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GUILFORD COUNTY, NC 09-27-2019 10:12:58 AM BY. SHEIKA WASHINGTON REGISTER OF DEEDS

ASSISTANT-HP

NC FEE \$38.00

DRAWN BY: JoAnne L. Carlyle, City Attorney RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261 Plu - City

NORTH CAROLINA

RIGHT OF WAY **ENCROACHMENT AGREEMENT**

GUILFORD COUNTY



THIS AGREEMENT ("Agreement") made this 27 day of Dept CITY OF HIGH POINT, a North Carolina municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, ("City") and ALLTEL COMMUNICATIONS OF NORTH CAROLINA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS, a foreign Limited Liability Company located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ 07920-1097, hereinafter known as the "Company".

WITNESSETH

WHEREAS, the City owns the public right of way within its municipal boundaries.

WHEREAS, the Company desires to use the public right of way of the City to conduct business as a communications services provider; and

WHEREAS, the Company desires, for its interest and convenience, to construct, maintain and operate a small cell wireless communications facilities within the City of High Point in and along certain rights-of-way outlined in Exhibit "A" attached hereto ("System"); and

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above described improvements to be made, and allow the Company to encroach upon the above-referenced City-owned right of way; and

WHEREAS, the Company has paid to the City the sum of \$150.00, which partially defrays the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises and \$150.00 in hand paid, receipt of which is hereby acknowledged, and other consideration, the Company hereby covenants and agrees that:

- 1. The Company is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced System.
- 2. The Company is responsible for any and all labor or expense which results from any and all future maintenance, repair, removal or dismantling of the System if and when required by the City, in its sole discretion.
- 3. The Company is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Company, its agents, employees, contractors or subcontractors in connection with the System, or any cause of action arising out of the installation, maintenance, or location of said System or any other cause of action arising out of the planting, installation, maintenance, or location of said System, except to the extent such claims and causes of action are caused by the gross negligence or willful misconduct of the City. (collectively, "Claims and Causes of Action").

4. The Company agrees:

- (a) to hold the City, its elected or appointed officials, representatives, officers, counselors, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action; and
- (b) to defend the City, its elected or appointed officials, representatives, officers, counselors, agents and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its elected or appointed officials, representatives, officers, counselors, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

The Company's indemnification obligations under this subsection shall not apply to any liability resulting from the gross negligence or willful misconduct of the City.

5. The Company, during the life of this Agreement, agrees to procure from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury (including death) and property damage and \$1,000,000 general aggregate including personal and advertising injury caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as their interest may appear as respects work under this Agreement. Company shall furnish the City upon

the City's request, but no more than once in any 12 month period, a certificate of insurance evidencing such insurance to be in full force and effect (or proof of self-insurance as referenced below). Upon receipt of notice from its insurer Company shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not immediately replaced with coverage meeting the requirements of this Agreement. Should Company fail to pay premium s upon said insurance, or should Company fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Company shall thereupon terminate, except Owner shall still be responsible for removing the System from the right of way. In lieu of the foregoing, Company may self-insure for any or all of the coverages set follh above.

- 6. Exhibit A is the proposed location of the System that the Company intends to submit to the City permitting department. The Company shall provide proposed locations of additions or changes to the System or maintenance, repair, replacement, or construction to System while this Agreement, or any extension of the Agreement, is in force.
- 7. The Company, upon completion of the installation of the System, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs from the installation shown on the Exhibit A (Site Plan) (in such event, the Company shall secure approval of the City prior to the differing installation).
- 8. The Company agrees to abide by all applicable statutes and ordinances governing the System.
- 9. This Agreement shall not divest the City of any rights or interest in said right of way. This Agreement is not a grant by the City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including, but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Company any ownership interest in the right of way.
- 10. The Company shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.
- 11. This Agreement shall be binding upon and inure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.
- 12. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

13. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:

City of High Point
Planning & Development Department
P.O. Box 230
High Point, NC 27261
ATTN: Planning Director

If to Company:

Alltel Communications of North Carolina Limited Partnership d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, NJ 07921

