

## FOR BOARD ACTION

Agenda Item # 7.b.

Meeting Date:

2/23/10

**SUBJECT:** Amendments to Midwest Wireless/Verizon Wireless Antenna Site Agreements  
(Apache Water Tower SW and SE Water Tower Sites)

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

### ITEM DESCRIPTION:

A request has been received from Midwest Wireless, d/b/a Verizon Wireless LLC (Verizon, hereafter) to amend certain terms of two existing Midwest Wireless Site Agreements. Midwest Wireless was acquired by Verizon during 2009. Verizon wishes to remove existing equipment and install upgraded equipment that does not comply with the two existing Midwest Wireless Agreements at the two sites listed below:

- 1) Apache Water Tower Site SW (ROC010) – Second Amendment to December 16, 2004, Midwest Wireless Site Agreement
- 2) SE Water Tower Site SE (Greenway ROC022) – Amendment to December 13, 2005, Site Agreement

The proposed changes to the two existing Site Agreements mainly involve:

- 1) Installation of larger replacement antennas at the two locations
- 2) Relocation of all ground equipment to the existing Verizon Wireless building at each site
- 3) Change in number and size of cables (fewer/bigger) at the Apache Tower

In addition, RPU is requiring written documentation from a registered professional engineer licensed in the State of Minnesota verifying that the antennas and cables will not compromise the structural integrity of the water storage tanks to which they are to be attached.

The annual rent for each site would remain unchanged. Annual rents thereafter will continue to be based on the Consumer Price Index (CPI-U) to reflect future inflation. RPU staff understands this to be the first step in a consolidation of the two installations each company has at the two sites. Termination of one of the two Site Agreements at each site is anticipated at some future date.

The proposed Amendments have been reviewed by the City Attorney.

### UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve the two proposed Midwest Wireless Communications, LLC d/b/a Verizon Wireless Amendments to the two existing Midwest Wireless Site Agreements, and request the Mayor and City Clerk to execute the Amendments.

  
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Date

**ROCHESTER PUBLIC UTILITIES**

## SECOND AMENDMENT TO SITE AGREEMENT

**THIS SECOND AMENDMENT TO SITE AGREEMENT (“Amendment”)** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Rochester, a Minnesota municipal corporation (“City”) and Midwest Wireless Communications, LLC d/b/a Verizon Wireless (“Lessee”), (collectively, the “Parties”).

**WHEREAS**, on December 16, 2004, City and Lessee entered into a Site Agreement, as amended by the Amendment to Site Agreement dated November 22, 2005 (collectively, the “Lease”) demising the Leased Premises; and

**WHEREAS**, pursuant to the Lease, Lessee has non-exclusive possession of the Leased Premises described in the Lease, at the site located at 1200 Highway 14 West, Rochester, Minnesota; and

**WHEREAS**, the Parties desire to amend the Lease to accurately describe the modification of the equipment on the Leased Premises.

**NOW THEREFORE**, in consideration of the terms and conditions of this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

1. Any capitalized term used, but not defined, in this Amendment shall be deemed to have the meaning ascribed to that term in the Lease. In the event of any conflict between the terms and provisions of the Lease and those of this Amendment, the terms and provisions of this Amendment shall control, in all events.
2. Section 1 of the Lease is hereby deleted in its entirety and replaced with the following:

The property interests hereby leased (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 twelve (12) antenna equivalents (each antenna assembly up to approximately 95” x 16”), space required for twelve (12) cable runs (each not to exceed 1-5/8” in diameter, with ½” jumpers installed from within the tower shaft to antenna assemblies) to connect equipment and antennas, non-exclusive easements required to run utility lines/cable, and 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” (Revised)** attached hereto and the locations of the antennas on the Structure are depicted in **Exhibit “B” (Revision #2)**, 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.) Lessee shall provide written documentation from a registered professional engineer licensed in the State of Minnesota verifying that the replacement antennas and cables to be installed in 2010 do not compromise the integrity of the CITY's water storage infrastructure to which the antennas and cables are to be attached.

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

3. Effective upon the full execution of this Amendment, all references in the Lease to Exhibit A shall be references to Exhibit A (Revised) and all references in the Lease to Exhibit B, or Exhibit B (Revised), shall be references to Exhibit B (Revision #2).
4. Section 19.F. of the Lease is hereby deleted in its entirety and replaced with the following:

F. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

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

LESSEE: Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless  
Attention: Network Real Estate  
180 Washington Valley Road  
Bedminster, NJ 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

5. Section 19.J. is hereby added to the Lease, as follows:

Site Name: Apache (ROC010)  
Location No: 162859

J. PROTECTION OF ADJACENT PROPERTY LESSEE shall restrict its operations to CITY's Property, unless LESSEE provides CITY a copy of written authorization from adjacent property owner(s) permitting use of the adjacent property owner's property during LESSEE's equipment installation or maintenance activities.

6. Except as provided in this Amendment, all of the terms and conditions of the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date first above written.

