POLE CONTACT AGREEMENT
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
LEVEL 3 TELECOM OF CALIFORNIA, LP

PREAMBLE

This Pole Contact Agreement ("Agreement") is entered into between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power ("City") and Level 3 Telecom of California, LP (Company). City and Company may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City owns, operates, and maintains poles, anchors, and other related equipment and land rights under the poles ("City Overhead Facilities") designed primarily to facilitate the transmission and distribution of electric utility and fiber optic services to its electric customers;

B. City solely owns its Wooden Utility Poles ("Poles"), and does not sell an ownership interest in its Poles. City enters into Pole Attachment Agreements to allow the attachment of non-City owned facilities to its Poles;

C. Company represents that it is either (a) a personal wireless service provider authorized, certificated or licensed by the Federal Communications Commission ("FCC") or other agency, (b) an operator of a small cell distributed antenna system network authorized, certificated or licensed by the FCC, the California Public Utilities Commission ("CPUC") or other agency, (c) a wireline provider of Telecommunications Service authorized, certificated or licensed by the CPUC, or (d) a provider of Multichannel Video Services franchised by the CPUC or other agency;

D. The Parties agree that City will be reimbursed for the "Total Cost" of any work incurred for establishing and maintaining attachments under this Agreement with respect to its Overhead Facilities and in accordance with the terms of this Agreement. "Total Cost" shall be defined as, including the employee fully burdened hourly rate, actual cost of material and equipment, and cost of payments to contractors. Company shall pay City within thirty (30) days of invoice issuance unless otherwise stated or mutually agreed upon;

E. City has determined that its electric utility ratepayers are not required to subsidize third parties, including individuals, business entities or their owners or their stockholders by entering into agreements regarding the use of its Overhead Facilities in a manner which may jeopardize the reliability of City's electric

transmission and distribution system. City will charge nondiscriminatory, cost-based fees for contacting its Overhead Facilities;

F. The California Public Utility Commission's General Order 95 (G.O. 95) sets forth minimum standards used for wooden utility pole design and maintenance in California, and City's standards and requirements may exceed these minimums;

G. City has determined that the electric utility ratepayers have invested in City's "SVP MeterConnect WIFI system" and that the continued reliable operation of the service is not to be diminished as a result of this Agreement;

H. Company desires to attach its wire, cable, fiber, amplifier, switching, processing and transmission and distribution components of its cable, electric, or broadband communications systems ("Equipment") to City Overhead Facilities;

I. The term "Pole Attachment" means any attachment by Company under this Agreement to a pole owned by City;

J. Because it is impractical to execute a separate agreement in each instance which Company desires to contact the Overhead Facilities, it is the intent of the Parties that this Agreement shall be the all-inclusive master agreement regarding such contacts for the duration of this Agreement;

K. This Agreement does not apply to the attachment to City's overhead Facilities of any wireless antenna, or the associated cabling from the antenna to the multiplexing equipment, required to transmit/receive wireless signals;

L. Unless otherwise stated the term "days" shall mean calendar days; and

M. Construction and design practices relating to this Agreement shall be governed by the most recent version of SVP Standard Document Overhead 0825 in existence at the time of construction.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Company shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Schedule of Fees and Charges

Exhibit B – Sample Instructions and Application

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

2.1. Initial Term. Unless otherwise set forth in this Agreement or unless this Section is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate five (5) years thereafter ("Initial Term"). The Effective Date shall be the date on which the City executes this Agreement.

2.2. Option to Extend. Company shall have the Option to Extend the term of this Agreement beyond the Initial Term described herein for one additional five (5) year period on the same Terms and Conditions that are described in this Agreement ("Extension Term"), provided that (i) Company shall give written notice of its intention to extend this Agreement at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration of the Initial Term; (ii) Company is not in default of any of the material Terms and Conditions of this Agreement; (iii) and upon written mutual agreement of the Parties.

3. SCOPE OF ALLOWED USE OF OVERHEAD FACILITIES

Company shall attach its Equipment on City's Poles in accordance with SVP's City's Standard Document Overhead 0825, as may be amended from time to time, and shall perform the work required to install its Equipment promptly and in such manner as not to interfere with the services of City and City's third party attachers who have an active attachment agreement with City. If Company will use contractor(s) to perform any work contemplated by this Agreement, Company shall notify City in writing and identify the contractor(s) as soon as the contractor(s) is/are known to Company. Company shall be as fully responsible to City for the acts and omissions of its contractor(s), and/or person either directly or indirectly employed by them, while such contractor(s) and/or person is doing work for or on behalf of Company, as Company is for the acts and omissions of persons directly employed by it. When performing work in accordance with this Agreement, Company and/or contractor(s) shall wear clothing with visible labels that clearly identifies Company and/or contractor name and/or logo; such clothing may include a hat, vest, shirt, etc. Use of any Overhead Facilities under this Agreement shall be confined to Equipment, for which City has specifically given Company written permission to install in accordance with this Agreement.

4. APPLICATION TO PLACE EQUIPMENT

Whenever Company desires to place Equipment on any of City's Overhead Facilities, Company shall make a written application ("Application") to City for permission to attach to specific Poles. This written Application shall also include, but not be limited to, the location of specific Poles and anchors to be contacted, the description of equipment to be attached, height of contact, necessary work required by City or others to make Overhead Facilities ready for contact, guying, structural and wind loading calculations (calculations to include any City or third party equipment and decorations already attached to Poles). Upon receipt of the Application, City shall have the right to approve or deny the attachment to the proposed Pole, and afterwards, if approved, to inspect Company's installation of equipment onto Pole.

City may refuse to accept new Applications in accordance with Public Utilities Code Section 9511(c) if Company has unresolved violations or failed to comply with correction notices that are more than one hundred and eighty (180) days from City issuance or has more than thirty (30) active Applications with City at any one time, in accordance with Section 5.6. City may continue to refuse new Applications until such violations and correction notices are resolved or the total number of active Applications is thirty (30) or less. While City is not accepting new Applications, Company may continue to maintain its existing attachments and City will continue to process previously accepted Applications. Exceptions to this requirement are stated in this Agreement.

5. APPROVAL TO PLACE EQUIPMENT

5.1. After a written Application has been submitted by Company and has been reviewed by City, City shall provide written response, comments, denial and/or permission to place Equipment, as described in the Application, on the Overhead Facilities identified in the Application within forty-five (45) days after the receipt of a completed Application, or sixty (60) days if the request is to attach to over three hundred (300) poles. Each time City provides comments, Company shall have forty five (45) days from the comment issuance to provide a written response to the comments. City shall have forty-five (45) days from each of Company's responses to issue comments, a denial and/or permission to place the Equipment as requested in the Application. If Company fails to provide a written response to City's comments within ninety (90) days after the date of issuance of City's comments, the Application shall be considered withdrawn, and a new application must be submitted for approval. Any request to overlash existing Equipment shall be submitted in accordance with Section 4. City will approve or deny all completed overlash requests within forty-five (45) days. For routine business a limit of three hundred

(300) or fewer poles may be in the pending application approval process at any one time. When an Application has not been approved within the time frame described above it will no longer count towards the three hundred (300) pole total. When Applications for more than three hundred (300) poles are in the pending application approval process, an agreement containing, but not limited to, due dates and prioritization, will be negotiated between the Parties.

