

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
NOVEMBER 25, 2008 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Resolution and License Agreement with T-Mobile Central, LLC	✓ Resolution Ordinance Motion Discussion Only	Enza I. Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to authorize the execution of a license agreement between the Village of Downers Grove and T-Mobile Central, LLC (T-Mobile) to install, maintain and operate an antenna on Village property located on the water tower at 2304 Maple Avenue.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 identified *Exceptional Municipal Organization*. Supporting this goal is the objective *Fiscally Sound and Sustainable Village Government*.

FISCAL IMPACT

The license agreement is for a term of five years beginning upon the issuance of a building permit in 2008 and ending December 31, 2012. The agreements also provide for two five-year extension terms. After February 1, 2018, T-Mobile may request the Village to enter into negotiations towards renewing or extending the agreements. The license fee per site will be \$3,300 per month through December 31, 2008, with a four percent increase each year thereafter.

RECOMMENDATION

Approval at a future Village Council Meeting on the consent agenda.

BACKGROUND

T-Mobile is a provider of digital communication services in the Chicagoland area. T-Mobile contacted the Village concerning its desire to install an antenna on the water tower at 2304 Maple Avenue. Associated equipment cabinets will be placed on the properties as well.

The license agreement is for only antenna on existing Village Council-approved cell sites that do not extend the height of the tower. As such, no special use approval is required pursuant to Section 28.1307(M) of the Zoning Ordinance.

Staff recommends approval of the resolution and license agreement.

ATTACHMENTS

Resolution
 License Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING A LICENSE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND T-MOBILE CENTRAL TO INSTALL, MAINTAIN
AND OPERATE AN ANTENNA ON VILLAGE PROPERTY
(2304 MAPLE AVENUE)**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain License Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and T-Mobile Central, LLC (the “Licensee”), for the installation, maintenance and operation of an antenna on Village property located at 2304 Maple Avenue, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND T-MOBILE CENTRAL, LLC TO INSTALL, MAINTAIN AND OPERATE AN ANTENNA ON VILLAGE PROPERTY

WHEREAS, the Village of Downers Grove (hereinafter referred to as the “Village”) is an Illinois municipal corporation and a home rule unit, pursuant to the laws of the State of Illinois; and

WHEREAS, the Village is the lessor of certain real estate located at 2304 Maple Avenue, Downers Grove, Illinois, upon which is located a Village Water Tank (hereinafter referred to as the “Tower”); and

WHEREAS, T-MOBILE CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as the “Licensee”) has requested permission to install an antenna on the top of the Tower and its related equipment on ground space near the Tower (hereinafter referred to as the “Antenna”); and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions, the Village and the Licensee agree as follows:

1. CONTRACT DOCUMENTS:

The provisions set forth in the preamble and the following exhibits are incorporated into and made a part of this Agreement:

- a. Exhibit 1 - Site map of the Property dated, _____, 2008, and approved by the Village on _____, 2008, showing the Tower Space and Ground Space, together with the areas on the Property licensed to Licensee to provide access and utility service to the Ground Space (collectively the “Licensed Premises”) which includes location of any proposed underground utilities necessary for operation of the Antenna.
- b. Exhibit 2 - Plans and specifications dated _____, 2008, and approved by the Village on _____, 2008, for the Antenna and any cables or utility lines to be installed on the Licensed Premises and used for housing of the related Antenna equipment (collectively “Licensee’s Improvements”).

2. GRANT OF LICENSE:

The Village hereby grants to the Licensee the right, permission and authority to install, operate and maintain Licensee’s Improvements upon the terms and conditions hereinafter specified. This Agreement shall not terminate upon the sale, assignment or transfer of the property, but shall run with the land. In the event that the tower is removed, this contract shall cease and neither the Village nor the Licensee will not be responsible or liable for replacement or rent.

3. SPECIFICATIONS: The Licensee shall comply with the following specifications:

a. *In general:* During the term of this Agreement, there shall be no variations, modifications, or upgrades from the plans and specifications of Exhibits 1 and 2 without the prior written approval of the Village, which approval shall not be unreasonably withheld or delayed.

b. *Antenna:* The Antenna shall be for the operation of radio frequency: receive 1740 MHz; transmit 2135-2140 MHz. The Antenna shall be installed, attached to the Tower, and maintained in conformance with Exhibit 2 and any applicable State and federal requirements. The Antenna shall be located more than ten (10) feet from any existing antenna equipment and shall not exceed seventy-two (72) inches in height.

