

ATTACHMENT 2

Agreement for Dark Fiber Services – Level 3 LLC

202-073

A-30

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 6/13/01
Department Name: General Services
Department No.: 063
Agenda Date: 6/26/01
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors
FROM: Ron Cortez, Director
General Services Department
STAFF Phil Kryder, General Services (805.568.2684)
Dennis Kirby, General Services (805) 568-2671)
CONTACT:
SUBJECT: AGREEMENT FOR DARK FIBER SERVICES

JUN 26 2001

2001 JUN 15 PM 2:38
COUNTY OF SANTA BARBARA
CLERK OF THE SUPERVISORS

Recommendation(s): 1) Waive the bidding requirement for the lease of "Dark Fiber" from Level 3 Communications Inc., LLC; and, 2) Authorize the Board Chair to sign the attached Dark Fiber Agreement with Level 3 Communications Inc. , LLC, an out-of-county vendor.

That the Board of Supervisors:

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal Number 2: Ensure the Public Health and Safety and Provide Essential Infrastructure.

Executive Summary and Discussion: The County of Santa Barbara operates a WAN (Wide Area Network) that provides data communications services to approximately 4,500 workstations throughout the County. This mission critical network currently relies on readily available and affordable T-1 leased circuits for inter-facility connectivity. Not too long ago, T-1 connections were considered high speed. They are now considered to be slow and have become bottlenecks to the ever-increasing amount of traffic traversing our network. Fortunately, the County has, or soon will have cost-effective higher bandwidth solutions within most of our geographic areas. The critical remaining need is the procurement of a scalable, multi-use, high-speed links between primary North and South County campuses and between the two primary south county campuses.

In attempting to meet this need, the General Services, Information Technology Division has, over the past three years, solicited network proposals from a multitude of telecommunications service providers. None of the proposals were considered to be affordable until we solicited a proposal from Level 3 Communications, who is currently in the process of constructing a fiber optic route through our county.

21,874

Level 3 Communications, LLC
Right of Way (ROW) Obligations and Contracts Administration Dept.
1025 Eldorado Blvd.
Broomfield, CO 80021
Attn: Connie Nordhues

Concurrence:

County Administrator's Office

Contract Summary Form:

Contract Number: _____

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than \$100,000, submit a purchasing requisition to the Purchasing Division of General Services. See "Online Purchasing Manual" under "General Services", "Purchasing", "Policies and Procedures. "See also "Contracts for Services" policy. Form not applicable to revenue contracts.

D1. Fiscal Year : FY 00/01
 D2. Budget Unit Number (plus -Ship/-Bill codes in paren's).. : 063
 D3. Requisition Number : N/A
 D4. Department Name..... : General Services
 D5. Contact Person..... : Dennis Kirby
 D6. Phone : x2671

K1. Contract Type (check one): Personal Service Capital Project/Construction
 K2. Brief Summary of Contract Description/Purpose : Twenty-year agreement with Level 3 Communacions to prodide the County with fiber Optic Communcations connections (dark fiber) between primary campuses in Lompoc, Goleta, and Santa Barbara (62 miles).
 K3. Original Contract Amount..... : \$213,000 (approximate) startup cost with annual payments of \$23,000/year + annual CPI adjustments
 K4. Contract Begin Date : .06/27/01
 K5. Original Contract End Date..... : estimated to be 12/2021
 K6. Amendment History (leave blank if no prior amendments):

Seq#	EffectiveDate	ThisAmndtAmt	CumAmndtToDate	NewTotalAmt	NewEndDate	Purpose (2-4 words)
		\$	\$	\$		

K7. Department Project Number

B1. Is this a Board Contract? (Yes/No)..... : Y
 B2. Number of Workers Displaced (if any) : none
 B3. Number of Competitive Bids (if any) : N/A
 B4. Lowest Bid Amount (if bid)..... : \$
 B5. If Board waived bids, show Agenda Date..... : Waiver is being requested on 6/26/01
 B6. ... and Agenda Item Number..... : #
 B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Vendor agreement

F1. Encumbrance Transaction Code..... : 1701
 F2. Current Year Encumbrance Amount..... : \$0
 F3. Fund Number : 1919
 F4. Department Number..... : 1919 & 1915
 F5. Division Number (if applicable)..... : 1919-3100, 1915 - 5401
 F6. Account Number..... : 8300
 F7. Cost Center number (if applicable) : N/A
 F8. Payment Terms..... : Net 30

