

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/13/2017

SUBJECT:	SUBMITTED BY:
License Agreement for Use of Village Rights-of-Way	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of a license agreement with Level 3 Communications for the use of the Village's rights-of-way for the installation, operation and maintenance of an underground fiber optics telecommunications system.

STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 identified *Exceptional Municipal Services*.

FISCAL IMPACT

Level 3 Communications will pay the Village \$5,000.00 for a license fee.

RECOMMENDATION

Approval on the June 13, 2017 consent agenda.

BACKGROUND

Level 3 desires to install, operate and maintain underground fiber optic telecommunications cables within the Village's rights-of-way. This License Agreement allows Level 3 to do so. Section 253 of the Telecommunications Act of 1996 (47 U.S.C. 253) provides that the Village may not prohibit or have the effect or prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Further, the Illinois Telephone Company Act (220 ILCS 65/4) authorizes telecommunications carriers, such as Level 3, to construct, maintain, alter and extend its facilities along, upon, under and across any highway, street, alley, or public right-of-way dedicated to utility purposes, so long as it does not inconvenience or disturb the public in the use thereof.

The key terms of the amendment are as follows:

- The term of the License Agreement would be ten years from the date of the execution by the Village. The License Agreement may be renewed for successive five year terms upon written consent of the Village and Level 3.
- Level 3 will pay a \$5,000.00 license fee for the initial term, and the parties will agree upon a renewal fee at the time of any such renewal.
- The License Agreement is not specific to one location as Level 3 has indicated a desire to install in several locations. However, Level 3 must submit a permit application, pay the applicable permit

fees, and obtain a permit for each location where the cables will be installed. The Village will approve each proposed location.

- Although Level 3's work consists mostly of installation of underground fiber optic cables, the Agreement allows for aerial cable installation as well. However, it does not allow Level 3 to install small cell equipment. They will install the cables in the Village's rights-of-way in a manner not to inconvenience or disturb any of the Village's public utility infrastructure or any other permitted or authorized users of the rights-of-way.
- Level 3 must post a letter of credit to insure compliance with the License Agreement and the Village's ROW Standards.
- Level 3 is required to restore the rights-of-way to the same condition as before the installation, maintenance or repair.
- The Village can require Level 3 to relocate or remove its cables in certain circumstances.

ATTACHMENTS

Resolution

License Agreement

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF A
 MASTER LICENSE AGREEMENT
 BETWEEN LEVEL 3 COMMUNICATIONS, LLC
 AND THE VILLAGE OF DOWNERS GROVE
FOR USE OF VILLAGE RIGHTS-OF-WAY**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Master License Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Level 3 Communications, LLC (the "Licensee"), for the use of Village rights-of-way for the installation, operation and maintenance of telecommunications facilities, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

 Mayor

Passed:

Attest:

 Village Clerk

**MASTER LICENSE AGREEMENT BETWEEN
LEVEL 3 COMMUNICATIONS, LLC
AND THE VILLAGE OF DOWNERS GROVE
FOR USE OF VILLAGE RIGHTS-OF-WAY**

THIS LICENSE AGREEMENT ("this Agreement") is entered into by and between LEVEL 3 COMMUNICATIONS, LLC located at 1025 Eldorado Blvd, Broomfield, CO 80021 (hereinafter referred to as "the Licensee"), and the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, (hereinafter referred to as the "Village"), for the use of Village rights-of-way for the installation, operation and maintenance of telecommunications facilities.

WHEREAS, the Village is the exclusive owner of certain public rights-of-way, and has approved official standards for the construction of facilities on the public rights-of-way; and

WHEREAS, the Village has the right and power to regulate and permit the installation, attachment, operation and maintenance of telecommunications facilities upon public property and in the public rights-of-way within its municipal boundaries; and

WHEREAS, Licensee desires to construct, install, attach, operate, repair, maintain and remove fiber telecommunications facilities in and/or upon the Village's public rights-of-way (the "ROWs") within the Village's boundaries, subject to the provisions of this Agreement; and

WHEREAS, in consideration of the payment of a license fee, the Village desires to allow Licensee to utilize the ROWs for such purposes, subject to the provisions of this Agreement; and