4. **CONSTRUCTION, INSTALLATION AND MAINTENANCE:**

The Licensee may install, repair, maintain, or replace the Antenna, subject to the following conditions:

a. Licensee shall obtain all required permits and authorizations from the Village, in accordance with the applicable ordinances, prior to commencing any work under this Agreement. Such work shall comply with applicable codes and regulations and shall be conducted in a workmanlike manner.

b. Licensee shall obtain all necessary approvals from any regulatory authorities for the operation of the Antenna. Further, the Licensee shall comply with all applicable laws and regulations of such regulatory authorities including, but not limited to the Federal Communications Commission.

c. All costs connected with the installation, maintenance, repair, use and removal of Licensee's Improvements and any related equipment shall be the responsibility of the Licensee.

d. Licensee shall not take any action or allow any action to be done which may impair the use of or damage the Tower.

e. The Licensee may not interfere with the use by the Village, its officers, agents and employees, of the Tower or the property on which it is located.

f. Except for emergency situations, the Village shall provide reasonable advance notice to Licensee when it conducts any Tower repair or maintenance work that affects the Antenna or function of the Antenna. Except for emergency situations, the Village shall not physically disturb Licensee's equipment without Licensee's permission, Licensee shall be entitled to access the equipment located on the Ground Space near the Tower twenty-four (24) hours a day, seven days a week. Licensee shall provide the Village reasonable advance notice when access to the antenna on top of the Tower is needed. Access to the Tower can only be obtained between the hours of 8:00 a.m. and 4:00 p.m. by calling the Water Manager at 630/434-5462, or in the event of an emergency after hours, by calling Village Operations Center at (630) 434-5706 or (630) 434-5707.

g. The Licensee shall maintain Licensee's Improvements in good repair, and in a clean and slightly condition.

h. Upon termination of this Agreement by either party, the Licensee shall, within thirty (30) days and at its expense, remove the Licensee Improvements and restore the Licensed Premises to substantially its original condition, reasonable wear and tear excepted.

i. If Licensee abandons its use of Licensee's Improvements, Licensee shall, within thirty (30) days of receipt of written notice from the Village notifying the Licensee of such abandonment and at its expense, remove the Licensee's Improvements and restore the Tower to substantially its original condition. Licensee's Improvements will be presumed abandoned if it is not operated for a period of one month or more. If Licensee's Improvements are not removed within thirty (30) days, the Village may remove Licensee's Improvements and the Licensee shall reimburse the Village for the costs of such removal.

5. NON-INTERFERENCE WITH VILLAGE OPERATIONS:

Neither this Agreement nor Licensee's Improvements shall interfere or obstruct the functioning of the Village's operations and services. Licensee warrants that Licensee's Improvements shall be constructed, installed, maintained and operated in such a manner as to not interfere or obstruct any radio or electronic equipment or signals of the Village's radio and data systems. In the event such interference occurs, and the interference cannot be eliminated by Licensee after reasonable efforts, the Village may terminate this Agreement, in accordance with Paragraph 8(b) of this Agreement. Provided after notice to Licensee, the Village may immediately terminate this Agreement, or require that operation of the Antenna or any of Licensee's Improvements be immediately ceased where it determines that the Antenna or Licensee's Improvements present an immediate and serious danger to the public health, welfare or safety due to interference with the operation of the Village's radio and data systems.

6. TERM:

a. This Agreement shall have an Initial Term of approximately five (5) years beginning upon the issuance of a building permit in 2008, and ending December 31, 2012, and two (2) five-year Extension Terms beginning January 1, 2013, and January 1, 2018, respectively. The extension terms beginning January 1, 2013 and January 1, 2018, shall automatically commence unless either party provides the Village with written notice of its election not to renew the License at least one hundred and twenty (120) days prior to the expiration of the current term. The final date of the agreement shall be December 31, 2022.

b. After February 1, 2018, Licensee may request the Village to enter into negotiations towards renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually agreeable and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement.

7. COMPENSATION:

Beginning in 2008, upon the issuance of a building permit, Licensee shall pay to the Village a license fee of \$3330.00 per month in 2008. Thereafter, effective on the first day of January in the subsequent years of the agreement, the monthly license fee shall increase in an amount equal to the fee for the preceding year multiplied by 4%. The fee shall be paid to the Village of Downers Grove, Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515.

8. TERMINATION:

This Agreement may be terminated as follows:

a. Licensee may terminate this Agreement at any time upon sixty (60) days written notice to the Village without further liability if Licensee does not obtain all permits or other approvals required from any governmental authority or any easements required from any third party to operate the PCS system, or if any such approval is canceled, expires or is withdrawn or terminated, or if the Village fails to have proper ownership of the site or authority to enter into this Agreement, or if Licensee, for any other reason, in its sole discretion, determines that it will be unable to use the Property, however, if Licensee terminates this Agreement without cause, it shall pay the Village a termination penalty equal to three months of the current rental amount.

b. In the event either party fails to comply with the terms of this Agreement such party shall be considered in default and the non-defaulting party may serve written notice of its intent to terminate this Agreement. Except where the public health or safety is threatened, the notice shall give the defaulting party not less than thirty (30) days to correct such non-compliance. In the event the default is not corrected within thirty (30) days of such notice, the non-defaulting party may terminate this Agreement by serving a written notice of termination. Notwithstanding the preceding, if any default cannot be cured within thirty (30) days and the defaulting party has diligently commenced and continues to take reasonable action necessary to cure the default, the defaulting party shall be entitled to a reasonable extended period of time in order to cure the default.

c. In the event the Tower is destroyed or substantially damaged so as to substantially effect Licensee's use of the property, this Agreement shall be considered terminated.

