

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 201__ by and between THE CITY OF EL PASO ("Grantor"), whose address is 300 N. Campbell St. El Paso, Texas 79901, and LEVEL 3 COMMUNICATIONS, LLC ("Grantee"), whose address is 1025 Eldorado Blvd., Broomfield, Colorado 80021.

1. For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of this Agreement, Grantor on this date agrees to grant and convey to Grantee, its successors and assigns, and Grantee agrees to acquire from Grantor, a permanent perpetual non-exclusive easement on certain real estate located in El Paso County, Texas and legally described on Exhibit "A" attached hereto with rights of ingress, egress and access thereto, to construct, install, operate, maintain, repair, renew, replace and remove Grantee's communications facilities and equipment as Grantee may, from time to time require, generally consisting of multiple conduits, cables, wires, surface location markers, manholes, handholes, vaults and other appurtenances for similar uses (the "Facilities") upon, over, through, under and along a parcel of land ten feet (10') in width, being five feet (5') from centerline on each side of the installed conduit ("Easement") and an additional area outside the Easement utilized as temporary work space and as a construction/maintenance staging area ("Temporary Work Space") crossing the real property described in Exhibit A ("Property ") and a plat of the Easement shown on Exhibit B attached hereto and, by reference both made a part hereof, together with:

- (A) the right of ingress and egress over and across any adjacent real property owned or controlled by Grantor and the Easement and Temporary Work Space for the purpose of exercising the rights granted herein provided that such ingress and egress does not interfere with Grantor's improvements or uses, provided that Grantee will provide the Grantor with a 5 calendar day prior written notice before accessing the property to perform any activities involving any sort of construction or disturbance of the land, except in the event of an emergency when reasonable notice shall be acceptable;
- (B) the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of the Easement, and during construction or maintenance periods, to use additional areas adjacent to the Easement for ingress and egress.

2. This Agreement is made without any warranties of any kind by the Grantor.

3. Grantor reserves all rights to the Property not granted under this instrument. Grantor shall have the right to use and enjoy the surface of the Easement and grant others the use of the surface of the Easement except when such use interferes with the rights and privileges conveyed herein to Grantee. Grantor agrees not to erect or construct any building or structure, or plant trees within the Easement, except that structures currently located on the Easement may remain.

The Grantor's rights under this Agreement are subject to any other rights currently granted to other parties under this Agreement. Grantee will replace or repair, as reasonable, landscaping and paving if disturbed by Grantee's activities.

4. Grantee agrees to fully compensate Grantor for any damage or injury done to livestock, growing crops, improvements, structures, parking areas, landscaping and other appurtenances and/or other improvements in the course of construction and maintenance associated with the aforesaid Facilities except to the extent caused by the negligent or willful act or omissions of Grantor, its heirs, assigns, agents, employees or contractors. Grantee agrees that any areas adjacent to the Easement that are altered or damaged as a result of construction or maintenance by Grantee, but which are lying outside the Easement shall be restored to their prior condition when said construction or maintenance is completed.

5. Grantee shall perform all work on the Easement and the Property in a good workmanlike manner and obtain all permits or licenses required under law for such work on the Property or Easement. Except during construction, Grantee will maintain the Easement in a clean and well maintained manner during any maintenance or repair work performed by Grantee on the Property. Grantee's responsibility to maintain the Easement in a clean and well maintained manner under this section shall be limited to Grantee's exercise of the rights granted under this Agreement.

6. Except to the extent caused by the negligence or willful misconduct of the Grantor, Grantee agrees to release, indemnify, defend and hold harmless the Grantor against any and all claims, demands and causes of action arising in favor of any person, corporation or governmental entity, because of personal injury including death, or damages to property, including the Facilities, to the extent arising from any act or omission of the Grantee, its employees, contractors, subcontractors, or agents in connection with this Agreement, and in the course of construction and maintenance of the Facilities or use of the Easement. To the full extent allowed by law, the Grantee releases the Grantor from any claims pertaining to loss or damage to property, injury, or death sustained by the Grantee while using the Property, except to the extent caused by the negligence or willful misconduct of Grantor.

7. If any provision of this Easement Agreement shall be held to be violative of any applicable law or unenforceable for any reason, the invalidity or unenforceability of any such provision shall not invalidate or render unenforceable any other provision hereof, which shall remain in full force and effect.

8. No change or modification to this Easement Agreement shall be valid unless the same is in writing and signed by the parties hereto. No purported or alleged waiver of any of the provisions of this Easement Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.

