

2000 APR 11 PM 3:35

MTC 50013-KR

**OPTION AGREEMENT
SINGLE TERM**

Vol M00 Page 11861

LEVEL 3 COMMUNICATIONS, LLC ("Tenant") and the other party or parties signatory hereto (individually or collectively "Landlord") hereby agree as follows:

1. Landlord is the owner of the real estate legally described on **Exhibit "A"** attached hereto (including any and all buildings, structures and improvements thereon, the "Property"), and depicted on **Exhibit "B"**, Record of Survey dated 12/21/99.
2. Landlord hereby grants to Tenant the exclusive option (the "Option") during the Option Term (as hereafter defined) to lease the Property for a total term of **Seventy-Five (75)** year period for a one time sum of **Seventy Thousand Dollars and no cents (\$70,000.00)**, (the "Option Price").
3. Tenant may exercise the Option at any time during the period commencing with the date hereof and ending on **April 25, 2000**, (the "Option Term"). In consideration of the grant of the Option, Tenant hereby pays to Landlord the sum of **One Thousand Dollars and no cents (\$1,000.00)**, (the "Option Deposit").
4. Tenant may exercise the Option by delivery of written notice of exercise (the "Exercise Notice") from Tenant to Landlord before the expiration of the Option Term (the date of delivery of the Exercise Notice is called the "Exercise Date"). In the event Tenant shall fail to deliver an Exercise Notice to Landlord within the Option Term, the Option shall be void and of no further force or effect and the Option Deposit shall be retained by Landlord.
5. Upon the delivery of the Exercise Notice, and subject to the terms and conditions of this Agreement, Landlord shall be deemed to have hereby and thereby agreed to lease to Tenant, and Tenant shall be deemed to have hereby and thereby agreed to lease from Landlord, the Property for the Option Price. If the Option is exercised, then the Option Deposit shall be credited to Tenant as prepaid rent.
6. Landlord represents and warrants to Tenant as follows:
 - (1) Landlord has the authority to enter into this Agreement and observe and perform all of its duties and obligations hereunder.
 - (2) Landlord has good and marketable fee-simple title to the Property.
 - (3) Landlord is the only person or entity in possession or occupancy of the Property.
 - (4) If the Property is currently encumbered, Landlord will assist Tenant in obtaining Non-Disclosure and Attornment agreements from Landlord's creditors.
 - (5) There are no proceedings, actions, litigation, bankruptcy petitions, judgments, or claims of any nature whatsoever, against Landlord or the Property pending before any government, regulatory authority or any administrative forum which would jeopardize Tenant's leasehold interest in the Property.
 - (6) Landlord has not engaged or otherwise dealt with any real estate broker or salesperson in connection with this Agreement.
 - (7) The Property has access to and from a duly dedicated and accepted public street or highway and the Property does not serve any adjoining real estate for ingress and egress.
 - (8) To the best knowledge of Landlord (i) no underground storage tanks or hazardous, toxic or other regulated substances, within the meaning of any applicable federal, state or local statute or regulation, are presently stored or otherwise located upon or within the Property, and no part of the Property is contaminated by any such substance, (ii) the Property has never been used as a landfill, and (iii) the Property is not in violation of any occupancy permits, fire regulations, building codes or any other federal, state or local laws, rules, regulations or standards; and the Property is not impacted by a consent decree in connection with (i), (ii) or (iii) above.

Landlord hereby indemnifies Tenant from and against any losses, damages or expenses sustained, suffered or incurred by Tenant arising or resulting from the untruth, inaccuracy or breach of any of the foregoing representations.

7. Landlord hereby covenants with Tenant that between the date hereof and the expiration of the Option Term or, if the Option is exercised, the full execution of a Lease Agreement, Landlord shall not:
 - (1) further mortgage, encumber or otherwise grant a lien upon the Property or any part thereof, and
 - (2) create, establish, consent to or permit any further easements, covenants, conditions or restrictions to be placed upon or against the Property, or
 - (3) take any action, or fail to take any action, necessary to maintain the continued accuracy of Landlord's representations and warranties set forth in paragraph 6 above.
8. During the Option Term, Tenant shall have the right to conduct such inspections, reviews and investigations of the Property, including environmental assessments, as Tenant shall determine necessary in its sole discretion ("Inspections"). Any inspections required by law or regulation shall be the responsibility of the Landlord and the results thereof shall be provided to Tenant immediately.

