

**STAFF REPORT FOR CALENDAR ITEM NO.: 7.3**  
**FOR THE MEETING OF: May 12, 2011**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approving License Agreements between the Transbay Joint Powers Authority (TJPA) and Comcast, Level 3, and AboveNet to allow each of these telecommunications companies to temporarily relocate their facilities overhead on utility poles owned and installed by the TJPA through TJPA-owned Parcels N and N' at no cost to the TJPA, to allow for construction of the Transit Center.

**REPORT:**

As part of the Transit Center construction, the TJPA plans to install shoring wall, rail box, and other subsurface improvements in Beale Street. This construction will require the temporary and permanent relocation of existing utilities in Beale Street, including subsurface telecommunication facilities owned and maintained by Comcast, Level 3, and AboveNet. Comcast, Level 3, and AboveNet will be required to relocate these facilities at no cost to the TJPA.

In order to meet the TJPA's schedule for construction, Comcast, Level 3, and AboveNet have requested that the TJPA permit them to temporarily relocate their facilities overhead through TJPA-owned Parcels N and N' on utility poles to be owned and installed by the TJPA. Staff has negotiated License Agreements with Comcast, Level 3, and AboveNet that grant each of these telecommunications companies the temporary right to enter the TJPA's property to install and maintain temporary overhead lines and to remove these lines upon termination of the License. Parcels N and N' are two formerly State-owned parcels located at the corner of Beale and Howard Street, behind the 201 Mission office building.

Although the License Agreements are largely the same, they contain the following variations:

**Comcast**

Comcast must complete installation of its facilities within 45 days after notification by the TJPA that the utility poles are installed. The License will terminate twelve months after the TJPA provides written notice of termination to Comcast.

**Level 3**

Level 3 must complete installation of its facilities within 45 days after notification by the TJPA that the utility poles are installed. The License has a term of not less than three years; however, the TJPA may terminate the License (for the TJPA's convenience) twelve months after the TJPA provides written notice of such termination to Level 3.

**AboveNet**

AboveNet must complete installation of its facilities within 45 days after notification by the TJPA that the utility poles are installed and AboveNet has received all necessary permits from the City to conduct the work. The License will terminate twelve months after the TJPA provides written notice of termination to AboveNet.

Upon completion of construction of the rail box, currently scheduled in 2015, Comcast, Level 3, and AboveNet will relocate their permanent telecommunications facilities to Beale Street, at no cost to the TJPA.

**RECOMMENDATION:**

Staff recommends that the Board authorize the Executive Director to execute the License Agreements with Comcast, Level 3, and AboveNet in the form attached to this report.

**ATTACHMENTS:**

1. Resolution
2. License Agreement – Comcast
3. License Agreement – Level 3
4. License Agreement – AboveNet

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires the relocation of certain existing public and private utilities in the streets surrounding the former Transbay Terminal to construct shoring wall, rail box, and other subsurface improvements required to build the Transit Center; and

WHEREAS, Under Public Utilities Code sections 7901 *et seq.*, telecommunication corporations may construct telegraph or telephone lines along and upon any public road within the state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road; and

WHEREAS, In order to meet the TJPA's schedule for construction of the Transit Center, Comcast, Level 3, and AboveNet have requested that the TJPA permit them to temporarily relocate certain telecommunications facilities from the City streets to a portion of TJPA property known as Parcels N and N' at no cost to the TJPA; and

WHEREAS, Comcast, Level 3, and AboveNet acknowledge that the TJPA currently uses and has planned future uses of Parcels N and N' for construction and other activities related to the Transit Center; and

WHEREAS, The TJPA is willing to grant Comcast, Level 3, and AboveNet each a non-exclusive license to temporarily relocate certain telecommunication facilities from the City streets to certain portions of Parcels N and N', conditioned on Comcast's, Level 3's and AboveNet's non-interference with the TJPA's use of the property for construction of the Transit Center; and

WHEREAS, Staff has prepared License Agreements for the installation, maintenance and removal of telecommunications facilities through TJPA-owned property; and

WHEREAS, Staff recommends that the Board approve the License Agreements with Comcast, Level 3, and AboveNet; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute License Agreements with Comcast, Level 3, and AboveNet, authorizing Comcast, Level 3, and AboveNet to install, maintain, and remove telecommunications facilities through TJPA-owned property.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 12, 2011.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("Agreement") is made and entered into on \_\_\_\_\_, 2011 (the "Effective Date") by and between Transbay Joint Powers Authority, a joint powers agency with offices at 201 Mission Street, Suite 2100, San Francisco, California, 94105 ("Licensor" or "TJPA"), and Comcast of California III, Inc., a California Corporation with offices at 3055 Comcast Place, Livermore, California, 94551 ("Licensee" or "Comcast").

### RECITALS

A. Under Public Utilities Code sections 7901 *et seq.*, telecommunication corporations may construct telegraph or telephone lines along and upon any public road within the state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road.

B. Comcast has installed certain telecommunication facilities in the public streets of the City and County of San Francisco ("City").

C. The Transbay Joint Powers ("TJPA"), a joint powers agency created under California Government Code sections 6500 *et seq.*, is charged with the finance, design, development, construction, and operation of the Transbay Transit Center Project ("Transbay Project"). To facilitate construction of the Transbay Project, Comcast, at no cost or expense to the City or the TJPA, will relocate certain telecommunication facilities installed in the City streets.

D. The TJPA owns certain property in the City and County of San Francisco at Block No. 3718, Lot No. 025 ("TJPA Property"). The TJPA Property is currently being used for construction staging related to construction of the Transbay Project. The TJPA Property will eventually be used for phase two of the TJPA's construction of the new Transit Center.

E. To meet the TJPA's schedule for construction of the Transbay Project, Comcast has requested that the TJPA permit Comcast to temporarily relocate certain telecommunication facilities from the City streets to a portion of the TJPA Property. In order to accomplish Comcast's temporary relocation and the similar temporary relocation of other utilities, the TJPA will install and own utility poles ("Poles") on the TJPA Property; Comcast and other utilities will temporarily erect, attach, install, and maintain aerial cables, wires, and/or associated appliances to the Poles.