9. All notices and other communications which are required or permitted under the terms of this Agreement shall be in writing and shall be sent by either certified United States mail, postage prepaid, return receipt requested, or delivered personally. Notices and communications

shall be deemed to have been given on the date so mailed or on the date when personally delivered. Such notices and communications shall be addressed to the parties at their respective addresses set forth above. The notice address of either party may be changed by ten (10) days prior written notice delivered to the other party in accordance with this paragraph.

10. Grantor and Grantee covenant and agree, for themselves and their respective successors and assigns, to execute such other documents, and take such further actions, as may reasonably be requested by the other in order to carry out the provisions of this Easement Agreement, including without limitation, in the event the applicable local recorder's office shall refuse or otherwise fail to record this instrument, the execution of another instrument granting the easement herein described in form acceptable for recording.

11. Grantee may divide, subdivide or apportion, and may lease, assign, transfer, mortgage or encumber, all or any part of the Easement.

12. The covenants, terms, conditions and provisions contained herein shall run with the land and shall be binding upon Grantor and all subsequent owners of the Property provided that Grantee may not assign this Agreement without the Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

13. Relocation of Easement. At the request of the Grantor, the Grantee will relocate the Easement and all Grantee's property within the Easement location at the Grantee's sole expense. The Grantee will execute either an amendment to this Agreement or a release for the easement granted under this Agreement and the parties will enter into a new Easement Agreement for the new location of the easement. In the event relocation is required by reason of construction by a third party, non-governmental entity, Licensee's relocation costs shall be borne by the third party. All terms and conditions of this License shall apply to the new location.

14. No liens. Grantee will pay off and/or remove any liens on the Property that arise out of the Grantee's activities on the Property within 30 calendar days of receiving communication by the Grantor.

15. Termination of Easement. The Grantor may terminate all of Grantee's rights under this Agreement for the following reasons:

a. For Default. If the Grantee fails to perform any obligations under this Agreement following receipt of written notice and a 30 calendar day opportunity to cure.

b. For abandonment. If Grantee abandons the Easement. For purposes of this Agreement, the term "abandon" means the failure of the Facilities to provide service to any customers for a consecutive period longer than one year. Failure of Grantee to respond within 60 calendar days of receipt of a Grantor's inquiry of whether the Grantee has abandoned the Easement will constitute an abandonment of the Easement.

c. Refusal to relocate. If Grantee refuses to relocate the Easement following receipt of a written request by the City of El Paso. The City of El Paso will allow the Grantee a 30 calendar day opportunity to cure prior to termination of this Agreement.

d. Vote by City Council. If the City Council of the City of El Paso votes to terminate this Agreement for a public purpose. The recording of the Resolution by City Council in the El Paso County Records will suffice to provide evidence of the termination of this Agreement.

16. Upon termination of this Agreement for any reason, the Grantee will remove any property belonging to the Grantor from the Property, unless the parties mutually agree to abandon some or all of Grantee's Facilities on the Property. If the Grantee fails to remove all property from the Property within 90 calendar days of termination of this Agreement and the parties have not agreed to abandon any of Grantee's Facilities, then the City may dispose of the property at the Grantee's expense. The Grantee will pay the Grantor all actual, reasonable, and documented costs incurred by the Grantor, including attorney's fees, for disposing of property. The Grantee will also pay the Grantor all actual, reasonable, and documented costs incurred by the Grantor, including attorney's fees, for clearing a lien imposed on the Property because of any activities of the Grantee.

17. Upon Termination of this Agreement for any reason, all rights of the Grantee under this Agreement will be terminated and the Grantor will be free from any obligations under this Agreement.

18. This Agreement constitutes the entire agreement by the parties.

IN WITNESS WHEREOF, this instrument is executed and effective as of the date first written above.

GRANTOR SIGNATURE:

GRANTEE SIGNATURE:


By: Samuel Rodriguez, P.E.

By: _____

Its: Director of Aviation

Its: _____

APPROVED AS TO FORM



Omar De La Rosa
Assistant City Attorney

**ACKNOWLEDGMENT
BY GRANTOR**

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, on this ____ day of _____, 201____, personally appeared _____ who is _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

Notary Public

Commission Expires

**ACKNOWLEDGMENT
BY LEVEL 3 COMMUNICATIONS, LLC**

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, on this ____ day of _____, 201____, personally appeared _____ who is _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

Notary Public

Commission Expires

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

Property situated in the County of El Paso, State of Texas
legally described as follows:

