Master Service Agreement

This Master Service Agreement ("Agreement") is made by and between **LEVEL 3 COMMUNICATIONS, LLC** ("Customer") and **THE CITY OF LEESBURG, FLORIDA** ("City"). This Agreement provides the general terms and conditions applicable to Customer's purchase of communications services ("Service") from City.

1.0 CUSTOMER ORDERS

1.1 **Submission and Acceptance of Customer Order(s)**. Customer may submit requests for Service in a form designated by City ("Customer Order"). Customer Orders shall contain the duration for which Service is ordered ("Service Term"). Unless indicated otherwise in the Customer Order, Service will continue on a month to month basis at the expiration of the Service Term at City's then current rates. City will notify Customer of acceptance of the Customer Order by delivering (in writing or electronically) the date by which City will install Service (the "Customer Commit Date") or by delivering the Service. Renewal Customer Orders will be accepted by CIty's continuation of Service. If Customer submits Customer Orders electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Orders. Customer will pay City's then current charges for moves, adds or changes agreed to by City respecting any Customer Order or Service.

1.2 **Credit Approval and Deposits**. Customer will provide City with credit information as requested. City may require Customer to make a deposit as a condition of City's acceptance of any Customer Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to timely pay City hereunder or City reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed two months' estimated charges for Service and are due upon City's written request. When Service is discontinued, the deposit will be credited to Customer's account and the balance refunded.

1.3 **Customer Premises; Title to Equipment**. If access to non-City facilities is required for the installation, maintenance or removal of City equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment. Title to equipment (including software) provided by City remains with City. Customer will not create or permit to be created any encumbrances on City's equipment.

1.4 **Scheduled Maintenance and Local Access**. Scheduled maintenance may result in Service interruption. If scheduled maintenance requires Service interruption, City will: (i) attempt to provide Customer thirty days' prior written notice, (ii) work with Customer to minimize such interruptions and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time.

2.0 BILLING AND PAYMENT

2.1 **Commencement of Billing**. City will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies City within 3 days after delivery of the Connection Notice that Service is not functioning properly, City will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable Monthly Recurring Charge for each day the Service did not function properly.

2.2 **Payment of Invoices and Disputes**. City will deliver an invoice each month to Customer, and payment will be due no later than the date stated on the face of the invoice (the "Due Date"). Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use except that Customer shall not be responsible for fraudulent or unauthorized use (A) by City or its employees, (B) by third parties to the extent that such use (i) is caused by City's gross negligence or willful misconduct, or (ii) originates on City's side of the demarcation point. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount by the Due Date and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due. Any payments shall be applied first to any penalties owed, then to any interest owed and then to oldest to newest principal owed.

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2.3 **Taxes and Fees**. Excluding taxes based on City's net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on City or a City affiliate, along with similar charges stated in a Customer Order (collectively "Taxes and Fees"). Some Taxes and Fees are recovered through imposition of a percentage surcharge on the charges for Service. Charges for Service are exclusive of Taxes and Fees. Customer may present City with an exemption certificate eliminating City's liability to pay certain Taxes and Fees; City will give effect thereto prospectively.

2.4 **Regulatory and Legal Changes**. If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within thirty days after City's notice requesting renegotiation: (a) City may, on a prospective basis after such thirty days period, pass any increased delivery costs on to Customer and (b) if City does so, Customer may terminate the affected Service on notice to City delivered within thirty days.

2.5 **Cancellation and Termination Charges**.

2.5.1 Customer may cancel a Customer Order (or portion thereof) prior to the delivery of a Connection Notice upon written notice to City identifying the affected Customer Order and Service. If Customer does so, Customer shall pay City a cancellation charge equal to the sum of: (i) 1 month's monthly recurring charges for the cancelled Service; (ii) the non-recurring charges for the cancelled Service; and (iii) City's out of pocket costs (if any) incurred in constructing facilities necessary for Service delivery.

2.5.2 Customer may terminate specified Service(s) after the delivery of a Connection Notice upon thirty days' written notice to City. If Customer does so, or if Service is terminated by City hereunder as the result of Customer's default, Customer shall pay City a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (iii) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (iv) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination. Customer acknowledges that the charges in this Section are a genuine estimate of City's actual damages and are not a penalty.

3.0 DEFAULT

3.1 **Defaulting Party Defined**. If Customer fails to make any payment when due and such failure continues for five business days after written notice from City, Customer shall be considered to be in default of its obligations under this Agreement. If either party fails to observe or perform any other material term of this Agreement and such failure continues for thirty days after written notice from the other party, then that party shall be in default of its obligations under this Agreement.