F. Comcast acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property for construction and other activities related to the Transbay Project. The TJPA is willing to give Comcast a non-exclusive right to temporarily relocate certain telecommunication facilities from the City streets to a portion of the TJPA Property consistent with Public Utilities Code sections 7901 *et seq.*, conditioned on Comcast's non-interference with

the TJPA's use of the TJPA Property for the Transbay Project and non-interference with other utilities that may also attach telecommunication facilities to the Poles, and as described below.

## **LICENSE**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the TJPA hereby grants to Comcast a temporary non-exclusive License (the "License") affecting that portion of the real property located in the City and County of San Francisco, State of California at Block No. 3718, Lot No. 025, more particularly described in Exhibit A attached hereto and made a part hereof, and shown in Exhibit B attached hereto and made a part hereof (the "License Area"), subject to the following terms and conditions:

### **1. Term and Termination**

This License shall commence upon the full execution and delivery of the License ("Effective Date"). This License shall terminate ("License Termination Date") twelve (12) months after the TJPA provides written notice to Comcast of the termination of the License.

Notwithstanding the foregoing, Comcast's right to use and occupy the License Area to install the temporary facilities on the Poles, as described in Section 2 below, shall begin one (1) day after the TJPA provides written notice to Comcast that the Poles are installed ("Construction Start Date"), and terminate forty five (45) days after the Construction Start Date ("Construction End Date"); as of the Construction End Date, Comcast's installation activity in the License Area shall be complete.

### **2. Permitted Uses**

The TJPA grants to Comcast a temporary, non-exclusive right to enter, occupy, and use the License Area for the purposes of temporarily relocating and operating Comcast's telecommunication facilities (as described in Public Utilities Code sections 7901 *et seq.*) from the City streets. In particular, Comcast may erect, attach, install, and maintain aerial cables, wires, and/or associated appliances ("Equipment", and the attachment of such Equipment, "Attachments") to the Poles.

At least fourteen (14) days before the Construction Start Date, the TJPA shall provide Comcast the TJPA's plans for erection of the Poles and use of the Poles by Comcast and other utilities. Comcast shall review the plans and confirm that the plans are adequate to support the temporary relocation of Comcast's Equipment and Attachments during the term of this License. Comcast shall not unreasonably reject the plans, or delay its review of the plans.

Comcast agrees that if it requests replacement or other alteration of the Poles in order to accommodate Comcast's Equipment or Attachments, Comcast shall pay the actual cost of such replacement or other alteration of the Poles, as well as the actual cost to any other utility occupying the Poles that are the result of Comcast's request. Likewise, if another utility occupying the Poles requests replacement or other alteration of the Poles, that utility shall pay

the actual cost of such replacement or alternation, as well as the actual cost to Comcast and any other utility occupying the Poles that are the result of the other utility's request.

### **3. Non-exclusive License; Non-Interference; Notice Prior to Entry**

Comcast recognizes that this License is non-exclusive; the TJPA may permit other utilities to use the same Poles to attach telecommunications facilities on the Poles. No use of the Poles shall create or vest in Comcast any ownership or property rights in the Poles, and Comcast's rights under this License shall not be construed to compel the TJPA to maintain the Poles for a period longer than the term of this License.

Comcast acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property, including the License Area, for construction and other activities related to the Transbay Project. Comcast's right to use the License Area under this License is non-exclusive and is subordinate to the TJPA's use of the License Area. In particular, Comcast acknowledges that the TJPA plans to use the surface of the TJPA Property, including the License Area, for uses related to the Transbay Project during the term of this License.

Comcast shall provide not less than 24 hours advance notice to Mr. Edmond Sum of the TJPA at e-mail address [esum@transbaycenter.org](mailto:esum@transbaycenter.org) or by phone at (415) 597-4040 of Comcast's intent to enter on to the License Area, except in cases of emergency or as otherwise permitted by the TJPA.

### **4. Condition of the License Area at License Termination Date**

On the License Termination Date, Comcast shall, at Comcast's sole expense: (a) vacate all portions of the License Area; (b) remove or relocate without expense to the TJPA any Equipment or Attachments installed, used, or maintained by Comcast under this License; and (c) leave the License Area free of Equipment, Attachments, and any materials, rubbish, debris, or personal property brought onto the License Area by Comcast.

Within ten (10) business days after the License Termination Date, the TJPA will walk through the License Area with a Comcast representative to ascertain the condition of the License Area. Any unsatisfactory site conditions will be discussed and noted at that time. If all restoration requirements have been met, the TJPA shall give the Comcast representative a written site sign-off. If the TJPA determines that repairs to the License Area are required as a result of Comcast's use of the License Area under this License, the TJPA shall provide Comcast with documentation detailing the damage and an invoice for the actual incurred cost for the repair of the damage. Comcast shall pay the TJPA within forty five (45) days of receiving such invoice.

### **5. Compliance with Laws**

Comcast shall conduct all activities in the License Area in a safe, prudent, and professional manner in accordance with best practices. Comcast shall maintain its Equipment and Attachments in a safe condition, in thorough repair. Comcast shall exercise commercially reasonable efforts to avoid damage to the Poles, and the facilities and attachments of third parties

that may also use the Poles. Comcast shall, at its sole cost and expense, promptly comply with (i) all applicable laws, statutes, ordinances, rules, regulations, requirements, or orders of municipal, state, and federal authorities, including the California Public Utilities Commission, now in force or that may later be in force, including, but not limited to, those relating to the National Electrical Safety Code, and those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (ii) the conditions of any permit, occupancy certificate, license, or other approval issued by public officers; and (iii) any liens, encumbrances, easements, covenants, conditions, restrictions, and servitudes of record or of which Comcast has notice (collectively, “Legal Requirements”).

## **6. Dangerous Activities; Hazardous Substances**

Comcast agrees to conduct its activities and operations within the License Area in such a manner so as not to endanger the environment, and human health and safety. Comcast shall not cause or permit any Hazardous Materials to be brought upon, produced, stored, used, released, discharged, or disposed of on the License Area. Comcast shall be responsible for, at Comcast’s sole expense, remediating any discharge or release of Hazardous Materials on the License Area during the term of this License directly caused, in whole or in part, by Comcast, or in any way associated with Comcast’s activities, and shall immediately notify the TJPA, and the appropriate regulatory authorities, where required by law, of such release.

