# VILLAGE OF DOWNERS GROVE Report for the Village Council Meeting

#### 3/15/2022

SUBJECT:	SUBMITTED BY:
AT&T Cellular Antenna License Agreements	Enza Petrarca Village Attorney

# **S**YNOPSIS

Resolutions have been prepared authorizing execution of a second amendment to license agreement between the Village of Downers Grove and New Cingular Wireless, PCS, LLC (f/k/a AT&T Wireless) to install, maintain and operate antenna equipment on the water tower at 801 Burlington and a third amendment to license agreement for the water tower at 4414 Downers Drive.

# STRATEGIC PLAN ALIGNMENT

The goals for 2021-2023 include Steward of Financial, Environmental and Neighborhood Sustainability.

# **FISCAL IMPACT**

Approval of the proposed agreement would result in the Village collecting \$5,500 for the 801 Burlington site and \$5,150 for the 4414 Downers Drive site in monthly license fees with a 4% increase each year thereafter.

### RECOMMENDATION

Approval on the March 15, 2022 consent agenda.

### BACKGROUND

New Cingular Wireless PCS, LLC f/k/a AT&T is a provider of digital communications in the Chicagoland area. Representatives contacted the Village concerning its desire to renew its license agreement with the Village and continue their operation of antenna on the Village's water towers located at 801 Burlington Avenue and 4414 Downers Drive. They have had a license agreement with the Village on the 801 Burlington site since August 1, 1988 and a license agreement on the 4414 Downers Drive site since January 1, 2002. There will be no changes to the equipment or cabinets that currently exist on the property.

The proposed license agreements will commence upon execution. Approval of the proposed agreements would result in the Village collecting \$5,500 (801 Burlington site) and \$5,510 (4414 Downers Drive site) in monthly license fees, with a 4% increase each year thereafter. The agreements shall run for five, 5-year terms ending on December 31, 2046.

### **A**TTACHMENTS

Resolutions Agreements RES 2022-9355

### RESOLUTION NO.

### A RESOLUTION AUTHORIZING EXECUTION OF A THIRD AMENDMENT TO LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND NEW CINGULAR WIRELESS PCS, LLC <u>(4414 DOWNERS DRIVE)</u>

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois as follows:

1. That the form and substance of a certain Third Amendment ("Agreement"), between the Village of Downers Grove ("Village") and New Cingular Wireless PCS, LLC f/k/a AT&T ("Licensee") for the maintenance and operation of antenna equipment on Village property located at 4414 Downers Drive, Downers Grove, IL, as set forth in the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provision of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed: Attest:

Village Clerk

1\mw\res22\AT&T-Downers Drive

#### THIRD AMENDMENT TO LICENSE AGREEMENT

THIS THIRD AMENDMENT TO LICENSE AGREEMENT ("**Third Amendment**"), dated as of the latter of the signature dates below, is by and between the Village of Downers Grove, an Illinois municipal corporation, having a mailing address of 801 Burlington Avenue, Downers Grove, IL 60515 (hereinafter referred to as "Village"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "Licensee").

WHEREAS, Village and Licensee's predecessor in interest, AT&T Wireless PCS, LLC, entered into a License Agreement dated November 20, 2001, as amended by both the First Amendment to License Agreement and Second Amendment to License Agreement dated May 19, 2006 and December 20, 2012, respectively, (hereinafter, collectively, the "Agreement"), whereby Village leased to Licensee certain premises ("Licensed Premises"), therein described, that are a portion of the property ("Property") located at 4414 Downers Drive, Downers Grove, IL in order to install communication equipment (hereinafter referred to as the "Equipment") on the Tower (the "Tower Space") and certain related equipment on the ground (the "Ground Space"); and

WHEREAS, Village and Licensee, in their mutual interest, wish to amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Licensee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

