

ACCOMMODATION AGREEMENT

Between the City of Napa and GTE Mobilnet of California Limited Partnership

This Accommodation Agreement (this “**Agreement**”) by and between the City of Napa, a California charter city (“**City**”) and GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless (“**Verizon**”) is effective as of the Effective Date identified on the signature page. The City and Verizon are hereinafter collectively referred to as the “**Parties**.”

RECITALS

The following recitals are a substantive portion of this Agreement:

A. City and Verizon entered into that certain Agreement Between the City of Napa and GTE Mobilnet of California Limited Partnership, dba Verizon Wireless for the Use of City Property in Connection with the Operation of a Wireless Network (City of Napa Agreement No. C2017 411) dated January 5, 2018 (the “**MLA**”), pursuant to the terms of which MLA the City will permit Verizon, among other things, to install small cell antennas and related wireless communications equipment (“**Equipment**”) on certain municipal facilities, including streetlight poles (“**Municipal Facilities**”) located within the City’s public rights-of-way (“**ROW**”).

B. City and Verizon acknowledge that Verizon, in accordance with State and federal law, has the right to locate its Equipment on existing jointly owned utility poles within the ROW, including poles owned by PG&E and other utility providers (“**Joint Poles**”), subject to the approval of said Joint Pole owners and the City’s right to obtain a copy of such approval, and to install Verizon’s own freestanding utility poles within the ROW (“**Monopoles**”), in each case subject to and in accordance with applicable laws, including the Napa Municipal Code (“**NMC**”) and the terms of encroachment permits issued by the City.

C. Verizon’s contractor, CBR Group, has over the past year submitted to the City fifty-four (54) encroachment permit applications to install Equipment on Municipal Facilities, Joint Poles and Monopoles. As of the date of this Agreement the City has issued two encroachment permits to Verizon. These two sites (the “**Pilot Sites**”) are listed on Exhibit D attached hereto incorporated herein by reference.

D. By a letter from Paul Albritton to Michael Barrett, Napa City Attorney, dated December 5, 2018 and attached hereto and incorporated herein as Exhibit “A” (the “**Deemed Approval Letter**”), Verizon has asserted that the City failed to timely act on twenty-two (22) other Verizon permit applications for Joint Pole sites within the presumptive period of time that is specified by State and federal law and that, in accordance with federal law and applicable F.C.C. decisions, these twenty-two applications were “deemed granted” upon Verizon notifying the City of such “deemed approval.” These twenty-two (22) sites are listed in the Deemed Approval Letter and are herein referred to as the “**Deemed Approved Sites**.”

E. By that certain letter agreement from Paul Albritton to Michael Barrett dated December 21, 2018, as amended, (collectively the “**Tolling Agreement**” attached hereto and incorporated herein as Exhibit B), the Parties agreed to extend through November 8, 2019(, the 30-day deadline for

the City to file an action challenging the deemed approval of the Deemed Approved Sites, and the deadline for Verizon to file an action against the City for failure to act on the applications for the Deemed Approved Sites.

F. The City would like to delay issuing permits for fourteen (14) of the Deemed Approved Sites described in Exhibit C attached hereto and incorporated herein by reference (the “**Delayed Sites**”), for the period of time specified in Paragraph 1 of this Agreement so that the City has an opportunity to obtain community input regarding these Delayed Sites.

G. As part of Verizon’s installation of its Equipment within the City ROW Verizon will have a third party fiber company install a fiber optic network to service the Equipment and for such fiber optic installation to be economically feasible, Verizon requires that the Equipment be installed on a sufficient number of sites in Verizon’s initial round of site installations.

H. To accommodate the City’s desire to delay the issuance of permits on the Delayed Sites despite Verizon’s assertion that it has “deemed approval” for these sites, and to accommodate Verizon’s need to have a sufficient number of sites for its initial round of installations, the Parties have agreed to a resolution whereby Verizon agrees to delay the City’s approval of encroachment permits for the Delayed Sites until after the Pilot Program Period (as defined in Section 7), and the City has agreed to process and issue encroachment permits for twenty-eight (28) sites in accordance with the terms set forth herein, which shall consist of the two (2) Pilot Sites, the eight (8) Deemed Approved Sites that are not Delayed Sites (“**Approved Sites**”), and eighteen (18) additional sites for which Verizon has submitted applications to the City (“**Additional Sites**”). These twenty-eight (28) sites, are together referred to in this Agreement as the “**Agreed Sites**,” and are listed on Exhibit D attached hereto and incorporated herein by reference.

I. In addition to the Delayed Sites and the Agreed Sites, there are twelve (12) further sites for which Verizon has submitted applications to the City (the “**Pending Applications**” as shown on Exhibit E attached hereto and incorporated herein by reference). The Parties acknowledge that Verizon is currently addressing items that have been raised by the City in Notices of Incompleteness (“**NOI**”) for the Pending Applications.

J. City and Verizon are entering into this negotiated Agreement voluntarily resulting in a bargained for agreement. Each party waives the right to challenge this Agreement based upon current State, Federal or Local laws or regulations.