“Hazardous Material” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

## **7. Insurance**

Prior to commencing any work in the License Area and during the term of the License, Comcast shall obtain and provide to the TJPA evidence of insurance for the following insurance coverages:

a. Commercial General Liability insurance, including coverage for contractual liability, on an occurrence basis, and broad form property damage insurance covering damages to the License Area, with a combined single limits of not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence. Umbrella and/or excess liability policies may be used to supplement primary coverage to meet the required limits set forth above. The liability insurance

policy shall include an endorsement stating that the issuing company will endeavor to mail Thirty (30) days prior written notice to the TJPA before such coverage is diminished or canceled.

b. Workers' Compensation insurance, providing statutory benefits in the State of California either through an insurer licensed to provide such insurance or through a combination of qualified self-insurance in combination with excess insurance provided by an insurer licensed to provide such excess insurance and Employer's Liability insurance with minimum limits in accordance with statutory requirements. The foregoing Employer's Liability insurance limits may be met by using an excess or umbrella policy.

## **8. Indemnity**

Comcast shall, to the maximum extent permitted by law, jointly and severally indemnify, protect, defend and hold harmless the TJPA, its members, officers, shareholders, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise, in whole or in part, from the occupancy or use of the License Areas by Comcast, or the exercise by Comcast of their rights hereunder, or the performance of, or failure to perform, Comcast's duties under this License, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of the TJPA, Comcast, or its respective agents, contractors and invitees; (b) injury to property or interests in property of the TJPA, Comcast, or any third party, including, without limitation, any damage to Comcast's improvements; (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; and (d) any mechanic's liens recorded against the TJPA's real property; excepting only with respect to any Indemnitee, to the extent of any Claim arising solely from the gross negligence or the willful misconduct of such Indemnitee or its members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants.

Without limiting the generality of the foregoing, Comcast shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the License Area by, or at the request or for the benefit of, Comcast.

In the event any action or proceeding is brought against any Indemnitee for any Claim against which Comcast is obligated to indemnify or provide a defense hereunder, Comcast upon written notice from the TJPA shall defend such action or proceeding at Comcast's sole expense.

## 9. Mechanics' Liens

Comcast shall keep the License Area free and clear of liens or claims of liens arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Comcast or at its request or for its benefit. If any mechanics' liens are placed on or filed against the License Area in connection with Comcast's activities under the License, Comcast shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

## 10. General Provisions

a. Notices. Any notice, consent or approval required or permitted to be given under this License shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

TJPA: Maria Ayerdi-Kaplan, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, California 94105

with copy to: Deborah L. (Keeth) Miller  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102

Comcast: Comcast of California III, Inc.  
3055 Comcast Place  
Livermore, CA 94551  
Attn: Contracts Manager

With a copy to: Comcast Cable Communications, LLC  
1701 John F. Kennedy Blvd.  
Philadelphia, PA 19103  
Attention: Cable General Counsel

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above.

b. Amendments. Except as otherwise provided herein, this License may be amended or modified only by a written instrument executed by both parties.

c. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California.

d. This License may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement as of the day and year first written above.**

LICENSOR:

TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Maria Ayerdi-Kaplan  
Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deborah L. Miller

LICENSEE:

COMCAST OF CALIFORNIA III, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
License Legal Description

Exhibit B  
License Diagram

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), dated for reference purposes only as \_\_\_\_\_, 2011, is made and entered into by and between Transbay Joint Powers Authority, a joint powers agency with offices at 201 Mission Street, Suite 2100, San Francisco, California, 94105 ("Licensor" or "TJPA"), and Level 3 Communications, LLC with offices at 1025 Eldorado Boulevard, Broomfield, CO 80021 ("Licensee" or "Level 3").

### RECITALS

A. Under Public Utilities Code sections 7901 *et seq.*, telecommunication corporations may construct telegraph or telephone lines along and upon any public road within the state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road.

B. Level 3 has installed certain telecommunication facilities in the public streets of the City and County of San Francisco ("City").

C. The Transbay Joint Powers ("TJPA"), a joint powers agency created under California Government Code sections 6500 *et seq.*, is charged with the finance, design, development, construction, and operation of the Transbay Transit Center Project ("Transbay Project"). To facilitate construction of the Transbay Project, Level 3, at no cost or expense to the City or the TJPA, will relocate certain telecommunication facilities installed in the City streets.

D. The TJPA owns certain property in the City and County of San Francisco at Block No. 3718, Lot No. 025 ("TJPA Property"). The TJPA Property is currently being used for construction staging related to construction of the Transbay Project. The TJPA Property will eventually be used for phase two of the TJPA's construction of the new Transit Center.

E. To meet the TJPA's schedule for construction of the Transbay Project, Level 3 has requested that the TJPA permit Level 3 to temporarily relocate certain telecommunication facilities from the City streets to a portion of the TJPA Property. In order to accomplish Level 3's temporary relocation and the similar temporary relocation of other utilities, the TJPA will install and own utility poles ("Poles") on the TJPA Property; Level 3 and other utilities will temporarily erect, attach, install, and maintain aerial cables, wires, and/or associated appliances to the Poles.

F. Level 3 acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property for construction and other activities related to the Transbay Project. The TJPA is willing to give Level 3 a non-exclusive right to temporarily relocate certain telecommunication facilities from the City streets to a portion of the TJPA Property consistent with Public Utilities Code sections 7901 *et seq.*, conditioned on Level 3's non-interference with the TJPA's use of the TJPA Property for the Transbay Project and non-interference with other utilities that may also attach telecommunication facilities to the Poles, and as described below.

## LICENSE

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the TJPA hereby grants to Level 3 a temporary non-exclusive License (the “License”) affecting that portion of the real property located in the City and County of San Francisco, State of California at Block No. 3718, Lot No. 025, more particularly described in Exhibit A attached hereto and made a part hereof, and shown in Exhibit B attached hereto and made a part hereof (the “License Area”), subject to the following terms and conditions:

### **1. Term and Termination**

This License shall commence upon the full execution and delivery of the License (“Effective Date”). This License shall terminate (“License Termination Date”) twelve (12) months after the TJPA provides written notice to Level 3 of the termination of the License. This License shall have a term of not less than three (3) years after the Effective Date (“Minimum Time Period”). Notwithstanding the foregoing, the TJPA may terminate this License for the TJPA’s convenience within the Minimum Time Period subject to Level 3’s concurrence, which Level 3 shall not unreasonably withhold.

