

**Administrative-Finance Committee**  
**November 14, 2011**  
**6:30 P.M. – Conference Room**

- 1. Call to Order**
- 2. Establishment of Quorum**
- 3. Public Comment**
- 4. Discussion Items**
  - a. DuPage Senior Citizen's Council**
  - b. Comcast Cable Franchise Agreement**
  - c. Comcast PEG Fee**
  - d. Water Fund update**
  - e. Fleet Service Maintenance discussion**
- 5. Other Business**
- 6. Next Meeting – December 12, 2011**
- 7. Adjournment**

**AGENDA MEMO**  
**Administrative Finance Committee**  
**November 14, 2011**

**ISSUE STATEMENT**

A request from the DuPage Senior Citizen's Council to provide funding for Meals on Wheels, home maintenance and well being checkups for Darien residents.

**BACKGROUND/HISTORY**

The DuPage Senior Citizens Council provides Meals on Wheels, home maintenance support and well being checkups for senior Darien residents. The City of Darien has helped support their programming in past years by donating the cost difference between the value of the services rendered and the support the organization receives through senior donations, fundraising and support from other governmental entities such as the federal government and the State of Illinois.

This year, the cost difference has increased dramatically with reductions in donations and state funding along with an increase in the value of the services. The cost difference is \$35,360, up from \$22,000 last year. Staff explained to Marylin Krolak, Executive Director of the DuPage Senior Citizen's Council, that this increase was significant and the City of Darien only budgeted \$22,000 for this service, as no notice of an increase was provided.

**STAFF/COMMITTEE RECOMMENDATION**

Staff recommends supporting the DuPage Senior Citizen's Council for \$22,000, the amount budgeted.

**ALTERNATE CONSIDERATION**

Donating a different amount or eliminating the donation would be alternate considerations.

**DECISION MODE**

This item will be on the November 21, 2011 City Council agenda for formal consideration.



# DUPAGE SENIOR CITIZENS COUNCIL

[www.dupageseniorcouncil.org](http://www.dupageseniorcouncil.org)

*Providing Meals and More...*

1919 S. Highland Avenue, Building A, Suite 210  
Lombard, IL 60148-6162  
Office (630) 620-0804 Fax (630) 620-1158

October 14, 2011

Mr. Scott Coren  
City of Darien  
1702 Plainfield Road  
Darien, IL 60561



Dear Scott,

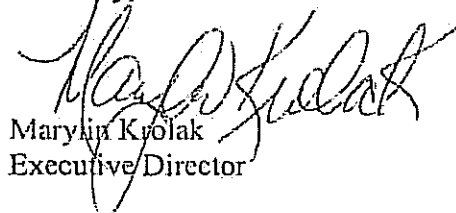
The DuPage Senior Citizens Council (DSCC) appreciates the continued support from the City of Darien for our programs benefitting seniors within your community. Please find enclosed a formal request for the monetary contribution Darien generously committed earlier this year during your last budget cycle. Also attached is a brief report of services provided during DSCC's Fiscal Year 2011 (10/1/2010 – 9/30/2011).

Your funding will help cover the costs of operating our life supporting services to Darien senior residents. DSCC is now providing 12,000 services to elderly Darien residents in a typical 12-month time frame and we know that number will steadily increase.

While we continue to operate in a difficult financial landscape made even more challenging by delayed and uncertain State and Federal funding, DSCC has nevertheless been able to avoid cutting critical services. As DSCC ends one fiscal year and begins another, we look forward to your continued support and partnership. Please let me know how I can be of assistance to you as you plan for and enter into your next budget cycle.

On behalf of the aging population we serve, thank you for contributing to DSCC programs that enable seniors to live in dignity and with as much independence as possible. You have certainly helped make Darien a better place for seniors!

Sincerely,

  
Marylin Krolak  
Executive Director

Enclosure

**DuPage Senior Citizens Council  
Summary of Services  
for  
City of Darien**

**History and Overview**

Established in 1975, DSCC is a non-profit agency committed to seniors and operates several programs, including the "***Meals on Wheels***" and Community Dining programs in DuPage County. Our mission is to promote the ability of elderly persons to live in dignity with as much independence as possible.

While much of American culture focuses on youth, DSCC advocates for the older generation who are the pillars of our society. These elderly persons have earned respect and deserve to live with dignity; however, many of them have become frail or otherwise lack the resources to provide for their own needs and rely on others for help.

Most of our clients are **homebound seniors who live alone**, and nearly **75%** of them are at or below the poverty level. DSCC is a safety net for many individuals who might not otherwise eat a hot meal each day or have someone to check in on them.

DSCC has historically received approximately half of its funding from federal and state grants, but that proportion has dropped substantially. National economic recovery remains sluggish, and the State of Illinois faces a fiscal crisis jeopardizing state funding for community-based services. Community support is needed now more than ever to maintain service levels for seniors and avoid cutting critical life saving components.

Following are the program descriptions and number of services provided to Darien senior residents during the past 12 months:

***Direct Services***

***Senior Nutrition Program/"Meals on Wheels" & Community Dining***

- **6,500 meals to 60 unduplicated seniors**

"*Meals on Wheels*" are packed and delivered each weekday to frail and homebound seniors in Darien by DSCC staff and volunteers who have been trained in food safety. Community Dining Sites scattered around DuPage County also provide opportunities for elderly persons to socialize, participate in activities, and receive valuable health and wellness information. Several Darien seniors that can still get out occasionally go to these sites. All meals served are balanced, nutritious, and meet special dietary needs required, such as low sodium, vegetarian, or diabetic. Each meal is equivalent to 1/3 of the Reference Dietary Intake for adults 60 and over.

***Home Maintenance Program/Chore Days***

- **25 Minor Home Repairs & Yard Clean Up services to 20 senior residents**

DSCC's Home Maintenance program provides low-cost minor home repairs which assist older persons with basic home responsibilities associated with daily living. Typical examples are repairing or replacing leaky faucets or toilets and installing smoke and carbon monoxide detectors, light fixtures, locks or deadbolts. Additional services which enhance seniors' safety

and security include installing bath benches, grab bars, and non-slip strips, as well as repairing and reinforcing walkway steps and stair railings. In cases where homes require larger repair services, DSCC offers assessments and provides contractor referrals to seniors.

Chore Days are another service in the category of home maintenance DSCC offers the elderly. For three weekends during the spring and again in the fall, groups of volunteers of all ages help seniors with various outside chores such as raking leaves, gardening, trimming shrubs, and other yard tasks. This assistance enables seniors to keep up with the tasks of home ownership and increases their ability to remain in their homes.

