

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

12/21/10

SUBJECT: Amendment to 2005 Master Site Agreement with Verizon Wireless
for Antennas on Water Storage Tanks – Country Club Manor Standpipe NW

PREPARED BY: Doug Rovang, Senior Civil Engineer

ITEM DESCRIPTION:

A request has been received from Verizon Wireless LLC (Verizon, hereafter) to amend certain terms of the existing Master Site Agreement dated July 8, 2005. Verizon wishes the right to install temporary electric service connections at ground level at the Country Club Manor Standpipe NW for use with a portable generator during power interruptions.

Verizon has had a standby generator at each of their sites – including this site - until recently. A “silencer” was installed on the west wall of the Verizon equipment enclosure at this site two years ago because of a noise complaint from a neighbor. More recently, the neighbor immediately adjacent to the west of the Standpipe site (who did not make the original noise complaint) determined that the silencer installation violated the City zoning setback requirement. Eliminating the existing backup generator silencer has eliminated the possibility of keeping the generator in service – and Verizon has requested approval to place, maintain and/or provide access to and use of temporary electrical cables and connections on the site during any power interruption as necessary, for use of a temporary power source during any power interruption at this site (with intent to maintain a level of reliability currently available at all other Verizon Rochester installations).

Staff is agreeable to the proposed terms of this amendment because it eliminates the necessity of a portable generator being moved up the steep grassed area to the Verizon enclosure or long cables being extended across the grassed area during emergency conditions. Under the terms proposed, RPU access to this site will not be impeded by Verizon temporary electric service equipment. (See attached Amendment Exhibit “G-2”).

The annual rent for the site would remain unchanged.

The proposed Amendment has been reviewed by the City Attorney.

UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve this proposed Verizon Wireless Amendment to the 2005 Verizon Master Site Agreement (and the Memorandum of Amendments to the Master Site Agreement which accompanies the Amendment), and request the Mayor and City Clerk to execute the Amendment and Memorandum.



General Manager

12-16-10

Date

SITE NAME: ROCQ Victory (ROC012)

AMENDMENT TO MASTER SITE AGREEMENT

This AMENDMENT TO MASTER SITE AGREEMENT ("Amendment") is made this _____ day of _____, 20____ by and between the City of Rochester, a Minnesota municipal corporation ("CITY") and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("LESSEE"), with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), with reference to the facts set forth in the Recitals below:

RECITALS

A. CITY and LESSEE, or their predecessors in interest, are parties to a Master Site Agreement dated July 8, 2005 for eight sites, and the agreement for the Country Club Standpipe Site NW was amended by the Second Amendment to Master Site Agreement dated August 31, 2009 (collectively, the "Agreement"), whereby CITY has leased a portion (the "Leased Premises") of the CITY's property located at 4040 Seventh Place Northwest, City of Rochester, County of Olmsted, State of Minnesota (the "Site") to LESSEE for the purpose of installing, removing, replacing, maintaining, modifying, altering and operating its communication fixtures and related equipment, antennas, cable, accessories and improvements, as situated substantially as shown on Exhibits G and H-1 attached to the Agreement.

B. CITY and LESSEE desire to amend the Agreement to allow LESSEE to place temporary electrical cables and connections on the Site for the use of a temporary power source at the Site during power interruptions at the Leased Premises.

AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. TEMPORARY POWER SOURCE CONNECTIONS. The Agreement is hereby amended to provide that LESSEE shall be permitted at any time during the Term, to place, maintain and/or provide access to and use of temporary electrical cables and connections on the Site during any power interruption as necessary, for the use of a temporary power source during any power interruption at the Leased Premises. LESSEE may place temporary connecting cables and appurtenances at location L-1 as shown on Exhibit G-2 attached hereto and made a part hereof. LESSEE shall also have the right to install a two (2) inch underground conduit, conductors and appurtenances during the Term to connect the temporary electrical cables to the

Leased Premises at location L-2 as shown on Exhibit G-2 attached hereto and made a part hereof.

2. RATIFICATION OF THE AGREEMENT. Except as specifically modified by this Amendment, the parties agree that all of the terms and conditions of the Agreement are in full force and effect and remain unmodified, and the parties hereby ratify and reaffirm the terms and conditions of the Agreement and agree to perform and comply with the same. In the event of a conflict between any term or provision of the Agreement and this Amendment, the terms and provisions of this Amendment shall control. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated in the Agreement. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

Signatures on following page

The remainder of this page intentionally left blank

IN WITNESS WHEREOF, CITY and LESSEE have caused this Amendment to be executed by each party's duly authorized representative effective as of the date written below.

