

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
MAY 22, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Agreement with DuPage Amateur Radio Club to Maintain an Antenna on Village property	✓ Resolution Ordinance Motion Discussion Only	Douglas Kozlowski, Communications Director

SYNOPSIS

A resolution has been prepared to authorize an agreement with the DuPage Amateur Radio Club to Install, Maintain and Operate an Antenna on Village Property.

STRATEGIC PLAN ALIGNMENT

The Strategic Plan indicates *We Engage our Citizens and Partner With Others to Make Downers Grove A Great Community in which to live and do business.*

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 5, 2007 consent agenda

BACKGROUND

Since 1987 the DuPage Amateur Radio Club (Club) has operated and maintained an Antenna System at the Summit Water Tower Site including the housing of transmitter equipment within the fire station at 5401 Main Street.

The construction of a new fire station facility at this location necessitates relocating the transmitter equipment to the Summit Rate Control Station (building) located at the base of the Summit Water Tower.

Under this in-kind lease agreement, the equipment and communications system operated by the DuPage Amateur Radio Club will serve as backup to the Village's emergency communications system in the event of a catastrophic communications systems failure. During certain emergency conditions these facilities would directly serve the health, safety, and welfare of Village residents.

Additionally, the facilities operated by the Club serve the public interest in a variety of ways including the reporting of severe weather emergencies to the National Weather Service and functioning as the communications system provider for local events such as the Bonfield Express and South DuPage CROP Walk.

ATTACHMENTS

Resolution
 Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A LICENSE
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DUPAGE AMATEUR RADIO CLUB TO INSTALL, MAINTAIN AND
OPERATE AN ANTENNA ON VILLAGE PROPERTY**

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 (the "Agreement"), between the Village of Downers Grove (the "Village") and DuPage Amateur Radio Club (the "Licensee"), for the installation, maintenance and operation of an antenna on 1037 Summit, as set forth in the form of 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 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.

Mayor

Passed:

Attest: _____
Village Clerk

**LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND
DUPAGE AMATEUR RADIO CLUB TO INSTALL,
MAINTAIN AND OPERATE ANTENNA ON VILLAGE PROPERTY**

This License Agreement entered into this day of _____, _____, by and between the Village of Downers Grove, an Illinois home rule municipal corporation (hereinafter referred to as the "Village"), and the DuPage Amateur Radio Club, an Illinois not-for-profit corporation (hereinafter referred to as the "Licensee"),

WITNESSETH

WHEREAS, the Village is an Illinois municipal corporation and a home rule unit pursuant to the laws of the State of Illinois; and

WHEREAS, the Village is the owner of certain real estate located at 1037 Summit, Downers Grove, Illinois, upon which is located the Summit Water Tower (hereinafter referred to as the "Tower") and a Village fire station; and

WHEREAS, Licensee is a voluntary group of amateur radio operators and technicians whose purpose is to advance radio communication techniques through experimentation and provide emergency communications services to the general public during times of need; and

WHEREAS, pursuant to a Lease Agreement between the Village and the Licensee dated October 13, 1987, the Licensee previously installed for its use an antenna on the top of the Tower and its related equipment inside the fire station at 5401 Main Street (hereinafter referred to as the Antenna); and

WHEREAS, the Village will construct a new fire station at 5401 Main Street and Licensee has requested permission to continue to use the Antenna and its related equipment currently located at 1037 Summit and

WHEREAS the Licensee's equipment will be permanently relocated from the fire station building to another Village owned structure on 1037 Summit; and

WHEREAS, the amateur radio facilities operated by the DuPage Amateur Radio Club can and do serve the public interest in a variety of ways including, the reporting of severe weather emergencies to the National Weather Service, providing redundancy to the Village's emergency communications system in the event of catastrophic communications systems failure and serving as the communications system provider for certain community events; and

WHEREAS, the Licensee is willing to extend use of its Antenna to the Village during an emergency or other time of need within permissible limits as specified by the Federal Communications Commission,

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions, the Village and the Licensee agree as follows:

1. **CONTRACT DOCUMENTS:** The provisions set forth in the preamble and the following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1 - Plans and specifications for the existing Antenna and the housing of the related Antenna equipment titled Village of Downers Grove 55th & Main Street Water

Tower Public Works Building 1037 Summit DuPage Amateur Radio Club Proposal, dated March 21, 2007 and approved by the Village on _____