### ***Well Being Checks***

- **5,600 Well Being Checks assuring the health and safety of senior residents**

Our "Meals on Wheels" volunteers and staff conduct a daily Well Being Check with each meal delivery and each on-site home maintenance service. A formalized system has been implemented for alerting our staff to any observed changes in a senior's physical or mental health. This value-added procedure, which has been formalized this year, has already resulted in several documented cases of staff and volunteers saving lives by finding fallen or injured seniors upon visiting their homes.

An Emergency Follow-Up Procedure is in place for any client who was expected to be at home, and DSCC collaborates with your local police and fire department to account for every "missing" senior by the end of each business day.

### ***Additional In-Direct Services***

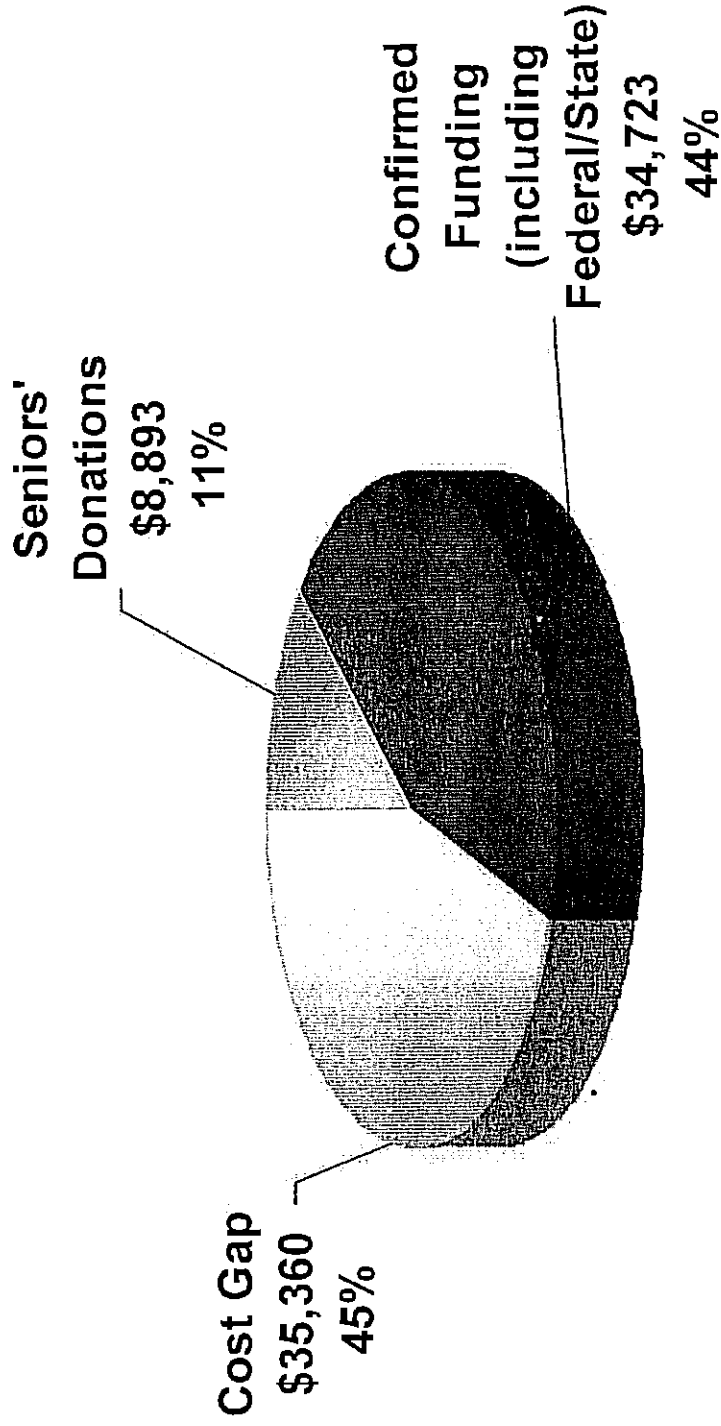
#### ***Health and Wellness***

- **60 senior residents received health education information each month**

At our Community Dining sites and along with the "Meals on Wheels" delivered to homes, DSCC provides an educational focus on varying topics pertinent to elderly lifestyles. As seniors become aware of and implement these preventive measures, we help improve their health and wellness and avoid premature institutionalization.

# Cost Analysis – Darien Senior Residents (60+) All Programs

FY2011 (10/1/2010 – 9/30/2011) Pre-Audit Actual



DuPage Senior Citizens Council  
*Providing Meals and More...*

DuPage Senior Citizens Council  
Municipality Financial Support

Municipality	For Period 10/01/08 - 9/30/09	For Period 10/01/09 - 9/30/10	For Period 10/01/10 - 9/30/11
Addison	\$7,000	\$10,900	\$0
Bartlett	\$7,275	\$11,029	\$12,000
Bensenville	\$10,000	\$0	\$0
Bloomingtondale	\$12,000	\$10,000	\$0
Burr Ridge	\$2,320	\$2,320	\$2,320
Carol Stream	\$8,410	\$8,410	* \$8,410
Clarendon Hills	\$0	\$0	\$0
Darien	\$24,534	\$22,701	* \$24,000
Downers Grove	\$39,674	\$0	\$0
Elmhurst	\$32,000	\$32,000	\$32,000
Glen Ellyn	\$0	\$500	\$3,500
Glendale Heights	\$14,538	\$15,000	* \$15,000
Hanover Park	\$0	\$2,000	\$2,000
Hinsdale	\$0	\$0	\$0
Itasca	\$0	\$0	\$0
Lisle	\$6,000	\$6,000	* \$6,000
Lombard	\$30,000	\$30,000	\$30,000
Naperville	\$0	\$15,000	\$15,000
Oakbrook Terrace	\$2,500	\$2,500	* \$2,500
Villa Park	\$8,000	\$8,000	\$0
Warrenville	\$8,400	\$0	* \$13,000
West Chicago	\$10,000	\$10,000	\$10,000
Westmont	\$17,000	\$24,000	\$24,000
Wheaton	\$25,000	\$0	\$25,000
Willowbrook	\$0	\$1,500	\$3,000
Winfield	\$0	\$0	\$0
Wood Dale	\$0	\$0	\$0
Woodridge	\$0	\$0	\$0

TOTAL	\$264,651	\$211,860	\$227,730
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\* Pledged Not Yet  
Received

**AGENDA MEMO**  
**Administrative/Finance Committee**  
**November 14, 2011**

**ISSUE STATEMENT**

A resolution authorizing the Mayor to execute a cable franchise agreement with Comcast to provide cable television services in Darien

**BACKGROUND/HISTORY**

When the predecessor to Comcast came into Darien to provide cable television services to residents, they needed an agreement to utilize public ways for their utility boxes and equipment. Cable companies would negotiate individual deals with municipalities for this right, with many different customer service standards, building requirements, reporting notifications, and taxes both on their services and for government and education programming. The franchise agreement negotiated by the Cable Commission and passed by the City Council included all of these items.

