

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of March 7, 2014, between GTE Mobilnet of California L.P., a California limited partnership d/b/a Verizon Wireless ("Verizon Wireless"), and the City of Pinole, California ("City"). Verizon Wireless and City are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

The Parties enter into this Agreement with respect to a Land Lease Agreement dated January 10, 2013 (the "Existing Lease") regarding Verizon Wireless's construction and operation of a wireless telecommunications facility on premises located in Pinole Valley Park (the "Park"). On March 25, 2013, the City issued to Verizon Wireless Conditional Use Permit 11-08 (the "Permit") which approved a Mitigated Negative Declaration and conditional use permit related to the potential operation and construction of the facility authorized in the Existing Lease (the "Approved Facility").

While reserving all of its rights under the Existing Lease, the Permit, and applicable law, Verizon Wireless has identified an alternative location for a wireless facility at 2518 Pfeiffer Lane, Pinole (the "New Site"), which is outside the Park and will meet the service objective of the Approved Facility. Verizon Wireless has submitted an application for a conditional use permit for the New Site (the "New Application").

The Parties desire to settle their dispute according to the terms set forth in this Agreement, contingent upon the City's timely approval of the New Application with conditions acceptable to Verizon Wireless, timely issuance of a building permit and any other ministerial approvals required in order for Verizon Wireless to construct the facility proposed in the New Application (the "Replacement Facility"), and making certain payments to Verizon Wireless as specified in this Agreement.

NOW THEREFORE, in consideration of the execution of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions hereof, the Parties hereby agree as follows:

1. Effect on Tolling Agreement.

This Agreement shall not affect or modify the tolling and stand-still Agreement dated January 29, 2014, between the Parties, as amended on May 13, 2015, which remains in full force and effect.

2. Timely Action on New Application and Related Approvals.

The City shall review and process the New Application and (if approved) issue a building permit and any other required ministerial approvals in a timely manner. This means that the City shall take final action on the New Application and any related ministerial approvals no later than 150 days after the application is filed with the City,

plus the number of days Verizon Wireless takes to fully respond to any request for additional information received within a reasonable time after the application is filed (the "Final Action Date"). The term "Final Action" means either a denial or an approval of the New Application and, in the case of an approval, the issuance of a building permit and any other ministerial approvals that may be required for construction of the Replacement Facility. Nothing herein shall in any way impact or diminish the City's rights or discretion regarding the New Application.

3. Public Process and Participation.

Verizon Wireless agrees and acknowledges that the City cannot and will not commit in advance to the outcome of the New Application and that the New Application may be subject to legally required environmental review and the same public hearing process as any other application for a conditional use permit. Nothing herein shall constitute or be construed as a pre-commitment by the City to approve the New Application.

The City understands, however, that approval of the New Application is a material term of this Agreement and that Verizon Wireless has the right to terminate this Agreement and commence legal action against the City for any claims arising out of the Existing Lease in the event the New Application is not timely approved, as contemplated herein.

4. Termination of Settlement Agreement.

This Agreement shall immediately and automatically terminate and have no further legal effect in the event the City takes final action to deny the New Application. In addition, Verizon Wireless shall have the right to terminate this Agreement on five days prior written notice to the City if any of the following occur: (i) the City fails to take final action to approve the New Application and any related ministerial approvals on or before the Final Action Date; or (ii) in approving the New Application or issuing any related ministerial approval, the City imposes conditions that are not acceptable to Verizon Wireless (provided that Verizon Wireless shall give written notice to the City within fifteen days after it receives notice of approval that any conditions of approval are not acceptable, or it will be deemed to have approved such conditions).

5. Termination of Existing Lease.

The Existing Lease shall automatically terminate and be of no further force and effect, except as specifically set forth below, when all of the following have occurred: (i) Verizon Wireless enters into a lease with the owner of the New Site; (ii) the City takes final action to approve the New Application and any conditions on such approval are acceptable or deemed acceptable to Verizon Wireless as set forth in Paragraph 4, above; and (iii) the City issues a building permit and any other ministerial approvals required in order for Verizon Wireless to construct the Replacement Facility. Notwithstanding the foregoing, neither the termination of the Existing Lease, expiration of the Permit for the

Approved Facility, nor anything else in this Agreement shall be deemed to extinguish or impair the right of Verizon Wireless to recover for the Claims, as defined in Paragraph 6 below, which are expressly reserved and shall survive termination of the Existing Lease.

6. Verizon Wireless's Reserved Claims.

Verizon Wireless claims that the City is liable to it for breach of the Existing Lease and related tort claims arising out of the City's acts and omissions, including, but not limited to, repudiation of the Existing Lease and delay in ratifying it, failure to provide quiet enjoyment, and possibly breach of warranty and false representation of authority to enter into the Existing Lease (collectively, the "Claims"). The City disputes those claims. Pending leasing, approval, and construction of the Replacement Facility, Verizon Wireless cannot determine the amount of damages it has incurred in connection with the Claims, but its claimed damages include, without limitation: all legal fees and other costs incurred in response to the City's original repudiation and delay in ratifying the Existing Lease, and the full cost of relocating the wireless facility from the approved location in the Park to the New Site, including, without limitation, all legal, architectural, engineering, and environmental costs incurred to investigate, lease, and obtain City and other governmental approvals for the Replacement Facility, together with any increase in construction costs of the Replacement Facility as compared to the Approved Facility (collectively, "Damages"). The City disputes that Verizon is entitled to said damages and further contends that Verizon waived its rights to pursue said damages pursuant to the waiver of consequential damages clause in the Existing Lease.

