

ADOPTED 3/10/2017

ORDINANCE NO. 17-543

WHEREAS, on or about October 12, 2000, the City of Huntsville, Alabama ("City") adopted Ordinance No. 00-819, entitled "An Ordinance Respecting the Use of the Public Rights-of-Way in the City of Huntsville, Alabama By Level 3 Communications, LLC" ("Ordinance No. 00-819"), which was subsequently accepted by Level 3 Communications, LLC ("Level 3"); and

WHEREAS, pursuant to Ordinance No. 00-819, the City granted to Level 3 the non-exclusive right to use the public rights-of-way to construct, maintain and operate certain fiber optic cable and related necessary equipment along a defined route in order to pass through the corporate limits of the City; and

WHEREAS, on or about May 25, 2006, the City and Level 3 (collectively referred to hereinafter as the "parties") entered into that certain "Settlement Agreement and Mutual Release" (Resolution No. 06-519) ("Settlement Agreement and Mutual Release"), whereby the parties agreed, in part, as follows:

In exchange for Level 3's right to use and occupy public rights-of-way in the City in accordance with Ordinance No. 00-819, Level 3 has agreed to provide as compensation, in lieu of the compensation currently set forth in Sections 8.1 (Use Fee) and Section 8.7 (Provision of Fiber) of Ordinance No. 00-819, and the City has agreed to accept, certain fiber and facilities and the maintenance thereof in accordance with an Intercity and Intracity IRU and Maintenance Agreement ("IRU and Maintenance Agreement"), which is attached hereto as Exhibit A, and which is to be entered into by the Parties simultaneously with the execution of this Agreement. In the event the rights and benefits conferred upon the City under the IRU and Maintenance Agreement ("City's Rights and Benefits") terminate during either the remaining ten-year term of Ordinance No. 00-819 or the fifteen-year term of the IRU and Maintenance Agreement, for any reason, then Level 3 has agreed to pay to the City, in accordance with certain provisions contained in the IRU and Maintenance Agreement and Ordinance No. 00-819, annually the sum of \$190,349.40; and in the event there is a partial termination of the City's Rights and Benefits, for any reason, then said payment will be reduced to reflect what the parties agree is the proportionate value remaining.

WHEREAS, in response to said Settlement Agreement and Mutual Release, on May 25, 2006, the City adopted, and Level 3 subsequently accepted, Ordinance No. 06-518, amending Ordinance No. 00-819, which included an extension of the term to August 23, 2016, and a modification of the Use Fee as embodied in that certain "Intercity and Intracity IRU and Maintenance Agreement" ("IRU and Maintenance Agreement") made and entered into between the City and Level 3 on or about May 25, 2006, and expiring on August 23, 2021 (Resolution No. 06-520); and

WHEREAS, on or about March 11, 2010, the City adopted, and Level 3 subsequently accepted, Ordinance No. 10-205, amending Ordinance No. 00-819, as amended by Ordinance No. 06-518, in order to allow for the expansion of Level 3's fiber route inside the corporate limits of the City and to increase the Use Fee commensurately; and

WHEREAS, Level 3's right to use and occupy the rights-of-way pursuant to Ordinance No. 00-819, as amended by Ordinance No. 06-518, and as further amended by Ordinance No. 10-205 (collectively referred to hereinafter after as the "Original Ordinance"), expired on August 23, 2016; and

WHEREAS, the IRU and Maintenance Agreement, including the provision of fiber and maintenance in favor of the City, does not expire until August 23, 2021; and

WHEREAS, in order to, in part, allow the timing of the expiration of the rights granted to Level 3 under the Original Ordinance to terminate at the same time as the IRU and Maintenance Agreement, and to compensate the City for the extension of the term of the Original Ordinance, the parties wish to reinstate, revive, and confirm the Original Ordinance so that it is deemed to have continued uninterrupted and in full force and effect up to and through the adoption, approval, acceptance, and publication of this Ordinance, and to further amend the Original Ordinance to extend its term for a five-year period up to and including August 23, 2021, (hereinafter referred to as "Extended Term"), and to adjust the Use Fee to compensate the City for Level 3's continued occupation of the Rights-of-way during the Extended Term.

