

AGENDA ITEM # _____
Copy Mailed To Alderperson _____

City of Madison, Wisconsin

A SUBSTITUTE RESOLUTION _____

Authorizing the grant of a license to PrimeCo Personal Communications, L. P. for the installation of telecommunications facilities on the Larkin Street Tower.

Drafted By: Donald S. Marx, Real Estate Manager

Date: March 25, 1997

Fiscal Note: The revenue from this licence, less any direct costs incurred by the Traffic Engineering Division in the administration of the license, shall be used to retire debt incurred by the City to construct the tower.

Sponsors: Ald. Jean MacCubbin, District 11

Presented April 1, 1997
Referred Board of Estimates, Board of Public Works, Transportation Commission and Plan Commission

Rereferred BOE, BPW, TC, PC (5-20)

Reported Back MAY 20 1997 JUN 3 1997

Adopted _____ POF _____

Rules Suspended _____
Public Hearing _____

APPROVAL OF FISCAL NOTE IS NEEDED BY THE COMPTROLLER'S OFFICE
Approved By 

ID NUMBER 21,302
SUBSTITUTE RESOLUTION NUMBER 5 4 2 5 2

WHEREAS, PrimeCo Personal Communications, L. P. has requested that the City allow it to install telecommunication facilities on the City's Larkin Street Tower; and

WHEREAS, City Traffic Engineering has reviewed and approved the locating of the telecommunications facilities on the tower; and

WHEREAS, the Real Estate Section has negotiated terms and conditions for a license to be granted to PrimeCo Personal Communications, L. P. to allow for the installation operation and maintenance of the telecommunications facilities on the tower.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Clerk are hereby authorized to grant a license to PrimeCo Communications, L. P. (PrimeCo) for the installation, operation and maintenance of telecommunications facilities on the City's Larkin Street Tower, as generally shown below, on the following terms and conditions:

- 1. PrimeCo shall pay to the City a one-time administrative fee of \$1,500 as payment of the City's costs of negotiating and processing the license.

2. The initial term of the license shall be ~~ten (10)~~ **five (5)** years. PrimeCo shall have the right to renew the license for ~~two (2) three (3)~~ additional ~~five (5)~~ year terms, subject to the terms and conditions of the license.
3. PrimeCo may use the Tower for the installation, operation, and maintenance of six (6) antennas and a nine foot by eighteen foot (9' x 18') communication shelter at the base of the Tower. PrimeCo shall have the right to install, operate and maintain an additional three (3) antennas on the Tower at any time during the term of the license. PrimeCo's installation, operation and maintenance of all wireless communication facilities shall be done in accordance with plans approved by the City.
4. The annual license fee for the communication shelter and the initial six (6) antennas shall be Twelve Thousand Dollars (\$12,000). Such annual license fee shall be paid in full on the commencement date of the license and on each subsequent anniversary of the commencement date. The annual license fee shall increase annually by 4% effective as of each anniversary of the commencement date of the license.
5. If PrimeCo installs the additional three (3) antennas, the annual license fee shall increase by an amount equal to Two Thousand Dollars (\$2,000), indexed at a rate of 4% calculated retroactively to the commencement date of the license. Said additional license fee shall become effective upon the installation of the additional antennas and shall be prorated for any partial year.
6. The City will guarantee the first ~~ten (10)~~ **five (5)** years of the license. ~~If the parties agree to renew for the second five (5) year term, the City will agree to guarantee that period as well.~~ During the **first** third and **second** ~~fourth~~ renewal terms the license may be revoked by the City upon determination by the Common Council that it is necessary to relocate the wireless communications facilities for furtherance of a public purpose. In the event of revocation under this paragraph, the City will give one (1) year advanced written notice to PrimeCo requiring relocation of its facilities and PrimeCo shall relocate the facilities at its sole expense. The City will use its best efforts to provide PrimeCo with a satisfactory alternate location on City-owned property which would allow for comparable coverage in the event of any required relocation. In the event of revocation under this paragraph, any license fee that has been prepaid for the period following the date the facilities are relocated shall be prorated on a per diem basis and refunded to PrimeCo.
7. If the Tower is damaged or destroyed by fire, winds, flood, lightning or other natural or manmade cause, the City shall have the option to repair or replace the Tower at its sole expense or to revoke the license effective on the date of such damage or destruction. In the event the City revokes the license, PrimeCo shall have no further obligations under the license. If the City elects to repair or replace the Tower, the annual license fee shall be abated until such repair or replacement is completed and any prepaid license fee for such abatement period shall be a credit against the license fee for the following year. During the abatement period PrimeCo may install, at its sole expense, temporary facilities to allow the continuation of its telecommunication operations. If the City undertakes such repair or replacement, but cannot complete the same within sixty (60) days after the damage or destruction occurred, PrimeCo may terminate the license upon written notice to the City, effective sixty (60) days after the damage or destruction occurred, and have no further obligation under the license. In the event of revocation or termination of the license under this paragraph any license fee that has been prepaid for the period following the revocation or termination shall be prorated on a per diem basis and refunded to PrimeCo.
8. PrimeCo may not assign the license without the prior written consent of the City except to any entity which controls, is controlled by, or is under the common control of PrimeCo, or to any entity resulting from an merger or consolidation with PrimeCo, or to any partner of PrimeCo, or to any partnership in which PrimeCo is a general partner, or to any person or entity which acquires all of the assets of PrimeCo as a going concern,

or to any entity which obtains a security interest in a substantial portion of PrimeCo. Any assignee shall assume all of the obligations of PrimeCo under the terms and conditions of the license.

PrimeCo shall indemnify, defend, and hold harmless the City from all claims, costs, losses and expenses resulting from the use of City-owned property or improvements located thereon under the terms and conditions of the license, except for the sole negligence and intentional acts of the City, its elected officials, officers, employees, agents, and representatives. PrimeCo shall maintain, at its sole cost during the term of any such license, commercial general liability insurance insuring PrimeCo and the City against liability for personal injury, death or damage to personal property arising out of the use of the site by PrimeCo. Such insurance shall provide coverage in an amount of not less than \$1 million for bodily injury or death to one or more persons and in an amount of not less than \$1 million for property damage. The City shall be named in the policy as an additional insured. Said insurance coverage limits may be adjusted, from time to time, by the City's Risk Manager.

10. PrimeCo shall keep in effect throughout the term of the license a surety bond in the amount of Five Thousand Dollars (\$5,000) with performance payment and maintenance clauses payable to the City in the event PrimeCo fails to remove personal property installed on the Tower and City-owned land upon expiration, termination, or revocation of the license.
11. The license shall be non-exclusive and the City may use the attached described City-owned lands and shall have the right to lease and convey other easements or grant other licenses to one or more entities on the City-owned lands provided that any such subsequent use, lease, easement or license shall not interfere with PrimeCo's rights under the license.
2. **PrimeCo shall indemnify, defend, and hold harmless the City from any and all actions or claims arising out of an alleged violation of the deed restriction relating to the Larkin Street Tower site.**

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are authorized to execute any and all documents to complete this transaction.

