

*Via Email Delivery. This Agreement supersedes previously dated Agreements.*

March 9, 2018

Anne Warrow  
Project Manager  
City of Ann Arbor  
301 E. Huron Street  
P.O. Box 8647  
Ann Arbor, MI, 48107-8647  
o: (734) 794-6410 f: (734) 994-1744

Re: **Level 3 Communications, LLC, including its affiliates and subsidiary companies ("Level 3") Telecommunications Facility Relocation – Level 3 Fiber Cable – Allen Creek RR Berm Opening Project, Ann Arbor, MI.**

Dear **Anne Warrow**:

**City of Ann Arbor** (the "Requestor") has contacted Level 3 regarding relocation and/or adjustment of fiber optic lines (the "Facilities") located in the vicinity of: **between MP 37.0 and PM 38.0 at approximately MP 37.4 along the Amtrak/Michigan Line**, rights of way (the "ROW") within the city of **Ann Arbor**, in the state of "**Michigan**", owned and operated for the purposes of utilities by **Norfolk Southern Corporation** ("ROW Provider") for the benefit of the Allen Creek Railroad Berm Opening Project, a site development project.

The current location of the Facilities in the ROW is set forth in the description attached hereto as Exhibit "A". Level 3 will relocate its Facilities to an alternative location in such manner to avoid all possible known conflicts between the Facilities and the Requestor's site improvements. The new location will be agreed upon by the ROW Provider and Level 3 and shall be located within property owned and under the control of the ROW Provider (the "New Facility Location") attached hereto as Exhibit "B", provided that:

- (1) ROW Provider first grants to Level 3 the complete authority to relocate its Facilities to the New Facility Location.
- (2) Level 3's contractor (or ROW Provider) will coordinate and perform all relocation work (the "Work"). Level 3 will use reasonable efforts to perform all Work from within the ROW Provider's right of way; however, where Level 3 is required to perform the Work from a third party's property, Level 3 will endeavor to do so at Requestor's sole cost and expense. In addition, Level 3 shall be permitted to perform the Work from Requestor's or others property. Where Level 3 performs the Work from Requestor's or others property, Level 3 will use reasonable efforts to minimize the impact of such Work thereon

(3) Requestor will first provide Level 3 with a check in the amount of **\$107,390.76 USD** prior to Level 3 performing any Work. Such amount reflects the estimated cost and expense of performing the Work. The check should be made out to Level 3 Communications, LLC and sent to the undersigned at the address listed below.

**(4) UPON COMPLETION, PROVIDED THAT THE FACILITIES HAVE BEEN MOVED TO AVOID ALL POSSIBLE KNOWN CONFLICTS BETWEEN THE FACILITIES AND THE REQUESTOR'S SITE IMPROVEMENTS AS PROVIDED IN THIS AGREEMENT, REQUESTOR ACCEPTS THE WORK "AS IS". LEVEL 3 MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE WORK OR AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(5) In the event that circumstances arise that cause the cost and expense of performing the Work to exceed the estimate, Level 3 will make an adjustment to the estimate and provide Requestor with documentation describing the basis for adjustment. Requestor will pay such additional amounts within thirty (30) days of receiving written notice from Level 3. A failure to pay such amount shall cause same to bear interest from the due date until payment is received at a rate of one and one half percent (1 1/2%) per month (or part thereof). Notwithstanding, any increase in costs or expenses estimated to cause the total expenditure to exceed \$87,000 shall require Requestor's written agreement. If Requestor declines to agree to the increase, Requestor shall be responsible only for costs and expenses incurred by Level 3 in performing the Work up to the total amount of \$87,000.

(1) (6) To the extent permitted by law, Requestor will indemnify, defend and hold Level 3, its affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants harmless from and against any loss, cost, damage and expense of whatever kind, including, but not limited to, the cost of obtaining any authorizations required by ROW Provider or any other entity, arising directly or indirectly (collectively "Claims") from (a) the Work, (b) the use or occupancy of the New Facility Location, and/or (c) Requestor's failure to perform under this Agreement. This indemnification will be limited to such claims or damages that arise from the sole or partial negligence, actions, or inaction of the Requestor or Requestor's affiliates, employees, invitees, contractors, subcontractors, agents, representatives and servants. Such Claims shall include attorneys' fees and court costs. The provisions of this paragraph (6) shall survive the performance of the Work.