NOW, THEREFORE, BE IT ORDAINED, by the City Council for the City of Huntsville, Alabama, as follows:

Section 1. That the foregoing premises, including, but not limited to, the terms identified therein, are hereby incorporated herein by reference.

Section 2. That Ordinance No. 00-819, adopted and approved on October 12, 2000, as amended by Ordinance No. 06-518, adopted and approved May 25, 2006, and as further amended by Ordinance No. 10-205, adopted and approved on March 11, 2010, (collectively referred to hereinafter after as the "Original Ordinance"), is hereby reinstated, revived, and confirmed by the parties so that the Original Ordinance is deemed to have continued uninterrupted and in full force and effect up to and through the adoption, approval, acceptance, and publication of this Ordinance.

Section 3. That **Section 4.1** of the Original Ordinance is hereby amended to read as follows:

4.1 Term.

A. Subject to Subsection B below, this Ordinance, and the rights conferred to Level 3 hereunder, unless terminated earlier in accordance with the terms of this Ordinance, shall extend to and expire on August 23, 2021 ("Extended Term").

B. Notwithstanding anything to the contrary contained in this Ordinance, in the event Level 3, at the sufferance of the City, holds over beyond the Extended Term of this Ordinance and continues to exercise some or all of the rights granted by this Ordinance, then Level 3 shall continue to be subject to and comply with all applicable provisions of this Ordinance, including all compensation and other payment provisions, throughout the hold-over period, provided that

any such hold-over shall in no way be construed as a renewal or other extension of the Ordinance, except to the extent an extension is necessary to comply with applicable law. In the event the Extended Term has expired and the parties are in the process of re-negotiating a renewal of this Ordinance or negotiating a new agreement relative to Level 3's use and occupancy of the Rights-of-Way, or as they may otherwise agree, this Ordinance shall continue on a month-to-month basis, provided, however, during any holdover period, either party may terminate the holdover period by providing 30 days advance written notice to the other party.

Section 4. That **Section 4.2** of the Original Ordinance is hereby amended to read as follows:

4.2 Rights and Obligations Upon Termination of Ordinance. Upon termination of this Ordinance, whether by expiration of the Extended Term or by abandonment of the Facilities by Level 3 or otherwise in accordance with the terms of this Ordinance, all rights and obligations between the parties hereto shall cease other than (a) the obligation to pay outstanding fees and other amounts due to the City; (b) performance under the IRU and Maintenance Agreement pursuant to and for the length its terms; and (c) defense and indemnification obligations as set forth in Section 6 of this Ordinance. The disposition and removal of the Facilities shall be governed by applicable provisions of this Section 4.

Section 5. That **Section 4.4** of the Original Ordinance is hereby amended to read as follows:

4.4 Removal of the Facilities. Subject to any applicable provisions of Section 10 below, upon any termination of this Ordinance, the City, in its sole discretion, may, but shall not be obligated to, direct Level 3 to remove, at Level 3's sole cost and expense, all, or any portion designated by the City, of the Facilities installed by Level 3 from the Rights-of-Way in accordance with all applicable requirements of the City and subject to the following:

A. This provision shall not apply to buried portions of the Facilities which, in the opinion of the City, cannot be removed;

B. In removing the Facilities, or part thereof, Level 3 shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Rights-of-Way and other property in as good condition as that prevailing prior to Level 3's removal of the Facilities from the Rights-of-Way and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments;

C. The City shall have the right to inspect and approve the condition of such Rights-of-Way, after removal and, to the extent that the City determines that said Rights-of-Way and other property have not been left in materially as good condition, as that prevailing prior to Level 3's removal of the Facilities, Level 3 shall be liable to the City for the cost of restoring the Rights-of-Way and other property to said condition;

D. The Surety Bond, liability insurance and indemnity provisions of this Ordinance shall remain in full force and effect during the entire period of removal and associated repair of all Rights-of-Way, and for not less than one hundred twenty (120) days thereafter; and

E. Removal shall be commenced within sixty (60) days of the removal order by the City and shall be substantially completed within six (6) months thereafter including all reasonably associated repairs of the Rights-of-Way.

