# VILLAGE OF DOWNERS GROVE Report for the Village Council Meeting 9/13/2016

SUBJECT:	SUBMITTED BY:
1st Amendment to Verizon License Agreement (Highland)	Enza Petrarca Village Attorney

## SYNOPSIS

A resolution has been prepared authorizing a first amendment to license agreement between the Village of Downers Grove and Verizon Wireless to install, maintain and operate antenna equipment on Village property located at 3801 Highland Avenue.

# STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 include Steward of Financial Sustainability.

## **FISCAL IMPACT**

The proposed amendment is for an additional 5-year term, which would extend the current lease through the year 2030. Effective January 1, 2016, the Village collected \$4,213.51 in monthly license fees. With this extension, Verizon agreed to pay an additional \$200 a month for this site, with a 4% increase each year thereafter.

## RECOMMENDATION

Approval on the September 13, 2016 consent agenda.

## BACKGROUND

Chicago SMSA Limited Partnership d/b/a Verizon Wireless is a provider of digital communications in the Chicagoland area. Verizon entered into a license agreement to place equipment on this tower in 2010 which was set to expire on December 31, 2025. Verizon contacted the Village concerning its desire to continue to operate their antenna on the Highland water tower and extend the existing agreement to remain at this location for an additional 5 years through December 31, 2030.

The proposed first amendment would result in the Village collecting an additional \$200/month in license fees, with a four percent increase in each year thereafter. The contract shall run for a term ending on December 31, 2030.

## ATTACHMENTS

Resolution First Amendment to Agreement

### RESOLUTION NO.

### A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND CHICAGO SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS TO INSTALL, MAINTAIN AND OPERATE ANTENNA EQUIPMENT <u>ON VILLAGE PROPERTY LOCATED AT 3801 HIGHLAND AVENUE</u>

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

 That the form and substance of a certain First Amendment to License Agreement ("Agreement"), between the Village of Downers Grove ("Village") and Chicago SMSA Limited
Partnership d/b/a Verizon Wireless ("Licensee") for the maintenance and operation of antenna equipment on Village property located at 3801 Highland Avenue, Downers Grove, IL, as set forth in the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager 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 provision 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

1\mw\res16\Verizon-Highlnad-1stAmd

Site Name: WHITLOCK PARK WT Location: 105178 Attorney/Date: WHD/05.31.16

### FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND CHICAGO SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS TO INSTALL, MAINTAIN AND OPERATE AN ANTENNA ON VILLAGE PROPERTY

This First Amendment to License Agreement ("First Amendment") is made as of the date of the last party to sign below, by and between the Village of Downers Grove (hereinafter referred to as "Village"), 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 "Licensee"). The Village and Licensee are at times collectively referred to hereinafter as the "Parties".

WHEREAS, the Parties previously entered into a License Agreement (the "Agreement") dated September 21, 2010;

WHEREAS, Licensee desires to expand its existing ground area space as set forth in Exhibits 1 and 2 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 6(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

a. This License shall have an initial term beginning upon the first day of the month in which a building permit is issued, but in no event later than January 1, 2011 ("**Commencement Date**") and end on December 31<sup>st</sup> of the same year. Thereafter, as part and parcel of the initial term, four (4) additional one (1) year periods shall automatically commence each January 1<sup>st</sup> and extend through December 31<sup>st</sup> of the same year. The term shall be automatically extended for one (1) five-year extension term ("First Extension") unless Licensee provides Village with written notice of its election not to renew the License at least one hundred twenty (120) days prior to the expiration of the Initial Term. Upon expiration of the First Extension, this Agreement shall be extended for two (2) additional five-year extension ("Second Extension and Third Extension") unless either party provides the other with written notice of its election not to renew the Agreement at least one hundred twenty (120) days prior to the then current term. The final date of the agreement shall be December 31, 2030.

3. Paragraph 7 of the Agreement is hereby amended by adding the following paragraph:

The monthly license fee shall be increased by \$200.00 per month effective as determined by the date this First Amendment is last executed by both Parties ("Effective Date"). If the date this First Amendment is last executed occurs on or between the first and fifteenth day of a month, the 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 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, 2016, the current license fee under the Agreement is \$4,213.51 per month.

