Level 3 owns a conduit system in Portland, OR, including the Innerduct (defined below and further described in Exhibit A) (the "Level 3 Conduit") which is contained in Level 3 Conduit along the length of the route identified in the map attached to this Agreement as Exhibit A-1;

WHEREAS, City owns a conduit system in Portland, OR, including Innerduct (defined below and further described in Exhibit B (the "City Conduit") which is contained in City Conduit along the length of the route identified in the map attached to this Agreement as Exhibit B-1; and

WHEREAS, Level 3 intends to grant an IRU in the Level 3 Innerduct to City and City intends to grant an IRU in City Innerduct to Level 3 such that each party will be the Grantor or Grantee in the respective IRUs.

WHEREAS, each respective Party has provided assurances in various forms to other Party regarding the Grantor's rights and authority to assign Innerduct rights to the Grantee, as further described in Article 2 of this Agreement, and the Grantee is entering into this Agreement in reliance upon those assurances.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the parties to this Agreement do hereby agree as follows:

ARTICLE 1. RECITALS AND DEFINED TERMS.

1.1 The above referenced recitals are incorporated in this Agreement as if fully set forth herein.

1.2 Each Party that is granting an IRU in Innerduct to the other Party under this Agreement is sometimes referred to herein as the "Grantor." Each Party that is being granted an IRU in Innerduct by the other Party is sometimes referred to herein as the "Grantee." With respect to the IRUs, the "Grantor Conduit" shall mean the Conduit owned by the Party which is granting the IRU.

1.3 Capitalized terms that have not been otherwise defined herein shall have the meanings set forth below:

(a) "Access Point" shall mean a manhole/handhole where Grantor will provide Grantee with access to the Innerduct conveyed to it hereunder. Access Points are set out in Exhibit A-2 and Exhibit B-2, attached to this Agreement. Additional Access Points may also be

requested by Grantee in writing and provided in the sole discretion of Grantor. Grantor shall not unreasonably deny Grantee's requests for Access Points. Grantee will be responsible for all costs associated with Access Points, including, but not limited to, splice and test fees, splice enclosures, fiber, escort charges, permit fees, traffic control and related costs. Additional Access Points requested by Grantee and brought to the edge of the public right of way (or within the public right of way) will be owned by Grantee.

(b) **"Innerduct"** shall mean a single, enclosed 1 ¼" HDPE tube and space within a Grantor Conduit designated by Grantor and used to enclose and carry cable.

(c) **"Manhole/Handhole"** shall mean the subsurface enclosures that personnel may enter or use for accessing the Innerduct.

ARTICLE 2. GRANT OF IRU.

2.1 Upon Grantee's final acceptance of the Innerduct from Grantor, Grantor shall sell, convey, transfer, assign and deliver to Grantee and Grantee shall accept and acquire from Grantor all of Grantor's assignable interest in and to the Innerduct, including without limitation an exclusive, indefeasible right of use in the Innerduct ("**IRU**"). Notwithstanding the foregoing, Grantor shall otherwise retain legal title to all of the Grantor Conduit. Grantor's assignable interest does not include the right to own or transfer title.

2.2 Grantee's right to own, control, maintain, modify or revise the Innerduct, the right of physical access to the Innerduct, or the right to encumber the Innerduct is limited to those rights expressly set forth in this Agreement.

2.3 Notwithstanding anything to the contrary herein, the Parties agree that upon the Acceptance Date, the grant of the IRU in the Innerduct shall be fully performed and shall be deemed severable and non-executory, and shall not be subject to assumption or rejection in any proceeding, notwithstanding any maintenance or other obligations contemplated to occur in the future pursuant to this Agreement, which obligations are ancillary to the main purpose of this Agreement.

2.4 Grantee may use the IRU and the Innerduct being conveyed to it hereunder for any lawful purpose, subject to the terms and conditions of this Agreement.

2.5 Grantee agrees not to take any action or inaction that will result in a lien being placed on the Grantor Conduit.

ARTICLE 3. TERM.

3.1 Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall be for the shorter of (i) the useful economic life of the Innerduct, (ii) until the termination of Grantor's Underlying Rights ("**Term**"), commencing on the Acceptance Date, as defined in Section 4.2 below.

3.2 If at anytime after the Effective Date Grantee determines that the Innerduct has reached the end of its economic useful life, or otherwise desires not to retain the IRU, Grantee shall have the right to terminate the IRU by providing sixty (60) days written notice to Grantor. Upon any such notice of termination by Grantee, the term of this Agreement shall expire with respect to such the Innerduct and all rights in and use of such the Innerduct shall revert to Grantor without

reimbursement of any fees or other payments previously made with respect to this Agreement, and from and after such time, Grantee shall have no further rights or obligations hereunder with respect to such Innerduct.

3.3 This Agreement shall become effective on the date hereof and shall terminate on the expiration of the Term or any earlier termination provided for hereunder.

ARTICLE 4. TESTING AND ACCEPTANCE.

4.1 Upon the Effective Date, Grantor shall provide Grantee with records and documents, to the extent they exist in Grantor's possession, regarding the results of any prior testing that Grantor may have conducted on the construction, installation and performance of the Innerduct that Grantor proposes to convey. Grantee may, at Grantee's expense, test the Innerduct to be conveyed to Grantee to determine if it was constructed, installed and is performing in accordance with prevailing industry standards as set forth in Exhibit E attached to this Agreement. Grantor shall use best efforts to ensure Grantee's access to the Innerduct so that Grantee may test the Innerduct within a reasonable period of time after the Effective Date.