WHEREAS, the Village Council has determined that the establishment of a Master License Agreement for telecommunications use of public ways will properly facilitate and manage the deployment of telecommunications facilities without requiring a telecommunications company to come before the Village Council each time it seeks approval of a site specific permit for a facility in the ROW; and

WHEREAS, regulation of the deployment of telecommunication facilities within Village ROWs can be accomplished through the use of site-specific permitting, managed and controlled by the Village, but only after a telecommunications company agrees to the terms of this Agreement; and

WHEREAS, Section 253 of the Federal Communications Act of 1934, as amended, including 47 U.S.C. Section 253, and Illinois 220 ILCS 5/21-1001, provides that the Village has the authority, subject to certain limitations, to control access to and use of the ROWs within the Village; and

WHEREAS, the Village has the authority to enter into this License Agreement pursuant to the powers granted it by Article VII, Section 10(a) of the Illinois Constitution of 1970, and finds that entering into this Agreement is in the best interests of the Village, its residents, and the public; and

WHEREAS, Licensee is authorized and empowered to enter into this Agreement and to perform the covenants and promises herein made and undertaken.

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the Licensee and the Village agree as follows:

1. **Recitals.** The above recitals are hereby incorporated into this License Agreement as if fully set forth in this section 1.

2. **Grant of License.** For and in consideration of the mutual covenants herein, and subject to the terms and conditions set forth herein and compliance with all applicable Federal, State and local laws and regulations, the Village grants a non-exclusive revocable license ("License") to Licensee for the use of the ROWs to construct, install, operate, use, own, repair, maintain and remove underground and aerial fiber telecommunications facilities (the "Facilities").

The License granted by this Agreement shall not convey any right, title or interest (including leasehold interest) in the ROWs, but shall be deemed to be a license only to use and occupy the ROWs for the limited purposes stated herein. In the event of default by Licensee, the Village shall not be obligated to bring a forcible entry and detainer action to terminate Licensee's rights hereunder. The rights granted to Licensee by the Village are and shall be at all times subordinate to the Village's right to ingress and egress and use of the public ROWs. All rights and obligations of the Licensee under this Agreement shall be exercised by the Licensee at its sole cost and expense.

This Agreement and the right it grants to use and occupy the ROWs shall not be exclusive and do not, explicitly or implicitly, preclude the issuance of other licenses to operate telecommunications facilities within the Village's municipal boundaries.

3. **Term; Fees.** The License granted by the Village to Licensee shall be for a period of ten (10) years from the Effective Date of this Agreement. For the initial term, Licensee shall pay a license fee in the amount of Five Thousand Dollars and No Cents (\$5,000.00) to the Village prior to the issuance of any permits. The term of this Agreement shall be for a period of ten (10) years, beginning on the date approved by the Village Council and ending ten (10) years thereafter, unless otherwise sooner terminated as provided for herein. For the initial term, Licensee shall pay a one-time lump sum license fee in the amount of Five Thousand Dollars (\$5,000.00) to the Village prior to the issuance of any permits. This Agreement may be renewed by mutual agreement of the parties for successive ten (10) year terms provided that Licensee is in full compliance with the terms and conditions of this Agreement at the time of renewal. This License Agreement shall automatically renew for an additional five (5) year term provided that Licensee is in full compliance with this Agreement. Licensee shall make written request for the further renewal of this License Agreement at least sixty (60) days prior to the expiration of the current term.

Unless otherwise provided by law, each renewal shall be subject to a License Fee that will be determined at the time of each renewal. In the event Licensee chooses not to renew this Agreement or the parties cannot agree upon an amount for the License Fee for a renewal term, this License Agreement shall terminate and Licensee shall remove its Facilities from all Village

ROWs and restore all ROWs as required herein. Licensee shall also be required to pay any applicable permit fees for each permit issued.

