

## LICENSE AND FRANCHISE RENEWAL AGREEMENT

THIS AGREEMENT (the Agreement) is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between the Town of Vienna, a Virginia municipal corporation (Town) and Level 3 Communications, LLC (Licensee/Franchisee).

WHEREAS, THE Town and the Licensee/Franchisee originally executed a “License Agreement” (Agreement) on June 16, 2000; and

WHEREAS, term of the Agreement was for five (5) years; and

WHEREAS, the Agreement has been assigned and renewed most recently on October 25, 2021, or five (5) years; and

WHEREAS the licensee Licensee/Franchisee is the sole operator of a private telecommunications system identified herein; and

WHEREAS, this License is granted subject to any and all lawful and applicable zoning conditions and conditional use permits required the Vienna Town Code; and

WHEREAS, the License is not a grant of any special private privilege or sale of public property; the parties hereby agree to the following terms and conditions; and

WHEREAS, Licensee/Franchisee and the Town are desirous of renewing and extending the Agreement for an additional term of five (5) years;

THEREFORE, the Licensee/Franchisee and the Town hereby agree to the following:

Section 1. In consideration of the terms hereof, the payment of required right-of-way user fees by Licensee/Franchisee to the Town, the annual payment rate as proscribed by Virginia Code Section 56-468.1 as compensation to the Town for the use of certain Town streets to run underground fiber conduit through the Town, and other good

and valuable consideration, the Town awards to Licensee/Franchisee, its successors and assigns, for the term of five (5) years and subject to the conditions and limitations described herein, a nonexclusive franchise to use the streets, alleys, rights-of-way, and public places of the Town as shown on the drawing attached as Exhibit A (as the same may hereafter be modified subject to the Town's permitting process) (the Drawing). Exhibit A is hereby defined as "Critical Infrastructure Information" as that term is used in Va. Code Section 2.2-3705.2(14). Exhibit A, as amended, shall be given confidential treatment by the Town and the Town expressly agrees not to release Exhibit A or the contents thereof to third parties. The purpose of this grant is to allow Licensee/Franchisee's construction and/or maintenance of a system of conduits, ducts, mains, and pipes and such other underground facilities for which permits may be issued by the Town (collectively referred to as the facilities) for the purposes of placing there the Licensee/Franchisee's wires, cables and appurtenances thereto for running a telecommunications system throughout the Town to provide telecommunication service and access lines to customers in the Town. Licensee/Franchisee will place all facilities underground unless it is not technically feasible to do so as agreed to by the Town. The Town acknowledges that the permission granted here extends to and includes the existing facilities of Licensee/Franchisee and its affiliate company Level 3 Telecom of Virginia, LLC, which acquired the assets of American Communications Services of Virginia, Inc. The combined facilities are depicted in Exhibit A.

Section 2. All facilities, under or along streets, alleys, rights-of-way, and public places of the Town authorized by this Agreement to be placed and constructed, shall be located underground and as shown on the Drawing (Exhibit A), attached and incorporated

by reference. Prior to construction in and under the streets, alleys, rights-of-way, and public places of the Town, Licensee/Franchisee shall obtain approval from the Town of Licensee/Franchisee's plans, showing the location of the proposed facilities. Any approval shall be in the form of an excavation permit. If such facilities by the Licensee/Franchisee are already in existence, Licensee/Franchisee is authorized to use those facilities. When such plans have been approved, the plans, and any subsequent modifications to them agreed to by the Town, shall be effective and binding to the same extent as if they were set out fully in this Agreement.

Section 3. Licensee/Franchisee agrees to relocate, at its own expense, within one hundred and twenty (120) days of written notification from the Town, all facilities which, in the reasonable discretion of the Town using recognized engineering standards, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities. Notwithstanding the foregoing, to the extent such relocation is necessitated by the actions, omissions, or work of a third party, including but not limited to private developers, private utilities, contractors, or other non-Town governmental entities for relocation of facilities unrelated to the Town's use of the streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities, Licensee/Franchisee shall be entitled to seek reimbursement from such third party for all reasonable relocation costs incurred. Nothing herein shall obligate the Town to reimburse Licensee/Franchisee or any third party for such costs.

Licensee/Franchisee shall relocate the facilities using like construction, or better, if technological advances warrant such, to such places designated by the Town. The Town shall use reasonable good faith efforts to designate locations for any relocated facilities that will permit Licensee/Franchisee to continue to serve its existing customers. Any Town permits needed as a result of a relocation request by the Town, however, shall be at no cost to Licensee/Franchisee. All facilities shall be relocated underground.