Since the last franchise agreement was negotiated, many individual aspects of the franchise agreement are outdated or no longer applicable. The customer service standards and notifications are superseded by other regulations that have been passed by the State of Illinois, the building requirements are more usefully enforced by public way construction codes, and \$150,000 has been invested into the government programming infrastructure at City Hall through the use of PEG fees paid as a separate line item on customer bills.

Comcast has now approached the City of Darien to pass a new fifteen year franchise agreement. The Public Act 95-0009 passed by the State of Illinois to allow AT&T to provide service provides the same regulations for Comcast and other providers everywhere in Illinois, so these aspects are no longer included in the agreement. The financial framework in this agreement is similar: up to five percent of cable services would be taxed by the municipality, which is the maximum allowable for the City of Darien. The main negotiable point within the contract is the PEG fee. Comcast is proposing a maximum charge of \$0.35 per month, the maximum provided in every municipality they serve, which would equate to approximately \$21,500 per year. This franchise agreement only gives the City of Darien the ability to do this; a separate resolution by the City Council would be needed for it to take effect.

The Communications Commission reviewed the franchise agreement, recommending several changes that were agreed to by Comcast. Attached is the final agreement recommended by the Communications Commission.

**STAFF/COMMITTEE RECOMMENDATION**

The Communications Commission recommended approving the franchise agreement.

**ALTERNATE CONSIDERATION**

Not approving the franchise agreement would be an alternate consideration.



**CABLE TELEVISION FRANCHISE AGREEMENT  
BY AND BETWEEN  
The  
CITY OF DARIEN, ILLINOIS  
And  
COMCAST OF ILLINOIS IV, INC.**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Darien, Illinois (hereinafter, the "City") and Comcast of Illinois IV, Inc. (hereinafter, "Grantee") this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date").

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act.

**SECTION 1: Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

"Cable System" or "System," has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for

purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

“City” means the City of Darien, Illinois or the lawful successor, transferee, designee, or assignee thereof.

“Customer” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean Comcast of Illinois IV, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5<sup>th</sup> Cir. 1997), and amounts collected from non-Subscriber revenues in

accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area served by the Grantee's Cable System as of the Effective Date of this Franchise Agreement.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

"Public, Educational and Governmental (PEG) Access Channel" shall mean a video Channel designated for non-commercial use by the public, educational institutions such as public or private schools, but not "home schools," community colleges, and universities, as well as the City.

"Public, Educational and Government (PEG) Access Programming" shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

"Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

## **SECTION 2: Grant of Authority**

2.1. The City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to replace all existing franchise agreements – including the prior Franchise with the Grantee – regardless of whether said prior Franchise or franchise agreements are in effect.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy the Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

2.6.3. During the term of this Franchise Agreement and any extension or renewal thereof, no application fee or Security Fund shall be required of the Grantee for any permit required by the City, provided that Grantee shall have timely made all payments to the City pursuant to Section 5.1 of this Franchise Agreement.

### **SECTION 3: Construction and Maintenance of the Cable System**

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title 6B, Chapter 5, entitled “Construction of Utility Facilities in the Public Rights of Way,” of the Darien City Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal

utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Improvements of Public Way. The Grantee agrees that it shall, upon reasonable notice by the City and at the Grantee's own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the City because of public health, safety and welfare improvements as deemed necessary by the City. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way.

3.4. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.5. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

#### **SECTION 4: Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and within one (1) mile of the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

4.1.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of

its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.2. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time.

4.3. New/Planned Developments. The City shall provide the Grantee with written notice of the issuance of building permits within the Franchise Area for projects requiring undergrounding of cable facilities. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's rights-of-way. The City agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches. The City shall also provide the Grantee with summaries of all planned developments in the City at the same time as provided to all utilities or other like occupants of the City's right-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.

4.4. Annexations. The City shall notify the Grantee of all annexations by the City; and of any and all planned developments in areas expected to be annexed at the same time the City informs utilities or other like occupants of the City's rights-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of actual and planned annexations, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time; and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred.

4.5. Service to School Buildings and Governmental Facilities.

4.5.1. Service to School Buildings. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to State accredited K-12 public and private schools not including "home schools," located in the Franchise Area within one hundred twenty five feet (125) of the Grantee's distribution cable.

4.5.2. Service to Governmental Facilities. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to municipal buildings located in the Franchise Area within one hundred twenty five (125) feet of Grantee's

distribution cable. "Municipal buildings" are those buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.5.3. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.6. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.7. Customer Service Obligations. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* Nothing in this Agreement shall preclude the right of the City to contact the Grantee's Government Affairs Manager or other representative to assist with any technical or billing questions.

## **SECTION 5: Oversight and Regulation by City**

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent

(5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the City would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the City may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the City up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the City conducts a public hearing on the proposed amendment; (iii) the City approves the amendment by ordinance; and (iv) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the City pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the City, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the City approves the amendment by ordinance; and (d) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.2. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the State of Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential.



**SECTION 6: Transfer of Cable System or Franchise or Control of Grantee**

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

**SECTION 7: Insurance and Indemnity**

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its officers, employees and agents.

**SECTION 8: Public, Educational and Governmental (PEG) Access**

8.1. PEG Capacity. The Grantee shall provide capacity for the City's noncommercial public, educational and governmental ("PEG") programming through Grantee's Cable System consistent with the requirements set forth herein. The City's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. As of the Effective Date of this Agreement, the City utilizes one (1) PEG channel. The City may request, and Grantee shall provide, a second PEG channel upon one hundred eighty (180) days advance written notice by the City and sufficient proof that the current channel is inadequate for all programming offered. "Sufficient proof" shall include a verified program log of all original, non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing channel for the prior six month period during the times of noon to midnight. In the event that eighty percent (80%) of the programming on the channel meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a second channel. Any cost for the activation of the additional channel shall be paid for by the City. The Grantee may offer the City's entire PEG programming on its basic digital tier of service.

8.2. The Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. However, the PEG channel is, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG channel among and between different non-commercial uses and Users. The City shall be responsible for the editorial control of the Video Programming on the PEG Channel except to the extent permitted in 47 U.S.C. §531(e).

