

MEETING DATE: 06/09/08

AGENDA ITEM: Consideration of Adoption of a Resolution Approving an Encroachment Permit Agreement with Level 3 Communications, LLC for Use of the Public Rights-of-Way on Venice Boulevard, Prospect Avenue, Girard Avenue and West Washington Boulevard.

ATTACHMENTS

		<u>Pages</u>
1	Encroachment Permit Agreement, Proposed	1 - 9
2	Resolution, Proposed	10 - 11
3	NFL Studios Project Map	12
4	Sony Studios Project Map	13

ENCROACHMENT PERMIT AGREEMENT
No. 2008 - _____

PARTIES: Level 3 Communications
 1025 Eldorado Boulevard
 Broomfield, CO 80021
 ("PERMITTEE")

 City of Culver City, a Municipal Corporation
 9770 Culver Boulevard
 Culver City CA 90232
 ("CITY")

ENCROACHMENT AREA:

NFL Networks Project: Route begins on Venice Boulevard, between Prospect and Girard Avenues. The route extends southerly on both Prospect and Girard Avenues, to their intersections with Washington Boulevard. At the intersection of Prospect Avenue and Washington Boulevard, the route continues easterly along Washington Boulevard to the NFL Studios, at 10950 Washington Boulevard. At the intersection of Girard Avenue and Washington Boulevard, the route continues westerly along Washington Boulevard to the NFL Studios, at 10950 Washington Boulevard. This route is depicted in the attached exhibit, Exhibit A, which is incorporated by reference as though set forth in full at this point.

AND

Sony Studios Project: Route begins at the intersection of Jasmine Avenue and Washington Boulevard. The conduit then traverses northeast along Washington Boulevard, to the Sony Pictures parking lot at 10202 W. Washington Boulevard. This route is depicted in the attached exhibit, Exhibit B, which is incorporated by reference as though set forth in full at this point.

RECITALS:

- A. **WHEREAS**, PERMITTEE desires to install two fiber optic conduit routes ("PROJECT") within portions of the City of Culver City rights-of-way, as shown in Exhibits A and B, for the purpose of providing fiber optic services to Sony Studios, at 10202 W. Washington Boulevard, and NFL Networks, at 10950 W. Washington Boulevard.
- B. **WHEREAS**, such PROJECT will encroach under and across the public rights-of-way and may require trenching and/or boring within said public rights-of-way.
- C. **WHEREAS**, the PROJECT is covered by a Negative Declaration pursuant to the California Environmental Quality Act, California Public Resources Code §§21000 et seq.
- D. **WHEREAS**, PERMITTEE desires to secure the permission of the City of Culver City to install and maintain the PROJECT to provide telecommunications services.

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, the parties hereto agree as follows:

1. Permission to Encroach. CITY hereby gives the PERMITTEE permission to encroach and occupy under and along the public rights-of-way of the ENCROACHMENT AREA, for the purpose of constructing, operating, maintaining, improving (to the extent such improvement does not involve excavations in public rights-of-way not located in the ENCROACHMENT AREA) and removing fiber optic lines and cables in the public rights-of-way specifically depicted in Exhibits A and B and in accordance with CITY's Rights-of-Way Management Plan & Standards (Culver City Municipal Code Section 9.08.307). This PROJECT shall be at the sole cost and expense of PERMITTEE and shall conform to that certain California Public Utilities Commission document entitled "Negative Declaration (IX) – Competitive Local Carriers' (CLCs) Projects for Local Exchange Telecommunications Service throughout California" (a copy of which will be attached hereto as Exhibit C and incorporated herein by reference as though set forth in full).

The terms of this Encroachment Permit Agreement (AGREEMENT) are based on the type of telecommunications facilities required by PERMITTEE to provide its authorized services. PERMITTEE acknowledges that any change in the nature of the facilities or its legal authority to provide services, or in applicable law, may affect the CITY's regulatory authority over such facilities. PERMITTEE further acknowledges that both PERMITTEE's use of CITY rights-of-way and this AGREEMENT are subject to such future lawful authority as the CITY exercises in its discretion.