5.2. Approval of the Application by City does not release Company of the obligation to obtain an encroachment permit for any work in the public right-of-way, which must be obtained from City or other agency with jurisdiction. All encroachment permit fees associated with the Application shall be the responsibility of Company.

5.3. If, in the judgment of City the accommodation of any of Company's Equipment necessitates the rearrangement of City Equipment located on Overhead Facilities or the replacement of Overhead Facilities, City will notify Company in writing within fourteen (14) days of the necessary changes and provide an estimate of the cost of the changes required. At City's option, Company may perform the requested rearrangement on behalf of City to City's specifications. If Company maintains its desire to use said Overhead Facilities and notifies City within fifteen (15) days, City will make such rearrangement or replacement, the Total Cost of which to be paid at the sole expense of Company. If Company accepts the make-ready work proposal and estimate by notifying City within fourteen (14) days, within sixty (60) days City shall notify existing attachers of any third party make-ready work involving existing attachers' equipment. Company shall have responsibility for coordinating with those existing attachers to complete such make-ready work. All parties, including City, shall complete all make-ready work within sixty (60) days of the notice, or one hundred five (105) days for applications involving more than three hundred (300) poles, or some longer timeframe negotiated by Company and the responsible parties. The Total Cost of all make-ready work completed solely to accommodate Company's Equipment will be at the sole expense of Company. City will notify Company of any extraordinary cost before such costs are incurred. If Company does not approve the extraordinary costs within fifteen (15) days after the issuance of notice of such costs, the costs shall be deemed disapproved and City shall consider the Application withdrawn. City shall not be responsible to Company for any loss sustained by Company by reason of the failure of any such third party, City, or user to make such rearrangements or transfers. Company shall be responsible for the cost of make-ready work completed by existing attachers, including the subsequent payment arrangements.

5.4. After completion of any work required by City to make the Overhead Facilities ready for placement of the Equipment and after receiving written approval to proceed from City ("Attachment Authorization"), Company

shall have the right to install, maintain and use Equipment described in its Application, subject to any reasonable technical conditions in City's written approval. Before commencing any such installation, Company shall notify City of the time when it proposes to do said work at least fourteen (14) business days in advance so that City may arrange to have its representative present when such work is performed. If Company provided such notice and City's representative is not available, Company is not obligated to alter its installation schedule or delay any planned work.

5.5. The timelines described in this Section may be extended under special circumstances upon mutual written agreement of all the affected Parties. If the installation is not substantially completed in the specified time limit, then, upon notice by City, the Application and approval shall be considered withdrawn and a new Application must be re-submitted for approval. If at any time City finds that the Equipment is not installed in accordance with the approved Application, such as having extra equipment not shown in the Application documentation, City has the right to stop the installation and require that any installed equipment not in accordance with the approved Application be removed, with Company responsible for the Total Cost of the removal.

5.6. Nothing in this Agreement shall be construed to obligate City to grant Company permission to use any part of City's Overhead Facilities, provided that such use shall not be denied or delayed in a discriminatory manner. If permission to use a part of City's Overhead Facilities is refused, City shall provide in the response the reason for the denial and the remedy, if such remedy is available, to gain access to the subject Overhead Facilities. Company may make other arrangements for the installation of Equipment. Company agrees to conform its Equipment to the requirements of G.O. 95, as amended, of the Public Utilities Commission of the State of California.

5.7. For purposes of this Agreement, "Decommissioned Equipment" is Equipment that Company is not using for a continuous period of one hundred eighty (180) days or more nor has any intention of ever using to provide service to Company. Decommissioned Equipment, not intended to be used any longer, shall be promptly removed from City's Overhead Facilities by Company within ninety (90) days of Company's decommissioning of the equipment. Company shall send written notification of removal of such equipment to City. City will stop charging fees from the date of receipt of the notification of removal and City shall have the right to verify removal. If City suspects that Equipment on its Overhead Facilities is decommissioned, City may send written notice to Company. Upon receipt of written notice, Company has ninety (90) days from the date that the notice was issued to remove the Decommissioned Equipment, or to notify City in writing that it disputes in whole or in part City's claim that Equipment is not or will not be utilized. If Company fails

to respond or fails to remove undisputed Decommissioned Equipment, City may remove the Decommissioned Equipment at Company's expense. City's failure to require removal in any particular instance shall not prevent City from requiring removal at a later date.

6. NEW OVERHEAD FACILITIES

If Company decides to erect Overhead Facilities in locations within City limits where none currently exist, then Company shall give notice to City that it may attach to the proposed new Overhead Facilities if it so desires subject to the terms and conditions offered by Company. Nothing herein shall be deemed to grant any required permits and approvals of any governing agency.

7. INSTALLATION AND MAINTENANCE OF ATTACHMENTS

Company shall employ a licensed and competent professional and at its own sole risk and expense, to install and maintain Equipment on Overhead Facilities in safe and good repair and in accordance with the requirements of City's Rules and Regulations, and all City, local, state and federal laws, ordinances and regulations.

Company shall have six (6) months from Attachment Authorization to complete the attachment, unless the Parties mutually agree to extend such timeframe. Following Company's installation of the attachment, City shall provide post construction comments, if any, within forty-five (45) days after City receives written notification of completion from Company. If Company fails to perform work related to post-construction comments within the timeframe described in this Agreement, City may perform the necessary work, the Total Cost of which City shall be at the sole expense of Company.

If City identifies any deviation from the aforementioned requirements involving Company's Equipment, City shall report the deviation in writing to Company. Company shall subsequently either respond in writing disputing the alleged deviation(s) or request more time for investigation with accompanying schedule within thirty (30) days of issuance of the written notice or resolve the deviation so that the Equipment conforms to all requirements. Such resolution shall be completed within one hundred eighty (180) days of issuance of notification, or less if required by G.O. 95. If Company fails to correct within specified time, City may perform the necessary corrections, the Total Cost of which City shall be at the sole expense of Company. No Application is necessary for replacement of existing Equipment if such replacement is the same model type, size, weight and appearance as the existing Equipment that was previously submitted and approved by City, and if the Parties agree that such replacement constitutes maintenance.

Following Company installation of permitted attachments, the time taken by Company to respond to City's post-construction comments shall not exceed one

hundred eighty (180) days from issuance, unless the Parties agree to extend such timeframe due to extenuating circumstances. If Company fails to perform such necessary work within this timeframe, City may perform the necessary work and the Total Cost of such work shall be at the Company's sole expense.

8. COORDINATION WITH THIRD PARTIES

City shall coordinate with Company to identify all existing third party attachers on any affected Overhead Facilities in relation to attachers' proposed new contacts or modifications of existing contacts. Within sixty days (60) of acceptance of proposed make-ready work, City shall notify any existing third party attachers that make-ready work for another attacher needs to be performed. Company shall coordinate directly with third party attachers any work that may be required by the existing third party attachers to accommodate Company's proposed work. Company may complete make-ready work with the consent of the existing attachers. Any costs associated with such modification of third party attachers' equipment are the responsibility of Company. Company may complete make-ready work without the consent of the existing third party attachers, if the existing third party attachers fail to move their attachments by the end of the make-ready timeline requirements specified in this Agreement.

