



P.O. Box 768 Cardiff, CA 92007

[www.hightidelegalgroup.com](http://www.hightidelegalgroup.com)

Nicholas Goldberg, Esq.

[nick@hightidelegalgroup.com](mailto:nick@hightidelegalgroup.com)

July 28, 2020

Town of Apple Valley, CA  
Attn: Mr. Doug Robertson, Town Manager  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Email: [drobertson@applevalley.org](mailto:d Robertson@applevalley.org);

**VIA EMAIL: [PUBLICCOMMENT@APPLEVALLEY.ORG](mailto:PUBLICCOMMENT@APPLEVALLEY.ORG)**

**RE: Verizon/Apple Valley Cell Tower - Comparison of Options and Legal Response**

Dear Mr. Robertson

PLN Telecom, Inc. ("PLN") has previously provided documentation to support our contention that the first Verizon tower built on the Town of Apple Valley's Golf Course (the "Property") by PLN in 'partnership' with the Apple Valley (the "Town") in 2014 has been a six-year success with no material issues and that now the Town and Verizon are taking steps to unfortunately breach such contractual terms. The contracts between the parties to such first build had agreed NOT to circumvent PLN in any future builds on the Property of the Golf Course. As detailed herein, the First Amendment (as defined below) further clarifies this point. Now, after being provided notified by PLN Telecom of alleged breaches and fraud by moving forward with a 2<sup>nd</sup> tower to be built on the Property by Verizon, the Town has knowingly and surreptitiously tried to circumvent PLN and its contractual and equitable rights.

The chart below compares the options between Verizon building the 2<sup>nd</sup> Tower versus allowing for PLN Telecom's existing contractual rights and instead letting PLN build the 2<sup>nd</sup> Tower, as contemplated in the First Amendment to the Communication Site License Agreement dated October 1, 2018 between PLN and the Town ("First Amendment"). **As you can clearly see below, the solution offered by PLN is the obvious choice as the all parties, including Verizon receive nearly the EXACT SAME DEAL. Further, Verizon will save approximately \$275,000 in initial capital expenditures required to build the 2<sup>nd</sup> Tower which will instead be borne by PLN.** Furthermore, by allowing PLN to build the 2<sup>nd</sup> Tower it removes any legal dispute that will result in significant delays and costs to all parties, including the Town and its taxpayers. If the Town agrees to forego approving Verizon's lease on these terms and instead allow PLN to build the 2<sup>nd</sup> tower, PLN will offer the following:

Key Points	Verizon/Apple Valley	PLN Telecom Offer	Comparison
Rent	Town receives \$1,700/mo	Town receives \$1,700/mo	Exactly the Same
Lease Term	5 years with 5x5 year extensions	5 years with 5x5 year extensions	Exactly the Same
Other Lease rights and obligations	***	***	Exactly the Same
Tower Maintenance responsibility	Verizon	PLN	More advantageous to Verizon as saves costs and time. Estimated at \$3,600/year
Responsibility to Build & Pay for Tower	Verizon – estimated costs \$275,000	PLN– estimated costs of \$275,000	More advantageous to Verizon as saves significant capital expenditures
<b>Legal Exposure</b>	The Town and Apple Valley have been placed on notice by PLN of <b>contractual breaches of prior cell tower license and tortious interference with contracts</b> . Further, PLN is aware that the <b>Town has colluded with Verizon to commit fraud that may not be covered by any indemnity provided by Verizon, leaving the Town exposed</b> . To protect its contractual and financial interests PLN may be forced to file to enjoin the building of the new tower and sue all parties for damages and specific performance	No legal costs to be incurred by any parties involved and instead efforts placed on building the new tower at PLN’s sole cost	<b>During this time of COVID, to waste taxpayer time and money by inviting a lawsuit against the Town when a better and nearly identical option is being offered is egregious and if the Town proceeds it should have to answer to its constituents as to why its councilmembers are costing the Town money and exposure rather than taking the obvious and equitable solution presented by PLN</b>

Further, we would like to express our disappointment in the tactics employed by the Town in its letter dated July 24, 2020, from Best, Best and Krieger, LLP (“BBK”), its legal counsel (“Town’s Letter”) in response to PLN’s letter from May 22, 2020. Waiting over two (2) months to respond to our initial correspondence and failing to return any phone calls shows your intentions to try to slip this deal in and circumvent your obligations and promises to PLN. Rather than engaging in constructive communication with PLN, you waited until only two (2) business days prior to the Town Council’s July 28<sup>th</sup> meeting where you hoped to push through an amended lease with Verizon, that just so happens to include an indemnity to try to shield the Town from liability from PLN’s claims, rather than address them professionally and in good faith. Further, in the Town’s Letter, BBK erroneously states that defined term “Property” does not include the entirety of the Town’s Golf Course but only the ‘southern property’ of the Town’s Golf Course. This is a flawed interpretation for the following reasons:

1. The original license between the Town and PLN (the “License”) defines the Property of having an address of 15200 Rancherias Road, Apple Valley – which is the address of the entire Golf Course including all APNs associated with it, not just a select ‘southern property’ APN.

