



Date of Council Meeting: **November 10, 2014**

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** Encroachment Agreement between the Town and Cellco Partnership d/b/a Verizon Wireless

**Staff Contact:** Barbara Notar, Deputy Town Attorney  
Aref Etemadi, Deputy Director of Utilities

**Council Action Requested:** Approve an Encroachment Agreement with Verizon Wireless.

**Staff Recommendation:** Recommend approval of the Encroachment Agreement.

**Commission Recommendation:** Not Applicable.

**Fiscal Impact:** Not applicable to this Agreement, although Verizon Wireless will contribute \$3500 to the Town's upgrade of the entrance gate at the Water Treatment Center.

**Executive Summary:** Verizon Wireless desires to erect a wireless antenna atop a Dominion Virginia Power ("DVP") transmission pole adjacent to the Town's Water Treatment Plant. A Right of Way Agreement has already been authorized in Resolution No. 2014-080 to allow Verizon Wireless cable to cross Town-owned property. However, an Encroachment Agreement is also needed to allow Verizon Wireless to cross Town easements which were conveyed to the Town by DVP and Loudoun County Board of Supervisors as a result of DVP's purchase of land for the Edwards Ferry Substation.

**Background:** Encroachment Agreements are to be authorized by the Town Council to allow private companies to cross town-owned easements.

**Attachments:** Resolution  
DRAFT Encroachment Agreement

## **ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT (“Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between CELLCO PARTNERSHIP d/b/a Verizon Wireless (“Verizon Wireless”) and the TOWN OF LEESBURG, a political subdivision of the Commonwealth of Virginia (the “Town”).

### **RECITALS**

A. Pursuant to that certain Deed of Subdivision, Conveyance, Easements, and Vacation, dated February 7, 2013 and recorded March 1, 2013 in the Circuit Court Clerk’s Office for Loudoun County, Virginia as Instrument No. 20130301-0018338 (the “Easement Agreement”), the Town was granted certain force main and facility easements (the “Easements”), in the locations (the “Easement Area”) and as more particularly set forth in the Easement Agreement.

B. The Easement Agreement permits the installation of improvements over and through the easement areas provided that the prior written approval of the Town is obtained.

C. Verizon Wireless is constructing a wireless communications facility on property located adjacent to the easement areas and desires to obtain the approval of the Town for certain encroachments over and through the Easement Area.

D. The parties desire to enter into this agreement to set forth the terms and conditions upon which Verizon Wireless will be permitted to encroach upon the Easements.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed by and between the parties as follows:

1. Town Approval. The Town hereby approves the encroachment upon the Easement Area by Verizon Wireless subject to the terms and conditions set forth in this Agreement.

2. Plans. Prior to the installation of any improvements, roads, other structures or utilities within the Easement Area, Verizon Wireless shall submit construction plans (the “Plans”) to the Town of Leesburg Department of Utilities, 1385 E. Market St., Leesburg, VA 20176 for approval. The Town’s approval of the Plans shall not be unreasonably withheld, conditions, or delayed, provided that the plans adequately provide for the protection of any Town facilities located within the Easement Area and do not otherwise adversely impact the Town’s continued use of the Easement Area for the purposes as set forth in the Easement Agreement, all in the reasonable discretion of the Town.

3. Indemnification. Verizon Wireless hereby agrees to indemnify, defend, and hold the Town harmless from and against all damages, losses, and liabilities arising out of Verizon Wireless’ installation of improvements and/or utilities over and through the Easement Area,

provided that such damages, losses or liabilities do not arise out of the negligence and willful misconduct of the Town.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

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

**TOWN OF LEESBURG, VIRGINIA**

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

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

DRAFT

CELLCO PARTNERSHIP,  
d/b/a Verizon Wireless

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

David R. Heverling  
Area Vice President Network

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

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DRAFT

PRESENTED November 10, 2014

RESOLUTION NO. 2014-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS TO ALLOW VERIZON WIRELESS TO CROSS THE TOWN'S EASEMENT AT THE KENNETH B. ROLLINS WATER TREATMENT PLANT

WHEREAS, Cellco Partnership d/b/a Verizon Wireless has previously entered into a Right of Way Agreement with the Town for access to a proposed wireless communication facility ("antenna") atop a Dominion Virginia Power ("DVP") transmission pole located adjacent to the Kenneth B. Rollins Water Treatment Plant; and

WHEREAS, Resolution No. 2014-080 authorized the execution of this Right of Way Agreement; and

WHEREAS, in order to reach the proposed antenna, Verizon Wireless must also cross Town-owned easements granted by DVP and Loudoun County as a result of DVP's purchase of Town-owned property for its Edwards Ferry Substation; and

WHEREAS, the Deputy Town Attorney has reviewed a draft of the proposed Encroachment Agreement; and

WHEREAS, construction of the antenna will benefit the residents of the Town.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the Encroachment Agreement between the Town and Verizon Wireless so long as the Deputy Town Attorney approves the Agreement.

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS TO ALLOW VERIZON WIRELESS TO CROSS THE TOWN'S EASEMENT AT THE KENNETH B. ROLLINS WATER TREATMENT PLANT

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

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

ATTEST:

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