



## Legislation Text

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**File #:** 04451, **Version:** 1

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### **Fiscal Note**

The revenues from this license (starting at \$22,000 per year, plus a one-time administrative fee of \$1,500), 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. There will be no impact on State cost controls.

### **Title**

Authorizing the grant of a license to TDS Metrocom, LLC for the installation of wireless digital communications equipment on the City's water tower located at 5815 Milwaukee Street. 3rd Ald. Dist.

### **Body**

WHEREAS, TDS Metrocom, LLC ("TDS") has requested that the City allow it to install wireless digital communications equipment on the City's water tower located at 5815 Milwaukee Street; and

WHEREAS, the terms of a license have been negotiated between TDS and the City of Madison Water Utility and Real Estate Section staff, which allow TDS to install, operate and maintain wireless digital communications 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 TDS Metrocom, LLC ("TDS") for the installation, operation and maintenance of wireless digital communications 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. TDS 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) years. TDS shall have the right to renew the license for two (2) subsequent five (5) year terms, subject to the terms and conditions of the license.
3. TDS may use the Property for the placement, construction, operation, maintenance, repair, replacement and removal of a maximum of ten (10) antennas and ancillary equipment (collectively, "Equipment") on the Tower and an equipment cabinet ("Cabinet") on land near the base of the Tower, together with wiring and conduit as necessary to connect the Equipment and the Cabinet and to provide necessary utility service thereto. The space utilized by TDS on the Tower and on the land near the base of the Tower are hereinafter collectively referred to as the "Premises."
4. TDS's installation, operation and maintenance of all wireless digital communication facilities shall be done in accordance with plans approved by the City.
5. The annual license fee for the Equipment and the Cabinet 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 end of the fifth year of the initial term, by giving TDS 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 TDS'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 TDS. In the event the City provides notice under this paragraph, the City agrees that it will work in good faith with TDS, if TDS requests, to find an alternative to revocation of the license, including but not limited to

allowing reinforcement or other alteration to the Tower. Any additional costs incurred as a result of such alternative shall be prorated between TDS and any other licensee(s) that desire to remain at the Property and agree to participate in the sharing of such costs. In the event of revocation under this paragraph, the City shall use its best efforts to provide TDS 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, TDS 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 TDS. 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 TDS 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, TDS may terminate the license upon written notice to the City, effective as of the date that the damage or destruction occurred. In such event, TDS 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 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 TDS. The restoration of City services shall be given the highest priority in the event that any of the City's services and TDS's telecommunication services are interrupted at the same time, unless otherwise agreed to by the City and TDS at the time of restoration.
8. TDS 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, TDS 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 TDS, or to any entity resulting from any merger or consolidation with TDS, or to any partner of TDS, or to any partnership in which TDS is a general partner, or to any person or entity which acquires all of the assets of TDS as a going concern. Before an assignment shall be effective, any assignee of the license shall assume in writing all of the obligations of TDS under the terms and conditions of the license.
9. TDS 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 TDS 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, TDS 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, TDS 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 TDS's rights under the license.
11. TDS's installation, operation, and maintenance of the Equipment and Cabinet shall not damage or interfere in any way the City's Tower operations or related repair and maintenance activities. TDS 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, TDS shall have the right to terminate the license.
12. TDS'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 TDS's Equipment.

13. Before the City shall grant approval of the placement of the equipment, TDS shall provide to the City, at TDS's expense, an interference study indicating whether TDS's intended use will interfere with any existing communications facilities on the Tower. TDS shall also obtain an engineering study indicating whether the Tower is able to structurally support TDS's equipment without prejudice to the City's use of the Tower.
14. TDS 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, TDS shall survey the existing RF environment at the Property. By installing the Equipment, TDS 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. TDS 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.
15. TDS shall cooperate with the City in reducing RF exposure to maintenance personnel by powering-down or powering-off its Equipment as necessary in conformance with TDS's Safety Plan filed with the City, Exhibit D, during periods of maintenance at the Property. The City shall provide TDS with as much advance notice of any such maintenance as is reasonably available. The City will attempt to provide TDS with a minimum of forty-eight (48) hours advance notice for routine maintenance and a minimum of four (4) hours advance notice for emergency repairs. For planned major repairs, such as painting the Tower, the City will give at least ninety (90) days notice. The City agrees that it will work in good faith with TDS, if TDS requests, to find an alternative to powering down equipment. Any additional costs incurred as a result of such alternative shall be prorated between TDS and any other licensee(s) at the Premises that agree to participate in the sharing of costs. TDS agrees to hold the City harmless for any loss of service by TDS that may occur during periods of maintenance at the Property by the City.
16. The City, at all times during the license, reserves the right to take any action it deems necessary, in its sole discretion to repair, maintain, alter or improve the Premises in connection with Tower operations as may be necessary, including licensing part of the Tower and/or the Land to others. Except in cases of emergency, the City will endeavor to provide TDS with written notice in advance of any scheduled repair, maintenance, alteration or improvement of the Premises. TDS agrees to reimburse the City for any additional repair, maintenance, alteration or improvement costs which the City incurs as a result of TDS's Equipment being located on the Tower. The City shall attempt to minimize, at no additional expense to the City, any disturbance to TDS's operations during such repairs, maintenance, alterations or improvements. Should the City's activities interfere with the TDS's operation, the City shall, if feasible, allow TDS to install temporary facilities, at its sole cost, on the Property until such activities are completed.

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.