

CONDUIT USE AGREEMENT

This Conduit Use Agreement (the "Agreement") is made and entered into on the 1st Day of May, 2009, by and between the City of West Lafayette, Indiana, with City Hall at 609 W Navajo Street, West Lafayette, Indiana (the "City"), and Indiana Datapipe, LLC ("Datapipe"), with an office at 427 N 6th Street, Suite C, Lafayette, Indiana (each, a "Party" and collectively, the "Parties").

WHEREAS, the City owns underground innerduct or conduit (the "City Conduit"); and

WHEREAS, Datapipe owns and operates a fiber optic communications network (the "Datapipe Network"); and

WHEREAS, the City wishes to expand the City's fiber optic network connecting City offices by obtaining the right to use certain fiber optic strands in the Datapipe Network; and

WHEREAS, Datapipe wishes to expand the geographic reach of the Datapipe Network by obtaining the right to use certain conduits from the City Conduit; and

WHEREAS, the City wishes to encourage the expansion of the available fiber-optic networks for use by public agencies, businesses, and residents, to improve City services, to reduce City expenses, to promote economic development, and to improve the quality of life; and

WHEREAS, the City and Datapipe desire to exchange with one another the quantity of fibers and conduit segments noted below for their own respective use subject to the terms and conditions stated below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. Property to be Exchanged. Attachment A, attached hereto and incorporated by reference, details the fiber and conduit to be exchanged by each Party. Hereinafter, the City Conduit that is part of this exchange shall be called the "Exchanged City Conduit" and the Datapipe Fiber that is part of this exchange shall be called the "Exchanged Datapipe Fiber".

2. Term of Exchange. (a) The initial term of this fiber and conduit exchange shall commence as of July 1, 2008 and, unless earlier terminated, terminate on December 31, 2030.

(b) This Agreement will automatically renew for subsequent five (5) year renewal terms unless either party gives written notice to the other Party of its request to terminate the Agreement at least one-hundred eighty days prior to the expiration of the then-current term.

(c) This Agreement can be terminated at any time with the consent of both Parties.

3. Title. Title to and ownership of each Party's exchanged fiber and conduit shall remain with the fiber or conduit owner. Datapipe will be responsible for payment of property taxes on Datapipe's property, except for the Exchanged Datapipe Fiber. The City will be responsible for any property taxes that are assessed on the Exchanged Datapipe Fiber.

4. Maintenance Obligations. (a) **In General.** Datapipe shall be responsible for the maintenance and repair of the Exchanged City Conduit, Exchanged Datapipe Fiber, and for the Datapipe Network. Datapipe may charge its usual and customary fees for the maintenance of the Exchanged Datapipe Fiber as provided for in separate agreements with the City.

(b) **Indiana Underground Plant Protection Service (IUPPS).** Datapipe shall maintain its membership in the IUPPS and shall register the location of the Exchanged City Conduit. Datapipe shall respond to the locate requests received from the IUPPS and shall appropriately mark the location of the Exchanged City Conduit. As required by Indiana law, the City and its contractors shall notify the IUPPS "Indiana 811 Call Before

You Dig” service at least 48 hours prior to the commencement of any work that has the potential to disturb or damage any underground facilities.

(c) Relocation. Should City, State of Indiana, or federal projects require the relocation of the Datapipe Network or the Exchanged City Conduit, Datapipe will be responsible for the construction of new facilities and the movement of the existing facilities. The City will be responsible for providing the right-of-way for the new facilities that will functionally replace the Exchanged City Conduit. The cost of this construction and relocation will be the responsibility of the City only to the extent that it pays the relocation costs of other utilities similarly affected by the project. If the City does not pay Datapipe for the construction and relocation, Datapipe shall own the conduit that replaces the Exchanged City Conduit.

5. Conditions of Use. (a) Allowed Use. The City may use the Exchanged Datapipe Fiber to conduct City business, provided that such use is technologically compatible with the overall use of Datapipe’s cables for communications services and that such use does not interfere with the use of Datapipe’s fibers by Datapipe or any third party. The City shall exercise its rights to use the Exchanged Datapipe Fiber in compliance with all applicable state, local and federal laws, regulations and codes.

(b) Use Requiring Prior Consent. The City may not allow the use the Exchanged Datapipe Fiber by any commercial third party without first obtaining the written consent of Datapipe. Datapipe shall not be required to provide consent for other commercial uses without reasonable compensation.

6. Default and Remedies. (a) Default. A Party shall be in Default under this Agreement if the Party fails to perform, in any material respect, any of its obligations set forth in this Agreement, and such failure is not excused by any provision of the Agreement and continues unremedied for a period of thirty (30) days following written notice from the non-breaching Party, provided that if the breach by its nature cannot be cured within thirty (30) days and the breaching Party within that time has commenced to cure, there shall be no Default so long as the Party thereafter diligently continues such cure to completion.

(b) Remedies. Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to pursue any and all legal or equitable remedies it may have against the Defaulting Party including, without limitation, the right to seek injunctive relief to prevent the Defaulting Party from continuing to Default its obligations under this Agreement.