8.3. Origination Point. At such time that the City determines that it wants the capacity to allow subscribers in the City to receive public, educational and/or governmental access programming (video and character generated) which may originate from schools, City facilities and/or other government facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the City determines that it wants to establish or change a location from which public, educational and/or governmental access programming is originated; or in the event the City wants to upgrade the connection to Comcast from an existing signal point of origination, the City will give Comcast written notice detailing the point of origination and the capability sought by the City. Comcast agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse Comcast for its expenditure, Comcast will implement any necessary system changes within a reasonable period of time.

8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the City to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.5. PEG Capital Support. At its sole discretion, the City may designate PEG access capital projects to be funded by the City. The City shall send written notice of the City's desire for Grantee to collect as an external charge a PEG Capital Fee of up to thirty-five cents (\$0.35) per customer per month charge to be passed on to each Subscriber pursuant Section 622(g)(2)(C)

of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge over a period of twelve (12) months, unless some other period is mutually agreed upon in writing, and shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment and the Grantee shall have the opportunity to review and make recommendations upon the City's plan prior to agreeing to collect and pay to the City the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, as long as the City spends the entire amount collected by the end of the term of this Agreement. Moreover, if the City chooses to borrow from itself or a financial institution revenue for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the City's written request.

8.5.1. For any payments owed by Grantee in accordance with this Section 8.3 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by Chase Bank U.S.A. or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this section.

8.5.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.6. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days notice. Except as otherwise provided herein, the programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

## **SECTION 9: Enforcement of Franchise**

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of 9.2 herein, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief.

9.4. Technical Violation. The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

a. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

b. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

#### **SECTION 10: Miscellaneous Provisions**

10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

Darien Franchise

To the City:

City of Darien  
1702 Plainfield Road  
Darien, IL 60561  
ATTN: City Administrator

To the Grantee:

Comcast  
155 W. Industrial Drive  
Elmhurst, Illinois 60126  
ATTN: Director of Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, ordinances, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, DuPage County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the

City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the City of Darien:**

**For Comcast of Illinois IV, Inc.:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

4c

**AGENDA MEMO**  
**Administrative/Finance Committee**  
**November 14, 2011**

**ISSUE STATEMENT**

A resolution instructing Comcast to collect as an external charge a PEG capital fee of \$0.35 per customer per month charge to be passed on to each subscriber pursuant to Section 622(g)(2)(C) of the Cable Act (47 U.S.C. SS542(g)(2)(C)).

**BACKGROUND**

The City Council has a recommendation from the Communications Committee to approve a franchise agreement from Comcast, which would replace the current agreement set to expire in 2012. Just like the previous agreement, the recommended agreement allows the City of Darien to apply a monthly charge to Comcast subscribers to pay for the capital costs of running a Public, Education and Government (PEG) Channel, commonly known in Darien as Channel 6. The PEG fees in the previous agreement allowed the City of Darien to purchase cameras and equipment that allow us to broadcast important meetings, create information boards to send to residents, and run community videos as local entertainment.

The Communications Commission reviewed the current communications infrastructure and invited two companies to provide input on potential future improvements to the existing system. The two quotes from the companies provided a range of \$95,000 - \$250,000 for replacements and upgrades that will be needed during the fifteen year duration of the franchise agreement. A \$0.35 PEG fee would equate to approximately \$21,500 per year based on our current customer total. The Communications Commission recommended passing the full \$0.35 PEG fee to accumulate funds needed for these future improvements. The PEG fee may be reduced at any point in the future.

**RECOMMENDATION**

The Communications Commission voted 5-0 to recommend approval of a resolution instructing Comcast to collect as an external charge a PEG capital fee of \$0.35 per customer per month charge to be passed on to each subscriber pursuant to Section 622(g)(2)(C) of the Cable Act (47 U.S.C. SS542(g)(2)(C)).

**ALTERNATE CONSIDERATION**

Not passing a PEG fee, or passing a fee in a different amount, would be alternate considerations.

**DECISION MODE**

This item will be placed on the November 21, 2011 City Council agenda for formal approval.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION INSTRUCTING COMCAST TO COLLECT AS AN EXTERNAL CHARGE A PEG CAPITAL FEE OF \$0.35 PER CUSTOMER PER MONTH CHARGE TO BE PASSED ON TO EACH SUBSCRIBER PURSUANT TO SECTION 622(g)(2)(C) OF THE CABLE ACT**

Whereas, the City of Darien has entered into a franchise agreement with Comcast of Illinois IV, Inc; and

Whereas, Section 8.5 of the franchise agreement allows the City of Darien to collect funds of up to \$0.35 per customer per month; and

Whereas, the City of Darien is in need of funds to complete the replacement and upgrade equipment used to provide Darien residents with access to meetings, information, and community programming; and

***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, that Comcast is hereby instructed to collect as an external charge a PEG capital fee of \$0.35 per customer per month charge to be passed on to each subscriber pursuant to Section 622(g)(2)(C) of the Cable Act.***

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this \_\_\_\_ day of \_\_\_\_\_ 2011.**

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_



RESOLUTION NO. \_\_\_\_\_

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY,  
ILLINOIS, this \_\_\_\_ day of \_\_\_\_\_ 2011.

ATTEST:

\_\_\_\_\_  
KATHLEEN MOESLE-WEAVER, MAYOR

\_\_\_\_\_  
JOANNE RAGONA, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

# CITY OF DARIEN

## MEMO

**TO:** Administrative/Finance Committee Members  
**FROM:** Bryon D. Vana, City Administrator  
**DATE:** November 14<sup>th</sup>, 2011  
**SUBJECT:** Proposed Water Rate Increase- DuPage Water Commission

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The proposed water rate increase from the DuPage Water Commission will be discussed at the Council goal setting session on November 16<sup>th</sup>. I wanted to review this item with the committee prior to goal setting so the committee members are familiar with staff's preliminary review.

Included with this memo are the following exhibits I will review:

- 1 Memo from the DWC announcing their proposed 4 year rate
- 2 A spreadsheet showing the calculations of the estimated annual payment to the DWC after the increase
- 3 A multi year expense budget showing the estimated water fund expenses through FYE 16
- 4 A multi year water fund budget summary showing the impact of the DWC increase if we kept our current water rate the same
- 5 A multi year water fund budget summary showing the impact of the DWC increase if we annually increase our current water rate the same amount as the DWC increase
- 6 Is a spreadsheet showing the calculations of water rate increase that would keep our water fund balance at approximately \$725,000 annually which is approximately a 60 day balance
- 7 A multi year water fund summary showing the impact of exhibit 6 regarding maintaining the 60 fund balance.