4.2 Grantee shall within sixty (60) days of the Effective date or the date of Grantee's testing, whichever is later, either accept the Grantor Innerduct by delivering a notice of acceptance to Grantor ("**Notice of Acceptance**") or reject the Grantor Innerduct by delivering a notice of rejection ("**Notice of Objection**") to Grantor specifying the material defect or failure to meet prevailing industry standards as set forth in Exhibit E. If Grantor receives a Notice of Objection, Grantor shall repair the Innerduct and notify Grantee in writing that the Innerduct is again ready for testing ("**Notice of Repair**") and the foregoing procedure shall apply again and successively thereafter until Grantee accepts the Innerduct or undertakes to remedy the unsatisfactory conditions as set forth in the next sentence. In the event Grantee delivers two (2) Notices of Objection for the same defect or failure and Grantor fails to find or cannot confirm or refuses to correct any such defect or failure, then Grantee may select another Innerduct in consultation with Grantor as its sole remedy hereunder. In addition, Grantor recognizes that its failure to successfully provide an acceptable Innerduct within two (2) Notices of Objection for the same defect or failure may have a material adverse impact on Grantee's business and operations, and that the damage caused by such delay may not be susceptible of precise determination. If the acceptance of the Innerduct by Grantee has not occurred within two (2) Notices of Objection for the same defect or failure, then Grantee shall be entitled to a daily pro rata credit of \$50.00 for each day after second Notice of Objection that acceptance has not occurred, until the Innerduct has been accepted by Grantee. The credit is agreed upon as liquidated damages and not as a penalty. The Parties to this Agreement have computed, estimated and agreed upon the sum as an attempt to make a reasonable forecast of probable actual loss because of the difficulty of estimating the damages that will result. Any failure of Grantee to timely deliver a Notice of Objection shall be deemed to constitute acceptance of the Innerduct for purposes of this Agreement and Grantee shall be deemed to have delivered a Notice of Acceptance on the sixty-first (61st) day after the Effective Date or the date Grantee receives a Notice of Repair from Grantor. In addition, any use by Grantee of the Innerduct other than solely for the purpose of testing the performance of the Innerduct shall be deemed to constitute Acceptance. The date on which Grantee delivers a Notice of Acceptance, or on which Grantee's acceptance is deemed, shall be the "**Acceptance Date**".

ARTICLE 5. MAINTENANCE AND REPAIR.

5.1 Wholly separate from conveyance of the IRU to the Innerduct, Grantor will provide maintenance and repair services necessary to maintain the Innerduct in accordance with

the terms and conditions set forth below. It is the intent of the Parties that the maintenance and repair obligations hereunder constitute a separate and severable portion of this Agreement from the conveyance of the Innerduct.

5.2 From and after the Acceptance Date, Grantor shall maintain and repair the Innerduct granted by it in accordance with prevailing industry standards. When performing maintenance and repairs, Grantor shall in all cases use commercially reasonable efforts to minimize disruption of Grantee's business operation. Grantor shall perform all Preventive Maintenance and Reactive Maintenance (as defined in Exhibit C attached to this Agreement). Grantee shall be responsible and pay Grantor for its proportionate share (based on the proportion of the Innerduct to the total number of innerducts so affected) of all Preventive Maintenance and Reactive Maintenance affecting the Innerduct, except to the extent the need for such maintenance is caused by the negligence or willful misconduct of Grantee or Grantor in which case such party shall bear all costs for such maintenance. In order to process payments to Grantor through Grantee's accounts payable system, Grantor must provide to Grantee copies of all invoices and other documentation showing computation of maintenance to which City is a party. Grantor shall also be responsible for all "one-call" and locate services for the Innerduct conveyed to Grantee. In the event of an emergency requiring repair, restoration and/or replacement of the Innerduct, Grantor will commence such repair, restoration and/or replacement within four (4) hours of Grantee notifying a Grantor network operation control center of such condition. In the event Grantor does not commence emergency maintenance within four hours, Grantee shall have the right to perform the necessary maintenance at Grantor's sole cost and expense.

5.3 Grantor shall operate and maintain one or more network operation control centers staffed twenty-four hours a day, seven days a week by trained and qualified personnel beginning with the Acceptance Date. Grantor maintenance personnel shall be available for dispatch twenty-four hours a day, seven days a week. Grantee shall promptly report the need for any maintenance in accordance with the procedures set forth in Exhibit D.

ARTICLE 6. ACCESS TO THE INNERDUCT.

6.1 Grantor shall have the right to control all activities concerning access to the Innerduct, except for activities in vaults located in the public right of way that only involve repairs or modifications to existing slack fiber cable or splice cases related to Grantee conduit, or as to activities regarding installation or maintenance of any optronics, electronics, electrical, optical, or other equipment or related facilities within Access Points located in or brought to the edge of the public right of way under Grantee's control.

6.2 Any work requested by Grantee to be performed on the Innerduct, including, without limitation, the installation of handholes or other Access Points, shall be undertaken only by Grantor at Grantee's request. All such work shall be performed in a timely manner consistent with standard industry practices. Grantor shall supply a proposed scope of work and cost estimate in reasonable detail prior to performance of any such work. Grantee shall reimburse Grantor for the actual, reasonable direct costs incurred in the performance of such work plus a management fee of ten percent (10%), within thirty (30) days after receipt of invoice therefore.

