

Prepared by/Return to:
City Attorney's Office
22 Lincoln Street
Hampton, VA 23669
(757) 727-6157
(BNB)

LRSN: 9000453; 13003533

Exemption Claimed: Virginia Code §58.1-811C(4)

THIS DEED OF EASEMENT AGREEMENT (the "Agreement"), made this ____ day of _____, _____, by and between the CITY OF HAMPTON, Virginia a municipal corporation of the Commonwealth of Virginia ("the City"), "Grantor" for indexing purposes, and ALTEL COMMUNICATIONS, LLC D/B/A VERIZON WIRELESS a New Jersey corporation, "Grantee" for indexing purposes, having a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920.

WHEREAS, the City is the owner of that certain lot, piece, or parcel of land designated as LRSN 9000453 located in the City of Hampton, Virginia ("the Property") and more particularly described on that certain plat entitled, "Survey C 1 Alltel Communications LLC, Langley AFB Site, 901 Little Back River Road, Hampton VA 23666", dated September 10, 2004, attached hereto as **Exhibit A**.

WHEREAS, Grantee desires to enter the Property and use a portion thereof for the purposes of (i) access from State Highway 609 (Little Back River Road) to a communications facility (the "Facility" or "Facilities") located in an 85'x90' area leased by the Grantee (the "Leased Premises"), (ii) installation and maintenance of utility wires, poles, cables, conduits, and pipes to the Facility, and (iii) installation, construction, maintenance, operation, use, repair, and replacement of wiring from the Facilities located on the Property, with said access being 20' wide and extending from the nearest public right-of-way, State Highway 609 AKA Little Back River Road, to the Lease Site, as shown on **Exhibit A**; and

WHEREAS, the City has agreed to grant to Grantee certain temporary, non-exclusive easements in certain areas of the Property as described in **Exhibit B** subject to the terms and conditions set forth in this Deed of Easement Agreement.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the mutual benefits accruing or to be accrued to the above-mentioned parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

- (1) **Grant of Easement**. Subject to the terms and conditions of this Agreement, the City hereby grants unto Grantee: (a) a temporary, non-exclusive 20' ingress/egress easement ("the Access Easement"), and (b) a temporary, non-exclusive 10' utility easement ("the Utility Easement"). The Access Easement and the Utility Easement (collectively, "the Easements"), are for the use and benefit of Grantee and its

licensees, seven (7) days a week, twenty-four (24) hours a day, over, under, upon, and across those portions of the Property as shown on **Exhibit A** and described in **Exhibit B** attached hereto and made a part hereof (such areas collectively referred to as “the Easement Property”).

(2) City’s Reserved Rights. The Easements are subject to the following rights reserved by the City:

- (a) The City reserves the right to use the Property for any purpose that does not interfere with Grantee’s use of the Easements and the Easement Property as set forth herein;
- (b) The City reserves the right to grant additional easements and other rights to third parties over, under, and within the Property, on the condition that such easements and other rights do not interfere with Grantee’s use of the Easements and the Easement Property as set forth herein;
- (c) The City reserves the right to restrict access temporarily to all or any portion of the Property it owns at any time and from time to time in connection with construction, maintenance, or repair activities on the Property, so long as such restricted access does not unreasonably interfere with Grantee’s use of the Easements and the Easement Property as set forth herein;
- (d) The City, its agents, successors, and assigns shall have the right to inspect the Easement Property with or without notice to the Grantee;

(3) Grantee’s Use:

- (a) Grantee, its employees, licensees, contractors, and subcontractors may utilize the Access Easement solely for ingress and egress seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks from 901 Little Back River Road to the Leased Premises. The Utility Easement shall be used solely for the installation and maintenance of utility wires, poles, cables, conduits, and pipes from the Facilities located on the Leased Premises to the Facility seven (7) days a week, 24-hours a day, on foot or motor vehicle, including trucks.
- (b) The City acknowledges that the Easements also include the installation, construction, maintenance, operation, repair, and replacement of any and all improvements within the Easement Property (collectively, “the Utility Improvements”) reasonably necessary or reasonably appropriate for the operation of the Facility, and all reasonably necessary ingress and egress thereto and therefrom. In connection with the exercise of its rights pursuant to this Easement Agreement, Grantee may permit its contractors, subcontractors, licensees, employees, and agents to enter upon the Easement Property and may grant licenses for same for the purposes set

forth herein so long as Grantee remains responsible and liable for all obligations set forth in this Easement Agreement.

