

RESOLUTION NO. 2018-129

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON APPROVING
MASTER LEASE AGREEMENT TEMPLATE FOR SMALL-CELL ANTENNA FACILITIES
INSTALLED ON CITY-OWNED PROPERTIES**

WHEREAS, the City Council introduced a Wireless Small-Cell Antenna Facilities (SAF) Ordinance on June 19, 2018 to establish guidelines to the development and operation of wireless telecommunication facilities in the public right-of-way and City-owned properties; and

WHEREAS, the City Council approved the SAF Ordinance on July 3, 2018; and

WHEREAS, the Ordinance came into effect on August 2, 2018; and

WHEREAS, the SAF Ordinance requires Applicants of proposed SAF projects on City-owned property to enter into a Master Lease Agreement (MLA) with the City; and

WHEREAS, the development of a Master Lease Agreement (MLA) template will help streamline the SAF development process and reduce uncertainty between the City and wireless providers; and

WHEREAS, this Resolution was publicly notified on November 13, 2018; and


WHEREAS, the City Council considered all of the written and oral testimony presented at the public hearing on December 4, 2018 in making its decision.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY APPROVE that certain Master Lease Agreement Template attached hereto as Exhibit "A" and incorporated by reference.

NOW, THEREFORE THE CITY OF AMERICAN CANYON DOES FURTHER HEREBY AUTHORIZE the City Manager to utilize said Master Lease Agreement Template in all SAF installations on City-owned properties and further authorizes the City Manager to modify said MLA Template as they deem prudent and appropriate provided any such charges are approved as to form by the City Attorney.

PASSED, APPROVED and ADOPTED at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 4th day of December, 2018, by the following vote:

AYES: Council Members Aboudamous, Joseph, Oro, Vice Mayor Leary and Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: None



Leon Garcia, Mayor

ATTEST:



Suellen Johnston, EMC, City Clerk

ATTACHMENT 1: EXHIBIT-A

Upon Recordation, Return to:

City of American Canyon
4381 Broadway St – Suite 201
American Canyon, CA 94503

Attn: City Clerk

(For Recorder's Use Only)

**MASTER LEASE AGREEMENT BETWEEN
THE CITY OF AMERICAN CANYON AND _____**

This Master Lease Agreement ("Agreement") is entered into as of _____, 2018 ("Effective Date") by and between the City of American Canyon, a municipal corporation (the "City"), and _____ ("Permittee"). City and Permittee may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Permittee is authorized to provide telecommunication services within the state of California by the Public Utilities Commission of the State of California (herein termed "PUC"); and,

WHEREAS, Permittee is a member in good standing of the Northern California Joint Pole Association ("JPA"); and

WHEREAS, Permittee seeks to affix wireless communication antennas and related equipment to certain of the City's structures, as defined herein; and

WHEREAS, Permittee desires to construct, install and maintain telecommunications equipment which may consist of antennas, support mast and mounts, cable equipment, amplifiers, receivers, battery units, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, battery back-up units, and related equipment (the "Facilities"), attached to City-owned Structures within the Public Right-of-Way ("ROW") within CITY; and

WHEREAS, CITY wishes to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of Small-cell Antenna Facilities (SAFs), while enabling CITY to

promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, CITY has the authority to regulate the terms and conditions for the use of City-owned Structures in the City's Public Right-of-Way; and

WHEREAS, CITY has implemented a Wireless Small-Cell Antenna Facilities Ordinance under American Canyon Municipal Code section 19.53, setting forth the submittal, design, operation, and maintenance standards required for all Small-cell Antenna Facilities within the City; and

WHEREAS, CITY refers to the Small-Cell Antenna Facilities Ordinance in instances where information is not explained in detail in this Master Lease Agreement; and

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY and Permittee agree as follows:

CERTAIN DEFINED TERMS

As used herein, the following capitalized terms have the meaning ascribed to them below. Additional terms and definition are available in the American Canyon Municipal Code, section 19.53.030.

"ACMC" means the American Canyon Municipal Code.

"Applicable Code" means Section 19.53 of the Code of the City of American Canyon.

"Applicant" means either 1) "Permittee" as defined herein or 2) a third-party telecommunication site acquisition company working on behalf of a Permittee after having evidenced to the City a letter(s) of authority from said Permittee to apply for an SAF Permit on their behalf.

"City" means the City of American Canyon, and also means "Licensor".

"City-owned property" means any property owned or maintained by the City of American Canyon, including streetlight poles and/or other structures within the Public Right-of-Way.

"Conflicting Facility" means any and/or all Facilities required to be removed due to conflict with a Public Project as defined in Section 3.1.

