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CITY OF OAKLAND



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September 23, 2014

HONORABLE CITY COUNCIL
Oakland, California

Subject: Crown Castle NG West, Inc. v. City Of Oakland et. al.
Alameda Superior Court Case No. RG12617055
OCA File No. X03768

Dear President Kernighan and Members of the City Council:

Pursuant to Section 401 of the City Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action. At closed session on May 6, 2014, the City Council considered a proposed settlement of a lawsuit filed by Crown Castle NG West, Inc. ("Crown Castle"), formally known as NextG Networks of California, Inc. ("NextG"), against the City of Oakland et al. (Alameda Superior Court Case No. RG12617055) (the "Action"). We have reached a proposed Settlement Agreement pursuant to the direction provided by the City Council, as discussed below.

Crown Castle installs distributed antenna systems ("DAS") in the public rights-of-way, which receive and transmit wireless signals for retail wireless providers such as AT&T. The City approved Conditional Use Permits ("CUPs") for Crown Castle to install telecommunications equipment in the City's rights-of-way—e.g., at the intersection of Marlborough Terrace and Grizzly Peak Boulevard (the "Grizzly Peak location") and along Skyline Boulevard near the Chabot Space Center (the "Chabot location")—pursuant to Oakland Planning Code ("OPC") provisions governing the siting of wireless telecommunications equipment. After approving the CUPs, the City demanded rent for the installations at the Grizzly Peak location and the Chabot location.

In the Action, Crown Castle claims (1) the City's demand for rent violates Government Code § 50030 and California Public Utilities Code § 7901 (the "Rent Cause of Action"), and (2) the City's enforcement of OPC provisions governing the siting of wireless telecommunication facilities violates Public Utilities Code §§ 7901 and 7901.1

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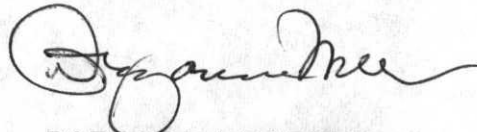
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(the "Permitting Cause of Action"). On February 19, 2014, the Superior Court entered an order granting summary judgment for Crown Castle on the Rent Cause of Action. The Superior Court has yet to resolve the Permitting Cause of Action.

At the May 6, 2014 Closed Session, the City Council considered a settlement proposal and provided direction to City staff and counsel. Consistent with the direction, we have finalized a proposed Settlement Agreement to resolve the Action, by which the City will accept the Superior Court judgment with respect to the Rent Cause of Action, which will preclude the City from charging rent for Crown Castle to access the public rights-of-way at the Grizzly Peak location and at the Chabot location and require the City to issue encroachment permits. In exchange, Crown Castle will (a) dismiss its Permitting Cause of Action, by which Crown Castle challenges the City's siting regulations set forth in the OPC and (b) accept reasonable conditions pursuant to encroachment permits for the Grizzly Peak location and the Chabot location.

We request that the City Council adopt the Resolution and authorize the proposed Settlement Agreement.

Respectfully submitted,

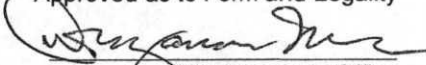
A handwritten signature in black ink, appearing to read "Barbara J. Parker", with a stylized flourish at the end.

BARBARA J. PARKER
City Attorney

Attorney(s) Assigned:

Charles Vose and Kiran Jain, City Attorney's Office
Kevin D. Siegel, Burke, Williams & Sorensen LLP

