



Legislation Details (With Text)

**File #:** 44748      **Version:** 1      **Name:** 3979 Second Amendment License Agreement Cingular / AT&T Lakeview Water Tower

**Type:** Resolution      **Status:** Passed

**File created:** 10/12/2016      **In control:** WATER UTILITY BOARD

**On agenda:** 11/1/2016      **Final action:** 12/6/2016

**Enactment date:** 12/9/2016      **Enactment #:** RES-16-00884

**Title:** Authorizing the execution of a Second Amendment to License pertaining to a license with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, at the Lake View Water Tower, located at 1202 Northport Drive.

**Sponsors:** Rebecca Kemble

**Indexes:**

**Code sections:**

**Attachments:** 1. October 19th BPW Agenda (RE Proj. Nos. 3979, 4119).pdf, 2. 3979 Reso Second Amend - Exhibit A.pdf, 3. 3979 Reso Second Amend - Exhibit B - Site Plan p.pdf, 4. 3979 Reso Second Amend - Exhibit E.pdf

Date	Ver.	Action By	Action	Result
12/6/2016	1	COMMON COUNCIL	Adopt	Pass
11/29/2016	1	WATER UTILITY BOARD	Return to Lead with the Recommendation for Approval	Pass
11/1/2016	1	COMMON COUNCIL	Re-refer	Pass
10/24/2016	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
10/19/2016	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	
10/19/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Referred	
10/19/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Referred	
10/19/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Referred	
10/18/2016	1	COMMON COUNCIL	Refer	Pass
10/12/2016	1	Economic Development Division	Referred for Introduction	

**Fiscal Note**

The proposed resolution has no fiscal impact. The Licensee will continue to pay an annual license fee. The License Fee shall continue to be subject to a 4% annual escalation. The revenues from this license, less any direct costs incurred by the Water Utility in the administration of the license, are deposited in a special reserve fund (Munis charge code 63028). In addition to normal direct costs, there is a payment to Dane County equal to 50% of the net proceeds of the license revenues to pay for the use of County-owned land to site the telecommunications facilities.

**Title**

Authorizing the execution of a Second Amendment to License pertaining to a license with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, at the Lake View Water Tower, located at 1202 Northport Drive.

**Body**

WHEREAS, the City and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (f/k/a Madison SMSA Limited Partnership) ("New Cingular") are parties to a license, dated January 23, 1998, as amended by First Amendment to License, dated March 13, 2013 (collectively, "License") pertaining to the placement by the Licensee of telecommunications equipment on the City-owned Lake View Water Tower ("Tower") located at 1202 Northport Drive in the City of Madison, as well as the placement of a telecommunications shelter located on land near the base of the Tower ("Land"). The Land and the space on the Tower are hereinafter collectively referred to as the "Premises"; and

WHEREAS, the Premises are located on the property owned by Dane County ("Property") and described on attached Exhibit A - Revised 2016, and the City has an easement over the Property from Dane County, which allows for the Licensee's use of and access to the Premises; and

WHEREAS, the initial term of the License was for the five (5)-year period commencing on January 12, 1998 and ending on January 11, 2003, and the Licensee has exercised all three renewal options such that the current expiration date of the License is January 11, 2018; and

WHEREAS, in 2014, the Tower reached the end of its useful life and was demolished by the City as part of a reconstruction project; and

WHEREAS, during demolition and reconstruction, the Licensee has been operating from temporary facilities located on the Property, as allowed for pursuant to the terms of the License; and

WHEREAS, also in accordance with the terms of the License, the License Fee has been abated since September 5, 2014, during the Licensee's operation at temporary facilities, and will be reinstated once construction of the new tower ("New Tower") is completed; and

WHEREAS, the parties desire to amend the License to confirm the status of the Licensee Fee payments and to update the License with the approved site and building plans for the New Tower and the Licensee's Equipment and Shelter; and

WHEREAS, the parties also desire to amend the License to provide for four (4) additional renewal options of five (5) years each.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an amendment to License with New Cingular, the key terms of which are as follows:

1. The description of the Property attached as Exhibit A to the License shall be replaced with attached Exhibit A - Revised 2016.
2. The site plan attached as Exhibit B to the License shall be replaced with attached Exhibit B - Revised 2016.
3. Exhibit C to the License shall be updated with the revised construction drawings, approved by the Madison Water Utility ("MWU").
4. The License shall be amended to provide that it may be renewed for four (4) additional five (5)-year terms (the "Additional Renewal Terms") upon agreement of the parties, with requisite notices provided by the parties as set forth in the License.
5. The License Fee payable during the Additional Renewal Terms shall be as set forth in the fee schedule attached as Exhibit E.
6. Rent is currently abated and will continue to abate until construction of the New Tower is completed.