6.3 Grantee will be entitled to access to the Innerduct at any of the Access Points provided it gives Grantor twenty-four (24) hours advance notice of the location to be accessed, and provided further that any such access is subject to the provisions of applicable underlying authorizations. Grantor may, at its expense, observe all activities of Grantee associated with such access. Grantee does not have the right to access any portion of the INNERDUCT that is outside the public right-of-way.

ARTICLE 7. OPERATIONS.

7.1 Grantor shall not interfere with or materially or adversely affect, or permit any other party under the control of Grantor to interfere with or materially or adversely affect, Grantee's use of the Innerduct and/or any optronics, electronics, electrical, optical, or any other equipment or related facilities owned, operated or used by Grantee in connection with the Innerduct. CITY shall not interfere with or materially or adversely affect, or permit any other party under the control of City to interfere with or materially or adversely affect, LEVEL's use, or any other party permitted by Grantor to use the Grantor Conduit, and/or any optronics, electronics, electrical, optical, or any other equipment or related facilities owned, operated or used by Grantor in connection with the Grantor Conduit.

7.2 Grantee acknowledges and agrees that Grantor is not supplying nor is Grantor obligated to supply to Grantee any optronics or electronics or optical or electrical equipment, any related facilities, or any space for the placement thereof (except as may be agreed in any agreement executed by the Parties), all of which are the sole responsibility of Grantee.

ARTICLE 8. RELOCATION, REPLACEMENT AND CONDEMNATION

8.1 If Grantor receives notice of any request, intent or plan by any third party ("**Relocation Request**"), including but not limited to any Governmental Authority (as defined below), to relocate any part of the Innerduct, Grantor shall notify Grantee of such Relocation Request and shall keep Grantee advised of the status of any such proceedings and negotiations related thereto. If relocation is required as a result of a Relocation Request, Grantor shall give Grantee at least sixty (60) days prior written notice of any relocation, provided that Grantor receives at least that much advance notice of the Relocation Request ("**Relocation Notice**") including an estimate of the cost. Grantor shall relocate the Innerduct and to the extent Grantor is not reimbursed for the costs of such relocation by a third party or Governmental Authority, Grantee shall pay its pro rata share (based on the proportion of the Innerduct to the total number of innerducts so affected) of the actual, reasonable direct costs incurred by Grantor in relocating the Innerduct. Upon request by Grantee, Grantor shall provide Grantee with copies of any underlying documentation relating to the relocation costs. In order to process payments to Grantor through Grantee's accounts payable system, Grantor must provide to Grantee copies of all invoices and other documentation showing computation of cost of relocation to which City is a party. The term "**Governmental Authority**" shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and other authorities.

8.2 In the event a part of the Innerduct requires replacement during the IRU Term or Renewal Term, if applicable, prior to the end of the Innerduct's useful life, such replacement shall be made as soon as commercially reasonable at Grantor's sole cost and expense; except, however, if the replacement of the Innerduct is required as a result of the negligence or willful misconduct of Grantee or Grantor, Grantor shall replace the Innerduct at such party's sole cost and expense.

8.3 If any portion of the Innerduct shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, Grantee shall be entitled to participate in any condemnation proceedings and to seek to obtain compensation for the economic value of its interest in the facilities so condemned, provided that Grantor's recovery for any exclusive property rights that it holds are not reduced by any

compensation paid to Grantee. In order to allow Grantee reasonable opportunity to appear and meaningfully participate in such proceedings, Grantor shall provide written notice to Grantee immediately of any condemnation action brought or threatened against any part of the Innerduct, or any private easements within which the Innerduct is located. Grantor also agrees not to convey any site on which is located any equipment or building of Grantee to such condemning authority in lieu of condemnation without reasonable prior notice to Grantee.

ARTICLE 9. TITLE AND TAXES.

9.1 The Parties acknowledge and agree that Grantor shall be considered the owner of the Innerduct and Grantee shall have the exclusive right of use of the Innerduct, subject to the terms thereof. Grantor agrees that it will not take any action that is inconsistent with Grantee's interest in the IRU other than as expressly provided for herein. Except as otherwise required by law, the Parties shall file (or cause to be filed with respect to any consolidated returns) their respective tax returns and other returns and reports for their respective taxes. The Parties acknowledge that the IRU constitutes an indefeasible grant to Grantee of an exclusive beneficial ownership interest in the Innerduct and that the grant of the IRU is intended to be non-executory in nature.

9.2 Grantee shall be responsible for, and shall timely pay directly to the taxing authority, any and all personal property taxes attributable to the Innerduct, except to the extent that Grantee is a tax exempt entity under Oregon law. Grantee shall apply for exemption from any applicable personal property taxes attributable to the Innerduct, and to the extent that Grantee is determined to be a tax exempt Oregon municipality, Grantee shall not be obligated to pay taxes under this section.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES.

10.1 Grantee represents and warrants that it will use the Innerduct and the IRU granted hereunder in compliance with all applicable codes, ordinances, laws, rules and regulations of any applicable Governmental Authority and underlying authorizations.

10.2 Grantor represents and warrants that it has obtained or will obtain all regulatory approvals, as well as any franchises, permits, orders, easements, title or other consents, either by contract, franchise or some other agreement, and all other rights necessary (collectively, "**Authorizations**") to be obtained by Grantor to enable it to construct, install and provide the Innerduct, grant the IRU to Grantee, and perform all other rights and obligations hereunder. Grantor shall cause such Authorizations to remain effective through the Term or to replace such Authorizations with suitable replacement Authorizations as applicable. In the event that any Authorizations are discontinued and not replaced and the loss of such Authorizations prohibits the use of the Innerduct, Grantor will notify Grantee of the loss of such Authorizations. Grantor will determine whether Grantor possesses substitute assets that will be of comparable utility. If Grantor does not have such assets or is not able to deliver such assets, then Grantor and Grantee shall consult to determine which of Grantor's available remaining assets will be delivered to Grantee to achieve a transfer of comparable utility. In the event the Parties are unable to reach agreement within thirty (30) days after the delivery of Grantor's notice, the matter shall be resolved according to the dispute resolution steps provided below. Grantor will provide Grantee copies of all Authorizations upon request.

