

WHEN RECORDED, RETURN TO:

City Clerk
City of Petaluma
Post Office Box 61
Petaluma, CA 94953

TELECOMMUNICATIONS MAINTENANCE/FACILITY REMOVAL AGREEMENT

This agreement (the "Agreement") is entered into as of this _____ day of _____, 20____,
by and between the City of Petaluma (the "City"), and _____
(the "Permittee") for the telecommunications facility located at _____

(Site Address) (Assessor's Parcel Number)

Recitals

- A. Ordinance No. 2029 N.C.S. requires the establishment of a Trust Fund as a condition of approval for a permit for a telecommunications facility (the "Facility").
- B. The Trust Fund is to serve as a guarantee for the costs of maintenance and/or removal of the proposed Facility and for associated administrative costs.
- C. The Trust Fund is to be funded by owner of the Facility as a condition of approval and shall be paid in full prior to the issuance of a building permit, in a sum as determined by the City.

Now, therefore, the parties hereto agree as follows:

- 1. Establishment of Deposit: Permittee shall provide to City a trust fund as determined by resolution of the City Council. On behalf of the Permittee, the City shall establish and record the deposit into a separate sub-account in the City General Trust Fund.
- 2. Term and Interest: The sub-account shall be maintained until terminated as provided below, and any interest earnings from the deposit shall be used for defraying administrative costs for the life of the sub-account.
- 3. Record-keeping: The City shall maintain a record of the balance in the Permittee's subaccount, together with the deposits thereto, and the withdrawals therefrom.
- 4. Conditions of Withdrawal:
 - a. Upon removal of the Facility by the Permittee, as verified by the City of Petaluma Community Development Department, City shall return to Permittee any remaining balance in the sub-account within thirty (30) days after certification by the Petaluma Community Development Department of said removal.

- b. Upon request in writing by Permittee, City may provide a draw from the subaccount to reimburse the Permittee for Facility removal. The City will release funds only if removal of the facility has been completed to the satisfaction of the City. In such event, any excess remaining in the sub-account after such draw shall be returned to Permittee.
 - c. Upon the transfer of ownership of the Facility, the deposit amount shall be assigned to the new owner/provider in an amount equal to the balance remaining in original Permittee's sub-account. The City shall not return any balance to the original Permittee except as otherwise provided in 4.a. above.
 - d. If the Facility is deemed to be abandoned or obsolete, after notifying Permittee, the City shall use funds from the sub-account for removal of the Facility, no sooner than six (6) months after determination of abandonment or obsolescence by the Petaluma Community Development Director. Abandonment shall include failure to properly maintain facility, meet conditions of approval, or provide reports as required herein or as a condition of approval. In this event, any balance remaining in the sub-account is retained by the City and transferred to the General Fund for any municipal use.
5. Indemnification: The Permittee agrees to defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action, or proceeding against the City, its boards, commissions, agents, officers or employees to attack, set aside, void, or annul, the approval of the Facility when such claim or action is brought within the time period provided for in applicable State and/or local statutes. The City shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the City from participating in the defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs and the City defends the action in good faith. Permittee further agrees to defend and indemnify, with counsel reasonably acceptable to the City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including without limitation attorney's fees and costs and fees of litigation) (collectively "Liability") of every nature arising out of or in connection with Permittee's obligations under this Agreement and Permittee's use and operation of the "Facility."
6. Liability: The Permittee and/or telecommunications facility lessor shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their respective use and operations of the Facility at the subject site within the City of Petaluma. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, telecommunications facility lessor and/or Permittee shall be responsible for any sanctions, fines, or other monetary losses imposed as a result of the release of pollutants from their respective operations. Pollutants means any soil, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste include materials to be recycled, reconditioned or reclaimed. Nothing in this paragraph is meant to limit any liability or obligations under paragraph 5.
7. Applicable Laws: Permittee shall comply with all environmental laws, whether local, state or federal, applicable to the facility. In addition, Permittee shall comply with all FCC

regulations regarding electromagnetic radiation. The indemnity provision of Section 5 shall apply to a breach by Permittee of Section 6.