4. **Title; Condition of ROWs.** It is understood and agreed that the Village makes no representations, warranties or assurances with respect to the following: the condition of the title or boundaries of the ROWs; the condition of the underground duct or conduit; other utilities or facilities in the ROWs; any other improvements or soils located on the ROWs; or the suitability of the ROWs for Licensee's intended use. Licensee assumes all risks associated with the placement, operation and maintenance of the Facilities within the ROWs and suitability of the ROWs for its Facilities. Licensee accepts the ROWs in an "As Is, Where Is" condition, including any environmental conditions, and accordingly, the Village shall not be held liable for any damages or liabilities resulting from any actions that arise because of any claims concerning the title, boundaries or condition of the ROWs.

5. **Location.** The location of the Facilities shall be as approved by the Village's Director of Public Works or designee. Licensee shall provide the Village with an accurate map "as built" certifying the proposed locations of the Facilities within the ROWs each time it submits a permit application. Licensee shall provide an updated map "as built" each time any location changes are made to the Facilities. Unless otherwise stated on a permit issued by the Village, Licensee shall not locate the Facilities so as to unreasonably interfere with the use of the ROWs by the Village, by any utility, by the general public or by other persons authorized to use or be present in or upon the public ROWs. Licensee shall relocate, at its sole cost and expense, any part of its Facilities that is not located in compliance with the permit requirements.

6. **Use of ROWs.** In its use of the ROWs and any work to be performed thereon, Licensee shall comply with all applicable laws, ordinances, regulations and requirements of federal, state, county and local regulatory authorities, including the applicable provisions of the Downers Grove Municipal Code, and the Village Council Policy entitled "Standards for the Construction of Facilities on the Public Right-of-Way" dated 11-6-07, as may be amended from time to time ("the Village ROW Standards"). In the event of a conflict between this License Agreement and the Village ROW Standards, the terms and conditions of this License Agreement shall control.

Licensee shall use and occupy the ROWs to construct, install, operate, use, repair, maintain and remove the Facilities, which shall be limited to underground conduit and fiber telecommunications cable where existing similar utilities are underground, and aerial fiber optic telecommunications cable where existing similar utilities are located aerially, and related equipment and facilities only, it being specifically understood that the ROWs shall not be used for the burning of refuse, the accumulation and/or storage of debris or other material, or for any unsanitary or unhealthful purposes. All parts of Licensee's Facilities shall be underground where feasible. Any unauthorized or impermissible use of the ROWs shall be deemed to be a material breach of this License Agreement. Licensee does not have authority to install any small cell facilities without approval by the Village and a written amendment to this Agreement.

Licensee warrants that the installation of the Facilities will be performed without any trenching or open trenching, but rather by directional boring. If directional boring is not possible for installation of the required Facilities, Licensee agrees to work with the Village's Director of Public Works, or designee, to determine the method of installation to be used, and to obtain the permission of the Village. Licensee shall not disturb any pavement for the installation,

operation, maintenance or removal of its Facilities. All movement and storage of equipment and materials shall be confined to the area designated by the Village. All surplus excavated material shall be removed from the ROWs and disposed of in accordance with any applicable laws or regulations. All tree stumps, and other debris resulting from construction operations shall be removed from the ROWs.

7. **Installation, Operation and Maintenance.** As a condition precedent to its right to access, use or attach any of its Facilities, Licensee shall, prior to occupying any area, submit a site-specific permit application for each location, including all siting, design, construction methodology, manufacturer's specifications, and structural engineering reports as necessary, and receive from the Director of Public Works or designee a site-specific permit for each location. The Director of Public Works or designee may request additional information if necessary to process the application. The Licensee shall also pay any applicable permit fees as required by law and the Village ROW Standards.

Unless otherwise provided by law, the Village reserves the right to refuse to approve or authorize any permit application when it determines that space in a ROW is inadequate to accommodate the Licensee's Facilities. All terms and conditions contained in this Agreement shall be incorporated into each individual permit obtained for each location. The installation, operation and maintenance of the Facilities shall comply with all applicable ordinances, statutes, laws or regulations.

The Licensee, in the performance an exercise of any of its authorizations and obligations under this Agreement shall not obstruct or interfere in any manner with the Village ROWs, existing utility easements, private rights of way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, poles, aerial and other existing telecommunications facilities without the express written approval of the Village or the other owners, including franchisees, of the affected property. If Licensee proposes to install its Facilities on a non-Village owned utility pole in the ROW, Licensee shall submit its written agreement with the franchisee or licensee which owns the existing utility pole as part of its site-specific permit application.