- (c) Any unauthorized use of the Easements is strictly prohibited, and Grantee shall neither use the Easements or the Easement Property, nor permit the use of the Easements or the Easement Property, in such a manner as to constitute a public nuisance.
- (d) Grantee shall limit its activities to the Easement Property and shall properly maintain the Easement Property and repair and restore any damage to the Property or any improvements located thereon caused by its use of the Property to install, construct, maintain, operate, repair, or replace any Utility Improvements.

Subject to the following limitations, Grantee shall not generally be required to maintain the Access Easement, including the internal Gosnold's Hope Park road known as Shelby Avenue, except that Grantee shall be responsible for any damage or deterioration to the Access Easement caused by Grantee's use of the Access Easement. Any such damage shall be repaired within thirty (30) days of receipt of notice thereof. If Grantee fails to repair any such damage, Grantor may complete needed repairs at Grantee's expense. Grantee shall then reimburse the cost of said repairs to Grantor within thirty (30) days of notice of receipt of an invoice for said cost.

Furthermore, in its use of the Access Easement, Grantee shall use only light and medium duty trucks. For purposes of this Lease, "light and medium duty trucks" shall be those with a gross vehicle weight rating (GVWR) of 26,000 pounds or less (those not considered a "commercial motor vehicle" by the Virginia Commercial Motor Vehicle Safety Act). In the event that Grantee requires the use of a vehicle in excess of the permitted weight range, Grantee shall notify Grantor at least thirty (30) days in advance of the date and time of the required use of the vehicle.

Notwithstanding the foregoing, Grantee shall be required to generally maintain that portion of the Access Easement which is a gravel road, including repair of any deep ruts which may develop in the gravel road within thirty (30) days of receipt of notice thereof.

- (e) The term of this Easement Agreement shall be equal to and shall correspond with the term of the Gosnold Hope Park Site Lease, as it may be amended from time to time, entered into by Grantee and Grantor contemporaneously with this Easement Agreement. This Easement Agreement shall terminate ninety (90) days after termination of the Gosnold Hope Park Site Lease

unless a new lease is executed by the parties hereto, their successors or assigns, pursuant to Virginia Code §§ 15.2-1800 and 15.2-2100.

- (4) Insurance. Grantee agrees to secure and maintain in full force and effect at all times during the term of this Easement Agreement Commercial General Liability Insurance, including contractual liability and products and completed operations liability coverage with limits of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate. Such insurance shall include the City as an additional insured. Grantee further agrees to secure and maintain in full force and effect at all times during the term of this Easement Agreement, or require its contractors performing services in the Easement Property to secure and maintain in full force and effect at all times during any service contract, the following policies of insurance:
- (a) Workers' Compensation Insurance as required under Title 65.2 of the Code of Virginia; and
 - (b) Automobile Liability Insurance including coverage for non-owned and hired vehicles with a One Million Dollar (\$1,000,000) combined single limit (CSL).

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in the Commonwealth of Virginia. It is the responsibility of Tenant to notify Landlord if any of the above insurance policies are canceled or materially modified thirty (30) days' prior to such cancellation or modification. Failure to notify Landlord shall be considered a material breach of this Agreement. Grantee shall submit a certificate or certificates of insurance to the City's Risk Management Administrator prior to the commencement of activities within the Easements or the Easement Property.

- (5) Indemnity. Except to the extent caused by the negligence or willful misconduct of the City, its agents, employees, volunteers, servants, and officials, Grantee expressly agrees to indemnify, defend, and hold harmless the City, its agents, employees, volunteers, servants, and officials from and against any and all claims, loss, damage, injury, and liability however caused, including but not limited to reasonable attorney's fees and litigation costs, resulting from negligence, misfeasance, malfeasance, or nonfeasance arising out of or in any way connected with activities in the Easements or the Easement Property by Grantee, its employees, contractors, subcontractors, licensees, consultants, subconsultants, or by any other persons, corporations, or legal entities retained by Grantee to perform any activities in the Easements or the Easement Property. In connection with Grantee's activities in the Easements or the Easement Property, clean-up costs, fines, administrative, criminal or civil penalties or charges, and third party claims imposed on the City by any regulatory agency or by any third party as a result of the noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by Grantee or by contractors, subcontractors, licensees,

consultants, subconsultants, or any other persons, corporations, legal entities retained by Grantee, shall be paid by Grantee. This provision shall survive termination of this Easement Agreement.

