

VILLAGE OF DOWNERS GROVE
Report for the Village
11/15/2022

SUBJECT:	SUBMITTED BY:
Second Amendment to License Agreement for Antenna on Village Property - Sprint - 3301 Finley	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing approval of a second amendment to the License Agreement with SprintCom, LLC for the continued operation of cellular antenna on Village property located at 3301 Finley Road.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

Approval of the proposed second amendment would result in the Village collecting monthly license fees in the amount of \$5,920.98 for this site effective January 1, 2024 with a 4% increase each year thereafter. The term will also be extended for 20 years.

RECOMMENDATION

Approval on the November 15, 2022 consent agenda.

BACKGROUND

SprintCom, LLC 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 cellular antenna on the Village's water tower located at 3301 Finley Road. They have had a license agreement with the Village on this site since 1998. There will be no changes to the equipment or cabinets that currently exist on the property.

The proposed license agreement will commence January 1, 2024. Approval of the proposed agreement would result in the Village collecting \$5,920.98 in monthly license fees, with a 4% increase each year thereafter. The agreement shall run for four, 5-year terms ending on December 31, 2043.

ATTACHMENTS

Resolution
Second Amendment to License Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SECOND AMENDMENT TO LICENSE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND SPRINTCOM, LLC
TO MAINTAIN AND OPERATE ANTENNA EQUIPMENT
ON VILLAGE PROPERTY (3301 FINLEY ROAD)**

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 Second Amendment ("Agreement"), between the Village of Downers Grove ("Village") and SprintCom, LLC ("Licensee") for the maintenance and operation of antenna equipment on Village property located at 3301 Finley Road, 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

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Sprint
Site: 3301 Finley
Site No: CHO3XC629/CH85030A

**SECOND AMENDMENT
TO LICENSE AGREEMENT**

THIS SECOND AMENDMENT TO LICENSE AGREEMENT ("Second Amendment"), dated as of the later 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, Illinois 60515 (hereinafter referred to as "Village") and **SPRINTCOM LLC**, a Kansas limited liability company successor in interest to SprintCom, Inc., having a mailing address of 6220 Sprint Parkway, Overland Park, KS 66251 (hereinafter referred to as "Licensee").

WHEREAS, Village and Licensee entered into a License Agreement entitled "LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND SPRITCOM, INC. TO INSTALL, MAINTAIN AND OPERATE ANTENNA EQUIPMENT ON VILLAGE PROPERTY" dated July 6, 1998 (along with Resolution 98-38), and a License Agreement entitled "FIRST AMENDMENT AND RESTATEMENT TO LICENSE AGREEMENT" dated June 20, 2012 (along with Resolution 2012-47) copies of which are attached hereto, whereby Village leased to Licensee certain Premises, therein described, that are a portion of the Property located at 3301 Finley Road, Downers Grove, Illinois (the "Agreements"); and

WHEREAS, Village and Licensee desire to amend the Agreements to provide that the term of the Agreement shall be restated, extended and to confirm compensation amounts, update insurance requirements and adopt certain provisions consistent with current Village antenna license agreement standards; and

WHEREAS, Village and Licensee also desire to amend the Agreements to provide that any notice or communication shall be sent to the Village at its current address and to Licensee at its current address.

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 as follows:

Section 1. CONTRACT DOCUMENTS of the Agreement is amended to add paragraph c. Exhibit 3 as follows:

- c. Exhibit 3 - 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.

Section 3. SPECIFICATIONS of the Agreement is deleted in its entirety and replaced with the following:

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TMO Lease ID: 1516672

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Site No: CHO3XC629/ CH85030A

- a. During the term of this Agreement, there shall be no substantial variations, modifications, or upgrades from the plans and specifications contained in the attached Exhibits without the prior written approval of the Village, which approval shall not be unreasonably withheld or delayed.
- b. The Licensee Improvements shall be installed, attached to the Tower Space or located on the Ground Space, and maintained in conformance with Exhibit 2 and any applicable State and federal requirements. The Licensee Improvements shall be located more than ten (10) feet from any existing equipment and shall not exceed seventy-two (72) inches in height.

