

**REVIEWED BY:**

Lisa G. Smith, Esquire  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC  
1501 Main St., Suite 600  
Columbia, SC 29201

Portion of City Right-of-Way on Enfield Drive  
And Adjacent to 2040 Coliseum Drive  
Licensee site name: Hampton Coliseum N005

**AFTER RECORDATION, RETURN TO:**

Hampton City Attorney's Office  
22 Lincoln Street  
Hampton, VA 23669  
(757) 727-6127 (VEM)

## **ENCROACHMENT AGREEMENT**

**THIS ENCROACHMENT AGREEMENT** (this "Agreement") made and entered into this \_\_\_\_\_ day of June, 2017, between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**, a Delaware general partnership with its principal place of business located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Licensee" and "Grantee").

**WHEREAS**, the City owns Enfield Drive, a public right-of-way which contains a Dominion Energy (formerly Dominion Virginia Power) pole (the "City Property");

**WHEREAS**, Licensee requests that the City grant it permission to encroach into three aerial areas of the City Property, comprising 8 cubic feet, more or less, to install a 1.88 cubic feet antenna, remote radio heads totaling 2.37 cubic feet, diplexers totaling 0.23 cubic feet, a 0.39 cubic feet utility meter and 0.23 cubic feet panel, and a 2.9 cubic feet equipment cabinet, together with cabling as required to connect such equipment, as illustrated on Exhibit "A" attached hereto ("Licensed Area"), together with a right of access thereto, to attach communications equipment to the utility pole owned by Dominion Energy (formerly Dominion Virginia Power) (the "Licensed Improvements");

**WHEREAS**, Licensee has demonstrated its authority to collocate on the Dominion Energy pole; and

**WHEREAS**, pursuant to § 34-86 of the City Code, the City agrees to grant Licensee a revocable license for the proposed encroachment under certain terms and conditions as specified herein.

**NOW, THEREFORE**, in consideration of these covenants, the parties agree as follows:

1. The City as “Licensor” hereby grants a non-exclusive revocable license to Licensee for the Licensed Improvements upon and under the City Property in the Licensed Area identified on the sketch designated as Exhibit “A,” which is attached hereto and made a part hereof.

2. Licensee agrees to the following:

A. Licensee shall repair any damage to rights-of-way, sidewalks, landscaping, or other public property and improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvements in the Licensed Area;

B. All work under this Agreement shall occur within the unpaved portion of the City Property;

C. The Licensed Improvements or any other permanent structure does not restrict the City’s ability to inspect, repair, and/or maintain the City Property or infrastructure in the Licensed Area;

D. An intermodulation study will be submitted to the City’s Information Technology Department to verify that the Licensed Improvements will not interfere with the City’s existing towers; and

E. Except as otherwise provided herein, the Licensed Area will be kept in a neat and clean manner, free of noxious fumes and any additional obstructions so as not to cause disruption or hazard to pedestrian or vehicular traffic on the City Property.

3. The license herein granted shall commence on June 14, 2017 and continue until terminated pursuant to this Agreement.

4. The Licensed Improvements shall remain in the same location as described herein and as shown on the attached sketch identified as Exhibit “A”.

5. Licensee shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.

6. Licensee may vacate or abandon its use of the Licensed Area and any rights and obligations granted herein at any time upon 30 days' written notice to the City, provided, however, Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvements. The Director of Public Works specifically is delegated the responsibility to establish and enforce these conditions.

7. In the event the City reconstructs, widens, changes, or improves the area of the City Property, and the reconstruction, widening, changing, or improvement would necessitate relocation of the Licensed Improvements, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensee shall relocate its Licensed Improvements to conform with the City's plans. The City agrees to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvements.

8. It is understood and agreed that Licensee shall be responsible for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee shall indemnify, defend, and hold harmless the City, and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, to the extent the same are due to, arise out of, or are in connection with (a) any and all such damages, real or alleged, (b) the violation by Licensee or its employees or agents of any law applicable to this Agreement, and (c) the performance of work by Licensee or those for whom Licensee is legally liable, all except to the extent such claims or damages are due to or caused by the City, its agents, volunteers, servants, employees and/or officials. Defense of any claim against the City shall not be undertaken by Licensee except following receipt of written demand from the City.

9. Licensee acknowledges and, subject to the second sentence of this Section 9, accepts any risk of damage to the Licensed Improvements located under and along the City Property which may have been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvements. Licensee does not waive its rights for any

cause of action for damages to the Licensed Improvements resulting from willful, wanton, or intentional acts or negligence of the City or its agents, volunteers, employees, and officials.

