

NORTHERN New Mexico College



MEMORANDUM

To: Board of Regents,
Northern New Mexico College

From: Richard J. Bailey, Jr., PhD, President

Date: January 22, 2021

Re: Commnet FirstNet Project

Issue

The NNMC El Rito Campus hosts a tower structure. New Cingular Wireless PC, LLC and its manager AT&T Mobility Corporation, are asking to use a portion of this property through a lease agreement. This tower will be used for transmission and reception of communication signals. The initial lease will be eight (8) years and tenant will pay NNMC \$1,200 per month for the term of the lease. The lease will also automatically renew for seven (7) additional five (5) year term(s) unless NNMC notifies New Cingular Wireless, PC, LLC (AT&T Mobility Corporation) 6 months prior to the final extension term. See lease documents attached which have been reviewed and approved by NNMC legal counsel.

Recommendation

Staff recommends that the Board of Regents approve Commnet FirstNet Project as presented.

Market: AZ/NM
 Cell Site Number: NML02653A
 Cell Site Name: El Rito, NM
 Fixed Asset Number: 15061966

TOWER STRUCTURE LEASE AGREEMENT

THIS TOWER STRUCTURE LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by Northern New Mexico College, having a mailing address of 921 Paseo de Onate, Espanola, NM 87532 (“**Landlord**”) and Commnet Wireless, LLC, a Delaware limited liability company, having a mailing address of 1562 Park Street, Castle Rock, CO, 80109, Attn: Property Management, with a simultaneous copy to 400 Northridge Rd., Ste. 1100, Atlanta, GA 30350, Attn: Real Estate Notices (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a tower structure (the “**Tower**”), together with all rights and privileges arising in connection therewith, located at El Rito campus of Northern New Mexico College, in the County of Rio Arriba, State of New Mexico (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement. Tenant desires to assign this Agreement to New Cingular Wireless PCS, LLC, a Delaware limited liability company; its manager, AT&T Mobility Corporation; or one of its affiliates (collectively, “**AT&T**”).

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:
 - (a) Approximately 247 square feet of ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s equipment (the “**Ground Space**”).
 - (b) The portion of the Tower selected by Tenant and dedicated for Tenant’s exclusive use and consisting of an envelope of ten (10) contiguous vertical feet of space within which any portion of Tenant’s communication equipment and improvements might be located, operated or maintained (the “**Primary RAD Space**”). The Primary RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to such 10-foot vertical envelope and any portion of vertical space on the Tower on which Tenant’s communication equipment is located. The location of the Primary RAD Space is identified in **Exhibit 1**. At any time during the Term of this Agreement, Tenant may use portions of the Tower outside of, but adjacent to, the Primary RAD Space to accommodate Tenant’s improvements and equipment that extend outside the Primary RAD Space (the “**Extended Primary RAD Space**”), subject to Tenant’s confirmation that the space is available and that sufficient structural loading capacity is available or can be made available through structural modifications of the Tower. The Primary RAD Space, as it might be expanded by the Extended Primary RAD Space at any time during the Term of this Agreement, shall continue to be referred to as the Primary RAD Space. In addition and at no additional cost, Tenant may use space on the Tower to accommodate one (1) microwave dish and equipment associated therewith at a radiation center height of the lowest height of available space for each microwave dish that works under a path study (“**Primary Dish Space**”), together with the option to occupy space on the tower to accommodate additional microwave dishes as required by Tenant and its equipment (“**Additional Dish Space**”) (hereinafter space for microwave dishes is collectively referred to as the “**Dish Space**”).
 - (c) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space or any Incremental Ground Space and the Primary Dish Space, Additional Dish Space, Primary RAD Space or any Additional RAD Space and between the electric power, telephone, fiber, and fuel sources for the Property (hereinafter collectively referred to as the

“**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Dish Space, Ground Space and Primary RAD Space; and between Tenant’s equipment in the Ground Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. The Ground Space, Primary RAD Space, Dish Space, and Connection Space are hereinafter collectively referred to as the “**Premises.**”