Notwithstanding the foregoing, Level 3’s right to use and occupy the License Area to install the temporary facilities on the Poles, as described in Section 2 below, shall begin one (1) day after the TJPA provides written notice to Level 3 that the Poles are installed (“Construction Start Date”), and terminate forty five (45) days after the Construction Start Date (“Construction End Date”); as of the Construction End Date, Level 3’s installation activity in the License Area shall be complete.

### **2. Permitted Uses**

The TJPA grants to Level 3 a temporary, non-exclusive right to enter, occupy, and use the License Area for the purposes of temporarily relocating and operating Level 3’s telecommunication facilities (as described in Public Utilities Code sections 7901 *et seq.*) from the City streets. In particular, Level 3 may erect, attach, install, and maintain aerial cables, wires, and/or associated appliances (“Equipment”, and the attachment of such Equipment, “Attachments”) to the Poles.

At least fourteen (14) days before the Construction Start Date, the TJPA shall provide Level 3 the TJPA’s plans for erection of the Poles and use of the Poles by Level 3 and other utilities. Level 3 shall review the plans and confirm that the plans are adequate to support the temporary relocation of Level 3’s Equipment and Attachments during the term of this License. Level 3 shall not unreasonably reject the plans, or delay its review of the plans.

Level 3 agrees that if it requests replacement or other alteration of the Poles in order to accommodate Level 3’s Equipment or Attachments, Level 3 shall pay the actual cost of such replacement or other alteration of the Poles, as well as the actual cost to any other utility occupying the Poles that are the result of Level 3’s request. Likewise, if another utility occupying the Poles requests replacement or other alteration of the Poles, that utility shall pay

the actual cost of such replacement or alternation, as well as the actual cost to Level 3 and any other utility occupying the Poles that are the result of the other utility's request.

### **3. Non-exclusive License; Non-Interference; Notice Prior to Entry**

Level 3 recognizes that this License is non-exclusive; the TJPA may permit other utilities to use the same Poles to attach telecommunications facilities on the Poles. No use of the Poles shall create or vest in Level 3 any ownership or property rights in the Poles, and Level 3's rights under this License shall not be construed to compel the TJPA to maintain the Poles for a period longer than the term of this License.

Level 3 acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property, including the License Area, for construction and other activities related to the Transbay Project. Level 3's right to use the License Area under this License is non-exclusive and is subordinate to the TJPA's use of the License Area. In particular, Level 3 acknowledges that the TJPA plans to use the surface of the TJPA Property, including the License Area, for uses related to the Transbay Project during the term of this License.

Level 3 shall provide not less than 24 hours advance notice to Mr. Edmond Sum of the TJPA at e-mail address [esum@transbaycenter.org](mailto:esum@transbaycenter.org) or by phone at (415) 597-4040 of Level 3's intent to enter on to the License Area, except in cases of emergency or as otherwise permitted by the TJPA.

### **4. Condition of the License Area; License Termination Date**

Within ten (10) business days prior to the Level 3 occupying the License Area, the TJPA will walk through the License Area with a Level 3 representative to ascertain the condition of the License Area to assess the condition of the License Area prior to Level 3's occupation thereof.

On the License Termination Date, Level 3 shall, at Level 3's sole expense: (a) vacate all portions of the License Area; (b) remove or relocate without expense to the TJPA any Equipment or Attachments installed, used, or maintained by Level 3 under this License; and (c) leave the License Area free of Equipment, Attachments, and any materials, rubbish, debris, or personal property brought onto the License Area by Level 3 (collectively, "Obligations at Termination").

Within ten (10) business days after the License Termination Date, the TJPA will walk through the License Area with a Level 3 representative to ascertain the condition of the License Area. Any site conditions inconsistent with the Obligations at Termination will be discussed and noted at that time. If all Obligations at Termination have been met, the TJPA shall give the Level 3 representative a written site sign-off. If the TJPA determines that repairs to the License Area are required solely as a result of Level 3's use of the License Area under this License, the TJPA shall provide Level 3 with documentation detailing the damage and an invoice for the actual incurred cost for the repair of the damage resulting solely from Level 3's use of the License Area.. Level 3 shall pay the TJPA its pro-rated portion of the invoice within forty five (45) days of receiving such invoice.

## **5. Compliance with Laws**

Level 3 shall conduct all activities in the License Area in a safe, prudent, and professional manner in accordance with best practices. Level 3 shall maintain its Equipment and Attachments in a safe condition, in thorough repair. Level 3 shall exercise commercially reasonable efforts to avoid damage to the Poles, and the facilities and attachments of third parties that may also use the Poles. Level 3 shall, at its sole cost and expense, promptly comply with (i) all applicable laws, statutes, ordinances, rules, regulations, requirements, or orders of municipal, state, and federal authorities, including the California Public Utilities Commission, now in force or that may later be in force, including, but not limited to, those relating to the National Electrical Safety Code, and those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (ii) the conditions of any permit, occupancy certificate, license, or other approval issued by public officers; and (iii) any liens, encumbrances, easements, covenants, conditions, restrictions, and servitudes of record or of which Level 3 has notice (collectively, “Legal Requirements”).

## **6. Dangerous Activities; Hazardous Substances**

Level 3 agrees to use all reasonable and good faith measures to conduct its activities and operations within the License Area in such a manner so as not to endanger the environment, and human health and safety. Level 3 shall not knowingly or negligently cause or permit any Hazardous Materials to be brought upon, produced, stored, used, released, discharged, or disposed of on the License Area. Level 3 shall be responsible for, at Level 3’s sole expense, remediating any discharge or release of Hazardous Materials on the License Area during the term of this License directly caused, in whole or in part, by Level 3, or in any way associated with Level 3’s activities, and shall immediately notify the TJPA, and the appropriate regulatory authorities, where required by law, of such release.

