

79-R-06

A RESOLUTION

Authorizing the City Manager to Apply for a Grant under the Infrastructure Maintenance Fee Litigation *Cy Pres* Committee's General Authority to Make Such Grants

WHEREAS, in 1997, the State of Illinois enacted the Telecommunications Infrastructure Maintenance Fee (IMF) Act, which authorized the imposition of a fee of one percent (1%) of the gross charges on wireless retailers. Municipalities throughout the state imposed the IMF on telecommunications bills from January 1, 1998 through February 7, 2002; and

WHEREAS, in 1998, a lawsuit was filed challenging the fee, which the Court ruled unconstitutional and, upon appeal, the Illinois Supreme Court affirmed the unconstitutionality of the Municipal IMF only as it applied to wireless retailers; and

WHEREAS, in 2000, municipalities that imposed the IMF were joined as defendants in a class action lawsuit that asserted the unconstitutionality of the Infrastructure Maintenance Fee and sought refunds of the IMF; and

WHEREAS, as of October 18, 2005, a settlement was approved that required defendant class members to pay into the settlement fund seventy percent (70%) of the amounts collected through the Municipal IMF for wireless telecommunications services; and

WHEREAS, the Court will distribute the settlement fund in accordance with *cy pres* principles, or for its "next best" use. The settlement fund will be distributed as follows:

- Sixty percent (60%) for municipal emergency 9-1-1 telecommunications programs located anywhere within the State of Illinois; and
- Forty percent (40%) for medical facilities providing emergency care to indigent patients located in areas outside the six-county northeastern Illinois region; and

WHEREAS, the Court has established a three (3) -person committee (*Cy Pres* Committee) to make recommendations as to how the *cy pres* grants will be distributed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City of Evanston hereby requests use of the telecommunications infrastructure maintenance fee *cy pres* funds for the purposes described in this application.

SECTION 2: That the City Manager is hereby authorized to file an application on behalf of the City of Evanston with the *Cy Pres* Committee for a grant for use as described in this application.

SECTION 3: That the funds applied for will be expended consistent with the recitals in the application.

SECTION 4: That the City Manager is hereby authorized to furnish such additional information, assurances, certifications and amendments as the *Cy Pres* Committee may require in connection with this grant application.

SECTION 5: That the City manager is hereby authorized and directed on behalf of the City of Evanston to execute and deliver a grant application and all subsequent amendments thereto between the City of Evanston and the *Cy Pres*

Committee, and the Clerk of the City of Evanston is authorized and directed on behalf of the City of Evanston to attest said applications and all subsequent amendments thereto.

SECTION 6: That the City Manager is authorized and directed to take such action as is necessary or appropriate to implement, administer, and enforce said applications and all subsequent amendments thereto on behalf of the City of Evanston.

SECTION 7: That the City of Evanston will provide the *Cy Pres* Committee with a certification of a certified public accountant certifying that the grant funds were expended in conformity with the formal application of the use of the funds to ensure compliance with the grant program. Certification will be provided within ninety (90) days of a request by the *Cy Pres* Committee.

SECTION 8: That this Resolution 79-R-06 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Lorraine H. Morton, Mayor

Attest:


Mary P. Morris, City Clerk

Adopted: January 8, 2007