"Emergency" means a situation in which there is an imminent threat of injury to person or property, or loss of life.

"FCC" means the Federal Communications Commission.

“IRU” means Indefeasible Right of Use is an exclusive, indefeasible right to use the specified property, but does not convey title, ownership, or rights of possession in any real or personal property.

“Permittee” means a wireless telecommunication provider authorized by the FCC and PUC provide wireless telecommunication services.

“Person” or “Persons” means any person or entity.

“Premises” means lease area for a SAF. The area shall be defined on a site plan in the SAF permit application.

“PUC” means the California Public Utilities Commission

“Right-of-way or ROW” shall mean any land, or interest therein, which has been reserved for or dedicated to the City by deed, conveyance, agreement, dedication, usage, or other process of law, for the use of the general public for public road purposes.

“Small-cell Antenna Facility (SAF), Micro Wireless Facility, or Facility” means any and/or all of the antennas, antenna supports, telecommunications equipment, cabinets, equipment housing and enclosure, conduit, fiber optic cable, power supply, and other equipment and appurtenances.

“State” means the State of California.

“Street Tree” means a tree provided by the Permittee to screen the proposed Small-cell Antenna Facility. The tree shall be native to the region and of a drought-tolerant species. The tree and its maintenance shall comply with standards described in ACMC section 19.53.070.

“Structure(s)” means pole(s) supporting one or more streetlights, traffic signals, flags, banners and/or signage; street furniture; billboard(s); trash receptacle(s); bus stop(s); and any other similar structure(s) capable of accommodating a Wireless Installation. Structure does not include any City pole used for the function of electricity distribution.

“Technical Grounds” means, in light of prevailing industry engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable law.

“Wireless Installation” means an antenna system equipment, including Facilities that operate on FCC-approved frequencies in the bands authorized for commercial wireless communication services by the FCC pursuant to FCC licenses issued to Permittee and on unlicensed frequencies, and all associated

equipment, affixed by Permittee to a Structure owned or controlled by City pursuant to a Permit (in accordance with Section 3.1 hereof) authorized by City.

ARTICLE 1 INSTALLATION OF THE FACILITIES

1.1 Permitted Installation. Prior to installation or work of any kind on City-owned property or Structures, the Permittee shall obtain a SAF Permit and Building Permit. Additionally, the Permittee shall obtain an Encroachment Permit if the SAF is proposed in the City's Public ROW. Permittee may at Permittee's sole cost and expense and during the term of this Agreement, locate, place, attach, install, operate, use, control, repair, upgrade, enhance and maintain the Facilities in the City's ROW. Permittee will be placing the Facilities in, on and/or under City-owned Structures and the City's ROW, as described in Exhibit "A", attached herein to this Agreement. All actual reasonable costs associated with the removal and replacement of such Structures at Permittee's request to accommodate the Facilities will be at Permittee's full expense.

- (a) **Scope of Agreement.** Nothing in this Agreement grants Permittee the right to make any Wireless Installation, or to install other facilities on City-owned Structures that do not conform to this Agreement. To the extent not already governed by applicable law, City hereby grants Permittee such rights-of-way and easements for the use and benefit of Permittee as necessary to exercise the right to attach to City's Structures, as provided herein with compliance with standards explained in APMC 19.53. No use of City's Structures under this Agreement shall create or vest in Permittee any ownership or property rights in such Structures.
- (b) **Interference with Wireless Installations.** City will not grant after the date of this Agreement a permit, license, or any other right to any third party if, at the time such third party applies for access to a Structure, City knows or has reason to know that such third party's use may in any adversely affect or interfere with the Permittee's existing Wireless Installations, Permittee's use and operation of its Facilities, or Permittee's ability to comply with the terms and conditions of this Agreement.
- (c) **Installation of Poles.** Notwithstanding any provision herein, Permittee has the right to install its own poles in municipal rights-of-way for the purpose of affixing its Wireless Installations, subject to the City's permitting requirements and in accordance with applicable law.

1.2 Additional Facilities. During the term of this Agreement, Permittee may, pursuant to Permittee's obtaining any and all permits required by the City, as described in APMC section 19.53.110, construct additional Facilities by using other City-owned Structures within the City's ROW. In such an event, and upon the issuance of a SAF Permit by the City, such Permit shall be attached to this Agreement as part of Exhibit A. The addition or removal (pursuant to Section 2.4 of this Agreement) of SAF Permits to this Agreement shall not require additional amendments hereto, except as otherwise agreed to by the Parties in writing, any expansion of the Facilities pursuant to this Section 1.2 shall be subject to the terms and conditions of this Agreement.