A 10 Foot Wide Utility Easement being a 4,915.36 square foot strip of land over and across a portion of Lot 4, Block 1-C, El Paso International Airport Tracts, Replat Unit 6, [E.P.I.A.T.U.6] (Book 0028, Page 0049, El Paso County Records, (E.P.C.R.)) Over and Across the portion of Allegheny Drive, vacated by the November 11, 1997 City Ordinance # 013389, As each are shown on said Ordinance and Plat of E.P.I.A.T.U.6 and over and across a portion of Tract 4A26A, Ascarate Grant Block 2, Same being those lands within the Memorandum of Lease by and between the City of El Paso and Spokane Equities of Record in Book 2854, Book 1619 and the Assignment of Leases in Document 20080026097 (E.P.C.R.) more specifically shown in Exhibit B below.

EXHIBIT B

PLAT OR DEPICTION OF THE EASEMENT

CENTURYLINK NATIONAL (LUMIN) RELO 184334 TX-CONVAIR LATERAL RELO. PROJECT:N.828261

PROJECT ADDRESS:
2027 AIRWAY BLVD. (REAR)
N.E. OF INTX. ALLEGHENY & DE HAVILLAND DRIVE
CITY OF EL PASO, EL PASO COUNTY, TEXAS 79925

UNDERLYING PARCEL OWNER:
NAME: CITY OF EL PASO
ADDRESS: 300 N. CAMPBELL ST. EL PASO, TEXAS 79901
PHONE:
EMAIL:

PUBLIC RECORD PARCEL I.D.:
E378999001C7300
E378999001D0100

PROJECT PREPARED BY:
GREAT WESTERN LAND SURVEYING & CONSULTING
L. DEAN VAN MATRE
TEXAS R.P.L.S. 5852
TEXAS FIRM REGISTRATION: 10194332
8512 BASIL COURT,
EL PASO, TEXAS 79925
Email: ldvm1930@gmail.com
Cell: 915-474-2803

BASIS OF BEARING & DATUM DATA:

- ALL DISTANCES ARE SURFACE & BEARINGS ARE GRID BASED UPON THE SPCS OF TEXAS.
- ZONE: CENTRAL 4203
- PROJECT IS TIED TO NATIONAL CORRS VIA THE GPS UTILITY.
- GEODETIC CONTROL VIA GPS FIELD OBSERVATIONS OBSERVED AT THE STATION REFERENCED BELOW.

PERMITS

DESCRIPTION	FM 1/2" Rebar in Cap
(Y) NORTHING	10,444,393.178'
(X) EASTING	413,028.797'
ELEVATION	NAVD88 3,918.55'
LATITUDE (DD)	31.79619154°
LONGITUDE (DD)	106.59077533°
ELLIPSOID ELEV	3639.37'
CONVERSION	N CTD727' E
CONVERSION	(Grid->Gd) 0.99979414709

LEGEND

- ⊙ FOUND SURVEY MONUMENT (AS NOTED)
- POINT TO BE SET (REBAR-SPICE-REBAR-REBAR)
- SNFV SEARCHED FOR NOT FOUND
- ⊠ CALCULATED POINT (NOT SET)
- ⬠ SHOWN FOR REFERENCE (NOT SET BY THIS SURVEY)

SSM STORM SEWER

- SP SIGN POST
- SM SOWER MANHOLE
- SL SEWER LINE
- FM FIRE HYDRANT
- W WATER LINE
- WV WATER VALVE
- WM WATER METER
- E ELECTRIC LINE
- EM ELECTRIC METER
- OH OVERHEAD LINE
- PP POWER POLE

BARBED WIRE

- FW FENCE
- CH CHAINLINK
- FC FENCE
- DM GAS METER
- GL GAS LINE
- TL TELECOM LINE
- FO FIBER OPTIC LINE
- EP ELECTRIC TRANSFORMER
- LP LIGHT POLE