9. TOWER REPAIR/MAINTENANCE:

Upon receiving ninety (90) days notice from the Village that it intends to repair or perform maintenance to the Tower, Licensee shall, at its own expense and in such manner as the Village shall reasonably request, immediately remove, relocate, change or alter the position of Licensee's Improvements. During the term of this Agreement, the Tower may be refurbished and/or painted. Refurbishment and/or painting will take several months to complete (approximately five to eight months). Prior to beginning refurbishment and/or painting, Licensee understands that its Antenna shall be removed from the Tower upon notice from the

Village and that the Antenna shall not be reinstalled until the refurbishment and/or painting is completed and the Village has approved such reinstallation, which approval shall not be unreasonably withheld, conditioned or delayed. During such period, Licensee may, at its sole cost and expense, install the Antenna on a temporary telephone pole or bring a cell on wheels outside the shrouded area of the tower in a location approved by the Village. However, such temporary arrangement shall not interfere with the refurbishment and/or painting of the tower or with other Village operations on the site. The Village shall not be responsible for any costs of removal, relocation, and reinstallation of the Antenna as a result of the refurbishment and/or painting.

10. RESTORATION:

When the Licensee does any work on or affecting the Licensed Premises, it shall, at its own expense, restore the Licensed Premises to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village. If the Licensee fails to restore the Licensed Premises, the Village may, after communications with the Licensee and after affording the Licensee a reasonable opportunity to correct the situation, restore the Licensed Premises, or remove the obstruction therefrom. No such prior written notice shall be required in the event that the Village determines that an emergency situation exists. The Licensee shall pay the Village for any reasonable costs of such restoration within fourteen (14) days after receiving a bill from the Village for such work.

11. UTILITIES:

Licensee shall be responsible for obtaining adequate utilities for operation of Licensee's Improvements, including electricity from any source available on the Property as long as the electricity for Licensee's Improvements are separately metered. Any utilities to be installed must be underground and at a location approved by the Village. Licensee shall pay for the electricity or any other utility it consumes in its operations at the rate charged by the servicing utility company and the Village shall not be liable for such charges.

12. TAXES:

Licensee is solely responsible for payment of taxes on the leasehold. Licensee is solely responsible to determine the taxes owed and to comply with the DuPage County payment procedures. Licensee shall reimburse the Village for any personal or real property taxes which are assessed as a result of Licensee's Improvements and directly attributable to its use of the Property under the terms of this Agreement. Licensee shall have the right, at its own expense and without expense to the Village, to contest by appropriate proceedings, conducted with due diligence and in good faith, the validity of the amount of any taxes or reassessment as applicable to the Licensed Premises or the Licensee Improvements. In the event that the Village becomes aware of any tax delinquency and that delinquency is not cured by the Licensee, the Village shall have the right to remove any of Licensee's equipment and terminate the Agreement.

13. INDEMNIFICATION:

Licensee shall indemnify, become responsible for and hold harmless the Village, its boards, committees, commissions, officers, agents and employees from any and all liability arising out of the existence of this Agreement; the installation, existence, maintenance or repair of Licensee's Improvements; or any act or omission of Licensee, its officers, agents and employees, except for liability which arises from the Village's or its employees' or agents' negligence or intentional misconduct.

For purposes of this Agreement, the term "liability" includes, but is not limited to: actual or claimed loss or damage to property or injury to or death of persons; actual or claimed responsibility for such loss, damage, injury or death; and any and all judgments, decrees, costs and expenses of every sort and kind of incident to such loss, damage, injury, death or responsibility, including, but not limited to, court costs, fines and attorney's fees.