3.2 **Non-defaulting Party's Privileges**. The non-defaulting party may: (i) terminate this Agreement and/or any Customer Order, in whole or in part, and/or (ii) subject to Section 4.1 and 4.3 of this Agreement, pursue any remedies it may have at law or in equity.

4.0 LIABILITIES AND SERVICE LEVELS

4.1 **No Special Damages**. Neither party shall be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Customer Order.

4.2 **Disclaimer of Warranties.** CITY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

4.3 **Service Levels**. The "Service Level" commitments applicable to Services are contained in the Service

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Schedules for each Service. If City does not meet a Service Level, a credit will be issued to Customer if and as stated in the applicable Service Schedule on Customer's written request. To request a credit, Customer must contact City Customer Service (contact information is located at http://LeesburgFlorida.gov) or deliver a written request per the provisions of Section 5.4 of this Agreement (with sufficient detail to identify the affected Service) within sixty days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Customer's sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

4.4 **Right of Termination for Installation Delay**. In lieu of installation Service Level credits, if City's installation of Service is delayed by more than thirty business days beyond the Customer Commit Date, Customer may terminate the affected Service without liability upon written notice to City, provided such written notice is delivered prior to City delivering a Connection Notice for the affected Service. This Section shall not apply where City is constructing facilities to a new location not previously served by City.

4.5 **Indemnification.** The Customer agrees to make payment of all proper and undisputed charges for labor and services required under this Agreement and Customer shall indemnify City and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished pursuant to this Agreement; any failure of performance of Customer under this Agreement; or the negligence of the Customer in the performance of its duties under this Agreement, or any act or omission on the part of the Customer, his agents, employees, or servants.

4.6 **Limitation of Liability and Remedies.** Customer understands and agrees that City's liability and Customer's sole remedy against City for any loss or damage that arises directly or indirectly out of, or resulting from impairment of, any service provided by City pursuant to this Agreement, or any mistake, omission, interruption, delay, error, or defect in the provision of services, or for loss or damage caused by delayed performance, negligent performance or nonperformance regardless of Customer's form of action shall be limited to recovery of actual damages in an amount equivalent to

A. The amount of actual and direct damages that are proven; or

B

5.0 GENERAL TERMS

5.1 **Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Both parties will use reasonable efforts to mitigate the effect of such an event. In the event City is unable to deliver Service as a result of a Force Majeure Event, Customer shall not be obligated to pay City for the affected Service for the duration of the event. Force Majeure Events and scheduled maintenance under section 1.4 are considered "Excused Outages" and shall not, apart from City's gross negligence or willful misconduct, make City a defaulting party per Section 3.1 of this Agreement.

5.2 **Assignment and Resale**. Customer may not assign its rights or obligations under this Agreement or any Customer Order without the prior written consent of City, which will not be unreasonably withheld provided that Customer may assign its rights or obligations under this Agreement to an entity that it controls, that it is controlled by or that is under common control with Customer without first obtain consent of City. This Agreement shall apply to any permitted transferees or assignees. Unless otherwise provided in a Service Schedule, Customer may provide Service to third parties or use the Services in connection with goods or services provided by Customer to third parties ("Customer Provided Services") provided that Customer shall indemnify, defend and hold City and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer certifies that it has filed all required documentation and will at all times have the requisite authority with appropriate regulatory agencies respecting the same. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

5.3 **Affiliates**. Customer's affiliates may purchase Service pursuant to this Agreement, and Customer shall be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

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5.4 **Notices**. Any notices provided by one party to the other party pursuant to this Agreement shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

IF TO CITY:
City of Leesburg
501 W. Meadow Street
P.O. Box 490630
Leesburg, FL 34749
Attn: Communications Manager
Facsimile: (352) 435-9451
Email: communications.manager@leesburgflorida.gov

IF TO CUSTOMER:
Level 3 Communications, LLC
1025 Eldorado Blvd
Broomfield, Colorado 80021
Attn: General Counsel

Facsimile: 720-888-5128

If no electronic or physical Customer address is indicated above, notices may be provided to any electronic or physical address identified on the Customer Order. Either party may change its notice address upon notice to the other party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

5.5 **Acceptable Use Policy; Data Protection**. Customer's use of Service shall comply with City's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available through City's web site (http://leesburgflorida.gov). Customer consents that City may use Customer data for the performance of City's obligations and the exercise of City's rights under this Agreement, including storing, processing or transferring data to or from the United States.

