Dark Fiber Lease Exchange Agreement

By and Between

Noel Communications

and

Kittitas County

This Dark Fiber Lease Exchange Agreement (this “Agreement”) is made and entered into as of June 16, 2015 (the “Effective Date”) by and between Noel Communications and Kittitas County. Noel Communications and Kittitas County may be referred to herein as a “Party” or together as the “Parties.”

Recitals

A. Noel Communications owns rights in, has constructed or is planning to construct, operate and maintain a fiber optic communications system (the “Noel Communications System”) in the route that is generally described and depicted in Exhibit 1. Noel Communications Fiber that is attached hereto and incorporated herein by this reference (the “Noel Communications System Route”).

B. Kittitas County owns rights in, has constructed or is planning to construct, operate and maintain a fiber optic communications system (the “Kittitas County System”) in the route that is generally described and depicted in Exhibit 2. Kittitas County Fiber that is attached hereto and incorporated herein by this reference (the “Kittitas County System Route”).

C. Noel Communications wishes to exchange the use of dark fiber within the Noel Communications System for the use of dark fiber within the Kittitas County System.

D. Kittitas County wishes to exchange the use of dark fiber within the Kittitas County System for the use of dark fiber within the Noel Communications System.

E. Each defined term shall have the meaning ascribed where such term is first used or, if no meaning is so set forth, the meaning assigned to such term in the Glossary of Terms that is attached hereto and incorporated herein by this reference.

Accordingly, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:
Article 1. Grants of Leases

1.1 Lease to Kittitas County. Noel Communications hereby leases to Kittitas County and Kittitas County hereby leases from Noel Communications:

(a) The number of dark fibers in the Noel Communications System specified in the “Kittitas County Fiber Lease Orders” which are attached hereto as Exhibits 5, 6, 7, 8, and 9. Noel Communications Fiber Service Order and incorporated herein by this reference.

(b) The Noel Communications Fibers will be specifically identified by Noel Communications.

(c) The lease to Kittitas County described in Article 1.1 shall be effective in two separate Phases:

   i. Phase 1, as identified in Exhibit 1. Noel Communications Fiber, will be completed by September 30, 2015.
   ii. In the event the parties agree to undertake Phase 2, as identified in Exhibit 1. Noel Communications Fiber, each party shall memorialize such intent in writing and provide the same to the other party pursuant to Article 10 herein.

1.2 Lease to Noel Communications. Kittitas County hereby leases to Noel Communications, and Noel Communications hereby leases from Kittitas County:

(a) The number of dark fibers in the Kittitas County System specified in the “Noel Communications Fiber Lease Order” which is attached hereto as Exhibit 2. Kittitas County Fiber and incorporated herein by this reference.

(b) The Kittitas County Fibers will be specifically identified by Kittitas County.

(c) Noel Communications agrees that as Lessee of the Kittitas County Fibers, Noel Communications shall be subject to all of the provisions of the Level 3 Communications, LLC Dark Fiber Agreement attached as Exhibit 10. Dark Fiber Agreement between Level 3 Communications, LLC and Kittitas County (the “Level 3 Agreement”) and incorporated herein by this reference. In the event of a conflict between the terms of the Level 3 Agreement and this Agreement, Noel Communications agrees that the Level 3 Agreement shall control.

(d) The lease to Noel Communications described in Article 1.2 shall be effective in two separate Phases:

   i. Phase 1, as identified in Exhibit 2. Kittitas County Fiber, will be completed by September 30, 2015.
   ii. In the event the parties agree to undertake Phase 2, as identified in Exhibit 2. Kittitas County Fiber, each party shall memorialize such intent in writing and provide the same to the other party pursuant to Article 10 herein.

(e) This Agreement includes network rack space necessary to facilitate the lease to Kittitas County described in this Article.
1.3 **Defined Terms.** Each Party that is leasing to or providing dark fibers to the other Party under this Agreement is sometimes referred to herein as the “Lessor”. Each Party that is leasing dark fibers from, or to which dark fibers are being provided under this Agreement, is sometimes referred to herein as the “Lessee”. With respect to each lease, the “Lessor Fibers” shall mean the dark fibers owned by the Party from whom the relevant dark fibers are leased. The Kittitas County System or the Noel Communications System is sometimes referred individually to as a “Lessor System.”

1.4 **Conditions.** Each lease is granted on the terms and subject to the covenants and conditions set forth in this Agreement. Each Lessee’s right to use shall be exclusive as to the dark fibers being leased to it. Each lease does not include the right of a Lessee to own, control, maintain, modify or revise the dark fibers, or the right of physical access to, the right to encumber in any manner, or other use of the Lessor’s System except as expressly set forth herein.

1.5 **Control of Network.** Each Lessee shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the Lessor’s Fibers.

1.6 **No Electronics.** Each Lessee acknowledges and agrees that Lessor is not supplying nor is Lessor obligated to supply to Lessee any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of Lessee; nor is Lessor responsible for performing any work other than as specified in this Agreement.

1.7 **Network Access.**

(a) The Noel Communications Fibers will be terminated at the points identified in Exhibit 1. Noel Communications Fiber.

(b) The Kittitas County Fibers will be terminated at the points identified in Exhibit 2. Kittitas County Fiber.

(c) All connections to the Noel Communications fiber shall be performed by Noel Communications, in accordance with its applicable specifications and operating procedures. Neither Party shall charge the other for the cost of the initial connections at the Demarcation Points described in Exhibit 1. Noel Communications Fiber and Exhibit 2. Kittitas County Fiber. It is the responsibility of Noel Communications to obtain all governmental and other approvals and consents necessary for the delivery of the cable and use of the Lessor Fibers.

(d) Noel Communications shall be responsible for obtaining all building access and other rights and rights of way necessary for Lessee to use the Lessor Fibers.

(e) At any time during the Term each Lessee shall have the right to establish additional connections to the Lessor Fibers that are leased to it, at splice points and at other locations wherever technically feasible, subject to Lessor’s approval, which approval shall not be unreasonably withheld or delayed.
Each Lessor shall respond to requests for additional connections with a feasibility determination within thirty (30) calendar days.

(f) Each Lessee shall pay the Lessor’s agreed upon cost for each additional connecting point. For other services performed by a Lessor, Lessee agrees to pay the agreed upon Costs incurred by Lessor.

**Article 2. Consideration**

2.1 **Exchange.** The consideration to each Lessor for the lease of the Lessor’s Fibers to each Lessee is the lease of Lessee’s fibers to Lessor.

2.2 **Connectivity.** Noel Communications shall perform all necessary fiber splicing, fiber testing, and installation of hand holes for fiber connection to Noel Communications fiber.

2.3 **Other Charges.** Lessee shall pay directly or reimburse Lessor for all other undisputed sums, costs, fees and expenses which are expressly provided to be paid by Lessee under this Agreement.

2.4 **Invoicing.** Each Lessor will send Lessee invoices for payments of all sums, costs, fees and expenses owed by Lessee to Lessor hereunder and Lessee shall pay such undisputed invoiced amounts within sixty (60) days after receipt of such invoice by Lessee.

**Article 3. Term**

3.1 **Commencement.** The term of this Agreement (the “Term”) shall commence on the Effective Date, and shall terminate on March 7, 2020 to coincide with the expiration date of the Level 3 Agreement

3.2 **Expiration of Term.**

(a) In the event that the Level 3 Agreement is terminated, this Agreement shall automatically terminate.

(b) In the event that the Level 3 Agreement is renewed by Kittitas County, each lease subject to this Agreement shall be automatically renewed, without any further action by Lessor or Lessee, for successive one (1) year periods (each a “Renewal Term”) unless either Party elects not to renew the lease at the end of the then-applicable Term or Renewal Term by giving written notice of non-renewal to the other Party at least one hundred eighty (180) days prior to the date of expiration of the then-current Term or Renewal Term, in which case the lease and this Agreement shall terminate at the expiration of the then-current Term or Renewal Term.

(c) Upon the termination of this Agreement, each lease shall terminate and all rights of Lessee to use the Lessor Fibers, or any part thereof, shall cease. All rights to the use of the Lessor’s Fibers therein shall revert to Lessor without reimbursement of any costs, fees, expenses or other amounts previously
paid with respect thereto. From and after such time Lessee shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the Term.

3.3 **Title.** It is understood and agreed that each Lessor shall maintain legal title to or rights in the entire Lessor System, and nothing contained herein shall be interpreted to give or convey to Lessee any property right, title or interest in such Lessor Fiber, which will at all times be and remain Lessor’s personal property notwithstanding that it may be or become attached to or embedded in realty.

**Article 4. Delivery and Acceptance**

4.1 **Acceptance Testing.** Noel Communications has tested, or at the time of installation shall test, all Fibers to verify that the Fibers have been installed and are operating in accordance with the Dark Fiber Splicing Specifications described in **Exhibit 3. Acceptance Testing & Specifications.** When Noel Communications has determined that the results of the Fiber Testing show that the Fibers have been installed and are operating in conformity with the Specifications, Noel Communications shall promptly provide Kittitas County with a notice of completion (the “Completion Notice”) together with a copy of the test results. Each Party shall be responsible for any repairs necessary to the Party’s fibers required to bring them into compliance with the Exhibit 3 Acceptance Testing & Specifications, including all associated costs.

4.2 **Acceptance.** Within thirty (30) days following receipt of a Completion Notice, Kittitas County shall provide Noel Communications with a written notice accepting or rejecting the Noel Communications Fibers, and specifying in reasonable detail, if rejected, the defect or failure in the Noel Communications fiber. If Kittitas County fails to notify Noel Communications of its acceptance or rejection of the Completion Notice within thirty (30) days following receipt of the same, Kittitas County shall be deemed to have accepted such Lessor Fibers. The date of such notice of acceptance or deemed acceptance of the Lessor Fibers shall be the “Acceptance Date.”

4.3 **Completion.** In the event of any good faith rejection by Lessee, Lessor shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure in accordance with the Specifications, and the notification and acceptance procedure shall be repeated until the Lessor Fibers are within the Specifications. The foregoing notwithstanding, if Lessee uses the Lessor Fibers other than for testing prior to acceptance, such use shall constitute acceptance of the Lessor Fibers and the first date of such use shall be the Acceptance Date; provided, however, that no acceptance or deemed acceptance shall constitute a waiver of Lessor’s obligations of maintenance and repair of the Lessor Fibers.

4.4 **Scheduled Delivery Date.**

(a) Subject to extension for delays described in Article 15 and to extension or delay as otherwise permitted or provided in this Agreement, each Party agrees to use all reasonable efforts to complete all construction, installation, Lessor’s testing and hand- over of Lessor’s test results and all Lessor Fibers to
Lessee (the “Scheduled Acceptance Dates”) by the dates set forth in Exhibit 3. Acceptance Testing & Specifications. Each Lessor shall give notice to Lessee as promptly as reasonably possible of any anticipated delay in completion.

