



Legislation Text

File #: 11467, **Version:** 1

Fiscal Note

The revenues from this license (starting at \$22,000 per year), less any direct costs incurred by the Water Utility in the administration of the license, will be deposited in a segregated revenue fund (SO-03). The funds will be used to support lead service replacement rebates, to provide water fountains (bubblers) in Madison area parks, or for other such uses as the Common Council may designate. There will be no impact on State cost controls or the tax levy.

Title

Authorizing the grant of a license to Denali Spectrum Operations, LLC for the installation of telecommunications equipment on the City's water tower located at 5815 Milwaukee Street.

Body

WHEREAS, Denali Spectrum Operations, LLC ("DSO") has requested that the City allow it to install telecommunications equipment on the City's water tower located at 5815 Milwaukee Street; and

WHEREAS, the terms of a license have been negotiated between DSO and the City of Madison Water Utility and Real Estate staff, which allow DSO to install, operate and maintain telecommunications equipment on the water tower; 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 to Denali Spectrum Operations, LLC ("DSO") for the installation, operation and maintenance of telecommunications equipment on the City's water tower (the "Tower") located at 5815 Milwaukee Street (the "Property"), as described in attached Exhibit A and generally shown on attached Exhibit B, on the following terms and conditions:

1. DSO shall pay to the City a one-time administrative fee of \$2,000 as payment of the City's costs of negotiating and processing the license.
2. The initial term of the license shall be five (5) years. DSO 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.
3. DSO may use the Property for the placement, construction, operation, maintenance, repair, replacement and removal of a maximum of six (6) antennas and ancillary equipment (collectively, "Equipment") on the Tower and an approximately 150 sq. ft. equipment shelter or enclosure ("Shelter") on land near the base of the Tower, together with wiring and conduit as necessary to connect the Shelter to the Equipment and to provide necessary utility service thereto. The space utilized by DSO on the Tower and on the land near the base of the Tower are hereinafter collectively referred to as the "Premises."
4. DSO's installation, operation and maintenance of all telecommunication facilities shall be done in accordance with plans approved by the City.
5. The annual license fee for the Equipment and the Shelter shall be Twenty-two Thousand Dollars (\$22,000). 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.

6. The City shall have the right to revoke the license at any time following the expiration of the first renewal term by giving DSO a minimum of one (1) year's prior written notice of revocation in the event the Premises, in the sole discretion of the governing body of the City, are desired for any public purpose or use, which use shall exclude DSO's permitted use under the license and any similar private use by any other telecommunications provider. Any license fee that has been prepaid for the period following the date the Equipment is relocated shall be prorated on a per diem basis and refunded to DSO. In the event of revocation under this provision, the City shall use its best efforts to provide DSO with a satisfactory alternate location on City-owned property which would allow for comparable telecommunications coverage.
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, DSO 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 DSO. 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 DSO may install, at its sole expense, temporary facilities to allow the continuation of its telecommunication operations. Said temporary facilities shall not interfere with the City's repair or replacement activities. 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, DSO may terminate the License upon written notice to the City, effective as of the date that the damage or destruction occurred. In such event, DSO shall have no further obligations under the License (except any obligations that by their nature or by their language survive termination). In the event of revocation or termination of the License under this provision, 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 DSO. The restoration of City services shall be given the highest priority in the event that any of the City's services and DSO's telecommunication services are interrupted at the same time, unless otherwise agreed to by the City and DSO at the time of restoration.
8. DSO shall not assign the License nor sublet the Premises, or any portion thereof, without the prior written consent of the City. Said consent may be withheld at the sole discretion of the City. Notwithstanding the foregoing, DSO shall be permitted to assign the License without the City's consent to any entity which controls, is controlled by, or is under the common control of DSO or to any entity resulting from any merger or consolidation with DSO, or to any partner of DSO or to any partnership in which DSO is a general partner, or to any person or entity which acquires all of the assets of DSO as a going concern. Before an assignment shall be effective, any assignee of the License shall assume in writing all of the obligations of DSO under the terms and conditions of the License.
9. DSO shall be liable to and hereby 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 officials, officers, 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 DSO and/or its officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the license, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees. Additionally, DSO shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of

\$1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, DSO shall furnish to the City a certificate of insurance on a form provided by the City.

10. 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 DSO's rights under the license.
11. DSO's installation, operation, and maintenance of the Equipment and Shelter shall not damage or interfere in any way the City's Tower operations or related repair and maintenance activities. DSO agrees to cease all such actions which materially interfere with the City's use of the Tower immediately upon actual notice of such interference, provided however, in such case, DSO shall have the right to terminate the license.
12. DSO'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 DSO's Equipment.
13. Before the City shall grant approval of the placement of the equipment, DSO shall provide to the City, at DSO's expense, an interference study indicating whether DSO's intended use will interfere with any existing communications facilities on the Tower. DSO shall also obtain an engineering study indicating whether the Tower is able to structurally support DSO's equipment without prejudice to the City's use of the Tower.
14. DSO 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, DSO shall survey the existing RF environment at the Property. By installing the Equipment, DSO 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 of the Effective Date cause to be violated, the RF Standards. DSO 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. DSO shall cooperate with the City in reducing RF exposure to maintenance personnel by powering down the Equipment, as necessary, during periods of maintenance at the Property. The City shall provide DSO with as much advance notice of any such maintenance as is reasonably available.

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.

EXHIBIT A

Description of the Property:

Lot 1, Certified Survey Map No. 10460, City of Madison, Dane County, Wisconsin