

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Easement Agreement") made and entered into this 12<sup>th</sup> day of May, 2020 (the "Effective Date"), by and between THE TOWN OF ERIE, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, Colorado 80516 (the "Town") and CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS with an address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Grantee") (each a "Party" and collectively the "Parties").

WHEREAS, the Town owns certain real property in Weld County, Colorado, legally described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Grantee is entering into a lease agreement (the "Lease Agreement") to lease space on real property legally described in **Exhibit B**, attached hereto (the "Leased Premises");

WHEREAS, the Leased Premises is located adjacent to the Property;

WHEREAS, Grantee intends to build a telecommunications facility on the Leased Premises; and

WHEREAS, subject to the terms and conditions set forth herein, the Town has agreed to convey to Grantee certain easements over, under and across the Property as further described in **Exhibit C**, attached hereto and incorporated herein by this reference (the "Easement Area").

NOW, THEREFORE, for and in consideration of the covenants contained herein, the Parties agree as follows:

1. Grant of Easement. The Town hereby grants and conveys to Grantee a non-exclusive easement over, under and across the Easement Area for the purposes of installing, maintaining, operating, repairing and replacing utility lines, cables and conduits to and from the Leased Premises, subject to all terms of this Easement Agreement.

a. Compensation. In consideration of the grant of easement, Grantee shall pay to the Town a one-time fee of Seven Hundred Thirty and 00/100 (\$730.00) within 90-days of full execution of this Easement Agreement.

2. No Permanent Structures. The Town shall not construct or permit to be constructed in the Easement Area any building or any other permanent structure or permanent excavation that would interfere with Grantee's use of the Easement Area under this Easement Agreement.

3. Term. The easement, rights, and privileges granted in this Easement Agreement shall be for a term coinciding with the term of the Lease Agreement, including any renewals thereof, and shall, without any further action on the part of the Town or Grantee, terminate immediately upon the termination of the Lease Agreement for the Leased Premises. Upon termination of the easement, rights, and privileges for any reason, at the Town's request, Grantee shall execute with

acknowledgement and deliver a notice of termination in a form suitable for recording in the official records of Weld County.

4. Indemnification. Grantee agrees to indemnify, defend and hold the Town harmless from and against any injury, loss, damage or liability, costs or expenses (including reasonable attorneys' fees and court costs) resulting from its use of the Easement Area, or any act, omission, condition, or other matter related to or occurring on or about the Easement Area under this Agreement. Except to the extent attributable to the negligent or intentional act or omission of the Town or its agent, Grantee agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false, or fraudulent.

5. Insurance. Grantee shall carry, at its own cost and expense, for themselves, their agents, successors, assigns, lessees, licensees, and agents, the following insurance: (i) commercial general liability insurance with a limit of liability of \$2,000,000 per occurrence for bodily injury (including death) and property damage; and (ii) workers' compensation insurance as required by law. Grantee shall not commence any use, construction, operation, or maintenance on the Property until it has obtained all insurance required under this Section and shall file a certificate of insurance with the Town. Grantee shall include the Town as an additional insured as their interest may appear under this Easement Agreement under its commercial general liability policy. Upon receipt of notice from its insurer(s) Grantee shall provide the Town with thirty (30) days' prior written notice of an insurer's intention to cancel.

6. Assignment. Grantee may, at its discretion and upon written notification to the Town, assign and delegate all or any portion of its rights and liabilities under this Easement Agreement in connection with any assignment of the Lease Agreement, or sublease or license of all or a portion of the Leased Premises, without the Town's consent. Grantee shall be released from its obligations hereunder only with the prior written consent of the Town.

7. Dominant and Servient Tenements. The Easement is granted for the benefit of the Leased Premises, and is appurtenant to the Leased Premises. The Leased Premises are the dominant tenement and the Property is the servient tenement.

8. Grantee's Use of the Easement Area.

a. Grantee shall use the Easement Area for the purposes of installing, maintaining, operating, repairing and replacing utility lines, cables and conduits to and from the Leased Premises, subject to all terms of this Easement Agreement, and shall keep the Easement Area reasonably clean.

b. Grantee shall protect the Easement Area over which Grantee has rights of ingress and egress from damage caused in whole or in part by acts or omissions of Grantee, its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents. Upon completion of construction, Grantee shall restore the Easement Area to substantially its pre-existing condition. If Grantee fails to clean, restore or correct damage to the Easement Area within 14 days after notice thereof from the Town, then the Town may do so, at Grantee's expense.



c. In all activities undertaken on property belonging to the Town, Grantee and/or its employees, agents, contractors, subcontractors, successors, assigns, lessees and/or licensees shall conduct and construct all work in a good and workmanlike manner.

9. Grantee's Compliance with Laws. Grantee shall at all times comply with all applicable laws, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules.