(b) The delivery and acceptance of the Kittitas County Fibers and the Noel Communications Fibers shall occur simultaneously, upon completion of Phase 1 and Phase 2 respectively. If at the time that Noel Communications has completed its construction and both parties are prepared to deliver the Lessor Fibers to the other party, the receiving party is not yet prepared to deliver its Fibers to the other Party, delivery shall be delayed until all Lessor Fibers are ready to be delivered. If the Acceptance Date of any of the Lessor Fibers in Phase 1 has not occurred by December 31, 2015, the applicable Lessee shall have the right, at its sole option, to terminate this Agreement. From and after such termination, this Agreement shall be of no further force and effect, the right of both Kittitas County and Noel Communications to use the other party’s Lessor Fibers shall thereafter cease, and Kittitas County and Noel Communications shall be released of and from any further obligations under this Agreement. In the event of such termination by a Lessee, each Party shall refund to the other Party all amounts previously paid by the other Party under this Agreement and all fibers shall be returned to each Lessor.

(c) In the event of such termination by a Lessee all fibers shall be returned to each Lessor. The remedies described in this Section shall be the sole and exclusive remedy available to a Recipient under this Agreement and/or applicable law.

4.5 Deliverables. Within ninety (90) days following the Effective Date, Noel Communications shall deliver documentation to Kittitas County as to the route of the applicable Lessor Fibers. This documentation (“Deliverables”) shall consist of:

(a) A copy of the as-built drawings;

(b) A route map depicting the route with street level details. Also, a statement of the mileage;

(c) The fiber assignments;

(d) Circuit IDs, if applicable; and

(e) The rack, panel and port numbers at the Demarcation Points where applicable.

Noel Communications shall also furnish Kittitas County with a list of names and telephone numbers for Noel Communications’ Network Operations Center and escalation list.

Article 5. Maintenance

5.1 Duties. The Lessor will be responsible, at its sole cost and expense, for the technical operation, maintenance and repair of its System and Lessor’s Fibers so as to assure continuing conformity of the applicable System and Lessor’s fibers with the Specifications, including any maintenance as the Lessor deems reasonably necessary for the normal operation of the applicable System, during the Term of this
Agreement. Maintenance shall be performed in accordance with the maintenance specifications set forth in Exhibit 4. Maintenance Specifications and Procedures that is attached hereto and incorporated herein by this reference. The Lessor, at its sole discretion, may provide these services with its own personnel or select a qualified subcontractor.

5.2 **Lessee System.** The Lessee will be responsible for the operation, maintenance and repair of its own equipment placed in the Lessor’s facilities or connected to the Lessor’s Fiber.

5.3 **Interruption.** If during the Term the use of either the Kittitas County Fibers or the Noel Communications Fibers is interrupted for any reason, including without limitation an interruption caused by or related to matters concerning the Underlying Rights (other than the rights described in Section 6.3), and other than as a result of an Excused Interruption as defined in Section 11.2, the Lessor shall exercise all reasonable efforts to restore the use of the Lessor Fibers as quickly as practicable following notice from the Lessee of the interruption. If the interruption is other than an Excused Interruption, then:

(a) During the period of interruption the Lessor shall, to the extent available, make available to the Lessee alternate Lessor System fibers or network systems with capacity at least equal to the capacity of the Lessor Fibers whose use has been interrupted.

(b) If the period of interruption exceeds four (4) hours and if the Lessee has not been provided with alternate capacity as described above, and the interruption is not caused by a Force Majeure Event, and if the Lessee reasonably determines that Lessor has not exercised all reasonable efforts to restore the use of the Lessor Fibers as quickly as practicable following notice from the Lessee, then Lessee shall have the right after providing Lessor one (1) hour of additional notice to disconnect the Fibers that are owned by Lessee and are being used by Lessor until the service of the Lessor Fibers is restored.

(c) If the use of the Lessor Fibers has not been restored within seventy-two (72) hours, and the interruption is not caused by a Force Majeure Event, then, at any time thereafter during the period that the interruption continues, the Lessee may terminate this Agreement upon electronic delivery of written notice to Lessor. From and after such termination, this Agreement shall be of no further force and effect, the right of both Kittitas County and Noel Communications to use the Lessor Fibers shall thereafter cease, and Kittitas County and Noel Communications shall be released of and from any further obligations under this Agreement.

(d) If Lessor or its designee is unable or unwilling to provide to Lessee the maintenance services as defined in this Agreement, then Lessor shall allow Lessee to assume responsibility for maintenance service for the Lessor Fibers as Lessor’s designee, provided that Lessee performs such maintenance services under substantially similar standards as provided herein. In such an event, Lessor agrees to promptly provide to Lessee all necessary information relating to any other parties occupying the Lessor System and any other information that Lessee may require to perform such maintenance services.

The Parties hereby expressly recognize that in the event of an interruption the remedies set forth in this Section 5.3 represent their sole remedy.
Article 6. Permits; Underlying Rights; Relocation

6.1 Lessor Rights of Way. Each Lessor has obtained certain rights of way and building access rights for construction and operation of the Lessor System (the “Underlying Rights”). This Agreement is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed as to be a representation, warranty or covenant of Lessor’s right, title or interest with respect to the right of ways or the Underlying Rights, all of which are disclaimed.

6.2 Lessee’s Obligations. Each Lessee agrees to use the Lessor Fibers only for lawful purposes in a manner consistent with the Underlying Rights, and that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. Each Lessee agrees not to cause or allow to be caused any default under the Underlying Rights.

6.3 Lessee Rights of Way. Noel Communications shall obtain all rights of way and other consents for access to all locations for the purpose of equipment installation, periodic maintenance, and services, and for the use of any required building facilities at all such locations required by Noel Communications. In the event Lessor’s Underlying Rights to a location outside of the public rights of way are scheduled to expire, terminate or be affected in any manner that would adversely impact Lessee’s use of the Lessor Fibers, Lessor shall provide Lessee with prompt written notice of such condition. Under such conditions Noel Communications shall directly obtain all rights, easements and other consents as may be necessary for Lessee’s continued use of the Lessor Fibers.

6.4 Relocations. If during the Term Lessor undertakes a relocation of any part of the Lessor System, including any of the facilities used or required in providing the Lease, Lessor shall proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent of, the time of, and the methods to be used for such relocation; provided that: (a) any such relocation shall be constructed and the Leased Fibers shall be tested in accordance with the specifications set forth in Exhibit 3. Acceptance Testing & Specifications; and (b) if the relocation is at Lessor’s discretion, Lessor shall maintain the same end points of the Lessor System and assume all relocation costs.

Article 7. Use of the Fibers

7.1 Underlying Rights. The requirements, restrictions, and/or limitations on Lessee’s right to use the Lessor Fibers and Associated Property, and safety, operational and other rules and regulations imposed in connection with the Underlying Rights are referred to collectively as the “Underlying Rights Requirements.”
7.2 Compliance. Each Lessee represents, warrants, and covenants that it will use the Lessor Fibers and Associated Property in compliance with and subject to the Underlying Rights Requirements and all applicable government codes, ordinances, laws, rules and regulations.

7.3 Non-Interference. Lessee shall not use the Lessor Fibers in a way that interferes in any way with or adversely affects the use of the fibers or cable of any other person using the Lessor System. The Parties acknowledge that each Lessor System may include other participants, including Lessor and other owners and users of telecommunication systems.

7.4 Purposes. Subject to the provisions specified above and in Article 6, Lessee may use the Lessor Fibers for any lawful purpose.

**Article 8. Limitation of Liability and Indemnification**

8.1 Waiver of Certain Damages. Notwithstanding any provision of this Agreement to the contrary, neither Party shall be liable to the other Party for any special, incidental, indirect, punitive or consequential costs, liabilities or damages suffered by the other Party, whether foreseeable or not, arising out of, or in connection with, such Party’s performance of its obligations under this Agreement.

8.2 Indemnification.

(a) Subject to the provisions of Article 8.1, Lessor hereby agrees to indemnify, defend, protect and hold harmless Lessee and its employees, officers and directors, elected or appointed officials, from and against, and assumes liability for: (1) any bodily injury, loss or damage to any person, tangible property or facilities of any Person (including reasonable attorneys’ fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Lessor, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors in connection with the performance by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement; and (2) any claims, liabilities or damages arising out of any violation by Lessor of any regulation, rule, statute or court order of any governmental authority in connection with the performance by Lessor of its obligations or the exercise by Lessor of its rights under this Agreement.

(b) Subject to the provisions of Article 8.1, Lessee hereby agrees to indemnify, defend, protect and hold harmless Lessor, and its employees, officers and directors, elected or appointed officials, from and against, and assumes liability for: (1) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorneys’ fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Lessee, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors in connection with the performance by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement; and (2) any claims, liabilities or damages arising out of any violation by Lessee of any regulation, rule, statute or court order of any governmental authority in connection with the performance by Lessee of its obligations or the exercise by Lessee of its rights under this Agreement.
(c) Lessor and Lessee agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

(d) The indemnification obligations contained in this Article shall survive the expiration or other termination of this Agreement.

Article 9. Insurance

9.1 Insurance Required. 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 bodily injury and property damage, including liability for completed operations;

(b) Workers compensation insurance in amounts required by applicable law and employer’s liability insurance with a limit of at least $1,000,000 per occurrence;

(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 $2,000,000 per occurrence; and

(d) Any other insurance coverage specifically required of such Party pursuant to Lessor’s right-of-way agreements, so long as these are coverages applicable to Lessee as an indirect user of the rights of way, and Lessee is informed of the requirement in writing by Lessor.

Each Party shall be listed as an additional insured on all commercial general liability and commercial automobile insurance policies maintained by the other Party and such other Party’s contractors and subcontractors.

9.2 Self-Insurance. Both Parties expressly acknowledge that a Party shall be deemed to be in compliance with the provisions of this Article if it maintains a self-insurance program providing for a retention of up to $1,000,000. If either Party provides any of the foregoing coverages on a claims-made basis, such policy or policies shall be for at least a three-year extended reporting or discovery period. Unless otherwise agreed, Lessor’s and Lessee’s insurance policies shall be obtained and maintained with insurers rated “A VII” or better by Best’s Key Rating Guide and each Party shall provide the other with an insurance certificate confirming compliance with this requirement for each policy providing such required coverage.

9.3 Indemnification. If either Party 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, 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.

9.4 **Pursuit of Claim.** If coverage is denied or reimbursement of a properly presented claim is disputed by either Party for the insurance provided above, the Party carrying such coverage shall make good-faith efforts to pursue such claim with its insurer.

9.5 **Waiver.** Kittitas County and Noel Communications hereby mutually waive their respective rights of recovery against each other and the officers, elected or appointed officials, 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 could 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. Kittitas County and Noel Communications 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.