- 1. Exhibit 1 and Exhibit 2 attached to the Agreement, are hereby stricken and replaced by Exhibit 1 and Exhibit 2 attached hereto. Section 1. "Contract Documents" of the Agreement is stricken and replaced with the following:
  - 1. **<u>CONTRACT DOCUMENTS</u>**: The provisions set forth in the preamble and the following exhibits are incorporated into and made a part of this Agreement.
    - a. <u>Exhibit 1</u> Site map(s) of the Property (or upgrades thereto), as amended from time to time and approved by the Village, showing the Tower Space, Ground Space, together with the areas on the Property licensed to Licensee to provide access and utility service to the Ground Space (collectively the "Licensed Premises") which includes location of any proposed underground utilities necessary for operation of the Equipment.
    - b. <u>Exhibit 2</u> Plans and specifications (or upgrades thereto), as amended from time to time and approved by the Village, for the Equipment and any cables, utility lines or equipment cabinets to be installed on the Licensed Premises and used for housing of the related communication equipment (collectively the "Licensee's Improvements").
    - c. <u>Exhibit 3</u> Plans and specifications (or upgrades thereto), as amended from time to time and approved by the Village, for the Licensee's Improvements and any cables or utility lines installed on the Licensed Premises for any sublicensee.
- 2. Section 4.g of the Agreement is hereby deleted in its entirety and replaced with the following:

Licensee shall be entitled to access the Licensed Premises Monday through Friday, 7:00a.m. to 3:30 p.m. Central Time, by contacting the Village Building Services Department at (630) 434-5551 (801 Burlington Tower) or the Public Works Department at (630) 434-5460 (for all other Towers). If access is required after business hours, on weekends, on a holiday or in the event of an emergency, Licensee shall contact the Village at (630) 434-5600. Except in emergency situations, Licensee may be required to pay the Village for costs incurred for Tower access afterhours.

Section 6. "Term" of the Agreement is amended to extend the term of the Agreement as follows:
6. TERM,

This Agreement shall renew for five (5) additional Extension Terms of five (5) years each beginning January 1, 2022 (the "**Commencement Date**"); January 1, 2027; January 1, 2032; January 1, 2037; and January 1, 2042, respectively. Each Extension Term shall automatically commence unless either party provides written notice to the other party of its election not to renew the Agreement at least one hundred and eighty (180) days prior to the expiration of the current term. If all extension terms occur, the final date of the Agreement shall be December 31, 2046.

a. Any Renewal or extension shall be according to terms that are mutual agreeable, and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Third Amendment

- 4. Section 7. "Compensation" of the Agreement is hereby amended in accordance with the following:
  - 7. **COMPENSATION:** Notwithstanding anything in the Agreement to the contrary, commencing on the Commencement Date, the license fee paid by Licensee to the Village shall be \$5,150.00 per month. Thereafter, effective on the first day of January in each subsequent year during the term of the Agreement, the monthly license fee shall increase in an amount equal to the fee for the preceding year multiplied by four percent (4%). The monthly fee shall be paid to the Village of Downers Grove, Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515 each month by the 10th of the month. In the event of any overpayment of license fee, prior to or after the Commencement Date, Tenant shall have the right to deduct from any future license fee payments an amount equal to the overpayment amount.
- 5. Section 8. "Termination" of the Agreement is amended as follows:

By deleting Section 8.a. in its entirety and replacing it with the following:

a. Licensee may terminate this Agreement at any time upon sixty (60) days written notice to the Village without further liability if Licensee does not obtain all permits or other approvals required from any governmental authority or any easements required from any third party to operate the Licensee's Improvements, or if any such approval is canceled, expires or is withdrawn or terminated, or if the Village fails to have proper ownership of the Tower or Property or authority to enter into this Agreement, or if Licensee, for any other reason, in its sole discretion, determines that it will be unable to use the Tower or the Property; however, if Licensee terminates this Agreement without cause, it shall pay the Village a termination penalty equal to three (3) months of the current license fee amount.

6. Section 9. "Tower Repair/Maintenance" of the Agreement is amended by adding the following to the end of the paragraph:

In the event of such temporary arrangement during such refurbishing and/or painting, the Village shall remain entitled to the license fee as provided in <u>Section 7. COMPENSATION</u>, above.