1.3 Scope of Installation. Permittee shall not unreasonably obstruct or interfere with the Public ROW, Public Utility Easements, private rights-of-way, sanitary sewers, sewer laterals, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, Multichannel Video Service facilities, and other telecommunications, utility and municipal property or facilities existing on the effective date for the related SAF Permit without the express written approval of the City and/or other owner(s) of the affected property or properties.

1.4 Compliance with Laws. This Agreement is subject to any and all applicable, Federal, State, and Local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, orders (specifically including, but not limited to those from the Federal Communications Commission ("FCC")), judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the parties to this Agreement or having jurisdiction that is applicable to any aspect of this Agreement, that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement – except as set forth in Section 2.2 (a) (iii) below.

1.5 Permits and Inspections. Permittee shall obtain any ministerial permits relating to the installation of the Facilities to the extent required by Law, including without limitation, those permits listed below (the "Permits"). Prior to installation, Permittee shall submit to the City's Community Development Department an application for review and approval of the Facilities proposed to be installed on City-owned Structures in the Public ROW. The period of time for the City to review any Facility related application shall comply with the Shot-Clock rules as established by applicable law.

- (a) SAF Permits. Permittee shall obtain an SAF permit from the City's Community Development Department. The Permittee shall comply with all development, operational, and maintenance standards explained in ACMC sections 19.53.
- (b) Encroachment Permits. Permittee shall obtain any necessary encroachment permits from the City for the installation of the Facilities and for any other work within the City's ROW if required by the American Canyon Municipal Code ("Code").
- (c) Building Permits. Permittee shall obtain any necessary building permits from the City for the installation of the Facilities and for any other work if required by the Building Code.
- (d) Compliance with Permits. All work within the City's ROW shall be performed in strict compliance with the applicable Permits and all applicable regulatory requirements.
- (e) Inspections. Prior to activation of the SAF, the Permittee shall request a final inspection from the City's Building Division and Public Works Department. In addition, City may conduct, at its sole expense, inspections of Wireless Installations on City's Structures. City shall give Permittee thirty (30) days' prior written notice of such inspections and Permittee shall have the right to be present at and observe any such inspections, at Permittee's sole expense. However, in the event of an Emergency for which City must promptly provide or restore safe and reliable City-provided service to a customer, City may conduct such inspections immediately and without prior notice to Permittee. Within seven (7) days following the completion of such Emergency inspection, City shall provide notice to Permittee describing the conditions of such Emergency and the scope and outcome of such inspection.

1.6 Records and Field Locations. If Permittee owns any active subsurface installations (as defined by Section 4216(a) of the California Government Code) for Wireless Installation under this Agreement, Permittee shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Facilities upon notification in accordance with the requirements of Section 4216 of the California Government Code, as it now reads or may hereinafter be amended.

- (a) Permittee shall maintain accurate maps and improvement plans of Wireless Installations located within the City. The maps and plans are to accurately show in detail the location, size, depth and description of all facilities as constructed. Prior to City acceptance of the work, Permittee shall deliver to the office of the Public Works Department free of charge, and at any subsequent time, upon request, to other third parties interested in performing work within Public Right-of-Way for a reasonable charge upon request and within thirty (30) days after such request, such maps and plans of all Wireless Installations installed in said Public Right-of-Way. When required by the City for the purpose of confirming the location of Facilities to accomplish the design or construction of public facilities, Permittee shall, at its sole cost and expense expose by potholing to a depth of one (1) foot below the bottom of its subsurface installations of Wireless Installations, within (30) days of receipt of written request from City to do so.
- (b) Permittee shall install a locator wire in conjunction with its construction of the subsurface installations of Wireless Installations pursuant to this Agreement.

1.7 Coordination of Excavation with Other Permittees. Upon request from the City, and at least thirty (30) days prior to commencing excavation work in the City's ROW pursuant to this Agreement, Permittee shall notify in writing, on a business letter to the City, other existing or potential users (collectively "User") of the City's ROW which are (a) shown on the list of users maintained by the City; and (b) are likely to be affected by such excavation work. The notice shall describe the work to be performed, the specific ROW of the City that will be used, and the time when such work will be performed. Each User receiving such notice shall have thirty (30) days from the date thereof to inform in writing Permittee and the City that such User desires to perform work jointly with Permittee. To the extent reasonably feasible, and subject to Permittee and User entering into a written agreement for such work and/or use, Permittee shall coordinate its work with any User who timely informs Permittee that it desires to perform work jointly in the City's ROW, provided that such User obtains any required ROW agreement and permits from the City as required by the Code before such User performs any work in the City's ROW, including the installation of any facilities, or uses any facilities installed by Permittee on their behalf. Nothing in this Section 1.6 is intended to cause delays to Permittee's construction schedule.

