



Legislation Text

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Fiscal Note

The proposed resolution authorizes the grant of license to the State of Wisconsin Department of Military Affairs for the installation of telecommunications equipment on the Lake View Water Tower located at 1202 Northport Drive. The property is owned by Dane County and the City of Madison has an easement over the property from Dane County, which allows the City to grant licenses for telecommunication purposes. No City appropriation is required.

Title

Authorizing the grant of a no-cost License to the State of Wisconsin Department of Military Affairs for the installation of telecommunications equipment on the Lake View Water Tower located at 1202 Northport Drive. (18th A.D.)

Body

WHEREAS, the State of Wisconsin Department of Military Affairs (“DMA”) requires a location for a telecommunications antenna and repeater to provide coverage for its Truax base and surrounding area; and

WHEREAS, DMA has requested that the City allow it to install telecommunications facilities on the City’s Lake View water tower (“Tower”) located at 1202 Northport Drive, and to also allow it to place ground equipment within the City-owned equipment shelter (“Shelter”) located near the base of the Tower; and

WHEREAS, staff from the City’s Water Utility and Traffic Engineering Radio Shop have reviewed DMA’s request and are able to accommodate the placement of DMA’s equipment on the Tower and within the Shelter; and

WHEREAS, DMA has requested that this installation be permitted at no cost to DMA as it supports the mission of the DMA, which is to provide essential, effective and responsive military and emergency management capability; and

WHEREAS, the terms of a license have been negotiated between DMA and Real Estate staff, which allows DMA to install, operate and maintain telecommunications equipment on the Tower and within the Shelter, at no cost to DMA; and

WHEREAS, the City Attorney’s office has reviewed and approved the license as to form.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby authorizes the grant of a license (“License”) to the State of Wisconsin Department of Military Affairs (“DMA”) for the installation, operation and maintenance of telecommunications equipment on the Lake View water tower (“Tower”) and within the City’s equipment shelter (“Shelter”), located at 1202 Northport Drive (“Property”), as described in attached Exhibit A and generally shown on attached Exhibit B, on the below terms and conditions. The Property is owned by Dane County and the City has an easement over the Property from Dane County (“Easement”), which allows the City to grant licenses for telecommunication purposes.

1. The initial term of the License shall be five (5) years. DMA shall have the right to renew the License for three (3) subsequent five (5) year terms, subject to the terms and conditions of the License.

2. DMA shall be permitted to use the Tower and the Shelter for the installation, operation, and maintenance of telecommunications equipment, together with wiring and conduit as necessary to connect the

Tower and Shelter equipment and to provide necessary utility service thereto. The space utilized by DMA on the Tower and within the Shelter are hereinafter collectively referred to as the "Premises."

3. No License fee or administrative fee shall be charged by the City to DMA for the License.
4. The City shall supply and be responsible for the reasonable cost of electricity to DMA's equipment within the Shelter and on the Tower.
5. DMA's installation, operation and maintenance of all telecommunication facilities shall be done in accordance with plans approved by the City. Any modifications to DMA's equipment on the Tower shall be subject to the written approval of the City and any other required governmental approvals before DMA may begin the modification. The City shall have a minimum of thirty (30) days to review and comment on DMA's submission of requested modifications. Notwithstanding any provision of this Subparagraph to the contrary, without obtaining the City's prior consent, DMA shall have the right to: (i) make additions, alterations or improvements to DMA's equipment housed within the Shelter; and (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.
6. The City shall have the right to revoke the License as follows: (i) at any time by giving DMA a minimum of thirty (30) days written notice specifying the nature of the default in the event DMA defaults in the performance of any term or condition of the License; and (ii) at any time by giving DMA a minimum of one hundred eighty (180) days written notice of revocation.
7. DMA shall have the right to terminate the License at any time by giving the City a minimum of thirty (30) days' written notice of termination.
8. DMA shall not assign, lease, sublease, or in any way transfer the License or sublicense the Premises, or any portion thereof, or otherwise allow a third party to use the Premises.
9. The City carries liability insurance through a self-insured retention program with Wisconsin Municipal Mutual Insurance Company. DMA, an agency of the State of Wisconsin, provides liability coverage for its officers, agents, and employees consistent with Section 895.46(1) and 893.82 of the Wisconsin Statutes. Although the liability coverage provided by the State of Wisconsin under Wis. Stats. sec. 895.46(1) is self-funded, and continuous, it is subject to the damage cap in Wis. Stats. sec. 893.82(6). Such liability coverage includes, but is not limited to claims, demands, losses, costs, damages and expenses of every kind and description (including death), or damage to persons or property arising out the License and founded upon or growing out of the acts or omissions of any of the employees of DMA while acting within the scope of their employment where protection is afforded by Sections 893.82 and 895.46(1) of the Wisconsin Statutes.
10. The City shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of the City, its agents or employees acting within the scope of their employment, in accordance with and while retaining the protections provided in Wis. Stats. ss. 893.80 and 895.46(1), with the exception of claims or losses falling under item 11.e. above. DMA, an agency of the State of Wisconsin, shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents, officials or employees acting within the scope of their employment, in accordance with Wis. Stats. ss. 893.82 and 895.46(1). The obligations of the parties under this Paragraph shall survive the expiration or termination of the License.
11. DMA represents and warrants that it will not use, 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. If such a release occurs on the Premises, Licensee agrees to be responsible for any damage, loss, expense or liability arising out of any release, unless caused by the sole negligence or intentional acts of the

