

RESOLUTION 2021-6

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE RIGHTS-OF-WAY USE AGREEMENT AND SETTLEMENT WITH LEVEL 3 COMMUNICATIONS, L.L.C.

WHEREAS, on May 14, 2019, the City of University City (the "City") entered into an agreement with Level 3 Communications, L.L.C. for use of the City's rights-of-way for communications facilities (the "ROW Use Agreement"); and

WHEREAS, the ROW Use Agreement's term has expired and needs to be renewed; and

WHEREAS, additional terms of the ROW Use Agreement also needed amendment to clarify certain actions the City Council has taken with respect to annual increases of linear foot fee rates for all users in the ROW; and

WHEREAS, Level 3 Communications, L.L.C. also needed an amendment to the notice provision in the ROW Use Agreement; and

WHEREAS, the City Council now desires to authorize the City Manager to enter into the First Amendment to ROW Use Agreement with Level 3 Communications, L.L.C. on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized to execute the First Amendment to the ROW Use Agreement between the City and Level 3 Communications, L.L.C. in substantially the form of Exhibit A, attached hereto and incorporated herein by reference. The City Manager and designees are further authorized to take such additional action as may be necessary or contemplated pursuant to this First Amendment to the ROW Use Agreement or to carry out the intent of this Resolution.

ADOPTED THIS 26TH DAY OF APRIL, 2021.

By: _____

Terry Crow, Mayor

ATTEST:

LaRette Reese
LaRette Reese, City Clerk

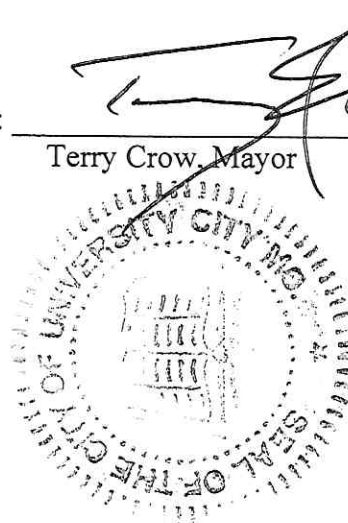


Exhibit A

First Amendment to Level 3 Communications, L.L.C. ROW Use Agreement

FIRST AMENDMENT TO THE RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES BETWEEN THE CITY OF UNIVERSITY CITY, MISSOURI AND LEVEL 3 COMMUNICATIONS, L.L.C

WHEREAS, on May 14, 2019, the City of University City (the "City") entered into an agreement with Level 3 Communications, L.L.C. for use of the City's rights-of-way for communications facilities (the "ROW Use Agreement"); and

WHEREAS, both parties desire to amend the ROW Use Agreement to extend the term and clarify certain increases in the User Fees that have occurred since execution of the ROW Use Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 3, Subsection 3.1, **Term**, is hereby amended by repealing the existing text and replacing such Subsection to read as follows:

Term. This Agreement shall be effective for a term commencing April 1, 2021 for ten (10) years, and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

2. Section 3, Subsection 3.2, **Compensation**, is hereby amended by repealing the existing text and replacing such Subsection to read as follows:

Compensation. The Licensee agrees to pay the User Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the City's policies and Code. Unless otherwise established by the Governing Body, Licensee shall pay to the City as monthly compensation for the use of the Rights-of-Way pursuant to this executed Agreement:

- a. **Linear Foot Fee:** a monthly payment of \$.1683 per linear foot of Facilities located in the Right-of-Way, for an annual amount of two dollars and two cents (\$2.02) per linear foot of Facilities in the Right-of-Way; and

provided that all Right-of-Way Users shall be entitled to a credit against the User Fee due hereunder equal to the payment(s) from such Right-of-Way User in accordance with Section 67.1846 RSMo.; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law. User Fee adjustments during the term of this Agreement shall not increase by more than two percent (2%) per year aggregate over the term (or annually thereafter if the term is extended without a change in this provision) upon designation by the Governing Body with at least 30 days' written notice and adjusted no more than once annually. Licensee acknowledges that by the City Council's passage of Ordinance No. 7136 that the User Fees shall increase by 2%

each January 1, beginning on January 1, 2021, and no further notice shall be due to Licensee.

Licensee states that it currently has 6,278 linear feet of Facilities and 0 antennas installed in City Rights-of-Way ("Existing Facilities"). Licensee intends pursuant to this Agreement to add an additional approximately 0 linear feet of underground Facilities and 0 antennas within the City ROW for the purposes authorized herein, as depicted on Exhibit B attached hereto and incorporated herein. The actual authorized installation shall be limited to that which has received approved permits from the City and the User Fee shall be paid based on the sum of the actual linear foot of Facilities installed and any additional linear foot approved by permit for installation. All User Fees shall be due and payable every month of each calendar year within thirty (30) days of each such month. Each User Fee payment shall be accompanied by a statement, signed as true, which may be sent electronically in advance of payment, stating the greatest total linear feet of facilities located in the Rights-of-Way the preceding month, the total amount of antennas located in the Rights-of-Way, any credit taken for gross receipt taxes or business license fees paid to the City, and the payment of the User Fee made. If any fee statement is determined to understate the User Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Any payments due to the City hereunder and not paid at the due date shall bear interest at the rate of one and one-half percent (1.5%) per month, unless such other maximum rate is established by law. On an annual basis by January 31, Licensee shall submit an affidavit certifying as true each statement submitted for the previous twelve (12) months, including the statement for the immediately preceding December. If any statement for the previous twelve (12) months was incorrect, a corrected statement shall be submitted with the affidavit. If an incorrect fee statement understated the User Fee owed, then such additional amount owed, including with interest on said amount as provided herein, shall be submitted with the affidavit. Licensee's credit to the User Fee as authorized above shall be calculated based upon gross receipt taxes paid and attributable to gross receipts received for the same months in which the User Fee is attributable. The User Fee required in this Section shall be paid by Licensee as required herein without offset, credit, refund, or deduction except for such credit as is expressly provided for above for gross receipts taxes paid. Licensee may make the User Fee and eligible tax payment that is subject to credit above all as a single combined payment or in separate payments and may also send a combined statement or separate monthly statements meeting the applicable requirements.

3. Section 9, Subsection 9.1, Notice is hereby amended by repealing the existing text for the Notice to Licensee and replacing such address for Notice to Licensee to read as follows:

If Notice to Licensee:
NIS/ROW
Level 3 Communications, L.L.C.
1025 Eldorado Blvd
Broomfield, CO 80021

4. The parties hereby reaffirm that all other provisions of the Agreement, not specifically amended herein shall remain in full force and effect through the term and any authorized extension and shall be deemed incorporated herein and binding on the parties. This Amendment shall be effective on April 1, 2021.

5. The Agreement together with this Amendment represents the entire agreement among the parties, and Level 3 Communications, L.L.C. agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Amendment.

IN WITNESS WHEREOF, the parties hereto execute this Amendment the day and year written below.

CITY OF UNIVERSITY CITY

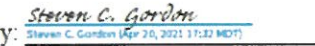
By: 
GREGORY ROSE, CITY MANAGER

Date: April 22, 2021

ATTEST:


LaRette Reese, City Clerk

LEVEL 3 COMMUNICATIONS, L.L.C.

By: 
Steven C. Gordon (Apr 20, 2021 11:22 MDT)

Print name: Steve Gordon

Title: Sr. Director

Date: Apr 20, 2021