Except to the extent caused by the Village's gross negligence or willful misconduct, the Village shall not be liable to the Licensee or its customers for any interruption of service to the Licensee or interference with the Licensee's Facilities for any reason whatsoever.

Maintenance of the Facilities within the ROWs shall be the responsibility of Licensee. The Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local laws, regulations and policies. Licensee shall use due care to insure that no damage, beyond reasonable wear and tear, is caused to the ROWs. Licensee shall report any damage it causes to any affected party in writing within twenty-four (24) hours of the damage. The Licensee shall reimburse the other party for any damage caused by its employees, contractors, subcontractors, agents, representative or its Facilities.

Notwithstanding any provisions to the contrary herein, in the event of an unexpected repair or emergency ("Emergency Maintenance"), Licensee may access the ROWs and commence such Emergency Maintenance work as required under the circumstances, provided

Licensee shall comply with the requirements for Emergency Maintenance set forth in the Village ROW Policy.

8. **Marking.** Prior to and during any installation or relocation of any underground cables or utility lines, Licensee shall contact J.U.L.I.E. to ascertain the presence and location of existing aboveground and underground facilities within the ROWs to be occupied by Licensee's Facilities and install route markers in accordance with the Illinois Underground Facilities Damage Prevention Act.

The Village shall have no obligation to mark the location of Licensee's Facilities. Licensee agrees that it will become a member of J.U.L.I.E. as a requirement of this License Agreement and that such a system is designed to alert Licensee to planned work in the rights-of-way, so that Licensee can mark the location of its facilities to avoid damage. The Village shall have no obligation to alert Licensee to proposed work by itself or others, other than as a participating member of the J.U.L.I.E. system.

9. **Public Safety.** Licensee or other person acting on its behalf, at its own expense, shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of any work in or affecting the ROWs or other property.

If the Village, in its reasonable discretion, determines that a particular use of the ROWs by Licensee is, or will be, hazardous to the public or the property, Licensee, upon written notice from the Village, shall install commercially reasonable safety devices or make commercially reasonable modifications at Licensee's sole expense to render the ROWs safe for, and compatible with, public use. In the event Licensee fails to install such safety devices or make required modifications within twenty-four (24) hours, or, if such modifications cannot be completed expeditiously to render the ROWs safe for the public, the Village may install such safety devices. In the event the Village installs such safety devices, the Licensee agrees to pay the actual costs of such improvements upon written demand. If Licensee fails to reimburse the Village within thirty (30) days after receipt of written demand, the Village may terminate this License Agreement, with all rights of Licensee hereunder being forfeited, and the Licensee waives all rights and claims of any kind against the Village arising out of this License Agreement and its termination.

10. **Restoration of ROWs.** Within ten (10) business days after initial construction operations have been completed or after repair, relocation or removal of the Facilities, Licensee shall grade and restore all areas disturbed by construction operations to a condition substantially similar to that which existed prior to the work. This time period may be extended for good cause shown. If weather or other conditions do not permit the complete restoration required by this Section, Licensee shall temporarily restore any disturbed property. Such temporary restoration shall be at Licensee's sole expense and Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions permit such permanent restoration.

For a period of twelve (12) months following any work in the ROWs by Licensee or any person acting on Licensee's behalf, except for backfilling which shall be a five (5) year period, Licensee shall, at its sole expense, be responsible for all costs of restoring any disturbances or

damage to the ROWs and for all repairs or damage to Village property to the extent directly caused by the work performed in the ROW by Licensee, its officers, agents, employees, contractors, subcontractors, successors, and assigns, except to the extent any of the foregoing are caused by the negligence of the Village. All such restoration shall be performed in accordance with the Village ROW Policy and to the reasonable satisfaction of the Village.