9. LOCATION OF ATTACHMENTS

Any pole space allotted to a Party for its use, any pole space allotted for clearance purposes, and any unallotted pole space may be occupied by a guy, lamp suspension or vertical contacts owned by either Party, so long as such occupancy does not conflict with the Terms and Conditions of this Agreement or the requirements of City, and provided that such guy, lamp suspension and vertical contacts are installed in such manner so as not to prevent or interfere with the full utilization by either Party, or preexisting third party, of the space allotted for such Party's use.

10. ATTACHMENT LIMITATIONS

10.1. Equipment shall not be installed, placed, or maintained on Overhead Facilities carrying voltage of 60,000 volts or greater between conductors.

10.2. If City finds it necessary at any time to intentionally increase its voltage to 60,000 volts between conductors on the poles jointly occupied under this Agreement, City shall give Company ninety (90) days' prior written notice, as provided herein, of its intention to increase said voltages.

10.3. Equipment must be installed below the supply cabinet level of City Overhead Facilities and a minimum of 8' above ground line.

11. IDENTIFICATION OF EQUIPMENT

Company shall identify Equipment newly installed or serviced at each contact point by means of a marking method mutually agreed upon by the Parties. Such identification shall be visible from ground level. Company shall provide City a 24-hour contact phone number to enable City to report any concerns regarding Equipment. In the event that City reports such concerns to Company, Company shall respond to such call(s) within three (3) days and perform the required repair or correct any adverse impact to City's operations caused by such Equipment at no cost to City, unless solely caused by City, within thirty (30) days of issuance of notice.

12. ADDITIONAL ATTACHMENTS

Except to the extent this Agreement provides otherwise, Company shall not have the right to place, nor shall it place, any additional Equipment in contact with any Overhead Facilities, or modify the location or manner in which existing Equipment contacts any Overhead Facilities, used by it without first following the attachment application process described in this Agreement and receiving written permission to do so from City as described in this Agreement. Company may rearrange existing attachments without being charged an additional attachment fee; for any new attachments the applicable fee shall be charged.

13. SUBSEQUENT ATTACHMENTS

If City intends to authorize or permit attachments of a third party to a pole jointly used by Parties under this Agreement, and if the proposed attachments of such third party requires the rearrangement of any Equipment, City shall obligate such third party to agree to pay to Company the cost for Company to rearrange the Equipment and any damage caused thereto before authorizing or permitting the attachments, to the extent allowed under existing contracts and applicable law.

14. GUYS AND ANCHORS

14.1. Company, at its sole risk and expense, shall install and maintain guys and anchors as required where Company's anchorage requirements are not coincident with City Overhead Facilities' existing anchorage requirements.

14.2. Where the anchorage requirements of Overhead Facilities used by the Parties are coincident, the existing guys and anchors should be used. If City, in accordance with accepted electric utility standards, determines that separate guys and/or anchors are necessary, Company, at its sole risk and expense, shall install new guys and/or anchors. If City, based on such accepted electric utility standards, determines that the existing guys and/or anchors need to be replaced, City, at Company's sole expense, or Company itself or Company's authorized contractors shall install new guys and/or anchors. Company shall be responsible for the Total Cost of such work.

14.3. No charge, payment or fee of any nature whatsoever shall be collected or become due by or to either of the Parties for the attachment of guy wires, provided that the proper easement(s) have been acquired. Vertical contacts to poles, stubs, and the attachment of wires or wire supports to poles to provide or maintain horizontal clearance from a pole of the other Party are excluded from charge, payment, or fee of any nature.

15. WARRANTY

Company hereby warrants that it has acquired, and maintains during the term of this Agreement, all necessary authorization required to provide services set forth in this Agreement within City. If the nature and character of Company's Equipment changes in the future, Company shall notify City, in writing, at least sixty (60) days in advance of its intent to change the nature of its Equipment. The Parties agree that the Terms and Conditions of this Agreement are based on the nature of Equipment attached to the Overhead Facilities. Company acknowledges that any unauthorized change in the nature of Equipment, beyond the definition of Equipment specified in this Agreement, shall require the renegotiation of the Terms and Conditions of this Agreement.

16. RIGHT OF CITY TO INSPECT

City shall have the right to inspect each new installation of Equipment attached to its Overhead Facilities and to make periodic inspections at City's discretion as conditions may warrant. Such inspections shall not relieve Company of any responsibility, obligation or liability assumed under this Agreement.

17. ACCESS

For the term of this Agreement, Company is authorized to use any easements and rights-of-way of City for access to Overhead Facilities to which Equipment is attached pursuant to this Agreement so long as such use does not impede City's present and future access to Overhead Facilities or easements. Company shall provide proper notification to the servient estate before entering private property. Easement authorization for purposes of this Section shall be deemed revoked upon Equipment removal or as described in Section 24.1.

18. COMPENSATION AND PAYMENT

As compensation for the right to install and maintain Equipment on Overhead Facilities, Company shall pay to City fees calculated as set forth in Exhibit A, attached hereto and incorporated herein by reference.

18.1. Application Fee. The non-refundable one-time application fee for Application review and inspection of Equipment installed on Pole per attachment installed on Pole per attachment ("Application Fee") is set forth in the City's approved Municipal Fee Schedule, adopted by the City

Council on an annual basis. The Application Fee is subject to City's review and adjustment in accordance with City policies and procedures and with any applicable law.

18.2. Surety Bond. Prior to the installation or other work performed by Company pursuant to this Agreement, Company shall furnish City with a surety bond satisfactory to City in the amount of two hundred and fifty thousand dollars ($250,000) ("Surety Bond") to protect City in the event of a default or if Company fails to meet and fully perform any of its obligations in accordance to this Agreement. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. The bond forms shall be in a form approved by the City Attorney. In the event City draws from Surety Bond, in whole or in part, then Company shall replenish the Surety Bond to the full amount stipulated within thirty (30) days and failure to do shall be deemed a default. If Company fails to meet and fully perform any of its obligations in accordance to this Agreement causing the City to draw from the Surety Bond two (2) or more times in a twelve (12) month period, City reserves the right to increase the required bond amount up to $50,000.

18.3. Equipment Contact Fees. Company shall pay City annual Equipment Contact Fees per attachment as described in Exhibit A. The fees shall be paid annually as set forth in this Section. The fees will be adjusted as described in Exhibit A. The fees will be charged each time an attachment contacts a Pole. City agrees that in no event shall the fees exceed the Pole attachment fee charged to any other commercial user attaching like equipment or facilities in the Pole's communications space by agreement with City entered into or renewed after the Effective Date.

18.4. Payment Schedule. As compensation for the right to install and maintain Equipment on Poles, Company shall pay to City fees calculated as set forth in Exhibit A, attached hereto and incorporated herein by reference.

18.4.1. The amount of the fee due to City from Company for any year shall be based on the type and number of attachments, as defined in Exhibit A. Said amount shall become due and payable in one (1) annual installment within thirty (30) days of issuance of invoice.