F. If Level 3 fails to comply with the City's removal order pursuant to this Section 4.4, the City may remove the Facilities at Level 3's expense, and Level 3 shall reimburse the City for all expenses within sixty (60) days after receipt of an invoice therefor. Level 3 hereby waives any claims for damages to the Facilities that may arise as a result of the City's actions.

G. Level 3 may request the City to accept, at no cost to the City, title to all or any portion of the Facilities, including any portion of the Facilities that the City has ordered Level 3 to remove. The City may, but shall not be obligated to, accept such title to all or any portion of the Facilities that Level 3 has offered to the City. If the City does not accept such title, Level 3 shall comply with the City's removal order and the City shall have all rights and remedies provided under this Ordinance, including this Section 4.4.

Section. 6. That **Section 8.1** of the Original Ordinance is hereby amended to read as follows:

8.1 USE FEE.

A. Use Fee for the Extended Term.

(1) During the Extended Term, up and until August 23, 2021, the compensation due to the City for the use of the Rights-of-Way shall be deemed to be as previously agreed to through the Settlement Agreement and Mutual Release, subject to and except as outlined in Subsection (2) below.

(2) Starting on August 23, 2016, as compensation for the rights and privileges granted by this Ordinance, including the right to occupy specified portions of the Rights-of-Way with its Facilities during the Extended Term, Level 3 shall pay to the City annually in advance the sum of \$19,405.00 for the Lateral Facilities along the North Lateral Route and South Lateral Route added by and set forth in Ordinance No. 10-205. Due to its prior remittance to the City on or about June 12, 2017, Level 3 shall pay the City on or before August 23, 2017, the sum of \$8085.41. Thereafter, starting in 2018, Level 3 shall, on or before August 23rd each year, pay the City annually in advance said Use Fee of \$19,405.00.

B. Use Fee during Hold-Over Period. In the event there is a hold-over beyond the Extended Term in accordance with Section 4.1 B of this Ordinance, then the annual Use Fee shall be the sum of \$209,754.40 ("Use Fee"), which is comprised of (1) \$190,349.40 for the 34,378 linear feet of the Facilities that are set forth in Exhibit A to Ordinance No. 00-819 along that portion of the route set forth in Exhibit B to Ordinance No. 00-819; and (2) \$19,405.00 for the Lateral Facilities along the North Lateral Route and South Lateral Route added by and set forth in Ordinance No. 10-205. According to Section 4.1 B of this Ordinance the hold-over period is on a month to month basis. However, to simplify payment Level 3 desires and agrees to continue to pay the Use Fee on an annual basis starting on August 23, 2021. Thereafter, Level 3 shall pay the City said Use Fee annually in advance each year on or before August 23rd so long as the hold-over period is in effect. In the event the hold-over period ends for whatever reason and there remains an un-earned balance on the pre-paid Use Fee, then said

remaining balance shall either be refunded by the City to Level 3 or, in the event this Ordinance is renewed or the parties re-negotiate a new agreement relative to Level 3's use and occupancy of the Rights-of-Way, then said remaining balance shall be applied thereunder.

C. **Change in Occupancy.** In the event there is a change in Level 3's occupancy of the Rights-of-Way, whether by an appreciable change in the location of the existing Facilities, an expansion of the existing Facilities, or the installation of new facilities, then the parties agree that, within 60 days thereafter, this Ordinance will be amended accordingly to reflect the change, including, but not necessarily limited to, an increase or a decrease in the Use Fee, as may be appropriate.

D. The Use Fee for the Facilities, together with any interest that accrues thereon due to untimely payment as provided for hereinafter in Section 8.4, that is remitted in accordance with this Section 8.1 shall not be required to be earmarked by the City and may, at the City's option, be deposited into its general fund.

