AGENDA

Municipal Services Committee November 26, 2018 6:30 P.M. – Council Chambers

- 1. Call to Order & Roll Call
- 2. Establishment of Quorum
- 3. New Business
 - a. <u>Resolution</u> Accepting a proposal from Backflow Solutions Inc. (BSI) to maintain a Potable Water Backflow Device Program from 2019 through 2023 at a pass through cost of \$12.95 per backflow device.
 - **Resolution** Authorizing the Mayor to accept a proposal from Christopher B. Burke Engineering, Ltd. in an amount not to exceed \$27,100.00 for the surveying and engineering redesign of the open ditch and storm water conveyance system for 67th Street.
 - **c.** Resolution Consideration of a resolution to extend the Boundary Agreement with Downers Grove for another 20 years.
 - **d.** <u>Discussion</u> Consideration of an amendment to the Sign Code regarding amortization in the Rt. 83 corridor.
 - e. <u>Discussion</u> Consideration of a request by Verizon to amend their lease regarding their equipment on the City cell towers at 1041 S. Frontage Road.
 - f. Minutes October 22, 2018 Municipal Services Committee
- 4. Director's Report
 - a. OR&I and I1 Zoning Ordinance review
- 5. Next scheduled meeting To Be Determined
- 6. Adjournment

AGENDA MEMO

Municipal Services Committee Meeting November 26, 2018

ISSUE STATEMENT

A <u>resolution</u> accepting a proposal from Backflow Solutions Inc., (BSI) to maintain a Potable Water Backflow Device Program from 2019 through 2023 at a pass through cost of \$12.95 per backflow device.

BACKGROUND

The Illinois Environmental Protection Agency requires each municipality to have a viable potable water backflow prevention program. Backflow prevention devices are installed to ensure contaminants from various different applications do not make their way back into our water system and cause potential harm to our customers.

The City currently utilizes Backflow Solutions Inc, (BSI) to maintain and manage our Backflow Program, at a pass through cost of \$12.95. The existing contract has been in place for 5 years and requires renewal.

Competitive quotes were requested for the Backflow Program and Staff had received two (2) quotes. Please see <u>Attachment A</u>. The lowest competitive quote was Backflow Solutions Inc, (BSI). BSI has provided services for the City for the previous 5 years with very satisfactory results and they serve adjacent municipalities.

The program would allow for Backflow Solutions Inc, (BSI) to administer the program for the City of Darien for 5 years and would include the following:

- Maintain a Database for Backflow Devices
- Backflow Survey for Darien Water Customers-Years 2019-2021-2023(EPA Requirement). The survey would include mailing out approximately 9,000 surveys to our water customers. Staff has estimated there are approximately 1,000 backflow devices in the system.
- Establish a Web Base for Backflow Entry Data by the Certified Tester
- EPA Site Compliance Representation as Required
- City Access to Database
- Annual Backflow Compliance and Violation Reminders
- Direct Vendor Billing to Backflow Testing Vendor

The program involves no direct cost to the City and BSI has held their filing cost for \$12.95 per backflow device. Please note a property owner will not have the ability to self-certify a backflow device unless they are licensed by the State. It is estimated that the City will incur a cost for approximately \$500 for the survey mailers as mandated by the Environmental Protection Agency. Please see Attachment B.

2018 Back Flow Prevention Program November 26, 2018 Page 2

STAFF RECOMMENDATION

Staff recommends approval of this resolution accepting a proposal from Backflow Solutions Inc, (BSI) to maintain the Potable Water Backflow Device Program from 2019 through 2023 at a pass through cost of \$12.95 per backflow device.

ALTERNATE CONSIDERATION

As directed by the Municipal Services Committee.

DECISION MODE

This item will be placed on the December 3, 2018 City Council agenda for formal approval.

CITY OF DARIEN PUBLIC WORKS 1702 PLAINFIELD ROAD DARIEN, IL 60561

QUOTE REQUEST:

Backflow Program

OPENING DATE/TIME:

November 6, 2018 @ 10:00 a.m.

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PROPERTY OWNER COST	1	\$ 12.95	\$ 12.95	1	\$ 12.95	\$ 12,95	1	\$ 12,95	\$ 12.95	1	\$ 12.95	\$ 12.95	1	\$ 12.95	\$ 12.95	\$ 64.75
TOTALS													•			\$ 64.75

Dan Gombac

From: Spera, Stanley <Stanley.spera@dupageco.org>

Sent: Tuesday, August 7, 2018 11:36 AM

To: Dan Gombac
Cc: Rivera, Cheryl

Subject: FW: Printing & Mailing Quote

importance: High

Don,

Here is what we have so far:

Programming to flag your customers in file for printer: \$180 to \$360 depending on which option will work with the printer.

Insert cost: \$265.50.

Stan

630-985-3553

From: Rivera, Cheryl

Sent: Tuesday, August 07, 2018 11:26 AM

To: Spera, Stanley <Stanley.spera@dupageco.org>

Subject: FW: Printing & Mailing Quote

Importance: High

Stan,

Below is estimate for printer costs, Tom hasn't replied to my email so I'm not sure if the quote will change if we change the way we give him the insert account #'s.

Also, I've added Billmaster estimate below for cost of programming.

Billmaster cost:

Option 1 – Insert field in Outsource file to say "add insert" – approximately 1 hour programming = \$180.00 Option 2 – Create 2 separate Outsource files, one file for inserts one file for no inserts – approximately 2 hours programming = \$360

Let me know if you need anything else.

Cheryl

From: Rivera, Cheryl

Sent: Monday, August 06, 2018 1:52 PM

To: 'tstith@peregrinesolutions.com' < tstith@peregrinesolutions.com >

Subject: RE: Printing & Mailing Quote

See my answers below in red.

Call me if this is too difficult to respond to via email.

Thank you,

Cheryl

From: Tom Stith [mailto:tstith@peregrinesolutions.com]

Sent: Monday, August 06, 2018 1:22 PM

To: Rivera, Cheryl < Cheryl.Rivera@dupageco.org >

Subject: FW: Printing & Mailing Quote

The 70# stock is about twice as thick as regular copy paper.

From: Tom Stith [mailto:tstith@peregrinesolutions.com]

Sent: Monday, August 06, 2018 1:20 PM

To: 'Rivera, Cheryl'

Subject: RE: Printing & Mailing Quote

Hi Cheryl-

Do you know how these accounts are flagged/recognized within your file now. For instance, are they certain zip codes, certain routes, certain services provided etc that you are trying to reach? It would be certain accounts #'s in the current file we send you but our programmer said they could insert a field in the current Outsource file to alert you which specific accounts get the insert. The programmer would let you know what field position this special note would be at within the file. If we inserted a special field to the existing outsource file, would there be a cost on your side to process this change to the file? We would not continue to use this insert in the next billing cycles and going forward, it would only be used for when we need a special insert.

Generally if you can provide us instructions on how to recognize these accounts within your file as currently composed that is better than introducing a new value or a new field. If we were to go this route, would I just give you a list of account numbers and you could be sure they got the insert? There may be no commonality to which accounts get this insert, some account #'s may start with 2100, 2101, 1500, etc. Would there be a cost on your side to process it this way?

Let me know if that doesn't make sense. If you know how flagged/recognized, and the details, I can have James on my end take a look at it.

We would charge .03 per insert. For 8,850 price would be \$265.50. No additional shipping or inserting charges. We actually print these on a 70# offset paper/equipment. This allows us to run without any slowdowns on the inserting equipment.

Let me know what you think on the insert account info.

Thanks, Tom

From: Rivera, Cheryl [mailto:Cheryl.Rivera@dupageco.org]

Sent: Monday, August 06, 2018 12:39 PM

To: tstith@peregrinesolutions.com **Subject:** RE: Printing & Mailing Quote

Tom,

Would it be possible, instead of us sending you two files, could we just place a field in the current file we send that signals you should put an insert in?

I would have your technical person talk to our Data West technical person.

If it has to be two separate files, we could do that too, but it would take more time and cost to complete.

Thank you, Cheryl

From: Tom Stith [mailto:tstith@peregrinesolutions.com]

Sent: Thursday, August 02, 2018 4:26 PM

To: Rivera, Cheryl < Cc: Arlowe, Amy < Amy.Arlowe@dupageco.org>

Subject: RE: Printing & Mailing Quote

How would these bills be indicated if they are to receive the insert? usually if we have a partial insert, our customer sends a "Yes Insert" file and a "No insert" file. Don't remember if we've done that with you, and if that is something you can do?

Thanks, Tom

From: Rivera, Cheryl [mailto:Cheryl.Rivera@dupageco.org]

Sent: Thursday, August 02, 2018 2:51 PM

To: tstith@peregrinesolutions.com

Cc: Arlowe, Amy

Subject: Printing & Mailing Quote

Importance: High

Good Afternoon Tom,

We are looking for a quote for you to print and enclose a one page letter into our Sept or November bills. See info below and let me know if you have any questions.

Approximately 8,850 letters

8.5 x 11 size One Sided

Black and White Only

Exception – Folded and inserted only with specific account # bills. (not sure if we tried this before and what obstacles/needs this presents on your side)

Get back to me as soon as you can.

Thank you,

Cheryl Rivera Financial Services Manager DuPage County Public Works Woodridge, IL 60517

Phone: 630-985-7400 x249

Fax: 630-985-4802

RESOLUTION NO A RESOLUTION ACCEPTING A PROPOSAL FROM BACKFLOW SOLUTIONS INCOMES IN TO MAINTAIN A POTABLE WATER BACKFLOW DEVICE PROGRAM FROM 2019 THROUGH 2023 AT A PASS THROUGH COST OF \$12.95 PER BACKFLOW	
DEVICE	
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, I	U
PAGE COUNTY, ILLINOIS, as follows:	
SECTION 1: The City Council of the City of Darien hereby Approves Accepting a Propos	sal
From Backflow Solutions Inc, (BSI) to Maintain a Potable Water Backflow Device Program fro	m
2019 through 2023 at a Pass Through Cost of \$12.95 Per Backflow Device, a copy of which	is
attached hereto as "Exhibit A" and is by this reference expressly incorporated herein.	
SECTION 2: This Resolution shall be in full force and effect from and after its passage a	nd
approval as provided by law.	
PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAG	Æ
COUNTY, ILLINOIS, this 3 rd day of December, 2018.	
AYES:	_
NAYS:	
ABSENT:	
APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNT	Y,
LLINOIS, this 3rd day of December, 2018.	
KATHLEEN MOESLE WEAVER, MAYOR	
JOANNE E. RAGONA, CITY CLERK	

APPROVED AS TO FORM:

CITY ATTORNEY



CITY OF DARIEN - BACKFLOW PROGRAM

The City of Darien is seeking qualified vendors to provide quotes for a web-based backflow management program. The awarded vendor shall be responsible for completing an inventory of all known backflow devices for commercial and residential backflow devices. Currently, the City has 838 various backflow devices. The awarded vendor shall be retained for a (5) five year term. The awarded vendor shall provide municipal references and have a minimum of (5) years of municipal backflow data management utilizing their proposed web-based system. The awarded vendor shall be responsible for the following MANDATORY REQUIREMENTS:

- Initial Inventory-The City shall provide all backflow records available to the awarded vendor to be uploaded into proposed web-based program
- Proposed vendor will issue multiple letters to properties that have testable backflow assemblies in order to facilitate compliance and establishment of annual due dates
- Proposed vendor shall prepare and forward the City a proof of the bi-annual backflow survey-see attached sample. The City shall be responsible for the mailer, including postage and handling. The proposed vendor shall catalogue all surveys and update the database as required
- Provide an electronic data base (web program) capable of storing 'but not limited to' the following items
 - A) Past test reports/information
 - B) Contractor licenses
 - C) Backflow tester licenses
 - D) Annual test kit calibration certificates
 - E) Collect and catalog all annual backflow test reports, each test report shall include the following information:
 - 1) Property name
 - 2) Property Address
 - 3) Billing address
 - 4) Property contact information
 - 5) Pass/Fail
 - 6) Backflow test readings, size, make, model, serial number and location of device(s)
- Provide an executive summary of your program, company and services (2 pages or less).
- Provide a detailed working/operation of your program and how it would best suit the City's needs. This shall include the start-up process, implementation and ongoing maintenance to your program. As well as key features, distinctions and functions
- Provide a company chart that includes primary contacts and titles, key positions, customer service staff and I.T. department

- Provide at a minimum, 5 Illinois municipal references for work currently being performed using the proposed system. Also shall include number of testable backflow assemblies currently being tracked as well as the length of time services have been provided to each reference
- Please provide an escrow account for vendors proposed programs source code
- The vendor shall be available for an onsite EPA meeting if required
- e The City must have unfettered access to all reports; backflow tests, non-compliant water customers as well as the ability to have multiple City staff users
- The City shall have the right to terminate the agreement within 30 days of notice
- The City reserves the right to disqualify a proposed vendor for not meeting in part or in whole any of the above, mandatory, criteria

Below, please provide the quote for the services requested:

Quantity	Description	Unit	Unit Cost
1	Annual Cost to the City for the Database Management December 1, 2018-April 30, 2023	Per Year	\$0.00
1	Annual Cost of each (residential & commercial) backflow assembly report entered by a certified and licensed contractor into the web-based reporting program. December 1, 2018-April 30, 2023	Each	\$12,95
	TOTAL COST TO THE CITY		HO.00

If applicable, include in a separate work sheet, any and all pricing escalations for the duration of the agreement. Please be advised, price is only one factor of this proposal. The City reserves the right to select the most qualified and experienced firm with the most advantageous program for the City's use regardless of 'low price'.

Please specify any legal action taken against your firm in the last 3 years. Please specify any, additional, 3rd parties with a financial stake in your firm. Proposed bidders must be majority shareholders and sole owners of the proposed program.

Quotes are due by Tuesday, November 6, 2018 at 10:00 a.m. late submissions will not be evaluated. Proposals and may be emailed to <u>rkokkinis@darienil.gov</u> or faxed to Regina Kokkinis at 630-852-4709. Questions may be directed to Municipal Services at 630-353-8105.

ADDITIONAL NON-REQUIRED ITEMS:

Please provide any additional items, literature, etc. you feel would be beneficial for the City's review and benefit.

VENDOR INFORMATION

TO BE COMPLETED BY VENDOR

COMPANY NAME: BSI Online
CONTACT PERSON: Katte Rager
ADDRESS: 12609 S. Laramie Avenue
CITY, STATE, ZIP CODE: Alsip, 12 60803
TELEPHONE NUMBER: Office 108-761-4362 Mobine 708-825-7873
FACSIMILE NUMBER: 888-414-4990
E-MAIL ADDRESS: Krager@backflow.com
AUTHORIZED SIGNATURE: Katil Rager

Price Proposal

Per the City of Darien's RFP, there are three components of this project requiring a price quote from proposing firms: a) Annual Cost to the City for Database Mgmt., b) Annual Cost to Contractor for Web Entry of Reports and c) Surveys. The City's RFP only provided a place for costs related to the annual tracking of backflow assemblies, but not for the survey portion.

To summarize all costs associated with this project, we have prepared this brief pricing proposal. Annual Cost to the City for Database Management

There is zero annual cost (\$0.00) to the City of Darien for Database Management of your backflow program.

Annual Cost of each backflow assembly report entered by contractor into web-based program. The cost to enter a report (both residential and commercial) into BSI Online is \$12.95 per report, which is consistent with the fee currently in place within the significant number of neighboring communities to Darien. While we have seen some of our competitors that are new to the market proposing lower filing fees, it should be noted that these fees will only result in a savings to the local backflow testers, as our experience has shown testing companies to pass along a fixed filing fee as opposed to adjusting it from community to community.

The filing fee is paid by the contractor at the time of entry. We offer several payment methods, including secure, online credit card processing, as well as the ability to establish a prepaid account (similar to an IPass).

Survey Cost

The City will be covering all costs associated with postage and mailing of the survey letters, there will be zero annual cost (\$0.00) for BSI to administer your survey program. This includes our professional IT / Graphic Design Team customizing each of your forms, as well as cataloging and receiving all survey data. Customized reports with results will also be provided.

Summary

In conclusion, there is zero annual cost (\$0.00) to the City of Darien for the services described in the RFP. The sole cost associated with this project will be a \$12.95 filing fee, paid by the licensed backflow contractor at the time of annual report submittal.



AGENDA MEMO

Municipal Services Meeting November 26, 2018

ISSUE STATEMENT

Approval of a <u>resolution</u> authorizing the Mayor to accept a proposal from Christopher B. Burke Engineering, Ltd. in an amount not to exceed \$27,100.00 for the surveying and engineering redesign of the open ditch and storm water conveyance system for 67th Street.

BACKGROUND

The 67th Street storm water infrastructure consists of an open closed conveyance system constructed in the 1960's. During the last 10 years, the City has completed ditch maintenance on all the adjacent roadways to 67th Street. The majority of the storm water is conveyed to 67th Street and flows to the east, towards Dale Basin and Lake Hinsdale Village, Willowbrook. Existing conditions of the system consist of various pipe sizes, concrete weirs, and various structures and does not convey storm water flow at an optimum level. The existing infrastructure also has multiple wash out areas and retains storm water.

The ditch catalogue calls out for the ditch to be completed in 2019 followed by the roadway resurfacing project in 2020. Staff has been in discussion with the City Engineer, Christopher B Burke Engineering regarding the proposed upcoming ditch project and based upon the volume of the storm water, a drainage study needs to be completed to call out for the optimum sized pipes and/or open ditches. In addition, there are existing portions of the open ditches that are significantly steep, difficult to maintain and are a safety concern for motorists, pedestrians, and adjacent residents.

The proposed engineering study, labeled and attached, as <u>Attachment A</u>, would authorize Christopher B. Burke Engineering to proceed with the surveying of the existing storm sewer system and the open ditches. After the surveying is completed, CBBEL will design a storm conveyance system to convey storm water.

Once the surveying is completed, staff is able to create a plan and implement a drainage project. Due to complexity of the tributary drainage of the area, staff does not have the expertise and equipment necessary to complete the surveying task.

The proposed engineering study was not contemplated for the FY 18/19 Budget. Upon review of the projects completed within the Capital Projects Fund, the fund does have the ability to absorb the proposed cost. Staff is requesting that the engineering study be completed at this time, as it would give us the ability to bid the drainage project along with other similar projects for an economy of scale. The proposed 67th Ditch Project would be included as an alternate for the upcoming 2019/2020 Budget, Ditch Maintenance Contract.

The expenditure would be expended from the following line item account:

67th Street Survey and Design Engineering November 26, 2018 Page 2

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY18-19 BUDGET DISCRETIONARY	YEAR TO DATE EXPENDITURE	PROPOSED EXPENDITURE	PROPOSED BALANCE
	Capital Projects				
	Drainage				
25-35-4376	Improvements	\$ 1,959,700.00	\$ 1,786,485.30	\$ 27,100.00	\$ 146,114.70

STAFF RECOMMENDATION

Staff recommends approval of this resolution with Christopher B. Burke Engineering in an amount not to exceed \$27,100.00.

ALTERNATE CONSIDERATION

Not approving the resolution and consider the schedule as follows: Engineering Drainage Study FY 19/20 Ditch Maintenance Project FY 20/21 Road Resurfacing Project 21/22

DECISION MODE

This item will be placed on the agenda for the December 3, 2018 City Council agenda for formal approval.



CHRISTOPHER B. BURKE ENGINEERING, LTD.
9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

November 9, 2018

City of Darien 1041 S. Frontage Road The City, IL 60561

Attention:

Dan Gombac - Director on Municipal Services

Subject:

Proposal for Professional Engineering Services

Drainage Study along 67th Street - Richmond Ave. to Tennessee Ave.

Dear Mr. Gombac:

Christopher B. Burke Engineering, Ltd (CBBEL) is pleased to provide this proposal for professional engineering services related to enclosing the drainage system along the south side of 67th Street, between Richmond Avenue on the west to Tennessee Avenue on the east in the City of Darien (City). The following is our Understanding of the Assignment, Scope of Services, and Fee Estimate.

UNDERSTANDING OF THE ASSIGNMENT

CBBEL understands that the City would like to enclose the drainage swale on the south side of 67th Street between Richmond Avenue and Tennessee Avenue into a closed system with storm sewers and overland flow. We understand the tributary area to the swale extends approximately one block north and one block south. We will complete a hydrologic and hydraulic analysis to appropriately size the storm sewers and overland flow swale.

SCOPE OF SERVICES

We suggest the following tasks:

Task 1 – Topographic Surveying: Thomson Surveying, Ltd. (TSL) will prepare a Topographic Exhibit of the roadside ditch located in the south right of way of 67th Street. The topographic exhibit limits is approximately 2000 linear feet and the limits are from 100 feet west of the west right of way of Richmond Avenue, to 100 feet east of the east right of way of Tennessee Avenue. Cross sections at 100 feet intervals will be taken along the ditch with the limits of the cross sections on the north edge of the pavement of 67th Street to the apparent south right of way line of 67th Street. Locations and identification of all above ground structures; i.e., mailboxes, utility poles, driveway, culvert headwalls, culverts, sidewalks. Locations of all landscape materials; i.e., bushes, trees (2" diameter and larger), flower beds, etc. will be included. Tree sizes (2" diameter and larger) shall be

measured four and one-half feet (diameter breast height) above the highest ground level at base of the tree. Locations of landscape timbers, flagstone paths or walls, brick pavers, etc. shall be noted. We will supply detailed information for all sewer structures, pipes, culverts, end sections, etc. within the survey limits. Detailed topography with one-foot contour intervals throughout the described project area, with elevations noted for key changes in grade, as well as high or low points between contours of the same elevation. Field locations (horizontal locations only) of all buried/marked utilities; i.e., gas, electrical and telephone, and sewers. J.U.L.I.E. locate to be called in by the City. Plan views shall be shown at a scale of 1" =20'. All survey work shall use NAVD 88 for Vertical Datum and USGS NAD 83 for Horizontal Datum.

Task 2 – Existing Conditions XP-SWMM Modeling: We will prepare an XP-SWMM hydrologic and hydraulic model of the existing drainage system within the study area. We will determine the drainage area to the swale on the south side of 67th Street. Subbasin areas will be delineated using the county topographic data. All relevant storm sewer and culvert information obtained from Task 1 will be modeled. Once the model is complete, we will simulate several design and historic rainfall events to establish the system capacity. We will prepare a brief summary memorandum with exhibit depicting the results so that the City can review the findings.

<u>Task 3 – Storm Sewer Sizing:</u> Based on the existing conditions XP-SWMM analysis, we will size a storm sewer to convey the runoff along the south side of 67th Street and define an overland flow route above the storm sewer. We may come up with an alternative depending on the findings. Each alternative will be developed to a conceptual level. The type, size, slope and length of the new storm sewers will be identified along with the overland flow swale. The proposed conditions hydraulics will be completed using the XP-SWMM model. A concept-level exhibit will be developed for each alternative and provided to the City for review and input.

<u>Task 4 – Summary Report:</u> We will prepare a final summary report that includes technical documentation on the development of the modeling. The report will include narrative description, exhibits, and calculations as needed.

<u>Task 5 – Meetings</u>: We have assumed that two meetings with the City staff will be needed throughout the duration of the study.

FEE ESTIMATE

Task	Description	Fee
1	Topographic Surveying	\$ 11,300
2	Existing Conditions XP-SWMM Modeling	\$ 6,000
3	Storm Sewer Sizing	\$ 4,500
4	Summary Report	\$ 3,800
5	Meetings	\$ 1,500
	TOTAL	\$27,100

We will bill you at the hourly rates specified on the attached Schedule of Charges. We will establish our contract in accordance with the attached General Term and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. Direct costs for blueprints, photocopying, mailing, mileage, overnight delivery, messenger services and report binding are not included in the Fee Estimate. Please note that meetings and additional services performed by CBBEL that are not included as part of this proposal will be billed on a time and materials basis and at the attached hourly rates.

services performed by CBBEL that are not included as part of this proposal will be billed on a time and materials basis and at the attached hourly rates.
Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.
Sincerely, Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE President
Encl. Schedule of Charges General Terms and Conditions
THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR THE CITY OF DARIEN:
BY:
TITLE:
DATE:

CHRISTOPHER B. BURKE ENGINEERING, LTD. STANDARD CHARGES FOR PROFESSIONAL SERVICES REVISED, SEPTEMBER 2018

	Charges*
Personnel	<u>(\$/Hr)</u>
Principal	265
Engineer VI	239
Engineer V	197
Engineer IV	160
Engineer III	144_
Engineer I/II	113
Survey V	219
Survey IV	185
Survey III	162
Survey II	118
Survey I	93
Engineering Technician V	187
Engineering Technician IV	152
Engineering Technician III	137
Engineering Technician I/II	80
CAD Manager	166
Assistant CAD Manager	144
CAD II	144
CADI	111
GIS Specialist III	139
GIS Specialist I/II	80
Landscape Architect	160
Environmental Resource Specialist V	206
Environmental Resource Specialist IV	160
Environmental Resource Specialist III	132
Environmental Resource Specialist I/II	108
Environmental Resource Technician	108
Administrative	101
Engineering Intern	61
Information Technician III	122
Information Technician I/II	110

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2018.