2. PERMITTED USE.

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, modification, use, operation, repair, replacement, supplement and upgrade of unlimited communications fixtures and related equipment, lines, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing, a security system, pads, foundations, and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**” or “**Communication Facilities**”), as well as the right to test, survey and review title on the Property; Tenant may exercise its rights to use the Allowed Wind Load Surface Area (defined below), without incurring any structural modification costs and/or rent increases. Landlord shall deliver a structural analysis in accordance with Tenant’s requirements and make, at Landlord’s expense, all structural modifications required to provide Tenant with the Allowed Wind Load Surface Area. In addition, Landlord shall provide for structural capacity for the Primary Dish. In no event shall the installation of Band Class 14 NPSBN Equipment on any tower cause such tower to be classified as a Class III tower structure.

(b) Tenant further has the right but not the obligation to add, modify and/or replace equipment 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 (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Landlord’s contiguous, adjoining or surrounding property (the “**Surrounding Property**”) as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense. Tenant has the right to install, modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

(c) Landlord agrees that Tenant may use and occupy additional space on the Tower at any additional RAD center(s) (each, an “**Additional RAD,**” and the additional space that Tenant uses or occupies, the “**Additional RAD Space**”) upon the same terms and conditions set forth herein, provided that such space is available or becomes available and subject to Tenant’s confirmation that sufficient structural loading capacity is available or can be made available through structural modification of the Tower. Additional RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to any portion of vertical space on the Site Structure on which the Incremental Equipment is located, operated, or maintained. Tenant

may also use additional ground space at the Property in increments of one square foot outside of the Ground Space, provided that such space is available or might be made available (the “**Incremental Ground Space**”). Upon Tenant’s use of any Additional RAD, Additional RAD Space, Dish Space, or Incremental Ground Space, such RAD or space shall be deemed part of the Premises.

3. **TERM.**

- (a) The initial lease term will be eight (8) years (the “**Initial Term**”), commencing on the Effective Date. The Initial Term will terminate on the eighth (8th) anniversary of the Effective Date.
- (b) This Agreement will automatically renew for seven (7) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.
- (c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions on a year-to-year basis for a further term of one (1) year, and for annual terms thereafter (“**Annual Term**”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.
- (d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the “**Term.**”

4. **RENT.**

- (a) Commencing on the first day of the month following the date that Tenant completes construction of the Communication Facility (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, One Thousand Two-Hundred Dollars and No/100 Dollars (\$1,200.00) (the “**Rent**”), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.
- (b) In the event that Tenant uses or occupies an Additional RAD, Rent shall be increased by One Hundred Twenty-Five and No/100 Dollars (\$125.00) per month per each Additional RAD (the “**Additional RAD Rent**”). The initial amount of Additional RAD Rent shall be subject to adjustment as provided in Section 4(e) of this Agreement.
- (c) In the event that Tenant uses or occupies Incremental Ground Space, Rent shall be increased by One and No/100 Dollars (\$1.00) per month per square foot of space (the “**Incremental Ground Space Rent**”). The initial amount of Incremental Ground Space Rent shall be subject to adjustment as provided in Section 4(e) of this Agreement. In the event that Tenant uses or occupies Additional Dish Space, Rent shall be increased by twenty-five and No/100 Dollars (\$25.00) per month for each additional diameter foot of microwave antenna (the “**Additional Dish Space Rent**”).
- (d) In addition to the Additional RAD Rent, in the event that Tenant uses or occupies any Additional RAD Space and (i) Tenant has used all of the Allowed Wind Load Surface Area, (ii) structural modifications are required because Tenant’s use or occupancy of the Additional RAD Space causes the Tower to exceed the maximum allowable combined stress ratio under the structural standards generally accepted within the telecommunications industry (the “**Structural Standards**”), and (iii) Tenant elects under Section 14(b) to have Landlord pay for those structural modifications, Rent shall be increased by the amount of \$0.08 per square inch of Wind Load Surface Area that exceeds the Allowed Wind Load Surface Area (the “**Incremental Use Rent**”). Otherwise, no Incremental Use Rent or other additional fees or charges shall be due and owing. The initial

amount of Incremental Use Rent, if any, shall be subject to adjustment as provided in Section 4(e) of this Agreement.