“Hazardous Material” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

## **7. Insurance**

Prior to commencing any work in the License Area and during the term of the License, Level 3 shall obtain and provide to the TJPA evidence of insurance for the following insurance coverages:

a. Commercial General Liability insurance, including coverage for contractual liability, on an occurrence basis, and broad form property damage insurance covering damages to the License Area, with a combined single limits of not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence. Umbrella and/or excess liability policies may be used to supplement primary coverage to meet the required limits set forth above.

b. Workers' Compensation insurance, providing statutory benefits in the State of California either through an insurer licensed to provide such insurance or through a combination of qualified self-insurance in combination with excess insurance provided by an insurer licensed to provide such excess insurance and Employer's Liability insurance with minimum limits in accordance with statutory requirements. The foregoing Employer's Liability insurance limits may be met by using an excess or umbrella policy.

## **8. Indemnity**

Level 3 shall, to the maximum extent permitted by law, jointly and severally indemnify, protect, defend and hold harmless the TJPA, its members, officers, shareholders, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise, in whole or in part, from the occupancy or use of the License Areas by Level 3, or the exercise by Level 3 of their rights hereunder, or the performance of, or failure to perform, Level 3's duties under this License, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of the TJPA, Level 3, or its respective agents, contractors and invitees; (b) injury to property or interests in property of the TJPA, Level 3, or any third party, including, without limitation, any damage to Level 3's improvements; (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; and (d) any mechanic's liens recorded against the TJPA's real property; excepting only with respect to any Indemnitee, to the extent of any Claim arising (a) solely from the gross negligence or the willful misconduct of such Indemnitee or its members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers, consultants, or any third-party acting on its behalf, or (b) solely from the TJPA's occupancy or use of the License Area for purposes wholly unrelated to this License.

**9. Mechanics' Liens**

Level 3 shall keep the License Area free and clear of liens or claims of liens arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Level 3 or at its request or for its benefit. If any mechanics' liens are placed on or filed against the License Area in connection with Level 3's activities under the License, Level 3 shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

**10. General Provisions**

a. Notices. Any notice, consent or approval required or permitted to be given under this License shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

TJPA: Maria Ayerdi-Kaplan, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, California 94105

with copy to: Deborah L. (Keeth) Miller  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102

Level 3: Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Attn: John Trujillo

with a copy to: Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Attn: General Counsel

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above.

b. Amendments. Except as otherwise provided herein, this License may be amended or modified only by a written instrument executed by both parties.

c. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California.

d. This License may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

e. To the best of TJPA's knowledge as of the Effective Date, TJPA is the sole and lawful owner and is in peaceful possession of the License Area, and TJPA has authority to convey the License granted herein. If TJPA requires Level 3 to relocate from the License Area as a result of a breach of this warranty, TJPA shall bear the reasonable costs thereof.

f. In no event shall either party be liable to the other for taxes levied on income, lost profits, indirect, incidental, consequential, special, or punitive damages.

g. Force Majeure. No party will be liable to the other party with respect to any failure to fulfill its obligations under this agreement, if such failure is due to reasons beyond its reasonable control, including, but not limited to, governmental interference, direction or restriction, terrorist activity, war or civil commotion, strikes, lock-outs, labor disputes, public enemy, blockade, insurrections, riots, acts of nature, acts of God, epidemics or quarantine restrictions.

**IN WITNESS WHEREOF, TJPA and Level 3 have executed this License Agreement as of the day and year first written above.**

LICENSOR:

TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_

Maria Ayerdi-Kaplan  
Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Deborah L. Miller

LICENSEE:

LEVEL 3 COMMUNICATIONS, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
License Legal Description

Exhibit B  
License Diagram

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), dated for reference purposes only as \_\_\_\_\_, 2011, is made and entered into by and between Transbay Joint Powers Authority, a joint powers agency with offices at 201 Mission Street, Suite 2100, San Francisco, California, 94105 ("Licensor" or "TJPA"), and AboveNet Communications, Inc. with offices at 360 Hamilton Avenue, White Plains, New York 10601 ("Licensee" or "AboveNet").

### RECITALS

A. Under Public Utilities Code sections 7901 *et seq.*, telecommunication corporations may construct telegraph or telephone lines along and upon any public road within the state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road.

B. AboveNet has installed certain telecommunication facilities in the public streets of the City and County of San Francisco ("City").

C. The Transbay Joint Powers Authority ("TJPA"), a joint powers agency created under California Government Code sections 6500 *et seq.*, is charged with the finance, design, development, construction, and operation of the Transbay Transit Center Project ("Transbay Project").

D. The TJPA owns certain property in the City and County of San Francisco at Block No. 3718, Lot No. 025 ("TJPA Property"). The TJPA Property is currently being used for construction staging related to construction of the Transbay Project. The TJPA Property will eventually be used for phase two of the TJPA's construction of the new Transit Center.

E. To meet the TJPA's schedule for construction of the Transbay Project, AboveNet has requested that the TJPA permit AboveNet to temporarily relocate certain of its telecommunication facilities from the City streets to a portion of the TJPA Property.

F. In order to accomplish AboveNet's temporary relocation and the similar temporary relocation of other utilities, the TJPA will install and own utility poles ("Poles") on the TJPA Property at no cost to AboveNet; AboveNet, at no cost to TJPA, will temporarily erect, attach, install, and maintain aerial cables, wires, and/or associated appliances to the Poles.

G. AboveNet acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property for construction and other activities related to the Transbay Project. The TJPA is willing to give AboveNet a non-exclusive right to temporarily relocate certain telecommunication facilities from the City streets to a portion of the TJPA Property consistent with Public Utilities Code sections 7901 *et seq.*, conditioned on AboveNet's non-interference with the TJPA's use of the TJPA Property for the Transbay Project and non-interference with other utilities that may also attach telecommunication facilities to the Poles, and as described below.

## LICENSE

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the TJPA hereby grants to AboveNet a temporary non-exclusive License (the “License”) affecting that portion of the real property located in the City and County of San Francisco, State of California at Block No. 3718, Lot No. 025, more particularly described in Exhibit A attached hereto and made a part hereof, and shown in Exhibit B attached hereto and made a part hereof (the “License Area”), subject to the following terms and conditions:

### **1. Term and Termination**

This License shall commence upon the full execution and delivery of the License (“Effective Date”). This License shall terminate (“License Termination Date”) twelve (12) months after the TJPA provides written notice to AboveNet of the termination of the License.