10. Licensee will maintain commercial general liability insurance, with limits of \$4,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property. Licensee shall include the City as an additional insured as its interest may appear under this Agreement. Licensee will provide the City with a certificate of insurance evidencing the coverage required by this Section 10 and agrees to provide the City's Risk Management Administrator the certificate of insurance annually, at the notice address set forth below in Section 12.

11. Licensee may not sublet or assign the rights granted under this Agreement without the prior written consent of the City.

12. Any notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

<u>As to Grantor:</u>	City of Hampton, Virginia Director of Public Works Fourth Floor 22 Lincoln Street Hampton, VA 23669
Copy to:	City of Hampton City Attorney's Office Eighth Floor 22 Lincoln Street Hampton, VA 23669
<u>As to Licensee:</u>	Cellco Partnership d/b/a Verizon Wireless Attn: Network Real Estate 180 Washington Valley Road Bedminster, New Jersey 07921.

Either party may change its address for notice purposes by giving notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Licensee shall keep and perform all terms and conditions hereof on its part to be kept and performed and at the expiration or sooner termination of this Agreement or the revocation of the license granted hereunder, peacefully and quietly surrender to the City the rights subject to the license granted hereunder. Licensee shall remove the Licensed Improvements at the written request of the City Manager to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvements within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvements, the Licensed Improvements shall become the property of the City, with the City reserving the right to remove the Licensed Improvements; and the expense of said removal to be paid by Licensee, which shall be collected as real estate taxes are collected if not paid by Licensee.

14. Failure of the City to take action with respect to the breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of such term, covenant, or condition.

15. The terms, covenants, and conditions of this Agreement, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto; and all parties shall be jointly and separately liable hereunder.

16. The license granted hereunder is revocable by the City Council upon giving the Licensee 30 days' written notice of revocation, which right of revocation shall not be exercised unreasonably.

17. The City Council hereby delegates to the City Manager the right to revoke the license granted hereunder for violation of Paragraph No. 19 of this Agreement, subject to the terms thereof.

18. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

19. In the event Licensee is for any reason or through any cause be in default under any of the terms of this Agreement, the City shall give Licensee written notice of such default by certified mail/return receipt requested, at the address set forth in Paragraph No. 12 of this

Agreement. Unless otherwise provided, Licensee shall have 20 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, provided, however, that if such default cannot reasonably be cured within 20 days, the cure period provided herein shall be extended as long as Licensee is using good faith effort to effect such cure and proves such good faith effort to the reasonable satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.

20. This Agreement includes the final and entire contract between the parties hereto and contains all the terms, covenants, and conditions agreed upon, it being the intent of the parties that neither shall be bound by any terms, covenants, conditions, or other representations not herein written.

21. The parties executing this Agreement represent and warrant they are duly authorized to execute it in their representative capacities as indicated.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**WITNESS** the following signatures and seals as of the date first written above.

**GRANTOR:**

**CITY OF HAMPTON, VIRGINIA**

By: \_\_\_\_\_  
City Manager / Authorized Designee

COMMONWEALTH OF VIRGINIA:  
City of Hampton, to wit:

I hereby certify on this \_\_\_\_\_ day of June, 2017, that the foregoing Encroachment Agreement was acknowledged before me by \_\_\_\_\_, City Manager or Authorized Designee for the City of Hampton, Virginia. She/He is known to me personally.

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

\_\_\_\_\_  
Notary Public

**ATTEST:**

\_\_\_\_\_  
Katherine Glass, Clerk of Council

COMMONWEALTH OF VIRGINIA  
City of Hampton, to-wit:

I hereby certify on this \_\_\_\_\_ day of June, 2017, that the foregoing Encroachment Agreement was acknowledged before me by Katherine K. Glass, Clerk of Council for the City of Hampton on the City's behalf. She is known to me personally.

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

\_\_\_\_\_  
Notary Public

Approved as to Form:

Approved as to Content:

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Department of Public Works

**LICENSEE / GRANTEE:**

**CELLCO PARTNERSHIP D/B/A VERIZON  
WIRELESS**

By: \_\_\_\_\_  
Name: Thomas O'Malley  
Title: Director - Network Field Engineering

STATE OF \_\_\_\_\_:  
City/County of \_\_\_\_\_, to wit:

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, that the foregoing Encroachment Agreement was acknowledged before me by Thomas O'Malley, Director - Network Field Engineering of Cellco Partnership d/b/a Verizon Wireless. He is known to me personally or provided \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

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