City. "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.

12. The License shall be non-exclusive and the City will continue to use the Tower and shall have the right to lease or grant other licenses to one or more entities on the Tower provided that any such subsequent use, lease, or license shall not interfere with DMA's rights under the License.

13. DMA's use and operation of its equipment shall not interfere with the use and operation of other communication facilities on the Tower that pre-existed DMA's equipment. Before the City shall grant approval of the placement of the equipment, DMA shall provide to the City, at DMA's expense, an interference study indicating whether DMA's intended use will interfere with any existing communications facilities on the Tower. DMA shall also obtain an engineering study indicating whether the Tower is able to structurally support DMA's equipment without prejudice to the City's use of the Tower.

14. DMA shall be responsible for ensuring that its equipment does not cause radio frequency ("RF") emissions that are in excess of the safe limits established by the FCC ("RF Standards"). Before installing its equipment, DMA shall survey the existing RF environment at the Property. By installing its equipment, DMA shall be deemed to have represented to the City that such equipment shall not itself violate, or, in conjunction with other RF sources located at the Property as of the Effective Date cause to be violated, the RF Standards. DMA 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. DMA shall cooperate with the City in reducing RF exposure to maintenance personnel by powering down its equipment, as necessary, during periods of maintenance at the Property. The City shall provide DMA with as much advance notice of any such maintenance as is reasonably available.

15. In the event the City requires the expertise of a third party engineer/consultant to review the installation of DMA's equipment and/or Shelter, or any future modifications to DMA's equipment and/or Shelter, DMA shall be required to reimburse the City of Madison Water Utility ("MWU") for costs incurred by MWU as a result of hiring said engineer/consultant. Such third party review shall include, but not be limited to, the following: the review of plans and specifications; review of structural, interference, and other reports; and on-site inspections and meetings. All fees and invoices must be paid within thirty (30) days after MWU sends DMA an invoice for the same together with reasonable supporting documentation evidencing such fees.

16. Within thirty (30) days following the installation of its equipment, DMA shall provide the City with as-built drawings showing the actual location of its equipment installed on Tower. Said drawing shall include a complete and detailed inventory of all equipment installed on the Tower.

17. DMA 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 the License.

18. DMA shall minimize the impact of any and all cable routes on the overall operation of and clearance spaces within the Tower. If the City finds the cables to be intruding into the City's work or access space, DMA shall reroute, resize or eliminate the interfering cable to the satisfaction of the City.

19. DMA shall limit the number of structural penetrations into the Tower. The City may limit the use of existing structural penetrations and the size and location of any proposed structural penetrations. The City

may require DMA to reroute, resize, or eliminate some cable to meet the City's needs.

20. If the Tower is damaged or destroyed, 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, DMA may install, at its sole expense, temporary facilities to allow the continuation of its telecommunications operations for a period not to exceed one (1) year, unless otherwise agreed to by the City and DMA. If the City undertakes such repair or replacement but cannot complete the same within a reasonable period of time, which shall not be less than sixty (60) days and not greater than two hundred seventy (270) days, after the damage or destruction occurred, DMA may terminate the License upon written notice to the City, effective as of the date that the damage or destruction occurred. In such event, DMA shall have no further obligations under the License (except any obligations that by their nature or by their language survive termination). The restoration of City services shall be given the highest priority in the event that any of the City's services and DMA's telecommunication services are interrupted at the same time, unless otherwise agreed to by the City and DMA at the time of restoration.

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