7. Section 12. "Taxes", of the Agreement is amended by deleting in its entirety and replacing it with the following:

TAXES: Licensee shall obtain a leasehold PIN and shall be solely responsible for payment of taxes on the leasehold on the Property (PIN # \_\_\_) which are assessed as a result of Licensee's Improvements and directly attributable to its use of the Property under the terms of this Agreement. Licensee shall provide a copy of this Agreement to the DuPage County Supervisor of Assessments and shall request and insure that the tax bill for the leasehold is sent directly to Licensee. Licensee shall then pay the taxes owed directly to the County Assessor's Office by the due date indicated on the tax bill. Licensee shall be solely responsible to pay any late fees, interest or penalties if not paid by the due date. Licensee shall have the right, at its own expense and without expense to the Village, to contest by appropriate proceedings, conducted with due diligence and in good faith, the validity of the amount of taxes or reassessment as applicable to the Licensed Premises or the Licensee Improvements. In the event that the Village becomes aware of any tax delinquency and that delinquency is not cured by the Licensee within thirty (30) days from the date the Village sends written notice, the Village shall have the right to remove any of Licensee's equipment and terminate this Agreement. Section 14. "Insurance" of the Agreement is amended by deleting it in its entirety and replacing it with the following:

**14. INSURANCE**: At all times while this Agreement remains in effect, and in support of the indemnification provided in the foregoing Paragraph 13, the Licensee shall, at its own cost and expense, maintain a program of third party liability insurance and/or self-insurance and include the Village, its officers, employees and agents as additional insureds by endorsement with respect to this Agreement from liability for bodily injury, death, and property damage caused, in whole or in part, by the activities of the Licensee under this Agreement.

a. During the Term of the Agreement. Licensee shall carry and maintain in effect during the entire term of this Agreement (i) worker's compensation insurance as required by law and which insures Licensee against worker's compensation claims arising out of Licensee's activities on the Tower; (ii) fire and casualty insurance or self-insurance covering Licensee's Improvements in an amount of one hundred percent (100%) of their actual replacement cost. Licensee self-insures this risk; and (iii) commercial general liability insurance per ISO form CG 00 01 or its equivalent, including broad form property damage insurance for bodily injuries and property damage. Such General Liability Insurance shall include coverage for contractual liability, premises, operations, underground, collapse, explosion, products and the loss of use, and shall include as Additional Insureds the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees by endorsement as respects the Agreement. Such insurance shall be in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

8.

- b. During Construction/Installation. During construction/installation, Licensee's contractors and subcontractors shall also maintain and provide Village with evidence of each of the insurance coverages specified in subparagraph (a) and in the amounts so specified. In addition, the contractor shall provide builder's risk insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the project, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement. Licensee may self-insures this risk.
- c. Policies. The policy or policies of insurance required by subparagraphs (a) and (b) shall be underwritten by a company or companies eligible to do business in the State of Illinois, with an A.M. Best rating of at least A-VII. A certificate of insurance or Licensee's form of self-insurance shall be delivered to the Village prior to the Commencement Date of this Agreement. Licensee or, where applicable, Licensee's contractors shall furnish the Village with a written notice of any cancellation, or non-renewal of any required coverage that is not replaced.
- d. Self-Insurance. Licensee may self-insure any of the required insurance under the same terms as required by this Agreement, provided that if Licensee elects to self-insure any coverage required herein, then the following provisions shall apply: (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least One Hundred Million Dollars (\$100,000,000) as evidenced by Licensee's or its parent company's most recent annual report; (ii) Licensee shall continuously maintain appropriate loss reserves for the amount of its self-insurance obligations under this section, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of the Village, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to the Village; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; and (vi) all amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement.
- 9. Section 15. "Liens" of the Agreement is amended by replacing the final two sentences with the following sentences:

If any such lien or claim for lien is filed or recorded against the Property, the Village shall give Licensee notice thereof and demand that Licensee remove the same, or post adequate security to ensure the removal of the same following the resolution of any dispute between Licensee and the lienholder, within sixty (60) days after such notice. Nothing in this provision shall restrict Licensee from granting a security interest in all or any part of Licensee's Improvements and to file of record UCC financing statements and/or fixture filings to perfect the same.