Section 4. In the event Licensee/Franchisee permits any unaffiliated third party telecommunications provider to connect Access Lines, as defined in § 56-468.1A of the Code of Virginia, to Licensee/Franchisee's facilities located in the Town's rights-of-way for the purpose of providing telecommunications service, whether by capacity agreement, joint use agreement, common use agreement or any other method whatsoever, Licensee/Franchisee shall notify the Town as soon as reasonably practical of the date on which and the party to which such permission was given in such manner so as to enable Town to assess such third party with access fees to which Town may be entitled. In the event Licensee/Franchisee rents or leases its Access Lines to a third party user and fails to notify Town to the end that Town is unable to collect access fees to which it is otherwise entitled, Licensee/Franchisee will remain responsible for payment to the Town of the Public Right-of-Way Use Fee (as defined in § 56-468.1 of the Code of Virginia) on such rented or leased Access Lines.

Section 5. If Licensee/Franchisee shall, in the construction, operation, replacement, maintenance, removal or repair of its facilities, damage any pavement, street, alley, sidewalk, sewer, water or other pipe or other public property (collectively Public

Facilities) belonging to the Town, Licensee/Franchisee shall promptly repair the same at its own cost and expense.

Licensee/Franchisee shall immediately notify the Town Manager and the appropriate public safety agency (e.g., fire department) of any damage or injury to any Public Facilities caused by work authorized pursuant to the Franchise and without limiting the obligations of Licensee/Franchisee under this Agreement, shall pay to the Town upon demand all costs incurred by the Town for the repair of such damage or injury, including, but not limited to, all costs incurred by the Town in purchasing water from alternative sources in the event of any interruption in Water Service.

If Licensee/Franchisee shall default in this obligation, the Town may cure such default and shall charge the work to the Licensee/Franchisee in accordance with the Town's then current standard rates for such work. However, prior to performing any such work the Town will give Licensee/Franchisee written notice of the default and a period of thirty (30) days after receipt of such notice within which to cure the default. The Town shall extend the thirty-day period for a reasonable time if such default cannot reasonably be cured within such period and Licensee/Franchisee has commenced and is diligently pursuing such cure. If Licensee/Franchisee does not so cure the default, the Town will provide Licensee/Franchisee with a written notice advising Licensee/Franchisee of the expiration date of the cure period and stating the date (which date shall be no less than ten (10) business days after Licensee/Franchisee's receipt of such notice) on which the Town intends to commence the work on Licensee/Franchisee's behalf.

Notwithstanding the foregoing, if such default in the opinion of the Town threatens the public health or safety, the Town shall make a reasonable effort to provide

Licensee/Franchisee with telephonic notice and an opportunity to immediately cure such default. If the Town is unable to reasonably provide such notice or Licensee/Franchisee fails to immediately cure the default, the Town may commence the cure on Licensee/Franchisee's behalf. In any event, the Town shall immediately thereafter provide Licensee/Franchisee with written notice of Town's performance of such emergency work.

Prior to commencing work on any street, alley, right-of-way, or public ground, Licensee/Franchisee shall exercise reasonable judgment in order to avoid any inconvenience to the general public or the Town's work forces. Licensee/Franchisee shall not impede the flow of traffic to any greater extent than is reasonably necessary in performing any maintenance, removal, replacement, construction or repairs.

Licensee/Franchisee shall strictly abide by the permit or approval requirements, including those requirements relating to time limitations.

Licensee/Franchisee is bound by all applicable lawfully enacted police power measures now or in the future adopted by the Town, in addition to the terms of this Agreement.

Section 6. Licensee/Franchisee shall indemnify the Town, its officers, officials and employees (for purposes of this Section only, collectively the Town), and shall hold the Town harmless from liability on account of injury, death or damage to persons or property arising out of construction, improvement, removal, maintenance, repair or operations of its facilities. If suit shall be brought against the Town, either independently or jointly with Licensee/Franchisee, Licensee/Franchisee will defend, indemnify and hold the Town harmless in any such suit, at the cost of Licensee/Franchisee. If a final judgment is obtained against the Town, either independently or jointly with Licensee/Franchisee,

Licensee/Franchisee will pay the judgment, including all costs and attorney fees and will hold the Town harmless therefrom. The indemnity, however, shall not apply to claims for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting solely from the negligence or the willful misconduct or other intentionally wrongful acts or omissions of the Town, its agents or employees.