- 4. Exhibit 1 of the Agreement is hereby deleted and replaced with the attached Exhibit 1-1. All references to Exhibit 1 in the Agreement shall be deleted and replaced with references to Exhibit 1-1.
- 5. Exhibit 2 of the Agreement is hereby supplemented with the attached <u>Exhibit 2</u>. All references to Exhibit 2 in the Agreement shall be supplemented to include the attached <u>Exhibit 2</u>.
- 6. The Parties agree to execute a Memorandum of this First Amendment which shall amend and restate the Memorandum of License Agreement recorded as Document R2010-131146 with the DuPage County Recorder with the terms of the Agreement as modified by this First Amendment.
- 7. 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.
- 8. All capitalized terms used but not defined in this First 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 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.
- 11. 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.

### VILLAGE:

VILLAGE OF DOWNERS GROVE

Date:

LICENSEE:

CHICAGO SMSA LIMITED PARTNERSHIP d/b/a Verizon Wireless By: Cellco Partnership, Its General Partner

By:

Director Engineering-Network

By:

**ATTEST:** 

By:

April Holden Village Clerk

Martin T. Tully

Mayor

Date:

[Exhibits Follow]

## **Ехнівіт 1-1**

### SITE MAP OF PROPERTY SHOWING TOWER SPACE & GROUND SPACE

WHD/12762144.1

Site No. LOC. #105178 Whitlock Park WT

### Legal Descriptions

### **Parent Parcel**

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE SAID SOUTHWEST OUARTER OF SECTION 32; THENCE SOUTH ALONG THE WEST LINE OF THE EAST HALF OF THE SAID SOUTHWEST QUARTER OF SECTION 32, A DISTANCE OF 1350.37 FEET; THENCE NORTH 62 DEGREES, 04 MINUTES, 22 SECONDS EAST, A DISTANCE OF 56.56 FEET, TO THE EAST RIGHT OF WAY LINE OF HIGHLAND AVENUE, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES, 01 MINUTES, 07 SECONDS EAST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 60.00 FEET; THENCE NORTH 89 DEGREES, 58 MINUTES, 53 SECONDS EAST, A DISTANCE OF 205.00 FEET; THENCE NORTH 00 DEGREES, 01 MINUTES, 07 SECONDS WEST, A DISTANCE OF 168.58 FEET, TO THE SOUTHERLY LINE OF THE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON EVANGELICAL HOSPITAL ASSOCIATION ASSESSMENT PLAT NO. 2, RECORDED IN THE DUPAGE COUNTY RECORDER'S OFFICE ON NOVEMBER 23, 1977, AS DOCUMENT NUMBER R77-108464; THENCE SOUTH 62 DEGREES, 04 MINUTES, 22 SECONDS WEST, ALONG THE SOUTHERLY RIGHT OF WAY AND SAID EASEMENT, A DISTANCE OF 231.98 FEET, TO THE POINT OF BEGINNING. ALSO KNOWN AS LOT 1 IN VILLAGE OF DOWNERS GROVE WATER UTILITY ASSESSMENT PLAT, BEING PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 1, 1989 AS DOCUMENT NUMBER R89-22988, IN DUPAGE COUNTY, ILLINOIS.