The date of completion shall be the date of final inspection of the New Tower ("Completion Date"), currently estimated as November 16, 2016. The City shall provide the Licensee with written notice confirming the Completion Date and confirming the calculation of the License Fee payable for the then current License year, which amount shall be prorated for the current License Year effective as of the Completion Date.

7. The Licensee shall have a designated period of time ("Installation Period") to complete its installation and restoration activities on the Premises. The Installation Period shall commence on the Completion Date and continue for ninety (90) days, except as may be adjusted by the City, in the City's sole discretion, to allow for winter conditions or other extenuating conditions. Any damage to the Property or New Tower due to the Licensee's reinstallation work shall be repaired to like new conditions, to the satisfaction of the MWU. In the event the Licensee fails to accomplish said installation and restoration activities within the Installation Period, the Licensee shall pay a penalty to the City of \$1,000.00 per calendar day for each additional day the Licensee's installation activities continue after the Installation Period. Notwithstanding the foregoing, the Licensee shall be permitted to complete the site restoration activities following the expiration of the Installation Period provided that said restoration shall be completed no later than June 1, 2017 ("Restoration Deadline"). In the event the Licensee fails to accomplish the restoration activities by the Restoration Deadline, the Licensee shall pay a penalty to the City of \$500.00 per calendar day for each additional day the Licensee's restoration activities continue after the Restoration Deadline.

8. The Indemnification and Insurance provision of the License shall be updated to read as follows (or such other modified language as may be approved by the City Risk Manager or designee and City Attorney):

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, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this License. Negligence on the part of the City shall not relieve the Licensee of its obligations under this paragraph.

The Licensee shall carry commercial general liability insurance on a form ISO CGL 00 01 or equivalent covering as insured the Licensee and including the City, its officers, officials, agents and employees as additional insureds, with a limit of Three Million Dollars \$3,000,000 per occurrence and Six Million Dollars \$6,000,000 general aggregate as may be reasonably adjusted, once per Term, by the City's Risk Manager.

This policy shall include contractual liability coverage and apply on a primary and noncontributory basis. Licensee will provide the City thirty (30) days advance written notice of cancellation or non-renewal of any required coverage that is not replaced during the term of this License. As evidence of this coverage, the Licensee shall furnish the City with a certificate of insurance on an ACORD form and the Licensee shall also provide copies of additional insured endorsements or policy if requested. Notwithstanding the foregoing, the City may view a copy of the Licensee's policy if there is a claim or suit filed under this License which has been denied or a reservation of rights letter received. If the coverage required above expires while this License is in effect, the Licensee shall provide a renewal certificate to the City for approval. Notwithstanding the foregoing, Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this License.

9. The Assignment and Subletting 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 of the 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.

10. 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. "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.

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

a) At all times during which the Licensee has access to the New Tower, the Licensee will take all reasonable steps to ensure that all enclosures, gates, ladders and any other access ways to the New Tower are properly secured in order to prevent unauthorized access to the New Tower. 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.

b) 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.

c) The Licensee shall have the right to install underground utility facilities within the non-exclusive 8' utility easement depicted on Exhibit B - Revised 2016 ("Shared Utility Easement"). Upon expiration or termination of this License, the Licensee shall be permitted to abandon such utility facilities in place.

d) In the event the City requires the expertise of a third party engineer/consultant to review the Licensee's equipment reinstallation on the New Tower or any future modifications to the Licensee's Equipment on the New Tower or Shelter (modifications to the exterior of the Shelter only) which modifications are requested by the Licensee, the Licensee 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. The City's review of any proposed modifications to Licensee's Equipment

shall not be unreasonably delayed as a result of such third party engineer/consultants' review. All fees and invoices must be paid within thirty (30) days after the MWU sends the Licensee an invoice for the same together with reasonable supporting documentation evidencing such fees. Notwithstanding the foregoing, the Licensee's obligation to reimburse the City for third party engineer/consultants' fees shall not exceed Five Thousand and No/100 Dollars (\$5,000.00) for any review of the Licensee's equipment reinstallation on the New Tower.

e) 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.

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 ("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 of the Effective Date cause to be violated, the RF Standards. The 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 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 the Licensee with as much advance notice prior to any such maintenance work being performed as is reasonably available.

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