(2) Each party shall obtain and maintain during the course of Work, the

following insurance: (a) Commercial General Liability (for bodily injury) with combined single limit of not less than \$5,000,000.00 (including excess liability coverage) each occurrence or its equivalent; (b) 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; and (c) 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.

(8) The execution of this letter agreement by the parties' representatives and their performance hereunder (a) has been duly authorized by requisite action, (b) will not require any additional approval on the part of the parties, and (c) will not violate any provision of law, any regulation or any contract or other obligation.

(9) This letter agreement constitutes the complete legal, valid, and binding obligation of the parties hereto and is enforceable against the parties in accordance with the terms hereof. Except to the extent herein provided, no amendment, supplement, modification, or termination of this letter agreement shall be enforceable unless executed in writing by both parties.

(10) If any part of this letter agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the court shall interpret the terms hereof to give the greatest effect to the parties' intentions in entering into this letter agreement.

(11) This letter agreement shall be construed under the laws of the State of **Michigan**.

(12) This letter agreement shall become effective on the date executed by Requestor.

(13) In the area of Requestor's site development, Level 3 is the holder of the easements recorded at Liber 4953, Page 364 and Liber 5000, Page 560 Washtenaw County Records. Level 3 consents to Requestor's site development within the area of these easements.

Please acknowledge your acceptance of the foregoing terms and conditions by signing this letter agreement and delivering a check in the amount set forth above to the undersigned. Level 3 will countersign this agreement and thereafter work with ROW Provider and **City of Ann Arbor** to coordinate a construction start date and the times for performing the work.

Sincerely,

PM Name

Project Manager, Relocations  
Global Field Services  
Level 3 Communications

1025 Eldorado Blvd  
Attn: Relocations Department  
Broomfield, CO 80021

APPROVED AND AGREED TO:

APPROVED AND AGREED TO:

Level 3 Communications, LLC


Name: ~~Paul Gonzalez~~ STEVE SWARTSLANDER

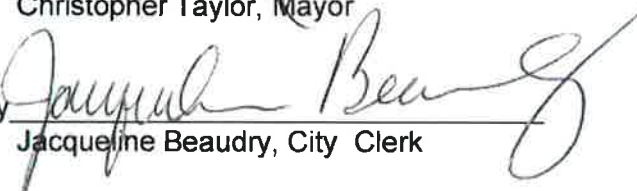
Signature: 

Title: DIRECTOR - RELOCATIONS  
~~Mgr Relo/Cost Recovery~~


Date: 4/1/19

For City of Ann Arbor

By   
Christopher Taylor, Mayor

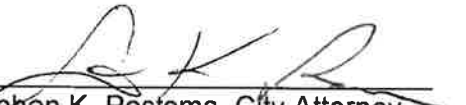
By   
Jacqueline Beaudry, City Clerk

Approved as to substance

By   
Howard S. Lazarus, City Administrator

By   
Craig Hupy, Public Service Area Administrator

Approved as to form and content

By   
Stephen K. Postema, City Attorney

**Exhibit "A"**

(Current Location of Facilities in ROW)



Level 3 Project GL70241

<b>Level 3</b>		<b>Relocation Project Cost Estimate</b>	
Estimate Date:	2/9/2018		
Relocation Project Tracking #			70241
Full Level 3 Project Name:	N366613: RELO GL70241 MI: Allen Creek RR Berm Opening Project, (Flint, MI)		
Customer Name:	City of Ann Arbor, MI		
Internal Project Code:	150136		
Construction Netbuild #:	N366613: RELO GL70241 MI: Allen Creek RR Berm Opening Project, (Flint, MI)		
Description	Cost		
Outside Plant Construction / Materials	\$31,333.18		
Engineering / Inspection	\$8,312.47		
Fiber Optic cable	\$7,860.00		
Fiber Optic Testing / Splicing	\$5,994.50		
Amtrak Permit and fees	\$28,880.00		
	Subtotal:	\$82,380.15	
Internal Cost Percentage	30.36%		
Level 3 Internal Costs	\$25,010.61		
<b>Total payment due to Level 3:</b>	<b>\$107,390.76</b>		

Level 3 Project GL70241

**Exhibit "B"**

(Relocation of facilities)

Level 3 Project GL70241

**Exhibit "C"**  
(Cost Estimate)

**Exhibit "D"**  
(Brief SOW)