**Article 10. Notices**

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Kittitas County at:

    Director
    Kittitas County Information Technology
    205 W 5th AVE STE 13
    Ellensburg, WA 98926

With a copy to:

    County Engineer
    Kittitas County Public Works
    411 North Ruby ST, STE 1
    Ellensburg, WA 98926

All notices and other communications shall be given to Noel Communications at:

    Director
    Noel Communications
    901 Pitcher St
    Yakima, WA 98901
With a copy to:

Lease Management
Noel Communications
PO Box 2967
Yakima, WA 98902

In addition, Lessor may give Lessee notice of the availability or interruption of the services, or a planned maintenance, by electronic delivery at all of the following Internet addresses:

Electronic Notice address for Kittitas County:

informationtechnology@co.kittitas.wa.us

Electronic Notice address for Noel Communications:

noc@noelcomm.com

In the case of an emergency, either Party may notify the other Party either through the Internet addresses set forth above, or at the following telephone numbers:

Telephone Number for Kittitas County:

509-962-7510 (Service Desk)

Telephone Number for Noel Communications:

800-800-5347

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

Article 11. Default

11.1 Defined. A default shall be deemed to have occurred under this Agreement if:

(a) By Lessee, if Lessee uses the Lessor Fibers in any manner that is prohibited by this Agreement and Lessee fails to cease such use within ten (10) days of receipt of notice from Lessor; or

(b) By either Party in the case of a failure to pay any undisputed amount when due and payable under this Agreement, if the Party fails to pay such undisputed amount within ten (10) days of receipt of notice from the other Party specifying such failure and requiring payment of such undisputed amount; or
(c) In the case of any other material breach of this Agreement, a Party fails to cure such breach within thirty (30) days after notice specifying such breach; provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursue such cure to completion.

11.2 Remedies. In the event of default by either Party as Lessee, as described in section 11.1, the Lessor may upon notice to Lessee, terminate Lessee’s use of the Lessor Fiber (an “Excused Interruption”) or terminate this Agreement. In addition, in the event of any default hereunder, the nondefaulting Party may (a) take such actions as it reasonably determines, in its reasonable discretion, to correct the default; and (b) pursue any legal remedies it may have under applicable law or principles of equity, including specific performance. Notwithstanding anything to the contrary in this Agreement, a nondefaulting Party may terminate the other Party’s use of the nondefaulting Party’s Fiber and the nondefaulting Party may continue its use of defaulting Party’s Fiber for a period not to exceed three (3) years.

11.3 No Waiver. A waiver by either Party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

Article 12. Termination

Upon termination of this Agreement, each Party as Lessee shall promptly remove all of Lessee’s electronics, equipment, and other Lessee property from the Lessor Fibers at its sole cost and under Lessor’s supervision. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.

Article 13. Assignment and Fiber Transfers

13.1 Restrictions. Lessee may not transfer or assign all or any part of its interest in this Agreement or in the Lessor Fibers, nor may Lessee sell, assign, lease, or grant an indefeasible right of use with respect to, exchange, encumber, or otherwise in any manner transfer or make available as dark fiber in any manner to any third party, the Lessor Fibers or the Associated Property, in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the consent of Lessor, which consent may not be unreasonably withheld.

13.2 Breach. A transfer or assignment or other use of the Lessor Fibers in violation of this Article shall constitute a material breach of this Agreement.
Article 14. Representations, Warranties and Acknowledgements

14.1 Warranties. Each Party represents and warrants to the other Party that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; and

(b) This Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditors’ rights and general equitable principles.

14.2 DISCLAIMER. Each party as lessor makes no warranty, express or implied, with respect to the lessor fibers, including any warranty of merchantability or fitness for a particular purpose, and all such warranties are hereby expressly disclaimed.

Article 15. Force Majeure

Neither Party shall be liable to the other Party, and each Party’s performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party’s performance of such obligations shall be excused and extended for and during the period of any such delay: act of God; fire, flood, shortages or unavailability or other delay in material delivery not resulting from the responsible Party’s failure to timely place orders therefor; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of a Party to obtain rights of way, easements, building access or other rights from private property owners; inability of Lessor to obtain access to the Lessor System; or any other cause beyond the reasonable control of such Party (each a “Force Majeure Event”). The Party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

Article 16. General

16.1 Binding Effect. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

16.2 Impositions. Noel Communications shall be responsible for and shall timely pay any and all Impositions with respect to the construction or operation of the Noel Communications fiber systems.
16.3 **Public Records.** Noel Communications and Kittitas County acknowledge that Kittitas County is subject to Chapter 42.56 of the Revised Code of Washington (RCW) and that this Agreement shall be a public record as defined in Chapter 42.56 RCW.

(a) Nothing herein shall be construed as granting any right or license under any copyrights, inventions, or patents, or enhancements thereto, now or hereafter owned or controlled by Lessor or Lessee.

(b) Neither Party shall, without first obtaining written consent of the other Party, use any trademark or trade name of the other Party in any promotional activity or otherwise.

(c) The provisions of this Section shall survive expiration or other termination of this Agreement.

16.4 **Attorneys’ Fees.** If either Party brings any legal action or proceeding against the other to enforce or interpret this Agreement, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its reasonable costs and expenses of suit and enforcing the judgment awarded to it, including reasonable attorneys’ fees, in addition to any other relief or award to which it may be entitled.

16.5 **Venue and Governing Law.** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Washington, without reference to its conflicts of law principles.

16.6 **Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(b) Except as set forth to the contrary herein, any right or remedy of Kittitas County or Noel Communications shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

(c) Nothing in this Agreement is intended to provide any legal rights to anyone not a Party of this Agreement.

(d) This Agreement has been fully negotiated between and jointly drafted by the Parties.
(e) All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party’s performance.

16.7 Entire Agreement. This Agreement constitutes the entire and final agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall control. This Agreement may only be modified or supplemented by an instrument in writing executed by each Party and delivered to the Party relying on the writing.

16.8 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation or municipal entity, and any liability relating thereto shall be enforceable only against the corporation or municipality. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, elected or appointed official, officer or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Article and shall be entitled to enforce the obligations of this Article.

16.9 Relationship of the Parties. The relationship between Kittitas County and Noel Communications shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. Kittitas County and Noel Communications, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

16.10 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the Parties have executed this Agreement as of the date written below.

Dated: _____________________________  Dated: _____________________________

Noel Communications  Board of County Commissioners
Yakima, Washington  Kittitas County, Washington

Nick Guy, Executive Director  Gary Berndt, Chair

Obie O’Brien, Vice Chair

Paul Jewell, Commissioner

ATTEST:

Julie Kjorsvik, Clerk of the Board
Dated: _____________________________

APPROVED AS TO FORM:

Michael Nigrey, Deputy Prosecuting Attorney
Glossary of Terms

The following terms shall have the stated definition in the Agreement:

“Allocable Share” means the relevant Costs as allocated between Lessee and Lessor based on the percentage determined by dividing the total number of Lessor Fibers (leased to Lessee) in the cable by the total number of all fibers in the cable; provided however, that such Allocable Share shall apply only to the individual fiber cable affected. All Costs associated with multiple conduits/innerducts shall first be reduced by a percentage determined by dividing one (1) conduit/innerduct by the total number of conduits/innerducts affected. The resulting reduced Cost shall then be further reduced by Lessee’s Allocable Share. Lessor shall reduce or refund Lessee’s Allocable Share Cost to the extent Lessor has been reimbursed by another party for such cost.

“Costs” means all reasonable and fully documented actual, direct on-site costs paid or payable in accordance with the established accounting procedures generally used by Lessor and which Lessor utilizes in billing third parties for reimbursable projects, including without limitation the following: (1) internal labor costs, including wages, salaries and benefits, and overhead allocable to such labor costs equal to fifteen percent (15%), and (2) other direct costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies, contract services, etc.).

“Demarcation Point” means a boundary point at the splice points or patch points at each end of the Lessor Fibers where a cable from Lessee’s system is joined to the Lessor Fibers. The side of the Demarcation Point on which the Lessor System is located shall be called the “Network Side.” The other side shall be called the “Premise Side.”

“Impositions” shall mean all taxes, fees, levies, imposed duties, charges or withholdings of any nature (including without limitation ad valorem, real property, gross receipts, taxes and license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Lessor Fibers, or any part thereof, by any Governmental Authority, except for franchise fees, and except for taxes imposed on the income, corporate existence or status of a party, or employment-related taxes.

“Person” shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or governmental authority.
Exhibit 1. Noel Communications Fiber

Ellensburg

Point of Presence A: Kittitas County Vault (Location 2), Manastash Road / near Strande crossroad, Ellensburg, WA (Demarc: TBD)

Point of Presence B: Kittitas County Courthouse, 205 W 5th Avenue, STE 13, Ellensburg, WA (Demarc: TBD)

Point of Presence C: Kittitas County Armory, 901 E 7th Avenue, Ellensburg, WA (Demarc: TBD)

Point of Presence D: Kittitas County Sheriff Public Safety Building, 307 W Umptanum RD, Ellensburg, WA (Demarc: TBD)

Cle Elum

Point of Presence E: Kittitas County Vault (Location 6), S. Cle Elum Way / under I-90 overpass, (Demarc: TBD)

Point of Presence F: Kittitas County Courthouse, 700 E 1st ST #113, Cle Elum, WA (Demarc: TBD)

Point of Presence G: Kittitas County Solid Waste Transfer Station, 50 - #5 Mine Road, across from the Cle Elum/Roslyn School (Demarc: TBD)
Number of Fibers:

- Four (4) fibers between Point of Presence A and B
  - Two (2) fibers connected to Level 3 fibers going toward Point of Presence E
  - Two (2) fibers connected to Level 3 fibers going toward Yakima
- Two (2) fibers between Point of Presence B and C
- Two (2) fibers between Point of Presence B and D
- Four (4) fibers between Point of Presence E and F
  - Two (2) fibers connected to Level 3 fibers going toward Point of Presence A
  - Two (2) fibers connected to Level 3 fibers going toward Hyak
- Two (2) fibers between Point of Presence F and G

Provisions by Phases

Phase 1:

- Between PoP A and PoP B
- Between PoP B and PoP D
- Between PoP E and PoP F

Phase 2:

- Between PoP B and PoP C
- Between PoP F and PoP G
Exhibit 2. Kittitas County Fiber

Handholes (access points) provided by Level 3 for Kittitas County’s use to access the four (4) fibers granted by Level 3 to Kittitas County. See Exhibit 6. Level 3 Communications, LLC Non-Exclusive Franchise To Use County Roads, Rights-Of-Way and Other County Property within Kittitas County.

Two (2) fibers between each access point.

Location 1: Corner of Uptanum Road and the Kittitas/Yakima County Line @ sta 46+23

Location 2: Manastash Road, sta 26+77 and intersection of un-named dirt road where Ellensburg Telephone ducts begin (near Strande crossroad)

Location 3: Hanson road crossing location from/to private easements

Location 4: Intersection of Thorp Cemetery Road (sta 39+50) and Thorp Highway

Location 5: Elk Heights Road intersection (sta 28+79)

Location 6: Intersection of S. Cle Elum Road and BNSF Right-of-Way (under I-90 overpass)

Location 7: Center part of Ronalds Quadrangle; location north of BNSF right-of-way in Washington DOT (WSDOT) maintenance facility. Appropriate easement shall be secured from WSDOT to access the handhole.