18.4.2. The payment dates provided for in this Section may be modified by City upon ninety (90) days prior written notice to Company. City may render an invoice for amounts due, but failure by City to render an invoice does not relieve Company from its obligation to pay the fees due.

18.5. Overdue Payments. If the payment is not paid as required herein, simple interest on unpaid, undisputed amounts of the payment shall accrue, until paid, at one percent (1%) per month. or an amount dictated by law.

18.6. Payment for Renewal Term. At the cessation of the Initial Term, as defined in this Agreement, Company may elect to renew this Agreement ("Renewal Term") as set forth in Section 2 for that Renewal Term and at the Rate Schedule set forth in Exhibit A., to the extent such rates comply with applicable law.

18.7. Baseline Report. The compensation in this Section shall be based upon the pro-rated number of Equipment estimated to be attached to Poles between the effective date and June 30th of the first year("Baseline Report"). City shall have the right to audit and verify the Baseline Report to assure the accuracy of the number of Pole attachments stated.

18.8. Inventory Report. Thereafter, upon request an inventory report ("Inventory Report") shall be submitted by Company to City, in writing, by May 31st setting forth the total number of Pole attachments utilized by Company. The Inventory Report shall include the total number of Equipment attachments from July 1st to June 30th of each given year. City shall have the right to audit and verify the Inventory Report to assure the accuracy of the number of Pole attachments stated.

18.9. Penalty. Should City determine that the actual number of attachments installed exceeds the number in the Baseline Report and/or Inventory Report, the additional attachments shall be deemed as unauthorized. Company shall be required to either submit an Application or contest the alleged unauthorized attachment within thirty (30) days of issuance of notice of the alleged unauthorized attachment. City may, at its sole discretion, require a one-time assessment equal to three times the then-current annual Equipment Contact Fee(s) set forth in Exhibit A for the attachment(s) if it is reasonably shown to have been made without authorization. City may remove any unauthorized attachments as set forth in California Public Utilities Code section 9513. City shall invoice Company for the Total Cost incurred by City as a result of removal.

18.10. Payment Disputes. If Company does not agree upon the amount owed, then it shall pay the undisputed amount and shall contact the City to discuss the remaining balance. Interest at the rate listed in Section 18.5 shall be awarded on that amount unpaid but actually due.

19. INTERACTION WITH CITY OR THIRD PARTY EQUIPMENT

19.1. For purposes of this Agreement, the term "Negative Impact" shall mean adversely interfering on a continuous or regular basis with the operation of

equipment owned or operated by or on behalf of City or third party who has an active attachment agreement with City. This includes interfering with the transmission of signals or the physical operation of any device. Company acknowledges and accepts that existing City services are currently in use. If Company's Equipment is found to be the cause of any Negative Impact upon City's services, City shall notify Company of such Negative Impact and Company shall either eliminate such impact or shutdown the operation of any Equipment in the vicinity of the Negative Impact within seventy-two (72) hours of issuance of notification in order for City, at its sole discretion, to determine the extent of the impacts and how to reduce/eliminate such impacts. If it is determined that the removal of Equipment is needed to reduce/eliminate the Negative Impact, City shall notify Company and Company shall have thirty (30) days after issuance of notification to remove the offending Equipment. If, after the timeframe mentioned above has elapsed, the Negative Impact continues, City shall have the right to remove the offending Equipment from the Poles and store the Equipment in accordance with the terms set forth in this Agreement. If the solution to remove the Negative Impact results in the removal of Company's Equipment, Company may apply to move the Equipment to a new Pole pursuant to the terms set forth in this Agreement. Upon written request of Company, City shall provide a map showing available Pole locations within five hundred (500) foot radius of the Pole to be removed.

19.2. If Company finds that any City third party attacher who has an active attachment agreement with City is causing a Negative Impact, as defined in this Agreement, then Company and the third party attacher shall coordinate to resolve the Negative Impact within fourteen (14) days of notification. If a resolution is not reached within the stated timeframe, Company and/or third party attacher may request, at the sole risk and expense (Total Cost) of the party causing the Negative Impact, City to take action, including providing a study indicating which party is the cause of the Negative Impact. Once identified, the party causing the Negative Impact shall remove or relocate Communications Equipment, or otherwise resolve Negative Impact, within thirty (30) days.

19.3. If Company disputes the finding that its Equipment is the cause of the Negative Impact, Company, at its sole risk and expense, may submit a study within thirty (30) days of City notification pursuant to Section 19.1 to demonstrate that its Equipment is not the cause. City shall review and respond to Company's study within thirty (30) days. If, at its sole discretion, City accepts and agrees with Company's study, Company may resume the operation of its Equipment. If, at its sole discretion, City does not accept and/or agree with Company's study, Section 19.1 shall apply.

19.4. City may, from time to time, require enhancements to its existing systems, including the expansion of the wireless service and installation of new wireless devices on Poles. City will use commercially reasonable efforts to install any new wireless devices in locations that will not interfere with Company's existing Equipment. Company will be provided at least sixty (60) days advance notification of such City activities and will be given time to re-evaluate their installations in the event, at the sole discretion of City, the enhancements to City services requires the removal or relocation of Company's Equipment. City shall have no obligation to make available any alternate Pole or any other facility for the relocation of Company's Equipment; however, at the sole cost of Company, City will accept and expedite Applications to relocate the Equipment to a new location, as set forth in Section 4 of this Agreement. Upon request of Company, City shall provide a map showing available Pole locations within a five hundred (500) foot radius of the Pole to be removed.

20. INTERRUPTION OF SERVICE

City and Company shall not be liable to each other for any interruption to Company's service or for any interference with the operation of Company's Equipment arising in any manner from the use of Overhead Facilities by City in accordance with this Agreement.

21. NO OWNERSHIP OR VESTED INTEREST CREATED

No use of any Overhead Facilities under this Agreement shall create or vest in Company any ownership interest, tenancy, estate or any other interest in the Overhead Facilities and Company's rights therein shall be and remain a license. Each Party shall pay the Total Cost of the installation and maintenance of its own facilities. Nothing in this Agreement shall be construed to compel City to maintain any Overhead Facilities for a period longer than demanded by its own service requirements. Title to the Equipment, exclusive of the Overhead Facilities (original or replacement) used for support shall remain with Company and shall constitute Company's personal property and equipment, and not fixtures or improvements attached to the land.

22. REPLACEMENT OF POLES OR ANCHORS

22.1. Simple Pole Transfers: For the purposes of this Agreement, a "Simple Pole Transfer" shall be defined as a transfer occurring in-line with the existing lead, has simple guying and does not require the following: splicing, service interruptions, riser transfers that require large amounts of trenching or conduit work, and complex guying. In the event any Overhead Facilities occupied by Company under this Agreement consisting of a Simple Pole Transfer are to be replaced, repaired, or altered. Company shall, at its own sole risk and expense, upon at least thirty (30) days

(except in the case of rearrangements required by third parties or City Equipment), notice from City, relocate or replace its Equipment or transfer it to replacement Overhead Facilities or perform any other work in connection with said Equipment that may be required by City; provided, the deadline above may be extended as needed on a day to day basis when Company requires otherattachers to perform their transfer and those transfers have been delayed. Company shall provide prior written notice of such delay otherwise the deadline will not be extended at the City's option. If Company fails to transfer or replace its Equipment within ninety (90) days of notification of pole replacement, City will have the right to transfer or remove Company's Equipment, the Total Cost at Company's sole expense. A single ninety (90) day timeline extension may be granted due to reasons of operational necessity. In such instances, Company shall make the request in writing to City for approval, the request and approval shall occur within the original ninety (90) days. City shall exercise extreme care when transferring Company's Equipment to the new Overhead Facilities. City shall not be liable to any claims of damage on Company's Equipment arising from such work except to the extent caused by the active negligence or willful misconduct of City.

