



**Date of Council Meeting:** July 22, 2014

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

- Subject:** Granting an easement to Verizon Wireless across town property to allow the company to install an antenna on a DVP transmission tower adjacent to town-owned property
- Staff Contact:** Barbara Notar, Deputy Town Attorney  
Amy Wyks, Director of Utilities  
Aref Etemadi, Deputy Director of Utilities
- Recommendation:** Authorize the Mayor to enter into a Right of Way Easement Agreement with Verizon Wireless to allow the company to cross Edwards Ferry Substation Lot 2
- Issue:** Should the Mayor execute a Right of Way Easement Agreement to allow Verizon Wireless to install a new wireless communication facility on a DVP transmission tower adjacent to town-owned property.
- Fiscal Analysis:** There will be no fiscal impact to the town as a result of granting the easement. Verizon Wireless shall pay to the Town of Leesburg the sum of \$3,500.00 as a one-time contribution to for the costs incurred in the installation of a gate.
- Background:** Verizon Wireless has proposed to install a new wireless communication facility (antenna) near the Town Water Plant on an existing Dominion Virginia Power transmission pole. Verizon Wireless has requested a utility easement to install the antenna. The proposed route for the utilities easement is shown on the attached plat.
- Staff recommends authorizing the right of way easement for Verizon Wireless.
- Attachments:** (1) Verizon Wireless Power Right of Way Easement Agreement  
(2) Verizon Wireless Right of Way Easement Plat

AFTER RECORDING RETURN TO:

HIRSCHLER FLEISCHER  
P.O. BOX 500  
RICHMOND, VIRGINIA 23218  
**Tax Map No.: 100-37-6809-000**  
Site Name: Edward's Ferry

## **DEED OF EASEMENT AND RIGHT OF WAY**

**THIS DEED OF EASEMENT AND RIGHT OF WAY** is made and executed between **TOWN OF LEESBURG**, a political subdivision of the Commonwealth of Virginia, hereinafter designated GRANTOR, and **CELLCO PARTNERSHIP, d/b/a Verizon Wireless** with its principal offices at One Verizon Way, Basking Ridge, New Jersey 07920, hereinafter designated GRANTEE.

**WHEREAS**, GRANTEE has entered into a Land Lease Agreement with Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion") for the lease of a portion of that certain parcel of property located in Loudoun County, Virginia shown, now or formerly, in whole or in part, on the Tax Map of the Loudoun County, Virginia as Tax Identification Number 110-27-2075-000, and is further described in Instrument No. 20130301-0018338 in the Office of the Clerk of the Circuit Court of Loudoun County, Virginia (hereinafter the "Lease Site").

**WHEREAS**, GRANTOR has agreed to grant to GRANTEE the ingress, egress and utility easements contained herein to permit GRANTEE to install a new wireless communication facility on the Lease Site.

### **WITNESSETH:**

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**, that GRANTOR for and in consideration of the sum of Ten and no/100ths (\$10.00) Dollars, paid by GRANTEE to GRANTOR, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the GRANTEE its agents and its successors and assigns (i) a non-exclusive easement and right-of-way (the "Ingress/Egress Easement Area"), for the purpose of ingress and egress to and from the Lease Site, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and (ii) a non-exclusive easement for the installation and maintenance of utility wires, cables, conduits, and pipes over, under, or along a ten (10') foot wide right of way (the "Utility Easement Area") to and from the Lease Site. The Ingress/Egress Easement Area and the Utility Easement Area are more particularly described as follows, to wit:

**SEE EXHIBITS A AND B ATTACHED HERETO AND INCORPORATED HEREIN**

## PROVISIONS

1. It is the intent of this Deed of Easement and Right of Way Agreement to convey to GRANTEE a non-exclusive easement for the purposes as set forth herein over the entire Ingress/Egress Easement Area and Utility Easement Area. However, to the extent the grant made hereby shall fail in any respect, or is held to be invalid, in whole or in part, including but not limited to the effectiveness of the grant made hereby, this Deed of Easement and Right of Way Agreement shall continue in full force and effect to the full extent of GRANTOR's interest in and to any part of the Ingress/Egress Easement Area and the Utility Easement Area.
2. GRANTEE, its agents, independent contractors, subtenants, licensees, tenants and invitees shall have the use of the Ingress/Egress Easement Area and the Utility Easement Area as described herein for the purpose of ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes over, under, or along the Ingress/Egress Easement Area and Utility Easement Area, provided that, in conjunction with such use, GRANTEE shall use the existing road thereon.
3. GRANTOR shall have the right to install a security gate within the Ingress/Egress Easement Area provided that, GRANTOR shall provide GRANTEE with keys and or access codes to permit GRANTEE full access over the Ingress/Egress Easement Area for the purposes set forth herein. GRANTEE shall pay to GRANTOR the sum of \$3,500.00 as a one-time contribution to GRANTOR for its costs incurred in the installation of the gate.
4. With the exception of that portion of the Ingress/Egress Easement Area and the Utility Easement Area which has heretofore been improved and/or paved, if any, GRANTEE shall pay for all costs incurred in connection with the creation of this easement and right of way.
5. In the event any public utility is unable to use the aforementioned right-of-way, the GRANTOR hereby agrees to grant an additional right-of-way either to the GRANTEE or to the public utility at no cost to the GRANTEE.
6. The term of this Deed of Easement and Right of Way Agreement shall be equal to and shall correspond with the term of the Land Lease Agreement, as it may be amended from time to time, entered into by GRANTEE and Dominion contemporaneously with this Deed of Easement and Right of Way, provided that the term shall not exceed forty (40) years. Upon the termination of the Land Lease Agreement, this Deed of Easement and Right of Way Agreement shall terminate ninety (90) days thereafter.
7. GRANTOR covenants that GRANTOR is seized of good and sufficient title and interest to the Ingress/Egress Easement Area and the Utility Easement Area and has full authority to enter into and execute this Deed of Easement and Right of Way Agreement. GRANTOR further covenants that there are no other liens, judgments or impediments of title on the Ingress/Egress Easement Area and the Utility Easement Area or affecting GRANTOR's title