Section 7. If Licensee/Franchisee does not comply with the terms of this Agreement within thirty (30) days after receipt of written notice of such non-compliance from the Town, the Town, at its option, may terminate the Franchise. However, such thirty-day period will be extended for an additional period of time as is reasonable under the circumstances if Licensee/Franchisee's non-compliance cannot reasonably be cured within the thirty-day period and if Licensee/Franchisee has commenced a cure within such period and continues to diligently pursue such cure.

Section 8. If this Agreement is terminated for default, Licensee/Franchisee shall convey to the Town all right, title and interest that Licensee/Franchisee has in any streets, alleys, rights-of-way, and public ground. Licensee/Franchisee shall bear the full costs of such conveyances. Additionally, Licensee/Franchisee shall release any and all permits provided by the Town to construct its facilities.

Section 9. This Franchise is not assignable or transferable without the express written permission of the Town. However, Licensee/Franchisee may assign, transfer or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with the Licensee/Franchisee, or pursuant to any financing, merger or reorganization of Licensee/Franchisee resulting in an otherwise legal and statutorily acceptable successor, provided the Town is advised of the action within

thirty (30) days form the date of assignment, transfer or sublet. Any successor(s) or assignees in whole or in part of Licensee/Franchisee shall be bound by all of the terms and conditions of this Franchise and shall be subject to all provisions, obligations, stipulations and penalties here prescribed.

Section 10. The rights, privileges and duties here granted shall continue for five (5) years after the effective date. The effective date shall be the date of the Town's adoption of the required ordinance approving this Franchise. Prior to the expiration of this Agreement, the parties may make a good faith effort to negotiate and enter into a new Franchise Agreement upon reasonable terms and conditions. The Town retains the absolute right to purchase the facilities, pursuant to condemnation proceedings or otherwise pursuant to law for the fair market value of the facilities upon the expiration or termination of this Agreement. Unless released by the Town, Licensee/Franchisee shall remove all its facilities from the streets, alleys and public places of the Town at the expense of Licensee/Franchisee as soon as possible after the expiration, termination or abandonment of this Agreement, or by such reasonable time to be prescribed by the Town Council. The Town may abandon such facilities without removal upon approval.

Section 11. Upon the effective date hereof, Licensee/Franchisee shall provide a letter of credit or enter into a bond in the sum of Twenty Five Thousand Dollars (\$25,000.00), with good and sufficient surety, acceptable to the Town Attorney, conditioned to the effect that Licensee/Franchisee will construct and maintain, or if constructed, will maintain, the facilities in good order throughout the term of the grant, and (subject to the cure rights set forth in Section 7 hereof) will comply with this Agreement in all respects. Subject to Section 13 hereof, this Agreement shall be void if

Licensee/Franchisee does not obtain (or has not obtained) an initial permit for installation of facilities within thirty-six (36) months after the date of Town's adoption of the approving ordinance. In the event of any noncompliance with any of the terms of this Agreement by Licensee/Franchisee, the Town is caused to draw upon said bond or letter of credit thereby reducing the principal amount thereof, Licensee/Franchisee shall immediately cause the said bond or letter of credit to be restored to and maintained at the principal sum of \$25,000.00. Town reserves the right to require an increase in such bond or letter of credit not to exceed \$100,000.00 at such time as Licensee/Franchisee expands its operation to actually provide access lines within the Town so as to require placement of additional underground lines and conduit.

Section 12. This Agreement was accepted in the Commonwealth of Virginia and shall be governed by the laws thereof, which laws shall prevail in the event of any conflict of laws.

Section 13. Any notice to be given under this Agreement shall be mailed or delivered to the Town of Vienna, Attention: Town Manager, 127 Center Street, South, Vienna, Virginia 22180 and to Licensee/Franchisee, Level 3 Communications, LLC Attn: NIS ROW, 931 14<sup>th</sup> St. Denver, CO 80202, registered or certified mail, if mailed, return receipt requested, with postage prepaid, or by courier service, if delivered, with signed evidence of receipt; and shall be deemed delivered when received or refused by the addressee. The parties may change these addresses by like notice.

Section 14. Notwithstanding the foregoing, the parties and each of them shall be excused from performing hereunder so long as performance is prevented or delayed by *Force Majeure*.

Level 3 Communications, LLC

By: \_\_\_\_\_

Date of Acceptance

\_\_\_\_\_

TOWN OF VIENNA, VIRGINIA

By: \_\_\_\_\_  
Linda J. Colbert, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley M. Kozlowski, CMC  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven D. Briglia, Town Attorney