V1. Vendor Numbers (A=auditor; P=purchasing)
 V2. Payee/Contractor Name : Level 3 Communicaions, LLC
 V3. Mailing Address : 1025 Eldorado Blvd.
 V4. City State (two-letter) Zip (include +4 if known)..... : Broomfield, CO 80021
 V5. Telephone Number..... : (303) 635-3571
 V6. Contractor's Federal Tax ID Number (EIN or SSN) : 470807040
 V7. Contact Person : Connie Nordhues
 V8. Workers Comp Insurance Expiration Date..... : N/A Public Utility
 V9. Liability Insurance Expiration Date[s] (G=ent; P=rofl) ... : N/A Public Utility
 V10. Professional License Number : #
 V11. Verified by (name of County staff) : D. Kirby
 V12. Company Type (Check one): Individual Sole Proprietorship Partnership Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature _____

DARK FIBER AGREEMENT

THIS DARK FIBER AGREEMENT ("Agreement") is made and entered into as of the 26TH day of JUNE, 2001, by and between LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company ("Grantor") and the COUNTY of SANTA BARBARA, CALIFORNIA ("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 the conduits of the Grantor System high fiber count fiber optic cables (the "Cable").

C. Grantee desires to obtain an indefeasible right to use certain fibers in the Grantor System within Grantee's boundaries to improve its infrastructure, subject to the terms and conditions set forth below.

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.

E. Grantor and Grantee, therefore, agree as follows:

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 Section 7.04.

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

1.05 "Costs" shall mean the actual direct costs paid or payable in accordance with the established accounting principles generally used by Grantor and which Grantor utilizes in billing third parties for reimbursable projects, including the following: (i) internal labor costs, including wages, salaries, benefits and overhead (provided that such overhead shall not exceed thirty percent (30%) of wages, salaries and benefits), and (ii) other direct costs and out of pocket expenses on a direct pass-through basis.

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

1.07 "Force Majeure Event" shall have the meaning set forth in Article 18.

1.08 "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.

1.09 "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.

1.10 "Grantee Fibers" shall have the meaning set forth in Article 3. The Grantee Fibers shall include the Initial Fibers and the Secondary Fibers (if and when installed).

1.11 "Grantor System" shall have the meaning set forth in the Recitals and shall include the fiber and conduit extending to the edge of the railroad right-of-way held by Grantor. The Grantor System shall not include the Lateral Segments and any Access Points located on public rights-of-way and constructed pursuant hereto.

1.12 "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.

1.13 "Initial Fiber(s)" shall mean the fibers designated as such in Exhibit "A".

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

- 1.15 "IRU Fee" shall mean the fee due for conveyance of the IRU in the Grantee Fibers, as set forth in Exhibit "B".
- 1.16 "Lateral Segment" shall mean a single conduit or conduits, as the case may be, extending from the Grantor System at the edge of the railroad right-of-way held by Grantor to the Access Points on the public right-of-way, which Lateral Segment shall be owned by Grantee.
- 1.17 "Maintenance" shall mean the routine and non-routine maintenance and repair of the Grantee Fibers performed by Grantor as further described in Exhibit "D".
- 1.18 "Person" shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.
- 1.19 "Prime Rate" shall mean, as of any relevant date, the rate of interest published in Money Rates Section of the most recent edition of The Wall Street Journal as the prime lending rate.
- 1.20 "Pro Rata Basis" shall mean a fraction, the numerator of which is the total number of Grantee Fibers within a particular Segment of the Grantor System and the denominator of which is the total number of fibers within the same applicable Segment of the Grantor System.
- 1.21 "Recurring Charge" shall have the meaning set forth in Section 12.01.
- 1.22 "Relocating Authority" shall have the meaning set forth in Section 6.02.
- 1.23 "Required Rights" shall have the meaning set forth in Section 6.01.
- 1.24 "ROW Grantor" shall have the meaning set forth in Section 9.03.
- 1.25 "Secondary Fiber(s)" shall mean the fiber designated as such in Exhibit "A".
- 1.26 "Segments" shall have the meaning set forth in Section 2.01.
- 1.27 "Segment End Points" shall have the meaning set forth in Section 2.01.
- 1.28 "System Route" shall have the meaning set forth in Section 2.01.
- 1.29 "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 an exclusive indefeasible right of use ("IRU") for the purposes described herein, in the number of fibers set forth in Exhibit "A" to be specifically identified in the Cable placed between the Segment End Points for such Segment (the "Grantee Fibers") all upon and subject to the terms and conditions set forth herein. The Grantee Fibers shall not include any fibers within a Lateral Segment (which fibers shall be conveyed to and owned by Grantee).