2. **GRANT OF LICENSE:** The Village hereby grants to the Licensee the license, right, permission and authority to install, operate and maintain the Antenna and related equipment upon the terms and conditions hereinafter specified. The license shall not terminate upon the sale, assignment or transfer of the property, but shall run with the land.
3. **SPECIFICATIONS:** The Licensee shall comply with the following specifications:
 - a. In general: During the term of this agreement, there shall be no variations, modifications, or upgrades from the plans and specifications of Exhibit 1 without the prior written approval of the Village.
 - b. Antenna: The Antenna shall be for the operation of a radio frequency pair: 442.550 MHz & r 447.550 MHz. The Antenna shall be installed, attached to the Tower, and maintained in conformance with any applicable State or federal requirements. The Antenna shall be located more than ten (10) feet from any existing antenna equipment and shall not exceed two hundred forty (240) inches in height above the attachment fixture.
4. **CONSTRUCTION, INSTALLATION AND MAINTENANCE:** The Licensee may install, repair, maintain, or replace the Antenna, subject to the following conditions:
 - a. Licensee shall obtain all required permits and authorizations from the Village, in accordance with the applicable ordinances, prior to commencing any work under this agreement. Such work shall comply with applicable codes and regulations and shall be conducted in a workmanlike manner.
 - b. The Licensee shall obtain all necessary approvals from any regulatory authorities for the operation of the Antenna. Further, the Licensee shall comply with all applicable laws and regulations of such regulatory authorities.
 - c. All costs connected with the installation, maintenance, repair, use and removal of the Antenna and any related equipment shall be the responsibility of the Licensee.
 - d. The Licensee shall not take any action or allow any action to be done which may impair the use of or damage the Tower.
 - e. The Licensee may not interfere with the use by the Village, its officers, agents and employees, of the Tower or the property on which it is located.
 - f. Except for emergency situations, the Village shall provide reasonable advance notice to Licensee when it conducts any Tower repair or maintenance work that affects the Antenna or function of the Antenna. Except for emergency situations, Licensee shall provide Village reasonable advance notice when access to the Antenna is needed. Keys to access the Tower can only be obtained between the hours of 8:00 a.m. and 4:00 p.m. from the Village Operations Center. In the event of an emergency, if prior notice is not possible, the party shall provide notice at the earliest reasonable opportunity.
 - g. The Licensee shall maintain the Antenna in good repair, and in a clean and sightly condition.
 - h. Upon termination of this Agreement by either party, the Licensee shall, within sixty (60) days and at its expense, remove the Antenna and restore the Tower to

substantially its original condition less reasonable wear, tear and casualty beyond Licensee's control.

- i. If Licensee abandons its use of the Antenna, Licensee shall, within seven (7) days of receipt of written notice from the Village notifying the Licensee of such abandonment and at its expense, remove the Antenna and restore the Tower to substantially its original condition. The Antenna will be presumed abandoned if it is not operated for a period of one month or more. If the Antenna is not removed within seven (7) days, the Village may remove the Antenna and the Licensee shall reimburse the Village for the costs of such removal.
5. **NON-INTERFERENCE WITH VILLAGE OPERATIONS:** Neither this license nor the Antenna shall interfere or obstruct the functioning of the Village's operations and services. Licensee warrants that the Antenna shall be constructed, installed, maintained and operated in such a manner as to not interfere or obstruct any radio or electronic equipment or signals of the Village's radio and data systems. In the event such interference occurs, and the interference cannot be eliminated by Licensee after reasonable efforts, the Village may terminate this Agreement. Provided after notice to Licensee, the Village may immediately terminate this Agreement, or require that operation of the Antenna be immediately ceased where it determines that the Antenna presents an immediate and serious danger to the public health, welfare or safety due to interference with the operation of the Village's radio and data systems.
6. **TERM:** This License Agreement shall have an initial five (5) year term and three (3) additional five (5) year terms and may be renewed upon joint agreement of the parties. This License Agreement shall automatically renew itself for each of the successive five (5) year terms unless the Village or Licensee provides the other party with a written notice of its intention not to renew this License Agreement at least ninety (90) days prior to the expiration of the then-current term.
7. **VILLAGE USE OF ANTENNA:** Officials from the Village of Downers Grove shall have the right to use the Antenna and the associated equipment during emergency situations, both natural and man-made, and other times of need for the protection of life or property in the Village, but only within the permissible limits as stated in Federal Communications Commission law. These same Village officials shall have the authority to turn off the associated equipment if they determine such action is necessary during times of emergency.
8. **TERMINATION:** This Agreement and any license may be terminated as follows:
 - a. Either party may terminate this Agreement upon sixty (60) days written notice to the other party.
 - b. In the event either party fails to comply with the terms of this Agreement such party shall be considered in default and the non-defaulting party may serve written notice of its intent to terminate the Agreement and the license. Except where the public health or safety is threatened, the notice shall give the defaulting party not less than thirty (30) days to correct such non-compliance. In the event the default is not corrected within thirty (30) days of such notice, the non-defaulting party may terminate this Agreement by serving a written notice of termination.
 - c. In the event the Tower is destroyed or substantially damaged, this agreement shall be considered terminated.
9. **TOWER REPAIR/MAINTENANCE:** Upon receiving thirty (30) days notice from the Village that it intends to repair or perform maintenance to the Tower, Licensee shall, at its own expense