#### Proposed 11.5'x15.0' Lessee Lease Area for Generator

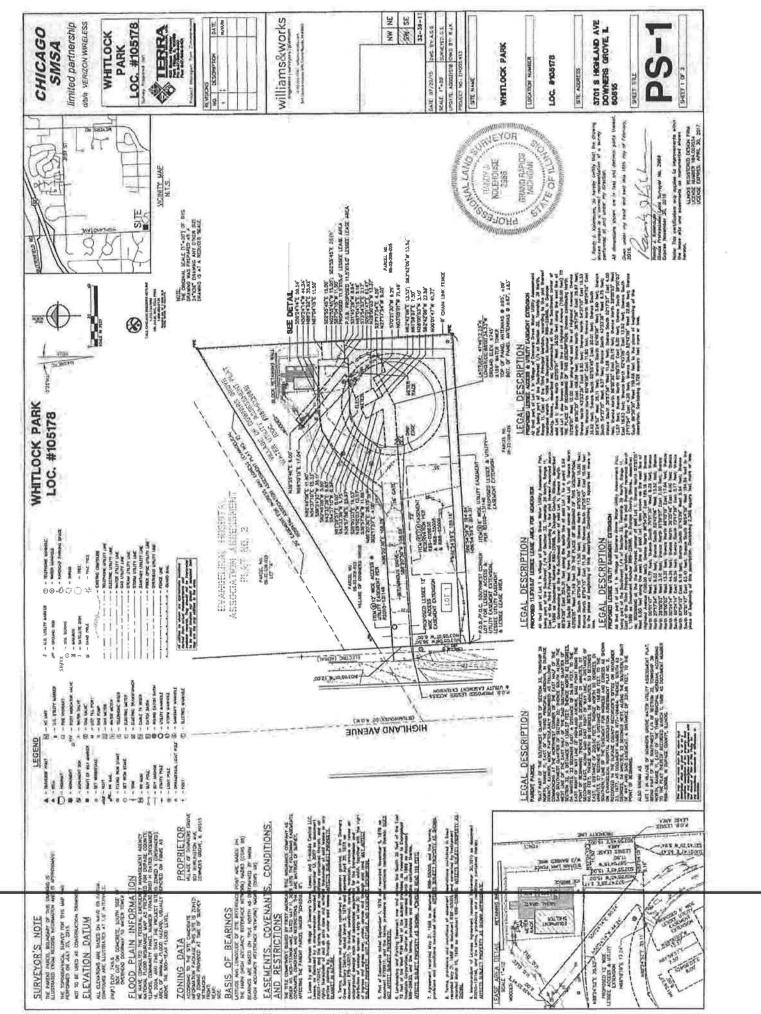
All that part of Lot 1 in Village of Downers Grove Water Utility Assessment Plat, being part of the Southwest 1/4 of Section 32, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded March 1, 1989 as Document Number R89-22988, in Dupage County, Illinois., described as; Commencing at the the Southwest corner of said Lot 1; thence North 86°54'59" East 204.31 feet along the south line of said Lot 1 to a point 0.69 feet South 86°54'59" West from the Southeast corner of said Lot 1; thence North 03°05'01" West 71.49 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 87°04'15" West 11.50 feet; thence North 02°55'45" West 15.00 feet; thence North 87°04'15" East 11.50 feet; thence South 02°55'45" East 15.00 feet to the place of beginning of this description. Containing 173 square feet more or less.

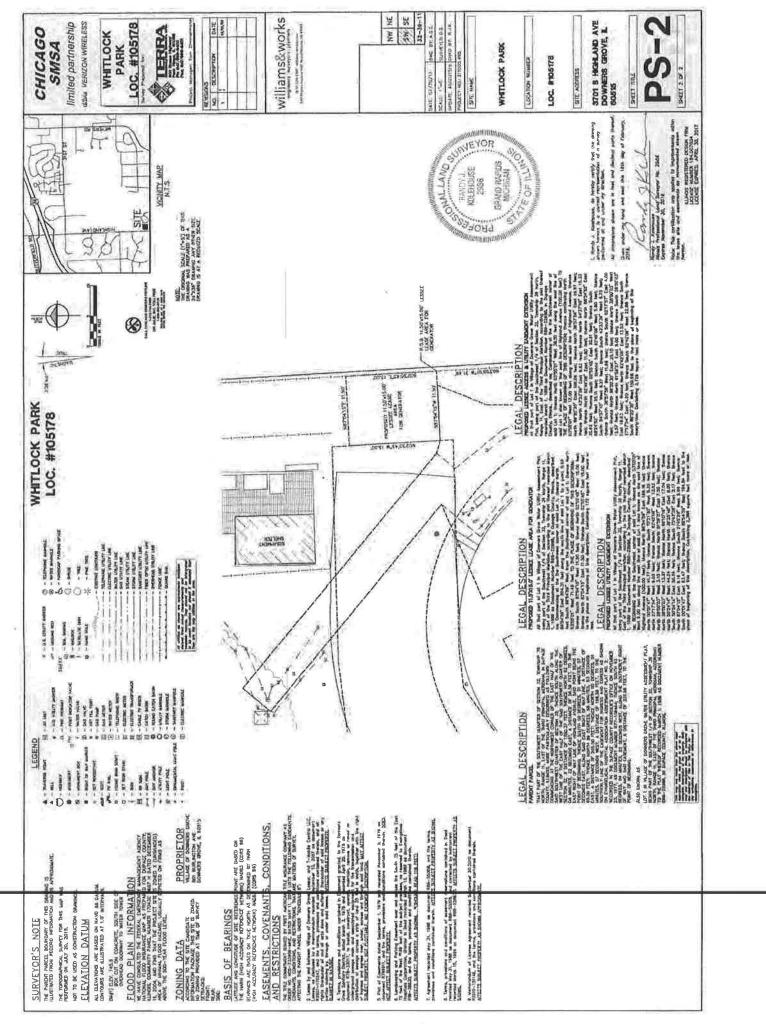
#### **Proposed Lessee Utility Easement Extension**