Location 8: Intersection of Cabin Creek Road and BNSF Right-of-Way

Location 9: Intersection of Kachess Highway and FS 4832

Location 10: Corner of SR 906 and Hyak Estate Road

Provisions by Phases

Phase 1:
- Between Location 2 and Location 6

Phase 2:
- Between Location 1 and Location 2
- Between Location 6 and Location 10
Exhibit 3. Acceptance Testing & Specifications

a. Noel Communications, Inc (NCI) shall perform the following tests to validate the various system components:

The bi-directional average loss per span as measured with a power meter test set shall not exceed the following amount:

\[(A \times L) + (0.1 \times N) + (0.5 \times C) = \text{Acceptable Span Loss}\]

Where:
- \(A\) = Maximum attenuation per km, 0.25 dB/km at 1550 nm or 0.35 dB/km at 1310 nm
- \(L\) = Optical length of cable measured in kilometers (from OTDR trace)
- \(N\) = Number of splices in a span
- \(C\) = Number of mated connector pairs

Maximum Individual Splice Loss: The maximum individual bi-directional average splice loss as measured with an OTDR shall not exceed 0.25 dB.

Maximum Individual Connector Loss: The maximum individual bi-directional average connector loss as measured with an OTDR shall not exceed 1.0 dB per mated pair.

Reflectance: Tested with OTDR. The maximum reflection per event shall not exceed –46 dB.

b. NCI shall perform all splices with an industry-accepted fusion splicing machine. NCI shall perform bi-directional power meter tests and OTDR tests at 1310 nm and 1550 nm, and deliver the results to Kittitas County in an electronic format.

c. If a cable sheath making up part of the User Fibers contains a non-dielectric cable, it shall be properly protected from foreign voltage and grounded with an industry-accepted system.

d. The fibers shall be terminated to the fiber termination panel with SC-UPC connectors, unless another type of connector is specified by User.
Exhibit 4. Maintenance Specifications and Procedures

1. General
   a. Noel Communications, Inc (NCI) shall operate and maintain a Network Operations Center twenty-four (24) hours a day, (7) seven days a week, by trained and qualified personnel, at 1-800-800-5347. NCI’s NOC personnel shall dispatch maintenance and repair personnel along the Fiber System to handle and repair problems detected through the NOC’s remote surveillance equipment, by the Licensee, or otherwise.
   b. NCI’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. NCI shall use best commercially reasonable efforts to have its first maintenance employee at the site requiring an emergency maintenance activity within four (4) hours from the time alarm identified by NCI’s NOC or notification by Licensee, whichever occurs first.
   c. Licensee shall utilize the Operations Escalation List provided by NCI, to report and seek immediate initial redress of service performance. NCI may update the Operations Escalation List from time to time.
   d. NCI shall take workmanlike care to prevent impairment to the signal continuity and performance of the Licensed Fiber. The precautions to be taken by NCI shall include notification to Licensee. In addition, NCI shall reasonably cooperate with Licensee in sharing information and analyzing the disturbances regarding the Licensed Fiber and/or Fiber System.
   e. NCI shall use its best effort to notify Licensee ten (10) days prior to the date of any planned non-emergency maintenance activity. In the event that a NCI planned activity is canceled or delayed for any reason as previously notified, NCI shall notify Licensee at NCI’s earliest opportunity and will comply with the provisions of the previous sentence to reschedule any delayed activity.
   f. Non-emergency work that is reasonably expected to produce any signal discontinuity must be coordinated between the Parties. Generally, Non-emergency work will be restricted to after midnight and before 6:00 a.m., local time.
   g. Upon notification of interruption of fiber service, disrepair, impairment or other need for Emergency repair or restoration of the Licensed Fiber, NCI shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, to have maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment. In the event that Licensee’s use of the Licensed Fiber is interrupted due to the occurrence of a Force Majeure event NCI will contact Licensee and repairs and restoration will be made as expeditiously as possible.
   h. NCI shall have qualified representatives on site at any time another company is crossing the Fiber System or digging within close proximity of buried facilities. NCI shall maintain all signposts along the Route with the number of the "One Call" organization.
   i. NCI shall maintain the Licensed Fiber in a manner that permits normal operation of the equipment associated with the Licensed Fiber.

2. Facilities
   a. NCI shall maintain the Licensed Fiber in a manner that permits normal operation of the Licensed Fibers.
   b. NCI shall perform appropriate Routine Maintenance on the Fiber System in accordance with NCI’s then current preventive maintenance procedures that shall not substantially deviate from industry practice and shall be responsible for correcting dysfunction.

3. Fiber System
   a. NCI shall maintain the Fiber System in good and operable condition and shall repair the fiber in workmanlike manner.
   b. NCI shall patrol the Fiber System on a reasonable, routine basis and shall perform all required locates. NCI shall have qualified representatives on site at any time another company is crossing the Fiber System or digging within close proximity of the fiber. NCI shall perform appropriate routine maintenance on the Fiber System in accordance with NCI’s then current preventative maintenance procedures. NCI’s maintenance procedures shall not substantially deviate from industry practice.
Exhibit 5. Noel Communications Fiber Service Order

Noel Communications Inc.
Fiber Optic Network
Since 1987

SERVICE ORDER

Requested Service Date: 9/1/2015
Service Type: Four (4) Fibers
Term: 10 Year

RT Ticket
Kittitas County
205 W 5th Avenue
Suite 13
Ellensburg, WA 98926
(Billing Address)

Order No.: 547-00
Billing Phone: (509) 312-0213
Fax Number: ( ) - 0
Billing Email: jim.goeben@co.kittitas.wa.us
Customer Contact: Jim Goeben
Resale Certificate:

DIGITAL TRANSPORT SERVICES (DTS)

Point of Presence A
Kittitas County Vault (Location 2)
Manastash Road / near Strande Crossroad
Ellensburg, WA 98926
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Point of Presence Z
Kittitas County Courthouse
205 W 5th Avenue Suite 13
Ellensburg, WA 98926
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Special Instructions:
This is for Four (4) Fibers
Two (2) Fibers connect to Level 3 Fibers going toward (location 6) Cle Elum
Two (2) Fibers connect to Level 3 Fibers going toward Yakima.

=================================================================================================
Exhibit 6. Noel Communications Fiber Service Order

**SERVICE ORDER**

Requested Service Date: 9/1/2015
Service Type: Four (4) Fibers
Term: 10 Year

RT Ticket
Kittitas County
205 W 5th Avenue
Suit 13
Ellensburg, WA 98926
(Billing Address)

**DIGITAL TRANSPORT SERVICES (DTS)**

Point of Presence A
Kittitas County Vault (Location 6)
S. Cle Elum Way / under I-90 overpass
Cle Elum, WA 98922
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Point of Presence Z
Kittitas County Courthouse
700 E. 1st Street Suite #113
Cle Elum, WA 98922
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Order No.: 563-00
Billing Phone: (509) 312-0213
Fax Number: ( ) - 0
Billing Email: jim.goeben@co.kittitas.wa.us
Customer Contact: Jim Goeben
Resale Certificate: 

GST#: 
PST#: JW

Special Instructions:
This is for Four (4) Fibers
Two (2) Fibers connect to Level 3 Fibers going toward (location 2) Ellensburg
Two (2) Fibers connect to Level 3 Fibers going toward Hyak.

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Exhibit 7. Noel Communications Fiber Service Order

SERVICE ORDER

Requested Service Date: 9/1/2015
Service Type: Two (2) Fibers
Term: 10 Year

RT Ticket
Kittitas County
205 W 5th Avenue
Suite 13
Ellensburg, WA 98926
(Billing Address)

Order No.: 564-00
Billing Phone: (509) 312-0213
Fax Number: ( ) - 0
Billing Email: jim.goeben@co.kittitas.wa.us
Customer Contact: Jim Goeben
Resale Certificate:

GST#: 
PST#: JW

DIGITAL TRANSPORT SERVICES (DTS)  =======================

Point of Presence A
Kittitas County Courthouse
700 E. 1st Street Suite #113
Cle Elum, WA 98922
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Point of Presence Z
Kittitas County Solid Waste Transfer Station
50 - #5 Mine Road
Cle Elum, WA 98922
Contact: Jim Goeben
Phone: (509) 312-0213
Email: jim.goeben@co.kittitas.wa.us

Special Instructions: This is for Two (2) Fibers
Two (2) Fibers between Kittitas County Courthouse and Kittitas County Transfer Station.

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**Exhibit 8. Noel Communications Fiber Service Order**

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**SERVICE ORDER**

Requested Service Date: 9/1/2015  
Service Type: Two (2) Fibers  
Term: 10 Year

RT Ticket  
Kittitas County  
205 W 5th Avenue  
Suite 13  
Ellensburg, WA 98926  
(Billing Address)

**Point of Presence A**  
Kittitas County Courthouse  
205 W 5th Avenue Suite 13  
Ellensburg, WA 98926  
Contact: Jim Goeben  
Phone: (509) 312-0213  
Email: jim.goeben@co.kittitas.wa.us

**Special Instructions:**  
This is for Two (2) Fibers  
Two (2) Fibers between Kittitas County Courthouse and Kittitas County Armory.

**Point of Presence Z**  
Kittitas County Armory  
901 East 7th Avenue  
Ellensburg, WA 98926  
Contact: Jim Goeben  
Phone: (509) 312-0213  
Email: jim.goeben@co.kittitas.wa.us

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Order No.: **565-00**  
Billing Phone: (509) 312-0213  
Fax Number: (   ) - 0  
Billing Email: jim.goeben@co.kittitas.wa.us  
Customer Contact: Jim Goeben  
Resale Certificate: 

GST#:  
PST#: JW

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**DIGITAL TRANSPORT SERVICES (DTS)**

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**Exhibit 9. Noel Communications Fiber Service Order**

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</tr>
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<td>Suite 13</td>
</tr>
<tr>
<td>Ellensburg, WA 98926</td>
<td>Ellensburg, WA 98926</td>
</tr>
</tbody>
</table>

**SERVICE ORDER**

- **Requested Service Date:** 9/1/2015
- **Service Type:** Two (2) Fibers
- **Term:** 10 Year
- **RT Ticket:** Kittitas County
- **Billing Phone:** (509) 312-0213
- **Fax Number:** (   ) - 0
- **Billing Email:** jim.goeben@co.kittitas.wa.us
- **Customer Contact:** Jim Goeben
- **Resale Certificate:**
- **GST#:**
- **PST#:**
- **JW**

**Point of Presence A**
- Kittitas County Courthouse
- 205 W 5th Avenue Suite 13
- Ellensburg, WA 98926
- **Contact:** Jim Goeben
- **Phone:** (509) 312-0213
- **Email:** jim.goeben@co.kittitas.wa.us

**Point of Presence Z**
- Kittitas County Sheriff / Public Safety Building
- 307 W Umptanum RD
- Ellensburg, WA 98926
- **Contact:** Jim Goeben
- **Phone:** (509) 312-0213
- **Email:** jim.goeben@co.kittitas.wa.us

**Special Instructions:** This is for Two (2) Fibers
- Two (2) Fibers between Kittitas County Courthouse and Kittitas County Sheriff.