Notwithstanding the foregoing, AboveNet’s right to use and occupy the License Area to install the temporary facilities on the Poles, as described in Section 2 below, shall begin one (1) day after (a) the TJPA provides written notice to AboveNet that the Poles are installed and (b) AboveNet has received all necessary permits from the City and County of San Francisco to conduct the work (“Construction Start Date”). As of the Effective Date, AboveNet has submitted to the City and County of San Francisco the applications required for the City to process the permits and will use good faith efforts to secure such permits. AboveNet shall complete its installation activity in the License Area no later than forty five (45) days after the Construction Start Date (“Construction End Date”); as of the Construction End Date, AboveNet’s installation activity in the License Area shall be complete.

### **2. Permitted Uses**

The TJPA grants to AboveNet a temporary, non-exclusive right to enter, occupy, and use the License Area for the purposes of temporarily relocating, then maintaining and operating, AboveNet’s telecommunication facilities (as described in Public Utilities Code sections 7901 *et seq.*) from the City streets. In particular, AboveNet may erect, attach, install, and maintain aerial cables, wires, and/or associated appliances (“Equipment”, and the attachment of such Equipment, “Attachments”) to the Poles.

At least fourteen (14) days before the Construction Start Date, the TJPA shall provide AboveNet the TJPA’s plans designed for erection of the Poles and use of the Poles by AboveNet and other utilities identified by the TJPA on such plans. AboveNet shall review the plans and confirm that the plans are adequate to accommodate the temporary relocation of AboveNet’s Equipment and Attachments during the term of this License. AboveNet shall not unreasonably reject the plans, or delay its review of the plans.

AboveNet agrees that if, after the Poles are installed in accordance with approved plans, it requests replacement or other alteration of the Poles in order to accommodate AboveNet’s Equipment or Attachments other than as illustrated on the approved plans, AboveNet shall pay

the actual cost of such replacement or other alteration of the Poles, as well as the actual cost to any other utility occupying the Poles that are the result of AboveNet's request. Likewise, if another utility occupying the Poles requests replacement or other alteration of the Poles, that utility shall pay the actual cost of such replacement or alternation, as well as the actual cost to AboveNet and any other utility occupying the Poles that are the result of the other utility's request.

### **3. Non-exclusive License; Non-Interference; Notice Prior to Entry**

AboveNet recognizes that this License is non-exclusive; the TJPA may permit other utilities to use the same Poles to attach telecommunications facilities on the Poles. No use of the Poles shall create or vest in AboveNet any ownership or property rights in the Poles, and AboveNet's rights under this License shall not be construed to compel the TJPA to maintain the Poles for a period longer than the term of this License.

AboveNet acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property, including the License Area, for construction and other activities related to the Transbay Project. AboveNet's right to use the License Area under this License is non-exclusive and is subordinate to the TJPA's use of the License Area. In particular, AboveNet acknowledges that the TJPA plans to use the surface of the TJPA Property, including the License Area, for uses related to the Transbay Project during the term of this License. Likewise, the TJPA acknowledges that AboveNet anticipates returning its temporarily relocated facilities to public streets once the TJPA Project has progressed to a point where such reinstallation is possible and appropriate. Therefore the parties agree to work in good faith to accommodate both parties plans.

AboveNet shall provide not less than 24 hours advance notice to Mr. Edmond Sum of the TJPA at e-mail address [esum@transbaycenter.org](mailto:esum@transbaycenter.org) or by phone at (415) 597-4040 of AboveNet's intent to enter on to the License Area, except in cases of emergency or as otherwise permitted by the TJPA. In the event of an emergency which is or may impact AboveNet's facilities, the TJPA will provide notice to AboveNet by phone at 888.636.2778.

### **4. Condition of the License Area at License Termination Date**

On or before the License Termination Date, AboveNet shall, at AboveNet's sole expense: (a) vacate all portions of the License Area; (b) remove or relocate without expense to the TJPA any Equipment or Attachments installed, used, or maintained by AboveNet under this License; and (c) leave the License Area free of Equipment, Attachments, and any materials, rubbish, debris, or personal property brought onto the License Area by AboveNet.

Within ten (10) business days after the License Termination Date, the TJPA will walk through the License Area with an AboveNet representative to ascertain the condition of the License Area. Any unsatisfactory site conditions related to AboveNet's use of the Licensed Area will be discussed and noted at that time. If all restoration requirements have been met, the TJPA shall give the AboveNet representative a written site sign-off. If the TJPA determines that repairs to the License Area are required as a result of AboveNet's use of the License Area under

this License, the TJPA shall provide AboveNet with documentation detailing the damage and the parties will agree whether AboveNet will correct such condition or receive an invoice for the actual incurred cost for the TJPA's repair of the damage, in which event AboveNet shall pay the TJPA within forty five (45) days of receiving such invoice.

## **5. Compliance with Laws**

AboveNet shall conduct all activities in the License Area in a safe, prudent, and professional manner in accordance with best practices. AboveNet shall maintain its Equipment and Attachments in a safe condition, in thorough repair. AboveNet shall exercise commercially reasonable efforts to avoid damage to the Poles, and the facilities and attachments of third parties that may also use the Poles. AboveNet shall, at its sole cost and expense in connection with its use of the License Area, promptly comply with (i) all applicable laws, statutes, ordinances, rules, regulations, requirements, or orders of municipal, state, and federal authorities, including the California Public Utilities Commission, now in force or that may later be in force, including, but not limited to, those relating to the National Electrical Safety Code, and those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (ii) the conditions of any permit, occupancy certificate, license, or other approval issued by public officers; and (iii) any liens, encumbrances, easements, covenants, conditions, restrictions, and servitudes of record or of which AboveNet has notice (collectively, "Legal Requirements").