All that part of Lot 1 in Village of Downers Grove Water Utility Assessment Plat, being part of the Southwest 1/4 of Section 32, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded March 1, 1989 as Document Number R89-22988, in Dupage County, Illinois., described as; BEGINNING at the the Southwest corner of said Lot 1; thence North 03°05'01" West 6.00 feet along the west line of said Lot 1 also known as the east line of Highland Avenue (100.00 feet); thence North 86°54'59" East 189.16 feet; thence North 00°01'47" West 41.77 feet; thence South 70°21'30" West 9.25 feet; thence North 27°17'54" West 9.03 feet; thence South 62°42'06" West 13.52 feet; thence North 28°00'03" West 3.10 feet; thence North 61°59'57" East 7.50 feet; thence North 28°00'03" West 13.37 feet; thence North 66°10'19" East 17.04 feet; thence North 50°24'14" West 44.24 feet; thence North 39°35'46" East 6.00 feet; thence South 50°24'14" East 50.24 feet; thence South 73°47'28" East 2.17 feet; thence North 87°04'15" East 9.16 feet; thence South 21°45'29" West 8.94 feet; thence South 00°01'47" East 63.47 feet; thence South 86°54'59" West 194.84 feet to the place of beginning of this description. Containing 2,366 square feet more or less.

#### Proposed Lessee Access & Utility Easement Extension

All that part of Lot 1 in Village of Downers Grove Water Utility Assessment Plat, being part of the Southwest 1/4 of Section 32, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded March 1, 1989 as Document Number R89-22988, in Dupage County, Illinois., described as; Commencing at the the Southwest corner of said Lot 1; thence North 03°05'01" West 38.50 feet along the west line of said Lot 1 also known as the east line of Highland Avenue (100.00 feet) TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence continuing North 03°05'01" West 12.00 feet along said east line of Highland Avenue; thence North 86°20'30" East 106.09 feet; thence North 36°57'56" East 29.97 feet; thence North 43°33'39" East 9.83 feet; thence North 54°37'10" East 15.33 feet; thence North 82°49'08" East 11.80 feet; thence North 88°24'52" East 35.62 feet; thence South 02°55'45" East 20.01 feet; thence South 88°24'52" West 35.11 feet; thence South 82°49'08" West 5.80 feet; thence South 54°37'10" West 8.37 feet; thence South 43°33'39" West 6.75 feet; thence South 86°57'56" West 11.66 feet; thence South 02°17'57" East 4.00 feet; thence North 86°20'30" East 16.63 feet; thence North 88°0'03" West 12.57 feet; thence North 61°59'57" East 4.20 feet; thence South 82°00'03" East 16.63 feet; thence North 62°42'06" East 13.52 feet; thence South 27°17'54" East 4.20 feet; thence South 62°42'06" West 22.88 feet; thence South 86°20'30" West 159.68 feet to the place of beginning of this description. Containing 3,729 square feet more of fees.





# EXHIBIT 2

### PLANS & SPECIFICATIONS: SUPPLEMENT

