

**ORDINANCE NO.**

2010-49

**AN ORDINANCE AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A COMMUNICATIONS FACILITY COMPENSATION AGREEMENT**

WHEREAS, the corporate authorities of the Village of Woodridge are authorized by Section 11-75-1 of the Illinois Municipal Code, 65 ILCS 5/11-75-1, to lease space above and around buildings owned by the Village to any person for any term not exceeding 99 years; and,

WHEREAS, Ordinance No. 2001-53 authorized the Mayor and Village Clerk to execute a certain Communications Facility Site Agreement, leasing spacing on and around the Woodward Avenue Standpipe; and,

WHEREAS, the corporate authorities have approved a First Amendment to the Communications Facility Site Agreement; and

WHEREAS, in order to provide for certain compensation with regard to the activities contemplated by the First Amendment, a Communications Facility Compensation Agreement is necessary and in the best interests of the Village.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF WOODRIDGE, DUPAGE, WILL, AND COOK COUNTIES, ILLINOIS, a home rule municipality in the exercise of its home rule powers, as follows:

SECTION ONE: That the Mayor and Village Clerk are authorized to execute that certain Communications Facility Compensation Agreement, in substantially the form attached hereto as Exhibit "A" and incorporated herein.

SECTION TWO: That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

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SECTION THREE: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED this 7th day of October, 2010.

Trustee Banks	<u>Aye</u>	Trustee Kagann	<u>Aye</u>
Trustee Beavers	<u>Aye</u>	Trustee McManus	<u>Aye</u>
Trustee Cunningham-Picek	<u>Aye</u>	Trustee Pittinger	<u>Aye</u>
Mayor Murphy <u>-</u>			

APPROVED this 7th day of October, 2010.

  
Mayor

ATTEST:

  
Village Clerk

Filed in the office of the Village Clerk and published in pamphlet form by authority of the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois this 7<sup>th</sup> day of October, 2010.

  
Village Clerk

**EXHIBIT A**

**COMMUNICATIONS FACILITY COMPENSATION AGREEMENT**

THIS COMMUNICATIONS FACILITY COMPENSATION AGREEMENT is made effective as of the 7<sup>th</sup> day of October, 2010 ("Effective Date"), by and between **Village of Woodridge**, an Illinois municipal corporation, ("Village") and **Clear Wireless, LLC** ("Clear") a Nevada limited liability company.

**BACKGROUND**

The Village has been working with Clear and their various consulting representatives for an extended period of time in order to complete the negotiations and contract documents associated with Clear's request to become a sub lessee of Nextel West Corporation ("Nextel") at 8810 Woodward Avenue, pursuant to the Communications Facility Site Agreement between the Village and Nextel dated November 15, 2001.

The First Amendment to the Communications Facility Site Agreement (the "First Amendment") between the Village and Nextel, approved by the Village Board on March 18, 2010, provided for the payment of a capital improvement fee of \$10,000. Subsequent to the Village Board approval of the First Amendment, Clear and Nextel requested to further negotiate the terms of the First Amendment, and Nextel proceeded to execute a version of the First Amendment which contained the provision for the payment of a capital improvement fee of \$6,900, rather than \$10,000 to the Village.

The final negotiations between the Village and Clear have resulted in a mutual agreement that the capital improvement fee should remain at the \$10,000 level.

Clear has requested to the Village their desire to make a separate payment of \$3,100 in lieu of modifying and having Nextel re-execute the First Amendment containing the payment of the \$6,900 capital improvement fee.


**AGREEMENT**


In consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Compensation.** The Village shall execute the version of the First Amendment containing the payment of the \$6,900 capital improvement fee; provided, however, that Clear shall make a payment of \$3,100 to the Village for the balance of the negotiated capital improvement fee. Payment shall be due and payable to the Village no later than August 1, 2010.

**2. Waiver of Right to Contest.** Clear waives any right it may have to later contest payment of the \$3,100 to the Village and acknowledges that such payment is part of the consideration paid to the Village for entering into the First Amendment.

**3. Attorneys Fees and Other Costs.** Clear shall pay all costs and expenses, including, but not limited to, attorneys fees, incurred by the Village in connection with the preparation of this Agreement. In addition, if Clear institutes any legal action against the Village relating to this Agreement, and the Village prevails, the Village shall be entitled to recover all of its costs and expenses, including, but not

Village Initials: 

Clear Initials: 

limited to, its attorney's fees incurred in connection with such litigation.

**4. Miscellaneous Provisions.**

(a) **Headings.** The headings, captions, numbering system, and the like are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of this Agreement.

(b) **Binding Effect.** All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors and assigns of both parties hereto.

(c) **Time of Essence.** Time is of the essence of this Agreement.

(d) **Unenforceable or Inapplicable Provisions.** If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof shall remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

(e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original, and all of which are identical.

(f) **Applicable Law and Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Illinois. Venue of any action arising out of the terms of this Agreement shall be in the Eighteenth Judicial Circuit, DuPage County, State of Illinois.

The parties have caused this Agreement to be executed as of the Effective Date.

VILLAGE:

CLEAR:

**Village of Woodridge**  
an Illinois municipal corporation

**Clear Wireless**  
a Nevada limited liability company

By: [Signature]  
Printed Name: William F. Murphy  
Title: Mayor  
Date: 10-21-10

By: [Signature]  
Printed Name: JIM PENNEBAKER  
Title: Network Project MGR  
Date: 9/12/10

STATE OF ILLINOIS

COUNTY OF DU PAGE

On Oct 21, 2010, before me, Rosemary Sharpe Notary Public, personally appeared William Murphy as Mayor for the Village of Woodridge, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Rosemary Sharpe  
Notary Public

Owner Initials: [Signature]



Clear Initials: [Signature]

My commission expires: 7-6-2013

STATE OF ILLINOIS

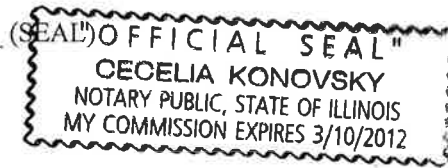
COUNTY OF COOK

On 9/12/10, before me, Cecelia Konovsky, Notary Public, personally appeared Jim Pennebaker, as Network Project Mgr for \_\_\_\_\_ Clear Wireless, LLC, a Nevada limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Cecelia Konovsky  
Notary Public

My commission expires: 3/10/2012



Owner Initials: JK

Clear Initials: JP