



Legislation Text

File #: 48035, **Version:** 1

Fiscal Note

The proposed resolution authorizes a third renewal option with Verizon Wireless for antennas utilizing the Larkin Tower. The annual payment for this lease is \$34,091 and will be deposited into the General Fund.

Title

Authorizing the execution of a Third Amendment to License pertaining to a license with Verizon Wireless Personal Communications LP, d/b/a Verizon Wireless (f/k/a PrimeCo Personal Communications, LP), at the Larkin Communications Tower located at 125 Larkin Street.

Body

WHEREAS, the City is the owner of the communications tower located at 125 Larkin Street (the "Tower"); and

WHEREAS, the City and Verizon Wireless Personal Communications LP, d/b/a Verizon Wireless (f/k/a PrimeCo Personal Communications, L.P.) (hereinafter, "Verizon") are parties to a license dated June 18, 1997, as amended (the "License"), pertaining to the placement by Verizon of telecommunications equipment on the Tower and an equipment shelter and generator located on land near the base of the Tower (the "Land"). The Land and space on the Tower are hereinafter collectively referred to as the "Premises," and are depicted on the attached Exhibit A; and

WHEREAS, the original License was authorized by Resolution No. 54,252, File ID No. 21,302, adopted by the Common Council on June 3, 1997; and

WHEREAS, the License was subsequently amended by a First Amendment to License, authorized by Resolution No. RES-08-00814, File No. 11483, adopted by the Common Council on September 2, 2008; and

WHEREAS, the License was further amended by a Second Amendment to License, authorized by Resolution No. 54,252, File ID No. 21,302, adopted by the Common Council on June 3, 1997; and

WHEREAS, the initial term of the License was for the ten (10)-year period commencing on June 1, 1997 and ending on May 31, 2007, and Verizon has exercised its two (2) renewal options such that the current term expired on May 31, 2017; and

WHEREAS, in accordance with the terms of the License, Verizon has remained on the Premises as a holdover tenant; and

WHEREAS, staff from the City's Office of Real Estate Services and Verizon have negotiated terms and conditions for an amendment to the License to provide for four (4) additional renewal options of five (5) years each and update various conditions of the License.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to enter into a Third Amendment to License with the License providing for the option of additional renewal terms, on the following terms and conditions:

1. The License shall be amended to provide that, effective as of, and retroactive to, June 1, 2017, the License shall be automatically renewed for one (1) term of five (5) years with no further action required

on the part of either party. Thereafter, the License may be further renewed for up to three (3) additional five (5) year terms with requisite notices provided by the parties as set forth in the License.

2. The License Fee payable during the additional renewal terms shall be as set forth in the fee schedule attached hereto as Exhibit B.
3. The Insurance and Indemnification provision of the License shall be updated to read as follows:

Indemnification and Insurance. The Licensee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Licensee or its officers, officials, agents, and employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this License, except to the extent caused by the sole negligence or willful misconduct of the City, its officers, officials, agents, or employees.

The Licensee shall carry commercial general liability insurance covering as insured the Licensee and including the City, its officers, officials, agents and employees as additional insureds, as their interest may appear under this License, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. This policy shall include contractual liability and apply on a primary and noncontributory basis. Upon receipt of notice from its insurer, the Licensee shall provide the City with thirty (30) days' prior written notice of cancellation. As evidence of this coverage, the Licensee shall furnish the City with a certificate of insurance on an ACORD form or substitute form reasonably approved by the City, and, if requested by the City Risk Manager, the Licensee shall also provide copies of the blanket additional insured endorsements or policy. If the coverage required above expires while this License is in effect, the Licensee shall provide a renewal certificate to the City for approval.

4. The Assignment and Sublicensing provision of the License shall be updated to read as follows:

Assignment and Sublicensing. The Licensee shall not assign, lease, sublease, or in any way transfer this License or sublicense the Premises, or any portion thereof, or otherwise allow a third party to use the Premises, without the prior written consent of the City. Said consent may be withheld at the sole discretion of the City. Notwithstanding the foregoing, the Licensee shall be permitted to assign this License to any entity which controls, is controlled by, or is under the common control of the Licensee, or to any entity resulting from any merger or consolidation with the Licensee, or to any partner of the Licensee, or to any partnership in which the Licensee is a general partner, or to any person or entity which acquires all of the assets of the Licensee as a going concern. Before an assignment shall be effective, any assignee of this License shall assume in writing all obligations of the Licensee under the terms and conditions of this License. The Licensee shall promptly provide to the City documentation of any assignment of this License.

5. The Hazardous Substance Indemnification provision of the License shall be updated to read as follows:

Hazardous Substance Indemnification. The Licensee represents and warrants that its use of the Premises herein will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Licensee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss,

or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof, which was caused by the Licensee or any of its employees or agents, except to the extent caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of this License.

6. The Non-Discrimination provision of the License shall be updated to read as follows:

Non-Discrimination. In the performance of the services under this License, the Licensee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Licensee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this License because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

7. The Taxes provision of the License shall be updated to read as follows:

- a. Real Estate Taxes. The City is a tax exempt entity. Should any City of Madison Ordinance or State of Wisconsin Statute require that the Property be subject to real estate taxes or assessments, the Licensee shall be liable for the Licensee's proportionate share of all such real estate taxes and assessments on a prorata square foot basis as the area of the Premises bears in relation to the Property with respect to the Land and for all taxes imposed on the full value of the Licensee's improvements constructed on the Land.
- b. Personal Property Taxes. The Licensee shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any interest of the Licensee in the Premises or assessed against the Equipment and Shelter.