10. Section 18. "Hazard Substances" of the Agreement is amended by deleting it in its entirety and replacing it with the following:

#### 18. HAZARDOUS SUBSTANCES:

(a) The Village represents and warrants that it has no knowledge of any hazardous substance existing on the Property in violation of any applicable federal, State or local law, regulation or ordinance, and that its use of the Licensed Premises will not generate any hazardous substance, and that it will not store or dispose on the Licensed Premises, nor transport to or over the Licensed Premises, any hazardous substance in violation of any applicable federal, State or local law, regulation or ordinance. The Village further agrees to hold Licensee harmless from and indemnify Licensee against any damage, loss or expense or liability resulting from the existence on the Property of any such hazardous substance, including all attorney's fees and consultant fees, costs and penalties, incurred as a result thereof, unless caused by Licensee or any of its employees or agents.

(b) Licensee represents and warrants that its use of the Licensed Premises will not generate any hazardous substance, and that it will not store or dispose on the Licensed Premises, nor transport to or over the Licensed Premises, any hazardous substance in violation of any applicable federal, State or local law, regulation or ordinance. Licensee further agrees to hold the Village harmless from and against and indemnify the Village against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release, including attorney's fees and consultant fees, costs and penalties, incurred as a result thereof, which was caused by Licensee or any of its employees or agents.

(c) "Hazardous Substance" as used herein shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic materials, hazardous or toxic radioactive substance, or other similar term by any federal, State or local environmental law, regulation or ordinance presently in effect or promulgated in the future.

11. Section 22. "Notices" of the Agreement is amended by deleting it in its entirety and replacing it with the following:

**22. NOTICES**: Unless otherwise specified herein, all notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

*Village:* Village Manager Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 (630) 434-5500

With Copy to: Village Attorney Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 (630) 434-5541 Licensee: New Cingular Wireless PCS, LLC Attn.: Tower Asset Group - Lease Administration Re: Cell Site #: IL1534 Cell Site Name: Downers Grove Water Tank (IL); Fixed Asset No.: 10074786 1025 Lenox Park Blvd. NE, 3rd Floor Atlanta, GA 30319

With a required copy of the notice sent to: New Cingular Wireless PCS, LLC Attn.: Legal Dept – Network Operations Re: Cell Site #: IL1534 Cell Site Name: Downers Grove Water Tank (IL); Fixed Asset No.: 10074786 208 S. Akard Street Dallas, TX 75202

12. The Agreement is amended by adding a new Section 23 as follows:

- PERMITTED USE: Licensee, its personnel, invitees, contractors, agents, sublessees, or 23. its authorized sublessees, or assigns may use the Licensed Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and, with prior written notice to the Village, modify, supplement, replace, upgrade, expand in existing space, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon, or relocate the same within the Premises at any time during the term of this Agreement for any reason, so long as these changes do not exceed the structural capacity of the Tower at this height, or at Licensee's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. The Village shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If the Village does not comply with the terms of this Section, in addition to any other rights it may have at law, Licensee may terminate this Agreement and shall have no further liability to the Village.
- Except as amended herein, all terms, conditions, provisions, covenants and agreements contained 13. in the Agreement, First Amendment and Second Amendment shall remain in full force and effect in their entirety. In the event of a conflict between this Third Amendment and the Agreement, the First Amendment or Second Amendment, this Third Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to the First Amendment, the Second Amendment and this Third Amendment.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to the Agreement on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2022.

