

Minutes

SPECIAL NEW BERLIN UTILITY COMMITTEE

August 24, 1999

Members Present: Alderman Bullermann (Chairman), Alderman Wysocki, Tim Murphy, Director of Public Works Hamid Hashemizadeh, and Alderman Patzer (arriving late).

Alderman Bullermann called the meeting to order at 5:35 p.m.

ITEM 36-99 Lease Agreement for Wireless Communication Facilities

Milwaukee SMSA Limited Partnership

- The agreement has an escalator factor of 5% (annual increase).
- There is a 3% late fee penalty.
- The license fee verbiage should reflect that, "the City may have the option of choosing the average of the State's 10 highest agreements."

The following amendments/corrections were made to the agreement:

1.) Section 4(a), revise:

From \$12,000. To \$15,000.

2.) Section 4(b), insert new last sentence:

"It shall be the responsibility of the Company to make this calculation each anniversary date and submit said calculation to the City for acknowledgment."

3.) Add New paragraph (d), as follows:

"d. The annual amount of license fees paid during each successive renewal term, may, at City's option, be determined by computing the average yearly rent or license fees paid by Company relative to the ten (10) highest lease or license payments to a local government entity (defined as a City, Village, County, School District, Township, Municipal Utility, or Housing Authority) located in the State of Wisconsin. Company shall provide City with copies of the ten (10) highest local government leases of licenses paid currently and in effect at the time of the adjustment and a calculation identifying the average yearly payment. Such average payment may, at the option of the City, constitute the Company's annual license fee for the first year of the next successive five (5) year term with annual increases as set forth in subsection (b), above, on each Adjustment Date thereafter. In the event of a dispute relative to the appropriate amount for inclusion as the annual license fee, the parties shall attempt to amicably resolve the same. In the event the parties are unable to reach agreement, each party shall prepare their own computation of the correct amount and these two amounts shall be submitted to a mutually agreeable arbitrator. The arbitrator shall select one computation or the other and that decision shall be final and binding on both parties for the first year of the next five (5) year term. Notwithstanding the above, in the event that the annual license fee as calculated above is less than the adjusted license fee paid during the final year of the prior initial term or renewal term, as applicable, the annual license fees payable during the upcoming renewal term shall continue to be calculated on the basis of the license fee paid in the final year of the prior initial term or renewal term, as applicable, subject to annual increases as set forth in subsection (b), above, on each Adjustment Date thereafter."

4.) Section 6(e), Insert \$600.00 in the blank spaces.

5.) At the end of para. 6(h), insert the following;

"... (between the two bids) *within 30 days of invoice. As Lease is nonexclusive, if other tenants also have facilities on tower that likewise cause additional expense to the maintenance of the tower (including but not limited to painting), then the City, in a reasonable manner within its sole discretion, shall apportion the difference between the two bids among the tenants.*"

6.) Section 6(l), insert at end of last sentence:

"...within 30 days of invoice."

7.) As to responsibility for FAA requirements, the last sentence of Sec. 6(j) be amended to read;

"...and shall be completed in *cooperation with other co-tenants and in accordance with all applicable FAA, FCC or other governmental regulations. Any violations shall be corrected within the time limits required by the applicable governmental body.*"

8.) Section 9(e) in the 5th line down have sentence read;

"...Company satisfactory *to both the Company and the City* setting forth..."

& in the 7th line down;

"...shall not be entitled to any revenue from other providers (*revenue shall be to City*)."

9.) The City Attorney does not want Subpart 19(b)(ii) removed unless Subpart 19(a)(ii) is likewise removed; They are both in OR both out.

10.) If BOTH Subparts 19(a)(ii) & 19(b)(ii) are in, then ADD the following sentence at the end of Subsection 19(a);

"Upon a notice of termination pursuant to Subpart (ii), above, Company shall pay a termination fee of \$15,000.00.

Motion by Alderman Wysocki to accept the amendments/corrections as discussed. Second by Tim Murphy. Motion carried unanimously.

Motion by Alderman Wysocki to recommend to Common Council approval of the Lease, as amended by the Utility Committee, to install Wireless communication facilities on Calhoun Road. Second by Tim Murphy. Motion carried unanimously.

ITEM 37-99 Lease Agreement for Wireless Communication Facilities
Indus, Inc.

The following amendments/corrections were made to the agreement.

1.) Section 4(b), insert new last sentence:

"It shall be the responsibility of the Company to make this calculation each anniversary date and submit said calculation to the City for acknowledgment."

2.) Section 4(d), in the 1st line, have sentence read as follows:

"... successive renewal term , *may, at the City's option* be determined"

& the 5th line down;

"... leases or licenses *paid currently and* in effect"

3.) At the end of para. 6(h), insert the following;

"... (between the two bids) *within 30 days of invoice. As Lease is nonexclusive, if other tenants also have facilities on tower that likewise cause additional expense to the maintenance of the tower (including but not limited to painting), then the City, in a reasonable manner within its sole discretion, shall apportion the difference between the two bids among the tenants.*"

4.) Section 6(l), insert at end of last sentence:

"...within 30 days of invoice."

5.) As to responsibility for FAA requirements, the last sentence of Sec. 6(j) be amended to read;

"...and shall be completed in *cooperation with other co-tenants and* in accordance with all applicable FAA, FCC or other governmental regulations. *Any violations shall be corrected within the time limits required by the applicable governmental body.*"

6.) Section 8, In the 9th line;

Change from \$1,000. to \$3,000.00

7.) Section 9(e) in the 4th line down have sentence read;

"...Company satisfactory *to both the Company and the City* setting forth..."

& in the 7th line down;

"...shall not be entitled to any revenue from other providers (*revenue shall be to City*)."

8.) Section 10(a), correct spelling on 4th line;

From "fight" to "*right*"

9.) Section 32, revise end of last sentence to read;

".... other consulting fees, up to any maximum limitations set forth in this Agreement,"

Motion by Alderman Wysocki to accept the amendments/corrections as discussed. Second by Tim Murphy. Motion carried unanimously.

Motion by Alderman Wysocki to recommend to Common Council approval of the Lease, as amended by the Utility Committee, to install Wireless Communication Facilities on Calhoun Road Water Tower. Second by Tim Murphy. Motion carried unanimously.

Motion by Tim Murphy to adjourn. Second by Director of Public Works Hamid Hashemizadeh. Motion carried unanimously.

Meeting adjourned at 5:47 p.m.