If you have questions prior to the meeting feel free to give me a call.



## DU PAGE WATER COMMISSION

600 E. BUTTERFIELD ROAD • ELMHURST, IL • 60126-4642

(630) 834-0100 • FAX: (630) 834-0120

October 26, 2011

Ex 1

Mayor Kathleen Weaver  
City of Darien  
1702 Plainfield Rd.  
Darien, IL 60559

Subject: DuPage Water Commission  
Proposed Four-Year O&M Rate Action

Dear Mayor Weaver:

Due to water rate increases recently announced by the City of Chicago to become effective on the first day of January in each of the years 2012, 2013, 2014, and 2015, among other reasons, the Commission is proposing to charge the following rate for Operation and Maintenance Costs in the calendar year set forth opposite each such rate:

\$2.73 per 1,000 gallons	2012
\$3.32 per 1,000 gallons	2013
\$3.97 per 1,000 gallons	2014
\$4.68 per 1,000 gallons	2015

This is to notify you that a hearing of the Charter Customers on the proposed four-year O&M rate action will be held by the Commission, at its offices, at 7:30 P.M. Thursday, November 17, 2011. Notice of this Charter Customer hearing on the proposed four-year O&M rate action is given to you in accordance with Section 7(l) of the Water Purchase and Sales Contract and, for the period commencing May 1, 2012, and ending December 31, 2015, will be subject to the Budget notice and hearing requirements of Subsection 7(l) of the Charter Customer Contract.

If you have any questions, please feel free to contact me.

Very truly yours,

John F. Spatz, Jr.  
General Manager

cc: Village/City Managers  
Commissioners

NOTICE

NOTICE OF CHARTER CUSTOMER HEARING ON  
AN ORDINANCE AMENDING ORDINANCE NO. O-5-11,  
INCLUDING A FOUR-YEAR INCREASE IN THE RATE TO BE CHARGED  
FOR OPERATIONS AND MAINTENANCE COSTS  
PURSUANT TO THE CHARTER CUSTOMER CONTRACT  
BY THE BOARD OF COMMISSIONERS OF THE  
DUPAGE WATER COMMISSION

CHARTER CUSTOMER NOTICE IS HEREBY GIVEN that on November 17, 2011, at 7:30 p.m., a hearing of the Charter Customers will be held by The Chairman and Board of Commissioners of the DuPage Water Commission, DuPage, Cook, and Will Counties, Illinois, at the Office of the Commission, 600 East Butterfield Road, Elmhurst, Illinois, for the purpose of considering an Ordinance Amending Ordinance No. O-5-11, including a four-year increase in the rate to be charged for Operations and Maintenance Costs in accordance with the Charter Customer Contract.

The following rate is proposed to be charged to all Contract Customers for Operation and Maintenance Costs in the calendar year set forth opposite each such rate:

\$2.73 per 1,000 gallons	2012
\$3.32 per 1,000 gallons	2013
\$3.97 per 1,000 gallons	2014
\$4.68 per 1,000 gallons	2015

Copies of the draft ordinance amending Ordinance No. O-5-11 are available for public inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at 600 East Butterfield Road, Elmhurst, Illinois. Charter Customers attending the hearing shall have the right to provide written and oral comments and ask questions concerning the ordinance amending Ordinance No. O-5-11 and the four-year increase in the Operations and Maintenance rate.

Maureen A. Crowley  
Clerk  
DuPage Water Commission

6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

USAGE	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Original Water	122,584	201,730	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668	199,668
Water	152,622	192,939	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806	205,806
Wastewater	153,098	236,347	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013	265,013
Water	181,572	285,602	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901	224,901
Wastewater	186,956	206,903	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619	209,619
Water	162,918	195,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425	185,425
Wastewater	136,802	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273	167,273
Water	133,424	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587	179,587
Wastewater	143,166	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443	177,443
Water	#####	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574	160,574
Wastewater	123,651	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276	176,276
Water	140,016	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130	165,130
Wastewater	#####	2,295,237	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515	2,326,515
Year-to-date % increase		2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%	2.91%
Year-to-date \$ increase		31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278	31,278

metered ga	rate	orig fye 12	rate	exp fye 12	rate	exp fye 13	rate	exp fye 14	rate	exp fye 15	rate	exp fye 16
86,140	2.04	\$175,726	2.04	\$175,726	2.73	\$235,162	3.32	\$285,985	3.97	\$341,976	4.68	\$403,135
89,247	2.04	\$182,064	2.04	\$182,064	2.73	\$243,644	3.32	\$296,300	3.97	\$354,311	4.68	\$417,676
118,270	2.04	\$241,271	2.04	\$241,271	2.73	\$322,877	3.32	\$392,656	3.97	\$469,532	4.68	\$553,504
88,607	2.04	\$201,158	2.04	\$201,158	2.73	\$269,197	3.32	\$327,375	3.97	\$391,470	4.68	\$461,481
91,116	2.04	\$185,877	2.04	\$185,877	2.73	\$248,747	3.32	\$302,505	3.97	\$361,731	4.68	\$426,423
93,632	2.04	\$191,009	2.04	\$191,009	2.73	\$255,615	3.32	\$310,858	3.97	\$371,719	4.68	\$438,198
78,332	2.04	\$159,797	2.04	\$159,797	2.73	\$213,846	3.32	\$260,062	3.97	\$310,978	4.68	\$366,594
85,024	2.04	\$173,449	2.04	\$173,449	2.73	\$232,116	3.32	\$282,280	3.97	\$337,545	4.68	\$397,912
83,859	2.04	\$171,072	2.04	\$171,072	2.73	\$228,935	3.32	\$278,412	3.97	\$332,920	4.68	\$392,460
74,581	2.04	\$152,370	2.73	\$203,906	3.32	\$247,974	3.97	\$296,523	4.68	\$349,554	4.68	\$349,554
83,225	2.04	\$169,779	2.73	\$227,204	3.32	\$276,307	3.97	\$330,403	4.68	\$389,493	4.68	\$389,493
77,167	2.04	\$157,421	2.73	\$210,666	3.32	\$256,194	3.97	\$306,353	4.68	\$361,142	4.68	\$361,142
1,059,310	\$2,160,992	\$2,323,200	\$3,030,615	\$3,669,713	\$1,508,721	\$2,211,377	\$2,796,578					