7. Procedure to Resolve Claims.

The parties mutually prefer an amicable resolution in lieu of litigation to resolve the Claims. To that end, the parties agree to follow the procedure set forth in this paragraph in an effort to reach agreement on the claimed damages. No later than forty-five days after construction of the Replacement Facility is completed or two years following the execution of this Agreement (whichever occurs first), Verizon Wireless shall deliver to the City Manager a good-faith demand, including an itemized summary of its Damages. If the City does not agree to this initial demand, the parties shall each appoint a settlement group (which shall include an attorney and a principal for each party), which shall then meet and confer in good faith in an effort to reach agreement. Alternatively, the Parties may agree to submit the pending disputes to mediation. If the settlement groups and/or mediation do not result in an agreement being reached within sixty (60) days after Verizon Wireless delivers the initial demand referred to above, either party shall have the right to declare an impasse on five (5) days written notice to the other party, and thereafter pursue all available remedies in law or equity subject to the terms and provisions of this Agreement.

8. Releases.

Subject to and conditioned upon the City's final approval of the New Application, its issuance of a building permit for the Replacement Facility, the Parties' agreement on an amount to resolve the Claims (the "Agreed Payment"), execution of an approved release agreement, and the City's timely payment to Verizon Wireless of the Agreed Payment, each party to this Agreement hereby releases the other from all claims, demands, actions and causes of action of any nature whatsoever which are currently known regarding the Existing Lease, the Approved Facility, or the Permit for the Approved Facility, including but not limited to the Claims, as well as all claims, demands, actions and causes of action regarding such matters that the parties do not know or suspect to exist in their respective favors as of the date of this Agreement, which, if known at the time of executing this Agreement, might have affected the Agreement as set forth herein. Each of the parties to this Agreement also hereby specifically waives the protections of California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

9. Exceptions to Release.

Notwithstanding Paragraph 8 above, nothing in this Agreement shall be construed as a release by any party of (i) any obligation or claim arising out of a breach of this Agreement; or (ii) any obligation or claim arising out of the unreasonable delay or denial of the New Application or failure or refusal to issue a building permit or any other approval required for Verizon Wireless to install the Replacement Facility.

10. Binding on Successors and Assigns.

This Agreement shall inure to the benefit of and bind and be binding upon the managing agents, shareholders, officers, directors, agents, employees, attorneys, heirs, successors, partners and assigns of the undersigned parties.

11. Advice of Counsel.

Each of the parties to this Agreement represents and warrants that they have engaged separate counsel to represent them with respect to this Agreement and all matters covered herein, that they have been fully advised by said attorneys with respect to their rights and with respect to the execution of this Agreement and as to all matters which are subject to the mutual releases contained herein, and that they have read this Agreement and understand the terms thereof.

12. Attorneys' Fees and Costs.

The Parties agree to bear their own attorneys' fees and costs in connection with the preparation and negotiation of this Agreement.

13. Complete Agreement.

This Agreement constitutes the entire, full and complete Agreement between the parties hereto, and supersedes all prior agreements, if any, except for the Existing Lease.

14. Enforcement.

The terms of this Agreement shall be interpreted, enforced and governed under the laws of the State of California (excluding California's choice of law rules). This Agreement is the result of negotiations between the parties, each of which has participated in the drafting hereof.

15. Warranty of Authority.

In executing this Agreement, each person executing this Agreement further represents and warrants that they have the authority to bind their respective entities, and that those party-entities have the right and authority to compromise, settle, release and discharge all of the claims released herein. Execution of this Agreement by the City Manager shall be deemed to evidence legally binding approval by the City Council of this Agreement.

16. Written Modifications Only.

The terms of this Agreement shall not be modified or amended except in writing, signed by all parties or their designated representatives for such purpose.

17. Time is of the Essence.

Time is of the essence in this Agreement.

18. Duplicate Originals and Counterparts.

This Agreement shall be executed in duplicate originals, with each party to retain a fully-executed duplicate original. This Agreement may be executed in counterparts, which when taken together shall constitute one binding Agreement. Scanned and facsimile signatures shall be considered as binding as original signatures.

19. Effective Date of Agreement.

This Settlement Agreement shall be deemed effective on the date executed by Verizon Wireless and approved by the City Council, whichever shall occur later.

20. Severability

If one or more of the provisions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

**GTE MOBILNET OF CALIFORNIA
LIMITED PARTNERSHIP dba
VERIZON WIRELESS**

CITY OF PINOLE

By: 
Phillip French
Executive Director - Network
Northern California - Nevada
Region

By: _____
Belinda Espinosa
City Manager

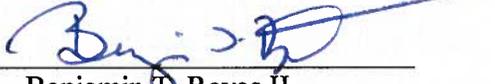
APPROVED AS TO FORM:

APPROVED AS TO FORM:

MACKENZIE & ALBRITTON, LLP

CITY ATTORNEY

By: 
James A. Heard

By: 
Benjamin T. Reyes II

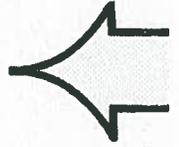
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LIMITED PARTNERSHIP dba
VERIZON WIRELESS**

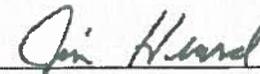
By: 
Phillip French
Executive Director - Network
Northern California - Nevada
Region

By: 
Belinda Espinosa
City Manager



**APPROVED AS TO FORM:
MACKENZIE & ALBRITTON, LLP**

**APPROVED AS TO FORM:
CITY ATTORNEY**

By: 
James A. Heard

By: _____
Benjamin T. Reyes II