K. The Parties now desire to enter into this Agreement to resolve the above- described issues between them based upon the terms and conditions set forth herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the adequacy of which is hereby acknowledged and agreed, the Parties agree as follows:

AGREEMENT

1. Deemed Approval Letter. Notwithstanding anything to the contrary set forth in the Tolling Agreement or this Agreement, the Parties hereby acknowledge and agree to the following with respect to the Deemed Approval Letter and the Approved Sites: (a) the City will not issue encroachment permits for the Delayed Sites to Verizon until the conclusion of the Pilot Program Period in accordance with Section 8; (b) upon the Effective Date of this Agreement, the City hereby foregoes, waives, releases and relinquishes any and all claims or rights to pursue a claim before any City, County, State, Federal or other governmental agency or court concerning the Deemed

Approval Letter or the Approved Sites except for any actions related to an alleged breach of this Agreement; and (c) as of the Effective Date, Verizon hereby foregoes, waives, releases and relinquishes any and all claims or rights to pursue a claim before any City, County, State, Federal or other governmental agency or court concerning the Deemed Approval Letter or the Approved Sites except for any actions related to an alleged breach of this Agreement.

2. Issuance of Permits for Approved Sites. The City will issue encroachment permits for the Approved Sites no more than forty five (45) days following the Effective Date of this Agreement. Each of these Approved Sites are located on Joint Poles, and Verizon hereby represents and warrants that it has obtained the prior written approval to install Equipment on the Approved Sites from the applicable Joint Pole owners. Notwithstanding the foregoing, the City reserves the right prior to construction to require evidence of approval of Verizon's use of a Joint Pole when reasonably necessary to confirm availability of the Joint Pole to Verizon.

3. Issuance of Permits for Agreed Sites on Joint Poles. For each of the Agreed Sites that will be located on a Joint Pole and that is not an Approved Site, the City shall issue an encroachment permit within ninety (90) days following submission of a complete encroachment permit application for such site, or if a complete application has already been submitted prior to the Effective Date, within 90 days of the Effective Date. The 90-day period may be tolled in the event of an incomplete application or by mutual agreement only as provided for Small Wireless Facilities under 47 C.F.R. § 1.6003 as applicable.

4. Issuance of Permits for Agreed Sites located on Monopoles. For each of the Agreed Sites that will be located on a Monopole, the City shall issue an encroachment permit within ninety (90) days following submission of a complete encroachment permit application for such site or if a complete application has already been submitted prior to the Effective Date, within 90 days of the Effective Date. The 90-day period may be tolled in the event of an incomplete application or by mutual agreement only as provided for Small Wireless Facilities under 47 C.F.R. § 1.6003 as applicable.

5. Issuance of Permits for Agreed Sites located on Municipal Facilities. In accordance with the terms of the MLA, prior to issuance of an encroachment permit for installation of Equipment on Municipal Facilities the Parties must first enter into a Site Supplement License ("SSL") for such site substantially in the form required by the MLA. For Verizon to be able to submit a complete and partially executed SSL to the City for approval and execution Verizon must first have plan check drawings that have been approved by the City. Therefore, the City agrees to give plan check approval to Verizon no later than sixty (60) days following the date Verizon submits a complete encroachment permit application. Verizon shall promptly (but in no case longer than 30 days from plan check approval) tender to the City a partially executed SSL. The City shall then enter into the SSL and shall issue the encroachment permit no later than thirty (30) days following the date Verizon submits a complete SSL to the City for signature substantially in the form required by the MLA. The total ninety (90) day period may be tolled in the event of an incomplete application or by mutual agreement only as provided for Small Wireless Facilities under 47 C.F.R. § 1.6003 as applicable.

6. RF Reports.

- a. Verizon agrees that for each of the Agreed Sites it will supply the City with a report provided by an independent third party registered professional engineer ("P.E."), reasonably acceptable to the Public Works Director, that calculates the radio frequency ("RF") emissions for the site and shows that the site when in operation will comply with the applicable FCC adopted RF exposure standards. All such

reports shall: (i) be prepared in accordance with the methodology described in the FCC's most current "Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields", OET Bulletin 65; (ii) certify that the Equipment on the site, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative RF emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits; (iii) include the frequencies and effective radiated power (watts) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC); and (iv) depict the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Verizon acknowledges that the independent P.E. report must be supplied prior to issuance of a building permit for the applicable site.