est gallons per budget  
 1,125,500  
 66,180  
 \$136,351

EX 2

City of Darien

11/8/2011

MUNICIPAL SERVICES  
WATER FUND BUDGET  
FISCAL YEAR END 2012

ACCOUNT	FY10 ACTUAL	FY11 BUDGET	FY11 ESTACT	FY12 BUD REQ	DEPT MAINT AUDIT REQUEST	COUNCIL DISCRETIONARY REVENUES	FY11 FORECAST	FY12 FORECAST	FY13 FORECAST	FY14 FORECAST	FY15 FORECAST	FY16 FORECAST
PERSONNEL												
SALARIES	\$ 458,647	\$ 450,000	\$ 450,000	\$ 434,000	\$ 434,000	\$	456,700	478,485	478,485			
OVERTIME	58,192	75,000	68,000	68,000	68,000		70,000	70,000	70,000			
SUB-TOTAL	516,839	525,000	518,000	502,000	502,000		525,700	548,485	548,485			
BENEFITS												
SOCIAL SECURITY	31,790	32,000	31,790	32,500	32,500		33,000	33,500	33,500			
MEDICARE	7,435	6,000	6,000	7,592	7,592		7,972	8,370	8,370			
IMRF	39,646	51,000	51,000	59,900	59,900		62,895	64,000	64,000			
MEDICAL LIFE INSURANCE	102,199	89,000	89,000	100,000	100,000		105,000	110,250	110,250			
SUPPLEMENTAL PENSION	9,415	9,500	9,600	2,400	2,400		2,520	2,646	2,646			
SUB-TOTAL	190,485	187,500	187,390	202,392	202,392		211,387	218,766	218,766			
OPERATING												
LIABILITY INSURANCE	168,014	163,240	163,060	174,141	163,161	10,980	160,976	190,025	190,025			
MAINTENANCE-BUILDING	31,520	87,309	75,000	31,471	26,471	5,000	7,866	28,067	28,067			
MAINTENANCE-EQUIPMENT	5,396	7,500	7,600	7,600	7,600		7,866	8,141	8,141			
MAINTENANCE-WATER SYS	112,330	106,000	106,000	130,000	130,000		179,550	184,259	184,259			
POSTAGE & MAILING	1,480	1,600	1,200	1,000	1,000		1,071	1,071	1,071			
QUALITY CONTROL	705	21,150	10,000	20,762	20,762		21,489	22,241	22,241			
SUPPLIES-OPERATION	3,187	6,650	6,650	6,850	6,850		7,090	7,338	7,338			
TRAINING & EDUCATION	995	2,235	1,100	2,350	1,600	750	1,656	1,714	1,714			
TELEPHONE	8,814	10,160	10,160	10,400	10,400		10,764	11,141	11,141			
INFORMS	1,985	2,760	2,760	3,350	3,350		2,458	2,544	2,544			
UTILITIES GAS & ELECTRIC	54,707	46,000	46,000	46,500	46,500		48,825	51,266	51,266			
VEHICLE GAS & OIL	14,213	18,000	15,000	18,000	18,000		18,900	19,845	19,845			
SUB-TOTAL	403,446	492,604	464,530	452,424	435,694	16,730	487,440	527,653	527,653			
CONTRACTUAL												
AUDIT	7,896	10,000	10,000	10,000	10,000		10,000	10,000	10,000			
CONSULTING/PROF SERV	6,941	16,350	13,350	13,350	13,350		9,675	10,014	10,014			
LEAK DETECTION	13,045	17,100	17,000	17,900	6,400	11,500	6,720	7,056	7,056			
DATA PROCESSING	40,658	96,400	91,000	152,328	152,328		152,328	152,328	152,328			
DUPAGE WATER COMM	1,944,385	2,389,949	2,300,000	2,745,209	2,745,209		3,306,324	3,947,422	3,947,422			
JANITORIAL SERVICE	641	-	-	-	-		-	-	-			
WATER TOWER PAINTING	-	-	-	-	-		-	-	-			
PRINTING AND FORMS	-	-	-	-	-		-	-	-			
SUB-TOTAL	2,013,366	2,529,799	2,431,000	2,936,787	2,927,287	11,500	3,487,047	4,126,820	4,126,820			
CAPITAL												
EQUIPMENT	104,034	37,454	24,000	10,750	750	10,000	-	-	-			
WATER METERS	25,077	25,000	25,000	25,000	25,000		-	-	-			
SUB-TOTAL	129,111	62,454	49,000	35,750	25,750	10,000	-	-	-			
TRANSFER												
RECAPTURE FEES	-	-	-	-	-		-	-	-			
SERVICE CHARGE	250,000	250,000	250,000	250,000	250,000		250,000	250,000	250,000			
WATER DEPRECIATION FU	-	-	-	-	-		-	-	-			
SUB-TOTAL	250,000	250,000	250,000	250,000	250,000		250,000	250,000	250,000			
DEBT RETIREMENT												
DEBT RETIRE	305,442	304,028	304,457	307,674	307,674		305,908	308,896	308,896			
SUB-TOTAL	305,442	304,028	304,457	307,674	307,674		305,908	308,896	308,896			
TOTAL EXPENSES	\$ 3,803,695	\$ 4,351,385	\$ 4,204,377	\$ 4,689,027	\$ 5,346,650	\$ 38,230	\$ 5,267,481	\$ 5,980,619	\$ 6,683,276	\$ 7,268,477		

EX 4

City of Darien

11/10/11

MUNICIPAL SERVICES  
WATER FUND BUDGET SUMMARY  
FISCAL YEAR ENDING 2012

ACCOUNT	FYE 10	FYE 11	FYE 12	FYE 13	FYE 14	FYE 15	FYE 16	FYE 17	FYE 18
	ACTUAL	BUDGET	REQUESTED	REQUEST	DISCRETIONARY	FORECAST	FORECAST	FORECAST	FORECAST
REVENUE									
WATER SALES	\$ 3,451,914	\$ 4,421,785	\$ 4,447,975	\$ 4,501,159	\$ -	\$ 4,480,513	\$ 4,490,507	\$ -	\$ -
INSPECTION/TAP-ON/PERMITS	24,437	4,000	18,850	4,000	-	4,000	4,000	-	-
OTHER WATER SALES	25,605	4,500	10,000	4,500	-	4,500	4,500	-	-
METER SALES	3,165	3,500	2,000	3,500	-	3,500	3,500	-	-
TRANSFER FROM WATER DEPC	152,000	550,000	-	-	-	-	-	-	-
MISCELLANEOUS INCOME	21,849	1,500	7,500	4,000	-	2,000	2,000	-	-
INTEREST INCOME									
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ -	\$ 4,504,513	\$ 4,504,507	\$ 4,490,507	\$ 4,490,507
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ -	\$ 4,504,513	\$ 4,504,507	\$ 4,490,507	\$ 4,490,507
Transfer to Wtr Depts									
Operating exp.									
TOTAL EXPENDITURES	\$ 3,874,334	\$ 4,351,585	\$ 4,204,377	\$ 4,657,929	\$ 24,840	\$ 5,557,481	\$ 5,980,519	\$ 6,683,276	\$ 7,268,477
FISCAL YEAR BALANCE	(195,364)	633,700	831,948	(170,770)	(24,840)	(1,062,968)	(1,476,112)	(2,152,769)	(2,777,970)
2012 FUND BALANCE	496,994	212,244	1,350,681	1,350,681	1,179,911	1,179,911	116,943	(1,359,169)	(3,551,939)
ENDING FUND BALANCE	272,244	1,332,684	1,350,681	1,179,911	(24,840)	116,943	(1,359,169)	(3,551,939)	(6,329,909)