and in such manner as the Village shall reasonably request, immediately remove, relocate, change or alter the position of the Antenna. During the term of this Agreement, the Tower may be refurbished and/or painted. Refurbishment and/or painting will take several months to complete (approximately five to eight months). Prior to beginning refurbishment and/or painting, Licensee understands that its Antenna shall be removed from the Tower upon notice from the Village and that the Antenna shall not be reinstalled until the refurbishment and/or painting is completed and the Village has approved such reinstallation. The Village shall not be responsible for any costs of removal, relocation, and reinstallation of the Antenna as a result of the refurbishment and/or painting.

10. **RESTORATION:** When the Licensee does any work on or affecting the Antenna, it shall, at its own expense, restore the Tower to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village. If the Licensee fails to restore the Tower, the Village may, after communications with the Licensee and after affording the Licensee a reasonable opportunity to correct the situation, restore the Property, or remove the obstruction there from. No such prior written notice shall be required in the event that the Village determines that an emergency situation exists. The Licensee shall pay the Village for any reasonable costs of such restoration within fourteen (14) days after receiving a bill from the Village for such work.
11. **TAXES:** Licensee shall either pay, or reimburse the Village, for any personal or real property taxes which are assessed as a result of Licensee's improvements and use of the Property under the terms of this Agreement.
12. **INDEMNIFICATION:** Licensee shall indemnify, become responsible for and save harmless the Village, its boards, committees, commissions, officers, agents and employee from any and all liability arising out of the existence of this Agreement; the installation, existence, maintenance or repair of the Antenna; or any act or omission of Licensee, its officers, agents and employees. For purposes of this Agreement, the term "liability" includes, but is not limited to: actual or claimed loss or damage to property or injury to or, death of persons; actual or claimed responsibility for such loss, damage, injury or death except to the extent that such damage or injury results from the sole negligence or intentional conduct of the Village; and any and all judgments, decrees, costs and expenses of every sort and kind of incident to such loss, damage, injury, death or responsibility, including, but not limited to, court costs, fines and reasonable attorney's fees.
13. **INSURANCE:** At all times while this Agreement remains in effect, and in recognition of the indemnification provided in the foregoing Paragraph 12, 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 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 the agreement (i) fire and casualty insurance covering the Antenna in an amount not less than one hundred percent (100%) of their actual replacement costs; and (ii) commercial general liability insurance, including broad form property damage insurance, for bodily injuries and property damage, in amounts not less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) in the aggregate covering bodily injuries or property damage occurring on the Tower.
 - b. During Construction/Installation. During construction/installation, licensee's contractor shall also maintain and provide the Village with evidence of each of the insurance coverage's 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 a company or companies authorized to do business in the State of Illinois, shall be reasonably satisfactory to Village, shall name Village as an additional insured and shall be delivered to the Village, together with evidence of the payment of the premiums, therefore, prior to the commencement of the term of this Lease. Licensee or, where applicable, Licensee's contractors shall furnish Village with a written notice of any cancellation, reduction or modification of insurance required under this Section.
14. LIENS: Licensee agrees that it will not permit or suffer any lien to be put upon or arise or accrue against the property on which the Tower is located in favor of any person or persons, individual or corporate, furnishing either labor or material in any work herein proposed, authorized, and contracted for by the Licensee, and the Licensee further covenants and agrees to hold the Village and its property free from any and all liens, or rights or claim of lien, which may or might arise or accrue under or be based upon any mechanic's lien law of the State of Illinois only where such action occurs as a direct result of any work authorized and contracted for by the Licensee.
15. RELOCATION OF ANTENNA: Should a commercial entity desire to locate on the Tower and pay a license fee therefore, Licensee agrees to relocate its Antenna upon written request of the Village.
16. ASSIGNMENT: This Agreement may not be assigned or transferred without the express written consent of the Village. Any assignment or transfer without such written consent shall, at the option of the Village, be deemed to be void and of no effect.
17. INVALIDITY: If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.
18. FORCE MAJEURE: Neither party shall be deemed in violation of this Agreement for the delay in performance or failure to perform in whole or in part its obligations under this Agreement due to strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, act of public enemy, fire, flood or other act of God or by other events to the extent that such events are caused by circumstance beyond such party's control.
19. NOTICES: Unless otherwise specified herein, all notices under this agreement shall be made in writing and delivered to:

Village Manager
Village of Downers Grove Civic Center
801 Burlington Avenue
Downers Grove, IL 60515-4776

Club President
DuPage Amateur Radio
Club P.O. Box 71
Clarendon Hills, IL 60514

20. This Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove written.

LICENSEE

By: _____

Title: _____

Subscribed and sworn to
this _____ day of _____, 20 ____.

