

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

McGuireWoods LLP  
1800 Century Park East, 8<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attention: Charlotte Pashley

(Space above this line for recorder's use)

**TELECOMMUNICATION FACILITY MAINTENANCE  
AND REMOVAL AGREEMENT**

THIS TELECOMMUNICATION FACILITY MAINTENANCE AND REMOVAL AGREEMENT, hereinafter referred to as "Agreement" is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the CITY OF SONOMA, hereinafter referred to as "City," COUNTY OF SONOMA, hereinafter referred to as "County", and GTE Mobilnet of California, Limited Partnership, d/b/a Verizon Wireless, by Cellco Partnership, its general partner, hereinafter referred to as "Operator."

WHEREAS, Operator currently operates a telecommunications facility, hereinafter referred to as "Telecommunication Facility," on the real property located at 284 First Street West, Sonoma, California, hereinafter referred to as the "Subject Property," as legally described in Exhibit "A" attached hereto and made a part hereof, pursuant to that certain Option and Lease Agreement dated September 1, 2002, as amended by that certain First Amendment to Option and Lease Agreement dated January 1, 2004 (as so amended, the "Lease") between County and Operator; and

WHEREAS, Operator wishes to make certain modifications (the "Modifications") to the Telecommunication Facility; and

WHEREAS, Operator has filed an application for a Use Permit Modification ("Use Permit") with the City to obtain City's consent to the proposed Modifications; and

WHEREAS, Section 5.32.130 of the City of Sonoma Municipal Code ("SMC") requires the person requesting establishment or modification of any telecommunications facility which includes a telecommunication tower, one or more new buildings/equipment enclosures larger in aggregate than 300 square feet, more than three satellite dishes of any size, or a satellite dish larger than four feet in diameter to submit to City's Planning and Community Services Director a maintenance/facility removal agreement signed by Operator and County, in its capacity as the fee owner of the Subject Property, prior to the approval of the Use Permit; and

WHEREAS, City has reviewed and administratively approved the Use Permit, subject to compliance with the Conditions of Project Approval dated July 2, 2018 (the "COAs"), attached hereto as Exhibit "B" and made a part hereof; and

WHEREAS, Operator now desires to enter into this Agreement to guarantee maintenance and removal of the Telecommunication Facility, as required by the COAs and in accordance with Section 5.32.130 of the SMC so the Use Permit can be issued and Operator can move forward with the Modifications.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the mutual covenants and representations set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Persons Bound.** This Agreement shall run with the property upon which Telecommunication Facility is located and fully bind Operator, City and County and each and all of their respective successors-in-interest and assigns. Hereafter, the term "Operator," "City" and "County" in this Agreement shall include all respective successors and assigns.

2. **Term.** This Agreement shall commence upon execution hereof by all parties and shall only terminate upon removal of Telecommunication Facility in conformance with the provisions of Paragraph 5 below; except that the obligations of Operator to County under Paragraphs 12 and 13 below shall continue in full force and effect after said expiration date as to liability for acts or omissions occurring during the term of this Agreement.

3. **Termination for Cause/Convenience.** This Agreement may be terminated prior to its expiration only upon prior written Agreement by all parties.

4. **Maintenance of Telecommunication Facility.** Operator shall, at its sole expense, maintain to the reasonable satisfaction of City the exterior appearance of the Telecommunication Facility in compliance with all applicable provisions of the SMC and the COAs.

5. **Removal of Telecommunication Facility.** Operator shall, at its sole expense, remove Telecommunication Facility if (a) the underlying use permit or other entitlement for use is not renewed as applicable, (b) the underlying use permit or other entitlement for use is revoked, or (c) use of the Telecommunication Facility ceases for a continuous period of a year and a day (i.e., the facility is abandoned). Telecommunication Facility removal shall commence within 120 days of any of the actions listed above unless City issues a new use permit or other entitlement for use in the interim. Telecommunications Facility removal shall include removal of all improvements installed or constructed by or on the behalf of Operator, its agents or its predecessors in interest, including their foundations down to 3 feet below the natural surface of the ground, and restoration of the site to its natural pre-construction condition, reasonable wear and tear excepted. All removal and restoration work shall be completed to the satisfaction of City within 180 days of permit/entitlement non-renewal, revocation, or abandonment, as applicable.

6. **Failure To Maintain/Remove Telecommunication Facility.** If Operator fails to maintain or to remove the Telecommunication Facility in compliance with the requirements of Paragraphs 4 or 5 of this Agreement, respectively, City's Director shall send Operator a written



notice identifying the work that needs to be done and giving Operator at least forty-five (45) calendar days following receipt of such notice to complete it. If Operator fails to complete said work within such 45-day period, City's Director shall send Operator a "Notice of Default" documenting Operator's failure to perform and indicating City's intent to commence the required work within ten (10) working days. If Operator has not finished the required work within ten (10) working days of receipt of such notice or any written extension thereto granted by City or fails to file an appeal pursuant to Section 5.32.150 of the SMC within eleven (11) working days of the Notice of Default, City and/or its agents may enter the subject property and perform the needed work. If an appeal is filed, City may enter the subject property and perform the necessary work only if the appeal is dismissed or final action is taken on it in favor of the City. Nothing in this paragraph shall be construed as a waiver by City of its right to pursue other legal remedies concurrently or subsequently to compel maintenance/removal of the Telecommunication Facility, including but not limited to, revocation of the use permit or other entitlement for use.

7. **Administrative and Enforcement Costs.** Operator shall pay all reasonable costs incurred by City in monitoring compliance with and enforcing this Agreement. Said costs shall include, but are not limited to, the costs of City inspections, the cost of administrating this Agreement, and any other costs incurred by City by virtue of any breach of this Agreement by Operator subject to the provisions of Paragraph 20 below. Operator shall reimburse the City for such costs within ten (10) working days of written request therefor.