2. Application Review Costs. PERMITTEE shall reimburse CITY for the time required of CITY staff to review PERMITTEE's encroachment permit application at the rates adopted by resolution of CITY's City Council.

3. Term of the Agreement. The term of this AGREEMENT shall be for a period of ten (10) years from the date of execution of this AGREEMENT, with two (2) five-year extensions, unless terminated earlier pursuant to other provisions of this AGREEMENT.

4. Public Utility Status of PERMITTEE. PERMITTEE represents to CITY that PERMITTEE has obtained Certificate of Public Convenience and Necessity ("CPCN") No. U-5941-C, dated February 17, 1998, for the provision of telecommunications services. PERMITTEE has represented that this CPCN authorizes construction activities in relation to the PROJECT. PERMITTEE has further represented that the PROJECT will be used solely for purposes authorized by its CPCN. Finally, PERMITTEE has represented that it is a "telephone corporation" within the meaning of the California Public Utilities Code, that the PROJECT involves the construction and operation of "telephone lines" and that the PROJECT will result in the carriage of telephone service.

5. Rights Granted and Reserved. The rights granted by this AGREEMENT are granted based upon representations by PERMITTEE that PERMITTEE's operations shall be solely for the purposes set forth in California Public Utilities Code Section 7901. If PERMITTEE uses the PROJECT for purposes other than the provision of Section 7901 services, or if the PROJECT is found not to be sanctioned by the CPCN, or if it is ultimately determined that CITY is not precluded by California Public Utilities Code Sections 7901 and 7901.1, California Government Code Section 50030, or any other applicable laws or regulations, from imposing compensation requirements, CITY reserves the right to charge PERMITTEE lawful compensation for the use of CITY's rights-of-way, as permitted. In addition, neither party waives any rights reserved under the Telecommunications Act of 1996



including, but not limited to, those rights set forth in Section 253(c) of that act, reserving to municipalities the right to manage their public rights-of-way and to require fair and reasonable compensation from telecommunications providers for use of public rights-of-way.

6. Supervision and Repair. All work and entry upon, over, under, or along the public rights-of-way shall be done under PERMITTEE's supervision, in a good and skillful manner, and shall comply with all reasonable standards imposed by CITY from time to time. PERMITTEE agrees to abide by the standards set forth in the Rights-of-Way Management Plan, adopted pursuant to Culver City Municipal Code Section 9.08.307. To this end, a PERMITTEE representative shall be physically present at any construction site at all times that construction or excavation is being conducted pursuant to this AGREEMENT and any excavation in connection with this PROJECT shall be monitored by PERMITTEE.

7. PERMITTEE's Obligation to Repair Damage and Restore Property. PERMITTEE agrees to repair any and all damage (including, but not limited to, subsidence, cracking, erosion, collapse, weakening or loss of lateral support) to any CITY property (including, but not limited to, streets, walks, public rights-of-way, gutters, utility lines and systems, underground utility lines and systems or sewer systems and sewer lines) resulting from the installation, maintenance or operation of the PROJECT at no expense to CITY and to the satisfaction of CITY. In addition, PERMITTEE agrees to restore all CITY property affected by construction of the PROJECT to the condition it was in prior to commencement of PROJECT at no expense to CITY and to the satisfaction of CITY.

8. No Right, Title or Interest. The permission granted hereunder shall not in any event constitute an easement on or an encumbrance against the public rights-of-way. No right, title or interest in the public rights-of-way, or any part thereof, shall vest or accrue in PERMITTEE by reason of this AGREEMENT or the issuance of any excavation or street use permit, or any other permits issued by the Public Works Department, or exercise of the privilege given thereby.

9. Possessory Interest. The parties agree that no possessory interest is created by this AGREEMENT. However, to the extent that a possessory interest is deemed created by operation of law, PERMITTEE acknowledges that notice is and was hereby given to PERMITTEE pursuant to California Revenue and Taxation Code §107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. PERMITTEE shall be solely responsible for any and all taxes, fees and assessments relating to PERMITTEE's use and maintenance of the PROJECT.