Attention: Network Real Estate

- 14. This Agreement shall be revocable at will by the City.
- 15. The Company shall restore all areas disturbed during the installation and maintenance related to the System to the satisfaction of the City Manager or his designee, and shall reimburse the City for the cost incurred by the City for any repairs or maintenance to roadways, sidewalks, structures, ornamental vegetation, landscaping, and all existing utilities, whether owned by the City or another agency, necessary due to the installation, maintenance, and/or existence of the System; and if at any time the City shall determine, in its reasonable judgment, that changes in the location of the System are necessary for public use for the purposes of construction, modification, or maintenance of infrastructure, including roads, water, wastewater, and electric facilities, the Company binds itself, its successors and assigns, to promptly alter the System at its sole cost, in order to conform to the City's requirements and without any cost to the City.
- 16. The Company, its employees, contractors, successors in interest, and assignees shall install and maintain the System in safe and proper condition such that it will not interfere with or endanger travel upon streets and/or sidewalks; will not obstruct or interfere with proper maintenance of such streets and/or sidewalks; and will not endanger existing facilities. The Company shall provide during installation, construction, and any subsequent maintenance, proper signage, signal lights, flagmen and other warning devices for the protection of traffic and pedestrians.
- 17. The Company agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of sol; silting or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or pollution of the air.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed and to be effective the day and year first above written.

ALLTEL COMMUNICATIONS OF

NORTH CAROLINA LIMITED
PARTNERSHIP d/b/a VERIZON WIRELESS
By: Alltel Corporation, Its General Partner
By: Root I
Print Name: Reston Drundy
Title: Engineer II Special 171- RE
STATE OF NC
STATE OF NC COUNTY
I, Tammie Sides, a Notary Public of the State of NC
County of <u>Iredell</u> , do hereby certify that Rest in Drawdy personally
came before me this day and acknowledged that he/she is RE Specialist , and that
he/she, as RE Specialis T being authorized to do so, executed the foregoing on behalf of the company.
Witness my hand and official stamp or seal, this the day of 9/24, 2019.
My commission Expires: 10/17/2021 Tamme Sides
Notary Public
The state of the s

CITY OF HIGH POINT By: Randy McCaslin, Deputy City Manager

ATTEST:

Lisa B. Vierling, City Clerk

NORTH CAROLINA

GUILFORD COUNTY

unthia C Dunan Trytha Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal, and attested by herself as its clerk.

Witness my hand and official stamp or seal, this the 21 day of September, 2019.

mmission Expires: 1/18/2020 Capital Hunan Steel

My commission Expires: 1/18/2020

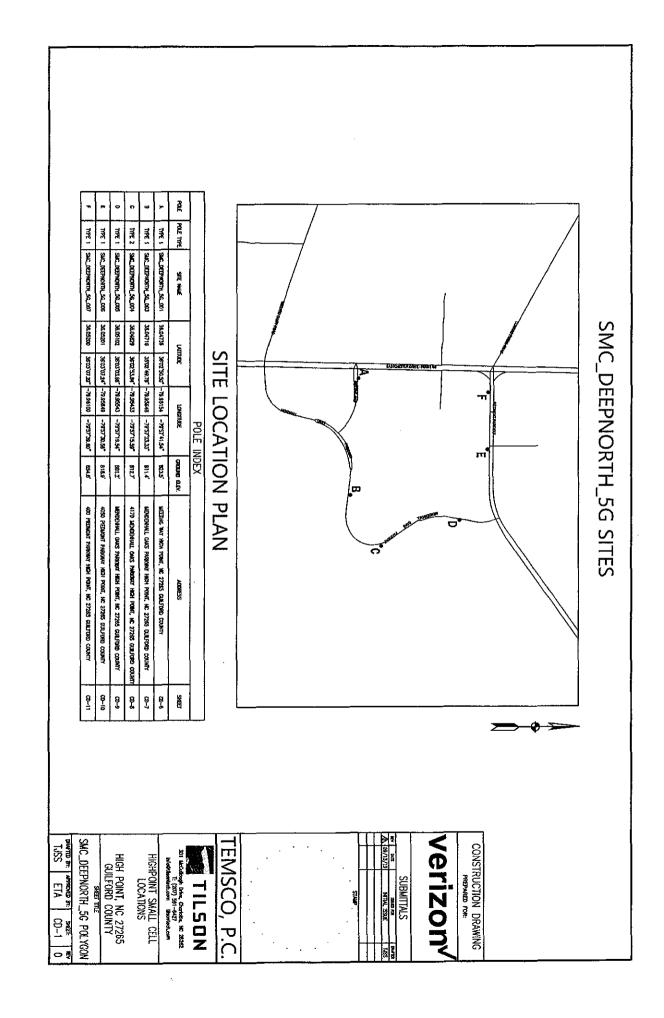
CYNTHIA C. DUNCAN-SMITH **NOTARY PUBLIC** GUILFORD COUNTY, NC

