

UTILITY EASEMENT

This Easement, effective as of the date of the last signature below, is by and between the Petersburg Borough, of PO Box 329, Petersburg, Alaska 99833, hereinafter referred to as “the Grantor”, and AP&T Wireless, of 136 Misty Marie Lane, Ketchikan, Alaska 99901, hereinafter referred to as “the Grantee”.

1. The Grantor hereby grants to the Grantee a nonexclusive perpetual easement on the property of the Grantor, described as follows:

Lot 5A, Block B1, Frederick Sound Alaska Subdivision, Alaska Tideland Survey
9, 419 Sandy Beach Road, Parcel ID #01.003.139, (“the Easement Parcel”),

and depicted on attached Exhibit "A" (pre-construction site topographical survey and post-construction as-built survey), for the following purposes: to construct a submarine and terrestrial fiber optic cable landing which includes a buried HDPE or steel conduit from the beach manhole seaward through the tidelands; a pre-cast reinforced concrete beach manhole, HDPE buried terrestrial cable conduit from the beach manhole to a pole riser on an existing utility pole along the Sandy Beach Road right-of-way. The Grantor expressly reserves for itself, its successors and its assigns, the right to use the Easement Parcel or to grant other easements or licenses at the same location so long as such use(s) do not unreasonably interfere with the rights herein granted.

2. The Grantee shall maintain the Easement Parcel, and any improvements constructed or installed thereon by Grantee, in a state of good condition and repair. The operation and maintenance of the Easement Parcel and any such improvements shall be at Grantee’s sole cost and expense.

3. This Easement is subject to all covenants, conditions, restrictions, reservations, and rights of way pertaining to the Easement Parcel, whether or not of record. The Grantor does not warrant or represent, and expressly disclaims, that the Easement Parcel is suitable for any particular use or purpose.

4. In its use of, and activities or operations on, the Easement Parcel, the Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements, at Grantee's sole cost and expense. The Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Easement Parcel.

5. The Grantee shall keep the Easement Parcel free and clear of any and all liens and encumbrances for labor performed or materials or services furnished to or at the Easement Parcel at the instance or request of the Grantee or anyone claiming under the Grantee.

6. The Grantee shall not materially interfere with the use by, and operation and activities of, the Grantor on its property. Accordingly, the Grantee shall use and follow such procedures on the Easement Parcel that result in the least inconvenience to the Grantor.

7. The Grantee shall be responsible for any damage to the Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. The Grantee shall promptly repair and restore to its original condition the Easement Parcel or any of Grantor's property, including any improvements, that may be damaged or destroyed in connection with the Grantee's use of the Easement Parcel.

8. This Easement is granted on the express condition that the Grantor is to be free from any and all liability by reason of injury or death to persons or injury to property from whatever cause arising out of Grantee's use of the Easement Parcel or exercise of rights hereunder. The Grantee shall exercise its privileges under and pursuant to this Easement at its own and sole risk, and shall indemnify, defend and hold harmless the Grantor, and all employees, officials and agents of the Grantor, from and against any and all claims, demands and liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with, this Easement, including without limitation the occupation or use of, or activities or operations on, the Easement Parcel by the Grantee or Grantee's employees, officers, agents, clients, invitees, and guests. The Grantor shall not be liable to the Grantee if, for any reason whatsoever, the Grantee's occupation or use of the Easement Parcel under and pursuant to this Easement shall be hindered or disturbed.

9. The Grantor, at its discretion, may terminate this Easement and all of the rights granted hereunder, (1) at any time after six (6) months of continuous non-use of the Easement Parcel by the Grantee, or (2) if the Grantee is in breach or default of any provision of this Easement

upon expiration of a thirty (30) day notice period; provided that the Grantor may immediately suspend the Grantee's activities on the Easement Parcel if the breach results in a health or safety hazard. The Grantee may terminate this Easement at any time.

Notice of termination shall be given in writing and delivered in accordance with paragraph 11 below. In the event of termination, the Grantee shall remove all fixtures, equipment and other property placed on the parcel by the Grantee or anyone claiming under the Grantee and restore and peaceably surrender the Easement Parcel in as good condition as such property was at the time of the Grantee's initial entry upon such property under this Easement. If Grantee fails to make such removal or restoration, the Grantor shall have the right to make such removal or restoration at Grantee's expense, the amount of which the Grantee shall pay to the Grantor on demand; if the Grantor so elects, it shall also have the right to take possession of and appropriate to itself without payment therefore any or all fixtures, equipment and property of the Grantee, or anyone claiming under Grantee, remaining on the Easement Parcel following termination. The parties agree to execute and record a termination of easement.

10. The Grantee shall be solely responsible for any and all taxes, charges or other fees levied by any governmental agency against the Easement Parcel as a result of this Easement or Grantee's use of, or activities or operations on, the Easement Parcel.

11. Any notice provided for or concerning this Easement shall be in writing and be deemed sufficiently given when sent by certified mail to the respective address of a party as set forth at the beginning of this Easement. A party may change its address by giving notice hereunder.

12. This Easement shall not be assigned or transferred, in whole or in part, by the Grantee, without the express written approval of the Grantor.

13. This Easement shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska. Venue for any dispute arising under this Easement shall be in the Superior Court for the State of Alaska, in Petersburg, Alaska.

14. Each party to this Easement has had an opportunity for independent counsel to review and modify this document. The rule of construction to the effect that any ambiguities are to be strictly construed against the drafter shall not apply to any interpretation of any provision of this Easement.

15. If either party shall commence a legal proceeding for any relief against the other, declaratory or otherwise, arising out of this Agreement, the prevailing party shall be awarded, in addition to any other relief, a reasonable sum as attorney fees.

16. This Agreement sets forth the entire understanding and agreement of the parties with respect to the transaction contemplated hereunder. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by written agreement executed by both Parties.

17. This Easement may be executed and delivered in counterparts, delivered by facsimile or in electronic format by email. Each such counterpart hereof shall be deemed an original instrument, but all such counterparts together shall constitute one document.

[Signatures on following pages]

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GRANTOR: Petersburg Borough

By _____

Printed Name _____

Its _____

Dated _____

STATE OF ALASKA)
)ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that before me personally appeared _____, to me known to be the _____ of the Petersburg Borough, and who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated s/he is authorized to execute this document on behalf of said entity.

WITNESS my hand and official seal this ___ day of _____, 20__.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

GRANTEE: AP&T Wireless

By _____

Printed Name _____

Its _____

Dated _____

STATE OF ALASKA)
)ss.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that before me personally appeared _____, to me known to be the _____ of _____, and who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated s/he is authorized to execute this document on behalf of said entity.

WITNESS my hand and official seal this ___ day of _____, 20__.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

To be Recorded in the Petersburg Recording District