**DIGITAL TRANSPORT SERVICES (DTS)**

Order No.: **566-00**
- Billing Phone: (509) 312-0213
- **Fax Number:** (   ) - 0
- Billing Email: jim.goeben@co.kittitas.wa.us
- Customer Contact: Jim Goeben
- Resale Certificate:
- **GST#:**
- **PST#:**
- **JW**

==========================================================================================
Exhibit 10. Dark Fiber Agreement between Level 3 Communications, LLC and Kittitas County
DARK FIBER AGREEMENT

THIS DARK FIBER AGREEMENT ("Agreement") is made and entered into as of the 15th day of July, 2000, by and between LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company ("Grantor") and KITTITAS COUNTY, WASHINGTON ("Grantee").

RECITALS

A. Grantor intends to construct and/or is currently constructing a multiconduit fiber optic communications system (the "Grantor System") as generally described and depicted on Exhibit "A" attached hereto.

B. Grantor further intends to install within one of the conduits of the Grantor System a high fiber count fiber optic cable (the "Cable").

C. Grantee desires to obtain the right to use the number of fibers and connecting those points identified in Exhibit "A" attached hereto, pursuant to the Non-Exclusive Franchise executed by Grantor and Grantee.

D. Grantor desires to grant to Grantee an indefeasible right to use the fibers and other facilities described herein, all upon and subject to the terms and conditions set forth below.

ARTICLE 1.
DEFINITIONS

1.01 "Acceptance Date" shall mean the date when Grantee delivers (or is deemed to have delivered) notice of acceptance of a Completion Notice with respect to a Segment in accordance with Article 8.

1.02 "Acceptance Testing" shall have the meaning set forth in Article 8.

1.03 "Access Points" shall have the meaning set forth in Article 9.

1.04 "Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person ("control," "controlled by" and "under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).
1.05 "Associated Property" shall mean the tangible and intangible property needed for the use of the Grantee Fibers as permitted by this Agreement, as and to the extent more particularly described in this Agreement, but excluding in any and all events any electronic and/or optronic equipment.

1.06 "Cable" shall have the meaning set forth in the Recitals.

1.07 "Completion Notice" shall have the meaning set forth in Section 8.02.

1.08 "Effective Date" shall have the meaning set forth in Section 5.01.

1.09 "Force Majeure Event" shall have the meaning set forth in Article 17.

1.10 "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 sewer authorities.

1.11 "Grantee Delay Event" shall mean the failure of Grantee to timely observe and perform its obligations and agreements hereunder, which failure delays the construction and installation of the Grantor System with respect to one or more Segments.

1.12 "Grantee Fibers" shall have the meaning set forth in Article 3.

1.13 "Grantor System" shall have the meaning set forth in the Recitals.

1.14 "grantor" shall mean any Person from whom Grantor has been granted a Required Right for the construction and operation of the Grantor System.

1.15 "Impositions" shall mean all taxes, fees, levies, imposed duties charges or withholdings of any nature (including without limitation ad valorem, real property, gross receipts, taxes and franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Grantor System, or any part thereof, by any Governmental Authority.

1.16 "IRU" shall have the meaning set forth in Article 3.

1.17 "Person" shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.
1.18 "Prime Rate" shall mean, as of any relevant date, the interest rate most recently published in the Money Rates Section of The Wall Street Journal as the prime rate.

1.19 "Proprietary Information" shall have the meaning set forth in Section 21.01.

1.20 "Relocating Authority" shall have the meaning set forth in Section 6.03.

1.21 "Required Rights" shall have the meaning set forth in Section 6.01.

1.22 "Scheduled Completion Date" shall mean, with respect to each Segment and subject to Force Majeure Events, the dates set forth on Exhibit "A".

1.23 "Segments" shall have the meaning set forth in Section 2.01.

1.24 "Segment End Points" shall have the meaning set forth in Section 2.01.

1.25 "System Route" shall have the meaning set forth in Section 2.01.

1.26 "Taxes" shall have the meaning set forth in Section 4.05.

1.27 "Term" shall have the meaning set forth in Article 5.

ARTICLE 2.
SYSTEM ROUTE

2.01 The Grantor System will connect the points identified on Exhibit "A" attached hereto (each point identified on Exhibit "A" is herein called a "Segment End Point", the route between the applicable Segment End Points is herein called a "Segment", and all of the Segments together are herein called the "System Route").

2.02 The specific location of the System Route between Segment End Points is subject to change in the sole discretion of Grantor; however, the System Route will connect the Segment End Points for each Segment.

ARTICLE 3.
GRANT OF IRU

As of the Effective Date for each particular Segment of Grantee Fiber delivered by Grantor to Grantee hereunder, Grantor hereby grants to Grantee, and Grantee hereby acquires from Grantor (i) an exclusive indefeasible right of use in, for the purposes described herein, the number of fibers set forth in Exhibit "A" to be specifically identified in the Cable between the Segment End Points for such Segment (the "Grantee Fibers"); and (ii) an associated and non-
exclusive indefeasible right of use, for the purposes described herein, in the Associated Property respecting such Segment, all upon and subject to the terms and conditions set forth herein (collectively the "IRU"). Grantee and its designees may use the Grantee Fibers for any lawful purpose. The Grantee may assign the use and/or management of the Grantee Fibers, in whole or in part, to any entity pursuant to the procedures contained in Article 19.

ARTICLE 4.
CONSIDERATION
In exchange for the right to access certain portions of Grantee's public right-of-way, as identified in the Non-Exclusive Franchise executed by the parties on March 7, 2000, Grantee is hereby granted an IRU to the Grantee Fibers, as more specifically described in Article 3.

ARTICLE 5.
TERM
5.01 The IRU with respect to each Segment shall become effective on the Acceptance Date with respect to the Grantee Fibers within a Segment has occurred (the "Effective Date"). Subject to the provisions of Article 18, the IRU with respect to the Grantee Fibers within each Segment shall terminate on the twentieth (20th) anniversary of the Effective Date (the "Term").

5.02 Upon the expiration of the Term respecting a Segment, all rights to the use of the Grantee Fibers therein shall revert to Grantor, and from and after such time Grantee shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the Term.

5.03 Subject to Article 18, this Agreement shall become effective on the date hereof and shall terminate on the date when all the Terms of the Segments shall have expired or terminated, except that those provisions of this Agreement which are expressly provided herein to survive such termination shall remain binding on the parties hereto.

5.04 It is understood and agreed by the parties that if Grantor, its successors or assigns, seeks renewal(s) of its right of access to any portions of Grantee’s public right-of-way that the compensation for such renewal(s) shall include, in part, a continued IRU for the Grantee Fibers for the term of such renewal(s), provided that such compensation and use is permitted by the applicable law then and there existing.
ARTICLE 6.

REQUIRED RIGHTS

6.01 Grantor agrees to obtain and maintain in full force and effect for and during the Term of each Segment all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Grantor to obtain in order to permit Grantor to construct, install and keep installed, and maintain the Grantee Fibers within such Segment in accordance with this Agreement and to convey the IRU in the Grantee Fibers to Grantee and all other rights under this Agreement pursuant to the IRU (collectively, the "Required Rights"). Grantee shall obtain, prior to the commencement of the Term, and maintain in full force and effect for and during the Term of each Segment all rights, licenses, permits, authorizations, franchises and other approvals which are necessary for Grantee to obtain in order to permit Grantor to grant the IRU to Grantee and for Grantee to use the Grantee Fibers.

6.02 In the event Grantor shall receive notice from any grantor or provider of a Required Right that Grantor has failed to observe or perform its obligations under such Required 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 Required 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.

6.03 If, after the Acceptance Date with respect to a Segment, Grantor is required (i) by any Governmental Authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any Required Right, (iii) by any other Person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event, to relocate the Grantor System within such Segment or any portion thereof, Grantor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. Grantee shall be kept fully informed of all determinations made by Grantor in connection with such relocation, and any such relocation shall be constructed substantially in accordance with the construction specifications set forth in Exhibit "C", incorporate fiber meeting or exceeding the specifications set forth in Exhibit "D" and be subject to Acceptance Testing. Grantee shall not be obligated to pay for any cost of relocation. Grantor shall use all reasonable good faith efforts to minimize any interruption in the operation of the Grantee Fibers during any relocation.

ARTICLE 7.

CONSTRUCTION OF THE GRANTOR SYSTEM

7.01 Grantor will design, engineer, install and construct the Grantor System substantially in accordance with the construction specifications set forth in Exhibit "C", in a workmanlike
manner and in accordance with industry standards and all applicable laws. Such responsibilities shall include, without limitation, preparation of construction drawings, materials specifications and materials requisitions. The Grantee Fibers and the conduit housing the Cable shall meet or exceed the fiber and conduit specifications set forth in Exhibit "D".

7.02 Grantor will undertake the Acceptance Testing of each of the Segments.

7.03 Notwithstanding anything to the contrary contained herein, Grantor may elect, at its option, to acquire any portion of the Grantor System from third parties (whether under a lease, sublease, indefeasible right of use, or otherwise) in lieu of constructing and installing the Grantor System respecting such portion; provided, any such acquired portion shall be or have been constructed substantially in accordance with the specifications and procedures required by this Agreement except for such deviations which do not, in the reasonable discretion of Grantor, materially diminish the utility, reliability or expected useful life of the Grantor System.

7.04 Grantor shall construct handholes at locations in the public rights-of-way described in Exhibit "B" for Grantee's use and fee ownership. The handholes shall be constructed substantially in accordance with the specifications contained in Exhibit "C." Grantor shall provide Grantee with written notice of the completion of the handholes. Grantee shall have the opportunity to inspect such handholes, and must then either accept or reject said handholes within fifteen (15) business days of receipt of Grantor's completion notice. In the event that no written notice is received by Grantor within such fifteen (15) day period, the handholes shall be deemed accepted. In the event that Grantee rejects the handholes, it must give Grantor written notice with reasonable specificity regarding the rationale behind the rejection. Grantor shall then use commercially reasonable efforts to successfully complete the construction of the handholes, and such process shall continue until Grantee accepts all handholes. After Grantee has accepted, or been deemed to accept, the handholes, such handholes shall be considered owned in fee by Grantee. Grantee shall warrant the condition of the handholes pursuant to Section 20.02 of the Agreement.