56.00
m

OPTION AGREEMENT
SINGLE TERM

11862

9. Within five (5) days after the Exercise Date, Tenant, at Tenant's sole cost, shall order an ALTA title insurance commitment (the "Title Commitment"), including copies of all recorded documents, from a title company of its choice ("Title Company") and an ALTA/topographical survey ("Survey") from a surveyor of its choice. The Title Commitment must contain the commitment by the Title Company to issue access, zoning and subdivision endorsements. Within fifteen (15) days after Tenant's receipt of the Title Commitment and the Survey, whichever occurs last, Tenant shall give written notice to Landlord of any matters disclosed in the Title Commitment and Survey which Tenant finds objectionable in its sole discretion. Landlord shall thereafter use its best efforts to correct and/or cure all such objectionable matters within thirty (30) days after receipt of such notice (the "Cure Period"). In the event Landlord shall fail to correct and/or cure such matters, Tenant may terminate the Option and this Agreement (along with terminating the Lease Agreement) and the Option Deposit shall be returned to Tenant. The Property will be conveyed to Tenant upon the full execution of the Lease Agreement subject to any matters disclosed in the Title Commitment and not objected to by Tenant (the "Permitted Exceptions").

10. Tenant's obligation after delivery of the Exercise Notice shall be subject to the satisfaction of the following conditions:
- (1) All of Landlord's representations and warranties shall be true and accurate as of the Exercise Date.
 - (2) Landlord shall have observed and performed all of Landlord's covenants and agreements.
 - (3) Landlord shall have cured and/or corrected all matters in the Title Commitment found objectionable by Tenant other than the Permitted Exceptions.

Tenant may, at its option, waive in writing any of the foregoing conditions. In the event the foregoing conditions are not satisfied or waived, Tenant may terminate this Agreement whereupon the Option Deposit shall be returned to Tenant.

11. In the event Landlord shall default in the performance of this Agreement, Tenant may exercise any and all rights and remedies allowed by law, including specific performance; however, if Landlord is unable, after exercising its best efforts, to cure and/or correct those matters found objectionable by Tenant in the Title Commitment Tenant shall be allowed only to either waive such objections or terminate this Agreement.

12. In the event Tenant shall default in the performance of this Agreement, Landlord's sole remedy shall be to terminate this Agreement and retain the Option Deposit as liquidated damages.

13. If, prior to delivery of Exercise Notice and the execution of the Lease Agreement, all or any portion of the Property shall be taken by condemnation or eminent domain proceedings, Landlord shall promptly give notice thereof to Tenant and Tenant shall have the right to terminate this Agreement or retain its rights to deliver an Exercise Notice. If there shall be a taking after the delivery of an Exercise Notice and Tenant shall elect not to terminate this Agreement, the Option Price shall not be reduced, but the Option Price shall be adjusted according to the percentage of the Property affected by the condemnation or eminent domain proceeding. If there shall be a taking prior to the delivery of an Exercise Notice, Tenant shall elect not to terminate this Agreement, and Tenant shall subsequently deliver an Exercise Notice, the Option Price shall be adjusted according to the percentage of the Property affected by the condemnation or eminent domain proceeding.