1.8 Fee. Permittee is solely responsible for the timely payment of all lawful fees in connection with Permittee's performance under this Agreement, including those set forth below.

- (a) Fee. To compensate the City for any costs incurred as a result of Permittee's entry upon and deployment on City-owned property within the ROW, Permittee shall pay to the City an annual fee ("Pole Fee") that consists of One Thousand and Five Hundred Dollars (\$1,500) for each City-owned Structure upon which Permittee's Facilities has been installed pursuant to this Agreement. The fees are subject to a two (2%) percent annual increase on each anniversary date. Any new Facilities on City-owned Structure within the

ROW installed by Permittee identified in this Agreement will be assessed the increased rate.

- (b) The Pole Fee shall be prorated for any Facilities that are installed pursuant to this Agreement for any partial year as appropriate and shall be multiplied by the number of Facilities installed by Permittee pursuant to this Agreement. The Pole Fee shall be due and payable annually not later than sixty (60) days after each anniversary of the Effective Date of this Agreement. For any new Facilities installed pursuant to this Agreement, the applicable prorated Pole Fee shall be paid within ninety (90) days of the Commencement Date of the applicable Facility. The "Commencement Date" for such new Facilities shall be the first day of the month after the beginning of installation of a Facility and shall be evidenced by the Parties in writing.
- (c) Late Charge. If Permittee fails to pay any License Fee, Additional Fee, or other amount payable to the City under this Master Lease Agreement within fifteen (15) days after the City's delivery of notice that the same is due and unpaid, such unpaid amounts will be subject to a late charge equal to 2% of the unpaid amounts. For example, if a License Fee in the amount of \$40,000 is not paid on its due date and remains unpaid after the fifteen (15) day cure period has expired, the late charge would be \$800.
- (d) Default Interest. Any Lease Fee, Additional Fee, and other amount payable to the City (except late charges), if not paid within 10 days after the due date, will bear interest from the due date until paid at the default rate of 10% per year. Payment of default interest and the applicable late charge alone will not excuse or cure any default by Permittee.
- (e) Master Lease Application Processing Payments. Permittee shall pay to the City funds to cover the City's ordinary processing and other administrative costs related to the Master Lease Agreement ("Master Lease Costs"). Such payments shall compensate the City for all of the reasonable and actual costs of processing the Master Lease Agreement application, including, but not limited to, all time and materials costs of City employees, agents, consultants, and the City Attorney's office.
- (f) Initial Deposit and Replenishment. Permittee shall make an initial deposit in the amount of Four thousand and five hundred (\$4,500) dollars upon delivery of a partially executed counterpart of this Master Lease to the City. The City will not be obligated to process any Master Lease until the initial payment is submitted. The initial payment shall be held by City in an account for the reimbursement of City's reasonable and actual costs incurred in processing the Master Lease application. Upon Permittee's request, City shall provide to Permittee a monthly accounting of the account with a description of City's costs and expenses withdrawn from the account. If there is a reasonable need for additional funds to facilitate review and processing of the Master Lease application, the City may request, and Permittee shall replenish the deposit for the City's anticipated cost of such extra work. If Permittee refuses or fails to submit the replenishment for the extra work upon City's written request, City shall have the right to cease all processing of Permittee's application until such time as the funds are received.

ARTICLE 2
TERM AND TERMINATION

2.1 Term. The initial term of this Agreement shall be for ten (10) years beginning on the Effective Date of this Agreement and shall continue for automatic successive ten (10) year periods unless either party delivers to the other party a written termination notice within one hundred eighty (180) days prior to the scheduled termination. The term of any license granted pursuant to this Agreement shall be ten (10) years, or coextensive with the Term of this Agreement, whichever is longer.

2.2 Technical Requirements and Specifications.

- (a) At its own expense, Permittee must erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with:
 - (i) the requirements and specifications of the National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”) and any and all other applicable regulatory codes for safe practices when performing work on or near Structures (collectively, “Safety Codes”); and
 - (ii) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction.
 - (iii) changes to the requirements, specifications, rules and orders in subsections (i) and (ii) shall not apply retroactively unless required by law.

- (b) City may, on Technical Grounds, deny all or part of an SAF Permit application for a lease on a City-owned Structure, or limit the number and/or technical characteristics (*e.g.*, weight or size) of any Wireless Installation on any Structure. In the event City determines, based upon Technical Grounds, that inadequate space exists on its Structure(s) to accommodate any proposed Wireless Installation, Permittee may elect to have such Structure(s) replaced in accordance to standards explained in APMC 19.53, at Permittee’s sole expense, with Structure(s) with adequate space to accommodate the proposed Wireless Installation.

