RESOLUTION NO. 27-2019

Approving an Agreement and Permit for between Level 3 Communications, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

WHEREAS, Level 3 Communications, LLC, a Delaware Limited Liability Company, has requested authority to provide telecommunications services in the City of Worthington; and,

WHEREAS, the City of Worthington has enacted a comprehensive Right-of-Way Ordinance, Chapter 949 of the Codified Ordinances of the City of Worthington; and,

WHEREAS, City Council found the technical ability, and plan for services of Level 3 Communications, LLC, acceptable; and,

WHEREAS, Level 3 Communications, LLC, has facilities within the community that were formerly owned and operated by tw telecom, ICG Communications, Inc., WilTel Communications Group, LLC, and TelCove Inc. (fka Adelphia Business Solutions of Ohio, Inc.); and,

WHEREAS, the authority is nonexclusive; and,

WHEREAS, Level 3 Communications, LLC, has certified that the company meets the criteria of Section 949.05 of the Codified Ordinances of the City of Worthington for the issuance of a permit;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That pursuant to Chapter 949 of the Codified Ordinances of the City of Worthington, an agreement between the City of Worthington and Level 3 Communications, LLC, a Delaware Limited Liability Company, as attached hereto and made a part hereof is hereby authorized and approved and the City Manager is hereby authorized and directed to execute said agreement on behalf of the City, upon approval thereof by the Director of Law.

SECTION 2. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted May 20, 2019

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council
TELECOMMUNICATIONS AND UTILITY PERMIT FOR THE USE OF PUBLIC
RIGHTS-OF-WAY WITHIN THE CITY OF WORTHINGTON, OHIO

This Agreement is executed on this _____ day of ____________, 2019, by and
between Level 3 Communications, LLC, a Delaware corporation limited liability company,
(“Company”) and the City of Worthington, Ohio, an Ohio municipal corporation (the “City”)
pursuant to Resolution No. 27-2019 passed by the Worthington City Council on
May 20 ____________, 2019.

Now, therefore, in consideration of the foregoing and of the covenants, promises and
conditions hereinafter set forth it is hereby agreed as follows:

I. That the Company, a limited liability company organized under the laws of the State of
Delaware, its successors and assigns, is hereby granted the non-exclusive right, privilege
and authority in accordance with the provisions of Chapter 949 of the Codified
Ordinances of the City to acquire, construct, maintain and operate a telecommunications
system and/or utility in the City in and under, above, across and along the streets, alleys,
thoroughfares, public rights-of-way, public property and easements as the same now exist
or may hereafter be laid out in the City, with minimum interference with the proper use
of same, for the provision of all competitive telecommunications services as authorized
by the Public Utilities Commission of Ohio.

II. The Company shall construct and operate the telecommunications and/or utility system in
accordance with all laws, ordinances, construction standards, governmental requirements,
FCC technical standards and any other standards incorporated by reference. Nothing in
this Agreement permits the Company to provide any other utility services or cable
television services.

III. The Company shall comply with the applicable requirements of Chapter 949 of the City
Codified Ordinances.

IV. The Company shall pay the annual permit fee as determined by City Codified Ordinances
Section 949.07.

V. The Company agrees that all contractors and subcontractors proposed for work on
construction, installation, operation, maintenance and repair of the system shall be
properly licensed under the laws of the state of Ohio and all City ordinances.

VI. Subject to the final requirements of this Section VI, in those areas where telephone and
electric services are provided by underground facilities, the Company shall place all new
facilities underground. In all other areas, the Company agrees to use its Best Efforts (as
defined in Chapter 949 of the City Codified Ordinances) to place all facilities in the City
right-of-way underground except for equipment which is customarily placed on or above
the ground in conjunction with underground transmission facilities. In addition, where
the City Manager or his designee determine that such transmission facilities should not be
located underground, the City Manager shall have the authority to relieve the Company
of the requirement to do so. In making such a determination, the City Manager may take
into account unusual circumstances or physical characteristics including but not limited
to the existence of underground facilities which might interfere with the operations of the
Company, topographical features or use requirements which may interfere with existing
facility locations. The City Manager may also relieve the Company of the requirement to
locate transmission facilities underground when to do so in a particular circumstance
would not be in the best interest of the City. The installation of above-ground locator wire markers is prohibited.

VII. The rights, privileges and authority hereby granted shall not be effective prior to acceptance of this Agreement by the Company and the City and shall terminate three years from the date of acceptance.

VIII. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, and judgments for injury or damages in connection with the Company's (including its employees, contractors and subcontractors) acts or omissions pursuant to this permit.

IX. Whenever in this Agreement the City or Company is referred to, such reference shall be deemed to include the respective successor or assign of either, and all rights, privileges, and obligations herein contained shall bind and inure to the benefit of such respective successor or assign, in which the predecessor of such successor or assign is divested of all such rights, privileges, or obligations, whether so expressed or not.

X. The terms and provisions of this Agreement are joint and several, and the invalidity of any part shall not affect the validity of the Agreement.

XI. If this permit involves the installation of small cell facilities or wireless support structures in the right of way, then the Company shall also comply with the applicable requirements of Chapter 955 of the City Codified Ordinances. In the case of any conflict between the requirements of Chapter 955 and Chapter 949 of the City Codified Ordinances, the provisions of Chapter 955 shall control.

LEVEL 3 COMMUNICATIONS, LLC
By:_________________________
Name:_______________________
Title:_________________________

CITY OF WORTHINGTON
By:_________________________
Name:_______________________
Title:_________________________

Approved as to Form:

Law Director, City of Worthington