10. Miscellaneous.

a. *Entire Agreement.* This Easement Agreement constitutes the entire agreement between the Parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

b. *Binding Effect.* Except as otherwise expressly provided herein, all provisions in this Easement Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. The Town shall record this Easement Agreement in the official records of Weld County and may re-record it at any time as may be required to preserve its rights in this Easement Agreement.

c. *Governing Law and Venue.* This Easement Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

d. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Easement Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers or employees.

e. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town in this Easement Agreement not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

f. *Third Parties.* There are no intended third-party beneficiaries to this Easement Agreement.

g. *Severability.* If any provision of this Easement Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

h. *Notice.* Any notice under this Easement Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Easement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF ERIE**

\_\_\_\_\_  
Jennifer Carroll, Mayor

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

**ATTEST:**

\_\_\_\_\_  
Joanne Salser, Deputy Town Clerk

**CELLCO PARTNERSHIP  
d/b/a VERIZON WIRELESS:**

By: Jennifer Sedillo

Print: Jennifer Sedillo

Title: Sr Manager RE/Regulatory

Date: 4-6-2020

**EXHIBIT A**  
**Legal Description**  
Town Property

TRACT B, THE GRANDVIEW SUBDIVISION, A PART OF THE E 1/2 OF T1N, R68W, OF THE 6<sup>TH</sup> P.M., TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO.

**EXHIBIT B**  
**Leased Premises**

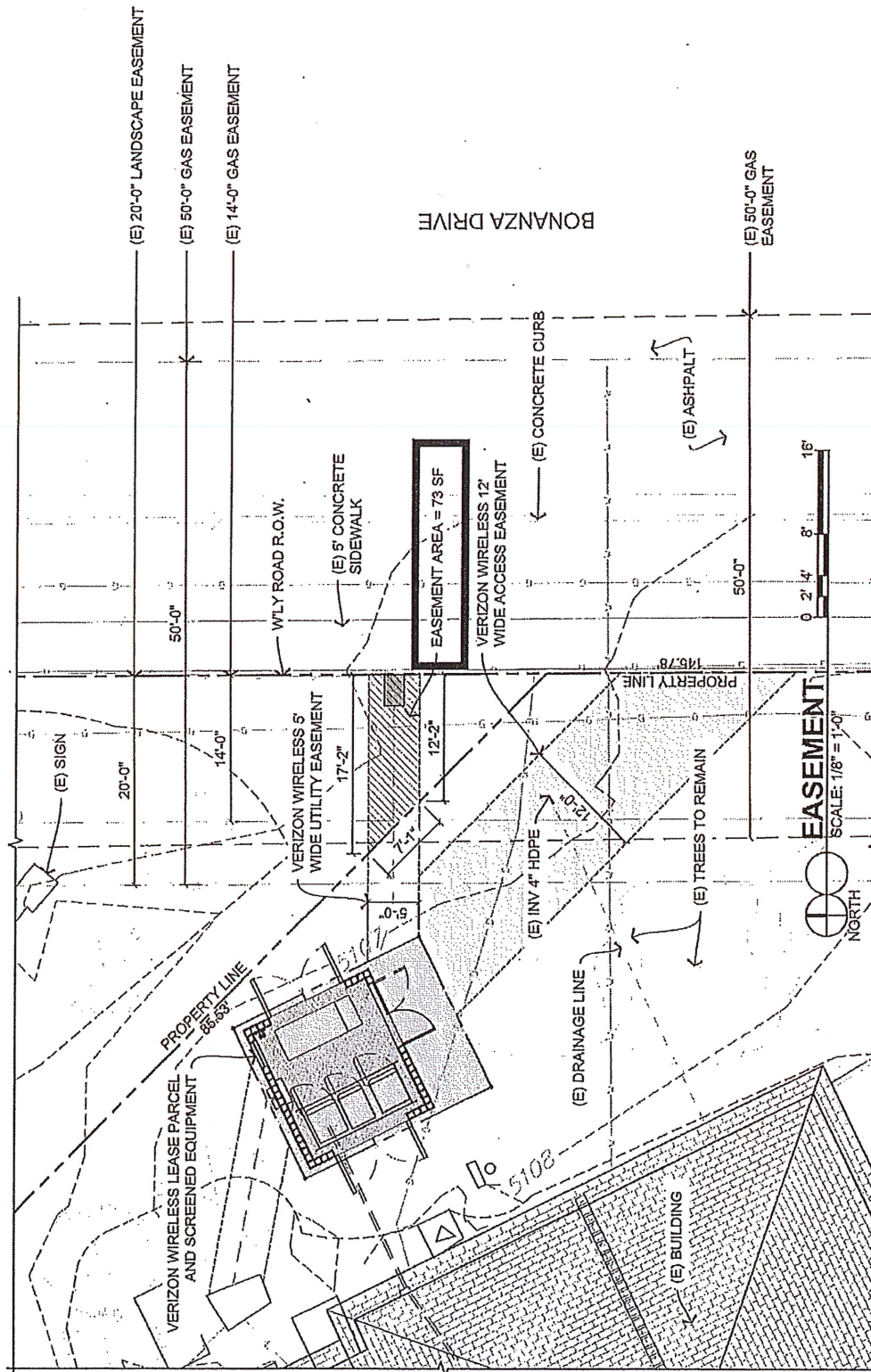
TRACT C, THE GRANDVIEW SUBDIVISION, A PART OF THE E 1/2 OF T1N, R68W, OF THE 6<sup>TH</sup> P.M., TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO.

**EXHIBIT C**  
**Easement Area**

(Attached)



# **EXHIBIT C** **Easement Area**



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