EXHIBIT "A" SYSTEM: SMALL WIRELESS FACILITIES (SITE PLAN AND LOCATIONS)

- 1. Small wireless facilities and related equipment, as more particularly described in the attached plans, entitled "Deepnorth Sites" for 6 nodes sites, which are incorporated herein and made part of this agreement by reference and attached as Exhibit A-1 Deepnorth Sites.
- 2. Small wireless facilities and related equipment, as more particularly described in the attached plans for the following areas and node sites, incorporated herein and attached hereto as Exhibits A-2 and A-3:
 - a. Exhibit A-2: SMC Deepriver Sites (11 node sites)
 - b. Exhibit A-3: SMC Thatcher Sites (14 node sites)
- 3. Node Site IDs:

SMC_DEEPNORTH_5G_001	512612
SMC_DEEPNORTH_5G_003	512614
SMC_DEEPNORTH_5G_004	512615
SMC_DEEPNORTH_5G_005	512616
SMC_DEEPNORTH_5G_006	512617
SMC_DEEPNORTH_5G_007	512618
SMC_DEEPRIVER_5G_002	512619
SMC_DEEPRIVER_5G_003	512620
SMC_DEEPRIVER_5G_005	512622
SMC_DEEPRIVER_5G_006	512623
SMC_DEEPRIVER_5G_007	512624
SMC_DEEPRIVER_5G_008	512625
SMC_DEEPRIVER_5G_009	512626
SMC_DEEPRIVER_5G_010	512627
SMC_DEEPRIVER_5G_011	512629
SMC_DEEPRIVER_5G_013	512632
SMC_DEEPRIVER_5G_014	512635
SMC_DEEPRIVER_5G_016	512636
SMC_THATCHER_5G_001	513277
SMC_THATCHER_5G_002	513278
SMC_THATCHER_5G_003	513279
SMC_THATCHER_5G_004	513280
SMC_THATCHER_5G_005	513282
SMC_THATCHER_5G_006	513283
SMC_THATCHER_5G_007	513284
SMC_THATCHER_5G_009	513286
SMC_THATCHER_5G_010	513287
SMC_THATCHER_5G_011	513288
SMC_THATCHER_5G_012	513289
SMC_THATCHER_5G_014	513291
SMC_THATCHER_5G_015	513292
SMC_THATCHER_5G_013	513290
SMC_THATCHER_5G_008	513285