Disturbed grass areas shall be restored with sod. All open excavations necessary for the installation, repair, relocation, maintenance or removal of the Facilities shall be properly backfilled, and any asphalt pavement or PCC concrete pavement or sidewalk shall be replaced with like-kind and quality materials. The backfill settlement repair period shall be for five (5) years from the date of placing said backfill by Licensee, during which time the affected areas shall be maintained by Licensee at its sole expense in a condition satisfactory to the Village. Under hard surface areas, such as roadways, sidewalks and drives, trench backfill shall be compacted and certified by the Village to comply with the Village construction standards. All restoration work shall be completed in accordance with the Village ROW Policy or other Village zoning or construction standards, whichever is more stringent and/or comprehensive.

In the event Licensee fails, in a timely manner, to restore any disturbances or make any and all repairs to the ROWs or other Village property as set forth above, the Village may make or cause to be made such restoration or repairs and either demand payment from Licensee, who agrees to pay the reasonable costs of such restoration or repairs within thirty (30) days of receipt by Licensee of written demand and all invoices and documentation supporting the actual costs incurred by the Village, or demand payment from the security posted by Licensee, which payment must be received by the Village within thirty (30) days of demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village.

11. **Environmental.** Licensee shall not trim or cut any trees or shrubs, alter or impede water flowage, apply chemicals or disturb the topography of the ROWs in any manner without prior written approval of the Village. Licensee will take all reasonable steps to assure that Licensee will not release any regulated hazardous material in violation of any applicable federal or state environmental law on the ROWs. Licensee, at its sole cost and expense, shall remediate, remove, clean up or abate in accordance with applicable federal or state law, or the directives of the appropriate oversight agency, a release of a regulated hazardous material in violation of a federal or state law occurring on the ROWs, to the extent such a release was caused by Licensee. In the event of a release of a regulated hazardous material in violation of a state or federal law on the ROWs by Licensee, or any claim or cause of action brought against the Village regarding such release, the indemnification provided for in Section 15 shall apply.

12. **Damage to Licensee's Facilities.** Unless directly and proximately caused by gross negligence, the willful, intentional or malicious acts of the Village, its officers, directors, employees, contractors or other agents, the Village shall not be liable for and Licensee expressly waives all claims for any damage to or loss of Licensee's Facilities within the ROWs as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the ROWs by or on behalf of the Village.

13. **Licensee Form of Business Disclosure.** Licensee agrees to complete and maintain on file with the Village a current Disclosure Affidavit, attached as Exhibit "A" to this License Agreement.

14. **No Transfer or Assignment.** This License Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. During the term of this License Agreement, Licensee acknowledges and agrees that it does not have the right or authority to transfer or assign this License Agreement or any interest herein without the prior written consent of the Village; provided, however that Licensee shall have the right, without the Village's prior written consent, but upon written notice to the Village and submission of a revised Exhibit "A", to assign or otherwise transfer this License Agreement to any successor entity or affiliate or subsidiary of Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee. Any such written consent required under this Section 14 may not be unreasonably withheld, conditioned or delayed. Any transferee or assignee must, at a minimum, show satisfactory evidence that it meets the insurance requirements and other terms, conditions, and provisions contained herein. In the event the License herein granted is terminated or the Licensee transfers title to the Facilities or vacates or ceases to use the Facilities, Licensee shall, nevertheless, remain liable to the Village under the provisions hereof, until said Facilities herein authorized are removed, and the public ROWs are restored as herein required, or as otherwise mutually agreed in writing between the Village and Licensee. Acceptance of payment from an entity or person other than Licensee shall not constitute a waiver of this provision. This provision shall survive the expiration or early termination of this Agreement, but not beyond the applicable statute of limitations period.

15. **Indemnity/Hold Harmless.** To the fullest extent permitted by law, Licensee shall defend, indemnify, keep and hold harmless the Village and its officials, officers, employees and agents from and against all injuries, deaths, losses, damages, claims, demands, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, to the extent caused by any negligent, careless or wrongful acts or omissions or from the reckless or willful misconduct of Licensee, its affiliates, officers, employees, agents, contractors or subcontractors in the installation, operation, relocation, repair, maintenance or removal of the Facilities or Licensee's use of the ROWs, and in providing or offering service over the Facilities.