(a) In the event that representatives from Grantor and Grantee cannot resolve the matter, it shall be referred to persons with higher authority on the part of Grantee and the

Grantor, who also shall have the authority to resolve the dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the matter. If the matter is not resolved after this meeting, Grantee and Grantor agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon Grantee and Grantor agree to present the matter to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the Grantor and CITY. If the matter is not resolved by mediation, the Grantor and Grantee may mutually agree to resolve the dispute by arbitration.

(b) Grantee may initiate arbitration by resolution of its City Council, while Grantor may choose to initiate arbitration by sending written notice to Grantee. After arbitration has been initiated, Grantee and Grantor may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court. If either Grantee or Grantor does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(1) If Grantee initiates arbitration, Grantee, by written notice, shall select one arbitrator and Grantor by written notice shall select one arbitrator within 15 days after passage of the resolution. If Grantor initiates arbitration, it shall identify its selected arbitrator in its written notice, and Grantee shall select one arbitrator, within 15 days after receiving the notice.

(2) The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(c) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of Grantee and Grantor. The arbitrator(s) shall make a written report to Grantee and Grantor on the final determination within 60 days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. Once initiated by the parties, the arbitration shall be conducted according to the Uniform Arbitration Act, ORS 36.600 to ORS 36.740 (2011). Grantee shall pay the arbitration fee required to initiate the arbitration. Grantee and Grantor shall otherwise share equally the fees and costs of the arbitrator(s).

(d) The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this Agreement.

(e) If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution of the matter through litigation.

10.3 Grantee represents and warrants that it has obtained or will obtain prior to the Acceptance Date all Authorizations to be obtained by it that are necessary to enable it to use,

operate, or access the Innerduct and the IRU granted hereunder and to perform all other rights and obligations hereunder. Grantee shall cause such Authorizations to remain effective through the IRU Term or to replace such Authorizations with suitable replacement Authorizations as applicable.

10.4 Each Party represents and warrants that: (i) it has the power and authority to enter into, execute, and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; (iv) it shall not commit a breach of any other agreement as a result of executing this Agreement or as a result of the obligations imposed upon it hereunder; and (v) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any Governmental Authority.

10.5 Each Party represents and warrants to the other that there are no pending, or to the knowledge of such Party, threatened actions, suits, claims, condemnations or other proceedings (i) which would materially and adversely affect the Innerduct being delivered hereunder by Grantor, the Grantor Conduit, or the ability of either Party to consummate the transactions and perform the obligations contemplated hereby, (ii) which would result in any charge being levied against, or lien assessed on the Innerduct being delivered by Grantor hereunder which lien would materially and adversely affect Grantee's use of the Innerduct, or (iii) in which either Party is or will be a party by reason of either Party's interests in the Innerduct.

10.6

(a) If Grantor receives notice from any grantor or provider of an Underlying Right that Grantor has failed to observe or perform its obligations under such Underlying Right, and Grantor is not contesting in good faith the validity of such claimed or alleged failure, Grantor shall give written notice to Grantee and Grantee may, at its option (subject to the terms and provisions of the Underlying Right and the ability of third parties to cure defaults of Grantor thereunder), cure or correct such failure and Grantor shall reimburse Grantee for the costs and expenses incurred by Grantee in connection therewith. Grantee shall promptly inform Grantor in writing of its decision on whether to obtain reimbursement.

(b) Grantor agrees to defend, indemnify, and hold harmless Grantee from and against, any and all losses arising from:

(1) Any failure by Grantor, its or their employees or agents to comply with any obligation imposed on any of them under any Underlying Right;

(2) Any claims or actions concerning any of the Grantor Conduit or any railroad right of way by a lessor or other grantor, including without limitation any attempt by such lessor or other grantor to revoke such lease or other grant or to possess the associated facilities;

(3) Any claims or actions concerning any of the Grantor Conduit by a person with a third party interest, including without limitation any attempt by such third party to take title to or possession of Grantor Conduit, or eject or dispossess Grantor; or,

(4) Any claims or actions concerning Grantor's rights in the Underlying Right, including without limitation that Grantor is trespassing.

ARTICLE 11 INSURANCE.

11.1 At all times during the Term (or Renewal Term if applicable) each Party shall procure and maintain in force, at its own expense:

(a) not less than \$2,000,000 combined single limit liability insurance, on an occurrence basis, for personal injury and property damage, including, without limitation, injury or damage arising from the operation of vehicles or equipment and liability for completed operations;

(b) workers' compensation insurance in amounts required by applicable law and employers' liability insurance with a limit of at least \$1,000,000 per occurrence; and

(c) automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limits of not less than \$1,000,000 per occurrence.

11.2 LEVEL 3 acknowledges that, in lieu of the insurance requirements set forth in Section 11, the City is self-insured under ORS 30.282(2). In addition, the City is qualified for self-insurance under ORS 806.130 of the Oregon Vehicle Code. The City is a subject employer under ORS 656.017 and provides Oregon workers' compensation coverage for all its subject workers. Upon written request from LEVEL 3, the City shall submit a certified copy of the City's most recent audited financial statements, and other evidence demonstrating its qualifications to act as a self-insurer under Oregon law.