Section 4. CONSTRUCTION, INSTALLATION AND MAINTENANCE of the Agreement is amended by striking paragraphs (f)–(j) in their entirety and replaced with paragraphs (f)–(i) as follows:

- f. Licensee shall be entitled to access the Licensee Improvements Monday through Friday, 7:00 a.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 of Downers Grove for costs incurred for Tower access after-hours.
- g. Licensee shall maintain the Licensee Improvements in good repair, and in a clean and sightly condition.
- h. Upon termination of this Agreement by either party, Licensee shall, within thirty (30) days and at its expense, remove the Licensee Improvements and restore the Licensed Premises to substantially its original condition, reasonable wear and tear excepted. If the Licensee Improvements are not removed within thirty (30) days, the Village may remove the Licensee Improvements and Licensee shall reimburse the Village for the costs of such removal.
- i. If Licensee abandons its use of the Licensee Improvements, Licensee shall, within thirty (30) days of receipt of written notice from the Village notifying the Licensee of such abandonment and at its expense, remove the Licensee Improvements and restore the Tower Space to substantially its original condition. The Licensee Improvements will be presumed abandoned if they are not operated for a period of one month or more. If the Licensee

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Improvements are not removed within thirty (30) days, the Village may remove the Licensee Improvements and Licensee shall reimburse the Village for the costs of such removal.

Section 6. TERM of the Agreement is hereby amended as follows:

6. TERM:

- a. The current term of the Lease ends on December 31, 2023 (the "Current Term"), and Licensee shall have the right to extend this Lease beginning January 1, 2024 and ending December 31, 2028 ("Initial Extension Term"). Licensee shall further have the right to extend this Lease for three (3) five (5) year extension terms (the "Extension Terms") beginning January 1, 2029, January 1, 2034 and January 1, 2039, respectively, on the same terms and conditions as set forth in the Lease except as amended. Each Extension Term shall automatically commence unless either party provides written notice to the other party of its election not to renew this Agreement at least twelve (12) months prior to the expiration of the immediately preceding Current Term or Extension Term. If all Extension Terms occur, the final expiration date of the Agreement shall be December 31, 2043.
- b. After January 1, 2034, Licensee may request the Village to enter into negotiations towards renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually 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 Agreement.

Section 7. COMPENSATION of the Agreement is hereby amended as follows:

7. COMPENSATION:

The monthly license fee shall be Five Thousand Nine Hundred Twenty and 98/100 Dollars (\$5,920.98). Beginning on January 1, 2025, and in each subsequent year during the term of this 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.

Section 14. INSURANCE of the Agreement is stricken in its entirety and amended as follows:

14. INSURANCE: At all times while this Agreement remains in effect, and in recognition 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 to protect the Village, its officers, employees and agents from any

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liability for bodily injury, death, and property damage occasioned by the activities of the Licensee under this Agreement.

- a. During the Term of the Agreement. Licensee shall procure, pay for and maintain in full force and 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 covering Licensee's Improvements in an amount not less than one hundred percent (100%) of their actual replacement cost; and (iii) commercial general liability insurance, including broad form property damage insurance for bodily injuries and property damage. Such General Liability Insurance shall include coverage for the premises, operations, underground, collapse, explosion, products and the loss of use, and shall include Additional Insureds the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees. 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.
- 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.
- c. Policies. The policy or policies of insurance required by subparagraphs (a) and (b) shall be underwritten by an A-IV company or companies authorized to do business in the State of Illinois, shall be reasonably satisfactory to Village, shall include the Village as an additional insured and a certificate of insurance shall be delivered, epetrarca@downers.us, to the Village prior to the commencement of the term of this Agreement. Licensee or, where applicable, Licensee's contractors shall furnish the Village with a written notice of any cancellation, reduction or modification of insurance required under this Section.

Section 16. ASSIGNMENT of the Agreement is stricken in its entirety and amended as follows:

16. ASSIGNMENT AND SUBLEASING: This Agreement may not be assigned or transferred without the express written consent of the Village, which shall not be unreasonably withheld, conditioned or delayed. The Village agrees to respond to any such request within thirty (30) days from receipt of the request. Any assignment or

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transfer without such written consent shall, at the option of the Village, be deemed to be void and of no effect. Provided, however, this Agreement may be assigned or transferred to Licensee's parent or subsidiary, successor legal entity or other affiliate of Licensee without the Village's written consent as long as the Village is given written notice of the assignment or transfer within thirty (30) days thereof.