to the same and that there are no covenants, easements or restrictions which prevent the use of the Ingress/Egress Easement Area and Utility Easement Area by the GRANTEE as set forth above.

8. It is agreed and understood that this Deed of Easement and Right of Way Agreement contains all agreements, promises and understandings between the GRANTOR and GRANTEE and that no verbal or oral agreements, promises or understandings shall be binding upon either the GRANTOR or GRANTEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Deed of Easement and Right of Way Agreement shall be void and ineffective unless made in writing and signed by the Parties.
9. This Deed of Easement and Right of Way Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the Commonwealth of Virginia.
9. This Deed of Easement and Right of Way Agreement may be sold, assigned or transferred by the GRANTEE without any approval or consent of the GRANTOR.
10. This Deed of Easement and Right of Way Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

**TOGETHER** with all and singular the Rights, Members, Hereditaments and Appurtenances to the Ingress/Egress Easement Area and the Utility Easement Area belonging, or in anywise incident or appertaining.

**TO HAVE AND TO HOLD**, all the interests, rights, and privileges herein granted in and to the Ingress/Egress Easement Area and Utility Easement Area before described unto the GRANTEE, its Successors and Assigns, for the term as stated herein, it being agreed that said Deed of Easement and Right of Way shall run with and be appurtenant to the Lease Site and the Land Lease Agreement of GRANTEE.

**THE GRANTOR** does hereby bind the GRANTOR and the GRANTOR'S heirs, successors or executors and administrators, to warrant and forever defend all and singular the said Ingress/Egress Easement Area and the Utility Easement Area unto the GRANTEE and the GRANTEE'S Successors and Assigns against the GRANTOR and the GRANTOR'S Heirs.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others; including the neuter. Such words of inheritance shall be applicable as are required by the gender of the GRANTEE or GRANTOR. The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**IN WITNESS WHEREOF**, GRANTOR and GRANTEE have executed this instrument under seal effective as of the \_\_\_\_ day of \_\_\_\_\_ 2014.

**GRANTOR:**

**TOWN OF LEESBURG, VIRGINIA**

By: \_\_\_\_\_ [SEAL]

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )  
 )  
\_\_\_\_\_ OF \_\_\_\_\_ )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as the \_\_\_\_\_ of the Town of Leesburg, Virginia.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_  
My Notary Registration No.: \_\_\_\_\_

[NOTARY SEAL/STAMP]

**GRANTEE:**

CELLCO PARTNERSHIP,  
d/b/a Verizon Wireless

\_\_\_\_\_  
WITNESS

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

David R. Heverling  
Area Vice President Network

Date: \_\_\_\_\_

STATE OF MASSACHUSETTS )  
 )  
COUNTY OF WORCESTER )

ACKNOWLEDGMENT

I, \_\_\_\_\_, a Notary Public for the above-referenced County and State, do hereby certify that **David R. Heverling** personally came before me this day and acknowledged that he is the Area Vice President Network of **CELLCO PARTNERSHIP, d/b/a Verizon Wireless**, and that he, as Area Vice President Network being authorized to do so, executed the foregoing Instrument on behalf of **CELLCO PARTNERSHIP, d/b/a Verizon Wireless**.

WITNESS my hand and official Notarial Seal, this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
My Notary Registration No.: \_\_\_\_\_

**EXHIBIT A**  
**(WRITTEN DESCRIPTION OF INGRESS/EGRESS AND UTILITY EASEMENT)**

**EXHIBIT B**

**SURVEY OF INGRESS/EGRESS AND UTILITY EASEMENT**

PRESENTED July 22, 2014

RESOLUTION NO. \_\_\_\_\_

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS RIGHT OF WAY EASEMENT AGREEMENT AT EDWARDS FERRY ROAD SUBSTATION LOT 2

WHEREAS, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) has proposed to install a new wireless communication facility (antenna) to provide wireless service to residents of the Town and elsewhere; and

WHEREAS, Verizon Wireless has requested to connect an antenna to an existing Dominion Virginia Power transmission pole located adjacent to Town Property – Edwards Ferry Road Substation Lot 2; and

WHEREAS, Verizon Wireless has requested the Town grant them a right of way easement to install the antenna to the communications facility; and

WHEREAS, the easement, if granted to Verizon Wireless by the Town, will not be a detriment to the town-owned property in any way and will provide improved wireless service to Town residents.

THEREFORE RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the Verizon Wireless right of way easement agreement on a form approved by the Town Attorney for the installation of the wireless communication facility.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council