(e) Upon the commencement of each Extension Term, the monthly Rent will increase by one-and-a-half percent (1.5%) over the applicable Rent in effect during the previous term.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION.

This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord if at any time the Premises are not being used as a Communication Facility;

(e) by Tenant upon written notice to Landlord if the Agreement is not or cannot be assigned to AT&T; or

(f) by Tenant upon sixty (30) days' prior written notice to Landlord for any reason or no reason.

7. INSURANCE. During the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) and Landlord shall be listed as an additionally named insured. Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage. Prior to commencement of the lease and thereafter upon each renewal of insurance, Tenant shall provide Landlord with a copy of Tenant's certificate of insurance.

8. INTERFERENCE.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the

Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord, as a state educational institution and a subdivision of the State of New Mexico, shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the Lease. Landlord shall be liable for its own actions in accordance with this Lease. Landlord shall not be responsible for liability incurred as a result of the tenant's negligence, acts or omissions in connection with this Lease. Any liability incurred by Landlord in connection with this Lease is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, *et seq.*, NMSA 1978, as amended.

(c) Landlord: (i) shall promptly provide tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the tenant; and (iii) shall fully cooperate with the tenant in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve tenant of its indemnity obligation, except (1) to the extent the tenant can show it was prejudiced by the delay; and (2) the tenant shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. REPRESENTATIONS.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or

ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Landlord represents, to the best of its knowledge and except as may be identified in **Exhibit 3** attached to this Agreement, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord agrees to hold harmless Tenant from, and to assume all duties, responsibilities and liabilities of the Landlord at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant, its agents, employees, invitees, or guests.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property that were not brought onto the property by Tenant, its agents, employees, invitees, or guests, or any environmental, health or safety condition or matter relating to the Property or caused by the actions or omissions of Tenant, its agents, employees, invitees, or guests, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises with the materials or conditions not brought onto the Property or not caused by Tenant, its agents, employees, invitees, or guests, would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord. Prior to any determination to terminate this Lease under this subparagraph, Tenant must allow Landlord a reasonable opportunity to rectify the environmental concern, health or safety condition or matter relating to the property. The parties will agree in writing, what constitutes a repair, remediation or cure of the environmental materials or condition and a mutually acceptable timeline.

12. ACCESS. At all times throughout the Term of this Agreement, Tenant and its employees, agents, subcontractors, affiliates; and, the First Responder Network Authority ("**FirstNet**"), its employees, agents, subcontractors, and affiliates will have unfettered twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises and the communications facilities located thereon, regardless of whether such communications facilities are owned by Landlord, Tenant or Tenant's contractors or agents and expressly including shared power sources and generators. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. If Tenant elects to utilize an Unmanned Aircraft System ("**UAS**") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or

alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$100.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

13. REMOVAL/RESTORATION/REMEDICATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation. Tenant will be responsible for remediating any environmental hazards resulting from Tenant's use of the Property.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Landlord will maintain and repair the Property and access thereto, the Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit. Landlord shall maintain the Tower's structural integrity at all times (which shall mean that at no time will Landlord allow the Tower's condition to become, or remain, overstressed under the applicable structural standards set forth in the then-current version of the ANSI TIA-222). Landlord shall at all times during the Term of this Agreement reserve and have ready for Tenant's immediate use sufficient structural loading capacity on the Tower to support Tenant's installation of up to fifteen thousand square inches (15,000 sq. in.) of Wind Load Surface Area of Communication Facilities within the Primary Rad Space on the Tower (the "**Allowed Wind Load Surface Area**"). "**Wind Load Surface Area**" means the Flat Plate Equivalent Area, as defined in ANSI TIA standards, of any appurtenance (excluding all mounts, platforms, cables and other non-operating equipment) at ninety degrees (90°) perpendicular to wind direction, possessing the characteristics of flat material, with associated drag factors. Landlord shall be responsible for the costs of all structural modifications to the Tower, including the costs of related Government Approvals or other approvals, to support the Allowed Wind Load Surface Area. In the event that Tenant has used the Allowed Wind Load Surface Area and an installation of Communication Facilities within the Primary RAD Space will require structural modifications to comply with the Structural Standards, Tenant will pay Landlord for the portion of the structural modifications that is necessary to support Tenant's loading in excess of the Allowed Wind Load Surface Area. In the event that Tenant has used the Allowed Wind Load Surface Area and an installation of Communication Facilities within the Additional RAD Space will require structural modifications to comply with the Structural Standards, Tenant may, in its sole discretion, pay Landlord either (i) the portion of the structural modifications that is necessary to support Tenant's loading in excess of the Allowed Wind Load Surface Area; or (ii) an incremental increase in Rent in accordance with Section 4(d) of this Agreement. In no event shall Tenant be responsible for Tower modification costs to support the installations of other tenants or for the Tower to comply with applicable law so long as Tenant's installation is within the Allowed Wind Load Surface Area.