11.3 If either Party self-insures, fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, such Party shall indemnify and hold harmless the other Party from any and all claims for which the required insurance would have provided coverage. Further, other than the case of self-insurance, in the event of any such failure which continues after seven (7) days' written notice thereof by the other Party, such other Party may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Party failing to obtain such insurance.

11.4 In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided above, the Party carrying such coverage shall make good-faith efforts to pursue such claim with its carrier.

11.5 Each Party hereby waives their respective rights of recovery against each other and the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of either Party, for any loss arising from any cause covered or that would be covered by fire, extended coverage, All Risks or other insurance required to be carried under this Agreement or now or hereafter existing for the benefit of the respective Party. The Parties will cause from time to time their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with their respective property.

11.6 In the event a claim exceeds insurance amounts set forth in this Article, the amount of insurance shall in no way be construed as limiting a Party's liability to the amount of such insurance. The City's legal responsibilities to indemnify and hold harmless, beyond the limits of the insurance provided under this Article, shall be subject to the applicable conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

ARTICLE 12. DEFAULT AND TERMINATION.

12.1 In the event either Party (a “**Breaching Party**”) fails to perform an obligation or observe a term or condition of this Agreement and such failure continues for a period of thirty (30) days after written notice of such failure to the Breaching Party from the other Party (“**Non-Breaching Party**”), the Breaching Party shall be in breach of this Agreement. In the event such failure cannot reasonably be cured within such 30-day period, if the Breaching Party proceeds promptly to cure the same within the aforesaid period and continues to prosecute such cure with due diligence, the time for curing such failure shall be extended for such period of time as may reasonably be necessary to complete such cure; provided, however, that in no event shall any such failure remain uncured more than sixty (60) days after written notice of such failure to the Breaching Party. In the event the Breaching Party fails to cure in accordance with this provision, the Breaching Party shall be in material default of this Agreement and the Non-Breaching Party may resort to the remedies set forth below.

12.2 (a) Subject to the dispute resolution procedures described in Section 10.2 of this Agreement, upon the occurrence of any material default and following written notice to the other Party, the Non-Breaching Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default and recover from the Breaching Party its reasonable costs incurred in correcting such default or (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including specific performance.

(b) In the event of a material default by a Breaching Party that totally deprives the other Party of its rights to an exclusive, indefeasible right to use of the Innerduct provided by the Breaching Party for a period of more than sixty (60) days after written notice of such failure to the Breaching Party, the other Party shall have the further option of declaring this Agreement to be terminated for cause, in which case that Party shall be released of and from any further obligations under this Agreement. In the event of such a termination for cause, each Party as Grantee shall promptly remove all of Grantee’s electronics, equipment, and other Grantee property from the Grantor’s Innerduct at Grantee’s sole cost and under Grantor’s supervision. Such a termination of this Agreement for cause shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration. As of the date of termination for cause, any pre-existing unresolved claim or dispute by either Party, including but not limited to, money owed, performance due, or any other obligations of the Parties, that is the result of the other Party’s performance or non-performance, will, by their terms, survive termination of this Agreement and will be resolved in accordance with the terms and conditions of this Agreement. All indemnity, confidentiality, warranty and unperformed obligations will survive termination of this Agreement.

ARTICLE 13. MISCELLANEOUS.

13.1 Force Majeure. Except for any payments that may be due hereunder, neither Party shall be liable for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is directly caused by an event of force majeure, including but not limited to, fire, flood, explosion, accident, war, strike, embargo, governmental requirement, inability to obtain governmental authorization where no fault can be attributable to the Party seeking such authorizations, civil or military authority, act of God, inability to secure necessary materials, labor or transportation, acts or omissions of a common carrier, warehouseman, act of terrorism or other third party or any other cause beyond a Party’s reasonable control. Any such delay or failure shall suspend the Agreement until the Force Majeure condition ceases.

13.2 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state. Any litigation between Grantee and Grantor arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

13.3 Public Records.

(a) Grantor acknowledges that information submitted by Grantor to Grantee may be open to public inspection under the Oregon Public Records Law. Grantor is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(b) Grantor may identify information submitted to Grantee as confidential, if Grantor reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantor shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to Grantee. When submitting such information to Grantee, Grantor shall submit documentation to Grantee that specifically identifies the applicable exemption under the Oregon Public Records Law, and stating the reason(s) Grantor believes the information is exempt from public inspection. After reviewing the Grantor's request for confidentiality, and determining whether the identified exemptions are applicable, Grantee shall take reasonable steps to protect the confidential nature of any such information, consistent with the Oregon Public Records Law, including only disclosing such information to employees, representatives, and agents thereof that have a need to know or in order to enforce the provisions of this Agreement.

(c) Within five (5) business days of receiving a public records request to inspect any such request, Grantee shall provide Grantor with written notice of the request, including a copy of the request. Grantor shall have five (5) business days within which to provide a written response to Grantee, before Grantee may disclose any of the requested confidential information. If Grantee determines that it will be necessary to reveal the information, Grantee shall promptly notify Grantor, and do so at least five (5) business days prior to the information being released. Grantee shall retain final discretion to determine whether to release the requested information in response to any public records request, as recognized under the Oregon Public Records Law.