EX 5

City of Darien

11/10/11

MUNICIPAL SERVICES  
WATER FUND BUDGET SUMMARY  
FISCAL YEAR ENDING 2012

ACCOUNT	FYE 10 ACTUAL	FYE 11 BUDGET	FYE 11 ESTACT	FYE 12 REQUESTED	MAINTENANCE BUDGET REQUEST	COUNCIL DISCRETIONARY	FYE 13 FORECAST	FYE 14 FORECAST	FYE 15 FORECAST	FYE 16 FORECAST
REVENUE										
WATER SALES	\$ 3,451,914	\$ 4,421,785	\$ 4,447,975	\$ 4,501,159	\$ 4,501,159	\$ -	\$ 4,992,697	\$ 5,403,543	\$ -	\$ -
INSPECTION/TAP-ON/PERMITE	24,437	4,000	18,650	4,000	4,000	-	4,000	4,000	-	-
OTHER WATER SALES	25,605	4,500	10,000	4,500	4,500	-	4,500	4,500	-	-
METER SALES	3,165	3,500	2,000	3,500	3,500	-	3,500	3,500	-	-
TRANSFER FROM WATER DEPC	152,000	-	550,000	-	-	-	-	-	-	-
MISCELLANEOUS INCOME	21,849	1,500	7,500	4,000	4,000	-	2,000	2,000	-	-
INTEREST INCOME										
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ 4,517,159	\$ -	\$ 4,998,697	\$ 5,417,543	\$ 5,867,195	\$ 6,373,645
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ 4,517,159	\$ -	\$ 4,998,697	\$ 5,417,543	\$ 5,867,195	\$ 6,373,645
Transfer to Wtr Dept Operating exp.							\$ 300,000			
TOTAL EXPENDITURES	\$ 3,874,334	\$ 4,351,585	\$ 4,204,377	\$ 4,687,929	\$ 4,663,089	\$ 24,840	\$ 5,267,481	\$ 5,980,619	\$ 6,683,276	\$ 7,268,477
SCAL YEAR BALANCE	(105,364)	633,700	831,948	(170,770)	(145,930)	(24,840)	(570,784)	(563,076)	(816,081)	(894,832)
EG FUND BALANCE	212,244	498,994	212,244	1,350,681	1,350,681	(24,840)	1,179,511	609,127	46,052	(770,026)
NDING FUND BALANCE	212,244	1,132,654	1,350,681	1,179,911	1,204,751	(24,840)	609,127	46,052	(770,029)	(1,664,861)





Ex 1)

City of Darien

11/10/11

MUNICIPAL SERVICES  
WATER FUND BUDGET SUMMARY  
FISCAL YEAR ENDING 2012

ACCOUNT	FYE 10 ACTUAL	FYE 11 BUDGET	FYE 11 ESTMT	FYE 12 REQUESTED	MAINTENANCE BUDGET REQUEST	COUNCIL DISCRETIONARY	FYE 13		FYE 14		FYE 15	
							FORECAST	FORECAST	FORECAST	FORECAST	FORECAST	FORECAST
REVENUE												
WATER SALES	\$ 3,451,914	\$ 4,421,785	\$ 4,447,975	\$ 4,501,159	\$ 4,501,159	\$ -	\$ 5,132,493	\$ 5,952,792	\$ -	\$ -	\$ -	\$ -
INSPECTION/TAP-ON/PERMITS	24,437	4,000	18,850	4,000	4,000	-	4,000	4,000	-	-	-	-
OTHER WATER SALES	25,605	4,500	10,000	4,500	4,500	-	4,500	4,500	-	-	-	-
METER SALES	3,165	3,500	2,000	3,500	3,500	-	3,500	3,500	-	-	-	-
TRANSFER FROM WATER DEPC	152,000	-	550,000	-	-	-	-	-	-	-	-	-
MISCELLANEOUS INCOME	21,849	1,500	7,500	4,000	4,000	-	2,000	2,000	-	-	-	-
INTEREST INCOME												
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ 4,517,159	\$ -	\$ 5,146,493	\$ 5,956,792	\$ 6,666,102	\$ 7,272,416		
TOTAL REVENUE	\$ 3,678,970	\$ 4,985,285	\$ 5,036,325	\$ 4,517,159	\$ 4,517,159	\$ -	\$ 5,146,493	\$ 5,956,792	\$ 6,666,102	\$ 7,272,416		
Transfer to Wtr Depc												
Operating exp.												
TOTAL EXPENDITURES	\$ 3,874,334	\$ 4,351,595	\$ 4,204,377	\$ 4,667,929	\$ 4,663,089	\$ 24,840	\$ 5,567,481	\$ 5,980,619	\$ 6,683,276	\$ 7,268,477		
FISCAL YEAR BALANCE	(195,364)	633,700	831,948	(170,770)	(145,330)	(24,840)	(420,988)	(13,827)	(17,174)	3,939		
EG FUND BALANCE	488,994	212,244	212,244	1,350,681	1,350,681	1,179,911	1,179,911	758,923	745,096	727,922		
ENDING FUND BALANCE	212,244	1,132,684	1,350,601	1,179,911	1,204,751	(24,840)	758,923	745,096	727,922	731,861		

Rate/1000      4.90      5.80      6.95      7.95      8.80

**AGENDA MEMO**  
**Administrative/Finance Committee**  
**November 14, 2011**

**ISSUE STATEMENT**

A discussion on the City of Darien's fleet maintenance operations

**BACKGROUND/HISTORY**

The City of Darien has historically had one mechanic in the Municipal Services Department. The employee in this position for many years retired suddenly over the summer. Staff investigated several alternatives, including hiring an employee to fill the position, using automotive repair shops, or sharing services with local governmental agencies. One option staff is investigating is using the Village of Downers Grove to repair vehicles. Downers Grove runs a full service shop with several mechanics and a fleet services manager. Having a shop with mechanics constantly on duty, especially during a snowstorm, would be beneficial for our operations. Downers Grove also has a service vehicle that can be used for repairs needed on location. There will also be additional shared resources in managing fleets, such as implementing best practices and assembling bid documents for the purchase of capital equipment.

