

SETTLEMENT AGREEMENT AND RELEASE

The City of Lake Worth Beach, a Florida municipal corporation ("**City**") and Level 3 Communications, LLC a Delaware limited liability company authorized to do business in the State of Florida ("**Level 3**"), collectively "**Parties**," for settlement purposes through their undersigned agents agree as follows:

WHEREAS, the City and Level 3 are entering a Pole Attachment Agreement to be executed concurrently with this Agreement, attached hereto as Exhibit A, allowing Level 3 to rent the City's electric poles to attach aerial cables, wires and associated appurtenances in support of Level 3's business (the "**Pole Attachment Agreement**"); and

WHEREAS, pursuant to the terms of the Pole Attachment Agreement, Level 3 is to pay to City an annual pole attachment fee of \$16.50 per pole, payable in advance, on the first day of January, April, July and October of each year during the term of the Pole Attachment Agreement; and

WHEREAS, the payments are to be based on the number of Attachments being maintained by Level 3 on the preceding first day of December, March, June, and September, respectively; and

WHEREAS, in August of 2018, the City completed an audit of its electric poles, primarily to determine what entities were hanging pole attachments from the City's electric poles. The City determined that Level 3 had aerial cables and wires attached to 448 of the City's electric poles; and

WHEREAS, based upon Level 3's audit of the City's audit results, a dispute has arisen between the Parties regarding responsibility for pole attachment fees on such 448 attachments; and

WHEREAS, in order to avoid further delay in executing the Pole Attachment Agreement, the Parties desire to resolve the above-referenced dispute as provided herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by both Parties, the Parties hereby enter into this Settlement Agreement and Release ("**Agreement**") and agree as follows:

1. **Payment for Alleged Unauthorized Attachments.** Level 3 shall pay to City the sum of \$ 36,960, which is based on an annual pole attachment fee of \$16.50 per pole as reimbursement for alleged Unauthorized Attachments for the five (5) years immediately prior to the date of this Agreement.

2. **Payment for Proportionate Share of Audit Costs.** Level 3 shall pay to City the sum of \$ 6,356 as reimbursement to City for Level 3's proportionate share of the Audit Costs.

3. **Pole Attachment Agreement.** The parties have negotiated the Pole Attachment Agreement to govern the rates, terms and conditions of Level 3's access to the City's electric poles. Pursuant to the Pole Attachment Agreement, Level 3 shall pay an annual pole attachment fee of \$16.50 per pole, subject to increases as set forth therein. Level 3 shall initially pay pole attachment fees for attachment to 448 poles. Such number shall be adjusted up or down in accordance with the actual number of poles to which Level 3 facilities are attached, reflecting the addition of billable attachments to new poles or removal of all attachments from included poles. The City shall conduct a joint audit of Level 3's and all franchise utility attachments within eighteen (18) months following the date of this Agreement. In the event it is determined, pursuant that audit, that Level 3 is attached to greater or fewer than 448 poles, the pole count upon which pole attachment fees are assessed shall be corrected and Level 3 shall pay the pole attachment fee of \$16.50 per pole for each additional pole identified in the audit or be credited the pole attachment fee per pole for the number of poles that Level 3 paid for attachments under this Agreement exceeding the newly audited number of attachments. The corrected pole attachment fees shall be retroactively applied to cover the same five (5) year term upon which payment is initially being made pursuant to paragraph 1 of this Agreement.

3. **Mutual Limited Release.** Subject to Level 3 paying the sums set forth in Paragraphs 1 and 2 to the City by no later than 30 days after the final approval by the City commission of this Settlement Agreement, each Party hereby mutually releases the other Party and its respective directors, officers, shareholders, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, successors, assigns, and executors from and against any and all claims related to compensation for Unauthorized Attachments and Audit Costs prior to the date of this Agreement except as provided herein.

4. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. Each Party hereto is represented by that Party's own counsel (or has had the opportunity to confer with counsel of their own choosing) and has had the benefit of (or the opportunity to have the benefit of) such counsel's advice in reviewing, commenting upon, and modifying this Agreement.

5. **Modification of Agreement.** This Agreement may not be amended or modified except by written instrument signed by all of the Parties hereto, and the Parties agree that this provision may not be waived except in writing.

6. **Waiver.** The rights of the Parties under this Agreement are to be considered cumulative, and the failure on the part of any Party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition herein. The waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

7. **Cooperation.** The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto.

8. **No Admission of Liability.** By this settlement, no Party admits any liability, but rather the Parties have agreed to this settlement as a compromise of disputed claims in the interests of avoiding the costs and uncertainty of litigation.

9. **Time is of the Essence.** Time is of the essence for all obligations under this Agreement.

10. **Headings.** The headings used in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision in it.

11. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect.

12. **Benefit and Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. This Agreement may be executed in counterparts, which, taken together, shall constitute one and the same instrument. The individuals signing below on behalf of entities represent and warrant that they have the full authority to bind their respective entities to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as an executed original.

13. **Governing Law, Venue, and Jury Trial Waiver.** This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law. Venue for any action relating to or arising out of this Agreement shall be in Palm Beach County, Florida. Each party also agrees to waive any and all rights to a trial by jury for any and all disputes or claims which may be related to or arise out of this Agreement.

14. **Attorneys' Fees.** Each Party shall bear its own attorneys' fees and costs in connection with this settlement of the above-referenced matter and the negotiation and preparation of this Agreement. Furthermore, in any legal action or other proceeding

arising out of or relating to this Agreement including, without limitation, enforcement of the terms of this Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with such dispute.

15. **Independent Legal Advice.** The Parties have had the opportunity to obtain independent advice of legal counsel of their own selection. Each of the Parties acknowledges that they have entered into this Agreement freely and voluntarily, believing it to be in their best interest. The Parties have entered into this Agreement with a full and complete understanding of their legal rights and neither Party is under any current impediment that would prevent their full and complete understanding of this Agreement and their free and voluntary acceptance of the terms and conditions of this Agreement. The Parties to this Agreement further acknowledge and agree that none of the signatories for any Party is/are suffering from any physical, mental, or other condition that would impair their ability to contract and their ability to understand fully the terms and conditions of this Agreement. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

16. **Effective Date.** The Effective Date of this Agreement is the date the City Commission for the City of Lake Worth Beach approves this Agreement.

Remainder of this page intentionally left blank.
Signature pages follow.

IN WITNESS WHEREOF, the parties hereto have made and executed this Settlement Agreement and Release as of the day and year set forth below by the City.

CITY OF LAKE WORTH BEACH, FLORIDA

Date: _____

Betty Resch, Mayor

ATTEST:

Approved as to form and legal sufficiency:

Melissa Ann Coyne, CMC, City Clerk

Glen J. Torcivia, City Attorney

LEVEL 3 COMMUNICATIONS, LLC

By: *Danett Kennedy*
Danett Kennedy, Senior Manager,

NIS/ROW
[Corporate Seal]

STATE OF Colorado)
COUNTY OF Broomfield)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 22 day of Nov., 2021, by D. Kennedy, as the Sr. Manager [title] of Level 3 communications, a limited liability company authorized to do business in Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the company to the same.

[Signature]
Notary Public Signature
Notary Seal:

