

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Capital Improvement  
**AGENDA DATE:** March 7, 2017  
**CONTACT PERSON/PHONE:** Andrew Goh, Capital Improvement City Engineer, 212-0065

**DISTRICT(S) AFFECTED:** 2

**STRATEGIC GOAL:** No. 7 Enhance and Sustain El Paso's Infrastructure Network

**SUBJECT:**

That the City Manager be authorized to execute an Underground Utility Easement between the City of El Paso as Grantor and Level 3 Communications, LLC, as Grantee, said easement A 0.015-acre portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three, Book 60, Page 60, Plat Records El Paso, El Paso County, Texas. This will allow Comcast Phone, the tenant, to acquire communication fiber optic services at the leased premises located at 28 Walter Jones, El Paso, TX.

**BACKGROUND / DISCUSSION:**

We are requesting City Council grant an underground utility easement to Level 3 Communications, LLC at 28 Walter Jones. The easement is necessary to place communication fiber optic service.

**SELECTION SUMMARY:**

N/A

**PROTEST**

- ☒ No protest received for this requirement.  
☐ Protest received.

**COUNCIL REPRESENTATIVE BRIEFING:**

Was a briefing provided? ☒ Yes or ☐ Not Applicable (Routine)  
If yes, select the applicable districts.

- ☐ District 1  
☒ District 2  
☐ District 3  
☐ District 4  
☐ District 5  
☐ District 6  
☐ District 7  
☐ District 8  
☐ All Districts

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

A handwritten signature in blue ink, appearing to read "Andy", is written over a horizontal line.

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute an Underground Utility Easement between the City of El Paso as Grantor and Level 3 Communications, LLC. as Grantee, said easement A 0.015-acre portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unite Three, Book 60, Page 60, Plat Records El Paso, El Paso County, Texas. This will allow Comcast Phone, the tenant, to acquire communication fiber optic services at the leased premises located at 28 Walter Jones, El Paso, TX.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2017.

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Andrew H. Goh, City Engineer  
Capital Improvement Department

THE STATE OF TEXAS §  
COUNTY OF EL PASO §

UNDERGROUND ELECTRICAL  
UTILITY EASEMENT

For and in consideration of the sum of One Dollar and No/100 (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the City of El Paso (Grantor) grants unto Level 3 Communications, LLC (Grantee), its successors and assigns, the right and privilege to enter and erect, relocate, construct, operate, remove, inspect, access, and maintain an underground communications system consisting of conduits, fixtures, manholes, handholds, vaults, and any other usual appurtenances pertaining thereto, and underground crossings with all necessary cables, lines, conduit, wires pertaining thereto (collectively "underground facilities"), with the right of access, ingress, and egress, thereto for the installation, construction, operation, inspection, repair, maintenance, replacement, upgrade, renewal or removal thereof, for the distribution of communications services, for any and all purposes for which same is or may hereafter be used, over or under, upon, and along the areas identified in Exhibit "A" attached hereto and incorporated herein for all purposes, said areas being in the following described premises in El Paso, El Paso County, Texas, to wit:

A 0.015-acre portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three 3, Book 60, Page 60, Plat Records El Paso, El Paso County, Texas and more particularly shown on Exhibit "A" which are attached hereto and incorporated herein for all purposes.

With the right to trim any trees and flora around said communications facilities so as to keep the underground facilities cleared and to do anything proper and necessary to operate, use and maintain same.

This easement shall be for the term of Grantee's franchise or similar authorization to be located within Grantor's public rights-of-way and any extension and renewal thereof by the Grantor. In accepting this easement, Grantee agrees that Grantor shall have the power at any time upon reasonable written notice to Grantee to require Grantee to remove and abate, at Grantee's expense, any installation or structure that is dangerous to life or property and that Grantor shall have the power at any time upon reasonable written notice to Grantee to require Grantee to change the route and position of its poles, lines, conduits or other construction at Grantee's expense when the El Paso City Council (the "City Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of public improvements, the construction of private buildings, the construction or use of driveways or under other conditions which the City Council shall find necessary and is applied in a non-discriminatory manner. Provided, however, that Grantee shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its wires or cables required by Grantor if such expenses or costs are reimbursable or payable to Grantee or Grantor by the State of Texas, the United States, or any agency or subdivision of either or when relocation is necessitated by a private party, whether directly or indirectly. Grantor shall use its best reasonable efforts to consult and confer with Grantee before requiring any such relocation or raising or lowering of its lines or cables, with a view to accomplishing the result reasonably and economically.

In accepting this grant, Grantee agrees that it will replace or repair, as reasonable, landscaping and paving to the extent disturbed by Grantee's construction, maintenance or repairs of or to its underground facilities in and upon such easement. Grantee shall promptly restore to as good condition as before working thereon, and to the reasonable satisfaction of the Grantor all streets excavated by it. Grantee may, from time to time and as may be required by prudent utility practices in connection with the construction, maintenance, or repair of its underground facilities, restrict access to or interfere with the use of Grantor's structures(s) or tangible personal property located on or in the vicinity of the easement. In such event, Grantee shall endeavor to provide Grantor reasonable written notice of any such restriction or interference and shall use commercially reasonable efforts to coordinate its activities with Grantor so as to minimize the duration and extent of such restriction or interference. The preceding sentence notwithstanding, certain events or circumstances may occur or arise that require Grantee to take immediate action to address imminent public safety concerns, the integrity of Grantee's underground facilities, or the reliability of service provided by Grantee. Under such or similar exigencies, Grantee shall provide Grantor notice of any restrictions or interference as soon as reasonably practicable, and shall use commercially reasonable efforts to minimize the duration and extent of such restriction or interference. Grantee agrees to call for utility spotting by a third party prior to any excavation by Grantee in the easement in accordance with applicable laws.

Grantor reserves the right to full use and enjoyment of said property except for the purposes herein granted. Grantor agrees not to erect permanent structures or obstruct access in, over, or under Grantee's underground facilities.

Grantor will not be held responsible for any damage to Grantee's underground facilities from excessive erosion due to flood run-off. Grantor, however, shall be responsible for damage to Grantee's underground facilities when caused by acts or omissions by Grantor's employees, contractors or authorized representatives.

Should Grantee abandon its underground facilities and the easement, then the easement hereinabove described shall revert to Grantor or its successors and assigns. Such abandonment shall be conclusively presumed following nonuse by the Grantee for a consecutive period of one (1) year and with use not being resumed within sixty (60) days following receipt of notice of abandonment from Grantor to Grantee, and on such abandonment, Grantee will then execute any and all reasonable and necessary documents to evidence such abandonment.

Grantee shall maintain the surface over the length and width of the easement to the satisfaction, as reasonable, of Grantor and in accordance with all applicable laws, ordinances, regulations, and City Code provisions, resulting from Grantee's activities on the easement area.

In addition, this easement is subject to the terms, conditions, and agreements as set forth in the addendum attached hereto and incorporated herein.

(Signatures begin on the following page)

**WITNESS THE FOLLOWING SIGNATURES AND SEAL on the dates entered below.**

**GRANTOR:**  
**THE CITY OF EL PASO**

**Tomás González**  
City Manager

APPROVED AS TO FORM:

Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

Andrew H. Goh, City Engineer  
Capital Improvement Department

## ACKNOWLEDGMENT

[illegible]

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2017  
by **Tomás González** as **City Manager** of the **City of El Paso**.

**Notary Public, State of Texas**

(Signatures continue on following page)



## **EPIA Addendum to EPEC Easement – FAA**

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises comprising the easement are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. The Grantee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Grantee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the “Acts and Regulations”) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the easement, in the event of breach of any of the above nondiscrimination covenants, Grantor will have the right to terminate the easement and to enter or re-enter and repossess said land and the facilities thereon (excepting Grantee’s electrical facilities, which shall be removed by Grantee as soon as reasonably practical upon notice by Grantor), and hold the same as if said easement had never been made or issued. [See FAA Order 1400.11, Appendix C of Appendix 4]