^{*}Charges include overhead and profit

CHRISTOPHER B. BURKE ENGINEERING, LTD. GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

- 3. <u>Changes</u>: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
- 4. <u>Suspension of Services</u>: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

- 5. <u>Termination</u>: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
- Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

- 8. <u>Standard of Practice</u>: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
- Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. <u>Indemnification</u>: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

- Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
- 12. <u>Governing Law & Dispute Resolutions</u>: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 13. <u>Successors and Assigns</u>: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
- 14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
- 15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void & without effect to the extent they conflict with the terms of this Agreement.
- 16. <u>Amendment</u>: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

- 17. <u>Severability of Invalid Provisions</u>: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
- 18. <u>Force Majeure</u>: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
- 19. <u>Subcontracts</u>: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
- 20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
- 21. <u>Designation of Authorized Representative</u>: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
- 22. <u>Notices</u>: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
- 23. <u>Limit of Liability</u>: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. <u>Client's Responsibilities</u>: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are

specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

- 25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
- 26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising ali safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the

Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. <u>Insurance and Indemnification</u>: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. <u>Hazardous Materials/Pollutants</u>: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

June 13, 2005
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RESOLUTION NO	
CHRISTOPHER B. BUR EXCEED \$27,100.00 FOR T	IZING THE MAYOR TO ACCEPT A PROPOSAL FROM KE ENGINEERING, LTD. IN AN AMOUNT NOT TO THE SURVEYING AND ENGINEERING OF THE OPEN ER CONVEYANCE SYSTEM FOR 67th STREET ROAD
BE IT RESOLVED BY TH	E CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE
COUNTY, ILLINOIS, as follow	vs:
SECTION 1: The City C	Council of the City of Darien hereby authorizes the Mayor to accept
a proposal from Christopher B. B	urke Engineering, Ltd. in an amount not to exceed \$27,100.00 for
the surveying and engineering of t	the open ditch and storm water conveyance system for 67th Street, a
copy of which is attached hereto	as "Exhibit A" and is by this reference expressly incorporated
herein.	
SECTION 2: This Resol	ution shall be in full force and effect from and after its passage and
approval as provided by law.	
ILLINOIS, this 3rd day of Decer AYES: NAYS: ABSENT:	YOR OF THE CITY OF DARIEN, DU PAGE COUNTY, December, 2018.
ATTEST:	KATHLEEN MOESLE WEAVER, MAYOR
JOANNE E. RAGONA, CITY CI	LERK
APPROVED AS TO FORM:	
CITY ATTORNEY	



CHRISTOPHER B. BURKE ENGINEERING, LTD. 9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

November 9, 2018

City of Darien 1041 S. Frontage Road The City, IL 60561

Attention:

Dan Gombac - Director on Municipal Services

Subject:

Proposal for Professional Engineering Services

Drainage Study along 67th Street - Richmond Ave. to Tennessee Ave.

Dear Mr. Gombac:

Christopher B. Burke Engineering, Ltd (CBBEL) is pleased to provide this proposal for professional engineering services related to enclosing the drainage system along the south side of 67th Street, between Richmond Avenue on the west to Tennessee Avenue on the east in the City of Darien (City). The following is our Understanding of the Assignment, Scope of Services, and Fee Estimate.

UNDERSTANDING OF THE ASSIGNMENT

CBBEL understands that the City would like to enclose the drainage swale on the south side of 67th Street between Richmond Avenue and Tennessee Avenue into a closed system with storm sewers and overland flow. We understand the tributary area to the swale extends approximately one block north and one block south. We will complete a hydrologic and hydraulic analysis to appropriately size the storm sewers and overland flow swale.

SCOPE OF SERVICES

We suggest the following tasks:

Task 1 – Topographic Surveying: Thomson Surveying, Ltd. (TSL) will prepare a Topographic Exhibit of the roadside ditch located in the south right of way of 67th Street. The topographic exhibit limits is approximately 2000 linear feet and the limits are from 100 feet west of the west right of way of Richmond Avenue, to 100 feet east of the east right of way of Tennessee Avenue. Cross sections at 100 feet intervals will be taken along the ditch with the limits of the cross sections on the north edge of the pavement of 67th Street to the apparent south right of way line of 67th Street. Locations and identification of all above ground structures; i.e., mailboxes, utility poles, driveway, culvert headwalls, culverts, sidewalks. Locations of all landscape materials; i.e., bushes, trees (2" diameter and larger), flower beds, etc. will be included. Tree sizes (2" diameter and larger) shall be

measured four and one-half feet (diameter breast height) above the highest ground level at base of the tree. Locations of landscape timbers, flagstone paths or walls, brick pavers, etc. shall be noted. We will supply detailed information for all sewer structures, pipes, culverts, end sections, etc. within the survey limits. Detailed topography with one-foot contour intervals throughout the described project area, with elevations noted for key changes in grade, as well as high or low points between contours of the same elevation. Field locations (horizontal locations only) of all buried/marked utilities; i.e., gas, electrical and telephone, and sewers. J.U.L.I.E. locate to be called in by the City. Plan views shall be shown at a scale of 1" =20'. All survey work shall use NAVD 88 for Vertical Datum and USGS NAD 83 for Horizontal Datum.

Task 2 – Existing Conditions XP-SWMM Modeling: We will prepare an XP-SWMM hydrologic and hydraulic model of the existing drainage system within the study area. We will determine the drainage area to the swale on the south side of 67th Street. Subbasin areas will be delineated using the county topographic data. All relevant storm sewer and culvert information obtained from Task 1 will be modeled. Once the model is complete, we will simulate several design and historic rainfall events to establish the system capacity. We will prepare a brief summary memorandum with exhibit depicting the results so that the City can review the findings.

<u>Task 3 – Storm Sewer Sizing:</u> Based on the existing conditions XP-SWMM analysis, we will size a storm sewer to convey the runoff along the south side of 67th Street and define an overland flow route above the storm sewer. We may come up with an alternative depending on the findings. Each alternative will be developed to a conceptual level. The type, size, slope and length of the new storm sewers will be identified along with the overland flow swale. The proposed conditions hydraulics will be completed using the XP-SWMM model. A concept-level exhibit will be developed for each alternative and provided to the City for review and input.

<u>Task 4 – Summary Report:</u> We will prepare a final summary report that includes technical documentation on the development of the modeling. The report will include narrative description, exhibits, and calculations as needed.

<u>Task 5 – Meetings:</u> We have assumed that two meetings with the City staff will be needed throughout the duration of the study.

FEE ESTIMATE

Task	Description	Fee
1	Topographic Surveying	\$ 11,300
2	Existing Conditions XP-SWMM Modeling	\$ 6,000
3	Storm Sewer Sizing	\$ 4,500
4	Summary Report	\$ 3,800
5	Meetings	\$ 1,500
	TOTAL	\$27,100

We will bill you at the hourly rates specified on the attached Schedule of Charges. We will establish our contract in accordance with the attached General Term and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. Direct costs for blueprints, photocopying, mailing, mileage, overnight delivery, messenger services and report binding are not included in the Fee Estimate. Please note that meetings and additional

services performed by CBBEL that are not included as part of this proposal will be billed on a time and materials basis and at the attached hourly rates.
Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.
Sincerely, Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE President
Encl. Schedule of Charges General Terms and Conditions
THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR THE CITY OF DARIEN:
BY:
TITLE:
DATE:

AGENDA MEMO MUNICIPAL SERVICES COMMITTEE November 26, 2018

Issue Statement

Consideration of a Resolution to extend the Boundary Agreement with Downers Grove for another 20 years.

Background

On July 16, 1990, the City of Darien passed Resolution R-24-90, which approved a Boundary Agreement with the Village of Downers Grove. See <u>Attachment A: 1990 Agreement</u>. The Agreement mapped a boundary line – mostly along 75th Street and Fairview Avenue and around the Knottingham, Queen's Court, and Florence Estates subdivisions. See <u>Attachment B: 1990 Boundary Line</u>. The main purpose of the Agreement is for neither municipality to annex land on the other side of the line or to exert any planning or subdivision review authority on the other side of the line. The Agreement expressly did not limit either municipality from opposing rezonings on the other side of the line. The Agreement had a 20 year duration.

Such boundary agreements are authorized by the State Constitution as one type of intergovernmental agreement. They are frequently used as a reasonable and efficient means of regulating land use and providing government services to unincorporated areas that are within the extraterritorial authority of two or more municipalities which is within 1.5 miles of the corporate limits. Darien has similar agreements with Willowbrook and Woodridge.

Since 1990, both Darien and Downers Grove have approved several annexations respectful of the boundary line. The only remaining unincorporated areas adjacent to the boundary line are one house at 973 75th Street (east of Haraldsen's auto repair) and 7 houses at 6801-6901 Fairview Avenue (north of Irish Court). See <u>Attachment C: Unincorporated Areas</u>. In order to preserve the redevelopment potential of these properties, staff has opened discussions with the Village of Downers Grove and their staff have indicated their willingness to extend the Boundary Agreement for another 20 years. No other changes are proposed. They have scheduled a vote on their resolution at their Board meeting November 20.

The Darien resolution and the Downers Grove resolution would extend the same boundary agreement and the same boundary line map for another 20 years expiring in 2038. See <u>Attachment D: Darien Resolution</u> (drafted by our City Attorney), <u>Attachment E: Boundary Agreement</u> (same as the 1990 agreement – retyped by Downers Grove), and <u>Attachment F: Boundary Line</u> (same as 1990 boundary line – redrawn by Downers Grove).

Decision Mode

If voted on by MSC, this item will be scheduled for the next City Council meeting December 3.

CITY OF DARIEN

RESOLUTION NO. R-24-90

A RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN MUTUAL BOUNDARY LINE AGREEMENT BETWEEN THE CITY OF DARIEN AND THE VILLAGE OF DOWNERS GROVE

WHEREAS, pursuant to Ill.Rev.Stat., ch. 24, §11-12-9, the City of Darien has the authority to enter into a jurisdictional boundary Agreement with another municipality; and

WHEREAS, the Village of Downers Grove and the City of Darien propose to enter into said boundary Agreement; and

WHEREAS, the City Council has determined that entry into such boundary Agreement will be reasonable and promote the common planning goals of the two municipalities;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the form and substance of a certain proposed Agreement attached hereto and made a part hereof (the "Agreement") between the City of Darien and the Village of Downers Grove, are hereby approved.

SECTION 2: The Mayor and Clerk are hereby authorized and directed to execute the Agreement.

SECTION 3: The City Clerk is hereby authorized and directed, in conjunction with the Village Clerk of the Village of Downers Grove, to cause a certified copy of the Agreement to be recorded in the Office of the DuPage County Recorder of Deeds.

SECTION 4: All resolutions or parts thereof in conflict with the provisions of this Resolution, are hereby repealed.

RESOLUTION NO. R-24-90

SECTION 5: This Resolution shall be in full force and
effect from and after its passage as provided by law.
PASSED BY THE FOLLOWING ROLL CALL VOTE this 16th day
of <u>July</u> , 1990.
AYES: 10-Bazon, Biehl, Callan, Gillespie, Kussow, Little, Rusnak, Smith, Soldate
NAYS: 0-None
ABSENT: 0-None
APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY,
ILLINOIS, this 16th day of July , 1990.
ATTEST:
ATTEST:
Kistende M. Caik Long
APPROVED AS TO FORM:
CITY ATTORNEY

STATE OF ILLINOIS)
SS
COUNTY OF DU PAGE)

I, Gertrude M. Coit, C.M.C do hereby certify
hat I am the duly qualified CITY CLERK of the CITY OF DARIEN of DuPage
County, Illinois, and as such officer I am the keeper of the records
nd files of said City;
I do further certify that the foregoing constitutes a full, true
nd correct copy of RESOLUTION #R-24-90, A RESOLUTION AUTHORIZING
HE EXECUTION OF CERTAIN MUTUAL BOUNDARY LINE AGREEMENT BE-
WEEN THE CITY OF DARIEN AND THE VILLAGE OF DOWNERS GROVE
IN WITNESS WHEREOF, I have hereunto affixed my official hand and
eal this 25th day of July, 19 90. Settle on bail on book City Clerk

PARTEDION DINE

THIS AGREEMENT, made this 13th day of August _____, 1990 by and between the Village of Downers Grove, a municipal corporation of DuPage County, Illinois (hereinafter called "Downers Grove"), and the City of Darien, a municipal corporation of DuPage County, Illinois (hereinafter called "Darien"),

WITNESSETH:

WHEREAS, Downers Grove and Darien are "units of local government" as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970; and

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves in order to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, Division 12 of Article II of the Illinois Municipal Code
(Chapter 24 of the Illinois Revised Statutes, 1989) confers upon the
corporate authorities of municipalities certain powers respecting the
subdivision and platting of land situated within their corporate limits and
within contiguous territory which is not more than one and one-half miles
beyond the corporate limits of a municipality that has adopted an official
plan or map pursuant to the authority conferred by said Division; and

WHEREAS, Downers Grove and Darien have duly authorized plan commissions, created pursuant to authority granted in Division 12 of Article 11 of the Illinois Municipal Code, and have adopted official plans pursuant thereto; and

Stames

WHEREAS, Division 12 of Article 11 of the Illinois Municipal Code authorizes the corporate authorities of such municipalities to agree upon a line marking the boundaries of the jurisdiction of each of such corporate authorities for certain purposes; and

WHEREAS, Downers Grove and Darien have agreed upon a line marking the boundaries of the jurisdiction of their respective corporate authorities, pursuant to the authority granted in Section 11-12-9 of the Illinois Municipal Code; and

WHERFAS there is unincorporated territory lying between the corporate limits of Downers Grove and the corporate limits of Darien, which territory is within one and one-half miles of the boundaries of Downers Grove and Darien; and

WHEREAS, Downers Grove and Darien recognize the need to provide for logical municipal boundaries and areas of municipal authority between their respective municipalities in order to plan effectively and efficiently for growth and potential development between their communities and conservation of available resources for their respective citizens; and

WHEREAS, the corporate authorities of Downers Grove and Darien have determined that it will be in the best interests of each of said municipalities and the citizens thereof to enter into an agreement establishing a boundary line pursuant to the foregoing authority, and have given consideration to the natural flow of storm water drainage and, to the extent practical, the inclusion of all of any single tract having common ownership within the jurisdiction of one or the other of said municipalities; and

WHEREAS, Downers Grove and Darien have authorized the execution of this Agreement as an exercise of their respective authority and in accordance with

the intergovernmental cooperation provisions of the Constitution of the State of Illinois of 1970.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, and pursuant to the authority of said municipalities referred to above, the Village of Downers Grove and the City of Darien hereby agree as follows:

- 1. The provisions of the preamble hereinabove set forth are hereby restated herein as though herein fully set forth.
- 2. The boundary line (the "Boundary Line") legally described in Exhibit "A" attached hereto, and depicted on the map attached hereto as Exhibit "B", is hereby approved and adopted by Downers Grove and Darien for all purposes of this Agreement, and specifically for municipal government planning, subdivision control, official maps, ordinances and other municipal purposes.
- 3. It is the intention of both municipalities to honor the Boundary Line in effecting future annexations of territory that is presently unincorporated. Without the prior written consent of the other municipality to the contrary, Downers Grove will not annex any territory within the jurisdiction of Darien and southerly and easterly of the Boundary Line described in paragraph 1 hereof, and Darien will not annex any territory within the jurisdiction of Downers Grove and northerly and westerly of the Boundary Line described in paragraph 1 hereof.
- 4. Darien hereby transfers to Downers Grove all powers, authority and jurisdiction which it may have northerly and westerly of the Boundary Line, and Downers Grove hereby transfers to Darien all powers, authority and jurisdiction which it may have southerly and easterly of the Boundary Line.

- 5. This Agreement shall not be construed so as to limit or adversely affect the right of either municipality to file a statutory objection or to take other lawful action to oppose proposed rezonings within one and one-half miles of its corporate limits or to oppose zoning in any lawful manner within the other municipality.
- 6. This Agreement shall be binding upon, and shall apply only to relations between Downers Grove and Darien. Nothing herein shall be used or construed to affect, limit or invalidate the boundary claims of either Downers Grove or Darien insofar as such claims shall relate to any municipality which is not a party to this Agreement.
- 7. This Agreement shall be in full force and effect from and after the copies hereof, certified by the Clerks of the respective municipalities, have been filed in the Office of the Recorder of Deeds of DuPage County, Illinois, and placed on file in the Office of the Clerk of each such municipality.
- 8. This Agreement for a jurisdictional boundary line shall be valid for a period of twenty (20) years from the date hereof, and may thereafter be extended, renewed or revised for additional terms by agreement of the parties.
- 9. Neither Downers Grove nor Darien shall directly or indirectly seek any modification of this Agreement through court action, and this Agreement shall remain in full force and effect until amended or changed by the mutual agreement of both respective corporate authorities, or until the end of its term, as the same may be extended, pursuant to paragraph 8 hereof.
- 10. The provisions of this Agreement are intended to be severable, and the invalidity or unenforceability of any one or more of such provisions shall not be deemed to impair or affect the validity or enforceability of any other provision hereof.

- 11. This Agreement shall be construed in accordance with the laws of the State of Illinois.
- 12. That all prior agreements of the parties as to any jurisdictional boundary line, and in particular the agreement entered between the parties on July 6, 1981, are hereby repealed.

IN WITNESS WHEREOF, Downers Grove and Darien have caused this Agreement to be executed by their respective Mayors, and attested by their respective Village Clerks, with their corporate seals hereunto affixed, as of the day and year first above written.

VILLAGE OF DOWNERS GROVE

BY:

Mayor

ATTEST:

Village Clerk

CITY OF DARIEN

ATTEST:

Village Clerk

41

EXHIBIT "A"

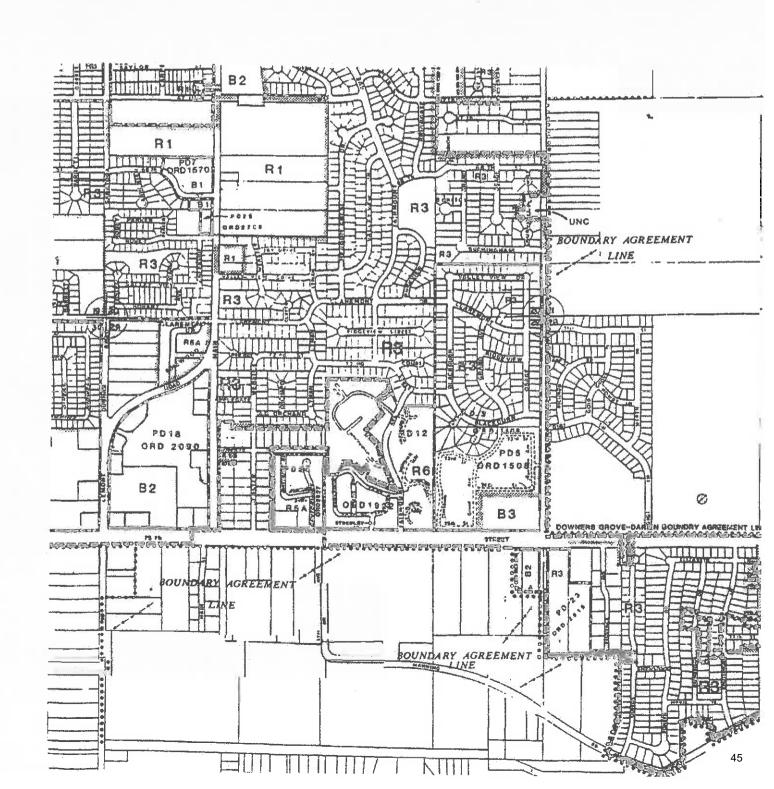
Commencing at the intersection of the centerline of Lemont Road with the Northerly right-of-way of United States Interstate Highway 55, in Downers Grove Township, for a point of beginning, thence Northerly along said centerline to a point 888.56 feet South of the Northwest corner of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 33.0 feet from the centerline of Lemont Road to a point, thence Northerly 38.56 feet to a point, thence Easterly 17.0 feet to the East right-of-way of Lemont Road, thence Northerly 205.0 feet along said East right-of-way to a point, such point being the intersection of said East right-of-way with the South line of the North 645.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 315.0 feet along said South line to the East line of the West 365.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence North 545.0 feet to the South line of 75th Street, such line being 100 feet South of the North line of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly along said South line of 75th Street for a distance of 4,904 feet more or less to a point, said point being the Northwest corner of Parcel 09-29-400-015 being a parcel of 1.71 acres located in the Southeast Quarter of Section 29, thence South along the West line of said 1.71 acre parcel or 402.83 feet, thence Easterly 366 feet to the East right-of-way line of Fairview Avenue, thence South a distance of 910 feet along said East right-of-way line of Fairview Avenue as dedicated by Document R74-00398 located in the Southwest Quarter of Section 28 to a point, said point being the Southwest corner of Vieth's Assessment Plat, thence Easterly along the South line of Vieth's Assessment Plat as extended Easterly for a distance of approximately 1185 feet to the Northeast corner of Lot 17 of Block 8 of Knottingham Unit 3, thence South 75 feet to the Southeast corner of Lot 17, thence West 145 feet to the Southwest corner of Lot 17 thence South along the West line of Block 8 of Knottingham Unit 3 to a point of intersection of said line with the North line of Manning Road, such point also being the Southwest corner of Lot 1 of Block 8 of Knottingham Unit 2, thence East along the South line of Lot 1, Block 8, Unit 2 and such line extended to the Southwest corner of Lot 1, Block 6 of Knottingham Unit 2, thence Easterly along the Southerly property lines of Lots 1 through 6 of Block 6 of Knottingham Unit 2, to the Southeasterly most corner of Lot 6, thence Northerly along the Easterly line of Lots 6 through 10 to a point of intersection with the Southwesterly corner of Lot 14, thence Easterly along the Southerly property lines of Lots 14 through 20 to a point of intersection with the Northwesterly corner of Lot 21, thence Southerly along the Westerly line of Lot 21 for a distance of 205.62 feet to the intersection of said Westerly line with the Northerly line of Plainfield Road, thence Easterly along the Northerly line of Plainfield Road to the East line of Williams Street, thence North along said East line to the point of intersection with the North line extended of Lot 27 of Block 3 of Knottingham Unit 1, thence Westerly along said North line of Lot 27 to the Northwest corner of Lot 27, thence South along the West line of Lot 27 to a point of intersection with the South line of Lot 5 of Block 3 of Knottingham Unit 2, thence Westerly along the South line of Lot 5 to the

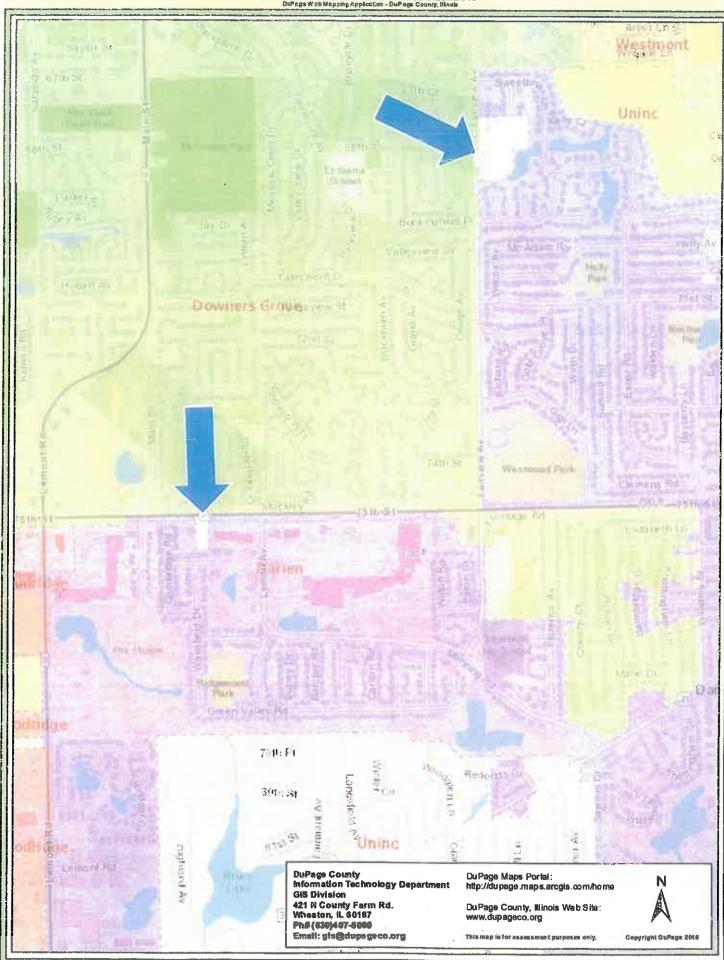
Southwest corner of said lot also being a point on the East right-of-way line of Knottingham Lane, thence North along the West line of said Lot 5 to the point of intersection with the Southerly Line of Lot 30, Block 4 of Knottingham Unit 2 extended, thence Westerly along said line to the Southwest corner of Lot 30, such point also being a point along the Easterly line of Lot 17 of Block 4 of Knottingham Unit 3, thence Southerly along such line to the Southeast corner of Lot 17, thence Westerly along the South line of Lot 17 to the Southwest corner of Lot 17 being a point on the Easterly right-of-way line of Baimbridge Drive, thence Northerly along the East line of Baimbridge Drive to a point on the West line of Lot 13, Block 4 being a point of intersection with the South line of Lot 35, Block 5 extended, thence Westerly along such line extended and along the South line of Lot 35 to the Southwest corner of said lot, thence Northerly along the West line of Lots 35, 36 and 37 to the Northwest corner of Lot 37, thence East along the North line of Lot 37 to the Northeast corner of said lot, thence South along the East line of Lot 37 to a point, said point being the intersection of the East line of Lot 37 with the North line of Lot 11, Block 4 extended, thence East along said extended line and the North line of Lot 11 to the Northeast corner of Lot 11, thence South along the East line of Lots 11, 12, 13, 14, 15, and 16 to a point on the East line of Lot 16 where it intersects with the North line of Lot 30, thence East along the North line of Lot 30 to the point of intersection with the West right-of-way line of Knottingham Lane, thence North along the West line of Knottingham Lane also being the Easterly property line of Lots 31, 32, 33, 34, 35, 36, and 37 to a point on the East line of Lot 37 being the intersection of said Easterly line with the Northerly line of Lot 10 of Block 2 of Knottingham Unit 1 extended, thence Easterly along such extended line and along the Northerly line of Lot 10 to the Easterly line of Lot 10, thence South along said East line to the Southeast corner of Lot 10 which is also the Southwest corner of Lot 15, thence East along the South line of Lot 15 and such line extended to the East right-of-way line of Williams Street, thence North on the East line to the point of intersection with the South line of Lot 16 extended, thence West along such line extended and along the South line of Lot 16 to the Southwest corner of said lot, thence North along the West line of Lot 16 to the Northwest corner, thence East along the North line and the North line extended to the East Line of the Williams Street right-of-way, thence North along the East line to the point of intersection with the South line of Lot 20 extended, thence West along said extended line and the south line of Lot 20 to the Southwest corner of Lot 20, thence North along the West line of Lot 20 to the Northwest corner of Lot 20, thence East along the North line of Lot 20 and such line extended to the East line of Williams Street, thence North along said East line to the intersection with the South line of Lot 1, Block 2, thence West along said South line extended and said South line to the Southwest corner of Lot 1, thence North along the West line to the Northwest corner of Lot 1, thence East along the North line of Lot 1 and said line extended to the East line of Williams Street, thence North along said East line and such line extended to the North right-of-way line of 75th Street, thence West along the North line of 75th Street to a point 1526.34 feet West of the East line of the West half of Section 28, thence South a distance of 438.38 feet to a point in the Northerly portion of Lot 2 of part of Varoni's Division of Lot 2 of Vieth's Assessment Plat such point being 238.38 feet South of the North property line and 36 feet West of the East line of said Lot 2, thence Westerly to the West line of said

Lot 2 a distance of 127.92 feet more or less, thence North to the North line of 75th Street, thence West along the North line of 75th Street to the East line of Fairview Avenue, thence North along the East line of Fairview Avenue to the point of intersection with the South line of the North half of Section 21, thence Easterly along said South line to the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 21 for a point of ending, all the aforedescribed being located in Township 38 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.

