

**ORDINANCE NO. \_\_\_\_\_, SERIES 2020**

**AN ORDINANCE AWARDING A RENEWAL OF A COMMUNICATIONS SERVICES FRANCHISE TO LEVEL 3 COMMUNICATIONS, LLC PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES. (AMENDMENT BY SUBSTITUTION)**

**SPONSORED BY: COUNCIL MEMBER COAN**

**WHEREAS**, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances the Louisville/Jefferson County Metro Government (“Louisville Metro”) solicited bid proposals from parties interested in obtaining communications services franchises to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky; and

**WHEREAS**, Level 3 Communications, LLC, is a wholly owned subsidiary of CenturyLink, Inc., and has a current communications service franchise, through TELCOVE of KENTUCKY, Ordinance No. 87, Series 2005, whose name was changed to LEVEL 3 Communications on May 30, 2018. Said current communications service franchise expires on June 13, 2020; and

**WHEREAS**, Level 3 Communications, LLC submitted a bid proposal to Louisville Metro for a renewal of a communications services franchise which meets all of the requirements of Chapter 116 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws.

**NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:**

**SECTION I.** Louisville Metro hereby grants to Level 3 Communications, LLC for a period of 20 years, a non-exclusive franchise to erect, install or maintain

communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances.

**SECTION II.** The franchise agreement by and between Level 3 Communications, LLC as appended to this ordinance is hereby approved and the Mayor is hereby authorized to execute and enter into that agreement for and on behalf of Louisville Metro.

**SECTION III.** The statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

**SECTION IV.** If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

**SECTION V.** This Ordinance shall take effect upon its passage and approval.

\_\_\_\_\_  
Sonya Harward  
Metro Council Clerk

\_\_\_\_\_  
David James  
President of the Council

\_\_\_\_\_  
Greg Fischer  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell Jefferson  
County Attorney

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

## **FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** made and entered into this 14<sup>th</sup> day of June 2020, by and between the Louisville/Jefferson County Metro Government (hereinafter “Louisville Metro”) and Level 3 Communications, LLC (hereinafter “Level 3”).

### **WITNESSETH:**

**WHEREAS**, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances and Sections 163 and 164 of the Kentucky Constitution, Louisville Metro solicited bid proposals from parties interested in obtaining franchises to erect, install and maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky; and

**WHEREAS**, Level 3 Communications, LLC, is a wholly owned subsidiary of CenturyLink, Inc., and has current communications service franchise, through TELCOVE of KENTUCKY, Ordinance No. 87, Series 2005, whose name was changed to LEVEL 3 Communications on May 30, 2018. Said current communications service franchise expires on June 13, 2020; and

**WHEREAS**, Level 3 submitted a bid proposal to Louisville Metro for a renewal of a communications services franchise pursuant to the requirements of Chapter 116 of the Louisville Metro Code of Ordinances; and

**WHEREAS**, pursuant to Ordinance No. \_\_, Series 2020, Louisville Metro granted to Level 3 for a period of 20 years, a non-exclusive franchise to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances; and

**WHEREAS**, Louisville Metro and Level 3 have entered into this Franchise Agreement to memorialize the award by Louisville Metro to Level 3 of said franchise pursuant to the terms and conditions reflected in Chapter 116 of the Louisville Metro Code of Ordinances.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Louisville Metro and Level 3 hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Chapter 116 of the Louisville Metro Code of Ordinances, as now written and as it may be amended during the term of this franchise agreement, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Level 3 for said franchise, which is attached hereto as Exhibit A, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. Level 3 agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy.

4. Level 3 has no poles in their system and has no plans to put poles in Metro's Right of Way. If Level 3 wishes to install poles in Metro's Right of Way, Level 3 and Metro agree to renegotiate the franchise agreement.

5. If it is determined that the Franchisee has excess capacity in their dark fiber network at a location where a camera is to be installed, Louisville Metro and the Franchisee may negotiate a fee for use of the excess fiber capacity to connect the equipment to the Louisville Metro network.

6. Louisville Metro granted unto Level 3 a non-exclusive franchise, for a term of

20 years to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky and as more specifically identified in the above-mentioned bid pursuant to Chapter 116 of the Louisville Metro Code of Ordinances.

7. The franchise memorialized in this Franchise Agreement shall commence on passage of the Ordinance approving this agreement or June 14, 2020, whichever is later, and shall expire in the time designated in this agreement and ordinance approving this agreement.

8. Level 3 does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

9. This Franchise Agreement memorializes the agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

**IN WITNESS WHEREOF**, Louisville Metro and Level 3 have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

**LEVEL 3 COMMUNICATIONS, LLC**

\_\_\_\_\_  
**GREG FISCHER, MAYOR**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

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