- (c) Worker Qualifications; Responsibility for Agents and Contractors. Each Party shall ensure that its workers and, to the extent that either may employ agents or contractors, their workers, are adequately trained and skilled to access Structures in accordance with all applicable industry and governmental standards and regulations. All parties engaged in construction activity or conducting business in the City are required to have active business licenses in the City of American Canyon. City may deny access to its Structures to any such worker who is not so qualified, or does not act in a safe and professional manner when accessing any Structure. In such event, Permittee shall take such reasonable and necessary action so as to ensure that such worker does not continue to access Structures on Permittee’s behalf unless such worker is qualified to City’s reasonable satisfaction. In no event, however, shall a party be liable or otherwise responsible for the competence or conduct of the other Party’s workers or those of the other Party’s agents or contractors.

2.3 Fiber-Optic Cables, Conduits, and Pull Boxes. The City understands that Permittee’s Facilities on the Premises may include conduit and fiber-optic cable. By entering into this Master Lease

Agreement, Permittee agrees that if it proposes the installation of conduits and fiber optic cable in the Premises, then Permittee shall provide the installation of an additional separate conduit and fiber optic cable of equal size and installed in the same time, place and manner as the proposed conduit and fiber optic cable and which shall be dedicated to the City for its exclusive municipal use, provided that adequate space exists within the Premises for the installation of conduit for both the Permittee and the City. When City and Permittee reach an agreement of such installation, a negotiated Indefeasible Right of Use (IRU) shall be entered into at that time, or Permittee may transfer title to such conduit, which will be from the base of the Structure to the top of the conduit within or on the Structure, to the City.

2.4 Termination of Use. Notwithstanding ACMC section 19.53.120, the Permittee further agrees to the requirements and procedures for Facility termination. Permittee may terminate its use of any or all of the Facilities by providing the City with thirty (30) days prior written notice. Upon termination by Permittee, provisions related to the removal of the Permittee Facilities shall apply. The City may terminate any individual SAF Permit for a Facility or this Agreement for cause upon thirty (30) days written notice to the Permittee. Upon the termination of any of the Facilities by either Party, the applicable SAF Permit shall be removed from Exhibit A of this Agreement and Permittee shall no longer be obligated to pay for a Pole Fee for the terminated Facility. Termination for cause means:

- (a) If the Permittee has failed to cure a material default affecting less than all of the Premises leased under this Agreement within thirty (30) days after it received the City's written notice of default, the City may terminate the affected leases for such Premises;
- (b) If the Permittee has failed to cure a material default affecting all of the Premises leased under this Agreement within thirty (30) after it received the City's written notice of default, then City may terminate the Agreement;
 - (i) If the default cannot reasonably be cured within thirty (30) days, Permittee will be allowed a reasonable amount of time to cure such default as long as the efforts to cure commenced within the thirty (30) day period and Permittee uses diligent efforts to complete the work in a reasonable amount of time.
- (c) If the Permittee has failed remove any and/or all Conflicting Facility within one hundred and eighty (180) days within of receipt a written demand from the City;
- (d) the CPUC, the FCC, or other agency exercising jurisdiction over the Permittee has, by final order to action that is no longer subject to appeal, terminated or otherwise revoked the Permittee's approval, authorization, certification or license to operate the Permittee's Facilities; or
- (e) the Permittee's authority to do business in California has expired or is rescinded or terminated by final order or action that is no longer subject to appeal.

**ARTICLE 3
REMOVAL AND RELOCATION**

3.1 Removal Due to Public Project. Upon receipt of a written demand from the City, Permittee, at its sole cost and expense, shall, within one hundred and eighty (180) days, remove any and/or all Facilities, constructed, installed, used and/or maintained by Permittee under this Agreement (hereinafter "Conflicting Facility"), whenever the City reasonably determines that the removal of any and/or all Conflicting Facilities is needed for any of the purposes listed below:

- (a) due to any work which will be performed by or on behalf of the City, or any other governmental agency, or any private developer, including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities such as City-owned or government owned sewers, water mains, drains, storm drains, pipes, poles, power lines, and tracks;
- (b) because any part of the Facilities is unreasonably interfering with or unreasonably affecting the proper operation of City-owned light poles, traffic signals, or other City facilities; or
- (c) to protect or preserve the public health and safety.