Licensee shall at its own expense, appear, defend and pay all charges of attorneys selected by Licensee in connection with the defense and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, Licensee shall, at its own expense, satisfy and discharge the same. This License Agreement shall not be construed as requiring the Licensee to indemnify the Village for its own negligence or willful misconduct. The indemnification required hereunder shall not be limited by the amount of the insurance to be maintained hereunder and shall survive termination of this Agreement.

16. **Insurance.** Licensee shall maintain, at its own expense, the following minimum levels of insurance until the Facilities are removed from the ROWs and the ROWs have been properly restored as required herein:

1. Workers Compensation – Statutory limits
2. Employers Liability - \$1,000,000 per employee and \$1,000,000 per accident
3. Commercial General Liability, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X," "C," and

“U” coverages) and products-completed operations coverage with limits not less than:

- i) Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - iii) Five million dollars (\$5,000,000) for all other types of liability
4. Automobile Liability for all owned, hired and non-owned automobiles - \$1,000,000 each Accident

If the Licensee is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this section.

Prior to commencing work on the Facilities described herein, Licensee shall furnish the Village with the appropriate Certificates of Insurance, and applicable policy endorsements. Licensee shall have the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the “Village of Downers Grove, its officers, officials, agents and employees” as “additional insureds”. Such insurance afforded to the Village shall be endorsed to provide that the insurance provided under each policy shall be Primary and Non-Contributory.

Commercial General Liability Insurance required under this section shall be written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations. Commercial General Liability, Employers Liability and Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies. Workers’ Compensation coverage shall include a waiver of subrogation against the Village.

All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with Licensee in the State of Illinois. (All insurance carriers shall be rated “A-” or better and of a class size “X” or higher by A.M. Best Company.)

All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be canceled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village, and ten (10) days prior written notice in the case of non-payment of premiums. Renewal certificates shall be provided to the Village not less than five (5) days prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to the Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall have the right to examine any policy evidenced on the Certificate of Insurance.

17. **Security.** Prior to performing any work in the ROWs, Licensee shall establish a security fund in the amount of Twenty-Five Thousand Dollars (\$25,000), which shall be provided to the Village in the form, at the Licensee’s election, of cash or an unconditional letter of credit

acceptable to the Village. This security fund shall serve as security for those purposes set forth in the Village ROW Policy, including but not limited to the installation of the Facilities in compliance with applicable plans, permits, technical codes and standards, the proper location of the Facilities as specified by the Village, restoration of the ROWs and other property affected by the construction or to satisfy any claims or damages. The Village may draw on the letter of credit or withdraw cash for the reasons set forth in the Village ROW Policy and require replenishment by Licensee in accordance with said Policy.

18. **Duty to Provide Information.** Within fifteen (15) days of receipt of a written request from the Village, Licensee shall furnish any information requested that is reasonably related to this License Agreement, or the License granted hereunder, provided however that Licensee shall not be required to furnish any such information that is proprietary or confidential unless necessary and directly related to Licensee's business activities under this Agreement. To the extent permissible under and in accordance with applicable law, the Village shall protect from disclosure any confidential or proprietary information submitted to or made available by Licensee to the Village under this Agreement provided that Licensee notifies the Village of, and clearly labels, the information which Licensee deems to be confidential and/or proprietary information.

19. **No Encumbrances.** Licensee shall not place or allow any liens, mortgages, security interests, pledges, claims of others, equitable interests, or other encumbrances to attach to or to be filed against title to the ROWs.

20. **Taxes.** Nothing contained in this License Agreement shall be construed to exempt Licensee from any fee, tax, property tax levy or assessment, which is or may be hereinafter lawfully imposed on it relative to its use of the ROWs or its operation of the Facilities.

21. **Video Programming.** Licensee shall notify the Village if it intends on providing cable television content over the Facilities to subscribers within the Village. If required by law, Licensee will enter into a cable franchise or an open video system franchise agreement with the Village in the event Licensee does provide cable television content over its Facilities.