(c) Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT.

7. Notices. All notices under this Agreement shall be in writing and be deemed given (a) on the day when delivered personally or sent by facsimile copy or electronic mail, provided receipt is confirmed; (b) on the next business day after being sent by overnight courier, provided receipt is confirmed; or (c) three (3) business days after being mailed via the United States Postal Service; provided in all cases, notice is sent to the appropriate Party at its address specified below, or at such other address as a Party may specify in writing to the other Party:

If to the City:
City of West Lafayette
Attn: City Engineer
609 West Navajo Street
West Lafayette, IN 47906

With a copy to:
City of West Lafayette
Attn: City Attorney
609 West Navajo Street
West Lafayette, IN 47906

If to Datapipe:

Indiana Datapipe, LLC.
427 N 6th Street, Suite C
Lafayette, IN 47901-2211

With a copy to:

Mark S. Davis.
Attorney at Law
133 N 4th Street, Suite 404
Lafayette, IN 47901

8. General Contract Terms. (a) Assignment. Either Party may assign this Agreement by giving written notice to the other party. Any assignment shall be for the entire Agreement and the assignee shall assume all obligations of the assignor under this Agreement.

(b) Entire Agreement. This Agreement contains the entire agreement of the Parties with regard to the subject matter of the Agreement and supersedes all prior or contemporaneous agreements and understandings, oral or written, between the Parties with respect to the subject matter contained herein.

(c) Modifications in Writing. No modification or amendment of this Agreement shall be valid unless set forth in a writing signed by authorized representatives of each Party and only to the extent expressly stated therein.

(d) Non-waiver. The failure of either Party to enforce strict performance of any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision or any other provision of this Agreement.

(e) Independent Contractors. The relationship of the parties is that of independent contractors. Nothing in this Agreement authorizes either Party to bind the other, to incur liability on behalf of the other, or to act as an agent for the other.

(f) Compliance with Laws. Each Party's performance under this Agreement shall comply with all applicable Federal, State, and local laws, rules, regulations, court orders, and governmental agency orders.

(g) Headings. The headings to the paragraphs of this Agreement are intended solely for the convenience of the Parties and shall in no way be held to explain, modify, amplify, or aid in the interpretation of the provisions hereof.

(h) Severability. If a court or a governmental agency with proper jurisdiction determines that a provision of this Agreement is unlawful, the provision shall be stricken, and if the Parties can legally, commercially, and practicably continue the Agreement without the stricken provision, the remainder of the Agreement shall continue in effect.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana except for its provisions regarding conflicts of law, and except to the extent that federal communications law applies. Any court action arising from this Agreement shall be venued in Tippecanoe County, Indiana, in either federal or state court, as is appropriate. The Parties agree that the statute of limitations set forth in the Communications Act of 1934, 47 U.S.C. Section 415, as amended, shall govern all actions arising out of this Agreement.

(j) Force Majeure. A Party shall be excused from its performance if its performance is prevented by acts or events beyond the party's reasonable control, including but not limited to: severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

(k) Legal fees and Costs. In any action between the Parties to enforce any material provision of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney’s fees, court costs, costs of investigation, and other related expenses incurred in connection therewith from the non-prevailing party in addition to whatever other relief a court may award.

IN WITNESS WHEREOF, the terms of this Agreement are hereby accepted by duly authorized representatives of the Parties.

Indiana Datapipe, LLC

The City of West Lafayette, Indiana

Signature: _____

Signature: _____

Printed Name: Stephen E. Belter

Printed Name: _____

Title: Managing Member and President

Title: _____

Date: _____

Date: _____

Attachment A

CONDUIT SELECTION BY DATAPIPE

The Route for the Exchanged City Conduit is as follows:

NUMBER OF MICRODUCTS	DEMARCATIION POINTS OF LINEAR ROUTE SEGMENTS
1 conduit – about 500 feet	#1 FROM: The power pole on the southwest corner of North Street and North Chauncey Avenue, West Lafayette, Indiana
	#2 TO: The power pole near the southeast corner of the West Lafayette Public Library parking garage on North Chauncey Avenue, West Lafayette, Indiana

FIBER SELECTION BY THE CITY

The Route for the Datapipe fiber to be exchanged to the City is as follows:

NUMBER OF FIBERS	DEMARCATIION POINTS OF LINEAR ROUTE SEGMENTS
12 strands of fibers	#1 FROM: The Morton Community Center on North Chauncey Avenue, West Lafayette, Indiana
	#2 TO: The West Lafayette Public Library on North Chauncey Avenue, West Lafayette, Indiana
12 strands of fibers	#1 FROM: The Morton Community Center on North Chauncey Avenue, West Lafayette, Indiana
	#2 TO: A fiber splice case between North Street and Wiggins Street on North Chauncey Avenue, West Lafayette, Indiana. Four of these strands will be spliced to the fiber going into West Lafayette Fire Station #1.