Section. 7. That Section 8.3 of the Original Ordinance is hereby amended to read as follows:

8.3 INSPECTION FEES AND COSTS. Level 3 shall be responsible for all costs borne by the City that are directly associated with the execution and performance of its work including but not limited to the construction, maintenance, repair, replacement, and removal of its Facilities within the Rights-of-Way; and such costs are to include without limitation any and all costs the City incurs for its oversight and inspection of the execution and performance of said work; provided, however, the City agrees that any reimbursement it requires for the inspection and oversight costs it incurs will be limited to the hourly rate of Twenty-five Dollars (\$25). In order to obtain reimbursement for costs, the City will submit to Level 3 an itemized invoice and Level 3 will reimburse the City within thirty (30) days from the receipt thereof. In the event Level 3 disputes any of the costs incurred by the City it may present to the City Engineer and Director of Public Works within ten (10) days from the date of the receipt of the invoice adequate documentation evidencing what it claims to be the correct amount and the City Engineer and Director of Public Works may, at their sole discretion, readjust the amount of the reimbursement as they deem appropriate.

Section. 8. That Section 8.4 of the Original Ordinance is hereby amended to read as follows:

8.4 INTEREST. If Level 3 fails to timely pay any amounts due and owing according to the terms of this Section 8, then interest on the amount due shall accrue from the due date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

Section 9. Nothing in this Ordinance shall be construed to affect the rights and obligations of the parties under the IRU and Maintenance Agreement (Resolution No. 06-520).

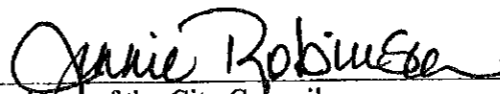
Section 10. This amendment to the Original Ordinance shall be published by Level 3 Communications, LLC in accordance with Section 14 of the Original Ordinance.-

Section 11. Level 3 Communications, LLC shall accept this Ordinance amending the Original Ordinance by executing and delivering the written acceptance in the form provided in Exhibit A hereto

Section 12. All other terms and conditions of Ordinance No. 00-819, as amended by Ordinance No. 06-518, and as further amended by Ordinance 10-205 shall remain unchanged and in full force and effect.

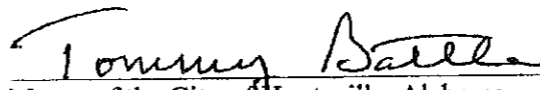
Section 13. This Ordinance shall become effective upon its publication.

ADOPTED this the 10th day of August, 2017.



President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 10th day of August, 2017.



Mayor of the City of Huntsville, Alabama

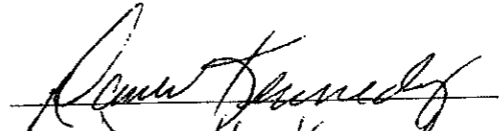
EXHIBIT A

ACCEPTANCE

The undersigned, Level 3 Communications, LLC, agrees to be bound by the provisions of Ordinance No. 17-543, adopted by the City on August 10, 2017, which amends Ordinance 00-819, as amended by Ordinance No. 06-518, and as further amended by Ordinance 10-205.

Dated this 16th day of August, 2017.

LEVEL 3 COMMUNICATIONS, LLC.


By: Danett Kennedy
Its: Site Manager NIS

ATTEST:


By: Katherine Rinehart
Its: Contract Manager

COPY

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CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 14.d.

Meeting Type: City Council Regular Meeting

Meeting Date: 7/27/2017

Type of Action: Introduction

Agenda Type: CITY COUNCIL

Subject:

Ordinance amending Ordinance 00-819, as amended by Ordinance 06-518, as further amended by Ordinance 10-205, concerning use of public rights-of-way by Level 3 Communications, LLC (Legal)

Account Number:

City Obligation Amount:

Total Project Budget:

Other Comments:

Grant Funded:

No

Grant Name - Resolution #:

Resolution #:

ATTACHMENTS:

Description

- ☐ Level 3 Ordinance Amendment
- ☐ Level 3 Ordinance Amendment

ORDINANCE NO. 00-819

**AN ORDINANCE RESPECTING THE USE OF THE PUBLIC RIGHTS-OF-WAY IN
THE CITY OF HUNTSVILLE, ALABAMA BY LEVEL 3 COMMUNICATIONS, LLC**