The Village must approve any sublease to any entity that is not Licensee's parent or subsidiary, successor legal entity or other affiliate of Licensee and the Village shall be entitled to fifty percent (50%) of any such sublease in addition to the rental fee as described in Section 7. COMPENSATION, above

Section 21. NOTICES of the Agreement is amended to indicate the current addresses of each party:

21. NOTICES: Unless otherwise specified herein, all notices under this Agreement shall be made in writing and delivered to:

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:

Sprint Property Services
Sprint Site ID: CH03XC629 / CH85030A
Mailstop KSOPHD0101-Z2650
6220 Sprint Parkway
Overland Park, Kansas 66251-2650
With a copy to:

Sprint Law Department
Sprint Site ID: CH03XC629 / CH85030A
Attn.: Real Estate Attorney
Mailstop KSOPHD0101-Z2020
6220 Sprint Parkway
Overland Park, Kansas 66251-2020

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Section 22. GOVERNING LAW of the Agreement is stricken in its entirety and amended as follows:

23. **GOVERNING LAW AND VENUE**: This Agreement shall be governed by the laws of the State of Illinois. Venue is only proper in the DuPage County Circuit Court, Illinois or the federal Northern District of Illinois.

Section 23. MISCELLANEOUS is hereby added as follows:

23. **MISCELLANEOUS**:
- a. If any term of this Agreement is found to be void or invalid, the remaining terms of this Agreement shall continue in full force and effect. Any questions of particular interpretation shall be interpreted as to their fair meaning.
 - b. This Agreement and the interests granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
 - c. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Agreement shall legally bind the parties to the same extent as original documents.

Except as amended herein, all terms, conditions, provisions, covenants and agreements contained in the Agreement shall be reinstated and shall remain in full force and effect in their entirety. In the event of a conflict between this Second Amendment and the Agreement or the First Amendment, this Second Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Agreement on the dates set forth below.

VILLAGE OF DOWNERS GROVE

SPRINTCOM LLC

By: _____
Village Manager

By: *[Signature]*

Title: Director, Provenient technology

Date: _____

Date: 11/18/2022

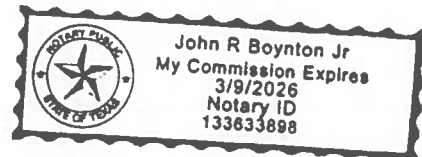
Attest: _____
Rosa Berardi, Village Clerk

Subscribed and sworn to before me
8 day of November, 2022.

John R Boynton Jr
Notary Public

[Signature]

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98-38

RESOLUTION NO. 98-38**A RESOLUTION AUTHORIZING EXECUTION OF THREE LICENSE AGREEMENTS BETWEEN THE VILLAGE OF DOWNERS GROVE AND SPRINTCOM, INC. TO INSTALL, MAINTAIN AND OPERATE ANTENNA EQUIPMENT ON VILLAGE PROPERTY LOCATED AT 4318 DOWNERS DRIVE, 3301 FINLEY ROAD AND 5235 KATRINE**

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 certain License Agreements (the "Agreements"), between the Village of Downers Grove (the "Village") and SprintCom, Inc. for the installation, maintenance and operation of SprintCom antenna equipment on Village property located at 4318 Downers Drive, 3301 Finley Road and 5235 Katrine, as set forth in the form of the Agreements submitted to this meeting with the recommendation of the Village Manager, are hereby approved.
2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreements, 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 Agreements.
4. That all resolutions or parts of resolutions in conflict with the provisions 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.

Passed: July 6, 1998

Attest: April N. Hold
Village Clerk

Betty M. Cheever
Mayor

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RESOLUTION NO. 2012-47**A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT
AND RESTATEMENT TO LICENSE AGREEMENT**

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 Agreement ("Agreement"), between the Village of Downers Grove ("Village") and Sprintcom, Inc. ("Licensee") for a first amendment to license agreement for the maintenance and operation of antenna equipment on Village property located at 3301 Finley, 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.

Passed: June 19, 2012

Attest: Armit h. Be
Village Clerk

Mart T. Tully
Mayor

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