7.05 The parties recognize that Grantee may not utilize the Grantee handholes for some time following Grantee's acceptance of the same. If at the time Grantee determines that it will utilize the handholes Grantee discovers that the handholes have not been constructed substantially in accordance with the specifications contained in Exhibit "C," then Grantor shall use commercially reasonable efforts to repair the handholes to meet such specifications.

ARTICLE 8.
ACCEPTANCE TESTING AND COMPLETION

8.01 Grantor shall test the Grantee Fibers in accordance with the procedures and standards specified in Exhibit "E" ("Acceptance Testing"). Acceptance Testing shall progress span by
span along each Segment as cable splicing progresses, so that test results may be reviewed in a
timely manner. Grantee shall be responsible for the timely completion of any work or
installation required in order for it to place the Grantee Fibers into operation (and Grantee’s
failure to complete such work shall not be grounds for rejection of a Completion Notice).

8.02 Upon the successful completion of Acceptance Testing respecting any Segment, Grantor
shall provide written notice of same to Grantee (a “Completion Notice”) for such Segment.
Grantor shall contemporaneously deliver a copy of the results of the Acceptance Testing for the
entire Segment (if and to the extent that Grantor has not previously delivered same) and Grantee
shall, within fifteen (15) days of receipt of the Completion Notice, either accept or reject the
Completion Notice (Grantee shall be permitted to reject only if Grantee specifies a material
failure of the Grantee Fibers to satisfy the requirements of this Agreement) by delivery of written
notice to Grantor. In the event Grantee rejects the Completion Notice, Grantor shall promptly,
and at no cost of Grantee, commence to remedy the defect or failure specified in Grantee’s
notice. Thereafter Grantor shall again conduct Acceptance Testing and (if successfully
completed) provide Grantee a Completion Notice with respect to such Segment. The foregoing
procedure shall apply again and successively thereafter until Grantor has remedied all defects or
failures specified by Grantee. Any failure by Grantee to timely reject a Completion Notice, or
any use of the Grantee Fibers by Grantee for any purpose other than testing, shall be deemed to
constitute acceptance for purposes of this Agreement and Grantee shall be deemed to have
delivered a notice of acceptance upon such use or on the fifteenth day after delivery of the
Completion Notice.

8.03 Upon completion and acceptance, Grantor shall provide Grantee with “as built” drawings
in written and electronic format.

8.04 The parties recognize that Grantee may not utilize the Grantee Fibers for some time
following Grantee’s acceptance of the same. If at the time Grantee determines that it will utilize
the Grantee Fibers Grantee discovers that there is a material failure of the Grantee Fibers, then
Grantor shall promptly, and at no cost of Grantee, commence to remedy the defect or failure
specified in Grantee’s notice.

ARTICLE 9.
ACCESS POINTS

At the Segment End Points, and at the other locations identified in Exhibit "B," Grantor shall
install a handhole for Grantee’s use within the public rights-of-way (the “Access Points”). Under
no circumstances shall any Access Point be located more than two hundred feet (200’) away from
the System Route. Grantor shall pull four (4) fibers to each Access Point and shall leave
approximately sixty (60) feet of slack fiber for Grantee’s future splicing needs. The Access
Points shall be the only areas where Grantee shall have access to the Grantee Fibers. The
Grantee shall be responsible for maintaining the Access Points and the fibers pulled to the Access Points from the Grantor System. Grantee shall, under no circumstances, access the Grantor System.

ARTICLE 10.
OPERATIONS

10.01 Grantee shall (at its full cost and expense) have full, complete, and exclusive control and responsibility for determining any network and service configuration or designs, routing configurations, re-grooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the Grantee Fibers; provided, such control and responsibility by Grantee shall not adversely affect the use by any other Person of the Grantor System and/or any electronic or optronic equipment used by such Person in connection therewith.

10.02 Grantor is not obligated to supply to Grantee any optronic or electronic equipment or related facilities, all of which are the sole responsibility of Grantee, nor is Grantor responsible for performing any work other than as specified in this Agreement.

10.03 Upon not less than one hundred twenty (120) days written notice from Grantor to Grantee, Grantor may, at its option substitute for the Grantee Fibers within any Segment or Segments, or any portions thereof, an equal number of alternative fibers within such Segment or portion thereof, provided that in such event, such substitution (i) shall be effected at the sole cost of Grantor, including, without limitation, all disconnect and reconnect costs, fees and expenses; (ii) shall be constructed substantially in accordance with the specifications and procedures set forth in Exhibit "C", incorporate fiber and conduit meeting or exceeding the specifications set forth in Exhibit "D", and be tested in accordance with the Acceptance Testing; (iii) shall not change any Segment End Points or other Access Points; and (iv) Grantor shall use all reasonable good faith efforts to minimize any interruption in the operation of the Grantee Fibers. Substitution of Grantee Fibers shall not affect or extend the Term with respect to the fibers so substituted.

ARTICLE 11.
MAINTENANCE AND REPAIR OF THE GRANTOR SYSTEM

From and after the Effective Date with respect to each Segment and continuing for the entire Term of this Agreement, the maintenance of the Grantor System within such Segment shall be provided in accordance with the maintenance requirements and procedures set forth in Exhibit "F" attached hereto. The costs of all Scheduled Maintenance, Unscheduled Maintenance, and repair (as defined in Exhibit "F") of the Grantor System, including the Grantee Fibers, shall be borne by Grantor.
ARTICLE 12.
IMPOSITIONS

Grantor and Grantee acknowledge and agree that Grantee shall be treated for accounting and federal and all applicable state tax purposes as the exclusive beneficial owner of the Grantee Fibers. To that end, Grantee shall be responsible for and shall timely pay all Impositions arising from the ownership of the Grantee Fibers, and shall file any and all necessary tax returns or other returns and reports associated therewith.

ARTICLE 13.
USE OF GRANTOR SYSTEM

13.01 Grantee represents and warrants that it will use the Grantee Fibers and the IRU hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

13.02 Subject to the provisions of this Agreement, Grantee may use the Grantee Fibers and the IRU for any lawful purpose. Grantee acknowledges and agrees that it has no right to use any fibers, other than the Grantee Fibers, included or incorporated in the Grantor System, and that Grantee shall keep any and all of the Grantor System free from any liens, rights or claims of any third party attributable to Grantee.

13.03 Grantee shall not use the Grantee Fibers in a way which physically interferes in any way with or otherwise adversely affects the use of the fibers, cable or conduit of any other Person using the Grantor System.

13.04 Grantee and Grantor shall promptly notify each other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to or loss of the Grantor System.

13.05 Grantee and Grantor agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.
ARTICLE 14.

INDEMNIFICATION

14.01 Subject to the provisions of Article 15, Grantor hereby agrees to indemnify, defend, protect and hold harmless Grantee and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Grantor, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by Grantor of its obligations under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Grantor of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Grantor of its obligations under this Agreement.

14.02 Subject to the provisions of Article 15, Grantee hereby agrees to indemnify, defend, protect and hold harmless Grantor, and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Grantee, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the exercise by Grantee of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Grantee of any regulation, rule, statute or court order of any Governmental Authority in connection with the exercise by Grantee of its rights under this Agreement.

14.03 Grantor and Grantee agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

14.04 Grantor and Grantee each expressly recognize and agree that its obligation to indemnify, defend, protect and save the other harmless is a material obligation to the continuing performance of its other obligations, if any, hereunder.

ARTICLE 15.

LIMITATION OF LIABILITY

Notwithstanding any provision of this Agreement to the contrary, the total maximum liability of either party to the other party, whether directly or by way of the indemnification obligations contained herein, shall be Five Million Dollars ($5,000,000.00).
ARTICLE 16.

INSURANCE

16.01 During the term of this Agreement, each party shall obtain and maintain the following insurance: (i) Commercial General Liability including coverage for (a) premises/operations, (b) independent contractors, (c) products/completed operations, (d) personal and advertising injury, (e) contractual liability, and (f) explosion, collapse and underground hazards, with combined single limit of not less than $5,000,000.00 each occurrence or its equivalent; (ii) Worker’s Compensation in amounts required by applicable law and Employer’s Liability with a limit of at least $1,000,000.00 each accident; (iii) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than $1,000,000.00 each accident; and (iv) any other insurance coverages required under or pursuant to the Required Rights.

16.02 Until the Effective Date for a Segment, Grantor shall bear all risk of loss of and damage or destruction to the Grantor System within such Segment. Commencing as of the Effective Date, any loss, damage or destruction of or to the Grantor System not otherwise required to be insured hereunder shall be treated for all purposes as Unscheduled Maintenance (as defined in Exhibit “F”).

ARTICLE 17.

FORCE MAJEURE

Except as may be otherwise specifically provided in this Agreement, neither party shall be in default under this Agreement if and to the extent that any failure or delay in such party’s performance of one or more of its obligations hereunder is caused by any of the following conditions, and such party’s performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; war or civil disorder; any other cause beyond the reasonable control of such party (each a “Force Majeure Event”). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event.

ARTICLE 18.

DEFAULT

18.01 If Grantee fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of ninety (90) days after written notice from Grantor (or if such failure is not susceptible of a cure within such ninety (90) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantor may (A) terminate this Agreement and the Term, in whole or in part, in which event Grantor shall have no further duties or obligations hereunder, and (B) subject to Article 16, pursue any legal remedies it may
have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

18.02 If (i) Grantor makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantor as filed and not dismissed with 120 days; (iii) Grantor fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of ninety (90) days after written notice from Grantee (or if such failure is not susceptible of a cure within such ninety (90) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantee may (A) terminate this Agreement, the non-exclusive franchise, and the Term, in whole or in part, in which event Grantee shall have no further duties or obligations hereunder, and the Grantee Fibers shall revert to Grantor, and (B) subject to Article 15, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

ARTICLE 19.
ASSIGNMENT

19.01 Grantee may assign, encumber or otherwise transfer this Agreement to any other Person without the prior written consent of Grantor; provided, Grantee shall give not less than sixty (60) day prior written notice to Grantor; and Grantee shall not be released from its obligations hereunder. Any assignee or transferee shall continue to be subject to all of the provisions of this Agreement.