In the event removal of Conflicting Facility is required, the City agrees to cooperate and work in good faith with Permittee to find an alternative location for the removed Facility and/or allow Permittee to place a temporary facility as close as practicable to the original location of the Conflicting Facility such that Permittee's operations will not be materially disrupted at any given location, provided however that any such temporary facility meets all standards in ACMC Section 19.53. Notwithstanding the foregoing, any time, effort or resources expended by either party in pursuit of such alternative locations or temporary facilities shall be construed as having independently utility and shall not be construed as having any tolling effect on the 180-day deadline to remove the Conflicting Facility imposed by the City's demand which shall remain in full force and effect. If, after the expiration of the 180th day following Permittee's receipt of City's written demand to remove the Conflicting Facility, Permittee fails to remove any and/or all of the Conflicting Facility, then Permittee agrees it has terminated its use of the Facility and the applicable SAF Permit shall be removed from Exhibit A of this Agreement.

3.2 Removal Due to Termination. As a result of termination, Permittee shall, at its sole cost and expense, remove the Facilities and, if such removal disturbs the City's ROW, restore the City's ROW to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Permittee to the City's ROW Facility and said removal shall occur no later than the earliest of the following:

- (a) One hundred eighty (180) days after receipt of a written demand from the City regarding conflicts with a Public Project as described in Section 3.1.
- (b) One hundred eighty (180) days after termination of this Agreement pursuant to the provisions of this Agreement.

3.3 Removal Due to Abandonment. In the event Permittee ceases to operate or maintain and abandons the Facilities, or any part thereof, for a period of one hundred and twenty (120) days or more, Permittee

shall, at its sole cost and expense and no more than 30 days after expiration of the one hundred and twenty (120) day time period herein, vacate and remove the Facilities or the abandoned part thereof. If such removal disturbs the City's ROW, Permittee shall also, at its sole cost and expense, restore the City's ROW to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Permittee to the City's ROW. Alternatively, the City may allow Permittee, in the City's sole and absolute discretion, to abandon the Facilities, or any part thereof, in place and convey it to the City.

ARTICLE 4 MAINTENANCE AND REPAIR

4.1 Electricity Use. Permittee shall pay for the electricity it consumes in its operations for their SAF on City-owned Structures in the following ways:

- (a) When it is technically feasible and consistent with PG&E policies for Permittee to use the City's existing electrical wires, conduit and other infrastructure at the Premises ("Infrastructure"), City hereby consents to Permittee's use of the Infrastructure for its Wireless Installation. When Permittee uses the Infrastructure, Permittee will pay and all costs to modify the Infrastructure to accommodate Permittee's use, the Pole Fee includes the cost of Permittee's electricity usage, and no sub-metering or additional payment for electricity required.
- (b) For all other Wireless Installations, Permittee is solely responsible for obtaining electricity for the Wireless Installation, including making payments to PG&E.
- (c) Upon approval by the City, Permittee may at Permittee's expense replace existing lighting at the Premises with LED or other energy saving lighting, and City will own, operate, maintain and repair the replacement lighting.
- (d) If PG&E offers Permittee the option to install a wireless Smart Meter or a pedestal-mounted meter, Permittee agrees to choose the wireless Smart Meter.

4.2 Maintenance and Repair. According to ACMC 19.53.090, for all SAF permits the Permittee shall, at Permittee's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Facilities in good condition and appearance, and in compliance with all applicable Laws. SAFs shall provide a financial guarantee, such as a letter of credit or security bond, for antenna equipment maintenance and removal. In the event any part of the Facilities requires replacement because such part cannot be repaired, Permittee shall, at Permittee's sole cost and expense, replace the irreparable part of the Small-cell Antenna Facilities.

- (a) SAF in the Public ROW – SAFs in the Public ROW will require an encroachment permit and SAF permit prior to construction. Encroachment permits for SAFs requires financial guarantee, such as a letter of credit or security bond.
- (b) Permittee's On-Call Representative. Permittee shall at all times have a representative assigned to be on call and available to the City regarding the operation of Permittee's Equipment. Permittee's representative shall be qualified and experienced in the operation of Permittee's Equipment, and shall be authorized to act on behalf of Permittee in any emergency and in day-to-day operations of the Equipment. Permittee's that

employ Network Operations Centers (NOC's) can use their NOC contact as the On-Call Representative. The contact information for Permittee's on-call representative is listed in the SAF application and will be listed on identification plates. Before the City performs non-emergency maintenance, repair, or other activities on the Premises in the regular course of its business that may impair the operation of Permittee's Equipment on the Premises, the City will attempt to provide at least 48 hour's telephonic notice to Permittee's on-call representative. The City will not be required to delay non-emergency repair or maintenance activities more than 48 hours after attempting to contact Permittee's on-call representative.

