

**Administrative-Finance Committee**  
**July 11, 2011**  
**6:30 P.M. – City Hall Conference Room**

- 1. Call to Order**
- 2. Establishment of Quorum**
- 3. Public Comment**
- 4. Discussion Items**
  - a. Verizon Antenna Agreement
  - b. Vehicle Fine Increase
  - c. Clarendon Hills Road Stormwater Project
- 5. Other Business**
- 6. Next Meeting – August 8, 2011**
- 7. Adjournment**

**AGENDA MEMO**  
**Administrative/Finance Committee**  
**July 11, 2011**

**ISSUE STATEMENT**

A resolution authorizing the City Administrator to enter into an agreement with Verizon Wireless to utilize the communications tower at 1041 S. Frontage Road.

**BACKGROUND/HISTORY**

The City of Darien owns a communications tower at 1041 S. Frontage Road that was turned over to the City by the University of Chicago in the early 1990s. The City inherited a lease from the University of Chicago that currently pays the City of Darien \$1,175 per month from Verizon for the right to utilize space on the tower and a shed on the ground. Since this lease was originally signed with the University of Chicago, telecommunication demand for these types of towers has increased significantly in the area. The City of Darien has signed five agreements over the past four years with vendors to lease space on water towers for \$2,000 per month.

The lease negotiated by staff with Verizon Wireless includes a rent increase from the \$1,175 per month to \$2,000 per month, with Verizon agreeing to pay a \$25,000 upfront fee in the new contract. These items are not accounted for in the current year budget, as these terms were declined by Verizon until very recently. The new rent and contribution will begin on January 1, 2012.

**STAFF RECOMMENDATION**

Staff recommends approval of the resolution.

**ALTERNATE CONSIDERATION**

Not approving the resolution would be an alternate consideration.

**DECISION MODE**

This item will be placed on the July 18, 2011 agenda for formal consideration by the City Council.

Site Name: Darien DPW  
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 "**Landlord**") 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.

**2. 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.

### 3. **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 "**Holdover 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 (5<sup>th</sup>) 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.

### 5. **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 Landlord.

**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.

**13. 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. Landlord 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.

**16. 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. NOTICES.** 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 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. SEVERABILITY.** 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.

**19. 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. CASUALTY.** 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 or destruction, 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. WAIVER OF LANDLORD'S LIENS.** 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 \_\_\_\_\_, 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.

**WITNESSES:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

**"LANDLORD"**

The City of Darien, an Illinois corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**"TENANT"**

Chicago SMSA Limited Partnership d/b/a  
Verizon Wirless

By: Cellco Partnership  
Its: General Partner

**WITNESS:**

\_\_\_\_\_

Print Name \_\_\_\_\_

By: \_\_\_\_\_  
Name: Beth Ann Drohan  
Its: Area Vice President Network  
Date: \_\_\_\_\_ 20



**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of Chicago SMSA Limited Partnership the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LANDLORD ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ 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: \_\_\_\_\_



**EXHIBIT 1**

**DESCRIPTION OF THE PROPERTY**

to the Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between The City of Darien, an Illinois corporation, as Landlord, and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, as Tenant.

The Property is described and/or depicted as follows:

**EXHIBIT 2**

**DESCRIPTION OF PREMISES**

to the Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between The City of Darien, an Illinois corporation, as Landlord, and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, as Tenant.

The Premises are described and/or depicted as follows:

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**

This Memorandum of Lease is entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between The City of Darien, an Illinois corporation, having 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, having a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Structure Lease Agreement ("**Agreement**") on the \_\_\_ 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:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**"LANDLORD"**

The City of Darien, an Illinois corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**"TENANT"**

Chicago SMSA Limited Partnership

d/b/a Verizon Wireless

By: Cellco Partnership

Its: General Partner

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 20



**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

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

**AGENDA MEMO**  
**Administrative/Finance Committee**  
**July 11, 2011**

**ISSUE STATEMENT**

Consideration of an ordinance to modify vehicle fines in the Darien City Code to match the fines imposed by the State of Illinois.