ARTICLE 4.

FEEES

4.01 Grantee agrees to pay to Grantor the IRU Fee for granting of the IRU in the Grantee Fiber installed within the Grantor System as set forth in "Exhibit B".

4.02 Grantee further agrees to pay to Grantor one hundred percent (100%) of the Costs, including the Costs of design, planning, engineering, materials and construction, associated with the Lateral Segments and Access Points.

4.03 In addition to the foregoing amounts, Grantee shall pay directly or reimburse Grantor for all other sums, costs, fees and expenses which are expressly provided to be paid by Grantee under this Agreement.

4.04 Grantor will send Grantee invoices for payments of the IRU Fee with respect to each Segment and Grantee shall pay such invoiced amounts within thirty (30) days after the Acceptance Date for such Segment. Grantor will send Grantee invoices for payments of all other sums, costs, fees and expenses owed by Grantee to Grantor hereunder and Grantee shall pay such invoiced amounts within thirty (30)

days after receipt of such invoice by Grantee. Any sums not paid by Grantee when due shall bear interest at the Prime Rate plus two percent (2%).

ARTICLE 5.

TERM

5.01 The IRU with respect to the Grantee Fibers shall become effective on the first day when both the IRU Fee with respect to the Grantee Fibers within the initial fiber optic cable has been paid in full and the Acceptance Date with respect to the Grantee Fibers within the initial fiber optic cable has occurred (the "Effective Date"). The Effective Date applies to both the Initial Fibers and any Secondary Fibers installed subsequent to the Initial Fibers. Subject to the provisions of Article 19, the IRU with respect to the Grantee Fibers shall terminate on the twentieth (20th) anniversary of the Effective Date (the "Term").

5.02 Upon the expiration of the Term 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 19, this Agreement shall become effective on the date executed by Grantee as written below and shall terminate on the date when 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 Grantor and Grantee acknowledge and agree that at any time following the seventeenth (17th) anniversary of the Effective Date, either party may request the opportunity to discuss the terms of an extension of the IRU by issuing written notice to the other party. Upon receipt of such request, Grantor agrees to negotiate in good faith with Grantee concerning a possible renewal of the IRU to the extent such renewal is technologically feasible and consistent with Grantor's operational capabilities and business plan at that time.

5.05 Subject to Grantor's receipt of any and all Required Rights and other necessary authorizations to begin construction, including any and all necessary permits and authorizations required by Grantee, as well as Force Majeure, Grantor shall take reasonable steps to complete construction of the Grantor System by December 31, 2001.

5.06 If Grantor fails to complete construction of the Grantor System by May 31, 2002, and such delay is not the result of Force Majeure or due to the failure of Grantee or other grantors of Required Rights to complete processing of any and all Required Rights or any other permits or authorizations necessary to commence construction and installation of the Grantor System, then either party may terminate this Agreement upon ninety (90) days prior written notice to the other party.

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, within thirty (30) days of the execution of this Agreement, and maintain in full force and effect for and during the Term 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 and Access Points. The parties acknowledge and agree that the parties would mutually benefit from the prompt processing and receipt of any and all Required Rights necessary to construct, maintain and operate the Grantor System and the Grantee Fibers. Accordingly, the parties agree to utilize their best efforts to cooperate and assist each other to secure such Required Rights as soon as possible after execution of this Agreement.

6.02 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 Grantor's standard construction specifications, incorporate fiber meeting or exceeding the specifications set forth in Exhibit "C" and be subject to Acceptance Testing. Grantee shall reimburse Grantor for its proportionate share of the Costs (including Acceptance Testing and including amounts paid to a Relocating Authority to avoid relocation) related to such relocation (to the extent Grantor has not been reimbursed by the Relocating Authority) allocated to Grantee on a Pro Rata Basis.

ARTICLE 7.