VILLAGE CLERK
VILLAGE OF DOWNERS GROVE
801 Burlington
Downers Grove, Illinois 60515

PROPOSED DARIEN-DOWNERS GROVE BOUNDARY AGREEMENT





RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL JURISDICTIONAL BOUNDARY LINE AGREEMENT WITH THE VILLAGE OF DOWNERS GROVE

WHEREAS, the City of Darien is a unit of local government as defined by Article VII, Section 1, of the 1970 Constitution of the State of Illinois; and

WHEREAS, as a unit of local government, Darien is enabled by Article VII, Section 10 of the 1970 Constitution of the State of Illinois to enter into agreements with other units of local government to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes municipalities to exercise jointly with any public agency of the State, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities and undertakings; and

WHEREAS, Darien and the Village of Downers Grove ("Parties") previously entered into a boundary agreement, dated August 13, 1990, with regard to the establishment of jurisdictional boundary lines pursuant to Section 11-12-9 of the Illinois Municipal Code (65 ILCS 5/11-12-9); and

WHEREAS, the Parties have determined that it is necessary and desirable to repeal and replace the August 13, 1990 Agreement, and, substitute in place, the Boundary Agreement, attached hereto as Exhibit A, and made a part hereof; and

WHEREAS, the City Council has reviewed the proposed Agreement (Exhibit A) and has determined that it is in the best interests of the City to repeal and replace the August 13, 1990 Agreement and enter into the proposed Agreement (Exhibit A) with the Village of Downers Grove.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, as follows:

SECTION 1: The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Resolution.

SECTION 2: The Mayor and City Clerk are hereby authorized and directed to execute the "Boundary Line Agreement", attached hereto as Exhibit A.

SECTION 3: The City Clerk is hereby authorized and directed to file a certified copy of this Resolution together with a fully executed copy of the Agreement, attached hereto as Exhibit

A, with the DuPage County of Recorder of Deeds.

SECTION 4: All prior agreements of the Parties as to any jurisdictional boundary line, and in particular, the Agreement entered into between the Parties on August 13, 1990 and recorded in the Office of the DuPage County Recorder of Deeds on August 15, 1990, are hereby repealed.

SECTION 5: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED AD APPROVED BY THE CITY COUNIL OF THE CIT OF DARIEN,

DUPAGE COUNTY, ILLINOIS, this _____ day of December, 2018.

AYES:	
NAYS:	<u> </u>
ABSENT:	
APPROVED BY THE MAYO	R OF THE CITY OF DARIEN, DUPAGE COUNTY
ILLINOIS, this day of December,	2018.
	KATHLEEN MOESLE WEAVER, MAYOR
ATTEST:	
JOANNE E. RAGONA, CITY CLERK	
APPROVED AS TO FORM:	
CITY ATTORNEY	

BOUNDARY LINE AGREEMENT

THIS AGREEMENT, made this	day of	, 2018 by and between the
Village of Downers Grove, a municipal corpora	ation of DuPage Co	ounty, Illinois (hereinafter called
"Downers Grove"), and the City of Darien, a m	unicipal corporation	n of DuPage County, Illinois (hereinafter
called "Darien"),		

WITNESSETH:

WHEREAS, Downers Grove and Darien are "units of local government" as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970; and

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves in order to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, Division 12 of Article II of the Illinois Municipal Code (65 ILCS '5/11-12-1 et seq.) confers upon the corporate authorities of municipalities certain powers respecting the subdivision and platting of land situated within their corporate limits and within contiguous territory which is not more than one and one-half miles beyond the corporate limits of a municipality that has adopted an official plan or map pursuant to the authority conferred by said Division; and

WHEREAS, Downers Grove and Darien recognize the need to provide for logical municipal boundaries and areas of municipal authority between their respective municipalities in order to plan effectively and efficiently for growth and potential development between their communities and conservation of available resources for their respective citizens; and

WHEREAS, Downers Grove and Darien have duly authorized plan commissions, created pursuant to authority granted in Division 12 of Article 11 of the Illinois Municipal Code, and have adopted official plans pursuant thereto; and

WHEREAS, there is unincorporated territory lying between the corporate limits of Downers Grove and the corporate limits of Darien, which territory is within one and one-half miles of the boundaries of Downers Grove and Darien; and

WHEREAS, Downers Grove and Darien have agreed upon a line marking the boundaries of the jurisdiction of their respective corporate authorities, pursuant to the authority granted in Section 11-12-9 of the Illinois Municipal Code; and

WHEREAS, Division 12 of Article 11 of the Illinois Municipal Code authorizes the corporate authorities of such municipalities to agree upon a line marking the boundaries of the jurisdiction of each of such corporate authorities for certain purposes; and

WHEREAS, the Parties previously entered into a boundary line agreement dated August 13, 1990 with regard to the establishment of jurisdictional boundary lines; and

WHEREAS, the Parties have determined that it is necessary and desirable to repeal and replace the August 13, 1990 Agreement and, substitute in place, this inclusive Agreement; and

WHEREAS, the corporate authorities of Downers Grove and Darien have determined that it will be in the best interests of each of said municipalities and the citizens thereof to enter into an agreement establishing a boundary line pursuant to the foregoing authority, and have given consideration to the natural flow of storm water drainage and, to the extent practical, the inclusion of all of any single tract having common ownership within the jurisdiction of one or the other of said municipalities; and

WHEREAS, Downers Grove and Darien have authorized the execution of this Agreement as an exercise of their respective authority and as an exercise of their intergovernmental cooperation authority under Article VII, section 10 of the Constitution of Illinois; and pursuant to 65 ILCS 5/1-1-5 and 5 ILCS 220/1 et seq and, for Downers Grove, pursuant to its home rule authority.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, and pursuant to the authority of said municipalities referred to above, the Village of Downers Grove and the City of Darien hereby agree as follows:

- 1. The provisions of the preamble hereinabove set forth are hereby restated herein as though herein fully set forth.
- 2. The boundary line (the "Boundary Line") legally described in Exhibit "A" attached hereto, and depicted on the map attached hereto as Exhibit "B", is hereby approved and adopted by Downers Grove and Darien for all purposes of this Agreement, and specifically for municipal government planning, subdivision control, official maps, ordinances and other municipal purposes.
- 3. It is the intention of both municipalities to honor the Boundary Line in effecting future annexations of territory that is presently unincorporated. Without the prior written consent of the other municipality to the contrary, Downers Grove will not annex any territory within the jurisdiction of Darien and southerly and easterly of the Boundary Line described in paragraph 1 hereof, and Darien will not annex any territory within the jurisdiction of Downers Grove and northerly and westerly of the Boundary Line described in paragraph 1 hereof.
- 4. Darien hereby transfers to Downers Grove all powers, authority and jurisdiction which it may have northerly and westerly of the Boundary Line, and Downers Grove hereby

- transfers to Darien all powers, authority and jurisdiction which it may have southerly and easterly of the Boundary Line.
- 5. This Agreement shall not be construed so as to limit or adversely affect the right of either municipality to file a statutory objection or to take other lawful action to oppose proposed rezonings within one and one-half miles of its corporate limits or to oppose zoning in any lawful manner within the other municipality.
- 6. This Agreement shall be binding upon, and shall apply only to relations between Downers Grove and Darien. Nothing herein shall be used or construed to affect, limit or invalidate the boundary claims of either Downers Grove or Darien insofar as such claims shall relate to any municipality which is not a party to this Agreement.
- 7. This Agreement shall be in full force and effect from and after the copies hereof, certified by the Clerks of the respective municipalities, have been filed in the Office of the Recorder of Deeds of DuPage County, Illinois, and placed on file in the Office of the Clerk of each such municipality.
- 8. This Agreement for a jurisdictional boundary line shall be valid for a period of twenty (20) years from the date hereof, and may thereafter be extended, renewed or revised for additional terms by agreement of the parties.
- 9. Neither Downers Grove nor Darien shall directly or indirectly seek any modification of this Agreement through court action, and this Agreement shall remain in full force and effect until amended or changed by the mutual agreement of both respective corporate authorities, or until the end of its term, as the same may be extended, pursuant to paragraph 8 hereof.
- 10. The provisions of this Agreement are intended to be severable, and the invalidity or unenforceability of any one or more of such provisions shall not be deemed to impair or affect the validity or enforceability of any other provision hereof.
- 11. This Agreement shall be construed in accordance with the laws of the State of Illinois.
- 12. That all prior agreements of the parties as to any jurisdictional boundary line, and in particular the agreement entered between the parties on August 13, 1990 and recorded in the Office of the DuPage County Recorder on August 15, 1990, are hereby repealed.

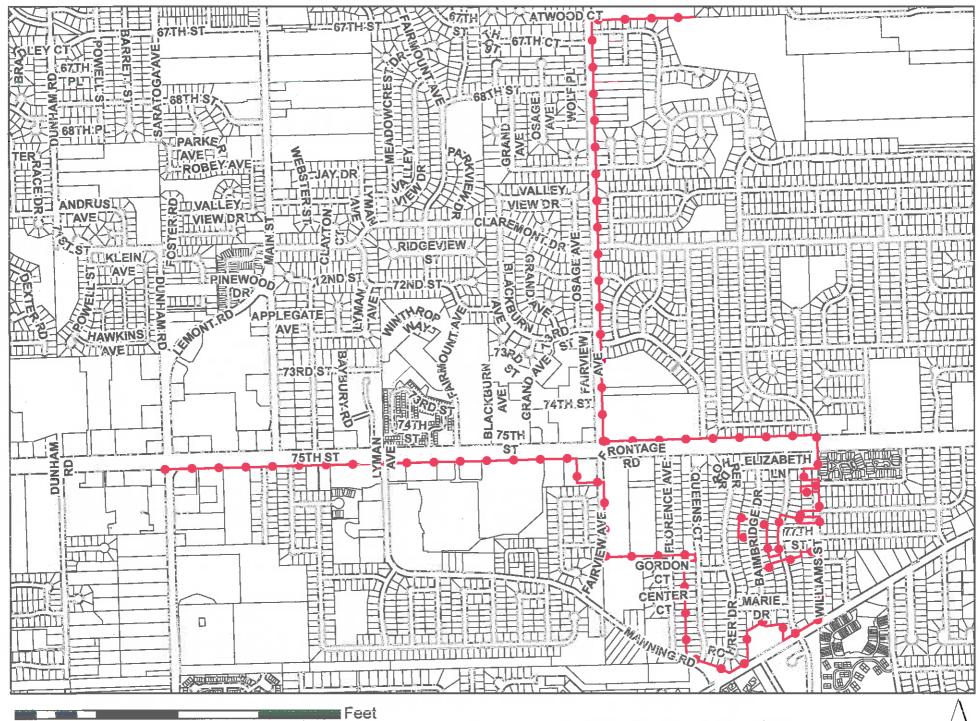
IN WITNESS WHEREOF, Downers Grove and Darien have caused this Agreement to be executed by their respective Mayors, and attested by their respective Village Clerks, with their corporate scals hereunto affixed, as of the day and year first above written.

VILLAGE OF DOWNERS GROVE	CITY OF DARIEN
BY:	BY:
ATTEST:	ATTEST:
Village Clerk	City Clerk

EXHIBIT A

Commencing at the intersection of the centerline of Lemont Road with the Northerly right-of-way of United States Interstate Highway 55, in Downers Grove Township, for a point of beginning, thence Northerly along said centerline to a point 888.56 feet South of the Northwest corner of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 33.0 feet from the centerline of Lemont Road to a point, thence Northerly 38.56 feet to a point, thence Easterly 17.0 feet to the East right-of-way of Lemont Road, thence Northerly 205.0 feet along said East right-of-way to a point, such point being the intersection of said East right-of-way with the South line of the North 645.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 315.0 feet along said South line to the East line of the West 365.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence North 545.0 feet to the South line of 75th Street, such line being 100 feet South of the North line of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly along said South line of 75th Street for a distance of 4,904 feet more or less to a point, said point being the Northwest corner of Parcel 09-29-400-015 being a parcel of 1.71 acres located in the Southeast Quarter of Section 29, thence South along the West line of said 1.71 acre parcel or 402.83 feet, thence Easterly 366 feet to the East right-of-way line of Fairview Avenue, thence South a distance of 910 feet along said East right-of-way line of Fairview Avenue as dedicated by Document R74-00398 located in the Southwest Quarter of Section 28 to a point, said point being the Southwest corner of Vieth's Assessment Plat, thence Easterly along the South line of Vieth's Assessment Plat as extended Easterly for a distance of approximately 1185 feet to the Northeast corner of Lot 17 of Block 8 of Knottingham Unit 3, thence South 75 feet to the Southeast corner of Lot 17, thence West 145 feet to the Southwest corner of Lot 17 thence South along the West line of Block 8 of Knottingham Unit 3 to a point of intersection of said line with the North line of Manning Road, such point also being the Southwest corner of Lot 1 of Block 8 of Knottingham Unit 2, thence East along the South line of Lot 1, Block 8, Unit 2 and such line extended to the Southwest corner of Lot 1, Block 6 of Knottingham Unit 2, thence Easterly along the Southerly property lines of Lots 1 through 6 of Block 6 of Knottingham Unit 2, to the Southeasterly most corner of Lot 6, thence Northerly along the Easterly line of Lots 6 through 10 to a point of intersection with the Southwesterly corner of Lot 14, thence Easterly along the Southerly property lines of Lots 14 through 20 to a point of intersection with the Northwesterly corner of Lot 21, thence Southerly along the Westerly line of Lot 21 for a distance of 205.62 feet to the intersection of said Westerly line with the Northerly line of Plainfield Road, thence Easterly along the Northerly line of Plainfield Road to the East line of Williams Street, thence North along said East line to the point of intersection with the North line extended of Lot 27 of Block 3 of Knottingham Unit 1, thence Westerly along said North line of Lot 27 to the Northwest corner of Lot 27, thence South along the West line of Lot 27 to a point of intersection with the South line of Lot 5 of Block 3 of Knottingham Unit 2, thence Westerly along the South line of Lot 5 to the Southwest corner of said lot also being a point on the East right-of-way line of Knottingham Lane, thence North along the West line of said Lot 5 to the point of intersection with the Southerly Line of Lot 30, Block 4 of Knottingham Unit 2 extended, thence Westerly along said line to the Southwest corner of Lot 30, such point also being a point along the Easterly line of Lot 17 of Block 4 of Knottingham Unit 3, thence Southerly along such line to the Southeast corner of Lot 17, thence Westerly along the South line of Lot 17 to the Southwest corner of Lot 17 being a point on the Easterly right-of-way line of Baimbridge Drive, thence Northerly along the East line of Baimbridge Drive to a point on the West line of Lot 13, Block 4 being a point of intersection with the South line of Lot 35, Block 5 extended, thence Westerly along such line extended and along the South line of Lot 35 to the Southwest corner of said lot, thence Northerly along the West line of Lots 35, 36 and 37 to the Northwest corner of Lot 37, thence East along the North line of Lot 37 to the Northeast corner of said lot, thence South along the East line of Lot 37 to a point, said point being the intersection of the East line of Lot 37

with the North line of Lot 11, Block 4 extended, thence East along said extended line and the North line of Lot 11 to the Northeast corner of Lot 11, thence South along the East line of Lots 11, 12, 13, 14, 15, and 16 to a point on the East line of Lot 16 where it intersects with the North line of Lot 30, thence East along the North line of Lot 30 to the point of intersection with the West right-of-way line of Knottingham Lane, thence North along the West line of Knottingham Lane also being the Easterly property line of Lots 31, 32, 33, 34, 35, 36, and 37 to a point on the East line of Lot 37 being the intersection of said Easterly line with the Northerly line of Lot 10 of Block 2 of Knottingham Unit 1 extended, thence Easterly along such extended line and along the Northerly line of Lot 10 to the Easterly line of Lot 10, thence South along said East line to the Southeast corner of Lot 10 which is also the Southwest corner of Lot 15, thence East along the South line of Lot 15 and such line extended to the East right-of-way line of Williams Street, thence North on the East line to the point of intersection with the South line of Lot 16 extended, thence West along such line extended and along the South line of Lot 16 to the Southwest corner of said lot, thence North along the West line of Lot 16 to the Northwest corner, thence East along the North line and the North line extended to the East Line of the Williams Street right-of-way, thence North along the East line to the point of intersection with the South line of Lot 20 extended, thence West along said extended line and the south line of Lot 20 to the Southwest corner of Lot 20, thence North along the West line of Lot 20 to the Northwest corner of Lot 20, thence East along the North line of Lot 20 and such line extended to the East line of Williams Street, thence North along said East line to the intersection with the South line of Lot 1, Block 2, thence West along said South line extended and said South line to the Southwest corner of Lot 1, thence North along the West line to the Northwest corner of Lot 1, thence East along the North line of Lot 1 and said line extended to the East line of Williams Street, thence North along said East line and such line extended to the North right-of-way line of 75th Street, thence West along the North line of 75th Street to a point 1526.34 feet West of the East line of the West half of Section 28, thence South a distance of 438.38 feet to a point in the Northerly portion of Lot 2 of part of Varoni's Division of Lot 2 of Vieth's Assessment Plat such point being 238.38 feet South of the North property line and 36 feet West of the East line of said Lot 2, thence Westerly to the West line of said Lot 2 a distance of 127. 92 feet more or less, thence North to the North line of 75th Street, thence West along the North line of 75th Street to the East line of Fairview Avenue, thence North along the East line of Fairview Avenue to the point of intersection with the South line of the North half of Section 21, thence Easterly along said South line to the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 21 for a point of ending, all the aforedescribed being located in Township 38 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.



BOUNDARY LINE AGREEMENT

THIS AGREEMENT, made this	day of	, 2018 by and between the
Village of Downers Grove, a municipal corpora	tion of DuPage (County, Illinois (hereinafter called
"Downers Grove"), and the City of Darien, a mi	unicipal corporat	tion of DuPage County, Illinois (hereinafter
called "Darien"),		

WITNESSETH:

WHEREAS, Downers Grove and Darien are "units of local government" as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970; and

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves in order to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, Division 12 of Article II of the Illinois Municipal Code (65 ILCS '5/11-12-1 et seq.) confers upon the corporate authorities of municipalities certain powers respecting the subdivision and platting of land situated within their corporate limits and within contiguous territory which is not more than one and one-half miles beyond the corporate limits of a municipality that has adopted an official plan or map pursuant to the authority conferred by said Division; and

WHEREAS, Downers Grove and Darien recognize the need to provide for logical municipal boundaries and areas of municipal authority between their respective municipalities in order to plan effectively and efficiently for growth and potential development between their communities and conservation of available resources for their respective citizens; and

WHEREAS, Downers Grove and Darien have duly authorized plan commissions, created pursuant to authority granted in Division 12 of Article 11 of the Illinois Municipal Code, and have adopted official plans pursuant thereto; and

WHEREAS, there is unincorporated territory lying between the corporate limits of Downers Grove and the corporate limits of Darien, which territory is within one and one-half miles of the boundaries of Downers Grove and Darien; and

WHEREAS, Downers Grove and Darien have agreed upon a line marking the boundaries of the jurisdiction of their respective corporate authorities, pursuant to the authority granted in Section 11-12-9 of the Illinois Municipal Code; and

WHEREAS, Division 12 of Article 11 of the Illinois Municipal Code authorizes the corporate authorities of such municipalities to agree upon a line marking the boundaries of the jurisdiction of each of such corporate authorities for certain purposes; and

WHEREAS, the Parties previously entered into a boundary line agreement dated August 13, 1990 with regard to the establishment of jurisdictional boundary lines; and

WHEREAS, the Parties have determined that it is necessary and desirable to repeal and replace the August 13, 1990 Agreement and, substitute in place, this inclusive Agreement; and

WHEREAS, the corporate authorities of Downers Grove and Darien have determined that it will be in the best interests of each of said municipalities and the citizens thereof to enter into an agreement establishing a boundary line pursuant to the foregoing authority, and have given consideration to the natural flow of storm water drainage and, to the extent practical, the inclusion of all of any single tract having common ownership within the jurisdiction of one or the other of said municipalities; and

WHEREAS, Downers Grove and Darien have authorized the execution of this Agreement as an exercise of their respective authority and as an exercise of their intergovernmental cooperation authority under Article VII, section 10 of the Constitution of Illinois; and pursuant to 65 ILCS 5/1-1-5 and 5 ILCS 220/1 et seq and, for Downers Grove, pursuant to its home rule authority.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, and pursuant to the authority of said municipalities referred to above, the Village of Downers Grove and the City of Darien hereby agree as follows:

- 1. The provisions of the preamble hereinabove set forth are hereby restated herein as though herein fully set forth.
- The boundary line (the "Boundary Line") legally described in Exhibit "A" attached hereto, and depicted on the map attached hereto as Exhibit "B", is hereby approved and adopted by Downers Grove and Darien for all purposes of this Agreement, and specifically for municipal government planning, subdivision control, official maps, ordinances and other municipal purposes.
- 3. It is the intention of both municipalities to honor the Boundary Line in effecting future annexations of territory that is presently unincorporated. Without the prior written consent of the other municipality to the contrary, Downers Grove will not annex any territory within the jurisdiction of Darien and southerly and easterly of the Boundary Line described in paragraph 1 hereof, and Darien will not annex any territory within the jurisdiction of Downers Grove and northerly and westerly of the Boundary Line described in paragraph 1 hereof.
- 4. Darien hereby transfers to Downers Grove all powers, authority and jurisdiction which it may have northerly and westerly of the Boundary Line, and Downers Grove hereby

- transfers to Darien all powers, authority and jurisdiction which it may have southerly and easterly of the Boundary Line.
- 5. This Agreement shall not be construed so as to limit or adversely affect the right of either municipality to file a statutory objection or to take other lawful action to oppose proposed rezonings within one and one-half miles of its corporate limits or to oppose zoning in any lawful manner within the other municipality.
- 6. This Agreement shall be binding upon, and shall apply only to relations between Downers Grove and Darien. Nothing herein shall be used or construed to affect, limit or invalidate the boundary claims of either Downers Grove or Darien insofar as such claims shall relate to any municipality which is not a party to this Agreement.
- 7. This Agreement shall be in full force and effect from and after the copies hereof, certified by the Clerks of the respective municipalities, have been filed in the Office of the Recorder of Deeds of DuPage County, Illinois, and placed on file in the Office of the Clerk of each such municipality.
- 8. This Agreement for a jurisdictional boundary line shall be valid for a period of twenty (20) years from the date hereof, and may thereafter be extended, renewed or revised for additional terms by agreement of the parties.
- 9. Neither Downers Grove nor Darien shall directly or indirectly seek any modification of this Agreement through court action, and this Agreement shall remain in full force and effect until amended or changed by the mutual agreement of both respective corporate authorities, or until the end of its term, as the same may be extended, pursuant to paragraph 8 hereof.
- 10. The provisions of this Agreement are intended to be severable, and the invalidity or unenforceability of any one or more of such provisions shall not be deemed to impair or affect the validity or enforceability of any other provision hereof.
- 11. This Agreement shall be construed in accordance with the laws of the State of Illinois.
- 12. That all prior agreements of the parties as to any jurisdictional boundary line, and in particular the agreement entered between the parties on August 13, 1990 and recorded in the Office of the DuPage County Recorder on August 15, 1990, are hereby repealed.

IN WITNESS WHEREOF, Downers Grove and Darien have caused this Agreement to be executed by their respective Mayors, and attested by their respective Village Clerks, with their corporate seals hereunto affixed, as of the day and year first above written.