**CITY:**

**City of Rochester**

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:**

**Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless**

By: \_\_\_\_\_  
Beth Ann Drohan  
Title: Area Vice President Network

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

Site Name: Apache (ROC010)  
Location No: 162859

**ACKNOWLEDGMENTS**

STATE OF MINNESOTA     )  
  )   ss.  
COUNTY OF OLMSTED     )

Before me, the undersigned Notary Public, personally appeared \_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_ and upon oath acknowledged that they are the Mayor, City  
Clerk, City Attorney and General Manager of Public Utilities, respectively, of the City of Rochester,  
Minnesota, and that being duly authorized, they executed the foregoing instrument on behalf of the City, for  
the purposes contained therein.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires:

\_\_\_\_\_  
[SEAL]

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
  )   ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned Notary Public, personally appeared Beth Ann Drohan and upon oath  
acknowledged that she is the Area Vice President Network of Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless, and that being duly authorized, she executed the foregoing instrument on behalf of  
the limited liability company, for the purposes contained therein.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires:

\_\_\_\_\_  
[SEAL]

\_\_\_\_\_  
Notary Public

## AMENDMENT TO SITE AGREEMENT

**THIS AMENDMENT TO SITE AGREEMENT (“Amendment”)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Rochester, a Minnesota municipal corporation (“City”) and Midwest Wireless Communications, LLC d/b/a Verizon Wireless (“Lessee”), (collectively, the “Parties”).

**WHEREAS**, on December 13, 2005, City and Lessee entered into a Site Agreement, as (the “Lease”) demising the Leased Premises; and

**WHEREAS**, pursuant to the Lease, Lessee has non-exclusive possession of a portion of the Leased Premises described in the Lease, at the site located at 501 20<sup>th</sup> Street SE, Rochester, Minnesota; and

**WHEREAS**, the Parties desire to amend the Lease to accurately describe the addition to, and modification of, the equipment on the Leased Premises at the above-named Site.

**NOW THEREFORE**, in consideration of the terms and conditions of this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

1. Any capitalized term used, but not defined, in this Amendment shall be deemed to have the meaning ascribed to that term in the Lease. In the event of any conflict between the terms and provisions of the Lease and those of this Amendment, the terms and provisions of this Amendment shall control, in all events.
  
2. Section 1. of the Lease is hereby deleted in its entirety and replaced with the following:

The property interests hereby leased (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 at the tank walkway level (110’ AGL) for attachment of twelve (12) antenna equivalents (each antenna assembly up to approximately 95” x 16”), space required for twelve (12) cable runs (each not to exceed 7/8” in diameter) to connect equipment and antennas, non-exclusive easements required to run utility lines/cable, and 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” (Revised) 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.) Lessee shall provide written documentation from a registered professional engineer licensed in the State of Minnesota verifying that the replacement antennas and cables to be installed in 2010 do not compromise the integrity of the CITY's water storage infrastructure to which the antennas and cables are to be attached.

**TERM.** The initial term of this Agreement shall commence on or about March 1, 2006 and shall terminate on December 31, 2011.

3. Effective upon the full execution of this Amendment, all references in the Lease to Exhibit A shall be references to Exhibit A (Revised) and all references in the Lease to Exhibit B shall be references to Exhibit B (Revised).
4. Section 19.F. of the Agreement is hereby deleted in its entirety and replaced with the following:

F. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

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

LESSEE: Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless  
Attention: Network Real Estate  
180 Washington Valley Road  
Bedminster, NJ 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

5. Except as provided in this Amendment, all of the terms and conditions of the Lease shall remain unchanged and in full force and effect.

Site Name: Greenway ROC022  
Location No: 162864

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date first above written.

**CITY:**

**City of Rochester**

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:**

**Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless**

By: \_\_\_\_\_  
Beth Ann Drohan  
Title: Area Vice President Network

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



Site Name: Greenway ROC022  
Location No: 162864

**ACKNOWLEDGMENTS**

STATE OF MINNESOTA    )  
                                      )    ss.  
COUNTY OF OLMSTED    )

Before me, the undersigned Notary Public, personally appeared \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_ and upon oath acknowledged that they are the Mayor, City  
Clerk, City Attorney and General Manager of Public Utilities, respectively, of the City of Rochester,  
Minnesota, and that being duly authorized, they executed the foregoing instrument on behalf of the City, for  
the purposes contained therein.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires:

\_\_\_\_\_  
[SEAL]

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS    )  
                                      )    ss.  
COUNTY OF COOK    )

Before me, the undersigned Notary Public, personally appeared Beth Ann Drohan and upon oath  
acknowledged that she is the Area Vice President Network of Midwest Wireless Communications, LLC  
d/b/a Verizon Wireless, and that being duly authorized, she executed the foregoing instrument on behalf of  
the limited liability company, for the purposes contained therein.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires:

\_\_\_\_\_  
[SEAL]

\_\_\_\_\_  
Notary Public



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve Amendments by Midwest Wireless Communications, LLC d/b/a Verizon Wireless to Midwest Wireless Site Agreements as follows:

- 1) Second Amendment to December 16, 2004, Midwest Wireless Apache Water Tower SW Site Agreement (for larger replacement antennas, change in number and size of cables, and relocation of ground equipment);
- 2) Amendment to December 13, 2005, Midwest Wireless SE Water Tower Site Agreement (for larger replacement antennas, and relocation of ground equipment).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 23<sup>rd</sup> day of February, 2010.

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President

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Secretary