4.3 Repair of ROW. Permittee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities to the extent caused by Permittee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Facilities in the City's ROW ("Permittee's Activities"). Permittee shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition in accordance with the City's applicable street restoration standards. Permittee's obligations under this Section 4.3 shall survive for six (6) months past the completion of such reparation and restoration work and return of the affected part of the City's ROW by Permittee to the City.

4.4 Security. Permittee shall provide a letter of credit of twenty-five thousand dollars (\$25,000) upon the first installation of any SAF set forth in Exhibit-A to ensure the Permittee before any and all obligations set forth in "Article 3 – Removal and Relocation" and "Article 4 – Maintenance and Repair". City may require Permittee to increase the security deposit from time to time (but no more frequently than every five years during the Term) to reflect the reasonable estimated cost of performing such obligations, to secure performance of Permittee's obligations under Articles 3 and 4. If, any amount is deducted from said security, the Permittee must restore the full amount of the deposit prior to the Department's issuance of a subsequent Permit. The security shall cover all sites within the Agreement and the City shall return and release the letter of credit to the Permittee should Permittee cease to operate all SAF described in this Agreement.

4.5 Street Tree. As indicated in APMC 19.53.070-A, Permittee shall provide one street tree per pole or vertical structure to help screen the SAF. If installing a street tree is infeasible on the basis of inadequate sidewalk width, utility interference, or public health, safety, or welfare reasons, at the approval of the Public Works Director, the applicant shall provide an "in-lieu" payment into the City's "Street Tree" fund. In-lieu street tree payment, including the maintenance and repair, shall be paid prior to the building permit issuance.

- a) Permittee shall provide a security deposit that is reviewed and found satisfactory by the City Attorney to guarantee ten (10) years of tree maintenance.
- b) The In-Lieu fee for each Street Tree depends on the species and the location. For estimation purposes, the fee shall include location preparation, soil preparation, planting, and maintenance. The initial deposit for a Street Tree with ten years of maintenance shall be at least two thousand and four hundred (\$2,400) dollars.

**ARTICLE 5
TAXES**

5.1 Taxes. Permittee agrees that it will be solely responsible for the payment of any and all lawful taxes, fees and assessments levied on its local use and maintenance of the Facilities. Pursuant to Section 107.6 of the California Revenue and Taxation Code, the City hereby advises, and Permittee recognizes and understands, that Permittee's use of the City's ROW may create a possessory interest subject to real property taxation and that Permittee may be subject to the payment of real property taxes levied on such interest. Permittee will cooperate with the Napa County Assessor in providing any information necessary for the Assessor to make a property tax determination. Permittee reserves the right to challenge any such assessment, and the City agrees to cooperate with Permittee in connection with any such challenge.

**ARTICLE 6
INDEMNIFICATION**

6.1 Indemnity. Permittee shall indemnify, defend, and hold harmless the City, its councilmembers, officers, employees, agents, contractors, and attorneys from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent directly or proximately resulting from Permittee's Activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council members, officers, employees, agents, or contractors. The City shall promptly notify Permittee of any claim, action or proceeding covered by this Section 6.1. Permittee will in no event be liable for indirect, punitive, or consequential damages.

6.2 Limitation of City's Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, direct, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

**ARTICLE 7
INSURANCE**

7.1 Insurance Requirements. Permittee shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Article.

(a) Insurance. Permittee shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(i) General Liability: A policy or policies of Commercial General Liability Insurance, with limits of two million (\$2,000,000) dollars combined single limit per occurrence for bodily injury, personal injury (including death), and property damage and four million (\$4,000,000) dollars general aggregate including personal and advertising injury resulting from wrongful or negligent acts by Permittee.

(ii) **Automobile Liability:** A policy or policies of Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles, with limits of one million (\$1,000,000) dollars combined single limit each accident for bodily and property damage.

(iii) **Workers' Compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of one million (\$1,000,000) dollars each accident/disease/policy limit.

(b) **Deductibles and Self-Insured Retentions.** Permittee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Permittee elects to self-insure its obligation under this Agreement to include Grantor as an additional insured, the following conditions apply:

- (i) City shall promptly and no later than thirty (30) days after notice thereof provide Permittee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Permittee with copies of any demands, notices, summonses, or legal papers received in connection with
- (ii) such claim, demand, lawsuit or the like:
- (iii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Permittee; and
- (iv) City shall fully cooperate with Grantee in the defense of the claim, demand, lawsuit, or the like.