CONSTRUCTION OF THE GRANTOR SYSTEM

7.01 Grantor will design, engineer, install and construct the Grantor System substantially in accordance with Grantor's construction specifications, in a workmanlike manner and in accordance with accepted industry standards and all applicable construction codes and laws. Such responsibilities shall include,

without limitation, preparation of construction drawings, materials specifications and materials requirements. Grantor shall provide Grantee with Grantor's construction specifications within a reasonable time upon written request. The Grantee Fibers shall meet or exceed the fiber specifications set forth in Exhibit "C".

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 Subject to Article 9, at the Segment End Points, and at the other locations identified in Exhibit "A", Grantor shall construct manholes or handholes, as the case may be, for Grantee's use and ownership in the public rights-of-way (the "Access Points"). Grantor further shall construct the Lateral Segments to connect the Access Points to the Grantor System. The Lateral Segments and Access Points shall be constructed substantially in accordance with Grantor's standard construction specifications. Grantor shall provide Grantee with written notice of the completion of the Lateral Segments and the Access Points. Grantee shall have the opportunity to inspect the Lateral Segments and the Access Points, and must either accept or reject the Lateral Segments and Access Points within ten (10) business days of receipt of Grantor's completion notice. In the event that no written notice is received by Grantor within such ten (10) business day period, the Lateral Segments and Access Points shall be deemed accepted. Grantee may reject the Lateral Segments and Access Points only if it specifies material deviations from the agreed specifications therefor. In the event of such rejection, Grantor shall use reasonable efforts to successfully remedy the defects specified. After Grantee has accepted, or been deemed to accept, the Lateral Segments and Access Points, title to and risk of loss respecting such Lateral Segments and Access Points shall be conveyed to Grantee, and Grantor shall have no further obligation or liability therefor.

ARTICLE 8.

ACCEPTANCE TESTING AND COMPLETION

8.01 Grantor shall test the Grantee Fibers in accordance with Grantor's standard procedures and standards ("Acceptance Testing") set forth on Exhibit "C" attached hereto. 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 (15th) day after delivery of the Completion Notice.

ARTICLE 9.

ACCESS POINTS AND LATERAL SEGMENTS

9.01 At the Segment End Points, and at the other locations identified in Exhibit "A," Grantor shall install Access Points for Grantee's use and ownership within the public rights-of-way. Grantor shall further construct the Lateral Segments to connect the Access Points to the Grantor System. Grantee shall obtain, at its own cost and expense (if any), any and all Required Rights necessary to enable Grantor to install, and for Grantee to occupy, use, maintain and own, the Access Points and the Lateral Segments. Grantee shall provide valid copies of such Required Rights to Grantor within thirty (30) days of the execution of this Agreement. Grantor and Grantee expressly acknowledge and agree that time is of the essence with respect to Grantee's acquisition of the Required Rights necessary to utilize the public rights-of-way for the installation of the Access Points and the Lateral Segments. Accordingly, in the event Grantee fails to acquire any and all Required Rights necessary to install and utilize the Access Points within such public rights-of-way, or if other circumstances intervene that prevent Grantor from completing the installation of the Access Points or the Lateral Segments, Grantor shall install a splice in the Grantee Fibers and leave approximately sixty (60) feet of slack fiber in the Grantor handhole that is closest to Grantee's planned Access Point. Upon Grantee's acquisition of all Required Rights necessary to utilize the public rights-of-way for the installation of the Access Points and Lateral Segments and submittal of valid copies of such Required Rights to Grantor, Grantor shall complete construction of the

Access Points and Lateral Segments and pull the slack fiber from the Grantor handhole that is closest to Grantee's planned Access Point to the location designated by Grantee for the Access Point.

9.02 Under no circumstances shall any Access Point be located more than fifty feet (50') away from the System Route, unless otherwise agreed by the parties. With respect to the Initial Fibers, Grantor shall install four (4) fibers within the Lateral Segment to each Access Point and with respect to the Secondary Fibers, Grantor shall install two (2) fibers within the Lateral Segment to each Access Point. Grantor shall leave approximately sixty (60) feet of slack fiber in the Access Point manhole/handhole 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 Lateral Segments. Grantee shall, under no circumstances, be permitted physical access to the Grantor System.