10. Termination. Either party may terminate this AGREEMENT at any time by providing one hundred eighty (180) days' written notice of said termination to the other party. CITY agrees that it shall terminate this AGREEMENT only in the event it determines the PROJECT causes jeopardy to the public health, welfare or safety, or if the CPCN terminates, is revoked, or is abandoned, or if PERMITTEE ceases to be a "telephone corporation" within the meaning of the California Public Utilities Code.

Should said termination occur, if requested in writing by the CITY's Public Works Director, PERMITTEE shall remove the PROJECT at its own expense and shall repair and restore all CITY property and all public rights-of-way which were affected by the placement, maintenance, and removal of the PROJECT to a condition satisfactory to CITY. If removal of the PROJECT is required by the CITY'S Public Works Director, the removal of the PROJECT and the repair of CITY property

and public rights-of-way shall be completed within ninety (90) days of the date the CITY'S Public Works Director requests removal. If no request for removal is received from the CITY'S Public Works Director within ninety (90) days of the effective termination date of this AGREEMENT, PERMITTEE may abandon the PROJECT in place, to the CITY's satisfaction, and the abandoned PROJECT shall be deemed conveyed to the CITY and PERMITTEE shall have no further obligation to remove, relocate, or maintain the PROJECT and no further right to control or use the PROJECT.

11. Permittee's Liability for All Damages. PERMITTEE shall assume all responsibility for all damages to property or injuries to persons which may arise from or be caused by PERMITTEE's performance under this AGREEMENT or by the performance of any other party acting on PERMITTEE's behalf in furtherance of this AGREEMENT. The obligations of this paragraph apply regardless of whether such damage or injury accrues or is discovered before or after termination of this AGREEMENT.

12. Insurance.

(a) PERMITTEE shall obtain, pay for, and maintain during the life of this AGREEMENT a Commercial General Liability policy, including Contractual Liability, and an Automobile Liability policy, which shall protect it and the CITY from claims for injuries and damages. These policies shall name the City of Culver City, its elected and appointed officials, officers, agents, and employees as additional insured under the policies except for Workers Compensation. These policies shall be maintained in the following amounts:

- (1) COMMERCIAL GENERAL LIABILITY INSURANCE in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence for personal injuries, including accidental death, to any one person; property damage insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) and subject to the above limits and combined single limit of insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000);
- (2) AUTOMOBILE LIABILITY INSURANCE endorsed for all owned and non-owned vehicles with a combined single limit of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence for personal injuries, including accidental death, to any one person; and for property damage;
- (3) WORKERS' COMPENSATION INSURANCE in the statutorily required amount.

(b) These policies shall contain a "Severability of Interest" clause and a "Primary Coverage" clause for any loss arising from or caused by PERMITTEE's performance of the AGREEMENT. In addition, the policies shall contain a statement of obligation on the insurance carrier's part to notify the CITY, by certified mail/return receipt requested, at least thirty (30) days in advance of any policy cancellation or termination or any reduction in the amount of coverage.

(c) Before starting operations under this AGREEMENT, PERMITTEE shall furnish the CITY with a "certificate of insurance" and, with respect to the Commercial General and Automobile Liability Insurance policies, an "additional insured endorsement", the certificate countersigned by the insurance carrier or its authorized representative, on forms satisfactory to the CITY's City Attorney, which set forth the above provisions.

(d) The countersigned certificate, along with the additional insured endorsement, shall

state: "The City of Culver City, its elected and appointed officials, officers, agents, and employees are named as additional insured under this policy. This insurance is primary to the coverage of the City of Culver City. Neither the City of Culver City nor any of its insurers shall be required to contribute to any loss. This policy contains a 'severability of interest clause.'" The additional insured requirement may be satisfied through the use of a blanket additional insured endorsement.