- b. Verizon further agrees that within thirty (30) days following commencement of operations of each Agreed Site, an independent P.E. will conduct post-installation on-site RF emission tests for such sites with measurements conducted to determine the maximum exposure level within 30 feet in any direction from the site. For sites located within 50 feet of elevated, occupied structures (i.e.-multi-story buildings, elevated balconies) supplemental measurement shall be taken, when access is made available, from such occupied space conducted at elevations coincident with the antennas maximum power lobe and the elevated area in question. Verizon shall provide the City with a report summarizing the analysis of the findings that includes a tabulation of the measurement data. In addition, when Verizon has commenced operation of all of the Agreed Sites Verizon shall have an RF compliance report prepared and submitted to the City, in a form reasonably acceptable to the City's Public Works Director, summarizing the results of the RF post-installation testing for the Agreed Sites. At the Public Works Director's discretion the City may obtain a peer review of this summary report by a qualified professional engineer registered in the State of California at Verizon Wireless's reasonable expense. Further, the City or its designee shall be permitted to conduct its own independent RF testing of the Equipment on each Agreed Site at the time of its choosing, with or without prior notice to Verizon.
- c. If any Equipment fails such post-installation RF testing or if any post-installation RF testing report submitted by Verizon is deficient in any respect, the Public Works Director shall have the right to issue to Verizon a notice of violation and Verizon shall immediately power-down and cease unattended operation of the Equipment until and unless Verizon demonstrates, to the Public Works Director's reasonable satisfaction, that the Equipment complies with applicable laws. Notwithstanding the preceding sentence, for the sole purpose of conducting on-site testing, Verizon shall be permitted to power-up the Equipment, and immediately power-down the Equipment after on-site testing (until and unless Verizon demonstrates, to the Public Works Director's reasonable satisfaction, that the Equipment complies with applicable laws).

7. Future Applications. Verizon shall not submit to the City any new applications for the installation of Equipment on Joint Poles, Municipal Facilities or Monopoles until the earlier to occur of (i) all of the Agreed Sites have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations pursuant to Section 6, the terms of the City's encroachment permits and all applicable laws to the Public Works Director's reasonable satisfaction; (ii) substantially all of the Agreed Sites (and in any case no less than

22) have been constructed, inspected and documented to be in compliance with FCC RF exposure regulations pursuant to Section 6, the terms of the City's encroachment permits and all applicable laws to the Public Works Director's reasonable satisfaction, which in any case shall not occur prior to August 15, 2020; or (ii) January 1, 2021, provided that whatever Agreed Sites have been or are then currently under construction are inspected and documented to be in compliance with FCC RF exposure regulations pursuant to Section 6, the terms of the City's encroachment permits and all applicable laws to the Public Works Director's reasonable satisfaction ("**Pilot Program Period**"). Notwithstanding the foregoing, during the Pilot Program Period, Verizon shall be permitted to submit any applications required by applicable laws or the NMC for a modification or routine maintenance in connection with an Agreed Site; and submit applications for the installation of Equipment on private property. Any applications filed after the Pilot Program Period shall be subject to all applicable provisions in the NMC and any City policies in effect at the time of application, including without limitation any objective location, design and other aesthetic criteria that are duly adopted and enforceable under the NMC and applicable law.

8. Issuance of Permits for Delayed Sites. Following the expiration of the Pilot Program Period, Verizon shall re-submit the application materials for each of the Delayed Sites and the City will issue an encroachment permit for each of the Delayed Sites within 75 days of each re-submittal. Each of these Delayed Sites are located on Joint Poles, and Verizon hereby represents and warrants that it has obtained the prior written approval to install Equipment on the Deemed Approved Sites from the applicable Joint Pole owners. Notwithstanding the foregoing, the City reserves the right prior to construction to require evidence of approval of Verizon's use of a Joint Pole when reasonably necessary to confirm availability of the Joint Pole to Verizon.

9. Pending Applications. Following the expiration of the Pilot Program Period, Verizon shall re-submit the application materials for each of the Pending Applications. Verizon resubmittals for the Pending Applications shall be processed in accordance with 47 C.F.R. § 1.6003, as applicable to those applications, assuming there are 75 remaining days on the pending FCC Shot Clock time period. Verizon agrees that resubmittals of the Pending Applications, which would restart the FCC Shot Clock shall not occur prior to the expiration of the Pilot Program Period. The City shall process the Pending Applications in accordance with applicable laws, including any City adopted objective location, design and other aesthetic criteria in effect at the time the Pending Applications are resubmitted to the City that are in effect and enforceable under the NMC and applicable law.

10. Build Out Period. Any encroachment permit for any Agreed Site shall automatically expire if Verizon Wireless has not requested issuance for construction within twelve (12) months of approval by the City. Any encroachment permit for any Agreed Site shall automatically expire if the Agreed Site has not been constructed within twelve (12) months of the issuance of the encroachment permit to Verizon. The timeframes in this Section 10 may be extended up to six (6) additional months by a written finding by the Public Works Director that the delay was due to circumstances outside Verizon's reasonable control.

11. Attorneys' Fees and Costs: As against each other, the Parties hereto shall bear their own attorneys' fees and costs arising in connection with this Agreement, the matters referred to herein, and all related matters. In the event a Party seeks to interpret or enforce the terms of this Agreement through court action, the prevailing Party shall be entitled to its reasonable attorney's fees and costs in connection with said proceeding.

