

UTILITY EASEMENT AGREEMENT

Document Title

This Utility Easement Agreement (“**Agreement**”) is entered into by and between the City of West Allis, a Wisconsin municipal corporation (“**Grantor**”) and Everstream GLC Holding Company LLC, a Delaware limited liability company (“**Everstream**”).

RECITALS

- A. Grantor owns real property in Milwaukee County, Wisconsin legally described on *Exhibit A* (the “**Property**”):
- B. Grantor leases to T-Mobile Central LLC a certain portion of the Property, which T-Mobile Central LLC wishes to be served by fiber provided by Everstream.
- C. Grantor is willing to grant a non-exclusive easement to Everstream for such purposes on the terms and conditions contained in this Agreement.

Recording Data

Name and Return Address
Atty. Julia K. Potter
Boardman & Clark LLP
PO Box 927
Madison, WI 53701-0927

478-0030-001

Parcel Identification Number (PIN)

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor and Everstream agree as follows:

1. Grant of Easement. Grantor hereby grants to Everstream a non-exclusive easement on the Property in the location legally described on *Exhibit B* (“**Easement Area**”) to construct, reconstruct, maintain, operate, and remove an underground fiber optic cable and any necessary appurtenant equipment to serve the parcel leased to T-Mobile Central LLC. All improvements shall be located below grade. Everstream shall provide Grantor with at least 48 hours’ advance notice prior to performing any work in the Easement Area by calling (414) 302-8827 or providing written notice as set out in Section 10.
2. Term. The term of the easement granted in Section 1 of this Agreement shall be coextensive with the term of the lease to T-Mobile Central LLC and shall automatically terminate upon the termination of said lease (“**Term**”). Everstream shall remove all of its facilities installed within the Easement Area within 90 days of receiving notice that Grantor’s lease with T-Mobile Central LLC has terminated.
3. Consistent Uses Allowed. Grantor reserves the right to use the Property and the Easement Area for all purposes that will not interfere with the rights granted to Everstream under this Agreement.
4. Restoration of Surface. Everstream shall perform all work under this Agreement in accordance with all applicable laws, rules, regulations, and ordinances. Upon completion of any work within the Easement Area, Everstream shall restore the surface of the Easement Area (and any adjacent portions of the Property affected by work in the Easement Area) to substantially the same condition it was in prior to the commencement of Everstream’s work.

5. Indemnification. Everstream shall indemnify and hold harmless the City of West Allis and its agents, employees, officers, departments, commissions, and elected and appointed officials from and against all loss, costs (including attorney's fees), penalties, injury, death, or damage to persons or property (including Grantor's property) that at any time during the Term may be suffered or sustained by any person or entity in connection with Everstream's activities conducted on the Property, regardless of the cause of the injury, except to the extent caused by the negligence or willful misconduct of Grantor or its agents or employees.
6. Covenants Run with Land. This Agreement is an equitable servitude running with the land described on **Exhibit B** and shall be binding upon, and inure to the benefit of, and be enforceable by Grantor and Everstream and their respective successors and assigns.
7. No Waiver. Nothing in this Agreement is intended to be a waiver or estoppel of the City of West Allis to rely on the limitations, defenses, and immunities contained within Wisconsin law, including but not limited to those contained in Wis. Stat. §§ 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City of West Allis shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.
8. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin, without regard to its conflict of laws provisions.
9. Entire Agreement. This Agreement sets forth the entire understanding of Grantor and Everstream with respect to its subject matter and may not be changed except by a written document executed and acknowledged by Everstream and all record owners of the Easement Area and duly recorded in the office of the Register of Deeds for Milwaukee County.
10. Notices. All notices permitted or required pursuant to this Agreement shall be in writing and shall be delivered or sent by certified mail or overnight delivery by a reputable national carrier to the addresses provided below, provided that either party may change such address by written notice to the other:

Grantor: City of West Allis, Wisconsin
Attn: Water Systems Superintendent
6300 W. McGeoch Ave
West Allis, WI 53219

Everstream: Everstream GLC Holding Company LLC
Attn: General Counsel
1228 Euclid Ave
Suite 250
Cleveland, OH 44115

11. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
12. Waiver. No delay or omission in exercising any right or power arising out of any default under the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by Grantor or Everstream of any of the obligations of the other shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
13. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in the Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement,

EXHIBIT A

PROPERTY

A part of Lot Two (2), Block Two (2), ASSESSOR'S PLAT NO. 254 being a part of the Southwest One quarter (1/4) of Section Four (4), Township Six (6) North, Range Twenty-one (21) East, City of West Allis, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Commencing at a point in the East line of the Southwest 1/4 of Section 4, 1827.90 feet North of the Southeast corner of said 1/4 Section; running thence North on and along the East line of the Southwest 1/4 of Section 4, 156.39 feet to a point in the South line of the Honey Creek Cemetery Grounds; thence Westerly on and along the South line of the Cemetery Grounds, 115.5 feet to a point; thence North on and along the Westerly side of the Cemetery Grounds, 547.17 feet to a point in the center line of National Avenue; thence South 65° and 30' West on and along the center line of National Avenue, 264.71 feet to a point (said point being 356.2 feet West of the East line of said 1/4 Section) thence South on and along a line which is 356.2 feet West of and parallel with the East line of said 1/4 Section, 443.80 feet to a point in the North Bank of Honey Creek, thence South 88°45' East on and along the North Bank of Honey Creek, 166.40 feet to a point; thence south 40°6' East on and along the North Bank of Honey Creek, 178.5 feet to a point; thence South 87° 36' East on and along the North Bank of Honey Creek, 72 feet to the point of commencement. Also including part of the vacated right-of-way on the South. Excepting therefrom those lands used and dedicated for street and avenue purposes.

ALSO

A part of Lot One (1), Block Three (3), ASSESSOR'S PLAT NO. 254 being a part of the Southwest One quarter (1/4) of Section Four (4), Township Six (6) North, Range Twenty-one (21) East, City of West Allis, County of Milwaukee, State of Wisconsin, the following described portion of said Lot One (1), Block Three (3) lying East of and North of the following described line:

Commencing at the Northwest corner of said Lot 1, Block 3; thence Northeasterly along the North line of said Lot 1, 238.60 feet to the point of beginning; thence South 250 feet more or less to a point which is 749.00 feet North of the South line of said Lot 1, Block 3, said point also being 215.70 feet East of the West line of said Lot 1, Block 3; thence Easterly and parallel with the South line of said Lot 1, Block 3, 100 feet more or less (said line also being along the North line and its extension of South 85th Street) to a point in the most easterly line of said Lot 1, Block 3.

Tax Key No: 478-0030-001

EXHIBIT B

EASEMENT AREA

A part of Lot Two (2), Block Two (2), Assessor's Plat No. 254 being located in the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) of Section Four (4), Township Six (6) North, Range Twenty-One (21) East, City of West Allis, Milwaukee County, Wisconsin containing 3,019 square feet (0.069 acres) of land and being described by:

Commencing at the South Quarter Corner of said Section 4; thence N00°-28'-03"W 1973.46 feet along the east line of the SW1/4 of said Section 4; thence S89°-31'-57"W 30.00 feet to a point on the West line of S. 84th Street and the point of beginning; thence S86°-04'-07"W 86.56 feet; thence N00°-28'-03"W 124.44 feet; thence S89°-31'-57"W 39.62 feet; thence N45°-07'-12"W 183.49 feet; thence N23°-48'-28"W 10.46 feet; thence N65°-58'-23"E 8.00 feet; thence S23°-48'-28"E 8.98 feet; thence S45°-07'-12"E 178.64 feet; thence N89°-31'-57"E 40.27 feet to a point on the West line of Honey Creek Cemetery property; thence S00°-28'-03"E 124.19 feet along said West line to its Southwest corner thereof; thence N86°-04'-07"E 82.55 feet along the South line of Honey Creek Cemetery property to a point on the West line of S. 84th Street; thence S00°-28'-03"E 8.01 feet along said West line to the point of beginning. Being subject to any and all easements and restrictions of record.