14. If, prior to delivery of Exercise Notice and the execution of the Lease Agreement, all or any portion of the Property shall be damaged or destroyed by casualty, Landlord shall promptly give notice thereof to Tenant and Tenant shall have the right to terminate this Agreement or retain its rights to deliver an Exercise Notice. If there shall be a casualty loss or damage after the delivery of an Exercise Notice and Tenant shall elect not to terminate this Agreement, but instead proceed to Closing, the Option Price shall not be reduced, but Landlord shall assign to Tenant all of Landlord's rights to all insurance proceeds, if any, as required to repair and restore the Property. If there shall be a casualty loss or damage prior to the delivery of an Exercise Notice, Tenant shall elect not to terminate this Agreement, and Tenant shall subsequently deliver an Exercise Notice, the Option Price shall be reduced by the amount of such insurance proceeds, if any, as required to repair and restore the Property.

15. 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 below. 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.

16. Grantor represents and warrants to Grantee that: Grantor is the sole lawful and owner and is in peaceful possession of the Property; the Property is free and clear of all liens and encumbrances; Grantor has good and marketable title to convey the Lease granted herein; the Lease is wholly within the Property; and the Lease is free of any grants, claims, or encumbrances which would conflict with Grantee's unrestricted use thereof, as contemplated by this agreement.

OPTION AGREEMENT
SINGLE TERM

17. Grantee agrees to release, indemnify, defend and hold harmless 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 System's, resulting from any act or omission of Grantee its employees, contractors, subcontractors, or agents in the course of construction and maintenance of the System/s or use of the Lease.

18. Grantor agrees that should the System be abandoned, or not used for a period of two (2) years, the Lease shall automatically cease and terminate and Grantee shall, if requested by the undersigned, release the same of record.

19. The covenants, terms, conditions and provisions therein shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors, assigns, lessees and agents of the parties hereto.

20. This Agreement shall be void and of no force or effect unless executed by Landlord and delivered to Tenant on or before 5:00 p.m., Denver, Colorado time, on N/A. References in this Agreement to "the date hereof" or similar words shall mean the date of execution hereof by Landlord as indicated below.

21. Those certain additional terms numbered 1 through 5 as set forth in a letter from Neal G. Buchanan Attorney At Law, dated October 26, 1999 (a copy of which is attached hereto marked Exhibit Q) are agreed to by the parties, and such additional agreements are incorporated herein as if fully set forth.

IN WITNESS WHEREOF, the parties execute this agreement as of March 31, 2000.

TENANT: LEVEL 3 COMMUNICATIONS, LLC

By: Nolan R. LeMaire
Nolan R. LeMaire
Acting Agent for Level 3 Communications, LLC

Title: FSA Coordinator

Address: 312 S.E. Stonemill Drive, Ste. 145
Vancouver, WA 98684

Dated: 4/4/00

ID# 47-0807040

with a copy of all correspondence to:

Level 3 Communications, LLC
14023 Denver West Parkway, 1st Floor
Golden, Colorado 80401
Attention: Director, Network Development

And: Level 3 Communications, LLC
1450 Infinite Drive
Louisville, Colorado 80027
Attention: General Counsel

LANDLORD:

By: James R. L. Mueller
James R.L. Mueller (SS# 562-96-7397)

By: Carla Lee Mueller
Carla Lee Mueller (SS# 540-76-3940)

Title: Property Owner

Address: 16087 Algoma Road
Klamath Falls, OR 97601

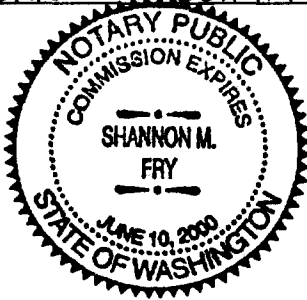
Dated: March 31, 00

OPTION AGREEMENT
SINGLE TERM

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

Tenant Acknowledgment

The foregoing instrument was acknowledged before me this 4th day of APRIL, 2000, by
NOLAN R. LEMAIRE of LEVEL 3 COMMUNICATIONS, LLC,
as Tenant.



[SEAL]

Shannon M. Fry
Notary Public

STATE OF Oregon)
) ss.
COUNTY OF Clatsop)

Landlord Acknowledgment

The foregoing instrument was acknowledged before me this 31st day of March, 2000, by
James R. L. Mueller & Carla Lee Mueller as
Landlord.