13.4 Public Announcements. The Parties acknowledge that Grantee's authority to enter into this Agreement must be approved by the Portland City Council by consideration and adoption of an ordinance, incorporating this Agreement and its exhibits, at a public meeting. Otherwise, neither Party shall issue any press release or make any public announcement relating to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party to this Agreement.

13.5 Further Assurances. Each of the Parties to this Agreement agrees to furnish such information, to do all acts and things, and to execute and deliver such agreements, documents, certificates, and instruments as shall from time to time be reasonably required to effectuate the transfers contemplated by this Agreement. Without limiting the generality of the foregoing, the Parties agree to cooperate with one another in completing documentation of the accounting, tax and regulatory aspects of the exchanges and/or payments made or to be made under this Agreement.

13.6 Binding Effect; Assignment. This Agreement will be binding upon and inure to

the benefit of the Parties to this Agreement and their respective heirs, personal representatives, successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either Party to this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, provided, however, that each Party may freely assign this Agreement to any affiliate, subsidiary or purchaser of substantially all of the assets of the assigning Party, or to a successor in reorganization pursuant to a Plan or Plans of Reorganization in the Bankruptcy Court cases. Nothing contained in this Section 13.6 shall be deemed or construed to prohibit Grantee from leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements respecting Grantee fiber optic cable(s) installed in the Innerduct; provided, however, that any such grant shall be subordinate to this Agreement and shall not exceed the Term hereof.

13.7 No Third-Party Beneficiaries. This Agreement and all of its provisions are for the sole and exclusive benefit of the Parties to this Agreement and nothing contained or referred to in this Agreement shall be deemed to confer upon any person other than the Parties to this Agreement any right (whether legal or equitable), benefit, claim, or remedy. Under no circumstances shall this section be applied or construed to restrict or impair Grantee in entering into contracts with other governmental entities for sharing construction costs or rights of usage of any aspects of Grantee's Innerduct rights.

13.8 Severability. The transfer of the Innerduct shall be deemed to be a separate transaction from any other provisions of this Agreement. Notwithstanding anything to the contrary herein, the agreement to grant an IRU pursuant to this Agreement shall be deemed severable, and such grant and the sale, assignment and transfer to Grantee of all of Grantor's beneficial right and interest in and to the Innerduct shall be fully performed and non-executory within the meaning of the 11 U.S.C. Section 365.

13.9 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement: (i) references to the singular include the plural, and references to the plural include the singular; (ii) words of the masculine gender include correlative words of the feminine and neuter genders; (iii) the headings or captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect; and (iv) the term "person" means any individual, corporation, partnership (whether general or limited), limited liability company, joint venture, estate, trust, association, organization, or other entity or governmental body. In addition, the Parties to this Agreement acknowledge and agree that each Party has retained counsel in connection with the negotiation and preparation of this Agreement, and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any schedule or exhibit to this Agreement.

13.10 Notices. All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the LEVEL 3:

Level 3 Communications LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Attn: Manager, Network Infrastructure Services

With a copy to:

Attn: General Counsel (same address)

If to the City:

The City of Portland, Oregon
Office for Community Technology
111 SW Columbia Street, Suite 600
Portland, OR 97201

With a copy to:

City Attorney's Office,
Room 430 City Hall
1221 SW Fourth Avenue,
Portland, OR 97204

Or such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by overnight air courier or on the third business day after posting if sent by registered or certified mail.

13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13.12 Incorporation of Recitals, Schedules and Exhibits. All Recitals, schedules and exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

13.13 Entire Agreement; Amendment; Waiver. This Agreement, together with all schedules and exhibits to this Agreement, contains the entire understanding and agreement among the Parties to this Agreement with respect to the subject matter hereof, and supersedes all prior discussions, understandings, and agreements (whether oral or written) between them with respect thereto. No amendment to, or modification or waiver of, any of the terms of this Agreement shall be valid unless in writing and signed by the Party against whom enforcement of such amendment, modification or waiver is sought. No failure or delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

IN WITNESS WHEREOF, LEVEL 3 and the CITY have executed this Agreement as of the date first above written.

THE CITY OF PORTLAND

LEVEL 3 COMMUNICATIONS,
LLC

By: _____

By:  _____

Print
Name: _____

Print
Name: Mike Rederer

Its: _____

Its: SIP Access Mgmt

EXHIBIT A – Level 3 Innerduct

1.

EXHIBIT A-1

Insert Level 3 Innerduct Route Map

EXHIBIT A-2

Level 3 Innerduct Access Points

CAP 0001-4203

CAP 0001-4072

EXHIBIT A-1

City to receive an IRU for (1) Innerduct in the Willamette River Bore between CAP's 0001-4203 and 0001-4072 (see screenshot below – blue line is the actual route, red line depicts the approximate boundaries). As-Built drawing of actual bore attached as second page of this Exhibit A-1