8. Maintenance: The Permittee shall properly maintain the exterior appearance of the Facility to the satisfaction of the City of Petaluma Community Development Director. Maintenance shall include, but not be limited to, landscaping, utility and/or structural components of the Facility.
9. Compliance with Standards:
 - a. No telecommunications facility shall be operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no telecommunications facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the standard for human exposure as these terms are defined in Chapter 14.44 of the Petaluma Municipal Code.
 - b. If the calculated NIER levels exceed 80% of the NIER standard established by the City, the applicant shall hire a qualified electrical engineer licensed by the State of California to measure NIER levels at said location after the facility is in operation. A report of these measurements and his/her findings with respect to compliance with the established NIER standard shall be submitted to the Community Development Director. Said facility shall not commence normal operations until it complies with, or has been modified to comply with, this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.
 - c. The telecommunications facility operator shall demonstrate continued compliance with the NIER standard established by Chapter 14.44 of the Petaluma Municipal Code. Every five (5) years, the telecommunications facility operator shall submit a report to the Community Development Director listing each transmitter and antenna present at the facility and the effective radiated power. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed 80% of the standard established by Chapter 14.44 of the Petaluma Municipal Code, the operator of the facility shall hire a qualified electrical engineer licensed by the State of California to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Community Development Director within five (5) years of facility approval and every five (5) years thereafter. In the case of a change in the standard, the required report shall be submitted by the operator within ninety (90) days of the date said change becomes effective.
 - d. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by Chapter 14.44 of the Petaluma Municipal Code shall be grounds for determination of abandonment, revocation of the use permit or other

entitlement, and removal of the facility.

- 10. Monitoring and Access: The Permittee shall pay to the City, prior to installation of said Facility, the estimated cost of monitoring compliance with, and enforcement of, this Agreement and any and all applicable conditions of approval of said facility and to reimburse the City for all costs incurred to perform any work required of the Permittee that the Permittee fails to perform. The estimated costs of monitoring shall cover a period of no less than five (5) years. Costs shall be estimated by the Community Development Director. Permittee specifically authorizes the City and/or its agents to enter onto the property at any time for inspection monitoring and, after providing notice in accordance with Section 14.44.140 of the Petaluma Municipal Code, to undertake any and all work to ensure compliance with this Agreement and any and all applicable conditions of approval of said Facility.

- 11. Transferability: All successors in interest of said Facility shall be subject to the terms and conditions of this Agreement, Chapter 14.44 of the Petaluma Municipal Code, as well as all applicable state, federal, and local laws, permits, and regulations. The Permittee shall notify the City of any successors in interest. Any balances in Trust fund deposits shall be assigned to the successor in interest upon notification to the City of a transfer of interest. Failure to notify the City of a transfer in interest shall be grounds for determination of abandonment and revocation of the use.

- 12. Notices: Any notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be given (i) by an established express delivery service which maintains delivery records, (ii) by personal delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as such parties may designate by written notice in the above manner:

City:	City of Petaluma Post Office Box 61 Petaluma, California 94953 Attn:
Permittee:	_____

	Telephone: _____
	Fax: _____

- 13. Penalties for Failure to Pay: Payment of trust fund deposit and any other costs as determined by Community Development Director shall be made prior to issuance of a building permit. In the event that the Permittee fails to pay the full amount required in the trust fund account or any reimbursable expenses related to monitoring, inspection, and

maintenance activities or provide reports as required herein, the facility may be determined abandoned, and after notice to Permittee, the facility shall be removed and use permit revoked.

14. Recordation: This Agreement shall be recorded at the Office of the Clerk/Recorder of the County of Sonoma and shall run with the land described in Exhibit A, which is attached hereto and incorporated herein by this reference.
15. This contract shall bind, and the benefits inure to, the respective parties thereto, their legal representatives, executors, administrators, successors in office or interest, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF PETALUMA

PERMITTEE

City Manager

By _____
Name

ATTEST:

Title

City Clerk

Address

APPROVED AS TO FORM:

City State Zip

City Attorney

Taxpayer I.D. Number

APPROVED:

Petaluma Business Tax Certificate Number

Department Director

APPROVED:

Risk Manager

APPROVED:

Administrative Services Director