**BACKGROUND/HISTORY**

The City of Darien lists a number of vehicle infractions, including speeding, in Section 9-5 of the Darien City Code. The City of Darien has reflected the State of Illinois fine schedule for these offenses. The State of Illinois has increased their fines to \$120 - \$1000 for general offenses listed, from a minimum of \$95 to \$140 for speeding between 21-30 mph over the speed limit, and from a minimum of \$105 to \$160 for speeding 31 mph or more over the speed limit. This ordinance would keep the City of Darien even with the State of Illinois fine schedule.

**STAFF RECOMMENDATION**

Staff recommends approving the ordinance.

**ALTERNATE CONSIDERATION**

Not approving the ordinance would be an alternate consideration.

**DECISION MODE**

This item will be on the July 18, 2011 City Council agenda for formal approval.

**CITY OF DARIEN  
DU PAGE COUNTY, ILLINOIS**

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 9-5-4  
OF THE DARIEN CITY CODE**

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**ADOPTED BY THE  
MAYOR AND CITY COUNCIL  
OF THE  
CITY OF DARIEN  
THIS 18<sup>th</sup> DAY OF JULY, 2011**

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**Published in pamphlet form by authority  
of the Mayor and City Council of the City  
of Darien, DuPage County, Illinois, this \_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 2011.**



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 9-5-4 OF THE DARIEN CITY CODE**

**SECTION 1:** Section 9-5-4: of the Darien City Code, “Fines Regarding Vehicle Code Violations” is hereby amended to provide as follows [deleted language stricken]:

**9-5-4: FINES REGARDING VEHICLE CODE VIOLATIONS:**

- (A) Fines; General: A violation of any provision of the Illinois vehicle code incorporated and adopted by reference in section 9-5-2 of this chapter, except those provisions where a minimum fine is otherwise specified, shall be punishable by a fine of not less than ~~seventy five dollars (\$75.00)~~ one hundred twenty dollars (\$120.00) nor more than ~~seven hundred fifty dollars (\$750.00)~~ one thousand dollars (\$1,000.00) for each offense. This fine amount shall expressly be exclusive of court costs and fees that may be imposed in addition to the fine amount.
- (B) All violations for driving a vehicle at a speed which is twenty one to thirty (21-30) miles per hour greater than the applicable statutory maximum speed limit shall be punishable by a minimum fine amount of ~~ninety five dollars (\$95.00)~~ one hundred forty dollars (\$140.00) for each offense. This fine amount shall expressly be exclusive of court costs and fees that may be imposed in addition to the fine amount.
- (C) All violations for driving a vehicle at a speed which is thirty one (31) miles per hour or greater than the applicable statutory maximum speed limit shall be punishable by a minimum fine amount of ~~one hundred five dollars (\$105.00)~~ one hundred sixty dollars (\$160.00) for each offense. This fine amount shall expressly be exclusive of court costs and fees that may be imposed in addition to the fine amount.

**SECTION 2:** This Ordinance shall be in full force and effect from and after its passage and approval, and shall subsequently be published in pamphlet form as provided by law.

**ORDINANCE NO.** \_\_\_\_\_

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

**AYES:** \_\_\_\_\_

**NAYS:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

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

\_\_\_\_\_  
KATHLEEN MOESLE WEAVER, MAYOR

**ATTEST:**

\_\_\_\_\_  
JOANNE E. RAGONA, CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

**AGENDA MEMO**  
**Administrative Finance Committee**  
**July 11, 2011**

**ISSUE STATEMENT**

A resolution authorizing Phase II of the urgent repairs of the storm sewer adjacent to Clarendon Hills Road at Maple Lane for a total cost not to exceed \$38,972.00, and a supplemental resolution for the Illinois Department of Transportation.