(c) Tenant will be responsible for paying on a monthly ~~or quarterly~~ basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider, such reimbursement to subject to an annual true-up but with no markup from actual cost. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within ~~sixty (60)~~ thirty (30) days days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(d) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. Under no circumstances (even in the event of material disputes under the Tower Lease) will the Landlord or any other party have the right to shut down Tenant access to power and will provide Tenant with equitable remedies in such event. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(e) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity, and assess all applicable legal fees and court costs to Tenant.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will

have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, to AT&T or its subsidiaries without Landlord's consent. Landlord's prior written consent, which shall not be unreasonably withheld, will be required prior to Tenant's assignment or sublease to any person or entity other than AT&T or its subsidiaries. Upon notification to Landlord of such assignment and completion of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. NOTICES. 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:

If to Tenant:	Commnet Wireless, LLC 1562 Park Street Castle Rock, CO 80109 Attn: Property Management	<u>With a simultaneous copy to:</u> Commnet Wireless, LLC 400 Northridge Rd., Ste. 1100 Atlanta, GA 30350
---------------	---	--

If to Landlord:	Northern New Mexico College Office of the President 921 Paseo de Onate Española, NM 87532
-----------------	--

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours or as soon as practicable. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of when Landlord learns of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, , then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Tenant's Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's communications equipment and leasehold improvements on the Premises if and as set forth in this Section 21. In all other circumstances, tower lease lessee shall not be responsible for any pass through of property taxes or other taxes or fees assessed on, or payable by, tower lease lessor or the ground owner in connection with a site. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant

may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b) of this Agreement.

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 of this Agreement.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. Sale of Property.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or the Surrounding Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RIGHT OF FIRST REFUSAL. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible

for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. APPROPRIATIONS

Because Landlord is subdivision of the State of New Mexico, the terms of this lease are contingent on sufficient appropriations and authorization being made by the Legislature of New Mexico, the New Mexico State Higher Education Department, the Northern New Mexico Board of Regents, and, if applicable, the Federal Government for the performance of this Lease. If, for any reason, sufficient appropriations and authorizations are not made, the Lease shall terminate upon written notice being given by the Landlord. Such termination shall not result in any claim for damages by Tenant. Landlord's decision as to whether sufficient appropriations are available shall be accepted by Tenant and shall be final.

25. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. Landlord's Board of Regents must approve any modification to this agreement. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the State of New Mexico and any action to enforce this agreements shall be filed in the First Judicial District Court for the State of New Mexico.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the

Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of Commnet Wireless, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to seek recovery from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

Northern New Mexico College

By: _____

Name: Michael A. Martin

Its: President, Board of Regents

Date: _____

“TENANT”

Commnet Wireless, LLC,
a Delaware limited liability company

By: _____

Print Name: [_____]

Its: _____ [Insert Title]

Date: _____ [Insert Date]

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 14 of 15

to the Tower Structure Lease Agreement dated [Insert Date], 20 , by and between Northern New Mexico College, as Landlord, and Commnet Wireless, LLC, a Delaware limited liability company, as Tenant.

