

**SMALL WIRELESS FACILITY
SITE AGREEMENT**

THIS SMALL WIRELESS FACILITY SITE AGREEMENT (the “Agreement”) is dated as of _____, 20__ (the date fully executed by all parties, referred to herein as “Effective Date”), and entered into by and between THE CITY OF MOORPARK, a California municipal corporation (the “City” or “City”), and _____, a _____ (“Permittee”). City and Permittee are referred to herein collectively as the “Parties” or individually as a “Party.”

Recitals

- A. Permittee is authorized by law to conduct business as a telephone corporation in the State of California and desires to construct, attach, install, operate, and maintain of its Equipment (as defined below) in the City; and
- B. On April 17, 2019, the City Council of City adopted Resolution No. 2019-3800 adopting a City Wide Policy Regarding Permitting Requirements and Development Standards For Small Wireless Facilities (the “City Policy”), which requires Permittee to enter into a site agreement with the City for the Equipment to be installed on any structure located within the public rights-of-way that states the terms and conditions for such use by Permittee; and
- C. City has approved Permittee’s application for City Small Wireless Permit No. _____ (the “Permit”); and
- D. The parties mutually desire to enter into this agreement in satisfaction of the site agreement required by the City Policy;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. Terms defined in the City Policy shall have the same meaning when used in this Agreement unless it appears from the context of this Agreement that another meaning is clearly intended. For further purposes of this Agreement, the following definitions shall apply generally to the provisions of this Agreement:

1.1 “Equipment” means the small wireless facility equipment cabinets, antennas, utilities, and fiber optic cables, wires, and related equipment, whether referred to individually or collectively, to be installed pursuant to the Permit.

1.2 “Hazardous Substance” means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including, but not limited to, petroleum products and asbestos.

1.3 “Laws” means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other

requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.4 “Person” means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

1.5 “PUC” means the California Public Utilities Commission.

1.6 “Right(s)-of-Way” or “ROW” means the Public right-of way.

1.7 “Services” means the transmission and reception of communications signals for the provision of personal wireless services, and mobile data services, and the installation, construction, modification, maintenance, operation, repair, replacement and upgrade of the Equipment to provide such services.

1.8 “Transfer” means any transaction in which the rights and/or obligations held by Permittee under this Agreement or a Supplement are transferred, directly or indirectly, in whole or in part to a party other than Permittee.

2. TERM. The initial term of this Agreement shall be the same as the term of the Permit, unless no term is provided for therein, in which case the term of this Agreement shall be ten (10) years.

3. SCOPE OF AGREEMENT. This Agreement applies to Permittee’s activities in the ROW within the scope of the Permit. Permittee shall comply with all applicable requirements of the City Policy, the terms and conditions of the Permit. In the event of any conflict between the terms of this Agreement and the terms of the City Policy, the terms of the City Policy shall control. Permittee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement. Any and all rights expressly granted to Permittee under this Agreement shall be exercised at Permittee’s sole cost and expense, and shall be subject to the restrictions set forth herein

4. HAZARDOUS SUBSTANCES. Permittee agrees that Permittee, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on, under, about or within the area of a ROW in violation of any Law. Except to the extent of the sole negligence or intentional misconduct of City, Permittee will pay, indemnify, defend, and hold City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Permittee pursuant to this Agreement. Permittee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. Permittee’s obligations under this section shall survive this agreement.

5. INDEMNIFICATION AND WAIVER.

5.1 Indemnification of City. Permittee agrees to defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the Permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the Permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with the Permit or rights granted thereunder, except for claims arising from or caused by the sole negligence or willful misconduct of indemnitees. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the Permittee and shall reasonably cooperate in the defense. Permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and Permittee shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Permittee expressly acknowledges and agrees that the Permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve the Permit and this Agreement, and that such indemnification obligations will survive the expiration, revocation or other termination of the Permit or this Agreement.

5.2 Waiver of Claims. Permittee waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the control of the City.

5.3 Waiver of Subrogation. Permittee hereby waives and releases any and all rights of action for negligence against City which may hereafter arise on account of damage to Equipment, or to the ROW, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Permittee. This waiver and release shall apply between the parties and shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by Permittee concerning the Equipment or the ROW shall waive the insurer's right of subrogation against the City.

5.4 Limitation on Consequential Damages. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, incidental, punitive, indirect, 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.

6. NOTICES.

6.1 Method and Delivery of Notices. All notices pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the City: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn: City Manager

If to Permittee:

Attn: _____

6.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the mail, or the next business day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth in this Section.

7. ASSIGNMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties.

8. Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

9. Severability of Provisions. If any one or more of the provisions of this Agreement is for any reason determined to be invalid, illegal, void, voidable, or unenforceable, by a court of competent jurisdiction in a final judicial action or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement.

10. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state or federal courts of jurisdiction in Ventura County, California.

11. Change of Law. Nothing in this Agreement shall prevent the application or enforcement of any change in law resulting from any legislative, regulatory, judicial, or other action after the Effective Date (“New Law”); including but not limited to any or all health and safety regulations (e.g., fire, building, and seismic, plumbing, and electric codes) that become applicable to the City as a whole. Notwithstanding any such New Law, the Parties agree that the Agreement shall remain in effect until the end of the Initial Term unless mutually agreed to in writing by the Parties.

12. Force Majeure. Except for payment of amounts due, neither Party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military

authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes reasonably beyond its control, whether or not similar to the foregoing.

13. Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14. Entire Agreement; Amendment. The entire understanding between the parties with respect to the subject matter herein is contained in this Agreement and the Permit. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed in the Agreement and the Permit. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

15. No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the City with respect to third parties shall remain as imposed by state law.

16. Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

17. Time is of the Essence. Time is of the essence with regard to the performance of all obligations under this Agreement.

18. Counterparts. This Agreement (and any Supplement) may be executed in multiple counterparts, including by electronic means, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

[Signature page to follow.]

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be legally executed as of the Effective Date.

CITY:
CITY OF MOORPARK

Troy Brown, City Manager

ATTEST:

Ky Spangler, City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

Kevin Ennis, City Attorney

PERMITEE:

By: _____

Name: _____

Title: _____