22.2. Complex Pole Transfers: For the purpose of this Agreement, a "Complex Pole Transfer" shall be defined as any transfer occurring out of line with the existing lead and/or requires: splicing, service interruptions, riser transfers that require large amounts of trenching or conduit work, and complex guying or complex coordination. In the event that any Overhead Facilities occupied by Company under this Agreement consisting of a Complex Pole Transfer are to be replaced, repaired, or altered, City shall schedule a meeting with all affected attachers. From this meeting a schedule with milestones will be produced in writing and distributed to all parties. If Company fails to perform such work after a schedule is agreed to then City may perform such tasks as needed, the Total Cost at Company's sole expense, to allow the other attachers to meet their milestones. In the case that the work to be performed is of a specialized task and City is performing the work, City will hire a qualified contractor to perform the work.

22.3. Emergency Pole Transfers: For purposes of this Agreement, an "Emergency" shall be defined as an unforeseen event, circumstance, or combination of circumstances that City reasonably determines to require immediate action and/or presents an ongoing danger to public health and safety and/or imperils SVP's distribution system. In cases of Emergency, City may, the Total Cost at Company's sole expense, relocate or replace the Equipment, or transfer it to replacement Overhead Facilities, or safely secure the Equipment temporarily or perform any other work required to serve the needs of City, provided that City notifies Company

of such work within three (3) business days after completion of such work. City shall make commercially reasonable efforts to notify Company of the relocation of its Equipment in the event of an emergency, prior to the relocation of that Equipment. City shall not be liable for any claims of damage to Company Equipment and/or company service interruptions concerning Company Equipment transfer work, except in the case of City's active negligence or willful misconduct.

23. REMOVAL OR VACATION

Should Company remove its Equipment from any of City's Overhead Facilities, Company shall, within thirty (30) days after such removal, give notice thereof to City, specifying the Overhead Facilities vacated and the location thereof, as well as the date of removal. Removal of all Equipment from any Overhead Facilities without its replacement or substitution by Company within thirty (30) days shall constitute a termination of Company's right to use such Overhead Facilities and easements without making a new Application thereof. Once the Equipment is removed, Company shall restore Overhead Facilities to City's satisfaction.

24. POLE REMOVAL NOTICE

24.1. If City is required by law or ordinance or desires at any time and for any reason to remove any Overhead Facilities or replace any existing Overhead Facilities with one not suitable for placement of Company's Equipment, City shall, except in cases of Emergency, issue Company a Notice of Pole Removal, to that effect at least thirty (30) days prior to the date on which it intends to remove such Overhead Facilities and Company shall no longer have approval to have such Overhead Facilities on City property or easements. When able, City shall provide Company a preliminary notice at least ninety (90) days in advance. If Company cannot accommodate the removal of the Equipment within the thirty (30) day notice period then the Parties will either (1) have City remove and store Company's Equipment, the Total Cost at Company's sole expense; or (2) shall negotiate and mutually agree upon a longer timeframe for removal of the Overhead Facilities and Company's Equipment, on a case-by-case basis. The removal of the Equipment shall be at the sole risk and Total Cost of Company. City shall have no obligation to make-ready any Pole for the relocation of Company's Equipment; however City will accept and expedite Applications to relocate the Equipment to a new location provided the Application meets the requirements set forth in Section 4 of this Agreement. Upon request of Company, City shall provide a map showing available Pole locations within a five hundred (500) foot radius of the Pole removed.

24.2. In the event of an Emergency, as defined in this Agreement, City may remove such Overhead Facilities and shall in such case notify Company

within three (3) business days of the action taken. City shall make commercially reasonable efforts to notify Company of the removal of its Equipment, prior to the Emergency removal of that Equipment. In the event that a service disruption is not evident (i.e. cable cuts), City shall exercise extreme caution during removal operations. City shall not be liable for any claims of Equipment damage and/or Company service interruption concerning Company's Equipment transfer or removal work as a result of such work, except in the case of City's active negligence or willful misconduct.

24.3. Abandonment/Sale of Equipment: If at any time Company shall desire to sell any Overhead Facilities under this Agreement, it shall notify City of its intention in writing no later than sixty (60) days in advance of the intended abandonment or sale date. When Company sells Overhead Facilities to another entity, Company shall notify such entity that a Pole Contact Agreement with City is needed in order to maintain Overhead Facilities on Poles.

24.4. Sale by City: It is the practice of City to not abandon any Overhead Facilities. Notwithstanding that practice, if at any time City desires to sell any Overhead Facilities jointly used by the Parties, it shall notify all attachers of its intention in writing. All attachers shall have the right to bid for the Overhead Facilities through a public process consistent with the City's Charter and City Code.

25. DAMAGE TO CITY PROPERTY AND/OR OVERHEAD FACILITIES

Company shall exercise precautions to avoid causing damage to City property and/or Overhead Facilities. Company shall assume responsibility for any loss stemming from such damage to the extent such loss is caused by Company. Company shall report to City within twelve (12) hours of learning of any such damage and shall reimburse City for its Total Cost incurred in making repairs to such damage caused by Company. City may choose not to accept further Applications until City receives said reimbursement or payment dispute as described in Section 18.9, unless otherwise required to do so under any applicable local, state or federal laws.

City shall exercise precautions to avoid causing damage to Company property and/or Equipment. City shall assume responsibility for any loss stemming from such damage to the extent such loss is solely caused by City's negligence or willful misconduct of City. City shall report to Company within twelve (12) hours of learning of any such damage and shall reimburse Company for its Total Cost incurred in making repairs to such damage caused by City.

If Equipment owned by either Party shall hereafter displace or pull any reasonably serviceable Overhead Facilities, occupied hereunder, out of line, or

damage any Overhead Facilities or such Equipment or installations owned by the other Party in any manner, the Party whose Equipment caused such damage shall pay the Total Cost of any related replacements, repairs or restoration of said Overhead Facilities, Equipment or installations.

26. DEFAULT AND REMOVAL OF EQUIPMENT

26.1. If Company should default in the performance of any work that it is obligated to do under this Agreement, following the notice period set out in this Agreement or thirty (30)days if no specific notice period is provided for, which may be extended upon written mutual agreement of the Parties, City may elect to do such work at Company's sole expense, and Company shall reimburse City for the Total Cost.