VILLAGE OF DOWNERS GROVE	CITY OF DARIEN	
BY:	BY:	_
ATTEST:	ATTEST:	
Village Clerk	City Clerk	_
Nmw/sor 19/Derien Roundary Line		

EXHIBIT A

Commencing at the intersection of the centerline of Lemont Road with the Northerly right-of-way of United States Interstate Highway 55, in Downers Grove Township, for a point of beginning, thence Northerly along said centerline to a point 888.56 feet South of the Northwest corner of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 33.0 feet from the centerline of Lemont Road to a point, thence Northerly 38.56 feet to a point, thence Easterly 17.0 feet to the East right-of-way of Lemont Road, thence Northerly 205.0 feet along said East right-of-way to a point, such point being the intersection of said East right-of-way with the South line of the North 645.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly 315.0 feet along said South line to the East line of the West 365.0 feet of the Northwest Quarter of the Southwest Quarter of Section 29, Township 38 North, Range 11, East of the Third Principal Meridian, thence North 545.0 feet to the South line of 75th Street, such line being 100 feet South of the North line of the Southwest Ouarter of Section 29. Township 38 North, Range 11, East of the Third Principal Meridian, thence Easterly along said South line of 75th Street for a distance of 4,904 feet more or less to a point, said point being the Northwest corner of Parcel 09-29-400-015 being a parcel of 1.71 acres located in the Southeast Quarter of Section 29, thence South along the West line of said 1.71 acre parcel or 402.83 feet, thence Easterly 366 feet to the East right-of-way line of Fairview Avenue, thence South a distance of 910 feet along said East right-of-way line of Fairview Avenue as dedicated by Document R74-00398 located in the Southwest Quarter of Section 28 to a point, said point being the Southwest corner of Vieth's Assessment Plat, thence Easterly along the South line of Vieth's Assessment Plat as extended Easterly for a distance of approximately 1185 feet to the Northeast corner of Lot 17 of Block 8 of Knottingham Unit 3, thence South 75 feet to the Southeast corner of Lot 17, thence West 145 feet to the Southwest corner of Lot 17 thence South along the West line of Block 8 of Knottingham Unit 3 to a point of intersection of said line with the North line of Manning Road, such point also being the Southwest corner of Lot 1 of Block 8 of Knottingham Unit 2, thence East along the South line of Lot 1, Block 8, Unit 2 and such line extended to the Southwest corner of Lot 1, Block 6 of Knottingham Unit 2, thence Easterly along the Southerly property lines of Lots 1 through 6 of Block 6 of Knottingham Unit 2, to the Southeasterly most corner of Lot 6, thence Northerly along the Easterly line of Lots 6 through 10 to a point of intersection with the Southwesterly corner of Lot 14, thence Easterly along the Southerly property lines of Lots 14 through 20 to a point of intersection with the Northwesterly corner of Lot 21, thence Southerly along the Westerly line of Lot 21 for a distance of 205.62 feet to the intersection of said Westerly line with the Northerly line of Plainfield Road, thence Easterly along the Northerly line of Plainfield Road to the East line of Williams Street, thence North along said East line to the point of intersection with the North line extended of Lot 27 of Block 3 of Knottingham Unit 1, thence Westerly along said North line of Lot 27 to the Northwest corner of Lot 27, thence South along the West line of Lot 27 to a point of intersection with the South line of Lot 5 of Block 3 of Knottingham Unit 2, thence Westerly along the South line of Lot 5 to the Southwest corner of said lot also being a point on the East right-of-way line of Knottingham Lane, thence North along the West line of said Lot 5 to the point of intersection with the Southerly Line of Lot 30, Block 4 of Knottingham Unit 2 extended, thence Westerly along said line to the Southwest corner of Lot 30, such point also being a point along the Easterly line of Lot 17 of Block 4 of Knottingham Unit 3, thence Southerly along such line to the Southeast corner of Lot 17, thence Westerly along the South line of Lot 17 to the Southwest corner of Lot 17 being a point on the Easterly right-of-way line of Baimbridge Drive, thence Northerly along the East line of Baimbridge Drive to a point on the West line of Lot 13, Block 4 being a point of intersection with the South line of Lot 35, Block 5 extended, thence Westerly along such line extended and along the South line of Lot 35 to the Southwest corner of said lot, thence Northerly along the West line of Lots 35, 36 and 37 to the Northwest corner of Lot 37, thence East along the North line of Lot 37 to the Northeast corner of said lot, thence South along the East line of Lot 37 to a point, said point being the intersection of the East line of Lot 37

with the North line of Lot 11, Block 4 extended, thence East along said extended line and the North line of Lot 11 to the Northeast corner of Lot 11, thence South along the East line of Lots 11, 12, 13, 14, 15, and 16 to a point on the East line of Lot 16 where it intersects with the North line of Lot 30, thence East along the North line of Lot 30 to the point of intersection with the West right-of-way line of Knottingham Lane, thence North along the West line of Knottingham Lane also being the Easterly property line of Lots 31, 32, 33, 34, 35, 36, and 37 to a point on the East line of Lot 37 being the intersection of said Easterly line with the Northerly line of Lot 10 of Block 2 of Knottingham Unit 1 extended, thence Easterly along such extended line and along the Northerly line of Lot 10 to the Easterly line of Lot 10, thence South along said East line to the Southeast corner of Lot 10 which is also the Southwest corner of Lot 15, thence East along the South line of Lot 15 and such line extended to the East right-of-way line of Williams Street, thence North on the East line to the point of intersection with the South line of Lot 16 extended, thence West along such line extended and along the South line of Lot 16 to the Southwest corner of said lot, thence North along the West line of Lot 16 to the Northwest corner, thence East along the North line and the North line extended to the East Line of the Williams Street right-of-way, thence North along the East line to the point of intersection with the South line of Lot 20 extended, thence West along said extended line and the south line of Lot 20 to the Southwest corner of Lot 20, thence North along the West line of Lot 20 to the Northwest corner of Lot 20, thence East along the North line of Lot 20 and such line extended to the East line of Williams Street, thence North along said East line to the intersection with the South line of Lot 1, Block 2, thence West along said South line extended and said South line to the Southwest corner of Lot 1, thence North along the West line to the Northwest corner of Lot 1, thence East along the North line of Lot 1 and said line extended to the East line of Williams Street, thence North along said East line and such line extended to the North right-of-way line of 75th Street, thence West along the North line of 75th Street to a point 1526.34 feet West of the East line of the West half of Section 28, thence South a distance of 438.38 feet to a point in the Northerly portion of Lot 2 of part of Varoni's Division of Lot 2 of Vieth's Assessment Plat such point being 238.38 feet South of the North property line and 36 feet West of the East line of said Lot 2, thence Westerly to the West line of said Lot 2 a distance of 127, 92 feet more or less, thence North to the North line of 75th Street, thence West along the North line of 75th Street to the East line of Fairview Avenue, thence North along the East line of Fairview Avenue to the point of intersection with the South line of the North half of Section 21, thence Easterly along said South line to the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 21 for a point of ending, all the aforedescribed being located in Township 38 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.

AGENDA MEMO MUNICIPAL SERVICES COMMITTEE November 26, 2018

Issue Statement

Staff is requesting consideration of an amendment to the Sign Code regarding amortization in the Rt. 83 corridor.

Background

In 1994 the City amended the Sign Code Title 4 Chapter 3 to require amortization of all legal non-conforming signs within 15 years. Amortization is a term borrowed from property valuation and tax lexicon that refers to the depreciation and useful life of a piece of property. In sign codes, it is used to specify when signs must be removed or replaced that were conforming when they were constructed but became non-conforming when the code standards were changed to be more restrictive. The purpose of sign amortization is to get rid of undesirable signs but give the sign owner time to get value from the sign and to budget for the cost of sign replacement. However, that regulatory strategy of sign amortization is no longer popular because of the useful period of most signs is longer than 15 years, the cost of replacement can be a burden on small businesses, such signs may no longer be seen as undesirable, and possible legal challenge.

Starting in 2007, the City staff did a comprehensive study of all non-conforming signs in all the business districts. The Planning and Development Committee reviewed the findings and public comments and decided to eliminate the amortization requirement for all signs. See Attachment A: Agenda Memo 3.31.08 and Attachment B: Subsequent Committee Minutes. A different regulatory strategy was preferred that being that non-conforming signs would be more gradually phased out when businesses changed and wanted a new sign or when properties were redeveloped or when the sign wore out or was damaged. So, the amortization requirement in one part of the code was eliminated. See Attachment C: Ordinance O-29-08. However, the same amortization requirement appears in another section of the code for signs on Rt.83. See Attachment D: Code Section 4-3-17 (A) 1. This section was apparently inadvertently not eliminated as directed by Committee when Ordinance 0-29-08 was drafted.

There are 5 free-standing signs in front of business along Rt.83 in Darien. They all have been constructed relatively recently and they conform to current code except for one that is non-conforming and has reached the end of its amortization period. See <u>Attachment E: Sign Photo</u>. The Darien Auto Center sign at 6710-22 Rt.83 is 29' tall, where 12' is the current standard. This sign is smaller than the two newest signs on Rt.83 in Willowbrook – the Pete's sign at 6900 Rt.83 and the Willowbrook Town Center sign at 7100 Rt.83. The Darien Auto Center would like to apply for a variation to replace one panel of their sign with an electronic message but they cannot apply because of the amortization requirement.

Staff Recommendation

Amend the sign code to correct the previous oversight by eliminating the amortization requirement in Section 4-3-1-7 (A) 1 for signs in the Rt.83 corridor.

Decision Mode

If the MSC so directs, we can prepare an ordinance amending the sign code and bring it back to MSC for review at your next meeting.

AGENDA MEMO PLANNING AND DEVELOPMENT COMMITTEE MEETING DATE: March 31, 2008

Issue Statement

Sign Amortization: Update, discussion.

Planning Overview/ Discussion

The Sign Code, Section 4-3 of the City Code, was adopted in 1994. The Sign Code provides for a 15 year amortization of non-conforming signs. That is, non-conforming signs are required to be brought into compliance by 2009 (1994 + 15 = 2009). This requirement does not apply in cases where the City has granted variations.

The following *preliminary list* contains properties that have signs which staff has estimated do not comply with the Sign Code (height, area, location, number of signs). Staff is still verifying whether relief has been granted for these signs and there will be excluded from the amortization requirement. Staff has only looked at permanently fixed signs, including free-standing signs (pole signs, monument signs, ground signs) and wall signs (signs permanently affixed to building facades).

75th Street:

Chestnut Court Shopping Center
Chuck's Import & Domestic Auto Service
Hareldson's Automotive
Lord of Life Lutheran Church
Mi Hacienda / E & L Carpet
Republic Bank
Snyder Insurance
West Suburban Bank
Wolf Camera

Bailey Road:

Carmelite Spiritual Center Carmelite Village

Cass Avenue:

Alpine Banquets Charter House Grill Citizens Financial Bank Concord/Cass Office Building Heritage Plaza Jewel/Osco shopping center Kinder Care

Model Funeral Home

Office park behind Darien Plaza

Pammy's Phillips 66 Popeye's

Shell service station

Speedway

St. John Lutheran Church

Taco Bell

West Suburban Bank

Lemont Road:

8121-23 Lemont Road

AAAA Towing

Shell/Circle K service station

Speedway

N. Frontage Road:

Carmelite-Darien Offices
Carriage Green Golf Course

Darien Office/Warehouse (vacant land)
Dry Dock
Grace Baptist Church
Society of The Little Flower
Wight & Co.

Plainfield Road:

1310 Plainfield Road office buildings
Broosters Chicken
Citgo
Darien Animal Clinic
Day care center @ Adams
Dr. Davis' property
Hinsbrook Center
Hinsbrook Professional Building II
Marion Hills Bible Church
Our Lady of Peace

Route 83:

Auto Mall (where Merlin's is located) Butternut Bakery The Patio

S. Frontage Road: Vision Trucking

Planning and Development Committee Review - January 28, 2008

The Planning and Development Committee considered this matter at its meeting on January 28, 2008. The following members were present: Alderman Sylvia McIvor – Chairman, Alderman Joseph Marchese, Alderman John Poteraske, Dan Gombac – Director, Michael Griffith – Senior Planner and Elizabeth Lahey – Secretary.

Michael Griffith, Senior Planner, briefly reviewed the staff agenda memo. He stated that memo has a preliminary list of properties which staff estimates has signs which do not comply with the Sign Code.

Alderman Poteraske asked if the City really wants to do this. He stated that this appeared to be a waste of time and wanted to know the benefit.

Alderman Marchese suggested sending a letter to the business' to explain the matter and to inform them that if they change signage in the future it will have to comply.

Mr. Griffith stated that he does not think any business knows about the amortization requirement and would be confused by such a letter. He stated the Sign Code provides rules on how nonconforming signs are handled regardless of the amortization.

The Committee discussed whether the amortization should proceed and what steps would be necessary to eliminate the requirement. Dan Gombac, Director, stated that staff would look into what would be required to eliminate this requirement and report back to the Committee.

There was not anyone from the public to comment.

Staff Comments - Planning and Development Committee February 25, 2008, meeting

The Sign Code provides the following definitions:

Building Frontage: The linear length of the outside building wall facing the public right-of-way or the linear length of the outside building wall facing a parking area which serves as the primary access for the subject use.

Free-standing sign: A sign which is ground mounted or supported by one or more columns, uprights, or braces in or upon the ground, not attached to or forming part of a building.

Ground (monument) sign: A sign which is supported by uprights or braces or some object on the ground, with no more than three (3) feet of clear space between the bottom of the face of the sign and the grade beneath the sign face.

Maintenance: For the purposes of this sign code, the cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

Pole sign: Any business sign having a support structure with a size less than twenty-five (25) percent of the total width of the sign with more than ten (10) feet of clear space between the bottom of the face of the sign and the grade beneath the sign.

The Sign Code allows the following free-standing signs within business zoning district, Section 4-3-10(B):

Not more than one ground sign per street frontage, provided that no individual business or shopping center utilizing a pole sign as permitted by this sign code shall erect or maintain any ground sign. Manual changeable copy signs not exceeding forty (40) percent of the sign area may be included on a ground sign, provided that all individual letters shall be uniform in height, style, and color, and provided the message is enclosed in a locking case. The area of a permitted ground sign shall

be limited to sixty (60) square feet per side. The highest point on such a ground sign shall not exceed twelve (12) feet above grade.

The Sign Code provides the following regulations when it comes to nonconforming signs:

4-3-11: NONCONFORMING SIGNS:

All signs presently erected and maintained in the City as of the effective date of this sign code, or which shall come to be located within the corporate limits of the City by virtue of any annexation after the effective date, shall be subject to the following regulations:

- (A) Legal Signs: All signs existing within the corporate limits of the City as of the effective date of this sign code or which shall become subject to the terms of this sign code by reason of annexation and which shall be in compliance with the regulations set forth herein, shall be considered to be legal signs and shall hereafter be owned, operated and maintained in conformance with the regulations contained herein.
- (B) Legal Nonconforming Signs: Any sign which existed lawfully on the effective date of this sign code and which remains or becomes nonconforming by reason of adoption of this sign code or because of subsequent amendments thereto, or which shall become nonconforming by reason of the annexation to the City of the lot or parcel on which said sign is located, shall be considered a legal nonconforming sign and the continuance of such use shall be only as hereinafter permitted:
 - 1. Amortization Period: Fifteen (15) years from and after the effective date of this sign code, all legal nonconforming signs shall be removed and eliminated. Said fifteen (15) year period shall for all purposes be deemed an appropriate amortization period for each and every legal nonconforming sign presently located within the corporate limits of the City or hereinafter located within the City by reason of the annexation into the City of the lot or parcel on which the sign is located.
 - A nonconforming sign, prior to the exhaustion of the amortization period set forth for in subsection (B)1 of this Section is subject to the following restrictions:
 - (a) Ordinary repairs and maintenance, including the removing and replacing of the outer panels shall be permitted, provided, that no structural alterations or other work shall

- appreciably extend the normal life of the legal nonconforming sign.
- (b) No repair or alteration which increases the size of the legal nonconforming sign shall be permitted. No substitution, through repair or alteration, of any elements of the sign, which causes such sign to be classified as nonconforming, for another such element, shall be permitted.
- (c) No legal nonconforming sign shall be moved in whole or in part to any other location on the same or any other premises unless every portion of such sign is made to conform to all of the regulations of this sign code.
- (d) A legal nonconforming sign which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed fifty percent (50%) of the cost of replacement of the entire sign shall not be restored unless said sign shall conform to all of the regulations of this sign code. In the event that such damage or destruction is less than fifty percent (50%) of the cost of restoration of the sign to the condition in which it was before the occurrence of damage or destruction, no repairs or reconstruction shall be made unless such restoration is started within thirty (30) days from the date of such damage or destruction, and, provided further, that completion is accomplished within three (3) months from the date of such damage or destruction.
- (e) If the restoration is not started within thirty (30) days from the date of such damage or destruction, and diligently prosecuted to completion, the sign shall be removed.
- (f) If a legal nonconforming sign is located on property which is sold, and when the full ownership is transferred by deed, the legal nonconforming sign shall be discontinued at the time of the deed transfer. If the ownership of a business changes, which does not affect the ownership of the property in which the business is located, the legal nonconforming sign shall be discontinued.
- (g) If a legal nonconforming sign is abandoned or discontinued for a continuous period of ninety (90) days, it shall not be

> renewed, and any subsequent sign shall conform to all of the requirements of this sign code. (Ord. 0-38-94, 9-6-1994)

Staff has reviewed the list of properties with nonconforming signs noted in the January 28, 2008, agenda memo. Staff has reviewed sign and building permit files, zoning approval and annexation agreement files for each of the properties.

To the best of staff's knowledge, the following properties contain signs which do not comply with the current Sign Code and for which are not covered by a variation, PUD or Annexation Agreement approval. Properties removed from the list are shown as "stricken." The following signs do not conform for a variety of reasons:

75th Street:

Chestnut Court Shopping Center

Chuck's Import & Domestic Auto Service......Free-standing sign too tall, too close to

driveway.

Wall signs on building facade which are not

the business frontage.

Hareldson's Automotive

Lord of Life Lutheran Church Free-standing sign too large.

Mi Hacienda / E & L Carpet......Free-standing sign too tall.

Republic Bank......Free-standing sign has electronic message

board.

Snyder Insurance......Free-standing sign too tall.

Wall signs on building façade not considered

their business frontage.

West Suburban Bank

Wolf Camera..... Free-standing sign too tall, appears to be too

close to driveway entrance.

Bailey Road:

Carmelite Spiritual Center/Village...... More than one free-standing sign on a lot,

free-standing sign too large, directional sign too

tall and too large.

Cass Avenue:

Alpine Banquets..... Free-standing sign too tall, also appears too

large and too close to driveway, limited

information found in files.

Charter House Grill.....appears too close to street.

Citizens Financial Bank.....appears too close to street. Concord/Cass Office Building Heritage Plaza.....Free-standing sign too tall, too large, appears to be too close to front lot line. Jewel/Osco shopping center..... Free-standing signs too tall, too large. Kinder Care **Model Funeral Home** Office park behind Darien Plaza......Free-standing sign too tall, too close to driveway entrance. Pammy's the time the permit was issued in 2004, staff had determined the Code to allow LED display as long as the copy was static. Popeye's Shell service station...... Free-standing sign too tall, encroaches into the vision clearance triangle, appears to be meet setback requirements. Speedway......Free-standing sign too tall, located within vision clearance triangle. St. John Lutheran Church...... Too many free-standing signs. Taco Bell.....Free-standing sign too tall, too large, within the vision clearance triangle. West Suburban Bank...... Free-standing sign too tall, too large and too close to front lot line. Lemont Road: AAAA Towing...... Free-standing sign too close to driveway entrance. Shell/Circle K service station...... Free-standing is too close to driveway entrance, portion of sign within the vision clearance triangle. Speedway...... Free-standing sign too close to driveway entrance. Wall signs on building façade not considered their business frontage. Gas City...... Free-standing sign has LED display. At the time the permit was issued in 2004, staff had determined the Code to allow LED display as

long as the copy was static.

N, Frontage Road: Carmelite-Darien Offices	
Carriage Green Golf Course	way. Free-standing signs too large, multiple signs,
Darien Office/Warehouse (vacant land). Dry Dock. Grace Baptist Church. Society of The Little Flower. Wight & Co.	. Free-standing sign too tall Too many free-standing signs. Free-standing sign within public street right-of-way.
Plainfield Road:	
1310 Plainfield Road office buildings	Free-standing sign too tall, too close to front and side lot lines. Sign may encroach into street
Citgo	right-of-way. Free-standing sign too large, location does not appear to comply. Property is zoned R-2, land
Darien Animal Clinic	use itself appears to be legal non-conforming. Free-standing sign, not permitted for a house converted to non-residential use through a special use.
Day care center at Adams Street Dr. Davis' property	special asc.
Hinsbrook Center (Darien Pantry shopping center)	Free-standing sign appears to be too tall, appears to be too close to driveway entrances and side lot line.
Hinsbrook Professional Building II Marion Hills Bible Church	
	Two free-standing sign structures on different street frontages, changeable copy appears to exceed allowable area on one sign.
Route 83: Auto Mall (where Merlin's is located). Butternut Bakery The Patio	Free-standing sign too tall, too large. Free-standing sign too tall, maybe too large.

S. Frontage Road:

Staff Findings/Recommendations

Discussion

Decision Mode

The Planning/Development Committee considered this matter at its meeting on July 23, 2007. The Planning/Development Committee considered this matter at its meeting on January 28, 2008. The Planning/Development Committee will consider this matter at its meeting on March 31, 2008.

Alderman Marchese stated that he liked the City do something about landscaping the signs.

Mr. Griffith stated that when he worked in Bensenville that landscaping was a requirement at the base of the sign area.

Alderman Marchese stated that he would like to incorporate landscaping into the Code.

Alderman Poteraske stated that the Mayor indicated that she would like to see the old signs conform. He stated that this could be done when a sign is damaged or significant changes are made. He further reported that the maintenance definition needs to be changed.

Chairperson McIvor stated that the businesses not in compliance should be notified that if there are business changes or if anything happens to the existing sign that they will have to conform to Code.

The Committee agreed to remove the amortization schedule, prohibit pole signs and incorporate in the ground sign free standing and landscaping and clean up the definition of maintenance.

Mr. Gombac reported that he would contact the Mayor and provide her with an update.

PUBLIC COMMENT:

There was no one wishing to present public comment.

MINUTES:

The minutes of February 25, 2008 were not available for approval.

CORRESPONDENCE:

Alderman Marchese stated that he received an email from a resident who was upset about the condition of the streets.

Mr. Gombac stated that he discussed the issue with the City Administrator and that he responded to the resident.

OLD BUSINESS:

None

to tot

Mr. Griffith stated the proposed amendment requires that the sign support to be at least 75% of the sign width and the vertical clearance could not be more than 3 feet.

Mr. Gombac stated that a ground sign is also a monument sign.

Alderman Marchese stated that he would like to see more of the pole signs removed with maintenance.

Mr. Griffith stated that he added in a section requiring landscaping at the base of the sign a minimum of 4 feet in width of the base on all sides.

Alderman Poteraske asked if 4 ft. was practical.

Mr. Griffith stated that the language provides flexibility if there is not enough room, so that the landscaping could be placed elsewhere on the site at the direction of the Circctor.

Alderman Marchese asked how nonconforming signs will be enforced.

Mr. Griffith stated that it will be done when completing a permit.

Alderman Poteraske stated that after the ordinance that every pole sign will be legally nonconforming.

Mr. Griffith stated that any legal pole sign that is presently up would be a legal nonconforming sign and there will not be a drop dead date to comply. He stated that if something happens to the sign that the sign will have to comply.

Alderman Marchese stated that he liked to see nonconforming signs changed if there is a major alteration to the facility.

Mr. Gombac, Director stated that the language could read any type of exterior renovation. He stated that if the Ordinance is approved that he will send out a letter to every business owner informing them of the changes.

There was no one in the audience wishing to present public comment.

Mr. Gombac stated that staff will make the necessary changes and bring it back to the Committee for final review.

E. Lighting Standards: Discussion of lighting standards, City of Darien and Village of Homer Glen. (Committee discussion followed by public comment.)

Mr. Michael Griffith, Senior Planner presented the staff report and stated that this discussion is based on a request by the City Administrator to take a look at what Homer Glen has adopted to regulate more intensive lighting standards.

with PZC 2008-07 is in compliance with the standards of the Darien City Code and move that the Planning/Development Committee recommend to the City Council approval of the petition subject to the following conditions:

City Clerk certificate to be added to the plat.

Upon voice vote, THE MOTION CARRIED unanimously 2-0.

B. Sign Code: Consideration of an amendment to the Sign Code regarding amortization of legal nonconforming signs, nonconforming sign regulations, landscaping requirements and prohibited and permitted sign types. (Committee discussion followed by public comment)

Mr. Michael Griffith, Senior Planner, presented the staff report and noted that he provided updated language on page 6 of the staff report. He stated that at the last meeting the Committee discussed repealing the amortization requirement, prohibiting pole signs, requiring compliance with the Sign Code with a business name change, in addition to other conditions which trigger compliance and requiring a landscape area at the base of a free-standing sign.

Alderman Poteraske stated that the idea behind the changes is to move towards the standard and not cost the business owner a lot of money or problems associated with amortization.

Mr. Dan Gombac, Director, stated that Alderman McIvor expressed that she is in support of the prepared agenda memo and that she did not want businesses to encounter hardship.

Mr. Griffith reported that a public hearing is not required and that it will be forwarded to the City Council.

There was no one in the audience wishing to present public comment.

Alderman Marchese made a motion and it was seconded by Alderman Poteraske to adopt the revisions to the Sign Code as presented.

Upon voice vote, THE MOTION CARRIED unanimously 2-0.

PUBLIC COMMENT:

None.

MINUTES:

Alderman Marchese reported that the May 20, 2008 Meeting Minutes would be approved at the next meeting.

CORRESPONDENCE:

Alderman Marchese reported that he received an email from a resident who was unhappy with his neighbor. Mr. Gombac reported that he would follow-up with staff and contact the resident.

CITY OF DARIEN

DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. <u>O-29-08</u>

AN ORDINANCE AMENDING TITLE 4-3 OF THE DARIEN CITY CODE (SIGN CODE)

(Text Amendment: Sign Code, nonconforming and pole signs)

ADOPTED BY THE

MAYOR AND CITY COUNCIL

OF THE

CITY OF DARIEN

THIS 7th DAY OF JULY, 2008

Published in pamphlet form by authority of the Mayor and City Council of the City of Darien, DuPage County, Illinois, this 8th day of July, 2008.

ORDINANCE	NO.	O-29-08
OVER HIM ICE	110.	V-27-00

AN ORDINANCE AMENDING TITLE 4-3 OF THE DARIEN CITY CODE (SIGN CODE)

(Text Amendment: Sign Code, nonconforming and pole signs)

WHEREAS, the City of Darien is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of local government, the City may exercise any power and perform any function pertaining to its government except as limited by Article VII, Section 6; and

WHEREAS, the City of Darien has adopted a Sign Code which is set forth in Title 4-3 of the Darien City Code; and

WHEREAS, the City Council has deemed it reasonable to periodically review said Sign Code and make necessary changes thereto; and

WHEREAS, on June 23, 2008, the Planning and Development Committee of the City Council considered text amendments to the said Sign Code and has forwarded its recommendation of approval to the City Council; and

WHEREAS, the City Council has reviewed the findings and recommendations described above and now determines to adopt the text amendments described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, as follows:

SECTION 1: Title 4-3 of the Darien City Code, "Sign Code", is hereby amended: 4-3-6: Definitions:

SIGN, GROUND (MONUMENT): A sign which is supported by uprights or braces or some object on the ground, with no-more than three feet (3') of clear space between the bottom of the face of the sign and the grade beneath the sign face. A free-standing sign where the size of the sign support components are not less than seventy-five percent (75%) of the total width of the sign, with no more than three feet (3') of clear space between the bottom of the face of the sign and the grade beneath the sign face.

