

FOR BOARD ACTION

Agenda Item # 4.

Meeting Date: 8/30/05

SUBJECT: AMENDMENT TO SITE AGREEMENT
(MIDWEST WIRELESS – Apache Water Tower Site)

PREPARED BY: Doug Rovang, Senior Civil Engineer *DR*

ITEM DESCRIPTION:

A Site Agreement between the City and Midwest Communications, L.L.C. dated December 16, 2004, permits the company to install wireless communications antennas and transmitter equipment at the Apache Water Tower site.

Midwest Wireless is requesting approval to increase the number of antenna equivalents at this site from 16 to 18. The proposed amendment authorizes the increase for a prorated 2005 additional rent amount of \$1,248.00.

The proposed Amendment to Site Agreement has been reviewed by the City Attorney.

UTILITY BOARD ACTION REQUESTED:

Management recommends the Utility Board approve the attached proposed Amendment to the original Site Agreement with Midwest Wireless Communications, L.L.C. and request the Mayor and City Clerk to execute the document.

Reviewed 8-24-05 WNS

Tammy Koshin
General Manager

8/25/05
Date

AMENDMENT TO SITE AGREEMENT

This Amendment to the SITE AGREEMENT dated December 16, 2004, ("Agreement") is made and entered into this ___ day of _____, 2005 by and between City of Rochester, a Minnesota municipal corporation, ("CITY"), and Midwest Wireless Communications, L.L.C., a Delaware Limited Liability Company ("LESSEE"), for the leasing of certain property interests at 1200 Highway 14 West (Apache Tower Site) pursuant to the following terms:

Paragraph 1 is replaced by the following paragraph:

1. **PROPERTY** The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following real property comprised of approximately two hundred forty (240) square feet of land, water tower ("Structure") exterior space for attachment of 18 antenna equivalents (each antenna assembly approximately 12" wide x 60" high), space required for eighteen (18) cable runs (each not to exceed 7/8" diameter) to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B (Revised)" attached hereto (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents).

TERM. The initial term of this Agreement shall commence on January 1, 2005, and shall terminate on December 31, 2010.

Paragraph 3 is replaced by the following paragraph:

3. **RENT.** LESSEE shall pay City 2005 rent on or about March 1, 2005, the amount to be eighteen-thousand-fifty-six dollars (\$18,056.00). LESSEE shall also pay CITY an additional 2005 prorated rent equivalent to an annual rent of twelve-hundred-forty-eight dollars (\$1,248.00) at such time as the 17th and 18th antennas are installed during 2005. CITY will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year. The

rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). Rent pro-rations shall be based on the number of days in the calculation period. If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination shall be refunded to LESSEE (or credited against any termination fee payable by LESSEE pursuant to Section 11 below).

IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement as of the day and year first above written

Signature page to Amendment to Site Agreement between City of Rochester, a Minnesota municipal corporation and Midwest Wireless Communications, L.L.C. (Apache Water Tower).

CITY

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____

Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____

Its: City Clerk

Approved as to Form: _____

Print Name: _____

Its: City Attorney

By: _____

Print Name: _____

Its: General Manager, Rochester Public Utilities

Address: City of Rochester
c/o Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55905

Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF _____) COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, _____, _____, and _____, the Mayor, City Clerk, and City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

Notary Public
My commission expires _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the attached Amendment to the Site Agreement dated December 16, 2004, with Midwest Wireless Communications, L.L.C. and to request the Mayor and the City Clerk execute the amendment for

Increasing to eighteen (18) the Number of Antenna Equivalentents and Appurtenant Equipment
at the Apache Water Tower Site

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30th day of August, 2005.

President

Secretary