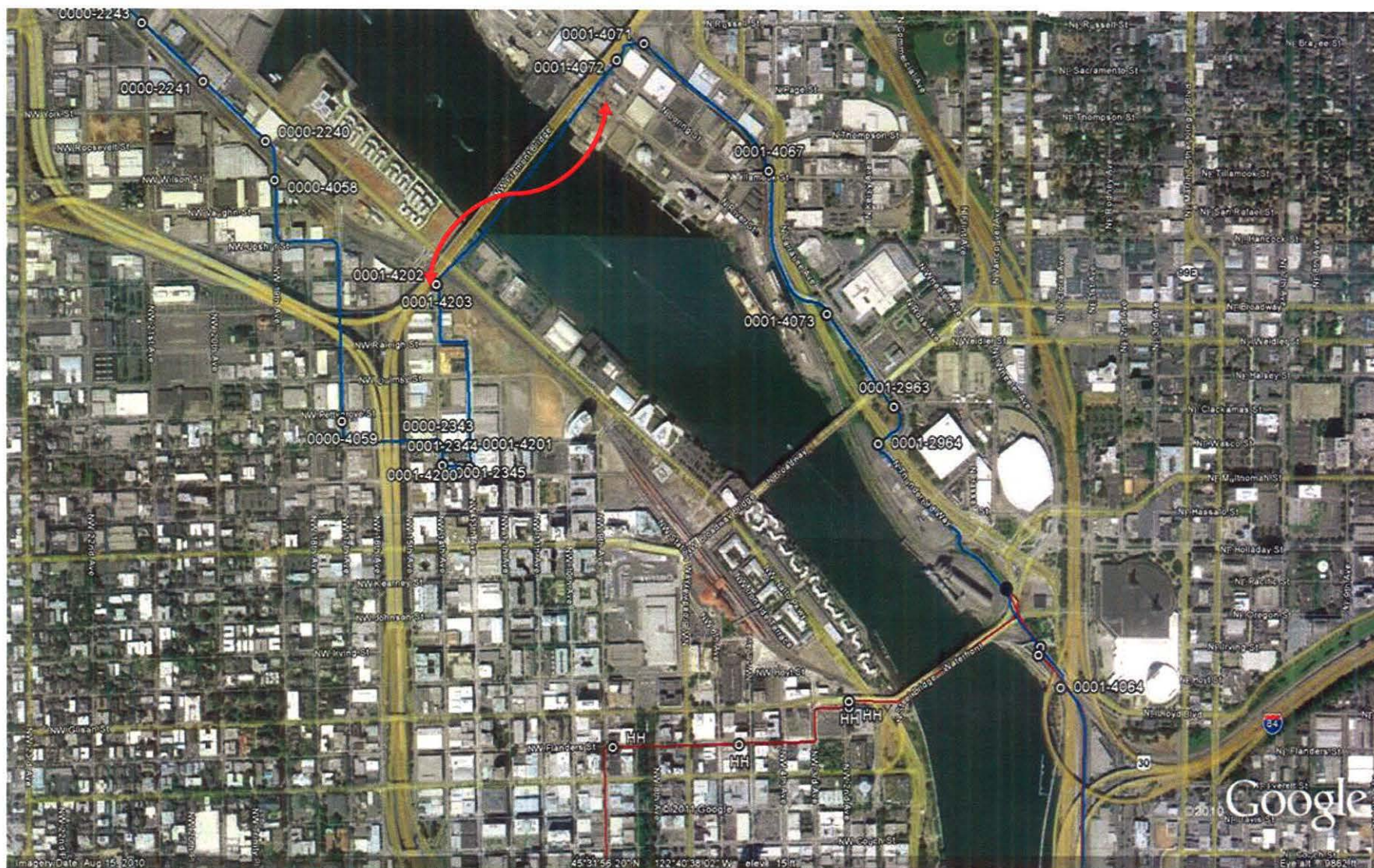


EXHIBIT B

EXHIBIT B-1

Insert City Innerduct Route Map

EXHIBIT B-2

City Innerduct Access Points

CAP 0725A21

CAP 0725A02D

EXHIBIT B-1

City to provide an IRU to Level 3 Communications, LLC for (1) 2" Innerduct across the Steel Bridge between CAP's 0725A21 and 0725A02D.



EXHIBIT C

CONDUIT MAINTENANCE AND REPAIR PROCEDURES

Grantor will perform preventive maintenance on the Innerduct in accordance with current industry practices. Grantee will be notified in advance and may choose to be present during the performance of any Preventive Maintenance or Reactive Maintenance at its own expense. In the event that Preventive Maintenance is canceled or delayed, Grantor will notify Grantee at the earliest opportunity to reschedule the activity. Preventive Maintenance expected to produce any signal discontinuity must be coordinated between the Parties at least seven (7) business days prior to the event. Generally, this work is scheduled after midnight and before 6:00 a.m. local time.

Preventive Maintenance

Preventive Maintenance is defined as the routine maintenance and repair of conduits. Grantor will perform routine maintenance, repair checks and services, including preventative inspections, as determined necessary by Grantor to maintain the Innerduct within current industry standards. Normal Preventive Maintenance activities performed by Grantor include:

- Patrol and monitoring of the Grantor Conduit on a regularly scheduled basis
- Regular testing to establish thresholds for quality assurance on the Grantor Conduit
- Establishment and operation of a "Call-Before-You-Dig" program
- Perform all required locates and record-keeping on the Grantor Conduit

Reactive Maintenance

Reactive Maintenance is any non-routine maintenance and repair of conduits not identified as Preventive Maintenance, including repairs required as a result of conduit cuts or natural or man-made disasters. Reactive Maintenance is generally divided into two categories as outlined below:

Emergency Reactive Maintenance is repair activity performed in response to any of the following:

- Alarm identification by Grantor's network operations center
- Notification by Grantee or notification by third party of any failure
- Interruption or impairment of conduits
- Any event likely to cause the failure, interruption or impairment of conduits

Demand Maintenance is repair activity performed in response to any potential integrity-affecting situation so as to prevent any failure, interruption or impairment of conduits.