12. General Terms.

a. Warranties. Each party executing this Agreement represents and warrants that no other person or entity had or has any interest in any of the claims, demands, obligations, property or causes of action referred to in this Agreement; that each party has the sole right and exclusive authority to execute this Agreement and to receive the consideration specified herein; that execution, delivery, and performance of this Agreement and any related documents has been duly authorized by all necessary partnership, trust or corporate action; that each individual executing this Agreement and any related documents is authorized to so execute instruments of this nature on the party's behalf; and that each party has not sold, assigned, transferred, conveyed, hypothecated or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

b. Entire Agreement. This Agreement, together with Exhibits A -E attached hereto and incorporated herein by reference, contains the entire agreement between the Parties concerning the matters set forth herein. This Agreement may not be amended, altered, modified or otherwise changed except by a writing executed by the Parties hereto, which expressly states that it is an amendment to this Agreement. All prior oral or written agreements, if any, are expressly superseded hereby and are of no further force and effect.

c. Effect on Successors. This Agreement shall be binding upon, and inure to the benefit of, any successors, assigns, executors, beneficiaries, administrators, personal representatives, and heirs of the Parties.

d. Time of the Essence. Time is of the essence with regard to all matters contained in this Agreement.

e. No Waiver. No delay or omission by any party hereto in exercising any right under this Agreement shall operate as a waiver of such right.

f. Governing Law and Venue. This Agreement is entered into in Napa County, in which the State Courts of the County of Napa is the exclusive venue for any action arising out of this Agreement. The Agreement shall be construed and interpreted in accordance with, the laws of the State of California, without regards to conflicts of laws principles.

g. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

h. Understanding of Agreement. In entering into this Agreement, the Parties represent that they have relied on the legal advice of their respective attorneys, who are attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorney, and that those terms are fully understood and voluntarily accepted.

i. Indemnification. To the full extent permitted by law, Verizon shall indemnify, defend, release and hold City, its agents, officers, and employees harmless from and against any claims, suits, liabilities, actions, damages, penalties or causes of action to set aside, attack, void or annul any actions of City, its agents, officers and employees, from any cause whatsoever in whole or in part arising out of or in connection with entering of this Agreement

regardless whether the actions or omissions are alleged to be caused by City or Verizon so long as City promptly notifies Verizon of any such claim, etc., and the City cooperates in the defense of same, all excepting claims that arise from the City's sole or gross negligence. Verizon reasserts and reaffirms that it shall be bound by the indemnity obligations of Applicant provided under paragraph 11 of each City of Napa Encroachment Permit issued pursuant to this agreement and of Licensee provided under paragraph 15 of the MLA, for each Site Supplement License (as that term is defined in the MLA) issued pursuant to this agreement, which indemnity obligations read as follows.

Napa Encroachment Permit Paragraph 11

Applicant hereby warrants that the design and construction of required improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner and in accordance with all applicable laws and regulations. To the full extent permitted by law, Applicant agrees to indemnify, defend, release and save harmless City, its officers and employees from and against any and all claims, suits, liabilities, actions, damages, penalties or causes of actions by any person including Applicant, owner, their employees and agents for any personal injury, death, or damage to property from any cause whatsoever arising out of or in connection with this agreement or the actions and obligations hereunder or approval of Applicant's project. This indemnification shall extend, without limitation, to injuries to persons and damages or taking of property resulting from the design or construction of the improvements and to adjacent property owners as a consequence of diversion of waters or design of construction of public drainage systems, streets or other public projects. Applicant shall so indemnify City regardless of City's passive negligence, City's approval of plans or City's inspection, approval or acceptance of the improvements and notwithstanding any limitation on the amount or type of damages or compensation payable by or for Applicant under Workers' Compensation, disability or other employee benefit acts, the acceptance of insurance certificates required under this agreement, or the terms applicability or limitations of any insurance held by Applicant. The provisions of this paragraph shall continue to bind the parties after acceptance / approval of the works of improvement by City.

MLA Paragraph 15

To the fullest extent permitted by law, and except in cases of sole and active negligence or intentional misconduct of Licensor or its agents, contractors or employees, Licensee shall indemnify, defend, save and hold harmless, Licensor, and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees, from and against any and all demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against Licensor by reason of the negligent or intentional actions,

acts, errors, mistakes or omissions caused in whole or in part by Licensee, its employees, affiliates, agents, or any of its contractors or subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relative to this Agreement. This indemnity obligation survives expiration or termination of this Agreement.

IT IS HEREBY AGREED:

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

By: _____
Printed Name: _____
Title: _____

Attorneys for Verizon:

Dated: _____, 2019 By: _____
Paul Albritton
Mackenzie & Albritton, LLP

CITY:
CITY OF NAPA, a California charter city

By: _____
Printed name: _____
Title: _____

ATTEST:

Tiffany Carranza, City Clerk

Date: _____
 ("Effective Date")

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Exhibit A: Deemed Approval Letter

Exhibit B: Tolling Agreement

Exhibit B-1: Tolling Extension Agreement

Exhibit C: Delayed Sites

Exhibit D: Agreed Sites

Exhibit E: Pending Applications

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415/ 288-4000
FACSIMILE 415/ 288-4010

December 5, 2018

VIA EMAIL AND U.S. MAIL

Michael Barrett
City Attorney
City of Napa
P.O. Box 660
Napa, California, 94559

Re: Deemed Approval Notice For Verizon Wireless Small Cell Facilities in
Napa, California

Dear Mr. Barrett:

We appreciate the emails from Alex Reynolds from the Department of Public Works, dated January 29, 2018, February 28, 2018, March 22, 2018, March 26, 2018, April 12, 2018, and November 15, 2018, approving encroachment permits for a number of sites to enable our client Verizon Wireless, and its contractor, CBR Group, to install small, unobtrusive wireless communications facilities on existing utility poles on City streets (the "Facilities"). To date, the City has not yet issued the encroachment permits associated with the approvals at the following PG&E or Joint Pole Authority locations:

- Node 003 (EP1801-0018 – 3563 Oxford Street);
- Node 004 (EP1711-0018 – 1857 Sierra Ave.);
- Node 010 (EP1801-0013 – 3033 Beard Ave.);
- Node 013 (EP1803-0010 – 2999 Linda Vista Ave.);
- Node 014 (EP1803-0012 – 2855 Marin St.);
- Node 016 (EP1801-0016 – 2623 Yajome St.);
- Node 018 (EP1710 – 0017 – 2449 Soscal Ave.);
- Node 023 (EP1711-0020 – 806 Lincoln Ave.);
- Node 024 (EP1801-0020 – 2632 1st St.);
- Node 025 (EP1711-0021 – 1663 East St.);
- Node 029 (EP1802-0061 – 1746 Yajome St.);
- Node 031 (EP1710-0026 – 2790 Kilburn Ave.);
- Node 045 (EP1801-0015 – 747 3rd St.);
- Node 052 (EP1710-0027 – 2601 Elm St.);
- Node 053 (EP1801-0017 – 2447 Old Sonoma Rd.);
- Node 055 (EP1710-0025 – 475 Jefferson St.);
- Node 056 (EP1711-0016 – 1850 Old Sonoma Rd.);

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City of Napa
December 5, 2018
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- Node 057 (EP1711-0022 – 418 Franklin St.);
- Node 058 (EP1711-0023 – 100 Coombs St.);
- Node 060 (EP1711-0024 – 353 Greenbach St.);
- Node 061 (EP1711-0025 – 679 Cabot Way); and
- Node 064 (EP1801-0014 – 3271 Browns Valley Rd.).

The deadlines imposed by federal law and applicable FCC decisions for the City to act on these applications have now expired. Accordingly, to confirm these approvals, we are providing you with this notice that these applications are “deemed granted” as a matter of law pursuant to Government Code Section 65964.1.

Verizon Wireless appreciates the City’s continued cooperation and will work collaboratively with the City toward prompt issuance of the permits. Verizon Wireless looks forward to improving reliable wireless service in Napa to benefit the community.

Thank you for your assistance.

Very truly yours



Paul B. Albritton

Cc: City Clerk

EXHIBIT B**MACKENZIE & ALBRITTON LLP**

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415/ 288-4000
FACSIMILE 415/ 288-4010

December 21, 2018

VIA EMAIL

Michael Barrett
City Attorney
City of Napa
P.O. Box 660
Napa, California, 94559

Re: Agreement to extend deadlines to seek judicial review under state or federal law regarding Verizon Wireless applications for small sell facilities in Napa, California

Dear Mr. Barrett:

The Federal Telecommunications Act requires that local governments act on wireless siting applications "within a reasonable period of time." *See* 47 USC § 332(c)(7)(B)(ii). In a 2009 declaratory ruling, the Federal Communications Commission ("FCC") established a legal presumption that a local government has violated this requirement if it takes longer than 90 days to act on an application to collocate a wireless facility or longer than 150 days to act on any other application. *See In Re: Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Etc., (FCC 09-99 November 18, 2009)* (the "Ruling").¹ A wireless service provider whose application has been pending for longer than the applicable period may seek judicial review in federal court. *See* 47 U.S.C. § 332(c)(7)(B)(v); *see also Ruling at* ¶ 49.

In addition to this federal remedy, State law provides that when an application has been pending longer than federal law allows, it will be deemed granted if the wireless carrier notifies the local government of such deemed approval. *See* Government Code Section 65964.1. In a letter dated December 5, 2018, we gave notice of such deemed approval of the following encroachment permit applications (the "Applications"):

- Node 003 (EP1801-0018 – 3563 Oxford Street);
- Node 004 (EP1711-0018 – 1857 Sierra Ave.);
- Node 010 (EP1801-0013 – 3033 Beard Ave.);
- Node 013 (EP1803-0010 – 2999 Linda Vista Ave.);
- Node 014 (EP1803-0012 – 2855 Marin St.);
- Node 016 (EP1801-0016 – 2623 Yajome St.);

¹ The Ruling was upheld by the United States Supreme Court. *See City of Arlington v. Federal Communications Commission*, 569 U.S. 290 (2013).

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- Node 018 (EP1710 – 0017 – 2449 Soscal Ave.);
- Node 023 (EP1711-0020 – 806 Lincoln Ave.);
- Node 024 (EP1801-0020 – 2632 1st St.);
- Node 025 (EP1711-0021 – 1663 East St.);
- Node 029 (EP1802-0061 – 1746 Yajome St.);
- Node 031 (EP1710-0026 – 2790 Kilburn Ave.);
- Node 045 (EP1801-0015 – 747 3rd St.);
- Node 052 (EP1710-0027 – 2601 Elm St.);
- Node 053 (EP1801-0017 – 2447 Old Sonoma Rd.);
- Node 055 (EP1710-0025 – 475 Jefferson St.);
- Node 056 (EP1711-0016 – 1850 Old Sonoma Rd.);
- Node 057 (EP1711-0022 – 418 Franklin St.);
- Node 058 (EP1711-0023 – 100 Coombs St.);
- Node 060 (EP1711-0024 – 353 Greenbach St.);
- Node 061 (EP1711-0025 – 679 Cabot Way); and
- Node 064 (EP1801-0014 – 3271 Browns Valley Rd.).