#### LICENSEE NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation Its: Manager

By:	Chel town
Print Name:	Andrew T. Flowers
Its:	Br Real Ectate & Construction Manager
Date:	1/27/2022

#### LICENSOR VILLAGE OF DOWNERS GROVE

By:\_\_\_\_\_ Village Manager

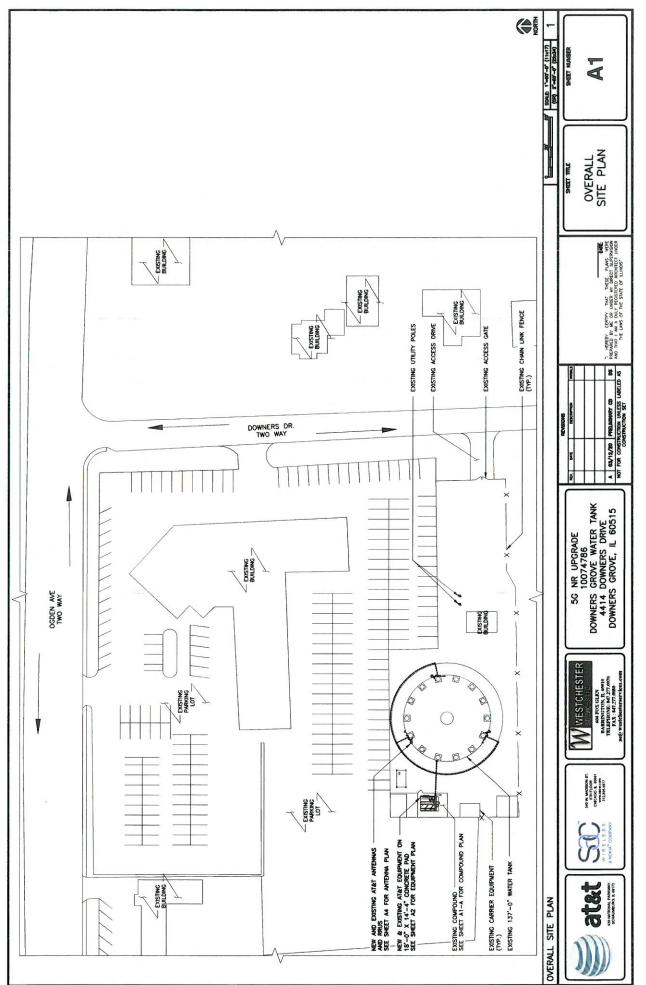
ATTEST:

Village Clerk

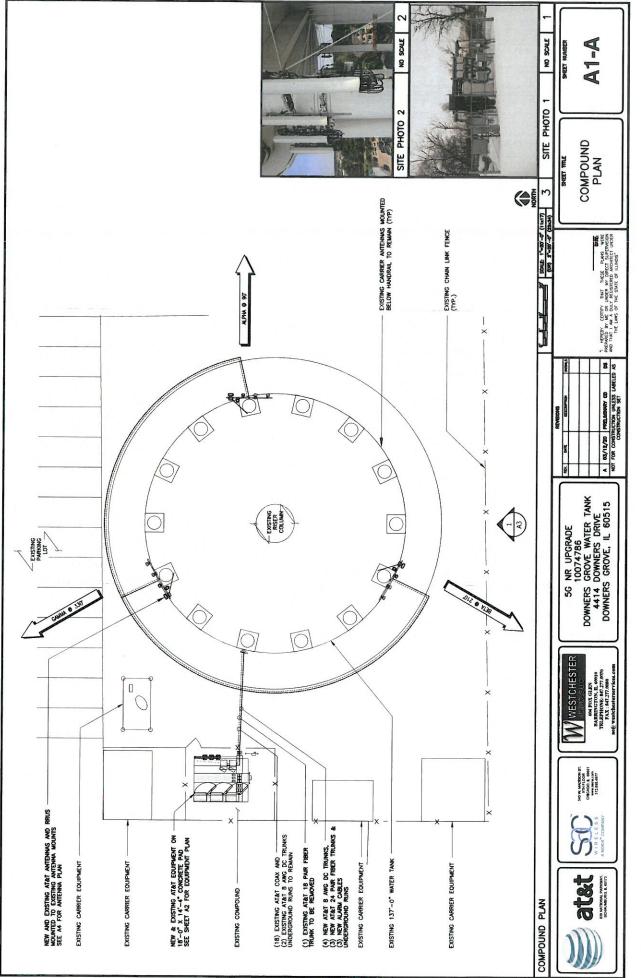
1\mw\agr.21\AT&T\Downers Drive\3rd Amd-FINAL