PERMITTEE SHALL FURNISH THE REQUIRED CERTIFICATE(S) OF INSURANCE AND ENDORSEMENT (S) PRIOR TO THE ISSUANCE OF PERMITS FOR CONSTRUCTION. AFTER CONSTRUCTION OF PROJECT HAS BEEN COMPLETED, PERMITTEE SHALL FURNISH CITY DOCUMENTARY PROOF OF BEING IN CONTINUING COMPLIANCE WITH THE REQUIREMENTS OF THIS PARAGRAPH EVERY TWO YEARS.

13. Performance Bond. Prior to the issuance of any permits pursuant to this AGREEMENT, PERMITTEE shall file with CITY a performance bond in the amount of two hundred fifty thousand dollars (\$250,000), on a form approved by the CITY'S City Attorney, to ensure satisfactory completion of, and/or repairs to, the PROJECT. CITY shall release this bond one year after CITY'S inspection and final acceptance of the construction undertaken pursuant to this AGREEMENT. To the extent that PERMITTEE is engaged in a joint build with one or more other permittees, the obligation to obtain a performance bond under this section lies only with the lead company of the joint build.

14. Indemnification. PERMITTEE agrees to and shall defend, indemnify and hold harmless CITY, its elected and appointed officials, officers, agents, employees, and representatives from all suits and causes of action, claims, charges, damages, demands, judgments, civil fines, and penalties or losses of any kind or nature whatsoever, arising out of this AGREEMENT for all claims of any kind including without limitation, for damage or claims for damage for bodily injury, including death, and claims for property damage which may arise directly or indirectly from this AGREEMENT or damage to PERMITTEE'S PROJECT including, but not limited to, those claims which arise out of:

- a) The performance or the failure to perform the obligations in this AGREEMENT by PERMITTEE, or its contractors, subcontractors, agents, employees, or any other person or entity acting on PERMITTEE's behalf; and,
- b) The design placement, maintenance, repair, or condition of the PROJECT. This indemnity and obligation to hold harmless shall apply regardless of whether or not CITY prepared, supplied, or approved plans or specifications or inspected any of the work or improvements installed and constructed pursuant to this AGREEMENT. Specifically, PERMITTEE agrees to defend, indemnify and hold harmless CITY, and its officers, agents, employees and representatives from the following damages or claims for damages: (1) any indirect, special, punitive or consequential damages (including, but not limited to, any claim for loss or services) to PERMITTEE, or any other person arising from any damage to PERMITTEE'S telecommunications facilities; and, (2) any damage or claims for damages resulting from damage to PERMITTEE's telecommunications facilities caused by third persons.

15. Limits of CITY Liability. In no event shall CITY be liable, under any theory, to PERMITTEE for any damage to the PROJECT caused by any excavation or work performed by CITY at or near the PROJECT. Neither PERMITTEE nor CITY shall be liable, under any theory, to the other for any indirect, special punitive or consequential damages (including, but not limited to, any claim for loss of

services) nor shall CITY be liable, under any theory, for damage to the PROJECT caused by any other persons.

16. Representation by Counsel. Where PERMITTEE is required to provide legal services to CITY under Paragraph 14, and chooses to utilize joint counsel, the parties shall make a good faith effort to cooperate and agree upon litigation strategy and implementation thereof. In the event CITY determines that PERMITTEE'S litigation strategy or implementation decisions are unreasonable, or not in CITY's best interest, or that separate counsel is necessary for the representation of CITY, CITY may obtain separate legal counsel chosen by CITY at PERMITTEE's cost and expense. CITY shall submit to PERMITTEE on a regular basis statements for attorney's fees, which shall be paid to CITY within sixty (60) days of PERMITTEE's receipt of said statement.

17. Compliance with All Laws. PERMITTEE shall comply with all applicable federal, state and local laws, rules and regulations.

18. Permits. All excavation, installation, maintenance or repair requiring excavation in the public rights-of-way for the PROJECT shall be done under permit(s) issued by the Public Works Department after payment by PERMITTEE of any applicable fees. Such excavation shall be at the sole cost and expense of PERMITTEE and shall substantially conform and be limited to the area covered by the PROJECT, as depicted in Exhibits A and B.