2. BBK states that Exhibit A of the License only refers to the 'southern property' but as can be clearly seen in the License, Exhibit A is defining the "Premises" (as the heading provides), not the Property. The Premises defines where on the *portion of the* Property the cell tower is being built but does not limit the overall definition of the Property.
3. Most importantly, the Section 4 of the First Amendment attached hereto, clearly states the following:

4. Future Development of Property located at 15200 Rancherias Road, Apple Valley, CA 92307. If, after full execution of this First Amendment, Licensee can secure the Verizon Wireless Conditional Use Permit (CUP) issued by Licensor (on or about August 1, 2018) to construct a second Wireless Communications Site on the Property, Licensor shall enter into a second License Agreement with Licensee. The License Fee for the second License Agreement shall be an amount equivalent to fifty percent (50%) of the total Authorized Sublicensee's payments to Licensee.

This Section 4 shows two things: (1) the parties clearly contemplated future development on the Property and **contemplation and mechanisms for PLN to build such a second tower on the Property**, and (2) the Town executed this document that states that Town [Licensor] has issued a CUP to Verizon to build such second tower on the "Property." The Town is now seeking to approve a lease to allow Verizon to build such second tower based on the CUP from August 1, 2018, which the Town agrees above was granted "on the Property". **If the Town believes that Verizon has a CUP to build the 2<sup>nd</sup> tower at the currently desired location, then the Town must logically agree that the definition of the Property in the License includes such area as well.** You cannot have it both ways!

It is clear to anyone acting honestly that the definition of "Property" was not exclusively limited to where the initial "Premises" on the 'southern property' but the entirety of the Golf Course Property and the above amendment confirms the Town had the same understanding. We strongly believe that any court will agree with such interpretation and easily see the efforts of Verizon and the Town to circumvent PLN in bad faith over the last couple of months since not approving the Verizon lease when initially put before the Town Council. Since that time, the Town and its legal counsel coincidentally added an indemnity provision from Verizon for Town's benefit to seek to protect the Town from its actions of knowingly breaching the terms of several agreements with PLN and also mysteriously modifying the terms of Property in the new agreement with Verizon as you were aware that your approach, same as in the past with your PLN license, included the entirety of the Golf Course in the definition. This is egregious behavior.

**Conclusion:**

Regardless of the misguided previous actions of the Town, PLN is still offering to avoid costly litigation and build the 2<sup>nd</sup> Tower on Verizon's behalf and honor the contractual terms with the Town, while taking on the construction and maintenance costs for Verizon. There are rarely such compromises that provide a Win-Win-Win for all three parties, but this is one. We strongly suggest that common sense and logic prevail here so we may all find an amicable way ahead and avoid costs and delays that will be brought on by litigation. We ask that you do what is right by PLN and your constituents.

Sincerely,



Nick Goldberg, Esq.  
High Tide Legal Group, PC

Enclosures (1) via Email only:

1. First Amendment

Cc: Paul Nussbaum ([plnussbaum@gmail.com](mailto:plnussbaum@gmail.com))  
Lori Lamson ([llamson@applevalley.org](mailto:llamson@applevalley.org))  
Mayor Scott Nassif ([snassif@applevalley.org](mailto:snassif@applevalley.org))  
Mayor Pro Tem Curt Emick ([cemick@applevalley.org](mailto:cemick@applevalley.org))  
Councilmember Art Bishop ([abishop@applevalley.org](mailto:abishop@applevalley.org))  
Councilmember Larry Cusak ([lcusack@applevalley.org](mailto:lcusack@applevalley.org))  
Councilmember Kari Leon ([kleon@applevalley.org](mailto:kleon@applevalley.org))

**FIRST AMENDMENT TO  
COMMUNICATIONS SITE LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO COMMUNICATIONS SITE LICENSE AGREEMENT (the "First Amendment") is made effective this 1st day of October 2018, by and between the **TOWN OF APPLE VALLEY, CA** (hereinafter referred to as "Licensor") and **PLN TELECOM, INC.**, a Florida corporation, (hereinafter referred to as "Licensee").