26.2. If Company should default in the removal of its Equipment or property from any of the Overhead Facilities within the time allowed for such removal, City shall give written notice to Company that City will remove and store the Equipment or property at Company's sole expense (Total Cost). If Company does not claim said Equipment within one hundred eighty (180) days, the Equipment shall become the sole property of City in which event title to said Equipment and property shall vest in City as of one hundred eighty (180) days after the date of such written notice.

26.3. Nothing herein contained shall be construed to make City or other third parties under contract with City liable for damage to Equipment or service of Company, except in the case of active negligence or willful misconduct on the part of City or third parties under contract with City. Damage to Equipment or service of Company by any party other than City or third parties under contract with City are subject to Section 27 of this Agreement.

27. DEFAULT PROCEDURES

Company shall be subject to default procedures as set forth in this Section if Company defaults in any of the following particulars:

27.1. Fails to pay the undisputed fees prescribed in this Agreement; or

27.2. Breaches any other term or condition of this Agreement.

Upon default under either of the subsections above, City shall give Company written notice setting forth the nature of the default and a demand that said default be cured and remedied. If Company fails, neglects or refuses within thirty (30) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then City, upon notice and without

suit or other proceedings, may terminate this Agreement and cancel and annul the rights and privileges granted herein.

27.3 City shall be subject to default procedures as set forth in this Section if City breaches any term or condition of this Agreement. Upon such default, Company shall give City written notice setting forth the nature of the default and a demand that said default be cured and remedied. If City fails, neglects or refuses within ninety (90) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then Company may terminate this Agreement

28. TERMINATION

28.1. Termination for Default. In the event that City invokes Section 27 in the case of a material breach by Company.

28.2. Termination by Company. In the event that Company desires to terminate the Agreement before the expiration of the Initial Term, as described in 2, Company shall provide written notice to City at least ninety (90) days in advance and shall be subject to pay the Equipment Contact Fees as described in Section 18.3.

28.3. Termination by City. In the event that Company (or any successor-in-interest to Company) shall cease to operate, City may terminate this entire Agreement upon providing Company or Company's successor ninety (90) days prior written notice of City's intent to so terminate this Agreement.

28.3.1. In the event that all of Company's Equipment that has been in place and previously used by Company is not utilized by Company for a period of twelve (12) consecutive months, City may terminate this entire Agreement upon providing Company ninety (90) days prior written notice of City's intent to so terminate this Agreement. If Company should default in the timely removal of its Equipment, Section 26.2 of this Agreement shall apply.

28.3.2. City shall not terminate this Agreement for telecommunications anti-competitive reasons, however this provision does not waive City's right to remove Overhead Facilities in accordance with any other provisions of this Agreement.

28.4. Upon receipt of a notice of termination as referred to in Section 28.1, 28.2 or 28.3, this Agreement shall terminate at the date specified in such notice, which date shall not be less than ninety (90) days from the date of such notice. Company, at its own expense, shall remove any and all attachments from Poles. The Parties will negotiate a practical timeframe

for the removal of Company's Equipment from City's Overhead Facilities. Such negotiated timeframe shall not exceed three (3) years and shall include milestones setting expectations for the amount of progress at specified intervals. If Company should default in the removal of its Equipment or property from City's Overhead Facilities within the agreed upon timeframe, then Section 26.2 shall apply.

28.5. In the case of termination due to any reasons, or denial of the Option to Extend for an additional five (5) years as described under Section 2.1, City will continue to process Applications from Company, provided that Company engages in timely negotiations for a replacement agreement. Furthermore, Company shall maintain all existing Equipment on City's Overhead Facilities pursuant to and in accordance with the Terms and Conditions of this Agreement until such time the replacement agreement becomes effective. In order for the negotiations to be considered timely, City shall submit a notice in writing at least six (6) months prior to the expiration date to Company indicating who will be acting as City's point of contact for the negotiations, as well as requesting a meeting date. Within four (4) weeks of the notification being sent, Company shall reply to City with its point of contact. If at any time during the negotiation the point of contact for either Party is changed, such Party shall notify the other Party no less than two (2) weeks in advance. The negotiations, at least, shall consist of monthly meetings and biweekly updates. If a new agreement is not signed within one (1) year of the termination date of this Agreement, City will have the option, with thirty (30) days notice, to decline to accept Exhibit (B)

29. USE SUBJECT TO PRIOR RIGHTS AND OBLIGATIONS

Nothing in this Agreement shall be construed as affecting any rights or privileges previously conferred by City or of an interest in or of facilities on the Overhead Facilities, by contract or otherwise, upon others to use the Overhead Facilities covered by this Agreement, except that City's rates, terms and conditions of access shall be non-discriminatory; and City shall have the right to continue and extend such rights or privileges consistent with this Agreement. The privileges herein granted to Company shall at all times be subject to any such existing contracts and arrangements. Any rights and privileges herein conferred are also subject and subordinate to the prior right of City to use all its easements, rights-of-way and property interests and governmental powers in the performance of its duties as a municipal utility and a governmental entity.

30. NON-EXCLUSIVE LICENSE

The license and right to access the Overhead Facilities granted by this Agreement is non-exclusive. Company shall not interfere with any other license and right of access granted by City to any other third party.

31. NO FRANCHISE RIGHTS CREATED

Nothing in this Agreement shall be construed as granting or creating any franchise right.

32. NO PUBLIC OFFERING

To the extent Company is required to file this Agreement with the Public Utilities Commission, Company declares that said filing, pursuant to the procedural requirements of G.O. 95-A is not to be construed as a public offering by Company of the services or the Equipment.

33. ASSIGNMENT AND SUBCONTRACTING

City and Company bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Company, without City's approval, may assign or transfer this Agreement and all of its rights, interests and/or obligations hereunder to any direct or indirect wholly-owned subsidiary of Company's parent company.

Company shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Company is for the acts and omissions of persons directly employed by it.

34. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

35. THIRD PARTY MODIFICATIONS

This Agreement shall be subject to such changes or modifications as may be required or authorized by any non-City affiliate third party regulatory commission in the exercise of its lawful jurisdiction, provided that neither Party is hereby consenting to its contractual rights being impaired, and any modification, revision, renewal or extension of this Agreement shall so state.

36. INDEPENDENT CONTRACTOR

Company and all person(s) employed by or contracted with Company to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Company has full rights to manage its employees in their performance of Services under this Agreement.

37. CONFIDENTIALITY OF MATERIAL

Subject to the California Public Records Act, and any other applicable Federal, state, or local laws, all ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Company or City and all other written information submitted to Company or City in connection with the performance of this Agreement shall be held confidential by Company and City provided that it is clearly and conspicuously marked as such, and shall not, without the prior written consent of City or Company, be used for any purposes other than the performance of the Agreement nor be disclosed to an entity not connected with performance of the Agreement. Notwithstanding the foregoing, City may provide Company with "block maps" and Company acknowledges that these block maps may not be clearly and conspicuously marked as confidential, but Company agrees that the block maps shall be held as confidential regardless of such marking and may not be used for any purposes other than the performance of the Agreement nor be disclosed to an entity not connected with the performance of the Agreement. Nothing furnished to Company which is otherwise known to Company or becomes generally known to the related industry shall be deemed confidential.