9.03 The Parties hereby expressly acknowledge and agree that the construction and installation of the Lateral Segments to facilitate the installation and placement of Access Points along the System Route remains subject to final approval by the grantor of the Required Rights to the rights-of-way in and upon which the Grantor System will be constructed (the "ROW Grantor"). In the event the ROW Grantor declines to approve the construction and installation of the Lateral Segments and the Access Points, Grantee shall identify a suitable alternate location for the desired Access Point(s) and Lateral Segment(s) and/or shall comply with the requirements imposed by the ROW Grantor within thirty (30) days. In the event Grantee is unable to identify a suitable alternate location and/or otherwise fails to comply with the obligations imposed by ROW Grantor within thirty (30) days, Grantor shall not be obligated to construct the Lateral Segment and/or the Access Point at that particular location. In such case, Grantee shall perform any and all construction work related to the installation of the Lateral Segment and/or Access Point(s), including the acquisition of any and all Required Rights from ROW Grantor, at its sole cost and expense.

9.04 Any splicing of the Grantee Fibers along the Grantor System shall be performed solely by Grantor at Grantor's cost and such Costs shall be promptly reimbursed by Grantee. Any splicing work at the Access Points shall be undertaken by Grantee at Grantee's sole cost and expense.

ARTICLE 10.

OPERATIONS

10.01 Subject to Article 9, Grantee shall (at its full cost and expense) have full and complete 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, or any colocation space for such equipment or 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 substitute Grantee Fibers at any time during the Term (provided that, in the event Grantor has substituted the Grantee Fibers, then at that time the substituted Grantee Fibers will be tested in accordance with the provisions of this Agreement).

ARTICLE 11.

MAINTENANCE AND REPAIR OF THE GRANTOR SYSTEM

From and after the Effective Date with respect to each Segment, the maintenance of the Grantor System within such Segment shall be provided in accordance with the maintenance requirements and procedures set forth in Exhibit "D" attached hereto. The costs of all Scheduled Maintenance (as defined in Exhibit "D") shall be borne by Grantee as part of the Recurring Charge. Grantee shall reimburse Grantor for its proportionate share of the Costs of any Unscheduled Maintenance (as defined in Exhibit "D"), which costs shall be allocated to Grantee on a Pro Rata Basis. Notwithstanding the foregoing, in the event that Grantor must perform Unscheduled Maintenance as a result of a relocation of the Grantor System at Grantee's direction, then Grantee shall reimburse Grantor for the entire Cost of Unscheduled Maintenance.

ARTICLE 12

RECURRING CHARGE

12.01 In consideration of Grantor's performance of Scheduled Maintenance, and subject to the adjustments described in Section 12.02, Grantee shall pay to Grantor each year, with respect to each Segment, commencing with the Acceptance Date of such Segment and continuing until the expiration of the Term of the IRU with respect to such Segment shall have occurred, the product obtained when: (a) \$375.00 is multiplied by (b) the number of Route Miles in such Segment (the "Recurring Charge"); provided, however, that under no circumstances shall the Recurring Charge for all Segments be less than five thousand dollars (\$5,000.00) per year. The Recurring Charge shall be due and payable on the Acceptance date of the first Segment and on each anniversary thereof.

12.02 The Recurring Charge shall be increased on each anniversary of the Acceptance Date of the first Segment in which Grantee will receive the IRU, by the increase, if any, in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (Base years 1982-84=100), for the preceding twelve (12) month period, provided however, that in no event shall the Recurring Charge be increased more than five percent (5%)

in any given year. In the event such index shall cease to be computed or published, Grantor may, in its reasonable discretion, designate a successor index to be used in determining any increase to the Recurring Charge.

ARTICLE 13.

IMPOSITIONS

Grantor and Grantee acknowledge and agree that Grantee shall be treated for 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, except that Grantee shall not be required to undertake payment of any taxes or other responsibilities pursuant to this Article if Grantee, as a public agency, is exempt from such payment and/or responsibilities and Grantee has established its exempt status to the satisfaction of the applicable taxing authority.

ARTICLE 14.

USE OF GRANTOR SYSTEM

14.01 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.

14.02 Grantee may use the Grantee Fibers and the IRU for its internal communications uses for purposes of public agency communication needs only and shall not sell, resell, lease, grant an indefeasible right of use or otherwise transfer the Grantee Fibers to any third party. 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.

14.03 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.

14.04 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.

14.05 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 15.

INDEMNIFICATION

15.01 Subject to the provisions of Article 16, 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.

15.02 Subject to the provisions of Article 16, 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.

15.03 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.

15.04 Grantor and Grantee each expressly recognize and agree that its obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement.

