

COUNCIL ACTION FORM

SUBJECT: AGREEMENT PROVIDING VERIZON WIRELESS TEMPORARY LIMITED RIGHT OF ENTRY TO SQUAW CREEK PARK

BACKGROUND:

Several cellular providers have contracts to place private cellular network equipment on City property. In March 2012, City staff was approached by a firm representing Verizon Wireless to place a cellular antenna on City property located south of the Iowa Department of Transportation. This location would bolster Verizon's network around the Iowa State Center and the downtown area, which would benefit both Verizon's customers and the City's emergency responders (several key components of the Police communications equipment use Verizon's network). Verizon's preferred site for this new tower is approximately 350 feet east of South Maple Avenue near the Parks and Recreation Department's Squaw Creek Community Gardens. Over the past year, City staff and Verizon have negotiated the terms of using this site for a cellular antenna.

City staff and Verizon have arrived at lease terms that staff supports bringing to the City Council for approval. Before that can occur, however, Verizon must complete a lengthy review of the lease agreement. City staff has been told that this review could take several months. One key provision of this draft lease is that the City would not receive rental payments until construction commences on the site.

Before construction could occur, Verizon will need access to the site to conduct soil tests and take measurements. This access is authorized by signing of the main lease by both the City and Verizon, but access would be withheld until the lease is signed. Alternatively, access could begin earlier through adoption of a separate agreement that allows Verizon access for testing and measurement purposes only. Since Verizon has indicated that the lease approval will take several months, adoption of this separate agreement would allow Verizon's tasks to be conducted concurrently, moving the potential construction date up by several months.

Under the terms of this temporary agreement, Verizon and its contractors would have rights to enter the property to conduct inspections, surveys, structural strength analyses, subsurface boring tests, an environmental site assessment, and any other types of testing Verizon deems necessary. These activities would be conducted at Verizon's cost and the City would not be responsible for the actions of Verizon's employees or contractors. Verizon would be required to notify the City at least 48 hours prior to accessing the site.

This agreement would be in effect for a period of one year. However, upon execution of the permanent lease, the temporary agreement's terms regarding site access would be

superseded by the lease agreement's terms. If no lease agreement is completed, Verizon would be responsible for returning the area to its original condition.

ALTERNATIVES:

1. Approve the temporary agreement granting Verizon Wireless a limited right of entry to City property for the purposes of inspection and testing.
2. Do not approve an agreement with Verizon Wireless.

MANAGER'S RECOMMENDED ACTION:

Verizon Wireless has expressed interest in locating a cellular antenna on City property, and a temporary access agreement will allow Verizon to conduct some of its required inspections and testing prior to approval of the long-term site lease. This agreement does not obligate the City to lease the site to Verizon, and Verizon would be responsible for restoring the area if the permanent lease is not signed.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the temporary access agreement granting Verizon Wireless a limited right of entry to City property for the purposes of inspection and testing.

LIMITED RIGHT OF ENTRY

The undersigned is the owner (“Owner”) of the property, premises or easement (the “Property”) described as follows:

Address: 600 South Maple Avenue, Ames, IA 50010

Assessors Property ID: 09-10-275-000

Consent. Subject to the limitations and conditions below, the Owner does hereby grant permission to Verizon Wireless and its agents, employees, consultants and representatives (herein individually and collectively referred to as “Verizon Wireless”) to enter onto the Property and contiguous property owned or controlled by the Owner for the purpose of performing an inspection of the Property, including surveys, a structural strength analysis, subsurface boring tests, an environmental site assessment, and any other activities as Verizon Wireless may deem necessary, at the sole cost of Verizon Wireless. In addition, Verizon Wireless may remove samples of the soil from the Property.

Indemnity. To the fullest extent permitted by law, Verizon Wireless shall indemnify and hold harmless the Owner, its agents, and employees from and against all claims, damages, losses, and expenses including, but not limited to, attorney’s fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of Verizon Wireless, any subcontractor, anyone directly or indirectly employed by any of them or any one for whose acts, any of them may be liable.

Insurance. Verizon Wireless agrees that it will, at its own expense, procure and maintain occurrence basis Commercial General Liability (CGL) insurance from a company or companies authorized to do business in the state of Iowa, in amounts not less than \$1,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence and \$2,000,000 Aggregate Limits. Certificates of Insurance will be provided by Verizon Wireless indicating that Owner has been named as Additional Insured on the policy(ies) and further stating that Owner will be notified of changes or cancellation per the Terms of said policy(ies). In no case will Verizon Wireless coverage be construed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the Owner.

Limitations and Conditions. The consent granted above is subject to the following limitations and conditions: 1) at least 48 hours prior to entering onto Property, Verizon Wireless shall notify Owner in writing or by telephone; 2) notification shall include the identities of the agents, employees, consultants, and representatives of Verizon Wireless who will be entering onto the Property, the time and date of the planned entry, the locations on Property where Verizon will be

conducting inspection activities, and the nature of the inspection activities being conducted; 3) notification shall be directed to the attention of Joshua Thompson, Parks and Facilities Superintendent (jthompson@city.ames.ia.us, 515-239-5364); 4) Owner reserves the right to limit or deny access or to require rescheduling of inspection activities if Owner determines that planned inspection activities by Verizon Wireless would interfere with previously-scheduled construction activities or otherwise jeopardize the security, safety, or confidentiality of City of Ames employees.

Authority. The individual executing this consent on behalf of the Owner represents to Verizon Wireless that such individual is authorized to do so by requisite action of the Owner.

Term. This consent is granted for a period of three hundred and sixty-five (365) days from the date indicated below. Recognizing that the Owner and Verizon Wireless are currently in negotiations for a lease agreement concerning this Property, this consent shall be voided upon the commencement date of that lease agreement. Thereafter, the terms of that lease agreement shall govern the use of the Property. In the event that the Term of this consent expires and no lease agreement is adopted by the Owner and Verizon Wireless for this Property, Verizon Wireless shall return the Property to its original condition.

OWNER:

By: _____

Date: _____