8. **Maintenance And Removal Costs.** Operator shall reimburse City for all reasonable costs incurred to fulfill the obligations of Operator under Paragraphs 4 and 5 above that Operator fails to fulfill in a timely and reasonably satisfactory manner. In addition to the actual costs of the work itself, said costs shall include reasonable administrative and job supervision costs actually incurred with respect to the work. Operator shall submit to City within ten (10) working days of written request therefor such monies as City reasonably estimates will be needed or have actually been spent to perform the necessary maintenance or removal work pursuant to Paragraph 6 above. If estimates are employed, they shall be in writing and shall contain a detailed breakdown of the costs expected to be incurred including administrative and job supervision costs. If the actual costs incurred by City exceed estimated costs, Operator shall submit to City within ten (10) working days of demand therefor those additional monies needed to cover actual costs. If the actual costs incurred are less than estimated costs, the excess monies collected shall be and refunded to Operator within sixty (60) days of submission.

9. **Failure To Pay Administrative, Enforcement, Maintenance, Or Removal Costs.** If Operator fails to submit to City or its agents officers or employees the monies required under Paragraphs 8 (Administrative and Enforcement Costs) or 9 (Maintenance and Removal Costs) within the time frames specified therein, City's Director shall send Operator a "Notice of Non-Payment" documenting Operator's failure to perform and directing Operator to cease operation of the Telecommunication Facility within ten (10) working days. If Operator does not pay the monies owed within this ten (10) working day period or any written extension thereto granted by City or fails to file an appeal pursuant to Section 5.32.150 of the SMC within ten (10) working days of the Notice of Non-Payment, Operator shall thereafter immediately cease

operation of the Telecommunication Facility. If an appeal is filed, Operator need only cease operation of the Telecommunication Facility if the appeal is dismissed or final action on it is taken that finds that the money owed must be paid. Once operation of Telecommunication Facility ceases, it shall remain suspended until Operator pays in full the required monies.

10. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of said change. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five (5) days following the date of deposit, whichever is earlier.

**CITY:**

Please provide Notice Address

**OPERATOR:**

GTE Mobilnet of California Limited  
Partnership, d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate  
Site Reference: DT Sonoma Hub

**COUNTY:**

Please provide Notice Address

11. **Indemnification.** Operator shall defend, indemnify and hold harmless City, and each and all of its officers, agents and employees, from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by Operator or its officers, agents, or employees, of activities or obligations authorized under this Agreement, except for those claims, losses, liabilities, and damages caused by the negligence or willful misconduct of City or County or their respective officers, agents, or employees.

12. **Insurance.** Operator shall maintain the insurance as described in Paragraph 8 of the Lease. Operator shall include City, its officers and employees as additional insureds as their interest may appear under this Agreement under its insurance carried pursuant to the Lease.

13. **Compliance with Laws.** Operator shall observe and comply with all applicable Federal, State and local laws, rules, and regulation including, but not limited to, all relevant provisions of the SMC. Operator shall not discriminate against any person performing the work required under this Agreement on the basis of race, creed, color, national origin, religious belief, gender, sexual orientation, medical condition, or disability.

14. **Assignment.** Operator shall not assign or otherwise transfer all or any part of its



interest in or obligations under this Agreement or in the Telecommunication Facility unless permitted pursuant to the terms of the Lease. Unless expressly agreed to in writing by City, any such assignment shall not relieve Operator of its obligations under this Agreement.

15. **Consent.** In any case where the approval or consent of one party hereto is required, requested, or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

16. **Interpretation.** The headings used herein are for reference only. The terms of this Agreement are as set forth in the text under the headings. This Agreement shall be governed by the laws of the State of California.

17. **Severability.** If any provision of this Agreement, or any portion thereof, is found to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

18. **No Waiver.** The waiver by any party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

19. **Specific Performance.** Because the services to be performed by Operator under the terms of this Agreement involve the maintenance of uncluttered public views, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, City, in addition to any other rights or remedies which City may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by Operator.

20. **Attorney's Fees.** In the event that any party commences legal action of any kind or character to enforce the provisions of the Agreement, obtain damages for breach thereof, or obtain injunctive or equitable relief, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

21. **Entirety of Agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, offers, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof. Any amendments to this Agreement must be in writing and executed by all parties.

[Signatures appear on the following page.]

IN WITNESS HEREOF the parties hereto have caused this agreement to be executed as of the date first written above.

**OPERATOR:**

GTE Mobilnet of California Limited Partnership,  
d/b/a Verizon Wireless

By Cellco Partnership, its general partner

Scott Stewart 4/17/19  
Name: SCOTT STEWART  
Title: Director Real Estate NORCAL/N.NEV

**COUNTY:**

COUNTY OF SONOMA

\_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

\_\_\_\_\_  
Name:  
Title:

**CITY:**

CITY OF SONOMA

\_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

\_\_\_\_\_  
Name:  
Title:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

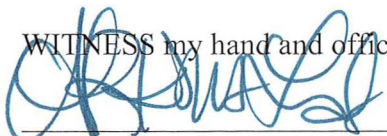
State of California )

County of Contra Costa )

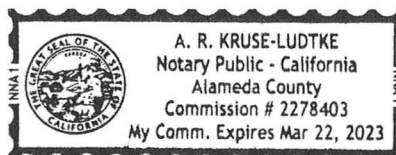
On April 24, 2019 before me, A. Kruse-Ludtke, Notary Public, personally appeared Scott Stewart, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public



Place Notary Seal Above

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )

\_\_\_\_\_ )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above