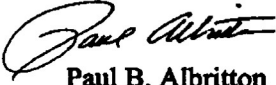
The City may seek judicial review of the deemed grant within 30 days of the notice from Verizon Wireless. *See* Govt. Code Section 65964.1(a)(3)(B).

We have agreed to a mutual extension of any applicable statutes of limitation for either party to seek judicial review concerning the Applications, the City's failure to act on them, or the validity of Verizon Wireless's notice of deemed approval. Specifically, when countersigned below, this letter will confirm that Verizon Wireless and the City of Napa (the "City") have agreed to extend through April 4, 2019: (a) the deadline for Verizon Wireless to file an action under 47 USC § 332(c)(7)(B)(v) regarding the City's failure to act on the Applications; and (b) the 30-day deadline under Govt. Code Section 65964.1(a)(3)(B) for the City to file an action challenging the deemed approval.

The parties further agree that neither this extension nor any subsequent decision of the City shall be deemed to impair or affect the validity of the deemed grant of the Applications. The City is not conceding that the deemed grant is effective or valid, but does agree that it will not rely on either the extension granted herein or any subsequent decision by the City Council or any subordinate body in any litigation regarding the City's failure to act on the Applications or the validity or effectiveness of the deemed grant of the Applications.

This letter agreement may be executed in counterparts, and scanned or facsimile signatures shall be deemed equivalent to original signatures. I will appreciate your returning a countersigned copy to me at your earliest convenience.

Michael Barrett
City of Napa
December 21, 2018
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Very truly yours,

Paul B. Albritton

ACCEPTED AND AGREED TO:

City of Napa



Michael Barrett
City Attorney

EXHIBIT B-1**MACKENZIE & ALBRITTON LLP**

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415/288-4000
FACSIMILE 415/288-4010

September 4, 2019

VIA EMAIL

Michael Barrett, Esq.
City Attorney
City of Napa
P.O. Box 660
Napa, California, 94559

*Re: Amendment to agreement to extend deadlines to seek judicial review
under state or federal law regarding Verizon Wireless applications for
small sell facilities in Napa, California*

Dear Mr. Barrett:

In a letter agreement dated December 21, 2018 and most recently amended August 14, 2019 (the "Tolling Agreement"), Verizon Wireless and the City of Napa (the "City") agreed to extend through September 19, 2019: (a) the deadline for Verizon Wireless to file an action under 47 USC § 332(c)(7)(B)(v) regarding the City's failure to act on the encroachment permit applications listed below (the "Applications"); and (b) the 30-day deadline under Government Code Section 65964.1(a)(3)(B) for the City to file an action challenging Verizon Wireless's notice that the Applications are deemed approved.

- Node 003 (EP1801-0018 – 3563 Oxford Street);
- Node 004 (EP1711-0018 – 1857 Sierra Ave.);
- Node 010 (EP1801-0013 – 3033 Beard Ave.);
- Node 013 (EP1803-0010 – 2999 Linda Vista Ave.);
- Node 014 (EP1803-0012 – 2855 Marin St.);
- Node 016 (EP1801-0016 – 2623 Yajome St.);
- Node 018 (EP1710 – 0017 – 2449 Soscal Ave.);
- Node 023 (EP1711-0020 – 806 Lincoln Ave.);
- Node 024 (EP1801-0020 – 2632 1st St.);
- Node 025 (EP1711-0021 – 1663 East St.);
- Node 029 (EP1802-0061 – 1746 Yajome St.);
- Node 031 (EP1710-0026 – 2790 Kilburn Ave.);
- Node 045 (EP1801-0015 – 747 3rd St.);
- Node 052 (EP1710-0027 – 2601 Elm St.);
- Node 053 (EP1801-0017 – 2447 Old Sonoma Rd.);
- Node 055 (EP1710-0025 – 475 Jefferson St.);

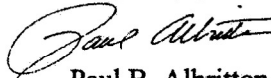
Michael Barrett
City of Napa
September 4, 2019
Page 2 of 2

- Node 056 (EP1711-0016 – 1850 Old Sonoma Rd.);
- Node 057 (EP1711-0022 – 418 Franklin St.);
- Node 058 (EP1711-0023 – 100 Coombs St.);
- Node 060 (EP1711-0024 – 353 Greenbach St.);
- Node 061 (EP1711-0025 – 679 Cabot Way); and
- Node 064 (EP1801-0014 – 3271 Browns Valley Rd.).

This letter, when countersigned, will confirm that Verizon Wireless and the City have agreed to further extend the applicable deadline to October 29, 2019 for (a) Verizon Wireless to file an action under 47 USC § 332(c)(7)(B)(v) regarding the City's failure to act on the Applications; and (b) the deadline under Government Code Section 65964.1(a)(3)(B) for the City to file an action challenging the deemed approval. Except as expressly modified herein, the Tolling Agreement remains in full force and effect without modification.