38. HOLD HARMLESS/INDEMNIFICATION

38.1. To the extent permitted by law, Company agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Company's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Company pursuant to this Agreement unless solely caused by the City's active negligence or willful misconduct. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

38.2. Limitation on Liability. Neither Party shall be liable to the other for any indirect, special, consequential, punitive or exemplary damages, such as damages for loss of anticipated profits or revenue or other economic loss, for any claim or cause of action arising out of or related to this Agreement, whether arising in contract, tort or otherwise, except for claims for which a party has an obligation of indemnity under this Agreement, for any grossly negligent, willful or fraudulent act or omission, or unless otherwise stated in this Agreement.

38.3. Company's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all

employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Company, against City (either alone, or jointly with Company), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

39. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Company shall provide and maintain in full force and effect, at no cost to City insurance policies set forth in Exhibit C.

40. WAIVER

Company agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

41. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attn: Chief Electric Utility Officer
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov, and
manager@santaclaraca.gov

And to Company addressed as follows:

Level 3 Telecom of California, LP
Attn: NIS Contracts
1025 Eldorado Blvd, ROW
Broomfield, CO 80021
and by e-mail at poles@centurylink.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

For after normal business hours or emergencies, all notices to the Parties shall be sent to City as follows:

Non-Emergency Service Requests: (8 a.m. - 5 p.m., M-F)
Operator on Duty
Day: (408) 615-5600
Night: (408) 615-5640

Emergency Service Requests (24 hr.):
Operator on Duty
(408) 615-5640

And to Company as follows:

Non-Emergency After Hours:
UNI call: 1-866-864-2255

Emergency:
UNI call: 1-866-864-2255

42. COMPLIANCE WITH LAWS

Company shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Company's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Company has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

43. CONFLICT OF INTERESTS

Company certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Company and that no person associated with Company has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Company is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Company will advise City if a conflict arises.

44. FAIR EMPLOYMENT

Company shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression,

gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

45. NO USE OF CITY NAME OR EMBLEM

Company shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

46. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

47. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

48. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

49. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

Approved as to Form: Dated: _____

_____ _____

City Attorney

City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

LEVEL 3 TELECOM OF CALIFORNIA, LP

Dated:	Nov 4, 2022
By (Signature):	Danett Kennedy Danett Kennedy (Nov 4, 2022 15:30 MDT)
Name:	Danett Kennedy
Title:	Sr. Manager
Principal Place of Business Address:	1025 Eldorado Blvd Broomfield, Co 80021
Email Address:	danett.kennedy@lumen.com
Telephone:	( ) 720-888-6461
Fax:	( ) 720-888-1000 (main office) no fax

"COMPANY"

EXHIBIT A
SCHEDULE OF FEES AND CHARGES

I. Equipment Contact Implementation Charges

Company shall reimburse City for the actual Total Cost for preparing the Overhead Facilities for each new or modified Company attachment. This reimbursement is a one-time charge, as applicable, for each attachment. Charges are due upon approval to install or modify any Equipment contact and must be paid before make-ready construction begins.

Charge:	**Cable Attachment Charges**
Description:	The costs incurred by City for making space available and other modifications necessary to accommodate each line attachment.
Price:	Total Cost

Charge:	**Anchor Attachment Charges**
Description:	The costs incurred by City for making provisions for guying the structure at the communications level.
Price:	Total Cost

Charge:	**Equipment Attachment Charges**
Description:	The costs incurred by City for making space available and other modifications necessary to accommodate equipment (amplifiers, nodes, batter backup) mounting.
Price:	Total Cost

Charge:	**Engineering Charge**
Description:	The costs incurred by City for reviewing contact design, designing City modifications and updating operation records.
Price:	Total Cost

II. Annual Equipment Contact Fees

Company shall pay City fees for contacting the Overhead Facilities as described in Section 18 of this Agreement. The Contact Fees will be paid annually and may be adjusted each year in accordance to the adjustment rates as set forth in this Exhibit. The applicable fees will be charged each time a cable attachment or other piece of equipment contacts a Pole or anchor. City agrees that in no event shall the applicable fee exceed the pole attachment fee charged to many other commercial users attaching like facilities in the poles' communication space by agreement with City entered into or renewed after the date of this Agreement.

Fee:	**Cable Attachment Fee**
Description:	The annual fee to be paid by Company for each point on the pole to which Company's cable is attached. Equipment not requiring an additional cable attachment point and required safety attachments,

such as guard arms shall not invoke an additional pole attachment fee but, shall require the standard request and engineering review prior to being attached to the overhead facilities.

Fee: **Anchor Attachment Fee**
Description: The annual fee to be paid by Company for each City anchor used by Company.

Fee: **Equipment Attachment Fee**
Description: The annual fee to be paid by Company for the pole space used by Company to mount equipment (amplifiers, nodes, battery backup).

Fee: **Riser Contact Fee**
Description: The annual fee to be paid by Company for the pole space used by Company to mount each riser.

III. Modifications to Annual Contact Fee

Contact Fees are set by City Council and subject to City's review and adjustment in accordance with City policies and procedures and in accordance with any applicable law.

IV. Security Deposit

The Security Deposit required is based upon the number of City-approved Company Poles. Company shall increase the amount of the Security Deposit as the number of Poles increases, per the increments listed below.

Number of Poles	Security Deposit
0 - 50	$5,000
51 - 100	$10,000
101 - 250	$25,000
251 - 500	$50,000
501 – 1,000	$100,000
Addition of 100 or 1,000	$10,000 or $100,000

EXHIBIT B
SAMPLE INSTRUCTIONS AND APPLICATION

Company and/or Contractor ("Applicant") Responsibilities

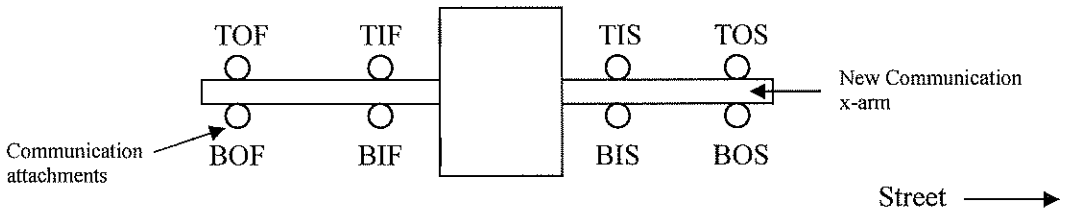
1. Applicant is responsible to do its own engineering analysis (submitted with Application) to determine where on the Pole Applicant needs to attach in order to meet CPUC GO 95 clearance requirements along the proposed route.

2. Applicant design must be in conformance with SVP Standard OH 0825.

3. Applications will follow the Application and approval time frames outlined in this Agreement.

4. City generally does not specify attachment heights.

5. All attachments that will need to be installed by Applicant on an x-arm supplied by City in accordance with SVP Standard OH 0825. City will identify the location on the x-arm to attach to. SVP will supply the x-arms, braces, and gains, but Applicant will need to supply the bolts and nuts, and mount the x-arm. Existing communication cable attached to Poles will need to be transferred to the new x-arm by Applicant. The locations on the x-arm for each of the cable attachments to be transferred over will be identified by SVP.



