



Legislation Text

File #: 43876, **Version:** 1

Fiscal Note

The revenues from this license (starting at \$26,000 per year), less any direct costs incurred by the Water Utility in the administration of the license, will be deposited into Munis charge code 63039 - Tower Lease Revenue. There will be no impact on State cost controls.

Title

Authorizing the grant of a License to Verizon Wireless Personal Communications, LP for the installation of telecommunications equipment on the Prairie Road Water Tower located at 2829 Prairie Road.

Body

WHEREAS, the City is the owner of the Prairie Road Water Tower located at 2829 Prairie Road ("Tower"); and

WHEREAS, Verizon Wireless Personal Communications, LP ("Verizon") has requested that the City allow it to install telecommunications equipment on the Tower; and

WHEREAS, the terms of a license have been negotiated between Verizon and the City of Madison Water Utility and Real Estate staff, which allow Verizon to install, operate and maintain telecommunications equipment on the 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 Verizon for the installation, operation and maintenance of telecommunications equipment on the Tower located at 2829 Prairie Road ("Property"), as described in attached Exhibit A and generally shown on attached Exhibit B, on the following terms and conditions:

1. The initial term of the License shall be five (5) years. Verizon 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. Verizon may use the Tower for the installation, operation, and maintenance of nine (9) antennas and ancillary equipment (collectively, "Equipment") on the Tower and telecommunications shelter on land near the base of the Tower ("Shelter"), together with wiring and conduit as necessary to connect the Shelter to the Equipment and to provide necessary utility service thereto. Verizon shall have the right to place an additional three (3) antennas on the Tower at any time during the term of the License, subject to the provisions of the License. The space utilized by Verizon on the Tower and on the land near the base of the Tower is hereinafter collectively referred to as the "Premises."
3. Verizon's installation, operation and maintenance of all telecommunication facilities shall be done in accordance with plans approved by the City.
4. The annual license fee ("License Fee") shall be Twenty-six Thousand and no/100 Dollars (\$26,000.00). Such License Fee shall be paid in full on the Effective Date and on each subsequent anniversary of the Effective Date. The annual License Fee shall increase annually by 4% effective as of each anniversary of the Effective Date.
5. Verizon 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. In addition to the License administrative fee, Verizon shall pay to the

City an administrative fee of \$2,000.00 for each subsequent amendment to the License, if any.

6. In the event Verizon places three (3) additional antennas on the Tower, the annual License Fee shall increase by Two Thousand Five Hundred Dollars (\$2,500), indexed at a rate of four percent (4%) annually, calculated retroactively for each full year since the effective date. Such additional License Fee shall become payable upon the installation of the additional antennas and shall be prorated for any partial year.

7. The City shall have the right to revoke the License at any time following the expiration of the first renewal term by giving Verizon 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 Verizon'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 Verizon. In the event of revocation under this provision, the City shall use its best efforts to provide Verizon with a satisfactory alternate location on City-owned property which would allow for comparable telecommunications coverage.

8. 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, Verizon 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 Verizon. 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 Verizon 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, Verizon may terminate the License upon written notice to the City, effective as of the date that the damage or destruction occurred. In such event, Verizon 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 Verizon. The restoration of City services shall be given the highest priority in the event that any of the City's services and Verizon's telecommunication services are interrupted at the same time, unless otherwise agreed to by the City and Verizon at the time of restoration.

9. Verizon shall not assign, lease, sublease, or in any way transfer the License or sublet 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, Verizon 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 Verizon or to any entity resulting from any merger or consolidation with Verizon, or to any partner of Verizon or to any partnership in which Verizon is a general partner, or to any person or entity which acquires all of the assets of Verizon as a going concern. Before an assignment shall be effective, any assignee of the License shall assume in writing all of the obligations of Verizon under the terms and conditions of the License. Verizon shall promptly provide to the City documentation of any assignment of the License.

10. Verizon 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 Verizon 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, Verizon 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, Verizon shall furnish to the City a certificate of insurance on a form provided by the City. This paragraph shall survive termination and assignment or transfer of the License.

11. Verizon shall have non-exclusive, unlimited access, 24 hours a day, 7 days a week, 365 days a year to the Shelter. Access to the Tower shall be provided to the Licensee at all times upon notice to the City. At all times during which Verizon has access to the Tower, Verizon will take all reasonable steps to ensure that all enclosures, gates, ladders and any other access ways to the Tower are properly secured in order to prevent unauthorized access to the Tower. Verizon shall be assessed a penalty of \$2,000.00 for each instance of non-compliance with the requirements of this paragraph.

12. In the event the City requires the expertise of a third party engineer/consultant to review the installation of Verizon's Equipment and/or Shelter or any future modifications to Verizon's Equipment and/or Shelter, Verizon 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 Verizon and invoice for the same together with reasonable supporting documentation evidencing such fees.

13. 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 Verizon's rights under the License.

14. Verizon'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. Verizon 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, Verizon shall have the right to terminate the License.

15. Verizon'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 Verizon's Equipment.

16. Before the City shall grant approval of the placement of the equipment, Verizon shall provide to the City, at Verizon's expense, an interference study indicating whether Verizon's intended use will interfere with any existing communications facilities on the Tower. Verizon shall also obtain an engineering study indicating whether the Tower is able to structurally support Verizon's equipment without prejudice to the City's use of the Tower.

17. Verizon 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, Verizon shall survey the existing RF environment at the Property. By installing the Equipment, Verizon 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. Verizon 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. Verizon 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 Verizon with as much advance notice of any such maintenance as is reasonably available.

18. Verizon 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, Verizon shall reroute, resize or eliminate the interfering cable to the satisfaction of the City.

19. Verizon 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 Verizon to reroute, resize, or eliminate some cable to meet the City's needs.

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

Legal description of the Property

Lot 1078, Hill View Addition to Meadowood, City of Madison, Dane County, Wisconsin.