This amendment to the Tolling Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original. I will appreciate your returning a countersigned copy to me.

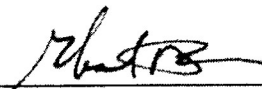
Very truly yours,


Paul B. Albritton

cc: Sabrina Wolfson, Esq.
David Jones, Esq.

ACCEPTED AND AGREED TO:

City of Napa

By: 
Printed name: Michael Barrett
Title: City Attorney

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415/ 288-4000
FACSIMILE 415/ 288-4010

October 18, 2019

VIA EMAIL

Michael Barrett, Esq.
City Attorney
City of Napa
P.O. Box 660
Napa, California, 94559

*Re: Amendment to agreement to extend deadlines to seek judicial review
under state or federal law regarding Verizon Wireless applications for
small sell facilities in Napa, California*

Dear Mr. Barrett:

In a letter agreement dated December 21, 2018 and most recently amended September 4, 2019 (the "Tolling Agreement"), Verizon Wireless and the City of Napa (the "City") agreed to extend through October 29, 2019: (a) the deadline for Verizon Wireless to file an action under 47 USC § 332(c)(7)(B)(v) regarding the City's failure to act on the encroachment permit applications listed below (the "Applications"); and (b) the 30-day deadline under Government Code Section 65964.1(a)(3)(B) for the City to file an action challenging Verizon Wireless's notice that the Applications are deemed approved.

- Node 003 (EP1801-0018 – 3563 Oxford Street);
- Node 004 (EP1711-0018 – 1857 Sierra Ave.);
- Node 010 (EP1801-0013 – 3033 Beard Ave.);
- Node 013 (EP1803-0010 – 2999 Linda Vista Ave.);
- Node 014 (EP1803-0012 – 2855 Marin St.);
- Node 016 (EP1801-0016 – 2623 Yajome St.);
- Node 018 (EP1710 – 0017 – 2449 Soscal Ave.);
- Node 023 (EP1711-0020 – 806 Lincoln Ave.);
- Node 024 (EP1801-0020 – 2632 1st St.);
- Node 025 (EP1711-0021 – 1663 East St.);
- Node 029 (EP1802-0061 – 1746 Yajome St.);
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- Node 052 (EP1710-0027 – 2601 Elm St.);
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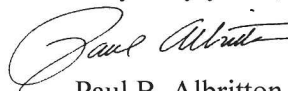
Michael Barrett
City of Napa
October 18, 2019
Page 2 of 2

- Node 056 (EP1711-0016 – 1850 Old Sonoma Rd.);
- Node 057 (EP1711-0022 – 418 Franklin St.);
- Node 058 (EP1711-0023 – 100 Coombs St.);
- Node 060 (EP1711-0024 – 353 Greenbach St.);
- Node 061 (EP1711-0025 – 679 Cabot Way); and
- Node 064 (EP1801-0014 – 3271 Browns Valley Rd.).

This letter, when countersigned, will confirm that Verizon Wireless and the City have agreed to further extend the applicable deadline to November 8, 2019 for (a) Verizon Wireless to file an action under 47 USC § 332(c)(7)(B)(v) regarding the City's failure to act on the Applications; and (b) the deadline under Government Code Section 65964.1(a)(3)(B) for the City to file an action challenging the deemed approval. Except as expressly modified herein, the Tolling Agreement remains in full force and effect without modification.

This amendment to the Tolling Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original. I will appreciate your returning a countersigned copy to me.

Very truly yours,


Paul B. Albritton

cc: Sabrina Wolfson, Esq.
David Jones, Esq.

ACCEPTED AND AGREED TO:

City of Napa

By: _____



Printed name: _____

Michael Barrett

Title: _____

City Attorney

EXHIBIT C - DELAYED SITES

Exhibit C - Delayed Sites			
VZW Site Name	Location (Address)	Lat & Long	ST - Structure Type
NB NAPA 003	3563 Oxford St	38.32182777, -122.3160889	PG&E Pole Top
NB NAPA 004	1857 Sierra Ave	38.327483, -122.311692	Wood Pole
NB NAPA 010	3033 Beard Rd	38.32035, -122.295083	JPA Pole
NB NAPA 013	2999 Linda Vista Ave	38.31215833, -122.3160278	JPA Pole
NB NAPA 014	2855 Marin St	38.313683, -122.302278	PG&E Pole Top
NB NAPA 016	2623 Yajome St	38.315114, -122.292839	PG&E Pole Top
NB NAPA 025	1663 East St	38.303506, -122.299794	PG&E Pole Top
NB NAPA 029	1746 Yajome St	38.30548611, -122.2882722	JPA Pole
NB NAPA 053	2447 Old Sonoma Rd	38.287675, -122.304247	PG&E Pole Top
NB NAPA 055	475 Jefferson St	38.2924, -122.2943389	PG&E Pole Top
NB NAPA 056	1850 Old Sonoma Rd	38.287825, -122.2951667	PG&E Pole Top
NB NAPA 057	418 Franklin St	38.292781, -122.287753	Wood Pole
NB NAPA 060	353 Greenbach St	38.280875, -122.298844	PG&E Pole Top
NB NAPA 064	3271 Browns Valley Road	38.304756, -122.32926	Slimline Pole