## **6. Dangerous Activities; Hazardous Substances**

AboveNet agrees to conduct its activities and operations within the License Area in such a manner so as not to endanger the environment, and human health and safety. AboveNet shall not cause or permit any Hazardous Materials to be brought upon, produced, stored, used, released, discharged, or disposed of on the License Area. AboveNet shall be responsible for, at AboveNet's sole expense, remediating any discharge or release of Hazardous Materials on the License Area during the term of this License directly caused, whether in whole or in part, by AboveNet, or in any way associated with AboveNet's activities, and shall immediately notify the TJPA, and the appropriate regulatory authorities, where required by law, of such release.

"Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

## **7. Insurance**

Prior to commencing any work in the License Area and during the term of the License, AboveNet shall obtain and provide to the TJPA evidence of insurance for the following insurance coverages:

a. Commercial General Liability insurance, including coverage for contractual liability, on an occurrence basis, and broad form property damage insurance covering damages to the License Area, with a combined single limits of not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence. Umbrella and/or excess liability policies may be used to supplement primary coverage to meet the required limits set forth above. The liability insurance policy shall include an endorsement stating that the issuing company will endeavor to mail Thirty (30) days prior written notice to the TJPA, as Certificate Holder, before such coverage is diminished or canceled.

b. Workers' Compensation insurance, providing statutory benefits in the State of California either through an insurer licensed to provide such insurance or through a combination of qualified self-insurance in combination with excess insurance provided by an insurer licensed to provide such excess insurance and Employer's Liability insurance with limits of not less than One Million and No/100 Dollars (\$1,000,000). The foregoing Employer's Liability insurance limits may be met by using an excess or umbrella policy.

## **8. Indemnity**

AboveNet shall, to the maximum extent permitted by law, jointly and severally indemnify, protect, defend and hold harmless the TJPA, its members, officers, shareholders, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), the extent same arise, in whole or in part, from the occupancy or use of the License Areas by AboveNet, or the exercise by AboveNet of their rights hereunder, or the performance of, or failure to perform, AboveNet's duties under this License, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of the TJPA, AboveNet, or its respective agents, contractors and invitees; (b) injury to property or interests in property of the TJPA, AboveNet, or any third party, including, without limitation, any damage to AboveNet's improvements; (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; and (d) any mechanic's liens recorded against the TJPA's real property; excepting only with respect to any Indemnitee, to the extent of any Claim arising from the gross negligence or the willful misconduct of such Indemnitee or its members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants.

Without limiting the generality of the foregoing, AboveNet shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the License Area by, at the request and for the benefit of, AboveNet.

In the event any action or proceeding is brought against any Indemnitee for any Claim against which AboveNet is obligated to indemnify or provide a defense hereunder, AboveNet upon written notice from the TJPA shall defend such action or proceeding at AboveNet's sole expense.

## **9. Mechanics' Liens**

AboveNet shall keep the License Area free and clear of liens or claims of liens arising in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by AboveNet or at its request and for its benefit. If any mechanics' liens are placed on or filed against the License Area in connection with AboveNet's activities under the License, AboveNet shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

## **10. General Provisions**

a. Notices. Any notice, consent or approval required or permitted to be given under this License shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) five business (5) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

TJPA: Maria Ayerdi-Kaplan, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, California 94105

with copy to: Deborah L. (Keeth) Miller  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102

AboveNet, legal notices:  
AboveNet Communications, Inc.  
360 Hamilton Avenue  
White Plains, New York 10601  
Attn: General Counsel

Operational notices: AboveNet Communications, Inc.  
415 Pendleton Way  
Oakland, CA 94621  
Attn: Olaf Maass, Sr. City Manager

or to such other address as either party may from time to time specify in writing to the other upon prior written notice delivered in the manner provided above.

b. Amendments. Except as otherwise provided herein, this License may be amended or modified only by a written instrument executed by both parties.

c. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California.

d. This License may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

e. This Agreement represents the entire agreement between the parties, superseding all earlier written or oral agreements of the parties, with respect to the subject matter contained herein and shall be binding upon and inure to the benefit of the parties and their respective successors and/or assigns.

**IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement as of the day and year first written above.**

LICENSOR:

TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Maria Ayerdi-Kaplan  
Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deborah L. Miller

LICENSEE:

ABOVENET COMMUNICATIONS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
License Legal Description

Exhibit B  
License Diagram

EXHIBIT "A"  
TEMPORARY UTILITY EASEMENT  
LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THOSE CERTAIN LANDS DESIGNATED AS CO-OP PARCEL N IN DIRECTOR'S DEED NUMBER DK-000390-01-01, RECORDED AUGUST 9, 2010, IN OFFICIAL RECORDS OF THE COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010J017207, TOGETHER WITH A PORTION OF THOSE CERTAIN LANDS DESIGNATED AS CO-OP PARCEL N' IN DIRECTOR'S DEED NUMBER DK-012857-01-01, RECORDED AUGUST 9, 2010, IN OFFICIAL RECORDS OF THE COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010J017211, BEING A STRIP OF LAND, 10.00 FEET WIDE, LAYING CONTIGUOUS WITH AND 5.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID CO-OP PARCEL N'; THENCE ALONG THE SOUTHWEST LINE OF SAID CO-OP PARCEL N' SOUTH 43°41'50" EAST 162.85 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING THE SOUTHWEST LINE OF SAID CO-OP PARCEL N' AND ALONG SAID CENTERLINE, THE FOLLOWING THREE COURSES:

- 1) THENCE PARALLEL WITH THE NORTHWEST LINE OF SAID CO-OP PARCEL N' NORTH 46°18'10" EAST 37.32 FEET;
- 2) SOUTH 65°12'23" EAST 343.94 FEET; THENCE PARALLEL WITH THE SOUTHEAST LINE OF SAID CO-OP PARCEL N,
- 3) SOUTH 46°18'10" WEST 163.43 FEET

TO THE POINT OF TERMINATION, BEING A POINT LAYING ON THE SOUTHWEST LINE OF SAID CO-OP PARCEL N FROM WHICH THE POINT OF BEGINNING BEARS NORTH 43°41'50" WEST 319.98 FEET DISTANT, MORE OR LESS.

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED AS TO COMMENCE OR TERMINATE AT THE SOUTHWEST LINE OF SAID CO-OP PARCEL N AND CO-OP PARCEL N'.