6. There may be make-ready work that needs to be done by other attachers. SVP will notify the other attachers that work is occurring in the area. Applicant is responsible with coordinating with the other attachers to perform the work.

7. Existing "out of service" cable/devices related to the Application must be removed by Applicant.

8. Applicant requests will be approved over two phases. The first phase will be insuring the make ready work is completed to SVP specification. The second phase will permit Applicant to attach cable and/or equipment to the poles. A final inspection will be done after all work is completed.

9. New Poles or anchors in sidewalk will require a Street Encroachment Permit.

10. Copy of authorized permit will be required on job site at all times.

Required Documents

- **Application and Permit:** Prepare and submit one (1) fully completed copy of the Application and Permit proposal prior to constructing any new attachments, expansions, service drops, upgrades, rebuilds or overlashing of cable attached to any Poles to:

  City of Santa Clara
  Department of Electric Utility - SVP Engineering
  1500 Warburton Avenue
  Santa Clara, CA 95050

- **Maps:** Include one (1) copy of detailed route maps that clearly show the location of each Pole Applicant proposal applies to. Maps must include:

  a. A map number on each map submitted;
  b. A number for each Pole on each map submitted;
  c. Street and road names;
  d. Crossroad information;
  e. A legend of the map symbology;
  f. A correct North direction symbol;
  g. Guying locations;
  h. Span Lengths; and
  i. Railroad crossings and limited access crossing.

- **Pole Attachment Proposal Specification Data Sheet:** Complete and include one (1) copy of Pole attachment proposal specification datasheet for each route map.
  - **Route Approval:** SVP will verify if the route is approved. If the route is not approved, SVP will notify Applicant immediately so the route can be modified.
  - **Make-Ready Work Approval:** Upon completion of the SVP Pole Inspection Evaluation, a make-ready review sheet will be submitted to Applicant for review. Permission for make ready work will be granted by SVP once the make ready work meets all SVP requirements. A make-ready work final inspection will be performed before approving for fiber/equipment attachment. Any work identified in the post make-ready work inspection must be completed before authorization to attach fiber/equipment to Pole is granted.
  - **Attachment Approval:** Applicant will be permitted to attach fiber/equipment after make-ready work has been inspected and any modification identified by SVP is corrected.
  - **Final Inspection:** SVP will perform a final inspection of the project once the project has been completed by Applicant. Any modifications required by Applicant will be identified and submitted for Applicant to correct.
  - **Project Completion:** SVP will notify Applicant when the project has been completed once the final inspection identified modifications have been

completed. A report will be sent to Applicant identifying the number of Poles attached to, fees incurred, and notification of project completion.

- ☐ **Include a CD with Application.** Files to include are: Application, make-ready sheets, maps, engineering calculations, and any device specifications.

Pole Contact Agreement Application Cover Sheet

Customer Job Number	SVP Job ID	Encroachment Permit #	Date

APPLICANT INFORMATION

Applicant Company Name			
Billing Address	City	State	Zip Code
Email Address	Telephone Number	Fax Number	
Authorized Contact Signature	Title	Contact Name (print)	

OTHER PERMITS

Project Dependent on Trenching or Boring? ☐Boring ☐Trenching ☐No Has a request for an Encroachment Permit been submitted? ☐Yes ☐ No Note: If project is dependent on boring or trenching, no permit will be issued until an encroachment permit is approved and a permit number is provided.	If Yes, Date Submitted for Permit Date Approved

FOR SVP (City) USE ONLY

Packet Reception

Date Received	Date Review Due	Packet Contents ☐Make Ready ☐Engineering Calculations ☐Map

Fees

Standard Inspection Costs: $230.15* x _____ + _____ = $_____
*Inspection Fee (per pole) $230.15
(# Work Locations) (Additional Fees) (Total Cost)

Net change to attachment balance in this project.

# Cable	# Equipment	# Anchors	# Risers	Date Other Attachers Notified
				☐Notification letter Attached

Make Ready Approval (No Attachment – Prep Work Only)

Approval to Perform Make Ready Work Granted By	Approval Date	Date Due

Approval for Cable & Equipment Attachment

Approval to Attach Cable & Equipment Granted By	Approval Date	Date Due

Post Construction Work Modification Requirements

GIGs List Issued? ☐Yes ☐ No	Date Issued	Date Due	Date Completed

Final Inspection Approval

All Work Completed to SVP Specifications	Approval Date

APPROVED STAMPED MAKE READY DOCUMENTS MUST BE ATTACHED AND PRESENT WITH THIS PERMIT ON THE JOB SITE # OF ATTACHED PAGES

PROJECT INFORMATION

Type of Construction:

☐New ☐Rebuild ☐Overlash ☐Other*

*If other, describe

If Overlash, how many times has this bundle been overlashed?

Pole Work locations

Note: If overlashing include bundle before and after diameter/ weight in cable and Device section

New Attachments

#Cable

#Overlashes

#Equipment

#Anchor

#Risers

#New Poles

#Overloaded Poles

#New Cross Arms

Project Description:

Specifications of Cables and Devices to be Added

Cables/Guy Wires

Type of Cable	Manufacturer	Part #	Diameter (in)	Weight (lb/ft)	Stringing Tension (lb)
☐Fiber ☐Coax ☐Guy ☐Other					
☐Fiber ☐Coax ☐Guy ☐Other					
☐Fiber ☐Coax ☐Guy ☐Other					

Devices

Type/ Description of Device	Manufacturer	Part #	Weight	Dimensions

Anchors

Type	Manufacturer	Part #	Holding Capacity (No Safety Factor)(lbs)

Risers			
Size	Number	Existing on Pole	Material Type

COPY OF AUTHORIZED PERMIT IS REQUIRED ON JOB SITE

NOTE: FAILURE TO COMPLETELY FILL OUT THIS PERMIT APPLICATION WILL RESULT IN THE APPLICATION PACKET BEING RETURNED UNPROCESSED

ALL CABLE SHALL BE MARKED WITH AN APPROPRIATE MEANS OF IDENTIFICATION AT EVERY POLE. ALL SUCH IDENTIFICATIONS SHALL BE READABLE BY THE NAKED EYE FROM THE GROUND.

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Company's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Company shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $2,000,000 Each occurrence
   $2,000,000 General aggregate
   $2,000,000 Products/Completed Operations aggregate
   $2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Company; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Company to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Company and/or its contractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Company included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Company or any contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Company's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Company shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including

any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Company's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal. If in accordance with standard insurance industry practices the insurer is unwilling or unable to include such notice requirement in any policy, then in lieu thereof Company, rather than the insurer, shall provide City with such notice.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal. If in accordance with standard insurance industry practices the insurer is unwilling or unable to include such notice requirement in any policy, then in lieu thereof Company, rather than the insurer, shall provide City with such notice.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Company and City agree as follows:

1. Company agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Company for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of

complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

2. The City reserves the right to withhold payments from the Company in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Company, and each and every contractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Company shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Company or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be e-mailed to:

ctsantaclara@ebix.com

Or by U.S. Mail at:

EBIX Inc.
City of Santa Clara – Department of Electric Utility
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Company shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall

be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.