

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: January 4, 2022

DEPARTMENT: Electric Utility

TITLE:

Level 3 Communications, LLC Pole Attachment and Settlement Agreement

SUMMARY:

Settlement Agreement and Pole Attachment Agreement with Level 3 Communications, LLC covering prior unauthorized pole attachments and continued attachment to City electric utility poles.

BACKGROUND AND JUSTIFICATION:

The City requires Pole Attachment Agreements (“Agreements”) with companies seeking to make use of City utility poles in the conduct of their businesses, however after many years of lack of attention by all parties the Agreements were not up to date, did not reflect the number of or current names of companies attached, was not accurate in terms of number of attachments, and were not reflective of prevailing market rates. Accordingly, Staff initiated a review of the entire process, conducted a pole attachment survey across City’s electric utility’s entire service territory, and entered into negotiations with the attaching entities to recover amounts related to unauthorized attachments and establish new standardized and uniform Agreements.

On April 3, 2018, the City issued a Task Order to Wantman Group, Inc., (WGI) under RFQ 18-303 to complete an audit of the City’s electric utility poles to identify the companies attached to City poles and number of attachments to each pole. The results of the audit indicated significant discrepancies with City records to the benefit of attaching entities. Staff has since successfully completed settlement agreements and implemented new agreements with multiple companies. One such company, Level 3 Communications, LLC (Level 3) was found to be attached to 448 utility poles without a Pole Attachment Agreement with the City. The audit and findings were shared with Level 3 for review and discussion.

Over the past eight months, the Electric Utility in conjunction with the City’s legal team, has worked with Level 3 on a Settlement Agreement in addition to a new Pole Attachment Agreement. The Settlement Agreement recovers five years of attachment fees for the 448 unauthorized attachments at \$16.50 per pole for a total of \$36,960. In addition, the City will also be recovering \$6,356 as reimbursement to the City for Level 3’s proportionate share of the WGI Audit costs. The one-time amount to be paid to the City by Level 3 under the Settlement Agreement is \$43,316.

The new Pole Attachment Agreement requires Level 3 to pay the City \$16.50 per pole for years 2022 through 2024 after which a 3% increase will be applied. The new pole attachment rates are applied uniformly across all attaching companies and are reflective of the results of a state-wide rate poll of municipal electric utility pole attachment rates conducted by the Florida Municipal Electric Association (“FMEA”). As a result of the new pole attachment agreement, the revenues expected for FY2022 through FY2024 from Level 3 are \$7,392 annually.

Approval of the Settlement Agreement and the Pole Attachment Agreement will allow Level 3 to proceed with expanding their business and increased numbers of pole attachments within the City's electric utility service territory.

MOTION:

Move to approve/disapprove Settlement Agreement and Pole Attachment Agreement with Level 3 Communications, LLC for unauthorized attachments and new Pole Attachment Agreement for FY 2022 in the amount \$50,708.

ATTACHMENT(S):

Fiscal Impact Analysis
 Level 3 Settlement Agreement
 Level 3 Pole Attachment Agreement
 Pole Attachment Revenue Summary

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	0	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	\$50,708	\$7,392	\$7,392	\$7,392	\$7,392
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	\$50,708	\$7,392	\$7,392	\$7,392	\$7,392
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY22 Budget	Current Balance	Agenda Revenue	Balance
401-0000-341-90.90	Government Charges & Fees Misc	N/A	\$255,590	\$255,590	+\$50,708	\$306,298