EXHIBIT D - AGREED SITES

Exhibit D - Agreed Sites			
VZW Site Name	Location (Address)	Lat & Long	ST - Structure Type
Pilot Sites			
NB NAPA 008	1558 Trancas St.	38.322331, -122.303258	Slimline Pole
NB NAPA 015	1429 Pueblo Ave / S/W Corner Pueblo Avenue & Wine Train Railroad	38.315303, -122.299425	PG&E Pole Top
Deemed Approved Sites			
NB NAPA 018	2449 Soscol Ave	38.31751666, -122.2850556	PG&E Pole Top
NB NAPA 023	806 Lincoln Ave	38.309664, -122.289142	PG&E Pole Top
NB NAPA 024	2632 1st St	38.3001705, -122.308303	PG&E Pole Top
NB NAPA 031	2790 Kilburn Ave	38.29774166, -122.3082306	PG&E Pole Top
NB NAPA 045	747 3rd St	38.29866389, -122.2811417	PG&E Pole Top
NB NAPA 052	2601 Elm St	38.28981944, -122.3046972	PG&E Pole Top
NB NAPA 058	100 Coombs St	38.286267, -122.287403	PG&E Pole Top
NB NAPA 061	679 Cabot Way	38.280117, -122.291558	PG&E Pole Top
Additional Sites			
NB NAPA 005	Southeast corner of Jefferson / Tower Avenue	38.333014, -122.30805	Slimline Pole
NB NAPA 006	2006 Redwood Rd. / 2008 Redwood Rd.	38.321036, -122.310647	Slimline Pole
NB NAPA 007	4020 Trancas Street / 4020 Bel Aire Plaza	38.321900, -122.306319	Slimline Pole
NB NAPA 009	2 Financial Plaza	38.324794, -122.289369	Slimline Pole
NB NAPA 019	2291 Soscal	38.313933, -122.285277	City Street Steel Light Pole
NB NAPA 021	2355 California Blvd.	38.305878, -122.302192	Slimline Pole
NB NAPA 022	1141 Lincoln Ave.	38.308350, -122.295392	Slimline Pole
NB NAPA 026	691 Lincoln Ave	38.310125, -122.284633	Slimline Pole
NB NAPA 030	1551 SOSCOL AVENUE	38.304769, -122.285258	Slimline Pole
NB NAPA 032	629 Freeway Dr.	38.296075, -122.302244	Slimline Pole
NB NAPA 037	1181-1191 Main St. / Near the corner of Main St. & Pearl St.	38.300389, -122.286836	Slimline Pole
NB NAPA 040	1100 2nd St. / Near NE corner of Coombs St. & Second St.	38.297950, -122.286144	Slimline Pole
NB NAPA 042	580 Coombs St	38.295610, -122.284499	City Street Steel Light Pole
NB NAPA 044	887 Soscol Avenue	38.299856, -122.283339	City Street Steel Light Pole
NB NAPA 047	South East Corner of Soscol & Eighth St.	38.294739, -122.279181	Slimline Pole
NB NAPA 048	519 Soscol Ave.	38.29265444, -122.2782431	City Street Steel Light Pole
NB NAPA 050	225 Kansas Ave.	38.285129, -122.276619	City Street Steel Light Pole
NB NAPA 051	100 Gasser Dr.	38.28195667, -122.2783758	City Street Steel Light Pole

EXHIBIT E PENDING

Exhibit E Additional Sites			
VZW Site Name	Location (Address)	Lat & Long	ST - Structure Type
NB NAPA 001	3510 Linda Vista Ave.	38.32161, -122.320191	City Street Steel Light Pole
NB NAPA 002	3898 Oxford St.	38.326670, -122.320318	City Street Steel Light Pole
NB NAPA 011	A/F 2875 La Homa Dr.	38.320551, -122.287769	City Street Steel Light Pole
NB NAPA 017	802 Pueblo Ave.	38.317055, -122.289872	City Street Steel Light Pole
NB NAPA 027	1225 Walnut St.	38.300634, -122.300663	City Street Steel Light Pole
NB NAPA 028	1616 Jefferson St.	38.302696, -122.294008	City Street Steel Light Pole
NB NAPA 034	2210 2ND St.	38.297016, -122.297356	City Street Steel Light Pole
NB NAPA 041	730 Randolph St.	38.296523, -122.286387	City Street Steel Light Pole
NB NAPA 043	1100 5th St. / On the corner of Brown St. and 5th St.	38.296093, -122.283620	City Street Steel Light Pole
NB NAPA 054	IFO 253 Walnut Street	38.290179, -122.300326	City Street Steel Light Pole
NB NAPA 062	4014 Browns Valley Rd.	38.307051, -122.340826	City Street Steel Light Pole
NB NAPA 063	1001 Buhman Ave.	38.302589, -122.34011	City Street Steel Light Pole