The Property is described as follows:

Sec. 9, T 24 N, R 7 E, Rio Arriba County, NM

A.P.N.: 1039143450464

Latitude: 36° 20' 11.01" N

Longitude: 106° 11' 34.85" W

The Premises are described and/or depicted as follows: See attached Construction drawings dated_____.

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 2
GROUND LEASE
(Not Applicable)

EXHIBIT 3

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

[INSERT AS APPLICABLE]

THIS AGREEMENT IS THE PROPERTY OF
(and after recording return to):
Commnet Wireless, LLC
Attn: Property Management
1562 Park St.
Castle Rock, CO 80109

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this _____ day of _____, 20____, by and between Northern New Mexico College, having its principal office/residing at 921 Paseo de Onate, Espanola, NM 87532 (hereinafter called "**Landlord**"), and Commnet Wireless, LLC, a Delaware limited liability company, 1562 Park Street, Castle Rock, CO, 80109, Attn: Property Management, with a simultaneous copy to 400 Northridge Rd., Ste. 1100, Atlanta, GA 30350, Attn: Real Estate Notices ("**Tenant**").

1. Landlord and Tenant entered into a certain Tower Structure Lease Agreement ("**Agreement**") on the _____ day of _____, 20____, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be eight (8) years commencing on the Effective Date of the Agreement, with seven (7) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.
5. This Memorandum of Lease is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

Northern New Mexico College

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

TENANT:

Commnet Wireless, LLC
a Delaware limited liability company

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of Commnet Wireless, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, personally appeared _____, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Memorandum of Lease dated _____, 20____, by and between Northern New Mexico College, as Landlord, and Commnet Wireless, LLC, a Delaware limited liability company, as Tenant.

The Property, as defined in the Agreement, is described as follows:

Sec. 9, T 24 N, R 7 E, Rio Arriba County, NM

A.P.N.: 1039143450464

The Premises, as defined in the Agreement, are described and/or depicted as follows: See attached Construction drawings dated July 24, 2020.



5015 SHOREHAM PLACE, SUITE 150
SAN DIEGO, CA 92122
www.sacow.com



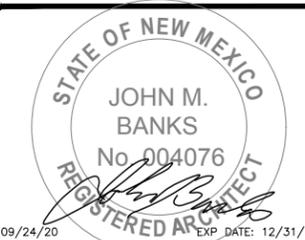
604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847.277.0070
FAX : 847.277.0080
ae@westchesterservices.com

**JOHN M. BANKS
ARCHITECT**

604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847-277-0070
FAX : 847-277-0080
jbanks@westchesterservices.com

REVISIONS

REV.	DATE	DESCRIPTION	INITIALS
0	07/24/20	PERMIT/CONSTRUCTION	JM
1	09/24/20	PERMIT/CONSTRUCTION	RA



"I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME AND UNDER MY DIRECT SUPERVISION AND THAT I AM DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF NEW MEXICO"