Grantee will report any failure, interruption or impairment in operation of the Innerduct to Grantor and Grantor will use commercially reasonable efforts to correct such failure, interruption or impairment as soon as commercially practicable. In the event Grantor fails to commence Reactive Maintenance within four (4) hours of notification by Grantee that such maintenance is required, Grantee will have the right to perform the maintenance at Grantor's sole cost and expense, and with Grantor's assistance to the extent necessary, which shall be Grantee's sole remedy for any outage or interruption. Within fourteen (14) days of any outage, Grantor will provide a post mortem report detailing the cause of the outage and the actions taken.

EXHIBIT D

MAINTENANCE REPORTING PROCEDURES AND ESCALATION LISTS

LEVEL 3 INNERDUCT MAINTENANCE REPORT PROCEDURES

Trouble Calls

When contacting the LEVEL 3 Global Network Management Center ("GNOC"), the CITY is requested to provide the following information:

- 1) Name, and primary phone numbers for the CITY's designated point-of-contact, (POC).
David Miner – OSPE - (503) 416-1522 – David.Miner@level3.com
- 2) The CITY's ID Number Not applicable
- 3) Innerduct identifier(s). (INSERT)
- 4) Description of problems or interruptions (Innerduct continuity, Innerduct failure, etc.).
- 5) Site addresses of the Innerduct endpoints.
 1. Near the East side of the Steel Bridge on the UP ROW.
 2. Near SE 82nd and Lawnfield on the UP ROW

It is advised that the CITY provide a second Point of Contact ("POC") for backup. All designated POC's should be familiar with LEVEL 3 product and informed of the specific problem being experienced. Additionally, the POC's must be authorized to act on the CITY's behalf with respect to the reported problem. LEVEL 3 shall not accept liability for any actions authorized by the POC.

Trouble Tickets

The CITY will be provided a Trouble Ticket number. This number should be used by the POC when inquiring about the status of the repair.

If the NMC engineer is unable to resolve a CITY issue directly, they will reassign the ticket to the responsible party and drive that organization or vendor to resolve the issue.

NMC engineers will update the Trouble Ticket for each material action taken in response to a service call.

The NMC will make reasonable effort to contact the POC to confirm problem resolution prior to closing any trouble ticket.

REPORTING AND ESCALATION LISTS

Level 3 Reporting List

1. Global Network Operations Center
877.453.8359

Level 3 Escalation Contact List

Should the CITY feel that they are not receiving adequate response, support or progress, the following list is provided for escalation to GNOC management. The City may contact the GNOC to request escalation or make contact directly.

Tier	Contact Name	Title	Tel. #	Cell Phone	Email Address
1	NMC Technician	Surveillance Engineer	877.453.8359	N/A	N/A
2	Manager on Duty	Infrastructure	720-888-6481	N/A	N/A
3	Mike Young	Sr Manager	720-888-7233	N/A	Michael.Young@level3.com
4	Chris Noble	VP, Operations	720-888-6988	N/A	Christopher.Noble@level3.com

City Escalation List**24/7 On-Call Contacts to Report an Outage**

1. Call 503-823-1000, and leave a voice mail with a call back number. This will page the on-call Fiber Network Engineer. *When leaving the voice mail, speak clearly to ensure the number is recorded correctly.*

If no response within an hour proceed to option 2.

2. Call the City of Portland helpdesk at 503-823-5199. If speaking to a person, ask for BTS Network Support for a Fiber Optic Network issue. If the call is after hours or is not answered, select Option 4, BTS Telecommunication, and then select Option 3. I-Net and Data.

Contacts for Fiber Maintenance

Send maintenance notifications to the following three contacts:

1. E-mail BTSNetworkNotifications@portlandoregon.gov
2. E-mail or call the Fiber Optic Network Construction Project Manager, call Rob Durkin at 503-823-3055, or e-mail rob.durkin@portlandoregon.gov
3. E-mail or call the BTS Network Engineering and Support Manager, call David Berg, 503-823-4765, or e-mail david.berg@portlandoregon.gov

CITY INNERDUCT MAINTENANCE REPORT PROCEDURES

EXHIBIT E

CONSTRUCTION SPECIFICATIONS

The intent of this Exhibit is to delineate the manufacturer specifications for the Conduit. Deviations from these specifications may occur if Grantor acquires a portion of the Grantor's Conduit from a third party.

Conduit

OSP Conduit SDR 11

1-1/4" (inside diameter)

High density polyethylene (HDPE) duct

Tensile yield 3200 psi

Flexural modulus 110,000 psi

Smoothwall inside & outer

Empty (no rope or tape)

Unlubricated

Plugs

Conduit Construction

- ♦ Conduits may be placed by means of trenching, plowing, jack and bore, or directional bore. Conduit will generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- ♦ Steel conduit will be joined with threaded collars, Zap-Lok or welding.
- ♦ Railroad crossings will be encased in steel conduit where required.
- ♦ All underground crossings of major streams, rivers, bays and navigable waterways will be placed in either HDPE or steel conduit at a minimum depth of 20 feet below the bottom of the waterway.
- ♦ All conduits placed on DOT bridges will be bullet-proof fiberglass where allowed by the authority and all other bridges galvanized steel conduit shall be installed.
- ♦ All conduits placed on bridges shall have expansion joint placed at each structural (bridge) expansion joint or at least every 100 feet, whichever is the shorter distance.

Innerduct Installation

- HDPE innerducts, where utilized, shall be 1-1/4 inches.
- HDPE innerduct(s), where utilized, shall be encased by a HDPE or steel conduit
- HDPE innerduct(s) shall extend beyond the end of all conduits a minimum of 18 inches.