(c) **Other Insurance Provisions.** The required policies shall contain, or be endorsed to contain, the following provisions:

- (i) **General Liability and Automobile Liability Coverage.** (1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be included as additional insureds as their interest may appear under this Agreement on all required insurance policies, except for Workers' Compensation and Employer's Liability policies. (2) Permittee's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of Permittee's insurance and shall not contribute with it. (3) Any failure of Permittee to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds. (4) Permittee's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.
- (ii) City's additional insured status shall (1) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or

in part, by Permittee or-, its employees; (2) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (3) not exceed Permittee's indemnification obligation under this Agreement, if any.

- (iii) Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by Permittee in the City's ROW.
- (iv) All Coverages. Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or, reduced in coverage or in limits, Permittee shall, within two (2) business days of notice from the insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) Acceptability of Insurers. Insurance shall be placed with insurers with an A.M. Best rating of no less than A-VII.

(e) Verification of Coverage. Permittee shall furnish the City Attorney's Office with certificates of insurance required by this Agreement. The certificates for each insurance policy are to be signed by an either manually or electronically, authorized representative of the insurer. All certificates are to be received and approved by the City before work commences.

7.2 Secondary Parties. In the event Permittee hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Facilities, Permittee shall require the Secondary Parties to obtain and maintain insurance similar in form and substance as that required by Section 7.1 of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 No Waiver. The Parties do not intend, and nothing in this Agreement shall be interpreted as, a waiver of any of Permittee's rights under state and/or federal law, including, but not limited to, Public Utilities Code section 7901 and 7901.1 and Government Code section 50030.

8.2 Nonexclusive Use. Permittee acknowledges that this Agreement does not provide Permittee with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. Permittee acknowledges that the City may make information available to other providers of communications services concerning the presence or planned deployment of the Facilities in the City's ROW. Permittee also acknowledges that the SAF project complies with the density requirements of APMC section 19.53.100.

8.3 Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and personally served or transmitted through first class United States mail, or by private delivery systems, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of American Canyon
C/o City Manager
4381 Broadway St – Suite 201
American Canyon, CA 94503

With a copy to:
William D. Ross, City Attorney
4381 Broadway St – Suite 201
American Canyon, CA 94503

Permittee: Wireless Corporation TBD

Any notice required or provided for under this Agreement shall be deemed served at the time of personal service. Mailed notices will be deemed served as of the day of receipt.

8.4 Attorneys' Fees. If legal action is brought by either Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to recover reasonable attorneys' fees and court costs.

8.5 Transfers. Permittee shall provide thirty (30) days' prior written notice to the City prior to any transfer of any part of the Facilities to a third party. An assignment to a new entity shall not be effective until the proposed transferee agrees in writing to comply with and be subject to all the terms and conditions of this Agreement and the Code. Without limiting any provision in this Agreement to the contrary, Permittee may in the ordinary course of its business and without the prior written consent of or notice to the City:

- (a) lease or license the Facilities, or any portion thereof, to another person;
- (b) grant an indefeasible right of user interest in the Facilities or any portion thereof to another person; or
- (c) offer or provide capacity or bandwidth from the Facilities to another person;
- (d) assign any contract to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity which directly or indirectly under common control with the Party. Permittee may assign this Agreement to any entity which acquires all or substantially all of Permittee's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization without approval or consent of the City.

8.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns and transferees.

8.7 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written, relating to the subject matter hereof, are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either Party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.

8.8 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

8.9 Governing Law. This Agreement shall be interpreted and enforced according to, and the Parties rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement shall occur in the federal court with jurisdiction over the City of American Canyon and the State courts located in Napa County, California.

8.10 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal due to termination, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.

8.11 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

8.12 Exhibits. All Exhibits referenced in this Agreement are hereby incorporated as though set forth in full herein.

8.13 Drafting. The Parties agree that this Agreement is the project of joint draftmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting Party in accordance with California Civil Code Section 1654, and that each Party to this Agreement waives the effect of such statute.

8.14 Authority to Execute This Agreement. Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

8.16 Deed Recordation. Permittee shall record the Right-of-Way Use Agreement with the Napa County Recorder and provide the City Attorney with a Recorded copy within thirty (30) days

after the Agreement is executed. Permittee shall pay all fees associated with the Napa County deed recordation process.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date stated in the introductory clause.

City of American Canyon, a municipal corporation

Wireless Corporation TBD

By: _____
Jason B. Holley
City Manager

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

City Clerk
Suellen Johnston, CMC

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

William D. Ross
City Attorney

EXHIBIT A

THE FACILITIES

Attached behind this page are descriptions and diagrams indicating the location(s) at which the Facilities covered by this Agreement will be installed.