15.05 Notwithstanding the foregoing provisions of this Article, to the extent Grantor is required under the terms and provisions of any Required Right to indemnify the grantor or provider thereof from and against any and all claims, suits, judgments, liabilities, losses and expenses arising out of service interruption, cessation, unreliability of or damage to the Grantor System, regardless of whether such claims, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, willful misconduct or other action or inaction of such grantor or provider and its employees, servants, agents, contractors, subcontractors or other Persons using the property covered by such Required Right, Grantee hereby releases such grantor or provider from, and hereby waives, all claims, suits, judgments, liabilities, losses and expenses arising out of service interruption, cessation, unreliability of or damage to the Grantor System regardless of whether such claims, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, willful misconduct or other action or inaction, of such grantor or provider or its employees, servants, agents, contractors, subcontractors or other Persons using the property covered by such Required Right.

ARTICLE 16.

LIMITATION OF LIABILITY

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 damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Except as set forth in Section 15.05, nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party.

ARTICLE 17.

INSURANCE

17.01 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 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.

17.02 During the term of this Agreement: (i) Grantee shall obtain and maintain "all risk" property insurance in an amount equal to the replacement cost of all electronic, optronic and other equipment utilized by Grantee in connection with the Grantee Fibers.

17.03 Unless otherwise agreed, all insurance policies shall be obtained and maintained with companies rated "A" or better by Best's Key Rating Guide and each party shall, upon request, provide the other party with an insurance certificate confirming compliance with the requirements of this Article. Grantor accepts that Grantee may participate in a Joint Powers Authority (JPA) for the purchase of insurance coverage and that said JPA endeavors to insure with insurance companies rated "A" or better by Best's Key Rating Guide.

17.04 Grantee and Grantor shall each obtain from the insurance companies providing the coverages required by this Agreement, the permission of such insurers to allow such party to waive all rights of subrogation and such party does hereby waive all rights of said insurance companies to subrogation against the other party, its affiliates, subsidiaries, assignees, officers, directors and employees.

17.05 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 "D").

ARTICLE 18.

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; fiber, cable, conduit or other material failures, shortages or unavailability or other delay in 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; failure of a third party to recognize a Required Right; any other cause beyond the reasonable control of such party and, in the case of Grantor, a Grantee Delay Event (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 19.

DEFAULT

19.01 If Grantee fails to observe and perform any material term and provision of this Agreement and such failure continues for a period of thirty (30) days after written notice from Grantor (or if such failure is not susceptible of a cure within such thirty (30) 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.

19.02 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, or other insolvency protection against Grantor is 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 thirty (30) days after written notice from Grantee (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantee may (A) terminate this Agreement and the Term, in whole or in part, in which event Grantee shall have no further duties or obligations hereunder, and/or (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.

ARTICLE 20.

ASSIGNMENT

20.01 Grantee may not assign, encumber or otherwise transfer this Agreement to any other Person.

20.02 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.

20.03 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.

ARTICLE 21.

REPRESENTATIONS AND WARRANTIES

21.01 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 and/or governmental 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.

21.02 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.

21.03 EXCEPT AS SET FORTH IN THE FOREGOING SECTION 21.02, 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.

ARTICLE 22.

CONFIDENTIALITY

22.01 Grantor and Grantee hereby agree that if either party provides confidential or proprietary information to the other party ("Proprietary Information"), such Proprietary Information shall be held in confidence and protected from disclosure to any third parties to the maximum extent possible under applicable law.

22.02 Notwithstanding anything to the contrary contained herein, either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and

proprietary nature of such Proprietary Information and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

22.03 Neither party shall issue any public announcement or press release relating to the execution of this Agreement without the prior approval of the other party, which approval shall not be unreasonably withheld.

22.04 Grantor acknowledges that as a public agency, Grantee is bound by all laws with regard to the availability of records to the public and that contracts are considered public records. Grantor further acknowledges that Grantee has no ability to conceal proprietary or otherwise confidential information in this Agreement or any other public record.

22.05 Grantee acknowledges that Grantor may be required to disclose all or any part of this Agreement to a grantor or provider of a Required Right and, in such event, Grantor shall redact, to the extent possible, any commercial terms and other provisions that are deemed confidential; provided that such grantor or provider of a Required Right is notified of the confidential and proprietary nature of such Agreement and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

22.06 The provisions of this Article shall survive expiration or termination of this Agreement.

ARTICLE 23.