14. INSURANCE:

At all times while this Agreement remains in effect, and in recognition of the indemnification provided in the foregoing Paragraph 13, the Licensee shall, at its own cost and expense, maintain a program of third party liability insurance and/or self-insurance to protect the Village, its officers, employees and agents from any liability for bodily injury, death, and property damage occasioned by the activities of the Licensee under this Agreement.

a. During the Term of the Agreement. Licensee shall procure, pay for and maintain in full force and effect during the entire term of the agreement (i) worker's compensation insurance as required by law and which insures Village against worker's compensation claims arising out of Licensee's activities on the Tower; (ii) fire and casualty insurance covering Licensee's Improvements in an amount not less than one hundred percent (100%) of their actual replacement cost; and (iii) commercial general liability insurance, including broad form property damage insurance, for bodily injuries and property damage, in amounts not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate covering bodily injuries or property damage occurring on the Tower.

b. During Construction/Installation. During construction/installation, Licensee's contractor shall also maintain and provide Village with evidence of each of the insurance coverages specified in subparagraph (a) and in the amounts so specified. In addition, the contractor shall provide builder's risk insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the project, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement.

c. Policies. The policy or policies of insurance required by subparagraphs (a) and (b) shall be underwritten by a company or companies authorized to do business in the State of Illinois, shall be reasonably satisfactory to Village, shall name Village as an additional insured and shall be delivered to the Village, together with evidence of the payment of the premiums, prior to the commencement of the term of this Agreement. Licensee or,

where applicable, Licensee's contractors shall furnish Village with a written notice of any cancellation, reduction or modification of insurance required under this Section.

15. LIENS:

Licensee agrees that it will not permit or suffer any lien to be put upon or arise or accrue against the Property in favor of any person or persons, individual or corporate, furnishing either labor or material in any work herein proposed, and the Licensee further covenants and agrees to hold the Village and its property free from any and all liens, or rights or claim of lien, which may or might arise or accrue under or be based upon any mechanic's lien law of the State of Illinois. If any such lien or claim for lien is filed or recorded against the Property, the Village shall give Licensee notice thereof and demand that Licensee remove the same, or post adequate security to insure the removal of the same following the resolution of any dispute between Licensee and the lienholder, within thirty (30) days after such notice. Nothing in this provision shall restrict Licensee from granting a security interest in all or any part of Licensee's Improvements and to file of record UCC financing statements and/or fixture filings to perfect the same.

16. ASSIGNMENT AND SUBLEASING:

This Agreement may not be assigned or transferred without the express written consent of the Village, which shall not be unreasonably withheld, conditioned or delayed. The Village agrees to respond to any such request within thirty (30) days from receipt of the request. Any assignment or transfer without such written consent shall, at the option of the Village, be deemed to be void and of no effect. Provided, however, this Agreement may be assigned or transferred to Licensee's parent or an subsidiary, successor legal entity or other affiliate of Licensee without the Village's written consent as long as the Village is given written notice of the assignment or transfer within 30 days thereof. The Village must approve any sublease and shall be entitled to 50% of any sublease in addition to the rental fee as described in Section 7, above.

17. HAZARDOUS SUBSTANCES:

a. The Village represents and warrants that it has no knowledge of any hazardous substance existing on the Property in violation of any applicable federal, State or local law, regulation or ordinance. The Village further agrees to hold Licensee harmless from and indemnify Licensee against any damage, loss or expense or liability resulting from the existence on the Property of any such hazardous substance, including all attorney's fees and consultant fees, costs and penalties, incurred as a result thereof, unless caused by Licensee or any of its employees or agents.

b. Licensee represents and warrants that its use of the Licensed Premises will not generate any hazardous substance, and that it will not store or dispose on the Licensed Premises, nor transport to or over the Licensed Premises, any hazardous substance in violation of any applicable federal, State or local law, regulation or ordinance. Licensee further agrees to hold the Village harmless from and against and indemnify the Village against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release, including attorney's fees and consultant fees, costs

and penalties, incurred as a result thereof, which was caused by Licensee or any of its employees or agents.

c. "Hazardous Substance" as used herein shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic materials, hazardous or toxic radioactive substance, or other similar term by any federal, State or local environmental law, regulation or ordinance presently in effect or promulgated in the future.

18. COST OF ENFORCEMENT:

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing party.

19. INVALIDITY:

If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.

20. FORCE MAJEURE:

Neither party shall be deemed in violation of this Agreement for the delay in performance or failure to perform in whole or in part its obligations under this Agreement due to strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, act of public enemy, fire, flood or other act of God or by other events to the extent that such events are caused by circumstances beyond such party's control.

21. NOTICES:

Unless otherwise specified herein, all notices under this agreement shall be made in writing and delivered to:

Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515-4776

And: T-MOBILE CENTRAL LLC
c/o T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator

In the event the Licensee moves, consolidates, merges, splits or otherwise reorganizes or moves its offices, it is the duty and obligation of the Licensee to provide written notification to the Village within thirty (30) days of any change.

22. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2008.

LICENSEE:

VILLAGE OF DOWNERS GROVE

By:

By:

Mayor

Title:

ATTEST:

Village Clerk

Subscribed and sworn to
this ____ day of _____, 2008.

Notary Public