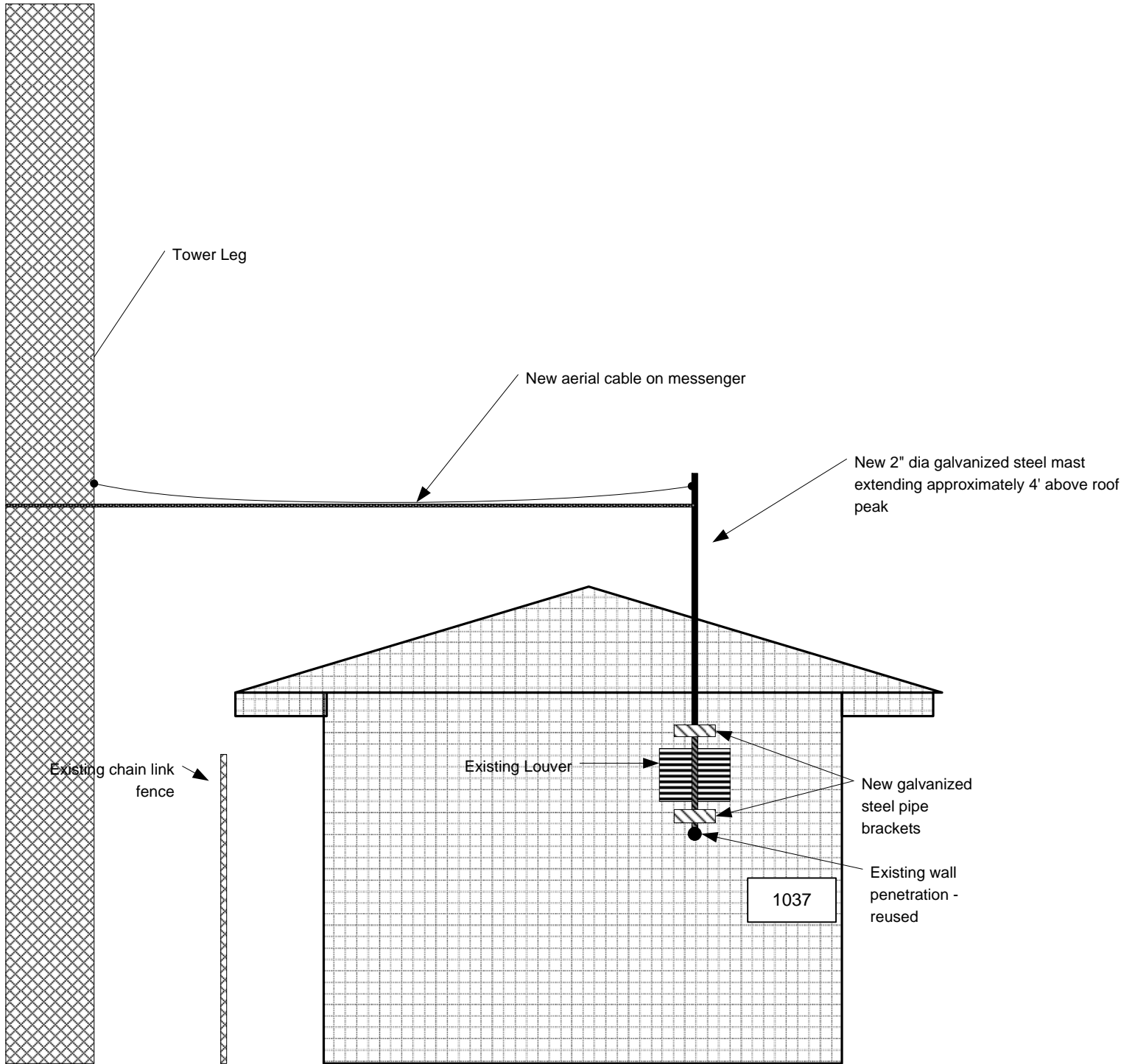
Notary Public

VILLAGE OF DOWNERS GROVE

By: _____
Mayor

ATTEST:

Village Clerk



Village of Downers Grove
55 th & Main Street Water Tower
Public Works Building 1037 Summit
DuPage Amateur Radio Club Proposal
D. Hlinsky – 21 March 2007 (1/4" = 1')