FIELD NOTE DESCRIPTION (PERIMETER) OF A 10 FOOT WIDE UTILITY EASEMENT
BEING A DESCRIPTION OF A 4,915.36 SQUARE FOOT STRIP OF LAND OVER AND ACROSS A PORTION OF LOT 4, BLOCK 1-C, EL PASO INTERNATIONAL AIRPORT TRACTS, REPLAT UNIT 6, [E.P.I.A.T.U.6] (BOOK 0028, PAGE 0049, EL PASO COUNTY RECORDS, (E.P.C.R.)) OVER AND ACROSS THE PORTION OF ALLEGHENY DRIVE, VACATED BY THE NOVEMBER 11, 1997 CITY ORDINANCE #213389, AS EACH ARE SHOWN ON SAID ORDINANCE AND PLAT OF E.P.I.A.T.U.6, AND OVER AND ACROSS A PORTION OF TRACT 4A26A, ASCARATE DRAIN BLOCK 2, SAME BEING THOSE LANDS WITHIN THE MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF EL PASO AND SPOKANE EQUITIES OF RECORD IN BOOK 2854, BOOK 1819 AND THE ASSIGNMENT OF LEASES IN DOCUMENT 20060026097 (E.P.C.R.) AND BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF CURVE OF LOT 4, BLOCK 1-C, AT THE VACATED NORTH R.O.W. OF ALLEGHENY DRIVE (E.P.I.A.T.U.6) MARKED BY A FOUND 1/2" WITHOUT IDENTIFICATION IN CONCRETE, HAVING GEODETIC COORDINATES OF 31.7961917°LAT. AND 106.5907757°LONG., FROM WHICH MONUMENT THE FOLLOWING TWO (2) SURVEY MONUMENTS FOUND AND USED TO DEVELOP SUBJECT BOUNDARIES BEAR THE FOLLOWING:

- THE SOUTH COMMON CORNER OF LOTS 3&4, BLOCK 1-B, SAID E.P.I.A.T.U.6, MARKED BY A FOUND 1/2" REBAR WITH CAP #2027 HAVING GEODETIC COORDINATES OF 31.795187°LAT. AND 106.599548°LONG. AND BEARS ON A TEXAS STATE PLANE GRID BEARING (BASIS OF BEARING) NORTH 87°51'09" WEST (PLAT BEARING=58°58'07" W) A DISTANCE OF 240.00 FEET.
- THE CENTERLINE/CENTERLINE INTERSECTION OF DE HAVILLAND DRIVE AND ALLEGHENY DRIVE, ESTABLISHED FROM FOUR (4) STRADDLE NAILS FOUND IN PLACE BEARS SOUTH 62°02'01" WEST A DISTANCE OF 57.80 FEET.

THENCE, FROM THE POINT OF COMMENCEMENT SOUTH 87°51'09" EAST A DISTANCE OF 221.00 FEET TO THE POINT OF BEGINNING, THENCE, THE FOLLOWING EIGHT (8) COURSES,

- ALONG A LINE PARALLEL TO AND OFFSET 5.00 FEET WEST FROM THE EAST LINE OF LOT 4, NORTH 02°08'51" EAST A DISTANCE OF 365.87 FEET.
- THENCE, SOUTH 87°51'09" EAST A DISTANCE OF 10.00 FEET.
- THENCE, ALONG A LINE PARALLEL TO AND OFFSET 5.00 FEET EAST FROM THE EAST LINE OF LOT 4, SOUTH 02°08'51" WEST A DISTANCE OF 365.87 FEET.
- THENCE, ACROSS VACATED ALLEGHENY DRIVE THE FOLLOWING FIVE COURSES, SOUTH 02°08'51" WEST A DISTANCE OF 54.00 FEET;
- THENCE, ALONG THE NORTH R.O.W. OF AIRWAY BOULEVARD, NORTH 87°51'09" WEST A DISTANCE OF 81.60 FEET;
- THENCE, NORTH 02°08'51" EAST A DISTANCE OF 10.00 FEET;
- THENCE, SOUTH 87°51'09" EAST A DISTANCE OF 51.68 FEET;
- THENCE, NORTH 02°08'51" EAST A DISTANCE OF 44.00 FEET TO THE VACATED NORTH RIGHT OF WAY OF ALLEGHENY DRIVE AND THE POINT OF BEGINNING OF THIS EASEMENT DESCRIPTION.

• CONTAINING AN AREA OF 4,915.36 SQUARE FEET OR 0.113 ACRES

SHEET DATA:
PROJECT OVERVIEW
FIELD NOTE DESCRIPTION

SHEET #: 1 OF 2 SU1

L. DEAN VAN MATRE
TEXAS R.P.L.S. 5852 APR 09, 2021-REV 1

SURVEYOR'S CERTIFICATION:
THIS EASEMENT SURVEY IS BASED ON A FIELD SURVEY PERFORMED BY ME, IT CORRECTLY DEPICTS EXISTING, READILY VISIBLE IMPROVEMENTS AND ABOVE GROUND UTILITIES. BOUNDARY CONTROL WAS VERIFIED FROM FIELD AND RECORD INFORMATION. A TITLE FOR THE SUBJECT PARCEL WAS NOT PROVIDED FOR THIS PROJECT.