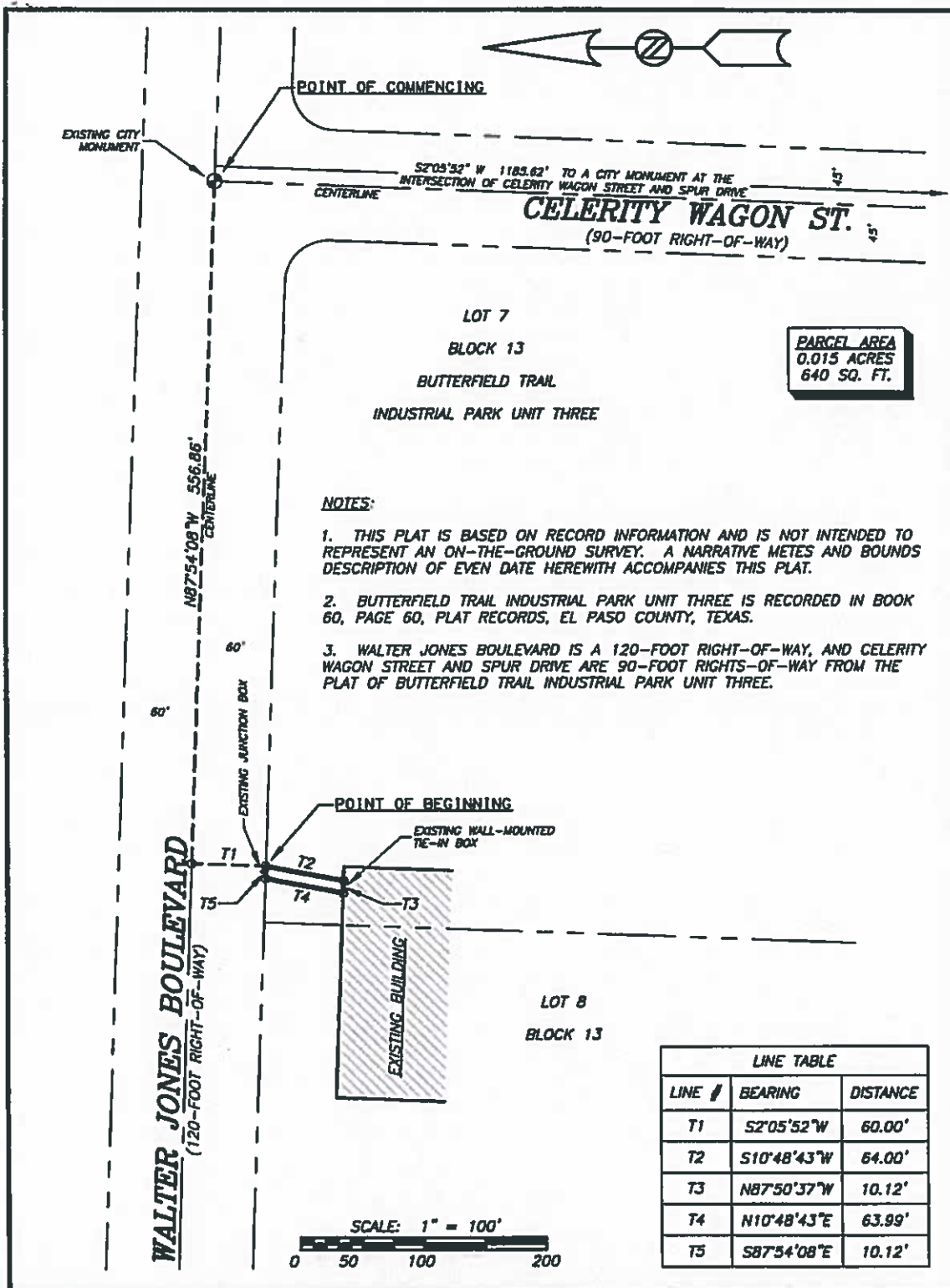
2. A. The Grantee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Grantee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the easement, in the event of breach of any of the above nondiscrimination covenants, Grantor will have the right to terminate the easement and to enter or re-enter and repossess said land and the facilities thereon (excepting Grantee’s electrical facilities, which shall be removed by Grantee as soon as reasonably practical upon notice by Grantor), and hold the same as if said easement had never been made or issued. [See FAA Order 1400.11, Appendix D of Appendix 4]

3. A. During the term of this easement, Grantee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms —programs or activities to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
  - Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- B. In the event of breach of any of the covenants in this section 3, Grantor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E of Appendix 4]

## Exhibit “A”



**ROBERT SEIPEL ASSOCIATES, INC.**  
**PROFESSIONAL LAND SURVEYORS**

1845 NORTHWESTERN DR. SUITE C EL PASO, TX 79912 915-877-1928

*RRS*

A 0.015-ACRE PORTION OF LOT 7, BLOCK 13,  
BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT  
THREE, EL PASO, EL PASO COUNTY, TEXAS.

TEXAS REG. SURVEYING FIRM 10060500

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DATE: 12-20-16

SCALE: 1" = 100'

DRAWN BY: RRS

CHK'D BY: RRS

FB: 443

FILE #: 16-0051

REVISED:

Property description: A 0.015-acre portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three, El Paso, El Paso County, Texas

#### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 0.015-acre portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three (Book 60, Page 60, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

**COMMENCING** at a city monument found at the centerline intersection of Walter Jones Boulevard (120-foot right-of-way, Butterfield Trail Industrial Park Unit Three) and Celerity Wagon Street (90-foot right-of-way, Butterfield Trail Industrial Park Unit Three), from which a city monument found at the centerline intersection of Celerity Wagon Street and Spur Drive (90-foot right-of-way, Butterfield Trail Industrial Park Unit Three) bears South 2°05'52" West, a distance of 1185.62 feet; Thence, North 87°54'08" West, along the centerline of Walter Jones Boulevard, a distance of 556.86 feet; Thence, South 2°05'52" West, a distance of 60.00 feet to the southerly right-of-way of Walter Jones Boulevard and the **POINT OF BEGINNING** of this description;

**THENCE**, South 10°48'43" West, a distance of 64.00 feet to the northerly face of an existing building;

**THENCE**, North 87°50'37" West, along said building, a distance of 10.12 feet;

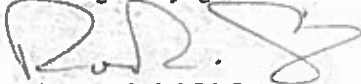
**THENCE**, North 10°48'43" East, a distance of 63.99 feet to the southerly right-of-way of Walter Jones Boulevard;

**THENCE**, South 87°54'08" East, along said right-of-way, a distance of 10.12 feet to the **POINT OF BEGINNING** of this description.

Said parcel of land contains 0.015 acres (640 square feet) of land more or less.

**NOTE: THIS DESCRIPTION IS BASED ON RECORD INFORMATION AND IS NOT INTENDED TO REPRESENT AN ON-THE-GROUND SURVEY. A PLAT OF EVEN DATE HERewith ACCOMPANIES THIS DESCRIPTION.**

ROBERT SEIPEL ASSOCIATES, INC.  
Professional Land Surveyors  
Texas Reg. Surveying Firm 10060500



Robert R. Seipel, R.P.L.S.  
President  
Texas License No. 4178

Job Number 16-0051  
December 20, 2016