[SEAL]

Kristil Redd
Notary Public

OPTION AGREEMENT
SINGLE TERM

11865

EXHIBIT "A"
Legal Description of Property

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 37 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN AND BEING A PORTION OF PARCEL 2 OF MINOR LAND PARTITION NO. 81-92, KLAMATH COUNTY, OREGON.

BEGINNING AT A FOUND 5 / 8" IRON ROD ON THE EASTERLY RIGHT-OF-WAY LINE OF ALGOMA ROAD (COUNTY ROAD 671), BEING LOCATED SOUTH 84°18'42" WEST, A DISTANCE OF 2619.51' FROM A FOUND 2" BRASS DISK AT THE NORTHEAST CORNER OF SAID SECTION 7, ALSO BEING ON THE NORTH LINE OF THAT TRACT OF LAND CONVEYED TO JAMES R. L. AND CARLA LEE MUELLER IN VOLUME M86, PAGE 19295-96, RECORDED OCTOBER 23, 1986, KLAMATH COUNTY DEED RECORDS; THENCE SOUTH 88° 11' 59" EAST ON SAID NORTH LINE, A DISTANCE OF 350.00 FEET; THENCE SOUTH 01° 34' 52" WEST LEAVING SAID NORTH LINE, A DISTANCE OF 436.00 FEET; THENCE NORTH 88° 11' 59" WEST, A DISTANCE OF 350.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID ALGOMA ROAD; THENCE NORTH 01° 34' 52" EAST ON THE SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 436.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"
Record of Survey

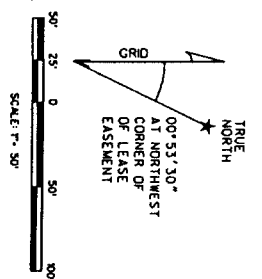
RECORD OF SURVEY
FOR
LEASE LOCATED IN A PORTION OF PARCEL 2 OF MINOR LAND PARTITION NO. 81-92
LOCATED IN THE NW 1/4 OF SECTION 7, TOWNSHIP 37 SOUTH, RANGE 9 EAST,
WILLAMETTE MERIDIAN, KLAATH COUNTY, OREGON
DECEMBER 21, 1999

COLLEEN L. RAMBO
TAX LOT 200

1188

1188

FOUND 2" DIA. BRASS DISK ON
1" DIA. GALVANIZED PIPE
36" LONG LYING ON GROUND.
SEE DETAIL "A" BELOW.



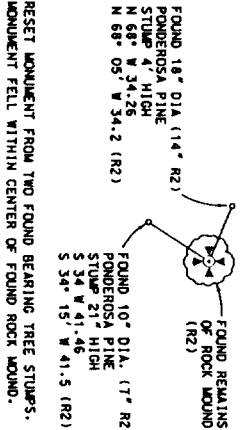
REFERENCE SURVEYS:

- R1 MINOR LAND PARTITION NO. 81-92, SA 11/11/99, CORNER RESTORATION
- R2 RECORD 37 09, E-5 DATED 5-21-64

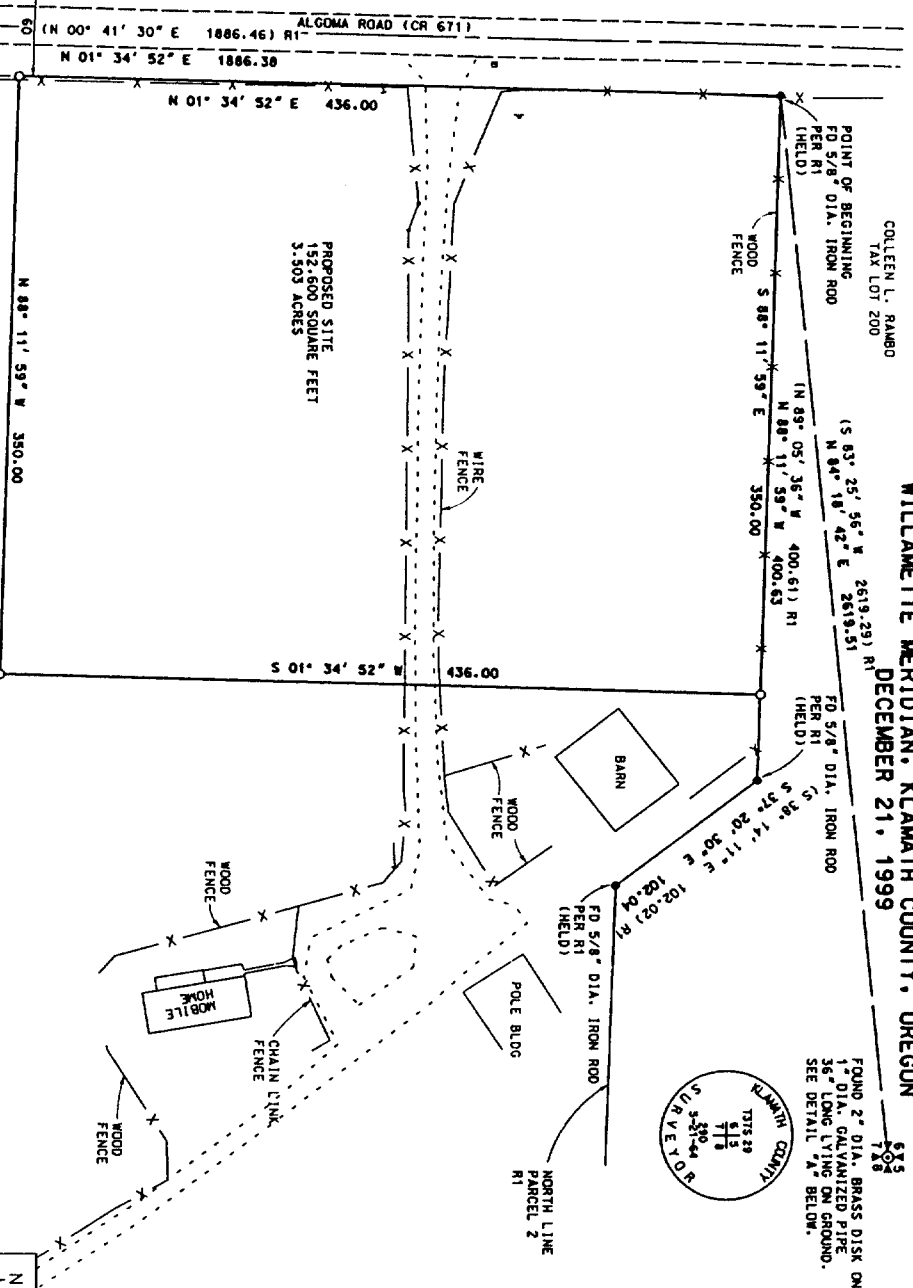
LEGEND

- FOUND MONUMENT AS NOTED
- SET 5/8" X 30" IRON ROD STAMPED "O.E.A. INC."
- POST
- LIGHT
- SECTION CORNER
- DIA.
- CENTERLINE
- EDGE OF GRAVEL
- EDGE OF PAVEMENT
- FENCE LINE
- RIGHT-OF-WAY
- PROPOSED PROPERTY LINE
- SECTION LINE

DETAIL A:



PROVIDED BY: DAVID EVANS AND ASSOCIATES, INC.
DUE TO THE POTENTIAL THAT THE ELECTRONIC FILE INFORMATION ON THIS DRAWING CAN BE MODIFIED, THE USE OF THIS ELECTRONIC INFORMATION SHALL BE AT THE SOLE RISK AND LIABILITY OF THE USER. THIS DRAWING IS FOR GRAPHIC PURPOSES ONLY AND SHALL NOT BEAR THE DECA LOGO.