Staff is currently discussing mutually beneficial pricing options with Downers Grove, with the intent to have a final contract to bring to the committee in December. Any concerns or input would be helpful in discussions with other potential partners.

**STAFF/COMMITTEE RECOMMENDATION**

For Discussion

**ALTERNATE CONSIDERATION**

For Discussion

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
VILLAGE OF DOWNERS GROVE AND THE CITY OF DARIEN, ILLINOIS  
REGARDING THE MAINTENANCE  
AND REPAIR OF DARIEN VEHICLES**

THIS INTERGOVERNMENTAL AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, with offices at 801 Burlington Avenue, Downers Grove, Illinois (hereinafter referred to as "Village"), and the CITY OF DARIEN, ILLINOIS, with offices at \_\_\_\_\_, Darien, Illinois (hereinafter referred to as "Darien"),

**WITNESSETH**

**WHEREAS**, Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) provide that units of local government may contract with one another to perform any activity authorized by law; and

**WHEREAS**, the Village has in-house fleet services (hereinafter referred to as "Village Fleet Services") to maintain and repair its own vehicles;

**WHEREAS**, **Darien** owns vehicles, but does not have in-house personnel to maintain and repair said vehicles, and wishes to contract with the Village for said fleet services;

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and agreements herein set forth, the parties hereto agree as follows:

1. The provisions set forth in the preamble are incorporated into and made a part of this Agreement.
2. The Village agrees to perform periodic repair and maintenance work on the vehicles owned by Darien. The services will be performed at the Village's maintenance garage and it shall be the responsibility of Darien, at its sole expense, to bring the vehicles to the garage for service work. Darien shall provide the Village a list of employees authorized to initiate repair work to be performed by Village Fleet Services.

3. Prior to performing any fleet services or ordering parts or materials for any vehicle, the Village shall provide Darien with an estimate of the total cost of work. Darien shall pay to the Village \_\_\_\_\_ for services performed by Village Fleet Services personnel. Darien shall pay to the Village the actual costs for parts, materials or outside services. Darien will be informed in writing of any rate changes at least sixty (60) days in advance of the effective date of the rate changes.

4. The Village will invoice Darien on a monthly basis. Darien agrees to pay the Village invoices for repairs and maintenance pursuant to the terms of the Local Government Prompt Payment Act (50 ILCS 505/3).

In the event that Darien defaults in any of its obligations to the Village, Darien shall pay the Village reasonable attorneys' fees, costs and expenses expended by the Village to collect the amount owed.

5. Warranties on parts and materials, if any, shall only be as long as the warranties provided by the manufacturers. All other warranties, express or implied, or any other representations, promises or statements are hereby disclaimed and disavowed by the Village.

6. Except in cases of sole negligence, the Village of Downers Grove shall not be liable for any damages in an amount exceeding the monies paid by the Darien to the Village for labor, parts, and materials expended. Darien hereby waives, and in no event shall the Village be liable for, any and all claims for special, incidental, consequential or punitive damages from the Village, its officers, employees and agents except in cases of negligence.

7. Each Party to this Agreement shall continue to procure and maintain, at its sole and exclusive expense, insurance coverage including comprehensive liability, contractual liability, personal injury, and property damage with such limits of coverage and deductibles as are prudent and reasonable for the protection of its own vehicles, apparatus, equipment or facilities. Darien

agrees that its insurance coverage on its vehicles shall be considered to be the primary coverage for those vehicles for all purposes.

8. In the event that Darien cancels a request for service for maintenance or repairs after parts and/or materials are ordered, Darien is responsible to pay the Village the applicable restocking fee, if one exists, for returnable parts and materials and one hundred percent (100%) of the cost of parts and materials that cannot be returned.

9. Each Party agrees to defend, indemnify and hold harmless the elected and appointed officials and all other agents, representatives and employees of the other Party, against any claim, suit or cause of action arising out of the Party's own negligence, willful, wanton, or intentional acts and/or omissions under this Agreement. Each Party agrees to raise as defenses before any court any respective governmental tort immunities provided by law.

10. The term of this Agreement shall be one (1) year from the effective date hereof. This Agreement will automatically renew for one (1) year terms unless either Party provides thirty (30) days' written notice of termination. Either Party may terminate this Agreement for any reason at any time upon delivery of a written notice to the other Party at least thirty (30) days before the intended termination date. Such notice shall be either personally delivered or sent by certified mail, return receipt requested.

11. Darien and Downers Grove shall, as parties to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) Darien and Downers Grove certify that they are an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of this Agreement.
- (c) Darien and Downers Grove shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq., and The Americans With

Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

12. In the event of Darien or Downers Grove's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), this Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, Darien and Downers Grove agree as follows:

- a. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- b. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.

13. Darien and Downers Grove, as parties to a public contract, shall have a written sexual harassment policy that:

- a. Notes the illegality of sexual harassment;
- b. Sets forth the State law definition of sexual harassment;
- c. Describes sexual harassment utilizing examples;
- d. Describes the Darien or Downers Grove's internal complaint process including penalties;
- e. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and
- f. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

14. Darien and Downers Grove, as parties to a public contract, certifies and agrees that it will provide a drug free workplace by:

- a. Publishing a statement: (1) Notifying employees that the unlawful manufacture,

distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or Darien's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

- b. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Darien's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
- c. Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- d. Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace from an employee or otherwise receiving actual notice of such conviction.
- e. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.
- f. Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.
- g. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

15. This Agreement represents the entire agreement between the parties. This Agreement shall only be amended by a written instrument approved and signed by all parties hereto. Such amendment shall take effect immediately upon its execution. This Agreement shall be binding upon any successors or assigns to either Party to this Agreement.

16. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Illinois. The forum for any legal disputes between the Village and the Darien shall be DuPage County, Illinois.



17. Any statement or writing to be presented to a Party hereunder shall be so presented by personal delivery or by deposit in the United States mail, with postage properly prepaid, and properly addressed to the offices of the other Party, as listed above, and shall be deemed presented on date of postmark.

18. If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties, pursuant to proper and necessary authorization have executed this Agreement on the date first written above.

**CITY OF DARIEN, ILLINOIS**

**VILLAGE OF DOWNERS GROVE**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Village Clerk