19. Default. In the event of default by either party to this AGREEMENT, the other party shall have available all remedies at law or in equity not otherwise provided for herein, including, by way of illustration but not limitation, suits for injunctive or declaratory relief, specific performance, relief in the nature of mandamus, or action for damages. Provided, however, PERMITTEE shall not have available an action for damages against CITY or any related person or entity except and to the extent of CITY's negligence, willful misconduct or criminal acts. All remedies, including the remedies specified in this AGREEMENT, shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election with respect to other available remedies.

20. City Performance Standards. In the event PERMITTEE fails to perform any of its obligations under this AGREEMENT within a reasonable period after delivery of written notice of such failure and CITY performs any work including, but not limited to, repairing or maintaining the street improvements, CITY shall only be obligated to perform such work in a manner consistent with the standard practices of the CITY in performing street work and construction. CITY shall not be obligated to repair or replace any materials or improvements in a form or manner consistent with Exhibits A and B, or any plans and specifications, and CITY shall not be responsible for any damages to PERMITTEE as a result of CITY performing such work, including, but not limited to, mitigation of damages due to PERMITTEE's prior work. PERMITTEE shall reimburse CITY for its full costs, including allocated overhead, of any work performed by CITY pursuant to this paragraph.

21. Abandonment. Notwithstanding Paragraph 10 herein, if PERMITTEE ceases use of the PROJECT or any portion thereof for a continuous period in excess of one hundred eighty (180) days without written notice of termination of this AGREEMENT, CITY may require PERMITTEE to remove the PROJECT or the involved portion thereof and return the involved public property to a condition satisfactory to CITY or, if CITY so elects, abandon the PROJECT or the involved portion thereof to the ownership of CITY without the payment of any compensation.



22. Relocation. PERMITTEE shall remove or relocate, without cost and/or expense to CITY, the PROJECT if and when made necessary by the installation, abandonment, change of grade, alignment or width of any street, sidewalk or other public facility or by the construction, maintenance, or operation of any CITY, or other public agency's, underground or aboveground facilities (including, but not limited to, any sewer, storm drain, conduits, gas, water, electric or other utility system) or pipes, provided that CITY or other public agency is acting in its governmental capacity. In the event all or any portion of any public rights-of-way occupied by the PROJECT shall be needed by CITY or other public agency for a governmental purpose or in the event the existence of the PROJECT shall be considered detrimental to the public health, safety, welfare, or convenience or to governmental activities including, but not limited to, interference with CITY or other public agency construction projects, or is in conflict vertically and/or horizontally with any proposed CITY or other public agency installation, PERMITTEE shall remove and relocate, without cost or expense to CITY, the PROJECT to such other location or locations as may be designated by the CITY or other public agency. Said removal or relocation shall be completed, without cost or expense to CITY, within ninety (90) days of notification by CITY unless urgent needs dictate a shorter period for removal or relocation. In the event the PROJECT is not removed or relocated within said period of time, CITY or other public agency may cause the same to be done at the sole cost and expense of PERMITTEE. Further, in the event of an emergency, as reasonably determined by CITY or other public agency, CITY or other public agency may remove or relocate the PROJECT without prior notice to PERMITTEE, provided that PERMITTEE is notified within a reasonable period thereafter. To the extent relocation of the PROJECT is required solely to accommodate (i) a non-public agency third party for non-governmental reasons, (ii) CITY acting in a proprietary capacity for non-governmental reasons, or (iii) CITY acting on behalf of a non-public agency third party for non-governmental reasons, the relocation shall be paid for in advance by CITY or the non-public agency third party. Additionally, CITY, using reasonable efforts, shall first consult with, or cause any party requesting relocation of the PROJECT to consult with, PERMITTEE to determine whether relocation is actually necessary, and, if so, how the costs of such relocation can be minimized. In the event relocation is required, CITY shall use best reasonable efforts to assist, or to cause any party requesting relocation of the PROJECT to use best reasonable efforts to assist, PERMITTEE in identifying a place to which to relocate the PROJECT.