4-3-7(B): Signs Specifically Prohibited:

- (B) Signs Specifically Prohibited: All signs not expressly permitted under this sign code are prohibited within the City. The following signs are specifically prohibited in all districts:
 - 1. Projecting and pole signs.
 - Pennants, streamers, portable signs, festoon lights or any other attentiongetting devices not specifically authorized by the Temporary Sign Regulations as set forth in Section 4-3-8 of this Chapter.
 - 3. Commercial signs not advertising a business conducted or a product sold on the same property as the sign is located except as permitted in this sign code.
 - Signs which contain statements, words, pictures or other depictions of an obscene, indecent or immoral character and which offend public morals or decency.
 - Miscellaneous advertising devices, other than the signs which conform to the provisions of this sign code, or any other provisions of the City Code, shall not be allowed.
 - 6. Signs in conflict with traffic signals, vehicular or pedestrian travel, access to fire hydrants and fire lanes and exists, and other signs which reasonably impede or impair public health, safety and welfare.
 - 7. Signs painted on the walls or windows of any building.
 - 8. Signs on vehicles, boats, trailers in place, other than one sign not larger than two feet (2") by two feet (2") advertising said vehicle, boat and or trailer for sale or rent.
 - Signs hung across any street or alley.
 - Obsolete signs.
 - 11. Unlawful signs.

4-3-7: GENERAL SIGN REQUIREMENTS:

- (G) Landscaping Requirements: All new ground signs shall be surrounded by a landscaped area. A landscape plan shall be submitted along with the permit application for such signs. The landscape plan shall comply with the following requirements:
 - 1. The landscaped area shall be located at the base of the ground sign, consisting of a square, rectangle, oval or circular area, the area of which shall be a minimum of four (4) feet in width on all sides of the sign base.
 - 2. The landscape area shall consist of a variety of plant types and species such as ground covers, perennials and low growing shrubs. Sodded or seeded areas shall not be construed as to meet this requirement. The landscaping shall be maintained at all times.
 - If the area available on the subject property for the required landscaping
 is insufficient, the Director may permit the installation of a portion of the
 required landscaping at an alternate location on the property.

4-3-10(B)(3): Signs in the Business Districts:

Not more than one ground sign per street frontage, provided that noindividual business or shopping center utilizing a pole sign as permitted by
this sign code shall erect or maintain any ground sign is permitted.

Manual changeable copy signs not exceeding forty percent (40%) of the
sign area may be included on a ground sign, provided that all individual
letters shall be uniform in height, style, and color, and provided the
message is enclosed in a locking case. The area of a permitted ground sign
shall be limited to sixty (60) square feet per side. The highest point on
such ground sign shall not exceed twelve feet (12°) above grade.

4-3-10-(C)(3): Signs In The Office And The Office Research And Industrial Districts (O And OR&I):

3. Not more than one ground sign per street frontage, provided any premises utilizing a pole sign as permitted by this sign code may erect or maintain a ground sign is permitted. The area of a ground sign shall be limited to sixty (60) square feet per side. The highest point on such ground signs shall not exceed six feet (6') above grade.

4-3-11: NONCONFORMING SIGNS:

All signs presently erected and maintained in the City as of the effective date of this sign code, or which shall come to be located within the corporate limits of the City by virtue of any annexation after the effective date, shall be subject to the following regulations:

- (A) Legal Signs: All signs existing within the corporate limits of the City as of the effective date of this sign code or which shall become subject to the terms of this sign code by reason of annexation and which shall be in compliance with the regulations set forth herein, shall be considered to be legal signs and shall hereafter be owned, operated and maintained in conformance with the regulations contained herein.
- (B) Legal Nonconforming Signs: Any sign which existed lawfully on the effective date of this sign code and which remains or becomes nonconforming by reason of adoption of this sign code or because of subsequent amendments thereto, or which shall become nonconforming by reason of the annexation to the City of the lot or parcel on which said sign is located, shall be considered a legal nonconforming sign and the continuance of such use shall be only as hereinafter permitted:
 - 1. Amortization Period: Fifteen (15) years from and after the effective date of this sign code, all legal nonconforming signs shall be removed and eliminated. Said fifteen (15) year period shall for all purposes be deemed an appropriate amortization period for each and every legal nonconforming sign presently located within the corporate limits of the City or hereinafter located within the City by reason of the annexation into the City of the lot or parcel on which the sign is located.
 - A legal nonconforming sign, prior to the exhaustion of the amortization period set forth for in subsection (B)1 of this Section is subject to the following restrictions:
 - (a) Ordinary repairs and maintenance, including the removing and replacing of the outer panels shall be permitted, provided:
 - i. The business name and/or sign copy are not changed, and
 - ii. that nNo structural alterations or other work shall appreciably extend the normal life of the legal nonconforming sign.
 - (b) Legal nonconforming signs shall be removed and eliminated when the square footage of the principal structure located on the same property is enlarged or if the exterior façade of said principal structure is altered or renovated.

- (b) (c) No repair or alteration which increases the size of the legal nonconforming sign shall be permitted. No substitution, through repair or alteration, of any elements of the sign, which causes such sign to be classified as nonconforming, for another such element, shall be permitted.
- (e) (d) No legal nonconforming sign shall be moved in whole or in part to any other location on the same or any other premises unless ever portion of such sign is made to conform to all of the regulations of this sign code.
- (d) (e) A legal nonconforming sign which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed fifty percent (50%) of the cost of the replacement of the entire sign shall not be restored unless said sign shall conform to all of the regulations of this sign code. In the event that such damage or destruction is less than fifty percent (50%) of the cost of restoration of the sign to the condition in which it was before the occurrence of damage or destruction, no repairs or reconstruction shall be made unless such restoration is started within thirty (30) days from the date of such damage or destruction, and, provided further, that completion is accomplished within three (3) months from the date of such damage or destruction.
- (e) (f) If the restoration is not started within thirty (30) days from the date of such damage or destruction, and diligently prosecuted to completion, the sign shall be removed.
- (f) (g) If a legal nonconforming sign is located on property which is sold, and when the full ownership is transferred by deed, the legal nonconforming sign shall be discontinued at the time of the deed transfer. If ownership of a business changes, which does not affect the ownership of the property in which the business is located, the legal nonconforming sign shall be discontinued.
- (g) (h) If a legal nonconforming sign is abandoned or discontinued for a continuous period of ninety (90) days, it shall not be renewed, and any subsequent sign shall conform to all of the requirements of this sign code.

ORDINANCE N	O. O-29	-08
	U. U.L.	/-UD

SECTION 3: Home Rule. This ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of Darien that to the extent of the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supercede state law in that regard within its jurisdiction.

SECTION 4: Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 7th day of July, 2008.

AYES:	7- Avci, Durkin, Galan, Gattuso, Marchese, McIvor, Poteraske
NAYS:	0-NONE
ABSENT:	<u>0-NONE</u>

ORDINANCE NO. O-29-08

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 7th day of July, 2008.

ATTEST:

KATHLEEN MOESLE WEAVER, MAYOR

JOANNE F. COLEMAN, CITY CLERK-

APPROVED AS TO FORM:

darien

illinois

DARIEN SIGN CODE

4-3-17: EXISTING SIGNS IN ROUTE 83 CORRIDOR:

For the purposes of this sign code, all signs that are presently existing in the Route 83 Corridor or that have been previously approved for construction prior to the passage of this sign code shall not be affected by the amendments contained herein and shall be considered legal signs.

- (A) Legal Nonconforming Signs: Any sign which existed lawfully on the date of the passage of this sign code and which remains or becomes nonconforming by the passage of this sign code or which shall become nonconforming due to annexation to the City, shall be continued only in accordance with the following provisions:
 - 1. Amortization Period: Fifteen (15) years from and after the date of adoption of this sign code all legal nonconforming signs shall be removed and eliminated. Said fifteen (15) year period shall for all practical purposes be deemed an appropriate amortization period for each and every legal nonconforming sign presently located within the corporate limits of the City or hereinafter located therein by reason of annexation into the City of the lot or parcel on which said sign is located.



AGENDA MEMO

MUNICIPAL SERVICES COMMITTEE November 26, 2018

Issue Statement

Consideration of a request by Verizon to amend their lease regarding their equipment on the City cell towers at 1041 S. Frontage Road.

Background

In 2011 the City approved Resolution R-59-11 that approved a lease agreement allowing Verizon to install their antennas on Tower A along with a shelter and related equipment. See <u>Attachment A:</u> Resolution R-59-11 (with lease as the exhibit). In 2016, The City approved a first amendment to the Verizon lease that allowed Verizon to place a backup generator on site to provide continued service during ComEd power outages. See <u>Attachment B:</u> Verizon Generator Lease. The main provisions of the lease are an initial monthly rent of \$2,000 plus \$250 for the generator for 5 terms of 5 years per term with a 15% escalation per term.

As part of Verizon's program to improve customer service, they want to upgrade their equipment. Tower A does not have the structural capacity to handle their planned equipment upgrades, so they have requested to move off of Tower A and install on Tower B. See Attachment C: Tower Photo. See Attachment D: Site Plan. Verizon has provided construction drawings and a structural study that shows Tower B has the structural capacity to handle the Verizon planned equipment.

Related activity includes plans by the two emergency public dispatch services, DUCOMM and ACDC, currently on Tower A, to move to Tower B. Verizon has been working with DUCOMM and ACDC to coordinate mounting locations on Tower B and structural analysis of Tower B. Leases for DUCOMM and ACDC are being negotiated now and will be forthcoming soon for City approval. Also, T-Mobile has plans to upgrade their equipment on Tower A, but is waiting for Verizon, DUCOMM, and ACDC to move off of Tower A to free up structural capacity on Tower A for the new T-Mobile equipment.

The main provisions of the new Verizon lease amendment includes initial monthly rent of \$4,000 with 15% escalation per term and 60 days to remove from tower A and install on Tower B. The City Attorney has reviewed and advised to move forward on said new lease. See <u>Attachment E</u>: Proposed Resolution and <u>Attachment F</u>: Verizon Lease 2nd Amendment.

Staff Recommendation

Approval of the proposed resolution which approves the Verizon lease amendment and plans as presented.

Decision Mode

If the MSC committee votes on this item on 11/26/18, we would like to place this item on the City Council agenda for 12/3/18.

		R-59-11
RESOLUTION	NO.	

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH VERIZON WIRELESS TO UTILIZE THE COMMUNICATIONS TOWER AT 1041 S. FRONTAGE ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, that the City Administrator is authorized to enter into an agreement with Verizon Wireless to utilize the communications tower at 1041 S. Frontage Road, a copy of which is attached as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 18th day of July, 2011.

AYES: 5 – Avci, Beilke, Marchese, Poteraske, Seifert

NAYS: 0 – NONE

ABSENT: 2 – McIvor, Schauer

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 18th day of July, 2011.

KATHLEEN MOESLE-WEAVER, MAYOR

ATTEST:

DANNE E. RAGONA, CITY CLERK

PPROVED AS TO FORM

TY ATTORNE



Site Name: <u>Darien DPW</u> Site Number

STRUCTURE LEASE AGREEMENT

THIS STRUCTURE LEASE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by The City of Darien, an Illinois corporation, having a mailing address of 1702 Plainfield Road, Darien Illinois 60561 (hereinafter referred to as "Lendlord") and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, having a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) (hereinafter referred to as "Tenant").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, improved with a communications tower (the "Tower"), together with all rights and privileges arising in connection therewith, located at 1041 South Frontage Road, in the City of Darien, in the County of DuPage, State of Illinois 60561 as more fully described on Exhibit 1 (collectively, the "Property"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. PREMISES.

(a) Landlord hereby leases to Tenant a portion of the Property consisting of: (i) ground area space of approximately 360 square feet for Tenant's equipment shelter ("Equipment Space") and

(ii) vertical space on the Tower ("Antenna Space"), together with such easements as are necessary for installation, operation and maintenance of Tenant's antennas as described on attached Exhibit 2; and

- (iii) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as "Connections"). Landlord agrees that Tenant shall have the right to install Connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the non-exclusive right for ingress and egress to the Premises (as hereinafter defined), seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, over such portion of the Premises as may be designated by the Landlord extending from the nearest public right-of-way to the Premises, together with the right to install, replace and maintain utility wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. Notwithstanding the foregoing, Tenant, to the extent feasible, shall locate all wires, conduits and cables on existing poles extending from the roadway into Landlord's Property. The Equipment Space, Antenna Space, Connections, Access, and Right-of-Way are hereinafter collectively referred to as the "Premises.".
- (b) During the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the

Premises and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its original condition, reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

- (c) If during the term of this Agreement Landlord decides to subdivide, sell, or change the status of the zoning of the Premises or the Property which includes (without limitation) the remainder of the Tower) or in the event of foreclosure, Landlord shall promptly notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Term of this Agreement Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other restriction that would prevent or, materially limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.
- PERMITTED USE. Tenant may use the Premises for the transmission and reception of Tenant's communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communication fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises for the transmission and reception of Tenant's communications signals (collectively, the "Communication Facility") as depicted on Exhibit 2 attached hereto, as well as the right to test, survey and review title on the Property; Tenant further has the right, but not the obligation, to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "Permitted Use") provided such additional or replacement equipment substantially conforms in size, shape and location to the facilities depicted on Exhibit 2. If Exhibit 2 includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of Exhibit 2. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Landlord's Surrounding Property, as may reasonably be required during construction and installation of the Communications Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("Tenant Changes"). Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement, provided such additional or replacement equipment substantially conforms in size, shape and location to the facilities depicted on Exhibit 2. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, and Tenant requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, and Landlord does not require such additional portion of the Property for Landlord's own purposes, Landlord agrees to lease to Tenant

the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

TERM.

- (a) This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial lease term will be five (5) years ("Initial Term"), commencing on January 1, 2012 ("Commencement Date").
- (b) This Agreement will automatically renew for four (4) additional five (5) year term(s), (each term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.
- (c) The Initial Term and the Extension Term are collectively referred to as the Term ("Term").
- (d) If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "Foldover Term"), subject to the terms and conditions of this Agreement with monthly rent equal to One Hundred Fifty percent (150%) of the then current rent amount.

4. RENT.

- (a) Commencing on the Commencement Date, Tenant will pay the Landlord a monthly rental payment of two thousand and No/100 Dollars (\$2,000.00) ("Rent"), at the address set forth above, on or before the fifth (5th) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Commencement Date.
- (b) In year one (1) of each Extension Term, the monthly Rent will increase by Fifteen (15%) over the Rent paid during the previous Term.
- (c) All Rent or other charges payable under this Agreement shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.
- (d) Within 30 days after the Commencement Date, Tenant agrees to pay to Landlord, as a one-time capital contribution, the amount of \$25,000.00, which shall compensate Landlord for Tower maintenance related costs.

APPROVALS.

- (a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.
- (b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

- (c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.
- **6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:
- (a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;
- (b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Tenant or if Tenant reasonably determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or
- (c) by Tenant upon written notice to Landlord for any reason at any time prior to commencement of construction by Tenant; or
- (d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate; provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b) Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 8 Interference, 11(d) Environmental, 18 Severability, 19 Condemnation or 20 Casualty of this Agreement.

7. INSURANCE.

- (a) Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Tenant's operations.
- (b) Tenant shall have the right to self-insure with respect to any of the above insurance requirements.
- (c) Landlord agrees that at its own cost and expense, Landlord will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence, or will maintain adequate self-insurance against such occurrences.

8. INTERFERENCE,

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further warrants that it will operate, keep and maintain the Communication Facility at all times in compliance with applicable governmental approvals and requirements to prevent material interference with other authorized radio frequency users of the Property. Tenant further agrees to cooperate with other authorized users of the Property to identify and eliminate interference problems, and Tenant agrees to cooperate with Landlord and such other tenant(s) and/or licensee(s) to resolve any disputes over radio frequency interference.

- (b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may materially adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.
- (c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way that materially interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

9. INDEMNIFICATION.

- (a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.
- (b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.
- (c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.
- (d) The provisions of this Paragraph 9 shall survive the expiration or termination of this Agreement,

10. WARRANTIES.

- (a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.
- (b) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the structure; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

11. ENVIRONMENTAL.

- (a) Landlord represents and warrants that, to the best of Landlord's knowledge, the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property. Tenant represents and warrants that it will not store, use or release hazardous substances on the Property.
- (b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities, and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs, or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.
- (c) The indemnifications of this Paragraph 11 Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 Environmental will survive the expiration or termination of this Agreement.
- (d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landford.
- 12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Lease. In connection with such default, in addition to any other rights or remedies available to Tenant under this Lease or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$100.00 per day in consideration of Tenant's damages, including, but not limited to, its lost profits, until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of access are difficult, if not impossible, to ascertain, and the liquidated damages set forth herein are a reasonable approximation of such damages. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to

Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landiord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations or underground utilities.

14. MAINTENANCE/UTILITIES.

- (a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.
- (b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement. Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.
- (c) The Landlord reserves the right to perform maintenance on the Tower, both structural and cosmetic (paint), at whatever intervals may be required to assure the integrity and longevity of the facility. Landlord shall provide Tenant with one hundred twenty (120) days advance written notice of the intended work and the opportunity to temporarily relocate and continue to operate its antennas, or otherwise to secure the antennas or the Communication Facility generally, to protect them from damage and allow Tenant to continue to operate, to the extent possible. If necessary, to continue Tenant's operations, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property. Further, any maintenance will be conducted by Landlord as diligently and expeditiously as possible. Tenant's installation, operation and maintenance of the Communication Facility on the Premises shall not

damage nor unreasonably interfere with the Landlord's operation, use, repair and maintenance of the Tower for its intended purpose.

(d) Landlord covenants that it will keep the Tower in good repair as required by all applicable laws. Landlord shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. If the Landlord fails to make repairs required for compliance with FCC regulations, the Tenant may make the repairs and the costs thereof shall be payable to the Tenant by the Landlord on demand; provided, however, Tenant has first complied with the default and right to cure provision of Paragraph 15 of this Agreement. If the Landlord does not make payment to the Tenant within ten (10) days after such demand, the Tenant shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the Tenant to the Landlord.

15. DEFAULT AND RIGHT TO CURE.

- (a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.
- (b) The following will be deemed a default by Landlord and a breach of this Agreement: Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord by Tenant.
- ASSIGNMENT/SUBLEASE. Tenant will have the right to assign, sell or transfer this Agreement, without the approval or consent of Landlord, to Tenant's parent, affiliates, subsidiaries of its parent or to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant may not otherwise assign this Agreement without Landlord's consent, which consent shall not to be unreasonably withheld, conditioned or delayed. Tenant may not sublease the Premises without the approval and consent of Landlord.
- 17. <u>NOTICES</u>. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant: Chicago Si

Chicago SMSA Limited Partnership

d/b/a Verizon Wireless

180 Washington Valley Road

Bedminster, New Jersey 07921 Attention: Network Real Estate

If to Landlord:

City of Darien

Attn: City Administrator 1702 Plainfield Road Darien, Illinois 60561

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

- (b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents (in section 17(b)(i) to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord
 - (i) a. Old deed to Property
 - b. New deed to Property
 - c. Bill of Sale or Transfer
 - d. Copy of current Tax Bill
 - e. New W-9
 - f. New Payment Direction Form
 - g. Full contact information for new Landlord including all phone numbers
- 18. <u>SEVERABILITY</u>. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.
- condemnation. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.
- 20. <u>CASUALTY</u>, Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Tower is damaged by fire or other casualty so as to render the Premises reasonably unsuitable for the permitted use of Tenant's Communication Facility, then either Tenant or Landlord may terminate this Agreement by providing written notice to the other party within sixty (60) days from the date of such damage of destructiond, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord undertakes to rebuild the Tower or if Tenant undertakes to rebuild the Communications Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent for: (i) three (3) months from the date of such damage or destruction, or (ii) until such time as Tenant is able to activate a replacement transmission

facility at another location or (iii) until the reconstruction of the Communication Facility is completed, whichever occurs first. If this Agreement has not been terminated and Landlord is undertaking the reconstruction of the Tower, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Tower is completed.

21. <u>WAIVER OF LANDLORD'S LIENS</u>. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

22. TAXES.

- (a) Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property and all real property taxes levied and assessed against Tenant's leasehold interest in the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for the year covered by the assessment. Tenant shall reimburse the Landlord for Tenant's proportionate share of the real estate taxes, upon timely receipt of a copy of the tax bill and request for reimbursement from the Landlord. For purposes herein, Tenant's proportionate share shall be determined based upon the square footage of the Premises (excluding therefrom any unassessed square footage used by Tenant, e.g., the rooftop) relative to taxable portion of Landlord's entire parcel of real estate (using, in the case of building space, the net usable square footage of the building, and in the case of leased land, the unimproved portion of Landlord's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.
- (b) Tenant shall have the right to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements, and Landlord agrees to join in such contest, if required by law, and to permit the Tenant to proceed with the contest in Landlord's name, provided that the expense of the contest is borne by Tenant. This right shall include the ability to institute any legal, regulatory, or informal action in the name of Landlord, Tenant, or both, with respect the valuation of the Premises. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefore. If the Landlord initiates an action to contest taxes or other items, Tenant may join in such action provided that Tenant pays its own expenses of so participating. Landlord shall, within thirty (30) days of receipt of notice of any increase in taxes, assessments or other charges, send a copy of such notice by certified mail, return receipt requested, to Tenant. If Landlord fails to give Tenant such notice as set forth above, Landlord will be responsible for payment of any increases and Tenant shall have the option to pay the same and deduct such payment from Rent or any other sums next due.

23. SALE OF PROPERTY.

(a) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell or lease any areas of the Property or for the installation, operation or maintenance of other specific wireless communications facilities if such installation, operation or maintenance would materially interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole

discretion, any such testing to be at the expenses of Landlord or Landlord's prospective purchaser, and not Tenant. Any such testing shall be performed within thirty (30) days of notice from Landlord of its intent to sell or lease any part of the property for installation of other wireless telecommunications facilities. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant or in violation of FCC technical requirements, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 23 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

24. MISCELLANEOUS.

(a) Amendment/Waiver. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) Memorandum/Short Form Lease. Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) Bind and Benefit. The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) Entire Agreement. This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) Governing Law. This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

(g) Estoppel. Either party will, at any time upon thirty (30) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii)

there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

- (h) W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.
- (i) No Electronic Signature/No Option. The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as an Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.
- (j) Replacement Agreement. This Agreement shall replace the Ground Lease Agreement dated May 1, 1992 by and between The University of Chicago Hospitals, predecessor in interest to Landlord and Tenant known to LESSEE as contract number 27816, as amended ("Original Lease"). The Original Lease shall terminate and shall be considered null and void upon the Commencement Date of this Agreement and no further notice of termination or additional writing shall be necessary on the part of either party. The parties agree that LESSEE shall make rent payments per the Original Lease up to the Commencement Date. On the Commencement Date, the terms of this Agreement shall govern all rights and obligations of the parties with respect to the Property and all rent payments shall be made pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to effective as of the last date written below.

Print Name: Johns E Lagana

Print Name: Johns E Lagana

Consen

Print Name Obseph Coates

"LANDLORD"

The City of Darien, an Illinois corporation

By: Name: Its:

Date:

"TENANT"

Chicago SMSA Limited Partnership d/b/a Verizon Wirleess

By: Cellco Partnership

Its: General Partner

By: Name: Beth Ann Drohan

Its: Area Vice President Nerwork

Date:

20

Illinois

TENANT ACKNOWLEDGMENT
COUNTY OF COOK SS:
On the day, of 20 before me personally appeared Before Me President Methods of Chicago SMSA Limited Partnership the Tenant named in the attached instrument, and as such was sufficient to execute this instrument on behalf of the Tenant.
Notary Public: My Commission Expires:
STATE OF Illivois COUNTY OF DUPAGE STATE OF DUPAGE SS:
STATE OF Illivois) ss:

OFFICIAL SEAL
MARIA E. GONZALEZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2-2-2014

EXHIBIT 1

DESCRIPTION OF THE PROPERTY

to the Agreement dated	, 20, by and between The City of Darien, an Illino
corporation, as Landlord, and Chicago SM	SA Limited Partnership d/b/a Verizon Wireless, as Tenant.
~	The state of the s

The Property is described and/or depicted as follows:

PART OF THE SOUTH WEST 1/4 OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTH WEST CORNER OF SAID SECTION 34, AND RUNNING THENCE NORTH 89 DEGREES 55 MINUTES EAST ALONG THE SOUTH LINE OF SAID SECTION 808.05 FEET FOR & POINT OF BEGINNING; THENCE NORTH O DEGREES 32 MINUTES EAST ALONG THE EAST LINE OF TRACT "D", M. A. MATOUSEK'S PLAT OF SURVEY FOR A DISTANCE OF 200.0 FEET; THENGE NORTHEASTERLY FOR A DISTANCE OP 637.57 FEET TO A POINT IN THE WEST LINE OF TRACT 5, DOWNERS GROVE SUPERVISORS ASSESSMENT PLAT NUMBER 11, WHICH IS 45.0 FEET SOUTH OF THE SOUTH RIGHT OF WAY OF FEDERAL AID ROUTE 98; THENCE SOUTH 0 DEGREES 32 HINUTES WEST ALONG THE WEST LINE OF SAID TRACT 5, FOR DISTANCE OF 756.7 FEET TO THE SOUTH LINE OF SAID SECTION 34; THENCE SOUTH 89 DEGREES 55 HINUTES WEST ALONG SAID SOUTH LINE FOR A DISTANCE OF 290.85 FEET TO THE POINT OF BEGINNING. IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT 2

DESCRIPTION OF PREMISES

to the Agreement of	dated		, 20_	, by	and betwe	en Th	e City o	f Darien,	an
Illinois corporation, as I Tenant.	Landlord, and	Chicago	SMSA	Limited	Partnership	d/b/a	Verizon	Wireless,	as
(Chair.									