22. **Removal, Relocation, or Modifications of Utility Facilities.** Within sixty (60) days following written notice from the Village, Licensee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any part of its Facilities within the ROWs whenever the Village has determined, in the exercise of its governmental proprietary rights and powers, that such temporary or permanent removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Village improvement in or upon, or the operations of the Village in or upon, the ROWs ("Village Project"). In the event that relocation of any or all of the Facilities is required pursuant to a Village Project and the Village and Licensee are unable to identify a feasible alternative to relocation within the sixty (60) day period, then the Village may extend the relocation period upon mutual agreement of the parties or terminate this Agreement, without penalty or payment to Licensee, solely with respect to the portion of the ROWs required by the Village for the above reasons or other public purposes.

In the event Licensee is required to disconnect, relocate, remove, change or alter the position of part or all of its Facilities from the ROWs due to a Village Project and fails to do so within the

time required by the Village as stated above, the Village may, after first providing ten (10) days' written notice to Licensee and an opportunity to cure, make or cause to be made such disconnection, relocation, removal, change, or alteration, and Licensee shall be liable to the Village for all costs regarding same. The Village may either demand payment from Licensee, who agrees to pay the reasonable costs of such relocation or removal within thirty (30) days of receipt by Licensee of written demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village, or demand payment from the security posted by Licensee, which payment must be received by the Village within thirty (30) days of demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village.

A. Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the Village, Licensee shall, at its own expense, remove all or any part of any unauthorized facilities or appurtenances from the ROWs. A facility is unauthorized and subject to removal in the following circumstances:

- 1) Upon expiration or termination of this License Agreement or permit, if applicable, obtained by Licensee, unless otherwise permitted by applicable law;
- 2) If the facility was constructed or installed without the prior grant of a license or permit;
- 3) If the facility was constructed, installed or maintained in violation of this License Agreement or the Village ROW Standards and such violation has not been cured as provided under this License Agreement; or
- 4) If the facility was constructed or installed at a location not permitted by any permit obtained by Licensee.

If the Licensee installs its Facilities in a ROW without a permit for that location, the Licensee agrees to pay a penalty payable to the Village in the sum of \$500.00 per month due on the first day of each month regardless of the amount of time the Licensee's Facilities remain in the ROW during that month until removed or permitted. Payment of the penalty shall not authorize the presence of the Facilities in the specific site without a permit. No action or inaction by the Village with respect to unauthorized use of any Village ROW shall be deemed to be a ratification or an unauthorized use.

B. Emergency Removal or Relocation of Facilities. The Village retains the right and privilege to disconnect, cut, move or remove any part of Licensee's Facilities located within the ROWs of the Village, as the Village may reasonably determine to be necessary in response to any public health or safety emergency. If circumstances permit, the Village shall attempt to notify Licensee prior to disconnecting, cutting, moving or removing any part of the Facilities by contacting Licensee's emergency number. The Village shall however notify Licensee at its emergency number within a reasonable time after disconnecting, cutting, moving or removing any part of the Facilities. Licensee's emergency NOC number is: 877-4Level3 or 877-453-8353.

23. Termination. The Village may terminate this License Agreement and the License granted herein for any of the following reasons:

- 1) Licensee made a fraudulent, false, or material misrepresentation in the permit application; or
- 2) Failure to cure a breach of this License Agreement or noncompliance with the Village ROW Policy after receipt of written notice and a thirty (30) day cure period, unless thirty (30) days is not a reasonable time to cure under the circumstances, in which event the cure period may be extended for such additional time as is necessary under the circumstances to complete the cure; or
- 3) Licensee's physical presence or presence of Licensee's Facilities on, over, above, along, upon, under, across, or within the ROWs presents a direct and imminent threat to the public health, safety, or welfare and no other alternative is available to prevent such threat by Licensee's Facilities, but only for the affected portion(s) of the ROWs; or
- 4) Licensee's failure to construct the Facilities substantially in accordance with the permit and approved plans and failure to cure within thirty (30) days after receipt of a written notice from the Village; or
- 5) Failure to provide the required traffic control; and to respond to requests from the Village to correct such deficiencies within a reasonable time frame according to the circumstances presented

Upon termination of this Agreement for any reason, Licensee shall, within ninety (90) days of written notice from Licensor, remove its Facilities from all Village ROWs and restore all ROWs as required herein.