19.02 This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

19.03 Nothing contained in this Article shall be deemed or construed to prohibit Grantor from selling, transferring, leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor System so long and such sale, transfer, lease, license, or grant does not interfere with Grantee’s rights or use of the Grantee Fibers.
ARTICLE 20.
REPRESENTATIONS AND WARRANTIES

20.01 Each party represents and warrants that: (i) it has the full right 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, subject to bankruptcy, insolvency, creditors’ rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

20.02 Grantor represents and warrants that the Segments of the Grantor System and the Grantee handholes that it will construct pursuant hereto will be designed, engineered, installed, and constructed substantially in accordance with the terms and provisions of this Agreement, any and all applicable building, construction and safety codes, as well as any and all other applicable governmental laws, codes, ordinances, statutes and regulations; provided Grantee’s sole rights and remedies with respect to any breach of such representation shall be (i) to inspect the construction, installation and splicing of the Grantee Fibers incorporated in each Segment and to participate in the Acceptance Testing, during the course and at the time of the relevant construction, installation and testing periods for each Segment, as provided herein; (ii) if, during the course of such construction, installation and testing any deviation from the specifications set forth in Exhibits “C”, “D” or “E” is discovered which is reasonably likely to materially adversely affect the operation or performance of the Grantee Fibers, the construction or installation of the affected portion of the Segment shall be repaired to such specification by Grantor at Grantor’s sole cost and expense; and (iii) if, at any time prior to the date that is twelve (12) months after the Acceptance Date, Grantee shall notify Grantor in writing of its discovery of a deviation from the specifications set forth in Exhibits “D” or “E” which is reasonably likely to materially adversely affect the operation or performance of the Grantee Fibers, or, if, at any time during the Term, Grantee shall notify Grantor in writing of its discovery of a deviation from the specifications set forth in Exhibit “C” which is reasonably likely to materially adversely affect the operation or performance of the Grantee Fibers, with respect to any Segment (which notice shall be given within thirty (30) days of such discovery) the construction or installation of the affected portion of such Segment shall be repaired to such specification by Grantor at Grantor’s sole cost and expense.

20.03 Grantee acknowledges and agrees that Grantee’s sole rights and remedies with respect to any defect in or failure of the Grantee Fibers to perform in accordance with the applicable vendor’s or manufacturer’s specifications with respect to the Grantee Fibers shall be limited to the particular vendor’s or manufacturer’s warranty and such warranties with respect to the Grantee Fibers shall be assigned to Grantee upon its request. In the event any maintenance or
repairs to the Grantor System are required as a result of a breach of any warranty made by any manufacturers, contractors or vendors, unless Grantee shall elect to pursue such remedies itself, Grantor shall pursue all remedies against such manufacturers, contractors or vendors on behalf of Grantee, and Grantor shall reimburse Grantee’s costs for any maintenance Grantee has incurred as a result of any such breach of warranty to the extent the manufacturer, contractor or vendor pays such costs.

20.04 EXCEPT AS SET FORTH IN THE FOREGOING SECTIONS 20.01 AND 20.02, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTEE FIBERS OR THE GRANTOR SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

20.05 The parties recognize that the foregoing representations and warranties shall in no way limit Grantor’s Scheduled Maintenance and Unscheduled Maintenance obligations as set forth in Article 11, which shall continue for the entire Term of this Agreement.

ARTICLE 21.
CONFIDENTIALITY

Grantor may mark proprietary documents it has submitted to Grantee as "proprietary." Grantee will notify Grantor if any third party seeks release of any document so marked and Grantee will withhold release for the maximum period permitted by law to provide Grantor the opportunity to seek court protection against release of the requested documents. The provisions of this Article shall survive expiration or termination of this Agreement.

ARTICLE 22.
NOTICES

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO GRANTOR:

Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021
Attn: Director, Intercity Network
with copies to:

Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021
Attn: General Counsel

IF TO GRANTEE: Kittitas County
Department of Public Works
205 West 5th Ave., Room 108
Ellensburg, Washington 98926
Attn: Director of Public Works

or at 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 same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 23.
ENTIRE AGREEMENT: AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

ARTICLE 24.
RELATIONSHIP OF THE PARTIES

The relationship between Grantee and Grantor shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes.

ARTICLE 25.
COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
ARTICLE 26.
CONSTRUCTION AND INTERPRETATION OF AGREEMENT
The purpose of this Agreement is for the Grantor to provide to the Grantee the use of four (4) fully operational fiber optic fibers which the Grantee may use without restriction for any lawful purpose or use. Grantor shall be obligated to provide access to the fibers at the locations noted herein and shall operate, maintain, and repair such fibers in a commercially reasonable manner to maintain uninterrupted service. Any ambiguity in this Agreement shall be construed in accordance with the foregoing statements in order effectuate the purposes of this Agreement.

ARTICLE 27.
ENFORCEMENT
If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.
IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company

By /s/ Timothy W. Edens
Title: Senior Director

KITTITAS COUNTY, WASHINGTON

By /s/ Perry O. Heston
Title: Kittitas County Board of Commissioner, Chair
### Exhibit "A"

**Segment Descriptions and Route Map**

<table>
<thead>
<tr>
<th>Segment</th>
<th>Fiber Count</th>
<th>Scheduled Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corner of Kittitas/Yakima County Line and Uptanum Road @ sta 46+23 to the Corner of SR 906 and Hyak Estate Road</td>
<td>4</td>
<td>4Q 2000</td>
</tr>
</tbody>
</table>
Exhibit "B"
Access Points

Location 1: Corner of Uptanum Road and the Kittitas/Yakima County Line @ sta 46+23
Location 2: Manastash Road, sta 26+77 and intersection of un-named dirt road where Ellensburg Telephone ducts begin
Location 3: Hanson road crossing location from/to private easements
Location 4: Intersection of Thorp Cemetary Road (sta 39+50) and Thorp Highway
Location 5: Elk Heights Road intersection (sta 28+ 79)
Location 6: Intersection of S. Cle Elum Road and BNSF Right-of-Way
Location 7: Center part of Ronalds Quadrangle. Location north of BNSF Right-of-Way in Washington DOT (WSDOT) Maintenance Facility. Kittitas County shall secure appropriate easement from WSDOT to access the handhole.
Location 8: Intersection of Cabin Creek Road and BNSF Right-of-Way
Location 9: Intersection of Kachess Highway and FS 4832
Location 10: Corner of SR 906 and Hyak Estate Road
Exhibit "C"
Construction Specifications

1. The intent of this Exhibit is to delineate the general specifications and standards for construction of the Grantor System. In the event any federal, state, local or private agency having jurisdiction shall impose higher standards, Grantor will comply and conform with such higher standards. Grantor may deviate from the specifications and standards described below in those instances where either (i) strict compliance is impractical due to physical (including environmental) conditions, right-of-way issues or code restrictions, or (ii) Grantor has acquired a portion of the Grantor System from a third party.

2. Material
   - Steel casings shall be minimum 35,000 PSI.
   - Any exposed steel conduit, brackets or hardware (i.e., bridge attachments) shall be galvanized.
   - Hand holes shall have a minimum 20,000 pound loading rating with 6 to 12 inches of cover.
   - Manholes shall have a minimum H-20 loading rating.
   - Fiber optic cable shall generally be single armored (except where Grantor determines otherwise, in its sole and absolute discretion).
   - HDPE SDR 11 conduits shall be used for plowing and HDPE SDR 9 conduits shall be installed in rock areas.

3. Minimum Depths
   - Minimum cover required in the placement of conduit shall be 42 inches, except in the following instances:
     - The minimum cover in borrow ditches adjacent to roads, highways, railroads and interstates shall be 48 inches below the clean-out line or existing grade, whichever is greater.
     - The minimum cover across streams, river washes and other waterways shall be 48 inches below the clean-out line or existing grade, whichever is greater.
     - At locations where conduit crosses other subsurface utilities or other structures, the conduit shall be installed to provide a minimum of 12 inches of vertical clearance; otherwise the conduit will be installed under the existing utility or other structure.
     - In rock, the conduit shall be placed to provide a minimum of 8 inches below the surface of the solid rock with a steel or concrete cap, or 18 inches below the surface of the rock or provide a minimum of 42 inches of total cover, whichever requires the least rock excavation. HDPE conduit will be back-filled with 2 inches of select materials (bedding) and 4 inches of select cover in rock areas.
     - In the case of the use/conversion of existing steel pipelines or salvaged conduit systems, the existing depths shall be considered adequate.

4. Buried Cable Warning Tape
   All conduit will be installed with buried cable warning tape except where existing steel pipelines or salvaged conduit systems are used. The warning tape shall generally be placed at a depth of 12 inches below grade and directly above the conduit.
5. 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 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 joints placed at each structural (bridge) expansion joint or at least every 100 feet, whichever is the shorter distance.

6. Innerduct Installation
   - HDPE inner ducts, 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.

7. Cable Installation
   - The fiber optic cable shall be installed by using blowing equipment or a powered pulling winch and hydraulic powered assist pulling wheels. The maximum pulling force to be applied to the fiber optic cable shall be 600 pounds.
   - Bends of small radii (less then 20 times the outside diameter of the cable) and twists that may damage the cable shall be avoided during cable placement.
   - The cable shall be lubricated and placed in accordance with the cable manufacturer specifications.
   - A pulling swivel break-away rated at 600 pounds shall be used at all times.
   - All splices will be contained in a hand hole or manhole.
   - A minimum of 13 feet of slack cable will be left in all intermediate hand holes or manholes.
   - A minimum of 50 feet of slack cable from each cable end will be left in all splice locations.
   - A minimum of 100 feet of slack cable will be left in all Regeneration Facilities and Opamp Facilities.

8. Manholes and Hand holes
   - Hand holes and manholes placed in traveled surface streets shall be HS-20 loading rated and shall have locking lids.
   - Hand holes shall be placed in all other areas and be installed with a minimum of 6 inches of soil covering the lid.
9. Cable Markers (Warning Signs)

Cable markers (with the same information as buried cable warning tape) shall be installed at all changes in cable running line directions, waterways, subsurface utilities, hand holes and at both sides of street, highway, bridge or railroad crossings. At no time, shall any markers be spaced more than 1000 feet apart. Markers shall be positioned so that they can be seen from the location of the cable and generally set facing perpendicular to the cable running line.

10. Compliance

All work will be done in strict accordance with federal, state, local and applicable private rules and laws regarding safety and environmental issues, including those set forth by OSHA and the EPA. In addition, all work and the resulting fiber system will comply with the current requirements of all governing entities (FCC, NEC, DEC, and other national, state, and local codes).

11. As-Built Drawings

- As-built drawings will contain a minimum of the following:
  - Information showing the location of running line, relative to permanent land marks, including but not limited to, railroad mileposts, boundary crossings and utility crossings.
  - Manhole and hand hole locations.
  - Conduit information (type, length, expansion joints, etc.).
  - Notation of all deviations from specifications (depth, etc.).
  - ROW detail (type, centerline distances, boundaries, waterways, road crossings, known utilities and obstacles).
  - Cable marker locations and stationing.
  - Fiber optic cable data (type, manufacturer, reel Ids, sequentials, slack coils, splice points, etc.).
  - Regeneration Facility and Opamp Facility locations and floor plans.
- Drawings will be updated with actual field data during and after construction.
- Metro area scale shall not exceed 1 inch = 200 feet.
- Rural area scale shall not exceed 1 inch = 500 feet.
- As-built drawings will be provided within 90 days after the Acceptance Date, in both hard copy and electronic format. Updates to the as-built drawings will be provided within 60 days of completion of change.
EXHIBIT "D"

Fiber and Conduit Specifications

The intent of this Exhibit is to delineate the specifications for the Grantee Fibers and the conduit housing the Cable. Deviations from these specifications may occur if Grantor acquires a portion of the Grantor System from a third party pursuant to the Agreement.