The Premises are described and/or depicted as follows: (See attached)

Prepared by and Return to: Ginsberg Jacobs LLC 300 South Wacker Drive Suite 2450 Chicago, Illinois 60606 (Darien DPW)

State: Illinois County:DuPage

MEMORANDUM OF LEASE

- 1. Landlord and Tenant entered into a certain Structure Lease Agreement ("Agreement") on the /d day of 20 //, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
- 2. The initial lease term will be five (5) years ("Initial Term") commencing on the Commencement Date, with four (4) successive automatic five (5) year options to renew.
- 3. The portion of the land being leased to Tenant (the "Premises") is described in Exhibit 1 annexed hereto.
- 4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

7/13/2011

Prepared by and Return to: Ginsberg Jacobs LLC 300 South Wacker Drive Suite 2450 Chicago, Illinois 60606 (Darien DPW)

State: Illinois County: DuPage

MEMORANDUM OF LEASE

- 1. Landlord and Tenant entered into a certain Structure Lease Agreement ("Agreement") on the 25 day of ______, 20/(_, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
- 2. The initial lease term will be five (5) years ("Initial Term") commencing on the Commencement Date, with four (4) successive automatic five (5) year options to renew.
- 3. The portion of the land being leased to Tenant (the "Premises") is described in Exhibit 1 annexed hereto.
- 4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

WITNESSES:	"LANDLORD"
Polist Name: To Mano & TO ADDNA	The City of Parien, an Illinois corporation
1.10	By: By D Com
Sult a Linois Print Name: AShley Pluster	Name: BLADN D. VANA
CENTED TO THE CONTRACT OF THE	Its: CITY ANUINISTRATOR
/E/ CC · LIEV	Date: 7-19-//
	"TENANT"
cirrien /	
CAGINETT	Chicago SMSA Limited Partnership
Illinois	d/b/a Verizon Wireless
	By: Cellco Partnership
Pa. Carto	Its: General Partner
Print Name: Dosept Coates	By: Lette lumbol
Print Name:	Print Name: BETh ANN DROKAN
	Its: AREA Vice President Network
	Date: リーカー

TENANT ACKNOWLEDGMENT STATE OF TIMES COUNTY OF COOK On the Ze day of , 201¢, before me personally appeared ANN Dechan, and acknowledged under oath that he/she is the Area Vice President Network of Chicago SMSA Limited Partnership d/b/a Verizon Wireless, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tepant. Official Seal Ann Goldstein Notary Public State of Illinois Notary Public: Ann Coldstein My Commission Expires 05/21/2014 My Commission Expires: ANDLORD ACKNOWLEDGMENT day of On the 2018 before me, personally appeared who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained

Notary Public:

My Commission Expires:

OFFICIAL SEAL MARIA E. GONZALEZ NOTARY PUBLIC. STATE OF ILLINOIS MY COMMISSION EXPIRES 2-2-2014

EXHIBIT 1

DESCRIPTION OF PREMISES

to the Memorandum of Lease date	d		, 20 _, bv	and between The
City of Darien, an Illinois corporation, Verizon Wireless as Tenant	as Landlord,	and Chicago	SMSA Limited	Partnership d/b/g
Verizon Wireless, as Tenant.				

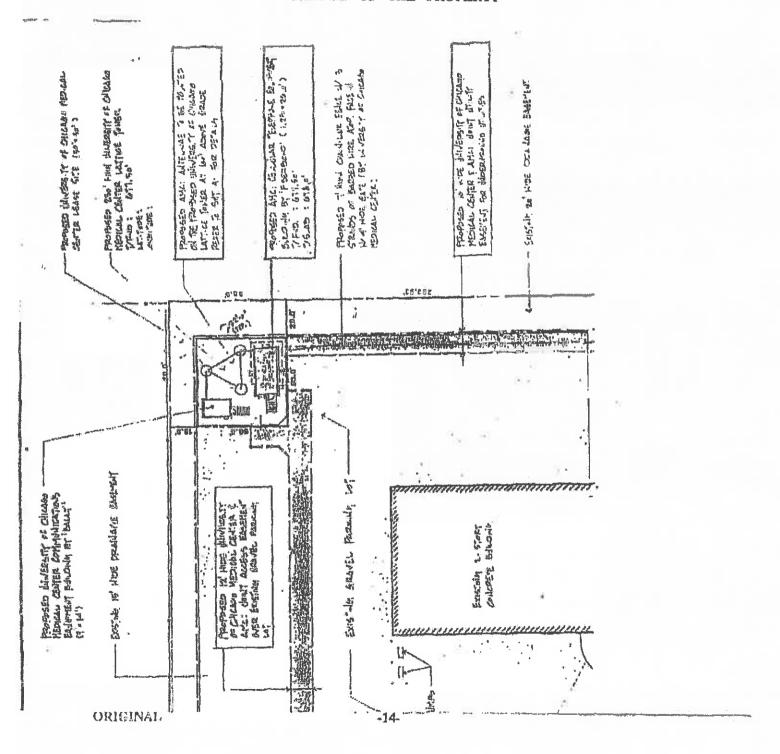
PART OF THE SOUTH WEST 1/4 OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY CONHENCING AT THE SOUTH WEST CORNER OF SAID SECTION 34, AND RUNNING THENCE MORTH 89 DEGREES 55 MINUTES EAST ALONG THE SOUTH LINE OF SAID SECTION 608.05 FEET FOR A POINT OF BEGINNING; THENCE MORTH O DEGREES 32 MINUTES EAST ALONG THE EAST LINE OF TRACT "D", H. A. HATQUSER'S PLAT OF SURVEY FOR A DISTANCE OF 200.0 FERT; THENCE MORTHEASTERLY FOR A DISTANCE OF 697.57 FEET TO A POINT IN THE WEST LINE OF TRACT 5, DOWNERS GROVE SUPERVISORS ASSESSMENT PLAT NUMBER 11, WHICH IS 45.0 FEET SOUTH OF THE SOUTH RIGHT OF WAY OF FEDERAL AID ROUTE 98; THENCE SOUTH O DEGREES 32 HINUTES WEST ALONG THE WEST LINE OF SAID TRACT 5, FOR DISTANCE OF 756.7 FEET TO THE SOUTH LINE OF SAID SECTION 34; THENCE SOUTH 89 DEGREES 55 MINUTES WEST ALONG BAID SOUTH LINE FOR A DISTANCE OF 290.85 FEET TO THE POINT OF BEGINNING. IN DUPAGE COUNTY, ILLINOIS.

(see attached site plan)

LEASE AGREEMENT

EXHIBIT B

SKETCH OF THE PROPERTY



MA NEWS

STATE OF ILLINOIS)

(COUNTY OF DU PAGE)

I, JoAnne E. Ragona, do hereby certify that I am the duly qualified CITY CLERK of the CITY OF DARIEN of DuPage County, Illinois, and as such officer I am the keeper of the records and files of the City;

I do further certify that the foregoing constitutes a full, true and correct copy of RESOLUTION NO. R-59-11 — "A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH VERIZON WIRELESS TO UTILIZE THE COMMUNICATIONS TOWER AT 1041 S. FRONTAGE ROAD" of the City of Darien, Du Page County, Illinois, duly passed and approved by the Mayor and City Council at a Meeting Held on July 18, 2011.

IN WITNESS WHEREOF, I have hereunto affixed my official hand and seal this 18th day of July, 2011.



City Clerk

Site Name. Darren DPW Location: 126659 Altorney/Date: WHD/04 15.16

FIRST AMENDMENT TO STRUCTURE LEASE AGREEMENT

This First Amendment to Structure Lease Agreement ("First Amendment") is made as of the date of the last party to sign below, by and between the City of Darien (hereinafter referred to as "Landlord"), and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), (hereinafter referred to as "Tenant"). The Landlord and Tenant are at times collectively referred to hereinafter as the "Parties".

WHEREAS, the Parties previously entered into a Structure Lease Agreement (the "Agreement") dated September 26, 2011;

WHEREAS, Tenant desires to expand its existing ground area space as defined as the "Equipment Space" in Paragraph 1 (a) of the Agreement to install a natural gas fueled standby generator; and

WHEREAS, the Parties wish to amend the Agreement in order to address the above items and to reach new agreements with respect to the same;

NOW, THEREFORE, in consideration of the promises hereinafter made and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

- 1. The recitals above are true and correct and are incorporated herein.
- 2. Paragraph 4 of the Agreement is hereby amended to add the following as subparagraph (d) thereof:
 - (d) Effective on the date this First Amendment is last executed by both Parties ("Amendment Effective Date"), the Rent shall be increased by \$250.00 per month. If the date this First Amendment is last executed occurs on or between the first and fifteenth day of a month, the Amendment Effective Date will be the first day of that month. If the date this First Amendment is last executed occurs on or between the sixteenth and the last day of the month, the Amendment Effective Date will be the first day of the following month. Rent, including any and all rent increases, will be escalated in accordance with the Agreement. As of January 1, 2012, the Rent under the Agreement was \$2,000.00 per month.
- 3. Exhibit 2 of the Agreement is hereby deleted and replaced with the attached Exhibit 2-1. All references to Exhibit 2 in the Agreement shall be deleted and replaced with references to Exhibit 2-1.
- 4. The Parties agree to execute a Memorandum of this First Amendment which shall amend and restate the Memorandum of Lease recorded as Document R2011-123583 with the DuPage County Recorder with the terms of the Agreement as modified by this First Amendment.
- 5. Except as amended herein, all terms, conditions, provisions, covenants, and agreements contained in the Agreement are hereby ratified and confirmed in their entirety. In the event

of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall take precedence. The terms used herein and not otherwise defined shall have the same meaning as set forth in the Agreement.

- 6. All capitalized terms used but not defined in this First Amendment shall have the meaning, if any, set forth elsewhere in the Agreement.
- 7. The Agreement may be further amended or modified only by a written agreement signed by both Parties.
- 8. This First Amendment shall bind and inure to the benefit of the successors and assigns of the Parties hereto, except to the extent any assignment or other transfer may be prohibited, limited or conditioned pursuant to any other term or condition contained in the Agreement.
- 9. This First Amendment may be executed in one or more counterparts, all of which counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be effective as of the last date written below.

LANDLORD:	TENANT:
Bryon D. Vana City Administrator	CHICAGO SMSA LIMITED PARTNERSHAP d/b/a Verizon Wireless By: Larry Rick Director Engineering-Network
Date: 5-25 ~ 16	Date: 8/2/16

[Exhibit Follows]

EXHIBIT 2-1

DESCRIPTION OF PREMISES

PARENT PARCEL.

PART OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34, AND RUNNING THENCE NORTH 89 DEGREES 55 MINUTES EAST ALONG THE SOUTH LINE OF SAID SECTION 808.05 FEET FOR A POINT OF BEGINNING; THENCE NORTH 0 DEGREES 32 MINUTES EAST ALONG THE EAST LINE OF TRACT "D", M. A. MATOUSEK'S PLAT OF SURVEY FOR A DISTANCE OF 200.0 FEET; THENCE NORTHEASTERLY FOR A DISTANCE OF 637.57 FEET TO A POINT IN THE WEST LINE OF TRACT 5, DOWNERS GROVE SUPERVISORS ASSESSMENT PLAT NUMBER 11, WHICH IS 45.0 FEET SOUTH OF THE SOUTH RIGHT OF WAY OF FEDERAL AID ROUTE 98; THENCE SOUTH 0 DEGREES 32 MINUTES WEST ALONG THE WEST LINE OF SAID TRACT 5, FOR DISTANCE OF 756.7 FEET TO THE SOUTH LINE OF SAID SECTION 34; THENCE SOUTH 89 DEGREES 55 MINUTES WEST ALONG SAID SOUTH LINE FOR A DISTANCE OF 290.85 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

NOW KNOWN AS:

LOT 1 IN GREAT DANE RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8,2011 AS DOCUMENT R2011-150249, BEING A RESUBDIVISION OF LOT 1 IN DARIEN PUBLIC WORKS SUBDIVISION, IN DUPAGE COUNTY, ILLINOIS

TENANT LEASE AREA FOR GENERATOR

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 44.61 feet along the south line of said Lot 1; thence North 00°30'36" West 59.94 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION;

thence South 89°29'24" West 10.00 feet; thence North 00°30'36" West 4.00 feet; thence North 89°29'24" East 10.00 feet; thence South 00°30'36" East 4.00 feet to the place of beginning of this description.

TENANT LEASE AREA

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION:

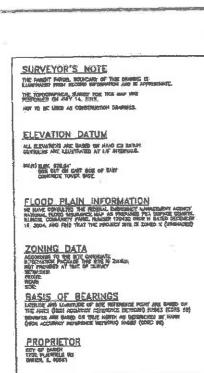
thence South 89°25'53" West 14.00 feet; thence North 00°34'07" West 33.83 feet; thence North 87°30'10" East 5.13 feet; thence North 88°28'17" East 8.88 feet; thence South 00°34'07" East 34.00 feet to the place of beginning of this description.

TENANT COAX EASEMENT

A 4.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet to the southeast corner of a 14.00 foot by 34.00 foot lessee lease area; thence continuing North 00°34'07" West 5.03 TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence North 86°25'45" East 6.35 feet for the place of ending of this centerline description. The sidelines to be lengthened and/or shortened to terminate at right angles.

TENANT UTILITY EASEMENT

A 10.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 41.61 feet along the south line of said Lot 1; thence North 00°30'36" West 61.89 feet TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 89°28'17" West 15.91 feet; thence South 87°30'10" West 10.22 feet; thence South 00°34'07" East 38.96 feet; thence South 88°33'29" West 158.47 feet thence North 01°26'31" West 85.07 feet to the south face of an existing building for the place of ending of this centerline description.



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DRAFTED BY
AND RETURN TO:
Whyte Hirschboeck Dudek S.C.
555 East Wells Street, Suite 1900
Milwaukee, Wisconsin 53202-3819
(Site Name: Darien DFW | 126659)
(Prepared by Rodney W. Carter Telephone No. (414) 978-5365)

AMENDED AND RESTATED MEMORANDUM OF LEASE

THIS AMENDED AND RESTATED MEMORANDUM OF LEASE ("Memorandum") is made as of this day of _______, 2016, by and between CITY OF DARIEN (hereinafter referred to as "Landlord"), and CHICAGO SMSA LIMITED PARTNERSHIP d/b/a Verizon Wi reless (herein after referred to as "Tenant").

WITHESSETH:

WHEREAS, Landlord and Tenant entered into that certain Structure Lease Agreement dated as of September 26, 2011 (the "Lease Agreement"); and

WHEREAS Landlord and Tenant have amended the Lease Agreement by that certain First Amendment to Structure Lease Agreement of even date herewith (the Lease Agreement and the First Amendment to Structure Lease Agreement, collectively, the "Agreement"), wherein and whereby Landlord demised and leased to Tenant, for a term as set forth in the Agreement, that certain real property located in the City of Darien, DuPage County, State of Illinois, more specifically described herein; and

WHEREAS, Landlord and Tenant previously caused to be recorded that certain Memorandum of Lease, recorded as Document No. R2011-123583 in the office of the Recorder for DuPage County, Illinois (the "Original Memorandum"), which references a recording date of October 17, 2011; and

WHEREAS, Landlord and Tenant wish to amend, restate and supersede the Original Memorandum in its entirety,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in the Agreement, Landlord and Tenant hereby acknowledge and agree as follows:

1. Term and Premises. Landlord owns certain Real Property, legally described in Exhibit A attached to and incorporated into this Memorandum (the "Property"). Under the Agreement and subject to its terms, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property located in the County of DuPage, State of Illinois, legally described in Exhibit B attached to and incorporated into this Memorandum (the "Premises"), for a term commencing on January 1, 2012 and expiring on December 31, 2017 ("Initial Term"), which Initial Term is subject to extension by Tenant for four (4) consecutive periods of five (5) years each (collectively, the "Extension Term"), all on the terms and provisions of the Agreement. The Initial Term and the Extension Term are referred to collectively as the "Term". Tenant has leased the Premises to construct thereon a fully completed and operational

WHD/12620130.1

communications facility and appropriate related improvements and systems on the Premises (collectively, the "Communications Facility"). Completion of the Communications Facility has occurred as of the date of this Memorandum.

- 2. <u>Definitions</u>. Except as otherwise expressly provided in this Memorandum, any capitalized words shall have the meaning ascribed to them in the Agreement.
- 3. <u>Easements.</u> Landlord hereby grants to Tenant the non-exclusive easements over the Property, set forth below and in Exhibit B, upon the terms and conditions more particularly described in the Agreement. All of the easements set forth on Exhibit B shall automatically terminate and be of no further force or effect upon expiration of the Term or cancellation or termination of the Agreement.
- a. Access Easement. A non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Property by Tenant, its contractors, subcontractors, guests and other invitees, as shown and described on Exhibit B.
- b. Utility Easements. A non-exclusive easement for utility service lines under and across the Property as shown and described on Exhibit B.
- 4. <u>Purpose of Memorandum of Ground Lease.</u> This Memorandum is prepared for the purpose of recordation and to reflect the above-described covenants, and it in no way modifies, extends or expands the provisions of the Agreement. In the event of a conflict between the terms and provisions of this Memorandum and the terms and provisions of the Agreement, the terms and provisions of the Agreement shall control.
- 5. Replacement & Termination of Original Memorandum. This Memorandum replaces the Original Memorandum in its entirety. The Original Memorandum, along with any utility and ingress/egress easements depicted or described in the Original Memorandum, are terminated and of no further force or effect by virtue of this Memorandum.
- 6. Agreement Controlling. This Memorandum is only a summary of certain of the terms and conditions contained in the Agreement, as the same may be further amended, and is not intended in any way to amend, alter, modify, abrogate, substitute or otherwise affect any of the terms or conditions contained in the Agreement, all of which are hereby incorporated herein by this reference. It is hereby understood and agreed that, notwithstanding this Memorandum, the terms and conditions contained in the Agreement shall, in all events, control the relationship between Landlord and Tenant with respect to the subject matter contained therein.
- 7. <u>Purpose; No Modification.</u> This Memorandum is solely for recording purposes and shall not be construed to alter, modify or supplement the Agreement of which this is a Memorandum.
- 8. <u>Not a Conveyance.</u> The Agreement is a lease of less than ninety-nine (99) years and not a conveyance.

SIGNATURES & EXHIBIT TO APPEAR ON FOLLOWING PAGEST

		By: Larry Rick Its: Director Engineering-Network
STATE OF ILLINOIS)) SS	ns. Director talgitocards
COUNTY OF COOK)	LARRY W. RICK
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SHARON A PETRIEL OFFICIAL SEAL Notary Public, State of Mr My Commission Exp July 16, 2017	inois -	* SHERDI A. VETRIFICATION Notary Public, State of Allunous My commission (is)(expires) LESSOR: CITY OF DARIEN
		By: Bryon Vena Its: City Administrator
STATE OF ILLINOIS)	
COUNTY OF DUPAGE) SS)	
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LESSEE:

d/b/a Verizon Wireless

CHICAGO SMSA LIMITED PARTNERSHIP

By: Celico Sactnership, its General Partner

WHD/12620150.1

This Document was drafted by:

Rodney W. Carter, Esq. WHYTE HIRSCHBOECK DUDEK S.C. 555 EAST WELLS STREET, SUITE 1900 MILWAUKEE, WISCONSIN 53202-3819

EXHIBIT A

Description of the Real Property

PARENT PARCEL

PART OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34, AND RUNNING THENCE NORTH 89 DEGREES 55 MINUTES EAST ALONG THE SOUTH LINE OF SAID SECTION 808.05 FEET FOR A POINT OF BEGINNING; THENCE NORTH 0 DEGREES 32 MINUTES EAST ALONG THE EAST LINE OF TRACT "D", M. A. MATOUSEK'S PLAT OF SURVEY FOR A DISTANCE OF 200.0 FEET; THENCE NORTHEASTERLY FOR A DISTANCE OF 637.57 FEET TO A POINT IN THE WEST LINE OF TRACT 5, DOWNERS GROVE SUPERVISORS ASSESSMENT PLAT NUMBER 11, WHICH IS 45.0 FEET SOUTH OF THE SOUTH RIGHT OF WAY OF FEDERAL AID ROUTE 98; THENCE SOUTH 0 DEGREES 32 MINUTES WEST ALONG THE WEST LINE OF SAID TRACT 5, FOR DISTANCE OF 756.7 FEET TO THE SOUTH LINE OF SAID SECTION 34; THENCE SOUTH 89 DEGREES 55 MINUTES WEST ALONG SAID SOUTH LINE FOR A DISTANCE OF 290.85 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

NOW KNOWN AS:

LOT 1 IN GREAT DANE RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8,2011 AS DOCUMENT R2011-150249, BEING A RESUBDIVISION OF LOT 1 IN DARIEN PUBLIC WORKS SUBDIVISION, IN DUPAGE COUNTY, ILLINOIS

EXHIBIT B

Descriptions of Premises & Easements

TENANT LEASE AREA FOR GENERATOR:

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 44.61 feet along the south line of said Lot 1; thence North 00°30'36" West 59.94 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION;

thence South 89°29'24" West 10.00 feet; thence North 00°30'36" West 4.00 feet; thence North 89°29'24" East 10.00 feet; thence South 00°30'36" East 4.00 feet to the place of beginning of this description.

TENANT LEASE AREA:

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION:

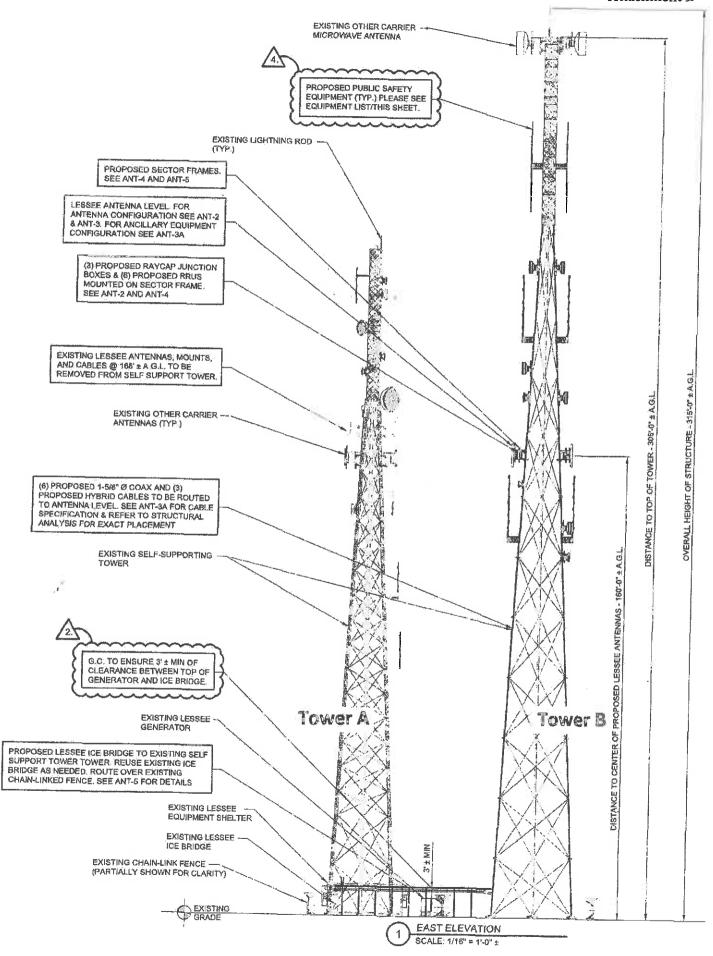
thence South 89°25'53" West 14.00 feet; thence North 00°34'07" West 33.83 feet; thence North 87°30'10" East 5.13 feet; thence North 88°28'17" East 8.88 feet; thence South 00°34'07" East 34.00 feet to the place of beginning of this description.

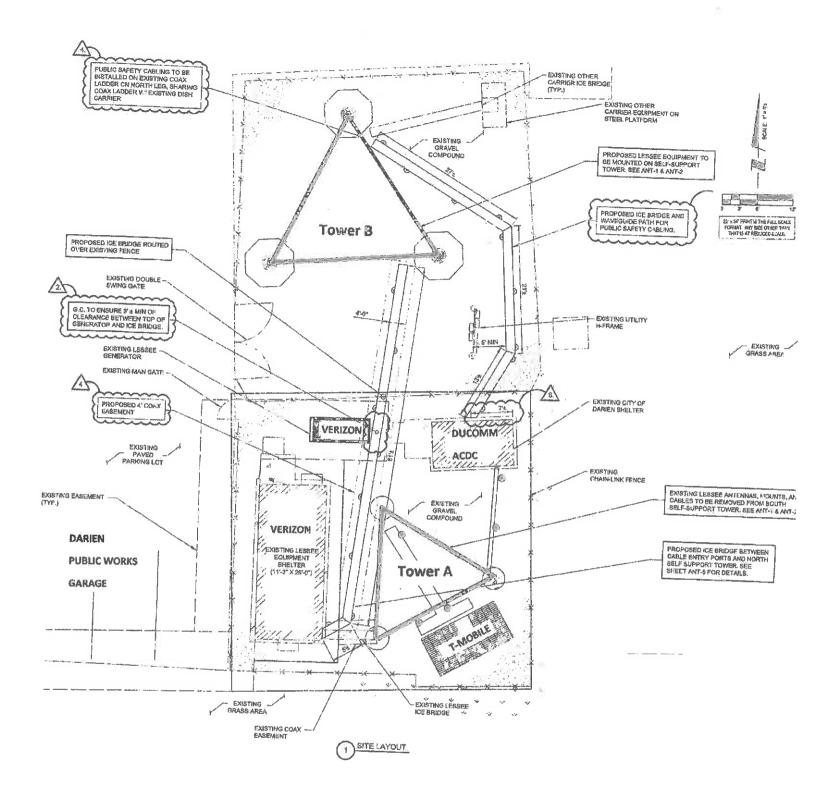
TENANT COAX EASEMENT:

A 4.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet to the southeast corner of a 14.00 foot by 34.00 foot lessee lease area; thence continuing North 00°34'07" West 5.03 TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence North 86°25'45" East 6.35 feet for the place of ending of this centerline description. The sidelines to be lengthened and/or shortened to terminate at right angles.