EXHIBIT 1

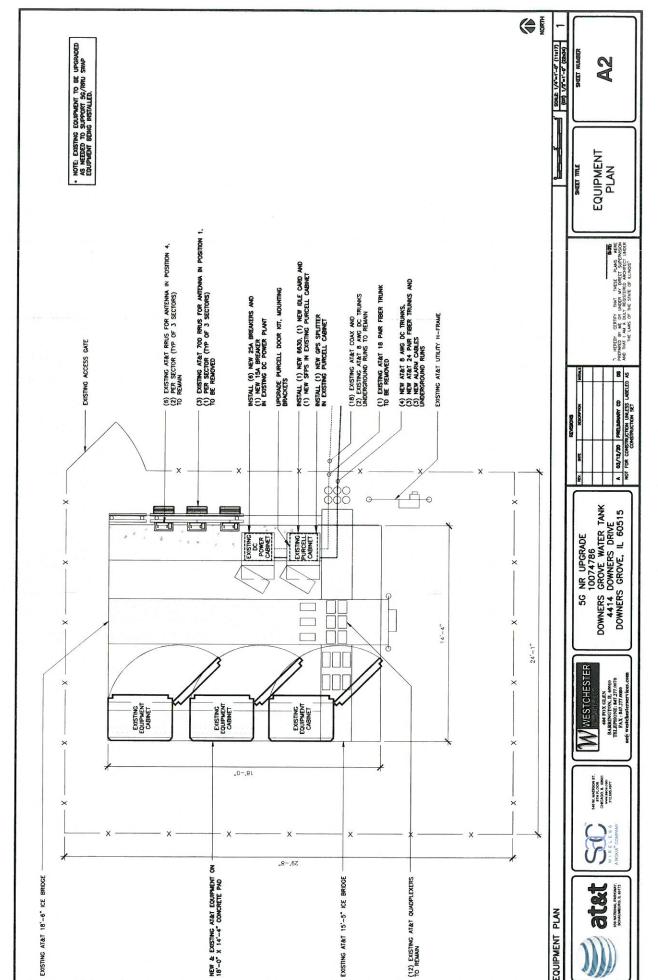




THE INFORMATION CONTINUED IN THE SET OF CONSTRUCTION DOCUMENTS IS PROPRETIVE BY INTURE. AN' USE OF DECLOSIONE OTHER THAN THAT WHICH REALES TO CONSTRUCT OF DECLOSION DOCUMENTS.