EXHIBIT A-1 SMC Deepnorth Sites



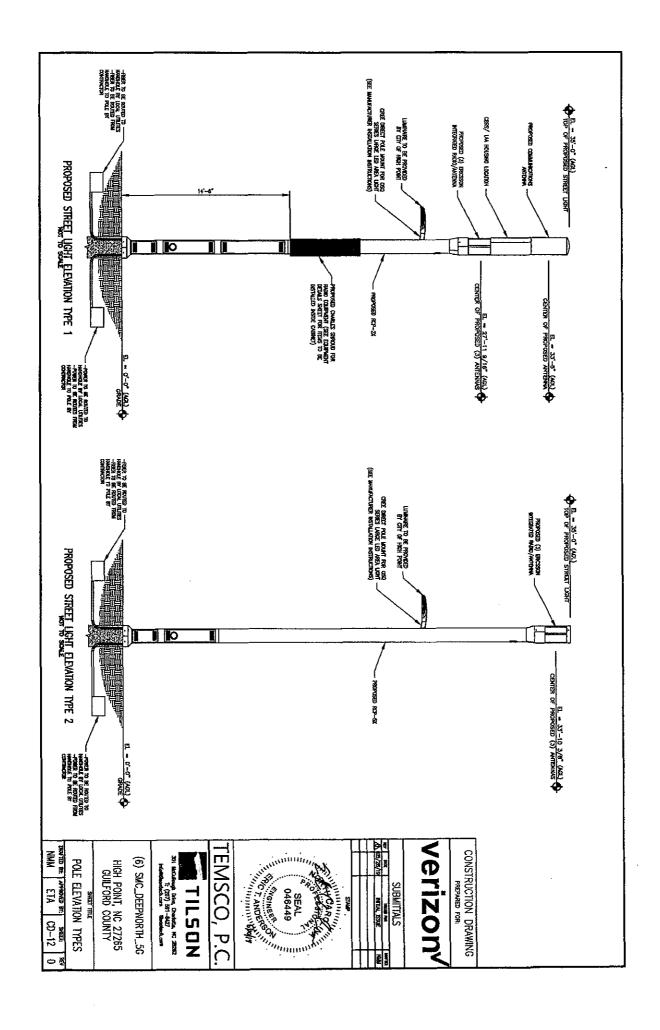
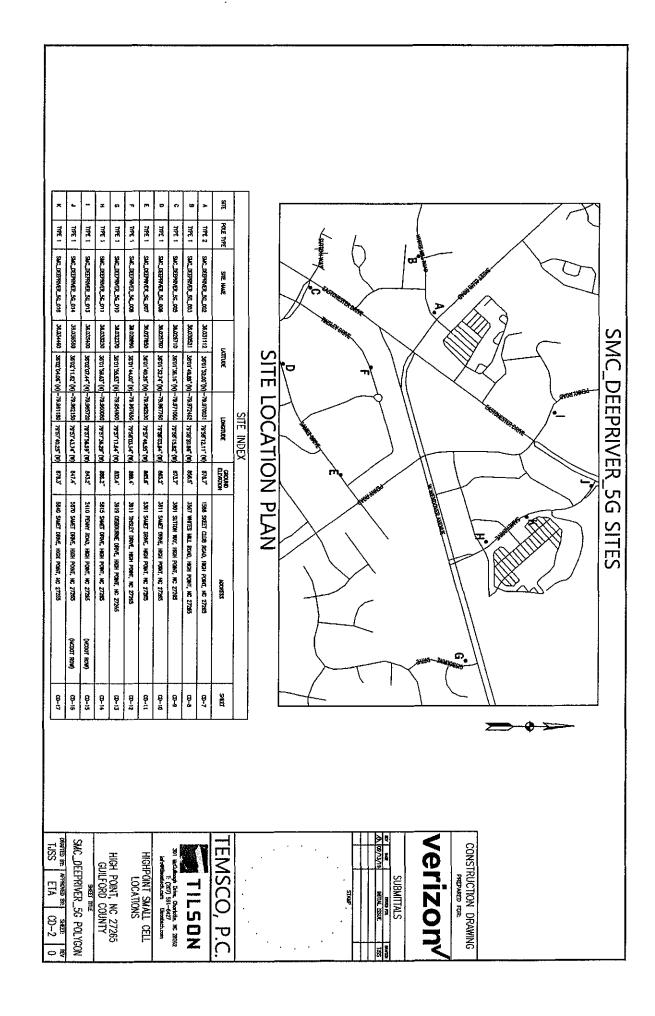
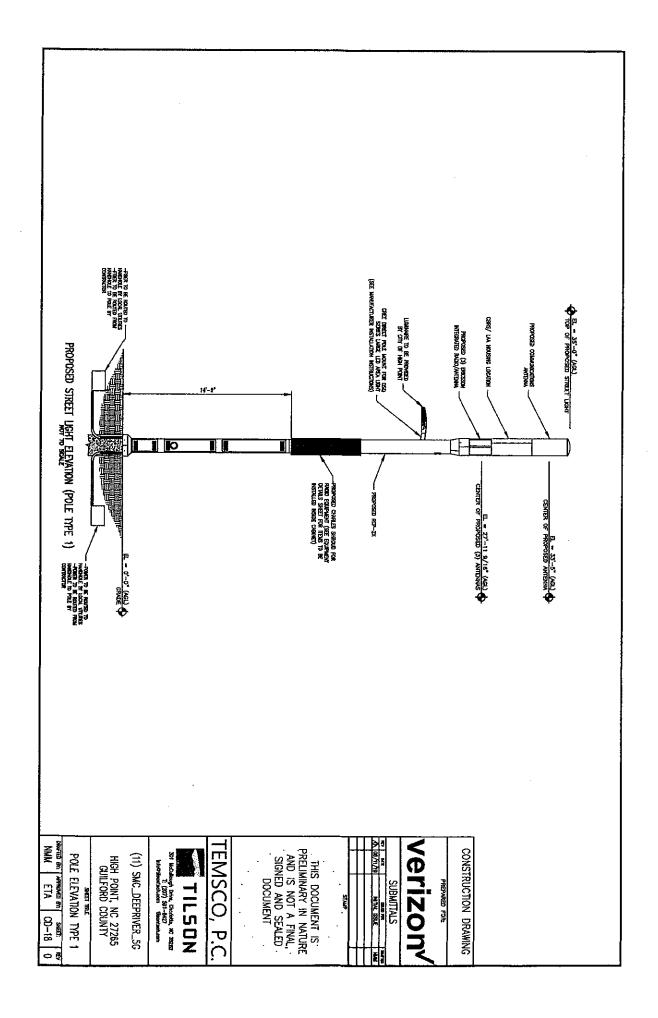