TENANT UTILITY EASEMENT:

A 10.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 41.61 feet along the south line of said Lot 1; thence North 00°30'36" West 61.89 feet TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 89°28'17" West 15.91 feet; thence South 87°30'10" West 10.22 feet; thence South 00°34'07" East 38.96 feet; thence South 88°33'29" West 158.47 feet thence North 01°26'31" West 85.07 feet to the south face of an existing building for the place of ending of this centerline description.





A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE SECOND AMENDMENT TO THE STRUCTURE LEASE AGREEMENT WITH VERIZON WIRELESS APPROVED BY RESOLUTION R-59-11 WITH FIRST AMENDMENT EXECUTED AUGUST 2, 2016 TO ALLOW VERIZON WIRELESS TO LOCATE TELECOMMUNICATIONS EQUIPMENT ON THE DARIEN CELL TOWERS LOCATED AT 1041 S. FRONTAGE ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: The City Council of the City of Darien hereby authorizes the City Administrator to execute the Second Amendment to Structure Lease Agreement with Verizon Wireless approved by Resolution R-59-11 with a First Amendment executed August 2, 2106 to allow Verizon Wireless to locate telecommunications equipment on the Darien cell towers located at 1041 S. Frontage Road, attached hereto as "Exhibit A".

SECTION 2: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

	PASSED AND APPROVED BY THE	CITY COUNIL OF TH	E CITY OF DARIEN
DUPA	AGE COUNTY, ILLINOIS, this	day of	, 2018 .
AYES	:		
NAYS	:		<u>.</u>
ABSE	NT·		

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DUPAGE COUNTY, ILLINOIS, this _____ day of _______, 2018. KATHLEEN MOESLE WEAVER, MAYOR ATTEST: JOANNE E. RAGONA, CITY CLERK APPROVED AS TO FORM:

CITY ATTORNEY

Site Name: Darien DPW Location: 126659 Attorney/Date: HB/08.22.18

SECOND AMENDMENT TO STRUCTURE LEASE AGREEMENT

This Second Amendment to Structure Lease Agreement ("Second Amendment") is made as of the date of the last party to sign below, by and between the City of Darien, with a mailing address of 1702 Plainfield Road, Darien, Illinois 60561 (hereinafter referred to as "Landlord"), and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, with its principal office at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), (hereinafter referred to as "Tenant"). The Landlord and Tenant are at times collectively referred to hereinafter as the "Parties".

WHEREAS, the Parties entered into that certain Structure Lease Agreement (the "Agreement") dated September 26, 2011, as amended by that certain First Amendment to Structure Lease Agreement (the "First Amendment") dated August 2, 2016 (the Agreement and First Amendment, collectively the "Lease") that provides for the operation of communications equipment on Landlord's tower ("Existing Tower") and other equipment on a portion of the real property owned by Landlord in the City of Darien as described in Exhibit 1 to the Agreement ("Property"), with certain non-exclusive easement rights of access for utility lines and cables and vehicular ingress and egress across and over the Property (collectively the "Premises"); and

WHEREAS, Tenant has agreed to remove its equipment from the Existing Tower and install its equipment on a newer three hundred five foot (305') self-support tower ("New Tower") in an alternate location on the Property for the benefit of Landlord;

WHEREAS, the Parties desire to amend the Extension Terms provided in the Lease; and

WHEREAS, the Parties wish to amend the Lease to address the above items and to reach new agreements regarding the same;

NOW, THEREFORE, in consideration of the promises hereinafter made and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

- 1. The recitals above are true and correct and are incorporated herein.
- Leased Premises. Landlord leases to Tenant install its radio communications equipment, antennas and appurtenances on a portion of that certain space on the New Tower in the locations depicted in the construction drawings attached as <u>Exhibit 2-2</u> ("Tower Space"). Aside from the Tower Space in <u>Exhibit 2-2</u>, this Second Amendment does not change the Premises.
- 3. <u>Equipment Installation</u>. Landlord grants permission to Tenant to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit 3 (the "New Tower Space Equipment"). All references to Exhibit 2-1 in the Lease are deleted and replaced with references to Exhibit 2-2.
- 4. <u>Relocation from Old Tower to New Tower</u>. Tenant shall be responsible for all Tenant's costs associated with moving from the Old Tower to the New Tower. It is understood that Tenant

has submitted the proposal for the Tower Space and New Tower Space Equipment to Landlord, and Landlord has approved said items. Provided that Tenant has received all necessary permits and approvals from appropriate governing bodies, Tenant may immediately commence the installation of the New Tower Space Equipment.

- 5. Rent. Paragraph 4 of the Agreement and Paragraph 2 of the Amendment are hereby amended to add the following as subparagraph 4(e) to the Agreement:
 - Tenant shall have a designated period of time ("Installation Period") to complete installation of the New Tower Equipment on the New Tower. The Installation Period shall commence upon the date Landlord supplies Tenant a building permit for Tenant's installation on the New Tower (the "Permit Date"). The Installation Period shall commence on the Permit Date and continue for sixty (60) days, except as may be adjusted by the Landlord, in the Landlord's sole discretion, to allow for extenuating conditions. Commencing sixty (60) days following the Permit Date, Rent payable under Paragraph 4(a) of the Agreement shall escalate, and Tenant will thereafter pay the Landlord a monthly rental payment of four thousand and 00/100 dollars (\$4,000.00) ("Rent"), at the address set forth above (the "Escalated Rent"). If the sixty (60) days following the Permit Date occurs on or between the first (1st) and fifteenth (15th) date of the month, the Escalated Rent shall be due on the first (1st) day of that month. If the sixty (60) days following the Permit Date falls on or between the sixteenth (16th) and the last day of the month, the Escalated Rent shall be due on the first (1st) day of the following month. Rent, including any and all rent increases, will be escalated in accordance with the Agreement. Specifically, commencing with the beginning of the Second Extension Term in September, 2022, Rent will increase from \$4,000.00 per month to \$4,600.00. Rent will increase by an additional 15% at the beginning of each additional Extension Term
- 6. The Parties agree to execute a Memorandum of this Second Amendment which shall amend and restate any previous memorandum(s) of Lease.
- 7. Except as amended herein, all terms, conditions, provisions, covenants, and agreements in the Agreement are ratified and confirmed in their entirety. If any inconsistencies occur between the Lease and this Second Amendment, the terms of this Second Amendment shall take precedence. The terms used herein and not otherwise defined shall have the same meaning as set forth in the Lease.
- 8. All capitalized terms used but not defined in this Second Amendment shall have the meaning, if any, set forth elsewhere in the Agreement.
- 9. The Agreement may be further amended or modified only by a written agreement signed by both Parties.
- 10. This Second Amendment shall bind and inure to the benefit of the successors and assigns of the Parties except to the extent any assignment or other transfer may be prohibited, limited or conditioned pursuant to any other term or condition contained in the Agreement.
- 11. This Second Amendment may be executed in one or more counterparts, all of which counterparts taken together shall constitute one and the same agreement.

	VITNESS WHEREOF, the Parties have ast date written below.	e caused this Second Amendment to be effective as or	
LAN	IDLORD:	TENANT:	
CITY OF DARIEN		CHICAGO SMSA LIMITED PARTNERSHIP d/b/a Verizon Wireless By Cellco Partnership, Its General Partner	
Ву:	Name: Bryon D. Vana Title: City Administrator	By: Name:	
	Date:	Title:	
		Date:	
	[Exh	bit 2-2 Follows]	

-3-

EXHIBIT 2-2

DESCRIPTION OF PREMISES

Tenant Lease Area

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 89°25'53" West 14.00 feet; thence North 00°34'07" West 33.83 feet; thence North 87°30'10" East 5.13 feet; thence North 88°28'17" East 8.88 feet; thence South 00°34'07" East 34.00 feet to the place of beginning of this description.

Tenant Lease Area for Generator

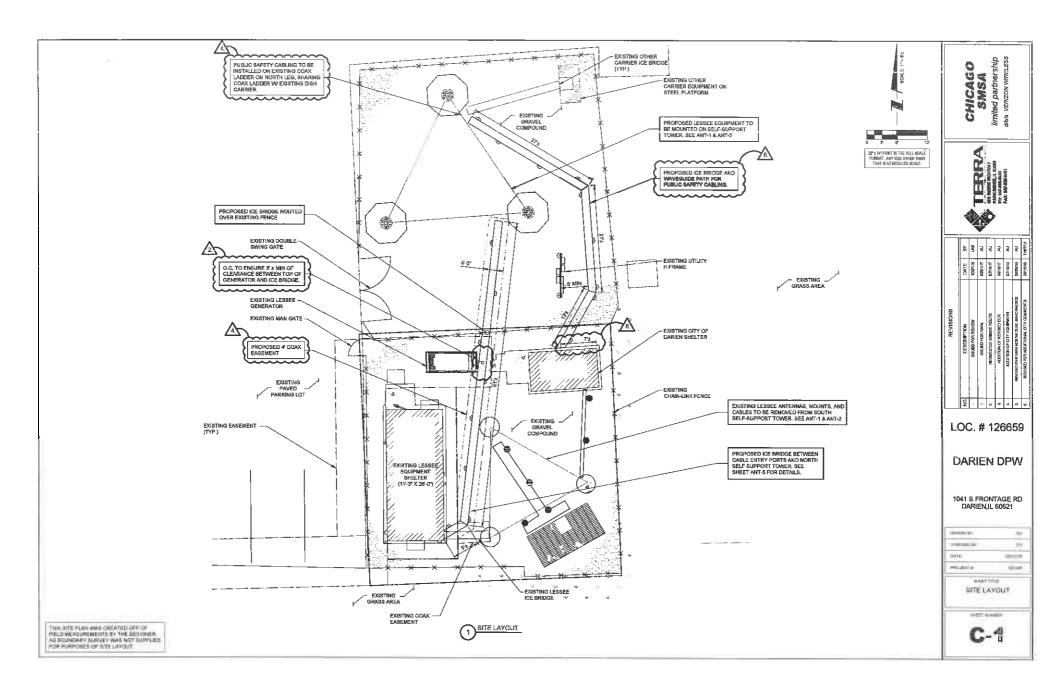
All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 44.61 feet along the south line of said Lot 1; thence North 00°30'36" West 59.94 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 89°29'24" West 10.00 feet; thence North 00°30'36" West 4.00 feet; thence South 00°30'36" East 4.00 feet to the place of beginning of this description.

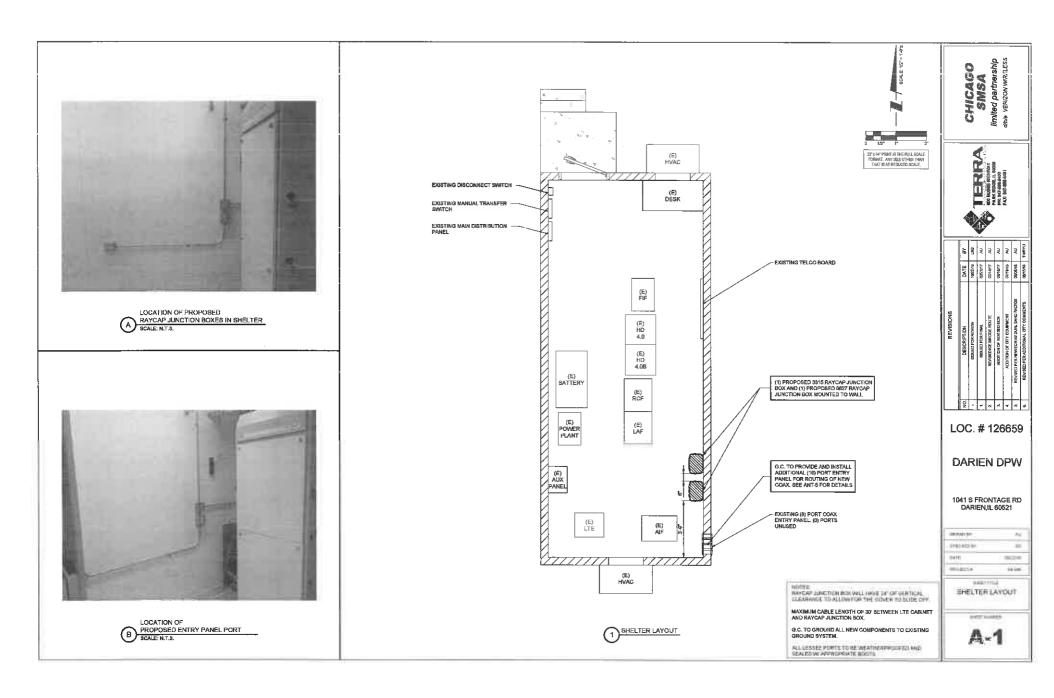
Proposed 10.00' wide Lessee Utility Easement

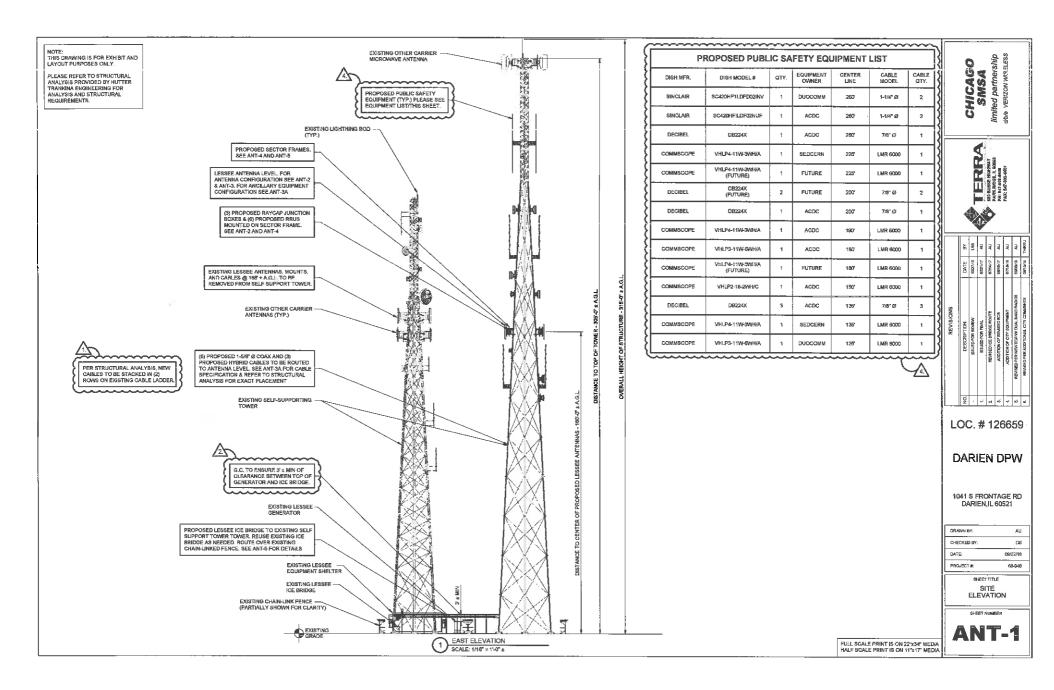
A 10.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 41.61 feet along the south line of said Lot 1; thence North 00°30'36" West 61.89 feet TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 89°28'17" West 15.91 feet; thence South 87°30'10" West 10.22 feet; thence South 00°34'07" East 38.96 feet; thence South 88°33'29" West 158.47 feet thence North 01°26'31" West 85.07 feet to the south face of an existing building for the place of ending of this centerline description.

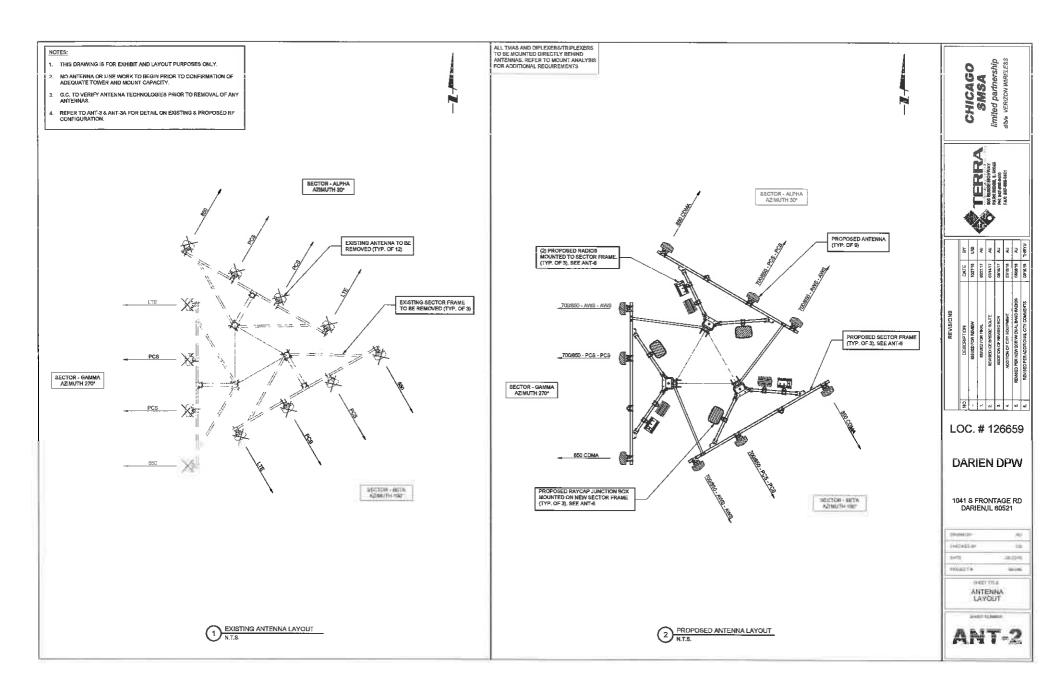
Tenant Coax Cable Easement

A 4.00 foot wide coax cable easement in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet to the southeast corner of a 14.00 foot by 34.00 foot lessee lease area; thence North 00°34'07" West 4.07 along the easterly line of said lessee lease area TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence continuing North 00°34'07" West 8.90 feet along said easterly line; thence North 06°37'11" East 55.32 feet; thence South 83°22'49" East 4.00 feet; thence South 06°37'11" West 61.97 feet; thence South 59°34'31" West 3.62 feet to the place of beginning of this description.









GROUNDING ELECTRODE SYSTEM NOTES:

- GROUNDING ELECTRODE SYSTEM NOTES.

 A.LL GROLLING CONNECTIONS BALL BE MADE BY THE EXITHERMIC PROCESS CONNECTIONS SHALL INCLUDE ALL CABLE TO CABLE, SPLICES, ETC., ALL CABLE TO CABLE, SPLICES, ETC., ALL CABLE TO CABLE MADE SHALL INCLUDE ALL CABLE TO CABLE AND LIGHT PROPROPERS OF SYSTEM AS A DISTANCE OF THE ASSET OF THE

	LEGEND
SYMBOL .	DESCRIPTION
8	5/8" DIAMETER x 10"-0" LONG COPPER CLAD GROUND ROD (HARGER-5810)
0	5/8" DIAMETER X 10"-0" LONG COPPER CLAD GROUND ROD WITH INSPECTION WELL
	#2 AWG TIND SOLID BARE GOPPER WIRE MINIMUM 42" BELOW GRADE (HARGER-L2)
-	EXOTHERMIC WELD

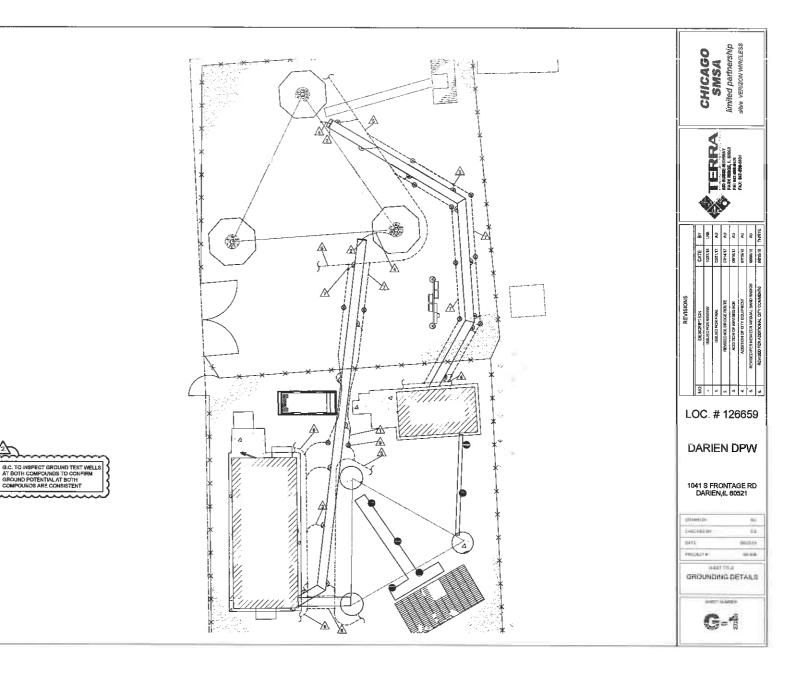
- GRÖIND TEST: GROUND TESTS SHALL BE PERFORMED AS REQUIRED BY LESSEE STANDARD PROCEDURES, GROUND GRID RESISTANCE SHALL IND EXCEED 5 OHMS.
- 5. CONTRACTOR SHALL SUBMIT THE GROUND RESISTANCE TEST REPORT AS FOLLOWS:
- ONE (1) COPY TO OWNER REPRESENTATIVE
 ONE (1) COPY TO ENGINEER
 ONE (1) COPY TO KEEP INSIDE EQUIPMENT ENCLOSURE

TYPICAL KEYED GROUNDING NOTES △

- ↑ \$2 AWG TNND SOLID BARE COPPER CONDUCTOR 42" BELOW GRADE (TYPICAL) MINIMUM 24" BENDING RADIUS
- 4"X20"X1/4" TINID INSULATED COPPER GROUND BAR, ISOLATED WITH 10.0"

 LONG #2 AWG TINID SOLID COPPER WIRE WELDED TAILS

 (HARGER GBIT 14420W)
- GROUND CABLE WAVEGUIDE BRIDGE (TYP.) BY ELECTRICAL CONTRACTOR. A GROUND ANTENNA CABLES TO GROUND BAR AT ANTENNA ELEVATION OF TOWER, GROUND BASE GROUND BAR TO GROUND HALO.
- ASSUMED LOCATION OF EXISTING TOMER GROUND RING
 ASSUMED LOCATION OF EXISTING ICE BRIDGE GROUND RING TO REMAIN
 BOND EXISTING TOMER BROUND RING TO PREPOSED BROUND RING TO WITH
 #2 AWG TIND SOULD COPPER CONDUCTOR IN 2 LOCATIONS.
- & ASSUMED LOCATION OF EXISTING SHELTER GROUND RING
- 5/8" x 10" COPPER CLAD GROUND ROD



Site Name: Darien DPW Location: 126659 Attorney/Date: HB/08.22.18

SECOND AMENDMENT TO STRUCTURE LEASE AGREEMENT

This Second Amendment to Structure Lease Agreement ("Second Amendment") is made as of the date of the last party to sign below, by and between the City of Darien, with a mailing address of 1702 Plainfield Road, Darien, Illinois 60561 (hereinafter referred to as "Landlord"), and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, with its principal office at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), (hereinafter referred to as "Tenant"). The Landlord and Tenant are at times collectively referred to hereinafter as the "Parties".

WHEREAS, the Parties entered into that certain Structure Lease Agreement (the "Agreement") dated September 26, 2011, as amended by that certain First Amendment to Structure Lease Agreement (the "First Amendment") dated August 2, 2016 (the Agreement and First Amendment, collectively the "Lease") that provides for the operation of communications equipment on Landlord's tower ("Existing Tower") and other equipment on a portion of the real property owned by Landlord in the City of Darien as described in Exhibit 1 to the Agreement ("Property"), with certain non-exclusive easement rights of access for utility lines and cables and vehicular ingress and egress across and over the Property (collectively the "Premises"); and

WHEREAS, Tenant has agreed to remove its equipment from the Existing Tower and install its equipment on a newer three hundred five foot (305') self-support tower ("New Tower") in an alternate location on the Property for the benefit of Landlord;

WHEREAS, the Parties desire to amend the Extension Terms provided in the Lease; and

WHEREAS, the Parties wish to amend the Lease to address the above items and to reach new agreements regarding the same;

NOW, THEREFORE, in consideration of the promises hereinafter made and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

- 1. The recitals above are true and correct and are incorporated herein.
- Leased Premises. Landlord leases to Tenant install its radio communications equipment, antennas and appurtenances on a portion of that certain space on the New Tower in the locations depicted in the construction drawings attached as <u>Exhibit 2-2</u> ("Tower Space"). Aside from the Tower Space in <u>Exhibit 2-2</u>, this Second Amendment does not change the Premises.
- 3. <u>Equipment Installation</u>. Landlord grants permission to Tenant to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit 3 (the "New Tower Space Equipment"). All references to <u>Exhibit 2-1</u> in the Lease are deleted and replaced with references to <u>Exhibit 2-2</u>.
- 4. <u>Relocation from Old Tower to New Tower</u>. Tenant shall be responsible for all Tenant's costs associated with moving from the Old Tower to the New Tower. It is understood that Tenant

has submitted the proposal for the Tower Space and New Tower Space Equipment to Landlord, and Landlord has approved said items. Provided that Tenant has received all necessary permits and approvals from appropriate governing bodies, Tenant may immediately commence the installation of the New Tower Space Equipment.