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: VP Dark Fiber Sales

with copies to:

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

Level 3 Communications, LLC
Right of Way (ROW) Obligations and Contracts Administration
Department
1025 Eldorado Blvd.
Broomfield, CO 80021
Attn: Connie Nordhues

IF TO GRANTEE: County of Santa Barbara
General Services, ITS Network Division
105 East Anapamu Street
Santa Barbara, CA 93101
Attn: Network/Operations Manager

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 24.

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 25.

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 26.

COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 27.

CONSTRUCTION AND INTERPRETATION OF AGREEMENT

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

ARTICLE 28.

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.

ARTICLE 29

GOVERNING LAW/VENUE

The existence, validity, construction, operation and effect of this Agreement will be determined in accordance with the laws of the State of California. In the event that litigation or other dispute resolution becomes necessary, such litigation or other form of dispute resolution shall be conducted in Santa Barbara, California. In the event that there is not at that time a federal court in Santa Barbara County and the parties seek federal resolution, the federal court selected shall be that district court closest to Santa Barbara, California.

[Signatures to begin on the following page]

IN WITNESS WHEREOF, GRANTOR AND GRANTEE have executed this Agreement to be effective as of the date executed by the GRANTEE.

GRANTEE,
COUNTY OF SANTA BARBARA

By *Jon Gray*
Chair, Board of Supervisors

Date: 6/26/01

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By *Jane S. Ferry*
Deputy

GRANTOR, Level 3 Communications, LLC, a
Delaware Limited Liability Company

By *[Signature]*
Title: *Director Net Dev*

APPROVED AS TO FORM:
STEPHEN SHANE START
COUNTY COUNSEL

By *Patrick J. Casey*

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By *Robert Geis* CPA

APPROVED AS TO INSURANCE FORM:
Andrea Smutz
Andrea Smutz
Risk Manager

COMMUNICATIONS MANAGER
Douglas Haddon
Douglas Haddon

Auditor/Controller
Fund: 1919
Dept: 063 -3100
Acct: 7510

EXHIBIT "A"
System Route and Segment Descriptions

1. **System Route.** The System Route shall consist of a length of approximately one hundred sixteen (116) miles through Santa Barbara County, approximately from the northernmost Access Point to the southernmost Access Point as depicted below in Section 3. The location of the System Route and the Segments located therein is generally depicted in the maps attached hereto.

2. Grantee Fiber Segment Description

The Grantee Fiber shall consist of the following:

A. Grantor shall provide Grantee with four (4) LEAF fibers (the "Initial Fiber") to be designated within the first fiber optic cable installed within the Grantor System. Grantor anticipates pulling the first fiber optic cable through the Grantor System during the fourth quarter of 2001. Grantor expressly disclaims any warranty or covenant regarding the date for completion of the Grantor System, installation of the Grantee Fiber or completion of Lateral Segments or Access Points.

Initial Fiber Cable Installation (Critical Link Sections)

Segment Name	Segment Endpoint	Segment Endpoint	Grantee Fiber Count	Segment Length (all Segment lengths indicated are approximate and are subject to change)
Segment 1	County Administration Building	County Calle Real Campus	4	4.5 miles
Segment 2	County Calle Real Campus	County Civic Center	4	57 miles

B. Grantor shall provide Grantee with two (2) SMF-28 (equivalent or better) fibers within and along the Segments described below if and when Grantor installs a second fiber optic cable within the Grantor System (the "Secondary Fiber"). The installation date for the Secondary Fiber shall be determined at a later time, provided that such installation remains technologically feasible and is consistent with Grantor's business and operational plans and limitations. Grantor expressly disclaims any warranty or covenant regarding the date for completion of installation of the Secondary Fiber.