- (6) Notice. Any and all notices required or permitted to be given under this Easement Agreement to Grantee or the City shall be in writing and postage and/or shipping and delivery shall be pre-paid and sent (a) by U.S. Postal Service Certified Mail with Return Receipt requested, (b) via a national overnight (or 2nd day) courier service requiring a signature upon delivery (such as Federal Express), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent) to the addresses set forth below. The parties hereto shall each have the right to specify, from time to time, as its address for purposes of this Easement Agreement, upon giving fifteen (15) days' written notice thereof to each other person then entitled to receive notices, instruments, or communications hereunder.

The City: City of Hampton, Virginia
22 Lincoln Street
Hampton, Virginia 23669
ATTN: City Manager

With copies to: City Attorney's Office
22 Lincoln Street
Hampton, Virginia 23669
ATTN: City Attorney

Dep't. Of Information Technology
22 Lincoln Street
Hampton, Virginia 23669

Dep't of Parks and Recreation
22 Lincoln Street
Hampton, Virginia 23669

Grantee: Alltel Communications, LLC d/b/a Verizon
Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
ATTN: Network Real Estate

- (7) Binding Agreement. All the terms, covenants, representations, warranties, and conditions of this Easement Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns, whether or not specifically set forth in any paragraph or section of this Easement Agreement. Failure of any party at any time to require performance of and provision hereof shall in no manner affect the right at a later time to enforce

the provisions. No waiver by either party of any condition, or the breach of any term, covenant, representation or warranty contained in this Easement Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed a further or continuing waiver of any condition or covenant, representation or warranty of this Easement Agreement. The captions and paragraph headings are for convenience only and shall not be used in construing or enforcing any of the provisions of this Easement Agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all other genders.

- (8) Governing Law/Severability/Venue. This Easement Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance, or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. The provisions of this Easement Agreement shall be severable and if any phrase, clause, sentence, or provision is declared unconstitutional, or the applicability thereof is held invalid by a court of competent jurisdiction, the remainder of this Easement Agreement shall not be affected thereby. Any and all suits for any claims or for any and every breach or dispute arising out of this Easement Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.
- (9) Amendment. This Easement Agreement may be amended only by a written instrument (i) duly authorized, executed, and delivered by the City and Grantee, or their respective successors or assigns; and (ii) recorded among the land records of the Clerk's Office.
- (10) Recording. This Easement Agreement shall be recorded at the Clerk's Office of the Circuit Court of the City of Hampton, Virginia.
- (11) Entire Agreement. This Easement Agreement constitutes the entire agreement between the City and Grantee concerning the subject matter hereof, and supersedes any prior or contemporaneous agreements among the parties concerning the specific subject matter hereof.

WITNESS the following signatures and seals:

GRANTOR:
CITY OF HAMPTON, a municipal corporation of
the Commonwealth of Virginia:

By: _____
City Manager/Authorized Designee

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

I, _____, a Notary Public in and for the City and
State aforesaid do hereby certify that Mary B. Bunting or her authorized designee, on behalf of the
City of Hampton, Virginia, has this day acknowledged the same before me in my City and State
aforesaid. She/he is personally known to me.
Given under my hand this _____ day of _____, 2020.

Notary Public

My commission expires: _____
Notary registration #: _____

ATTEST:

Katherine K. Glass, Clerk of Council

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

I, _____, a Notary Public in and for the City and
State aforesaid do hereby certify that Katherine K. Glass or her authorized designee, on behalf of
the City of Hampton, Virginia, has this day acknowledged the same before me in my City and
State aforesaid. She/he is personally known to me.
Given under my hand this _____ day of _____, 2020.

Notary Public

My commission expires: _____
Notary registration #: _____

GRANTEE:
**ALLTEL COMMUNICATIONS, LLC D/B/A
VERIZON WIRELESS, INC.** a New Jersey
corporation:

By: _____
[Insert Name]

COMMONWEALTH OF MASSACHUSETTS
City/County of WORCESTER to-wit:

I, _____, a Notary Public in and for the State and City/County aforesaid, do hereby certify that David R. Heverling, in his capacity as Area Vice President Network for Alltel Communications, LLC D/B/A Verizon Wireless, a Delaware limited liability company, whose name is signed to the foregoing writing bearing date on the ____ day of _____, 2020, has this day acknowledged the same before me in the City/County and State aforesaid. He further acknowledged in due form of the law that he is authorized on behalf of said entity to execute all documents pertaining hereto and acknowledged to me the same as his voluntary act and deed on behalf of said company. He/she is personally known to me or has produced _____ as identification.

Notary Public

My Commission Expires: _____

Registration Number: _____