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City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING SETTLEMENT OF CROWN CASTLE NG WEST, INC. V. CITY OF OAKLAND ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG12617055), BY ACCEPTING THE TRIAL COURT'S JUDGMENT THAT THE CITY CANNOT CHARGE RENT, AND MUST ISSUE ENCROACHMENT PERMITS, FOR CROWN CASTLE TO INSTALL TELECOMMUNICATIONS EQUIPMENT IN CITY RIGHTS-OF-WAY AT TWO LOCATIONS, PURSUANT TO PREVIOUSLY APPROVED CONDITIONAL USE PERMITS, IN EXCHANGE FOR CROWN CASTLE (A) DISMISSING ITS CAUSE OF ACTION CHALLENGING OAKLAND PLANNING CODE REGULATIONS GOVERNING THE SITING OF WIRELESS TELECOMMUNICATION FACILITIES AND (B) ACCEPTING REASONABLE CONDITIONS FOR THE TWO LOCATIONS PURSUANT TO ENCROACHMENT PERMITS

WHEREAS, Crown Castle NG West, Inc. ("Crown Castle"), formally known as NextG Networks of California, Inc. ("NextG"), installs distributed antenna systems ("DAS") in the public rights-of-way, which receive and transmit wireless signals for retail wireless providers such as AT&T; and

WHEREAS, NextG applied for discretionary permits under the Oakland Planning Code ("OPC") to install utility poles and telecommunications equipment in the City's rights-of-way in the Oakland Hills, e.g., at the intersection of Marlborough Terrace and Grizzly Peak Boulevard (the "Grizzly Peak location") and along Skyline Boulevard near the Chabot Space Center (the "Chabot location"); and

WHEREAS, on or about April 27, 2011, the City's Planning Commission approved the application, including for a Conditional Use Permit ("CUP") for the Grizzly Peak location, which approval is reflected in Planning Commission Decision Letter, Case File Number CMD 10-130, and on or about July 20, 2011, City's Planning Commission approved the application, including a Conditional Use Permit, for the Chabot location, which approval is reflected in Planning Commission Decision Letter Case File No. CM11003; and

WHEREAS, after approval of the CUPs described above, City staff demanded NextG enter Telecommunications License Agreements, which included a provision for payment of annual rent by NextG to the City, and declined to issue encroachment permits to install the facilities approved by the CUPs until NextG entered the proposed agreements; and

WHEREAS, NextG declined to enter into such agreements with the City; and

WHEREAS, on or about February 14, 2012, NextG Networks of California, Inc. filed an action entitled NextG Networks of California, Inc. v. the City of Oakland et al., Alameda County Superior Court Case No. RG 12617055 (the "Action"), alleging: (1) the City's attempt to charge rent for use of the public rights-of-way violates California Government Code § 50030 and California Public Utilities Code § 7901 (the "Rent Cause of Action"); and (2) the City's enforcement of OPC provisions governing the siting of wireless telecommunication facilities violates Public Utilities Code §§ 7901 and 7901.1 (the "Permitting Cause of Action"); and

WHEREAS, NextG Networks of California, Inc. changed its name to Crown Castle NG West Inc., and on April 11, 2013, the Superior Court entered an Order in the Action substituting Crown Castle as plaintiff in the Action; and

WHEREAS, on February 19, 2014, the Superior Court entered an order granting summary judgment for Crown Castle on the Rent Cause of Action but has yet to resolve the Permitting Cause of Action; and

WHEREAS, consistent with the direction provided by the City Council in closed session on May 6, 2014, the City Attorney's Office and the City's outside counsel and counsel for Crown Castle have prepared a Settlement Agreement to resolve the Action, by which the City will accept the Superior Court judgment with respect to the Rent Cause of Action, which will preclude the City from charging rent for Crown Castle to access the public rights-of-way at the Grizzly Peak location and the Chabot location and require the City to issue encroachment permits, and in exchange, Crown Castle will (a) dismiss its Permitting Cause of Action, and (b) accept reasonable conditions pursuant to encroachment permits for the Grizzly Peak location and the Chabot location; now, therefore, be it

RESOLVED: That the City Administrator, or his designee, is authorized to enter into the above described settlement, subject to final approval by the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - SCHAAF, BROOKS, KAPLAN, GALLO, KALB, GIBSON McELHANEY, REID and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland, California