EXHIBIT A-2 SMC Deepriver Sites





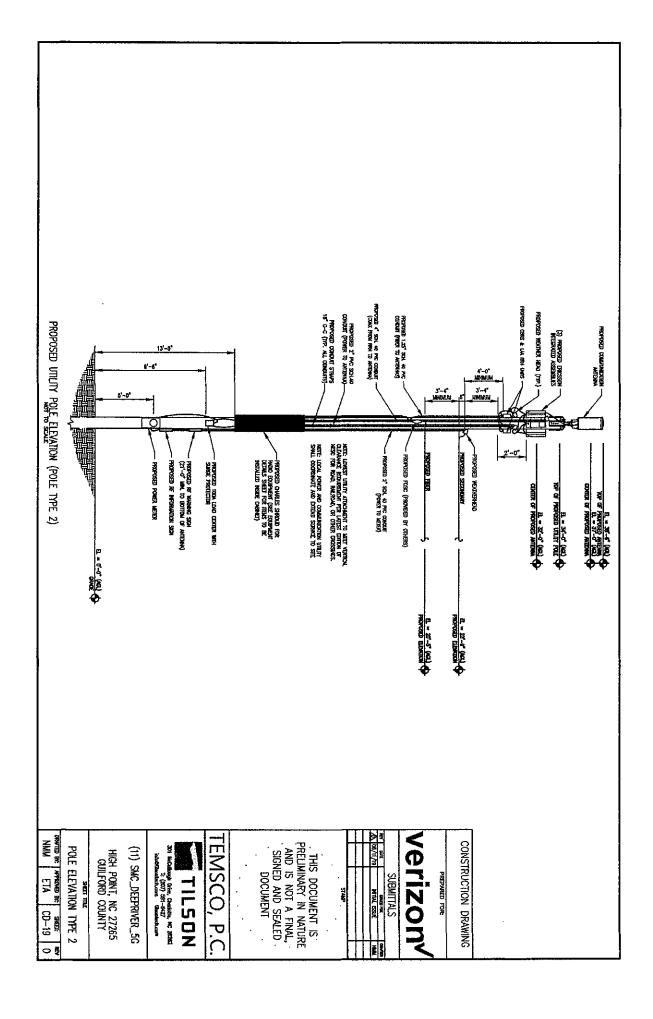


EXHIBIT A-3 SMC Thatcher Sites