CITY:

City of Rochester,
a Minnesota municipal corporation

By: _____
Print Name: _____
Title: Mayor

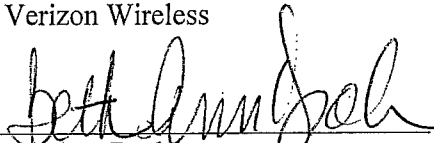
Attest: _____
Print Name: _____
Title: City Clerk

By: _____
Print Name: _____
Title: General Manager, Rochester Public Utilities

Approved as to form: _____
Print Name: _____
Title: City Attorney
Date: _____

LESSEE:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By: 
Beth Ann Drohan
Title: Area Vice President Network

Date: 12/21/10

DRAFTED BY
AND RETURN TO:
Moss & Barnett (AAD)
4800 Wells Fargo Building
90 South Seventh Street
Minneapolis, MN 55402-4129
(Site Name: **ROCQ Victory**)
(Prepared by Caroline A. Bussey, Telephone No. (612) 877-5383)

(Space above this line for Recorder's use.)

**MEMORANDUM OF AMENDMENTS
TO MASTER SITE AGREEMENT**

THIS MEMORANDUM OF AMENDMENTS TO MASTER SITE AGREEMENT (“Memorandum”) dated _____, 20__ was entered into by and between the City of Rochester, a Minnesota municipal corporation, with its address for notice located at c/o Rochester Public Utilities, 4000 East River Road N.E., Rochester, Minnesota 55905 (“CITY”), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its address for notice located at 180 Washington Valley Road, Bedminster, New Jersey 07921 (“LESSEE”).

CITY and LESSEE, or their predecessors in interest, originally entered into a Master Site Agreement dated July 8, 2005, as evidenced by a Memorandum of Master Site Agreement dated July 8, 2005 and recorded September 7, 2005, as Document No. T-111003 in the Office of Registrar of Titles of Olmsted County, Minnesota, as amended by Second Amendment to Master Site Agreement dated August 31, 2009, and as further amended by Amendment to Master Site Agreement dated _____, 20__ (the “Amendment”) for certain real property located at 4040 Seventh Place Northwest, City of Rochester, County of Olmsted, State of Minnesota, within the property of the CITY and being further described on Exhibit “A” attached hereto and made a part hereof together with a right of access and to install and maintain utilities. The Amendment provides for the right to place temporary electrical cables and connections on the Site for the use of a temporary power source and to install a two (2) inch underground conduit, conductors and appurtenances to connect the temporary electrical cables to the leased premises.

Signatures on following page

IN WITNESS WHEREOF, CITY and LESSEE have duly executed this Memorandum as of the day and year written below.

CITY:

City of Rochester,
a Minnesota municipal corporation

By: _____
Print Name: _____
Title: Mayor

Attest: _____
Print Name: _____
Title: City Clerk

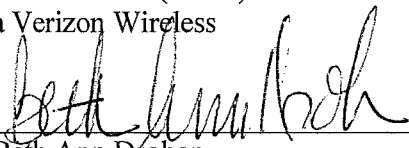
By: _____
Print Name: _____
Title: General Manager, Rochester Public Utilities

Approved as to form: _____
Print Name: _____
Title: City Attorney

Date: _____

LESSEE:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By: 
Beth Ann Drohan
Its Area Vice President Network

Date: 12/7/10

Acknowledgments on following page

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Exhibit "A"

(Legal Description)

Page 1 of 1

LOT 2, BLOCK 26, COUNTRY CLUB MANOR SIXTH ADDITION TO THE CITY OF ROCHESTER, OLMSTED COUNTY, MINNESOTA, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE REGISTRAR OF TITLES IN AND FOR SAID COUNTY.

TORRENS PROPERTY.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the attached Amendment to Master Site Agreement and Memorandum of Amendments to Master Site Agreement with Verizon Wireless LLC, and to request that the Mayor and the City Clerk execute the Amendment and Memorandum of Amendments for

Approval to place, maintain and/or provide access to and use of temporary electric cables and connections on the site during any power interruption as necessary, for use of a temporary power source during any power interruption at the Country Club Manor Standpipe Site, 4040 Seventh Place Northwest.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 21st day of December, 2010.

President

Secretary