PARCEL 2 MINOR LAND PARTITION 81-92
JAMES R. L. AND CARA LEE MUELLER
TAX LOT 300

FD 5/8" DIA. IRON ROD
PER R1
(HELD)

LEVEL 3 COMMUNICATIONS
KIEWIT CONSTRUCTION COMPANY
312 E. STONEMILL DR.
SUITE 145
VANCOUVER, WASHINGTON
98684

LEVEL 3 COMMUNICATIONS
MODOC POINT
ILA SITE

RECORD OF SURVEY
FOR LEASE
FOR
KIEWIT CONSTRUCTION COMPANY
LOCATED IN THE NW 1/4
OF SECTION 7, TOWNSHIP 37 SOUTH,
RANGE 9 EAST, WILLAMETTE MERIDIAN
KLAATH COUNTY, OREGON

SHEET 1 OF 2
SCALE 1" = 50'
SURVEY
FIELD BOOK
DRAWN G.M./M.C.
CHECKED C.R.C.
FILE PK310023

Exhibit "C-1"

NEAL G. BUCHANAN
Attorney at Law
435 Oak Avenue
Klamath Falls, Oregon 97601
Phone (541) 882-6607 - Fax (541) 882-2029

October 26, 1999

Level 3 Communications, LLC
312 SE Stonemill Dr., Suite 145
Vancouver, WA 98684

Re: James and Carla Mueller easement acquisition
16081 Algoma Rd., Klamath Falls, Oregon

Gentlepersons:

This office has been contacted with reference to the above matter, particularly with a request to review what appears to be a draft of an Option Agreement. Although the draft contemplates the use along with an Easement Agreement, that format was not provided to my clients.

Please also consider this letter as consent for your representatives to contact the Muellers directly, as I understand that your firm may be desirous of an expeditious processing of the matter.

At least with reference to the Option Agreement, there appear to be a few areas that were discussed as between the Muellers and your representative, which should be incorporated into the terms of that agreement. These include the following:

1. Survey Cost: Although the Option Agreement can be interpreted to so provide, it would be preferable if it were specifically noted that the survey cost is also to be at Level 3's cost.

2. Driveway Construction: Muellers indicate to me that there was discussion about the relocation of their driveway, as the anticipated location of the easement displaces their existing driveway. Toward that end, it would be suggested that the Option provide that Level 3 will relocate their driveway to a location further South on their property (I understand that they discussed construction of a driveway at the South end of their property, away from the easement) which would entail a somewhat longer driveway). The location and elevation of the replacement driveway would be at Mueller's election, to be constructed at Level 3's cost. In addition to the relocation of the driveway, Level 3 would also be required to either relocate (and extend) the fence located along the existing driveway to a location adjacent to the relocated driveway, or simply construct fencing of like material along that relocated driveway.

Exhibit "C-2"

Level 3
October 26, 1999
Page 2

3. Perimeter Fence: Level 3 would be required to construct a perimeter fence around the improvements anticipated to be constructed in the easement area, and would be responsible (for so long as the improvements were located there) to "fence out" all livestock (irrespective of whether the area wherein the easement is located is or is not in a livestock district).

4. Planning and Zoning Approvals: Level 3 would be responsible to prepare and process all Planning and Zoning applications, and to obtain any necessary approvals, at level 3's cost. Mueller would be required only to cooperate in such application process or processes.

5. Property Tax: In conjunction with any Planning or Zoning application procedure, a separate tax account shall be established such that the real property upon which Level 3's improvements are located as well as all improvements located on the easement shall be assessed and any tax levied. Muellers shall not be responsible to pay the said tax, and should Mueller be billed for any tax on property encompassed by the easement, or improvements located thereon, Level 3 shall promptly reimburse Muellers for such tax assessed (before the same becomes due).

Thank you for your immediate attention to this matter.

Sincerely,


NEAL G. BUCHANAN

NGB:mc
cc: client

*Acknowledged
Howard Anderson
10-26-99*

State of Oregon, County of Klamath
Recorded 04/11/00, at 2:35 p. m.
In Vol. M00 Page 11861
Linda Smith,
County Clerk Fee \$ 56⁰⁰