**RECITALS**

WHEREAS, Licensor and Licensee entered into that certain Communications Site License Agreement dated February 18, 2014, (the "**License Agreement**") regarding the Premises located at 19940 Seneca Road, Apple Valley, CA 92307, and

WHEREAS, Licensor and Lessee desire to amend the License Agreement on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. **Recitals; Defined Terms.** The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License Agreement.

2. **Term.** *Section 2.2* of the License Agreement is amended as follows:

The License Agreement has an initial term that commenced on September 12, 2014 and expires on September 11, 2019. The License Agreement provides for five (5) additional terms of five years each, with the final term expiring on September 11, 2044. Licensee shall be entitled to one (1) additional term of five (5) years, with the final term expiring on September 11, 2049. The Initial Term and any Additional Terms shall be collectively referred to as the "License Term".

3. **License Fee.** *Section 3.2.1* of the License Agreement is amended as follows:

For the first sublicense, the License Fee shall be an amount equivalent to fifty percent (50%) of the Authorized Sublicensee's payment to Licensee but in no event less than One Thousand Eight Hundred and Fifty Dollars (\$1850.00) per month. This minimum License Fee payable to the Licensor for the first



Authorized Sublicense represents seventy percent (70%) of the current License Fee being paid to Licensee as of the date of this First Amendment.

*Section 3.2.3 of the License Agreement is deleted in its entirety.*

4. **Future Development of Property located at 15200 Rancherias Road, Apple Valley, CA 92307.** If, after full execution of this First Amendment, Licensee can secure the Verizon Wireless Conditional Use Permit (CUP) issued by Licensor (on or about August 1, 2018) to construct a second Wireless Communications Site on the Property, Licensor shall enter into a second License Agreement with Licensee. The License Fee for the second License Agreement shall be an amount equivalent to fifty percent (50%) of the total Authorized Sublicensee's payments to Licensee.

5. **Right of First Refusal.** If Licensor receives an offer from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Licensor's interest in the License) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor's interest in the Licensee, or an option for any of the foregoing, Licensor shall provide written notice to Licensee of said offer, and Licensee shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Licensee's possessory or economic interest in the Premises. Licensor's notice shall include the prospective buyer's name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, and the proposed closing date. If the Licensor's notice shall provide for a due diligence period of less than thirty (30) days, then the due diligence period shall be extended to be thirty (30) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen days thereafter. If Licensee does not exercise its right of first refusal by written notice to Licensor within thirty (30) days, Licensor may convey the property as described in the Licensor's notice. If Licensee declines to exercise its right of first refusal, then the License shall continue in full force and effect and Licensee's right of first refusal shall survive any such conveyance. Licensee shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the License or as part of an assignment of the License. Such assignment may occur either prior to or after Licensee's receipt of Licensor's notice and the assignment shall be effective upon written notice to Licensor.

6. **Representations, Warranties and Covenants of Licensor.** Licensor represents, warrants and covenants to Licensee as follows:

a) Licensor is duly authorized to and has the full power and authority to enter into this First Amendment and to perform all of Licensor's obligations under the License as amended hereby.

b) Licensee is not currently in default under the License, and to Licensor's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Licensee under the License.

c) Licensor agrees to carry out and evidence the full intent and purpose of the parties under the License as amended hereby, and ensure Licensee's continuous and uninterrupted use, possession and quiet enjoyment of the Property under the License as amended hereby.

7. **Notices.** The notice address in Section 15 of the License is amended as follows:

If to Licensee:  
PLN Telecom Inc.  
50 Central Avenue, Ste. 1007  
Sarasota, FL 34236  
Attention: Paul Nussbaum

With a copy to:  
Paul Nussbaum  
1670 Kettner Blvd., Apt 508  
San Diego, CA 92101

8. **Counterparts.** This First Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

9. **Remainder of License Unaffected.** In all other respects, the remainder of the License shall remain in full force and effect. Any portion of the License that is inconsistent with this First Amendment is hereby amended to be consistent.

[Signature page follows]

Licensor and Licensee have caused this First Amendment to be duly executed on the day and year first written above.

LICENSOR:

Town of Apple Valley, California


By:  \_\_\_\_\_

Print Name: Douglas B. Robertson

Title: Town Manager

LICENSEE:

PLN Telecom Inc., a Florida Corporation

By:  \_\_\_\_\_

Print Name: PAUL L. Nussbaum

Title: PRESIDENT