Licensee may terminate one or more of the Facilities locations pursuant to this Agreement by giving at least thirty (30) days written notice. Licensee will not be subject to any penalty or fee for terminating such Facilities location prior to the end of the term of this Agreement.

24. **No Waiver.** The waiver by one party of any breach of this License Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this License Agreement and will not be construed to be a waiver of any provision except for the particular instance.

25. **Amendments.** This License Agreement represents the entire agreement between the parties. No oral changes or modifications of this License Agreement shall be permitted or allowed. Changes or modifications to this License Agreement shall be made only in writing and upon necessary and proper signature of the Licensee and the Village.

26. **Notices.** Any notice will be in writing and will be deemed to be effectively served when deposited in the US mail, certified or registered mail, return receipt requested, with sufficient first class postage affixed, or by overnight courier, and addressed to the party at the party's place of business specified below. Notices shall be addressed to designated representatives of both parties as follows:

Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Level 3 Communications, LLC
Attn: NIS-ROW
1025 Eldorado Boulevard
Broomfield, CO 80021
With a copy to:

Level 3 Communications, LLC
Attn: General Counsel
1025 Eldorado Boulevard
Broomfield, CO 80021

27. **Severability.** In the event that any provision of this License Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.

28. **Law and Venue.** This License Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Illinois. The forum for any legal disputes between the Village and the Licensee shall be DuPage County, Illinois.

29. **Force Majeure.** Whenever a period of time is prescribed herein for the taking of any action by Licensee, with the exception of any payment obligation of Licensee hereunder, and the ability of Licensee to perform or act within such period of time is delayed due to strikes, war, riots or other civil unrest, acts of God, governmental rules, regulations or restrictions, or any other cause beyond the reasonable control of Licensee, the period of time within which Licensee is obligated to perform shall be extended on an hour of hour, or day for day basis (as applicable) for each hour or day (as applicable) of delay and Licensee shall not be responsible or liable for not performing as a result of any such delay.

LEVEL 3 COMMUNICATIONS, LLC

VILLAGE OF DOWNERS GROVE

By: *Dan Kennedy*
Its: *Danett Kennedy* Its: Mayor
Ex manager NIS

By: _____

ATTEST:

ATTEST:

Katherine Plunkett

Village Clerk

Date: 6/7, 2017

Date: _____, 2017

Exhibit "A"
DISCLOSURE AFFIDAVIT

(NOTE: This Affidavit must be completely filled out and signed by the Licensee or a determination that the contract is exempt from any section must be obtained.)

I. BUSINESS STATUS STATEMENT

I, the undersigned, being duly sworn, do state as follows:

A. Level 3 Communications, LLC (hereafter "Licensee") is a:
Company Name

(Place mark in front of appropriate type of business)

____ Corporation (if a Corporation, complete B)

____ Partnership (if a Partnership, complete C)

____ Individual Proprietorship (if an Individual, complete D)

X Limited Liability Corporation (if an LLC, complete B)

B. Corporation/LLC

The State of incorporation or formation is Delaware

The corporate officers are as follows:

President: Jeff Storey

Vice President: Various

Secretary: N/A

Chief Financial Officer: Sunit Patel

C. PARTNERSHIP

The partners or members are as follows: (Attach additional sheets if necessary)

Name

Home Address

Name

Home Address

Name

Home Address

Name _____ Home Address _____

The business address is _____
_____ Telephone: _____

D. INDIVIDUAL PROPRIETORSHIP

The business address is _____
_____ Telephone: _____

My home address is _____
_____ Telephone: _____

E. Under penalty of perjury, _____
(Licensee's Name)

certifies that 47-0735805 is its correct Federal Taxpayer Identification Number,
(FEIN/SSN)

or in the case of an individual or sole proprietorship, Social Security Number.

LICENSEE – Level 3 Communications, LLC

By: [Signature]
Its: Danett Kennelly

Subscribed and sworn to before me this 7 day of June, 2017.

[Signature]
Notary Public

DENNIS L. STEPANICH III
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144038747
MY COMMISSION EXPIRES OCTOBER 7, 2018