WHEREAS, Level 3 Communications, LLC ("Level 3") is constructing a nationwide fiber optic telecommunications network and has no present plans to offer telecommunications services or other services, to any Person in the City of Huntsville, Alabama, and has requested that the City consent to the use of the City's Rights-of-Way in a "pass through" manner; and

WHEREAS, Level 3's request is the first such request that the City has received and the City desires to establish the terms and conditions for such use of the Rights-of-Way; and

WHEREAS, the City of Huntsville, Alabama, has the authority to grant the right to use and occupy the Rights-of-Way for the proposed network, and to manage and control the Rights-of-Way and to obtain fair and reasonable compensation for such use and occupancy; and

WHEREAS, the City has considered the request of Level 3 and is desirous of granting a non-exclusive right to use the City's Rights-of-Way for such purpose subject to the terms and conditions of this Ordinance; and

WHEREAS, Level 3 has agreed to accept the use of the Rights-of-Way in accordance with the terms and conditions of this Ordinance.

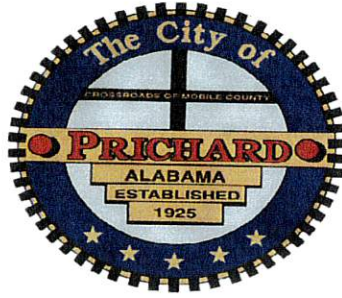
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, as follows:

SECTION 1. AUTHORITY AND DEFINITIONS

1.1 ADOPTED PURSUANT TO POLICE POWERS. The City adopts this Ordinance pursuant to its general police powers and applicable law. Any rights and privileges granted to Level 3 are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and general welfare of the public. Level 3 shall comply with all applicable laws enacted by the City pursuant to its police powers, to the extent not inconsistent with Alabama or federal law.

Jimmie Gardner
Mayor

Franklin S. McMillion
Assistant City Clerk



The City of Prichard
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Prichard, AL 36610
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George E. McCall Jr.
Council President
Councilman District 4

Stephanie Johnson-Norwood
Council Vice-President
Councilwoman District 2

Annie Williams
Councilwoman District 1

Derrick Griffin
Councilman District 3

Ossia Edwards
Councilwoman District 5

May 27, 2025

Amy Potter
Level 3 Communications
Property of Lumen Technologies

Re: Business Licenses and Franchise Fees

Dear Ms. Potter:

We have been discussing this issue for some time. I apologize for the length of time it has taken, but I wanted to make sure all calculations would be correct when we finished. I have looked at the information you have provided. There are two parts to address. One is the normal business license for the company and the other is the franchise fee. We had previously discussed this being a utility and the conclusion from those discussions is that you do not meet the criteria for that status.

1. The business license should be for a telephone company. The cost of the license is \$1,100.00 plus the sum of \$60.00 for every 1,000 inhabitants above 20,000. The license therefore should be \$1,100.00. Plus \$550.00 penalty for each of the years the company was without a license. The license for long distance service is \$278.00 plus \$15.00 for each 1,100 above 20,000 citizens. We will go back to 2022 to compute the amount that is due.
2. The calculations are as follows: Telephone company \$1,100 plus 550.00 and long distance \$278 plus \$139.00 plus \$10.00 issuance fee. The total due is \$2,077.00. This amount would be due for 2023 and 2024 also. The total for all three years would be \$6231.00. The total for the current year would be

\$1100.00 plus \$275.00 penalty and \$278.00 plus \$69.50 penalty and \$10.00 issuance fee. The total for 2025 would be \$1,732.50.

3. The total amount for all years would be \$7973.50.

This is not inclusive of the franchise fee yet to be determined. The franchise fee is due from the date of the expiration of the previous agreement until present. The calculation of this amount will be based upon the formula proscribed in the previous agreement.

Respectfully,

Franklin S. McMillion

Franklin S. McMillion – Assistant City Clerk