- 5. Rent. Paragraph 4 of the Agreement and Paragraph 2 of the Amendment are hereby amended to add the following as subparagraph 4(e) to the Agreement:
 - Tenant shall have a designated period of time ("Installation Period") to complete installation of the New Tower Equipment on the New Tower. The Installation Period shall commence upon the date Landlord supplies Tenant a building permit for Tenant's installation on the New Tower (the "Permit Date"). The Installation Period shall commence on the Permit Date and continue for sixty (60) days, except as may be adjusted by the Landlord, in the Landlord's sole discretion, to allow for extenuating conditions. Commencing sixty (60) days following the Permit Date, Rent payable under Paragraph 4(a) of the Agreement shall escalate, and Tenant will thereafter pay the Landlord a monthly rental payment of four thousand and 00/100 dollars (\$4,000.00) ("Rent"), at the address set forth above (the "Escalated Rent"). If the sixty (60) days following the Permit Date occurs on or between the first (1st) and fifteenth (15th) date of the month, the Escalated Rent shall be due on the first (1st) day of that month. If the sixty (60) days following the Permit Date falls on or between the sixteenth (16th) and the last day of the month, the Escalated Rent shall be due on the first (1st) day of the following month. Rent, including any and all rent increases, will be escalated in accordance with the Agreement. Specifically, commencing with the beginning of the Second Extension Term in September, 2022, Rent will increase from \$4,000.00 per month to \$4,600.00. Rent will increase by an additional 15% at the beginning of each additional Extension Term
- 6. The Parties agree to execute a Memorandum of this Second Amendment which shall amend and restate any previous memorandum(s) of Lease.
- 7. Except as amended herein, all terms, conditions, provisions, covenants, and agreements in the Agreement are ratified and confirmed in their entirety. If any inconsistencies occur between the Lease and this Second Amendment, the terms of this Second Amendment shall take precedence. The terms used herein and not otherwise defined shall have the same meaning as set forth in the Lease.
- 8. All capitalized terms used but not defined in this Second Amendment shall have the meaning, if any, set forth elsewhere in the Agreement.
- 9. The Agreement may be further amended or modified only by a written agreement signed by both Parties.
- 10. This Second Amendment shall bind and inure to the benefit of the successors and assigns of the Parties except to the extent any assignment or other transfer may be prohibited, limited or conditioned pursuant to any other term or condition contained in the Agreement.
- 11. This Second Amendment may be executed in one or more counterparts, all of which counterparts taken together shall constitute one and the same agreement.

IN V	WITNESS WHEREOF, the Parties It ast date written below.	ave caused this Second Amendment to be effec	tive as of
LAN	IDLORD:	TENANT:	
CITY OF DARIEN		CHICAGO SMSA LIMITED PARTNERSHIP d/b/a Verizon Wireless By Cellco Partnership, Its General Partner	
Ву:	Name: Bryon D. Vana	By:	
	Title: City Administrator	Name:	
	Date:	Title:	
		Date:	
	[Ex	hibit 2-2 Follows]	

-3-

EXHIBIT 2-2

DESCRIPTION OF PREMISES

Tenant Lease Area

All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 89°25'53" West 14.00 feet; thence North 00°34'07" West 33.83 feet; thence North 87°30'10" East 5.13 feet; thence North 88°28'17" East 8.88 feet; thence South 00°34'07" East 34.00 feet to the place of beginning of this description.

Tenant Lease Area for Generator

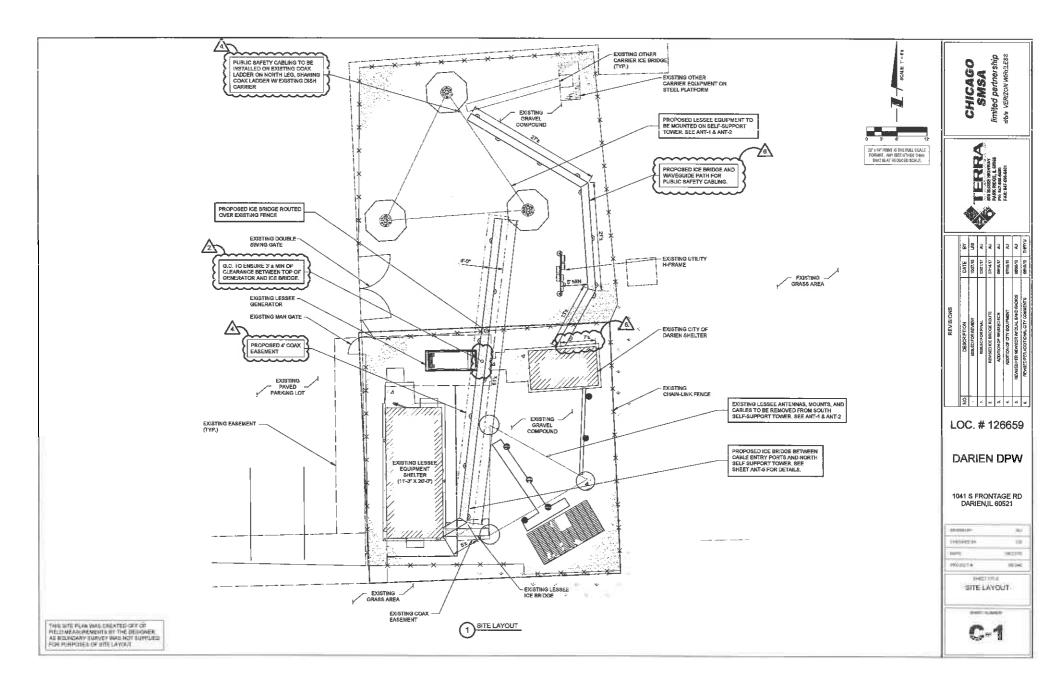
All that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 44.61 feet along the south line of said Lot 1; thence North 00°30'36" West 59.94 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 89°29'24" West 10.00 feet; thence North 00°30'36" West 4.00 feet; thence North 89°29'24" East 10.00 feet; thence South 00°30'36" East 4.00 feet to the place of beginning of this description.

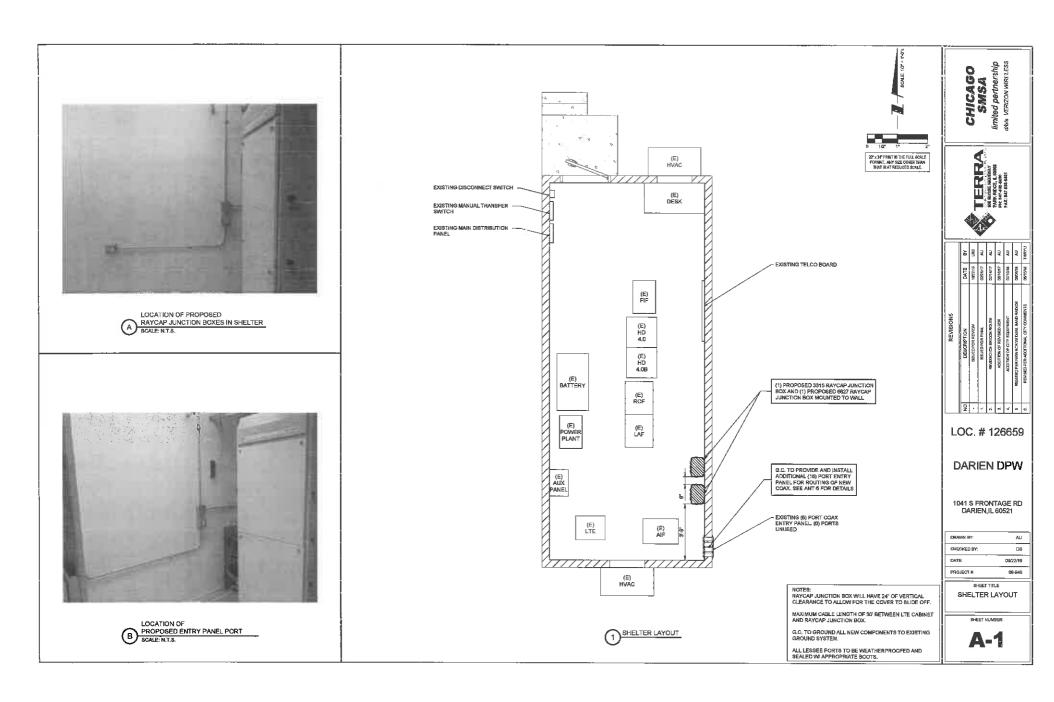
Proposed 10.00' wide Lessee Utility Easement

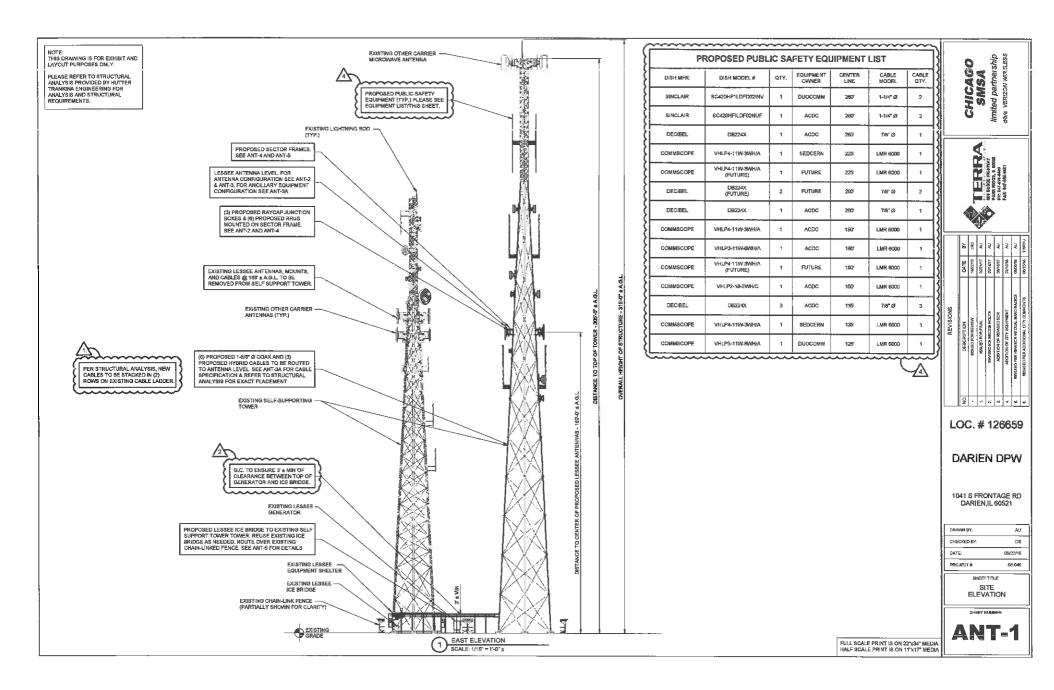
A 10.00 foot wide easement for utilities in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, the centerline of which is described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 41.61 feet along the south line of said Lot 1; thence North 00°30'36" West 61.89 feet TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 89°28'17" West 15.91 feet; thence South 87°30'10" West 10.22 feet; thence South 00°34'07" East 38.96 feet; thence South 88°33'29" West 158.47 feet thence North 01°26'31" West 85.07 feet to the south face of an existing building for the place of ending of this centerline description.

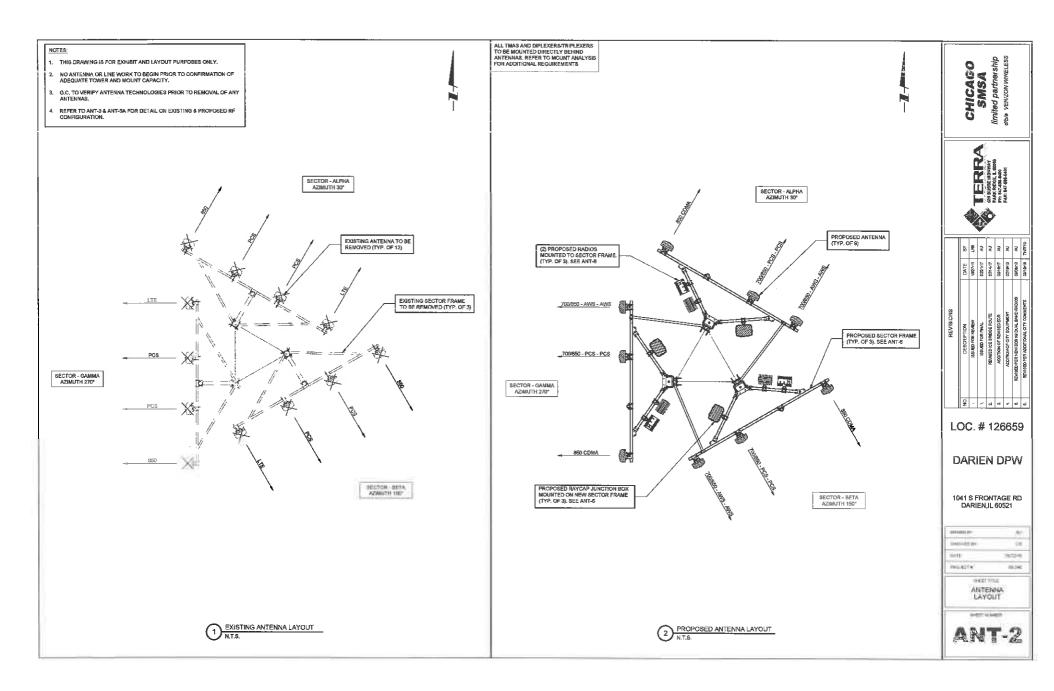
Tenant Coax Cable Easement

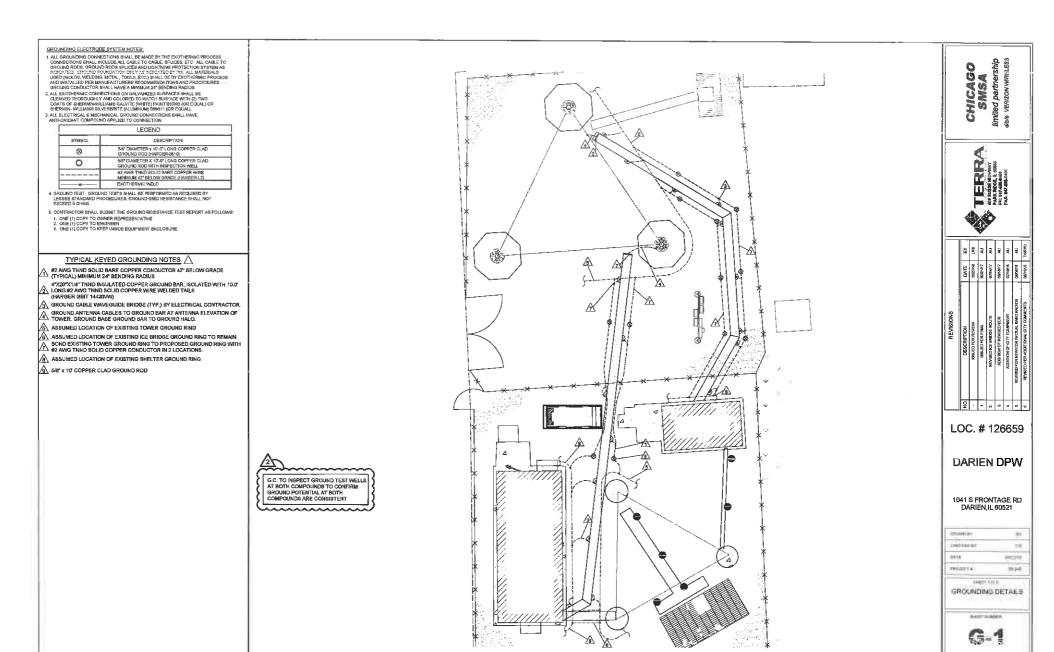
A 4.00 foot wide coax cable easement in that part of Lot 1 in Great Dane Resubdivision, being a resubdivision of Lot 1 in Darien Public Works Subdivision, part of the Southwest 1/4 of Section 34, Township 38 North, Range 11 East of the Third Principal Meridian, City of Darien, DuPage County, Illinois, as recorded in document number R2011-150249, DuPage County Recorder's Office, described as: Commencing at a found pipe at the Southeast corner of said Lot 1; thence South 88°33'32" West 48.69 feet along the south line of said Lot 1; thence North 00°30'36" West 23.00 feet to the southeast corner of a 14.00 foot by 34.00 foot lessee lease area; thence North 00°34'07" West 4.07 along the easterly line of said lessee lease area TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence continuing North 00°34'07" West 8.90 feet along said easterly line; thence North 06°37'11" East 55.32 feet; thence South 83°22'49" East 4.00 feet; thence South 06°37'11" West 61.97 feet; thence South 59°34'31" West 3.62 feet to the place of beginning of this description.











MINUTES CITY OF DARIEN MUNICIPAL SERVICES COMMITTEE MEETING October 22, 2018

PRESENT: Alderman Joseph Marchese-Chairman, Alderman Thomas Belczak,

Dan Gombac - Director, Steven Manning - City Planner

ABSENT: Alderman Thomas Chlystek

ESTABLISH QUORUM

Chairperson Joseph Marchese called the meeting to order at 6:35 p.m. at City Hall Council Chambers, Darien, Illinois and declared a quorum present.

OLD BUSINESS

a. Discussion III- Update-Refuse Container-Consideration to amend the City Code provisions on storage of refuse containers in residential areas.

Mr. Dan Gombac, Director reported that staff has been working with Alderman Vaughan and Mr. Jon Pierson regarding refuse and storage. He reported that Mr. Pierson is present and that Alderman Vaughan was not able to attend.

Mr. Gombac reported that staff has been working with Home Depot to find an adequate storage shed. He reported that detailed information and pricing is noted in attachment 3-1 of the Agenda Memo with pricing \$348.00 but offered to residents at \$312.00. He stated that the price is costly but long term it is a good product and will last.

Chairperson Marchese questioned if Home Depot could come down in price.

Mr. Gombac reported that that is the lowest pricing.

Alderman Belczak questioned if the Code will need to be amended. He questioned if this should be offered to anyone or those that have a grade variation. He stated that being subjective makes it more difficult.

Chairperson Marchese stated that he is concerned about the message and that he preferred that it not be open to everyone but rather a geographic location.

Mr. Gombac reported that the bulk of the complaints are in one area.

Mr. Steve Manning, Director reported that there are also others scattered throughout Darien.

Chairperson Marchese opened the meeting to anyone wishing to present public comment.

Mr. John Pierson, Darien stated that his home was built in 1967. He questioned if the Council looked at the architecture of the homes when the Code was written. He stated that in the 14 years he has owned his home that he has never had a problem and that he has had no help from the person who taped the note to his home and that it is not feasible to spend \$312.00. Mr.

Pierson stated that there are also a couple neighbors who are senior citizens and that they cannot put their garbage on the side.

Mr. Gombac reported that this will be in discussion and that in the meantime, Mr. Pierson is under a moratorium until a decision is made.

Chairperson Marchese suggested amending the Code for a certain area and try to offer assistance to those who cannot afford it.

Mr. Gombac reported that he will place this topic for a Goal Setting agenda item.

NEW BUSINESS

a. Resolution – To enter into an engineering agreement with Christopher B. Burke Engineering, Ltd. for the 2019 Street Maintenance Program, in an amount not to exceed \$32,826.00.

Mr. Dan Gombac, Director reported that this resolution is for an engineering agreement with Christopher B. Burke Engineering, Ltd. for the 2019 Street Maintenance Program. He reported that the proposed 2019 Road Program is listed in Item A of the Agenda Memo.

There was no one else in the audience wishing to present public comment.

Alderman Marchese made a motion and it was seconded by Alderman Belczak approval of a resolution to enter into an engineering agreement with Christopher B. Burke engineering, Ltd. for the 2019 Street Maintenance Program, in an amount not to exceed \$32,826.00.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

b. Resolution – Authorizing the Mayor to enter into an engineering agreement with Christopher B. Burke Engineering, Ltd for pavement corings for the proposed 2019 Street Maintenance Program, in an amount not to exceed \$11,500.00.

Mr. Dan Gombac, Director reported that this resolution is for an engineering agreement with Christopher B. Burke Engineering, Ltd. for the 2019 Street Maintenance Program. He reported that the cores are almost completed and that there will be limited cores in the future. He further reported that Christopher Burke has not raised his pricing and that there are a lot of caveats as to why the City uses them.

There was no one in the office wishing to present public comment.

Alderman Marchese made a motion and it was seconded by Alderman Belczak approval of a resolution authorizing the Mayor to enter into an engineering agreement with Christopher B. Burke Engineering, Ltd for pavement corings for the proposed 2019 Street Maintenance Program, in an amount not to exceed \$11,500.00.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

c. Resolution - Approval of a Resolution authorizing the Mayor to execute a three year Intergovernmental Agreement with the County of DuPage for mowing along County roads and rights of way.

Mr. Dan Gombac, Director reported that the City has an Intergovernmental Agreement with the County of DuPage for mowing certain areas of DuPage County roads. He reported that the reimbursable amount remains the same for five cycles of mowing and up to an additional 15. Mr. Gombac reported that the frequencies have increased from 10 to 15 reducing the per acre cost from \$100 to \$50 per acre. He reported that the proposed agreement is a three-year agreement.

Alderman Belczak questioned the tree trimming. Mr. Gombac reported that the County is still getting back to him.

There was no one else in the audience wishing to present public comment.

Alderman Marchese made a motion and it was seconded by Alderman Belczak approval of a resolution authorizing the Mayor to execute a three year Intergovernmental Agreement with the County of DuPage for mowing along County roads and rights of way.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

d. Resolution – Accepting the public improvements and authorizing release of the Letter of Credit upon receipt of maintenance security for the Carriage Way West Unit 6 development.

Mr. Dan Gombac, Director reported that the owner of Carriage Way West Unit 6 has completed the underground utilities and grading. He reported that the City can authorize release of the Letter of Credit upon receipt of security for 10% of the construction costs in the amount of \$6,131 to secure any maintenance that may be needed for the improvements for a one year period.

There was no one else in the audience wishing to present public comment.

Alderman Belczak made a motion and it was seconded by Alderman Marchese approval of a resolution accepting the public improvements and authorizing release of the Letter of Credit upon receipt of maintenance security for the Carriage Way West Unit 6 development.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

e. Resolution - Approval of the Plat of Easement for the Carriage Way West Unit 6 development.

Mr. Dan Gombac, Director reported that this is for Plat of Easement approval for the Carriage Way West Unit 6 development.

There was no one else in the audience wishing to present public comment.

Alderman Belczak made a motion and it was seconded by Alderman Marchese approval of a resolution approving the Plat of Easement for the Carriage Way West Unit 6 development.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

f. Discussion - Staff is proposing a code amendment for nuisance trees.

Mr. Dan Gombac, Director reported that the City gets several requests for removal of dead or diseased trees by the neighbor. He reported that removal of the nuisance trees is the responsibility of the property owner and often times owners delay, refuse or just do not respond.

Mr. Gombac reported that staff is working on updating the Code because there are no tools in place to enforce. He reported that the Agenda Memo Attachment A provides examples of what Nuisance Codes are in place at nearby communities.

Mr. Gombac reported that staff will provide a recommendation and model Code for approval.

g. PZC 2018-07 - 7879 Lemont Rd: Petitioner seeks approval of a special use zoning permit to operate an indoor volleyball recreation business in a portion of the building at 7879 Lemont Road.

Mr. Steve Manning, City Planner reported that the City approved the site plans of the Panattoni Development Company for a warehouse in June 2016. He reported that there is one tenant in the building now and that the rest of the building is vacant.

Mr. Manning reported that Club Fusion has locations in Batavia, Huntley, Crystal Lake and a practice facility in Darien. He reported that NuWave Volleyball has partnered with Club Fusion and that they use space at Perfect Swing. He stated that they are looking for a permanent home with 2 sand volleyball courts, 4 hard surface volleyball courts, fitness training room, showers, concessions, pro shop and offices providing volleyball training to youth grades 4-12 after school hours 4:30 pm - 9:30 pm with up to 4 coaches and 4 employees.

Mr. Manning reported that the PZC held a public hearing on October 3rd. He stated that they had issues regarding the lighting. Mr. Manning reported that the building presently has a wall mounted and pole mounted lighting in the rear and front lighting at the door which meets code and a circular drive. He reported that the PZC voted in favor of the petition 6-0.

Alderman Belczak questioned where the drop-off would be located.

Mr. Steve Dowjotas, NuWave Volleyball reported that the drop off and pick up would be located in the front on the circle drive.

Chairperson Marchese questioned the hours of operation and the number of courts.

Mr. Dowjotas stated that they train between the months of December through June during the hours of 4:30 - 9:00 p.m. for 10-18 year olds. He stated that presently they are unsure if tournaments will be held there and that their priority is to make sure the kids are trained. He further stated that there will be 2 indoor sand courts and 4 indoor floor courts.

Chairperson Marchese questioned if they are working with any of the high schools.

Mr. Dowjotas stated that they held tryouts for 15/16 year olds recently and that there are high schools students from everywhere with 27 currently in Darien. Mr. Dowjotas informed the Committee that parking will not be an issue because 70-80% of the students are dropped off.

There was no one in the audience wishing to present public comment.

Alderman Belczak made a motion and it was seconded by Alderman Marchese approval of a special use zoning permit to operate an indoor volleyball recreation business in a portion of the building at 7879 Lemont Road.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

Chairperson Marchese announced that this would be forwarded to the City Council on Monday, November 5, 2018.

h. Minutes – September 24, 2018 Municipal Services Committee

There was no one in the audience wishing to present public comment.

Alderman Belczak made a motion and it was seconded by Alderman Marchese approval of the minutes of the September 24, 2018 Municipal Services Committee Meeting.

Upon voice vote, THE MOTION CARRIED UNANIMOUSLY 2-0.

DIRECTOR'S REPORT

Mr. Dan Gombac, Director reported that the new banners replacing the Green and White banners were installed. He reported that the new banner shows a picture of the Clock Tower.

Mr. Gombac reported that staff is in discussion with a potential restaurant at the corner of Plainfield and Cass.

NEXT SCHEDULED MEETING

Chairperson Marchese announced that the next Meeting is scheduled for Monday, November 26, 2018.

ADJOURNMENT

With no further business before the Committee, Alderman Marchese made a motion and it was seconded by Alderman Belczak to adjourn. Upon voice vote, THE MOTION CARRIED unanimously and the meeting adjourned at 7:45 p.m.

RESPECTFULLY SUBMITTED:

Joseph Marchese	Thomas Belczak	
Chairman	Alderman	
Thomas Chlystek Alderman		