23. Underground Service Alert. PERMITTEE acknowledges that it is presently a member of "Underground Service Alert of Southern California" and agrees to maintain and keep current its membership in said organization throughout the term of this AGREEMENT.

24. Notices. All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or when received by certified mail, return receipt requested via U.S. Mail. Should CITY or PERMITTEE have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from PERMITTEE to CITY shall be given to CITY addressed as follows:

City Manager
Culver City City Hall
9770 Culver Blvd.
Culver City, CA 90232-0507

With a copy to:

City Attorney
Culver City City Hall
9770 Culver Boulevard
Culver City, CA 90232-0507

All notice, demands or requests from CITY to PERMITTEE shall be given to PERMITTEE addressed as follows:

Level 3 Communications
1025 Eldorado Boulevard
Broomfield, CO 80021
ATTN: Contract Administration

With a copy to:

Level 3 Communications
1025 Eldorado Boulevard
Broomfield, CO 80021
ATTN: General Counsel

25. Assignments/Transfers. PERMITTEE may not sell, assign, transfer or lease any interest in this AGREEMENT without the prior written consent of CITY.

26. Amendment. Notwithstanding anything in this AGREEMENT, this AGREEMENT may be amended by mutual written consent of the parties hereto.

27. Non-Waiver. A waiver by either party of any breach of any term, covenant, or condition contained in this AGREEMENT shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this AGREEMENT whether of the same or different character.

28. Severability. If any part of this AGREEMENT is held invalid, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or otherwise frustrate the purposes of this AGREEMENT.

29. Understanding of the Parties. This AGREEMENT, including the exhibits attached hereto, constitutes the entire agreement between the parties, and supersedes any previous oral or written agreements with respect to the subject of the AGREEMENT.

[Remainder of page intentionally left blank]

LEVEL 3 COMMUNICATIONS

By: _____ Dated: _____
Steve Gordon
Sr. Director, Network Infrastructure Services

CITY OF CULVER CITY

By: _____ Dated: _____
Charles Herbertson
Public Works Director

APPROVED AS TO FORM:

By: _____ Dated: _____
Carol A. Schwab
City Attorney



RESOLUTION NO. 2007-R _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CULVER CITY, CALIFORNIA, APPROVING AN
ENCROACHMENT PERMIT AGREEMENT WITH LEVEL 3
COMMUNICATIONS.

WHEREAS, Level 3 Communications has applied for a permit to encroach
upon Culver City's public rights-of-way in order to install fiber optic cable, as described in
the engineering plans submitted to Culver City's Public Works Department and in the
related Encroachment Permit Agreement;

WHEREAS, Level 3 Communications is a telecommunications company duly
authorized to provide telecommunication services by the California Public Utilities
Commission;

WHEREAS, the City of Culver City is authorized to regulate time, place and
manner of the placement of telecommunication facilities in its public rights-of-way;

WHEREAS, Chapter 11.20 of the Culver City Municipal Code provides that an
encroachment permit is required prior to installation of telecommunication facilities in the
City's public rights-of-way and that such permits are subject to approval by the City Council.

NOW, THEREFORE, the City Council of the City of Culver City, California,
DOES HEREBY RESOLVE, as follows:

1. The encroachment permit requested by Level 3 Communicaitons is
hereby approved.

2. The Public Works Director is authorized to execute the related

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...

...