8. The following new provisions shall be inserted in the License:

- a. Access to the Premises shall be provided to the Licensee at all times upon notice to the City. To arrange for access to the Premises, the Licensee shall contact the City's Communications Operations Supervisor ("Supervisor") at (608) 266-4768 a minimum of two (2) business days in advance of the Licensee's desired access date. For 24/7 emergency, after-hours access to the Premises, the Licensee shall contact Communications Operations staff at (608) 444-4208. The Licensee shall be permitted to access the Premises only through the designated Licensee Entrance. The City shall install an electronic security system on the Licensee Entrance that requires entry of a key code to enter and exit the Premises. To obtain a key code and any additional access instructions, the Licensee shall contact the Supervisor and provide the Licensee's site identification number corresponding to the Premises that is on file with the City's Office of Real Estate Services. Notwithstanding the foregoing, in the event the Licensee requires the use of a different entrance to access the Premises, the Licensee shall arrange for said access by contacting the Supervisor a minimum of five (5) business days in advance of the Licensee's desired access date. At no time shall the Licensee attempt to override the electronic security system or add its own lock to the Licensee Entrance or any other entrance to the Premises. At all

times during which the Licensee has access to the Premises, the Licensee will take all reasonable steps to ensure that all enclosures, gates, ladders and any other access ways to the Premises are properly secured when not in use in order to prevent unauthorized access to the Premises. The Licensee shall be assessed a penalty of Two Thousand and no/100 Dollars (\$2,000.00) for each instance of non-compliance with the requirements of this Subparagraph, payable within forty-five (45) days after Licensee's receipt of notice and invoice from the City; provided, however, that the City must provide the Licensee with written evidence that such violation is due to the acts of the Licensee, its employees, contractors, subcontractors, or agents.

- b. Any modifications to the Equipment, Shelter, or Generator shall be subject to the written approval of the City and any other required governmental approvals before the Licensee may begin the modification of the Equipment, Shelter, and/or Generator. The City shall have thirty (30) days to review and comment on the Licensee's submission of requested modifications. Notwithstanding any provision of this Subparagraph to the contrary, without obtaining the City's prior consent, the Licensee shall have the right to: (i) make additions, alterations or improvements to the Licensee's equipment housed within any Shelter on the Premises; (ii) replace any or all of its Equipment installed on or about the Tower with replacement equipment of the same kind, which is reinstalled in the same place and position and is of the same size and weight as the replaced Equipment; and (iii) replace its Generator installed on the Land with a replacement generator of the same kind, which is reinstalled in the same place and position and is of the same size as the replaced Generator.
- c. The Licensee agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of this License.
- d. In addition to the License Fee, the Licensee shall pay to the City an administrative fee of Two Thousand Dollars (\$2,000.00) for each subsequent amendment to this License, if any.
- e. The Premises shall conform where applicable to the accessibility provisions of the Wisconsin Administrative Code, Madison General Ordinance 39.05, the Federal Fair Housing Act as amended, and the Americans with Disabilities Act, regarding accessibility for the use of the Premises by the Licensee's employees, with all costs of compliance to be paid by the Licensee.
- f. RF Emissions.
 - a. The Licensee shall be responsible for ensuring that the Equipment does not cause radio frequency ("RF") emissions that are in excess of the safe limits established by the FCC (the "RF Standards"). Before installing the Equipment, the Licensee shall survey the existing RF environment at the Property. By installing the Equipment, the Licensee shall be deemed to have represented to the City that the Equipment shall not itself violate, or, in conjunction with other RF sources located at the Property as the Effective Date cause to be violated, the RF Standards. In the event that Licensee proposes to perform equipment modifications subsequent to the full execution of this Amendment, Licensee shall provide the City with safety recommendations that address the protection of those who must be on the Property due to maintenance, repair, or other activities related to the operations carried out at the Property.
 - b. The Licensee shall reasonably cooperate with the City in reducing RF exposure to maintenance personnel by powering down any specific items of the Equipment or sector (s) of the Equipment, as necessary, during periods of maintenance at the Property. In the event of scheduled maintenance, and excluding cases of emergency, the City shall

provide Licensee with at least five (5) business days' prior written notice of such maintenance and Licensee shall be permitted to have a representative present during any such interruption. In the event of an emergency, the City shall provide the Licensee with as much advance notice of any such maintenance as is reasonably practical. Notwithstanding the foregoing, in the event that Licensee must power down its Equipment as described in this section for a period greater than three (3) days, either consecutively or cumulatively, Lessee shall have the right to terminate this License at its sole discretion.

9. Paragraph 24 of the License is amended to provide that all notices sent to the City of Madison shall be sent to the following address:

City of Madison
Economic Development Division
Office of Real Estate Services
Attn: Manager
P.O. Box 2983
Madison, WI 53701-2983

10. All other provisions of the License remain unchanged and in full force and effect.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be authorized to execute the Third Amendment to License and any and all other documents necessary to complete this transaction.