 **EXHIBIT 2** 

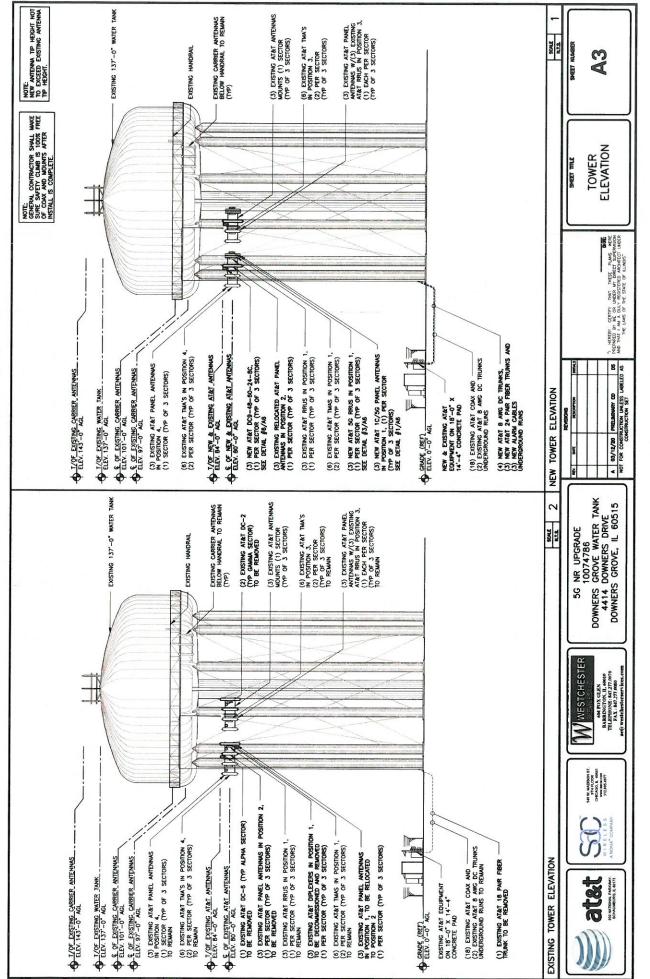


RES 2022-9355

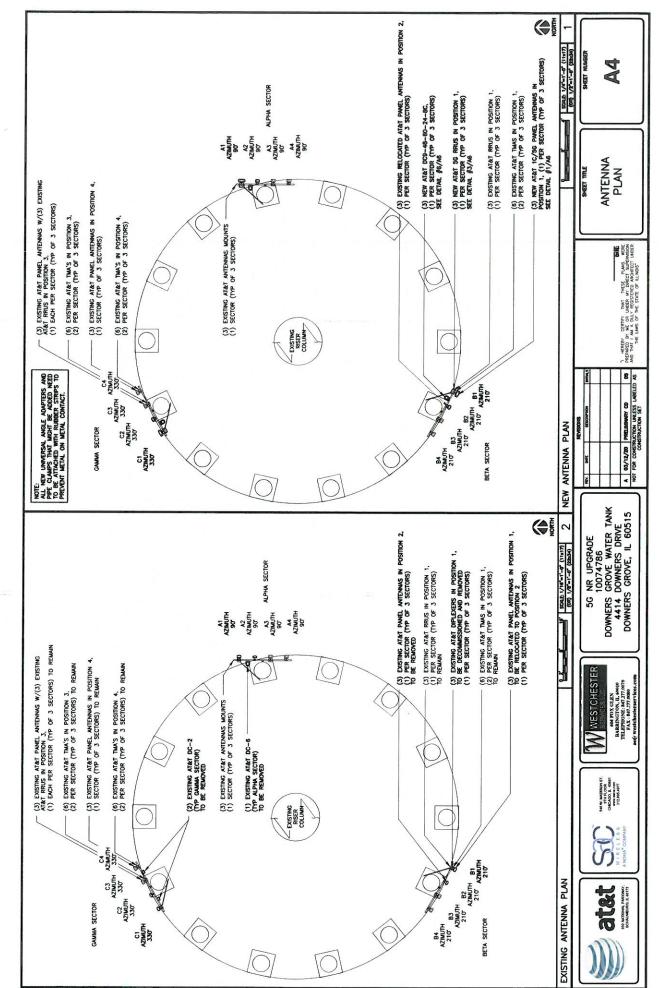
Page 15 of 18

THE INFORMATION CONTINUED IN THAS SET OF CONSTRUCTION DOCUMENTS IS PROVIDED AN INFURIT. MAY LISE OR DISCLOSINGE OTHER THAN THAN THENTES TO CURREN SERVICES IS STRUCTLY AND HISTORY

EXHIBIT 3



THE INFORMATION CONTINUED IN THIS SET OF CONSTRUCT IS PROPRETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARREN SERVICES IS STRUCT, PROVINED



THE INFORMATION CONTINUED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRUCTLY PROMIBILED.