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST 632.48 FEET (632.484 FEET PER CITY MONUMENT MAP 317, ON FILE IN THE OFFICE OF THE CITY ENGINEER).

COMPRISING 5,447 SQUARE FEET, MORE OR LESS.

PREPARED ENTIRELY FROM RECORD DATA BY:

**PRELIMINARY**

\_\_\_\_\_  
TODD A. TILLOTSON, PLS 8593  
LICENSE EXPIRES 12/31/11

DATE: \_\_\_\_\_

# PRELIMINARY

MISSION STREET

LINE TABLE		
LINE	LENGTH	BEARING
L1	37.32	N46°18'10"E
L2	343.94	S65°12'23"E
L3	163.43	S46°18'10"W

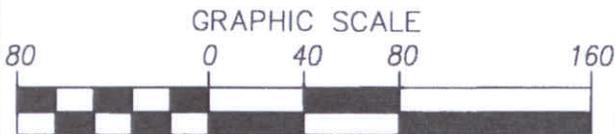
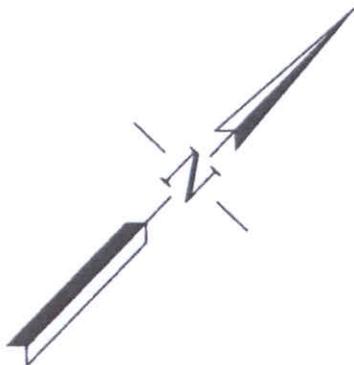
CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	295.60	406.36	41°40'44"

### LEGEND

-  CENTERLINE EASEMENT
-  EASEMENT LINE
-  PROPERTY LINE
-  MONUMENT LINE
-  TEMPORARY POWER POLE

### ABBREVIATIONS

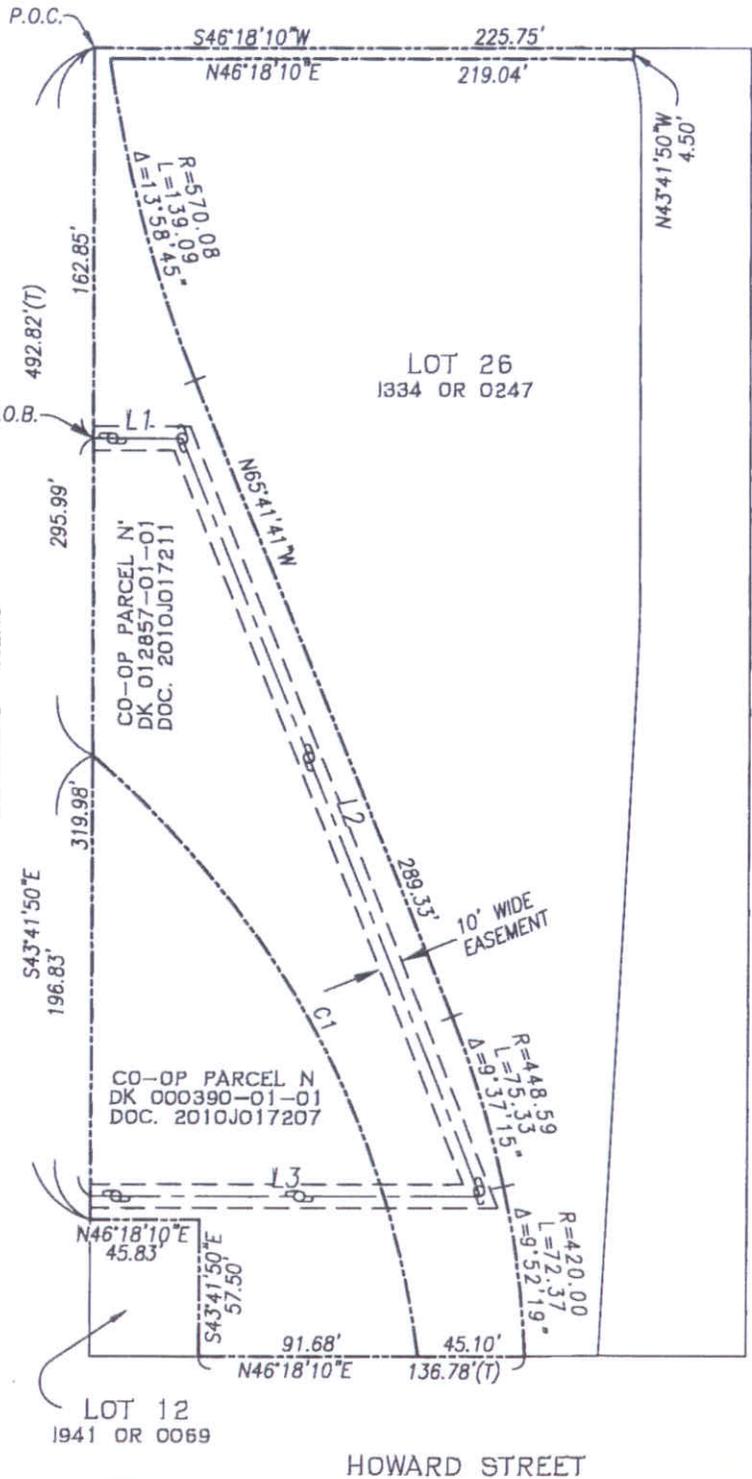
- OR OFFICIAL RECORDS
- DK-012857-01-01 DIRECTOR'S DEED NUMBER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



( IN FEET )  
1 inch = 80 ft.

BEALE STREET

BASIS OF BEARINGS  
S43°41'50"E 632.48'



**F3 & Associates, Inc.**  
Land Surveying  
701 E.H ST, BENICIA, CA 94510  
PHONE (707) 748-4300 FAX (707) 361-0295  
www.F3-Inc.com

EXHIBIT 'B' - PLAT TO ACCOMPANY LEGAL DESCRIPTION  
**TEMPORARY UTILITY EASEMENT**

APN 3718/025 AREA=5,447 SQ.FT.  
CITY AND COUNTY OF SAN FRANCISCO CALIFORNIA

DESIGN BY:	N/A
DRAWN BY:	STAFF
DATE:	FEB 2011
SCALE:	1"=80'
PAGE OF	1
JOB NUMBER:	11014