5.6 **Intellectual Property and Publicity**. Neither party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other party or its affiliates without the express prior written authorization of the other party. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing.

5.7 **Governing Law; Amendment**. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to its choice of law rules and jurisdiction for any claim or cause of action shall lie only in Lake County, Florida. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

5.8 **Relationship and Counterparts**. The relationship between the parties is not that of partners, agents, or joint venturers. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

5.9 **Attorneys' Fees**. In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorney's fees, incurred by reason of such action and all costs of arbitration or suit and those incurred in preparation thereof at both the trial and appellate levels, and in bankruptcy proceedings.

5.10 **Order of Precedence**. In the event of any conflict between this Agreement and the terms and conditions of any Service Schedule and/or Customer Order, the order of precedence is as follows: (1) any Customer Order signed by Customer and accepted by City, 2) any Service Schedule either attached hereto or hereafter signed by Customer, and (3) this Agreement.

5.11 **Term**. This Agreement shall become effective upon its execution by both Customer and City and shall continue in force for as long as any Service Schedule or Customer Order entered into under this Agreement remains in force. This Agreement shall terminate one-hundred, eighty (180) days after all Service Schedules and Customer Orders enter into under this Agreement terminate.

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5.12 **Severability.** If a court of competent jurisdiction finds or holds any part of this Agreement or any Service Schedule or any Customer Order entered into under this Agreement to be unenforceable, then only the unenforceable provision or section shall be affected and the remaining portions of this Agreement or any Service Schedule or any Customer Order entered into under this Agreement shall continue in full force and effect.

5.13 **Entire Agreement.** This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements, understandings, proposals, or representations relating to the Service, which are of no further force or effect. The Service Schedules attached hereto are listed below:

- **SERVICE SCHEDULE, Dark Fiber – Issue 2, January 25, 2012**

and are integral parts hereof and are hereby made a part of this Agreement.

5.14 **Order of Precedence.** Customer and City have entered into or will enter into an agreement for Customer to provide telecommunications services to City. If any provision of this Agreement conflicts with a provision of the agreement between the parties for telecommunications services, the provisions of the telecommunications services agreement will control.

CITY OF LEESBURG, FLORIDA ("City")

By _____

Name _____

Title _____

Date _____

LEVEL 3 COMMUNICATIONS, LLC ("Customer")

By _____

Name RJ Kuisley

Title SR Manager

Date 1/2/14

ATTESTED:

_____
(signed)

Its City Clerk

APPROVED AS TO FORM AND CONTENT:

_____
(signed)

Its City Attorney

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COMMUNICATIONS UTILITY

SERVICE SCHEDULE
Dark Fiber

This service is a nontransferable lease for Customer's exclusive use of a pair of dark single mode optical fibers

The fiber pair runs between two endpoints anywhere on City's network with no intermediate optical amplification, optical multiplexing, optical demultiplexing or optical retransmission points between the endpoints.

The fibers conform to ITU-T Recommendation G.652.

The fibers may be periodically fusion-spliced, with a typical point loss of approximately 0.02 dB.

The fibers may pass through one or more intermediate optical patch panels, with each patch panel incorporating two point losses between approximately 0.3 and 0.5 dB.

If City testing finds that the total optical loss measured at 1550 nanometers between City's optical terminations at the endpoints exceeds the maximum total optical loss stated in the applicable Customer Order, the fiber pair shall be considered to be in an outage condition. Outages spanning calendar months are considered a single outage and are credited in the month in which the outage ends.

Outage lasting at least	Outage lasting not more than	Credit
24 continuous hours	47 continuous hours	6% of MRC
48 continuous hours	71 continuous hours	12% of MRC
72 continuous hours	95 continuous hours	18% of MRC
96 continuous hours	120 continuous hours	25% of MRC
120 continuous hours	191 continuous hours	50% of MRC
192 continuous hours	720 continuous hours	100% of MRC

Technical Service Escalation Schedule
Customers should first call lower levels and, if necessary, proceed to higher levels.

Escalation Level	Time of Day	Contact
1	24 x 7	Communications Hotline 352-435-9463
2	24 x 7	Operations Manager 352-516-7147
3	24 x 7	Manager, Communications Utility 352-516-2750
4	24 x 7	Director, Information Technology 352-516-9030

DRAFT