Secondary Fiber Optic Cable Pull (Future Use)

Segment Name	Segment Endpoint	Segment Endpoint	Grantee Fiber Count	Segment Length (All Segment lengths indicated are approximate and subject to change)
Segment 1	County Administration Building-	County Calle Real Campus	2	4.5 miles
Segment 2	County Calle Real Campus	Goleta	2	5 miles
Segment 3	Goleta	Lompoc	2	52 miles
Segment 4	Lompoc	City of Santa Maria	2	40 miles
Segment 5	Santa Maria	Nipomo	2	14 miles

3. Access Points

Access Point Name	Location (All locations are approximate and remain subject to change)
1. County Administration Building* (Santa Barbara, CA)	In the vicinity of the Junction of Highway 101 and Carrillo Street
2. County Calle Real Campus* (Santa Barbara, CA)	In the vicinity of the South side of railroad tracks (at the edge of the UPRR ROW).
3. Goleta	In the vicinity of the east side of Tecolotito/Glen Annie Creek (approximately 2000 feet east of Storke Road)
4. County Civic Center* (Lompoc, CA)	In the vicinity of the NE corner of Highway 246 (Ocean Ave.) and "E" Street
5. Betteravia Government Center (Santa Maria, CA)	In the vicinity of the intersection of Brown Road and the UP Railroad (approximately 9500 feet south of the HWY 166 junction)
6. Nipomo	In the vicinity of the junction of the Union Pacific Railroad (MP 266//28+50 on the east side of the tracks), Callendar Road and Highway 1

*Designated Access Point shall be included with the installation of the Initial Fiber; the additional Access Points shall be added thereafter.

EXHIBIT "B"
IRU Fees

The IRU Fee for the Initial Fiber shall be as follows:

Segment	IRU Fee
Segment 1	\$76,000
Segment 2	\$76,000

The IRU Fee for Secondary Fiber shall be as follows:

Segment	IRU Fee
Segment 1	\$6,264.00
Segment 2	\$4,960.00
Segment 3	\$23,384.00
Segment 4	\$18,680.00
Segment 5	\$9,988.00

EXHIBIT "C"
Cabled Fiber Specifications

The intent of this Exhibit is to delineate the specifications for the Grantee Fibers.

Cabled Fiber

Grantor is installing non-zero dispersion-shifted optical fiber in the initial fiber optic cable of the Grantor System. In the second fiber optic cable, single mode fiber will be used. 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.

The fiber optic cable shall generally be single-armored unless otherwise designated by Grantor in its sole discretion.

Standards for Optical Cable with Non-Zero Dispersion –Shifted Fiber

- ♦ Attenuation at 1550 nm = 0.25 dB/km max span average
- ♦ Total Dispersion = 2.0 - 6.0 ps/nm-km for 1530 nm to 1565nm
4.5 – 11.2 ps/nm-km for 1565nm to 1625nm

Standards for Optical Cable with Single Mode Fiber

- ♦ Attenuation at 1310 nm = 0.40 dB/km max
- ♦ Attenuation at 1550 nm = 0.30 dB/km max
- ♦ Zero Dispersion wavelength = 1300 to 1322nm
- ♦ Dispersion slope = <.092 ps/nm²*km typical

EXHIBIT "D"
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.

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 five (5) 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 Grantor's standard splicing specifications. Grantor shall provide Grantee with Grantor's standard splicing specifications and any modifications to such specifications as may be necessary or appropriate in any particular instance, within a reasonable time upon written request.
- ♦ 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 buffer by fiber buffer, rotating between tubes, ribbons or buffers operated by the parties having an interest in the cable, including Grantee 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 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 or operational conditions existing at the site of the fiber cut, 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. Notwithstanding the foregoing, Grantor does not guarantee any specific rotational prioritization for Grantee in light of the overriding requirement for expediency in restoration of service to all parties.

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.

BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA
CLERK OF THE BOARD OF SUPERVISORS

MINUTE ORDER

June 26, 2001, in the a. m.

Present: Supervisors Naomi Schwartz, Susan Rose, Gail Marshall,
Joni Gray, and Thomas Urbanske

Michael F. Brown, Clerk (Ferry)

Supervisor Gray in the Chair

RE: General Services – Consider recommendations regarding an agreement with Level 3 Communications, Inc., LLC (not a local vendor) for fiber optic service (dark fiber) between Lompoc, Goleta, and Santa Barbara, as follows: (01-21,874)

- a) Waive the bidding requirement for fiber optic service from Level 3 Communications, Inc. LLC;
- b) Approve and authorize the Chair to execute an agreement with Level 3 Communications, Inc., LLC for a period of twenty years commencing in the fourth quarter of 2001 through the fourth quarter of 2021 with an initial payment of approximately \$190,000 and annual maintenance costs of approximately \$23,000, with capped CPI adjustments for successive years.

Marshall/Schwartz

a) Approved.

b) Approved; Chair to execute.