1 Encroachment Permit Agreement on behalf of the City of Culver City.

2 APPROVED and ADOPTED this ____ day of _____ 2007.

3
4
5 _____
6 SCOTT MALSIN, MAYOR
7 City of Culver City, California

8 ATTEST:

APPROVED AS TO FORM:

9
10
11 _____
12 MARTIN COLE
13 City Clerk

14
15 _____
16 CAROL A. SCHWAB,
17 City Attorney

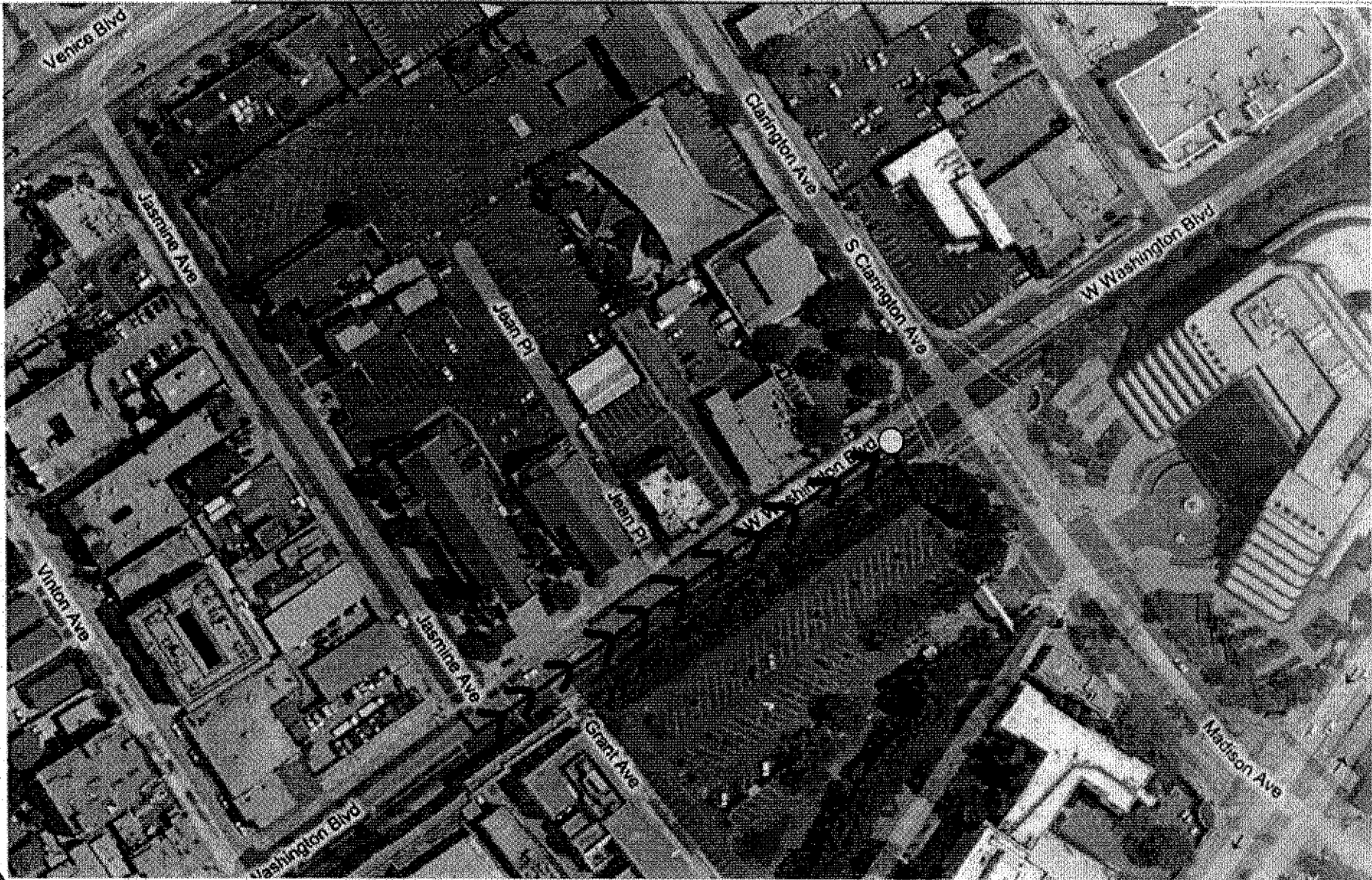
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Proposed Manholes



Proposed Underground, Approx. 3,316 ft.



Proposed Manhole

Proposed Underground, Approx. 494 ft.