**BACKGROUND**

On December 20, 2010 the City Council authorized an expenditure for the urgent repairs that included jetting, video-taping, sink hole repairs and a water modeling analysis of the 42-inch storm sewer pipe adjacent to Clarendon Hills Road, between Maple and 69<sup>th</sup> Street. All repairs have been completed and the water modeling study has been received and reviewed.

The 42-inch Clarendon Hills Road storm sewer was constructed in 1979 through 1980, and designed to flow north from 71<sup>st</sup> Street to 69<sup>th</sup> Street, then east from Clarendon Hills Road to Sawmill Creek, adjacent to the rear yards of the residences fronting Clarendon Hills Road and Brookbank Road. At the junction of 69<sup>th</sup> Street and the creek, the existing storm sewer is reduced to an 18-24 culvert metal pipe. The topography and infrastructure suggests that storm water was to flow bilaterally, north to Dale Basin via storm sewer and overland and south via storm sewer and overland. The City engineer and staff had identified a man made barrier, "baffle" located at 69<sup>th</sup> Street and Clarendon Hills Road that would significantly reduce storm water to flow from Maple Lane beyond 69<sup>th</sup> Street. An additional restriction was identified at Clarendon Hills Road and Maple Lane within the existing 24x36 elliptical culvert metal pipe and the 15-inch culvert metal pipe. Said culvert is under Clarendon Hills Road and since the most recent rains of June 9<sup>th</sup>, 2011 two additional sinkholes were identified, indicating deterioration of the pipe. During the cleaning and televising operation, it was further identified that the existing 36-inch metal culvert pipe under Maple Lane and adjacent to Clarendon Hills Road. is deteriorating and there are indications that the road is settling due to the deterioration. There is an existing 24 x 36 concrete culvert box under Clarendon Hills Road and Maple Avenue-fronting 7017 Clarendon Hills road that serves minimal benefit. Said structure also has 2-12-inch concrete pipes cemented within the western manhole of Clarendon Hills Road at Maple.

Christopher B. Burke Engineering recently completed a water modeling report with a recommendation letter, dated June 27, 2011 and labeled as Attachment B. The study recommends that an 18-inch diameter hole be constructed within the baffle at 69<sup>th</sup> Street. The study also recommends the following (see Plans labeled as Attachment C). This item will be completed by the Department at a minimal cost.

1. Remove the existing deteriorated 24x35 elliptical culvert metal pipe and the 15-inch culvert metal pipe under drain at Maple and Clarendon Hills Road-Fronting side yard of 7017-7021 Clarendon Hills Road.
2. Remove the existing 24x36 concrete culvert box fronting 7013 Clarendon Hills Road

3. Install a new 24x36 elliptical culvert metal pipe and 15-inch pipe under drain at Maple and Clarendon Hills Road- Fronting side yard of 7017-7021 Clarendon Hills Road.
4. Staff is also recommending that the removal and replacement of the existing 36-inch metal culvert pipe under Maple Ave at Clarendon Hills Road.

The project is considered maintenance and no additional permitting from DuPage County is required. The department along with limited outsourcing would complete the bulk of the proposed work.

This item was not funded for the FY11/12 Budget. The funds could be allocated from the Motor Fuel Tax Fund and requires a supplemental IDOT resolution. The projected ending fund balance for the Motor Fuel Tax Budget would be reduced from \$105,742 to \$66,770 if this resolution is approved.

#### **COMMITTEE RECOMMENDATION**

The Municipal Services Committee recommended approval of the resolution at the July 5, 2011 meeting, authorizing Phase II of the urgent repairs of the storm sewer adjacent to Clarendon Hills Road at 69<sup>th</sup> Street and at 71<sup>st</sup> Street for a total cost not to exceed \$38,972.00, and a resolution for the Illinois Department of Transportation.

#### **ALTERNATE CONSIDERATION**

Not complete the work and forward the project for FY12/13 funding consideration.

#### **DECISION MODE**

This item will be placed on the July 18, 2011 City Council agenda for formal consideration.