Fiber

Grantor is installing single mode fiber for Grantee’s use. Grantor may substitute alternative fibers if and only if such alternative fibers have performance specifications which are at least equal to the specifications set forth below.

Single Mode Fiber

- Attenuation at 1310 nm = 0.40 dB/km max
- Attenuation at 1550 nm = 0.30 dB/km max
- Zero Dispersion wavelength = 1312nm typical
- Wavelength cutoff<1260nm typical
- Dispersion slope=<.0902ps typical
- Polarization Mode dispersion = 0.20 ps max per fiber, 0.10 ps link value
- Mode Field Diameter = 9.2+- 0.4 µm at 1310 nm & 10.4 +-0.8 at 1550 nm
- Cladding Diameter = 125.0 +- 1.0 µm
- Core/Clad Concentricity <=0.5 µm

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

Cable Vaults and Pull Boxes

- Cable vaults shall conform to the requirements of ASTM C478 and ASTM C858. Cable vault and all components placed in traveled surface streets shall be designed to withstand HS20 loading per AASHTO loading in accordance with ASTM C857. Cable vaults not placed in traveled surface streets shall be designed to withstand HS10 loading.
- Cable vaults of varying sizes will be used.
- Each cable splice vault shall be grounded using industry accepted methods.
- Cable vaults shall contain racking to support cable runs.
- Design of pull boxes shall follow the same manner as cable vaults.
Exhibit "E"

Acceptance Testing Procedures and Standards

The intent of this Exhibit is to identify the fiber acceptances testing procedures and standards. Deviations from these specifications may occur if Grantor acquires a portion of the Grantor System from a third party pursuant to the Agreement.

1. All splices shall be fusion spliced. Mechanical splices are only allowed during temporary restoration and will be replaced with fusion splices.
2. Fibers shall be terminated with Ultra SC-PC connectors (typical return loss of 0.50 dB).
3. After end-to-end connectivity on the fibers has been completed, bi-directional OTDR span and power meter testing will be completed. Grantor shall perform tests after the fiber cable is installed and the splicing enclosures have been completed and are in their final resting configuration with the cable vault or hand hole covers closed. This ensures that no micro or macro bending problems with the cable or fiber strands will contribute to the loss/attenuation measurements.
4. Power meter tests shall be completed to verify and insure that no fibers have been crossed at any of the splice points within the network. Grantor shall test and record power level readings on all fiber strands in both directions of transmission (bi-directionally) using the 1310 & 1550 nm wavelengths.
5. All OTDR and power meter tests shall be completed as follows:
   a. All OTDR traces shall be taken from both ends of a section (between adjacent Locations) and recorded using the 1310 & 1550 nm wavelength. Loss/attenuation measurements for each splice point from both directions shall be taken and recorded.
   b. The end-to-end loss value as measured with an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following:
      (1) At 1310 nm: (0.40 dB/km x km of cable) + (number of connectors x 0.50) + (0.10 x number of splices).
      (2) At 1550 nm: (0.30 dB/km x km of cable) + (number of connectors x 0.50) + (0.10 x number of splices).
   c. Grantor's loss/attenuation objective for each fiber optic splice is 0.10 dB when measured in one direction with an OTDR test set (excluding connector loss, which is typically 0.50 dB per mated connector pair). If after three attempts this parameter is not met, the splice will be marked as Out-Of-Spec (OOS) and the splice will remain provided the average loss/attenuation value of all splices on an individual fiber basis shall not exceed 0.10 dB for the entire ring or subsystem.
   d. For bi-directional OTDR testing, the distance from Location "A" and Location "Z" shall be recorded for each splice point. The loss/attenuation at each splice point shall be recorded at both wavelengths (1310 nm & 1550 nm) in each direction. Grantor shall then average the two readings to obtain the final average splice loss/attenuation for each splice point of each fiber strand within the fiber optic cable.
   e. Each fiber strand color must be recorded along with its buffer tube color or the ribbon color. The laser source transmit power level using the 1310 & 1550 nm wavelengths will always be recorded together with the receive power level reading at the receiving end of the test.
6. OTDR traces will be taken and splice loss measurements recorded. Grantor will store OTDR traces on electronic media. Loss measurements will be recorded using an industry-accepted laser source and a power meter. Copies of all data sheets and tables and one set of diskettes with all traces will be available to Grantee.
7. Following emergency restoral, Grantor personnel shall perform span test documenting end-to-end attenuation measurement of each fiber and will be completed in both directions at 1310 & 1550 nm wavelengths. Upon permanent repair, new splice loss readings should be no greater than the original splice loss specifications.
Exhibit "F"

Maintenance Requirements and Procedures

Maintenance

Scheduled Maintenance. Routine maintenance and repair of the Grantee Fibers described in this section ("Scheduled Maintenance") shall be performed by or under the direction of Grantor, at Grantor's reasonable discretion. Scheduled Maintenance shall commence with respect to each Segment upon the Effective Date. Scheduled Maintenance shall only include the following activities:

- patrol of Grantor System route on a regularly scheduled basis, which will not be less than monthly, unless hi-rail access is necessary, in which case, it will be quarterly;
- maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- maintenance of sign posts along the Grantor System right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for Grantor's "Call-Before-You-Dig" program; and
- assignment of fiber maintenance technicians to locations along the route of the Grantor System initially at approximately 110 mile intervals dependent upon terrain and accessibility, and subject to subsequent modification in Grantor's reasonable discretion.

Unscheduled Maintenance. Non-routine maintenance and repair of the Grantee Fibers which is not included as Scheduled Maintenance ("Unscheduled Maintenance") shall be performed by or under the direction of Grantor. Unscheduled Maintenance shall commence with respect to each Segment upon the Effective Date. Unscheduled Maintenance shall consist of:

- "Emergency Unscheduled Maintenance" in response to an alarm identification by Grantor's Operations Center, notification by Grantee or notification by any third party of any failure, interruption or impairment in the operation of fibers within the Grantor System, or any event imminently likely to cause the failure, interruption or impairment in the operation of fibers within the Grantor System.
- "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of fibers within the Grantor System not covered by Scheduled Maintenance. Grantee shall immediately report the need for Unscheduled Maintenance to Grantor in accordance with reasonable procedures promulgated by Grantor from time to time. Grantor will log the time of Grantee's report, verify the problem and dispatch personnel immediately to take corrective action.

Operations Center

Grantor shall operate and maintain an Operations Center ("OC") staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel. Grantor's maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Grantor shall have its first maintenance personnel at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time Grantor becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events.
Grantor shall maintain a toll-free telephone number to contact personnel at the OC. Grantor’s OC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected in the Grantor System: (i) through the Grantee’s remote surveillance equipment and/or upon notification by Grantee to Grantor, or (ii) upon notification by a third party.

Grantor will not be responsible for monitoring the performance or operation of the Grantee Fibers; in the event that Grantee detects a failure in the operation of the Grantee Fibers which may indicate the need for Unscheduled Maintenance, Grantee shall report same to Grantor’s OC.

**Cooperation and Coordination**

- In performing its services hereunder, Grantor shall take workmanlike care to prevent impairment to the signal continuity and performance of the Grantee Fibers. The precautions to be taken by Grantor shall include notifications to Grantee. In addition, Grantor shall reasonably cooperate with Grantee in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Grantee, then Grantee shall, at Grantor’s reasonable request, make such personnel of Grantee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Grantor in performing such maintenance as required of Grantor hereunder.

- Grantor shall notify Grantee at least ten (10) business days prior to the date in connection with any Planned Service Work Period (“PSWP”) of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Grantee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Grantor’s ability to perform its obligations under the Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Grantor shall notify Grantee at Grantor’s earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

**Facilities**

- Grantor shall maintain the Grantor System in a manner which will permit Grantee’s use, in accordance with the terms and conditions of the Agreement.

- Grantee will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Grantee in connection with the operation of the Grantee Fibers, none of which is included in the maintenance services to be provided hereunder.

**Cable/Fibers**

- Grantor shall perform appropriate Scheduled Maintenance on the cables contained in the Grantor System in accordance with Grantor’s then current preventive maintenance procedures which shall not substantially deviate from standard industry practice.
• Grantor shall have qualified representatives on site any time Grantor has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of any cable.

• Grantor shall maintain sufficient capability to teleconference with Grantee during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Grantor shall use reasonable efforts to repair traffic-affecting discontinuity within four (4) hours after Grantor's representatives arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Grantor shall commence its planning for permanent repair, and thereafter promptly shall notify Grantee of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available PSWP.

• In performing repairs, Grantor shall comply with the splicing specifications as set forth in Exhibit "E". Grantor shall provide to Grantee any modifications to these specifications as may be necessary or appropriate in any particular instance.

• Grantor’s representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. Grantor shall maintain and supply an inventory of spare cable in storage facilities supplied and maintained by Grantor at strategic locations to facilitate timely restoration.

Planned Service Work Period

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends. A calendar showing approved PSWP will be agreed upon in the last quarter of every year for the year to come. The intent is to avoid jeopardy work on the first and last weekends of the month and high-traffic holidays.

Restoration

• Grantor shall respond to any event giving rise to the need for Unscheduled Maintenance (in any event, an "Outage") as quickly as possible (allowing for delays caused by Force Majeure Events) in accordance with the procedures set forth herein.

• When restoring a cut cable in the Grantor System, the parties agree to work together to restore all traffic as quickly as possible. Grantor, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Grantor shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, rotating between tubes or ribbons operated by the parties having an interest in the cable, including Grantee, Grantor and all future fiber users of the system (collectively, the "Interest Holders"), in accordance with the following described priority and
rotation mechanics; provided that, operating fibers (i.e., fibers which have been jumpered to Grantee's, Grantor's or another party's space or equipment) in all buffer tubes or ribbons or fiber bundles shall have priority over any non-operating fibers in order to allow transmission systems to come back on line; and provided further that, Grantor will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. In general, and except to the extent prohibited by applicable laws, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration and Segment-by-Segment basis, to provide fair and equitable restoration priority to all Interest Holders. Grantor will provide upon Segment completion a System-wide rotation mechanism on a Segment-by-Segment basis so that the initial rotation order of the Interest Holders in each Segment is varied (from earlier to later in the order), such that as restorations occur, each Interest Holder has approximately equivalent rotation order positions across the Grantor System. Additional participants in the Grantor System that become Interest Holders after the date hereof shall be added to the restoration rotation mechanism.

* The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M FiberLock", to complete the temporary restoration. Permanent restorations will take place as soon as possible after the temporary splice is complete.

**Subcontracting**

Grantor may subcontract any of the maintenance services hereunder; provided that Grantor shall require the subcontractor(s) to perform in accordance with the requirements and procedures set forth herein. The use of any such subcontractor shall not relieve Grantor of any of its obligations hereunder.