FIRSTNET
EL RITO
NML02653A
1140 STATE ROAD 554
EL RITO, NM 87530

SHEET TITLE

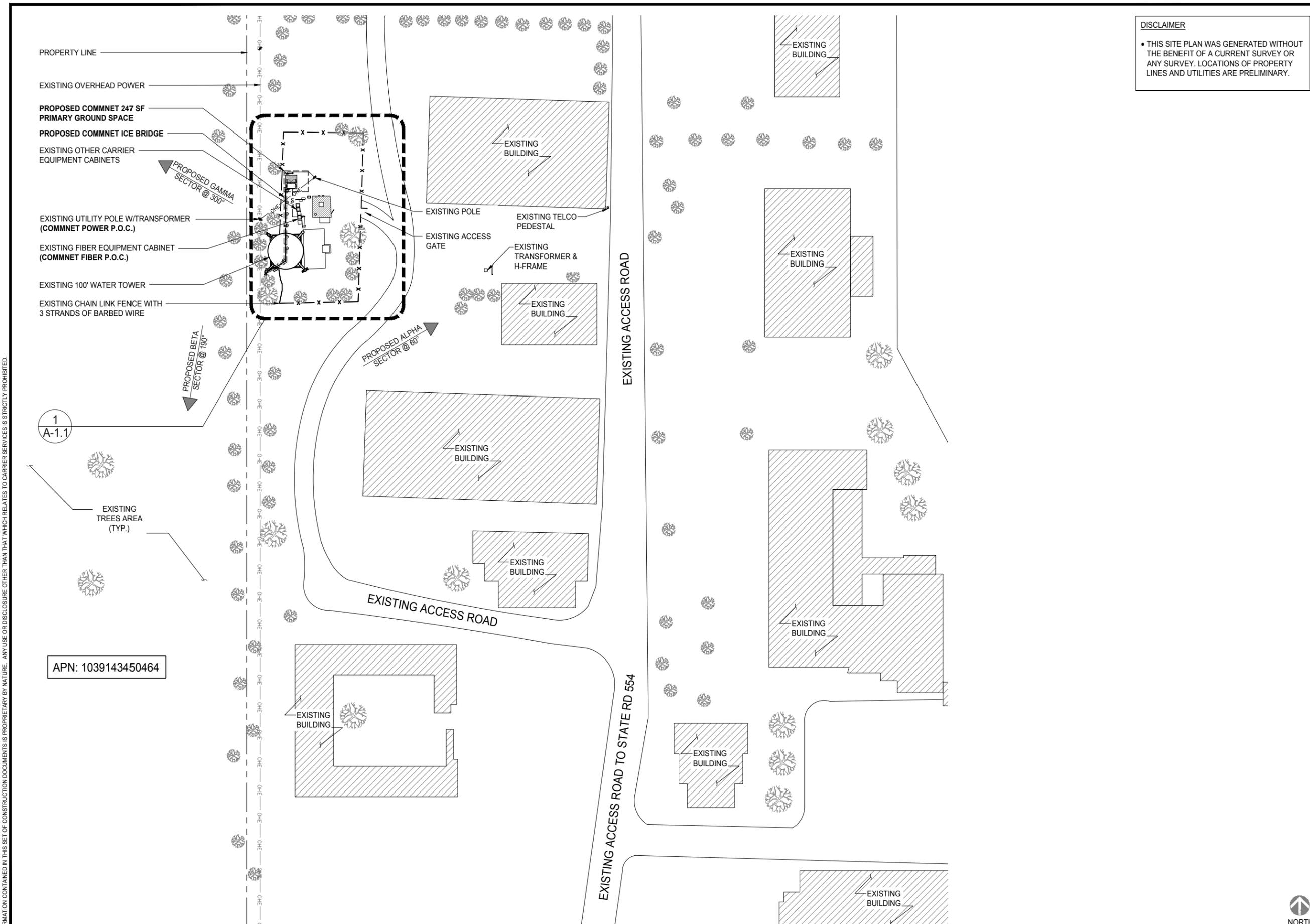
OVERALL SITE PLAN

SHEET NUMBER

A-1.0

DISCLAIMER

• THIS SITE PLAN WAS GENERATED WITHOUT THE BENEFIT OF A CURRENT SURVEY OR ANY SURVEY. LOCATIONS OF PROPERTY LINES AND UTILITIES ARE PRELIMINARY.



- PROPERTY LINE
- EXISTING OVERHEAD POWER
- PROPOSED COMMNET 247 SF PRIMARY GROUND SPACE
- PROPOSED COMMNET ICE BRIDGE
- EXISTING OTHER CARRIER EQUIPMENT CABINETS
- EXISTING UTILITY POLE W/TRANSFORMER (COMMNET POWER P.O.C.)
- EXISTING FIBER EQUIPMENT CABINET (COMMNET FIBER P.O.C.)
- EXISTING 100' WATER TOWER
- EXISTING CHAIN LINK FENCE WITH 3 STRANDS OF BARBED WIRE

1
A-1.1

APN: 1039143450464

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

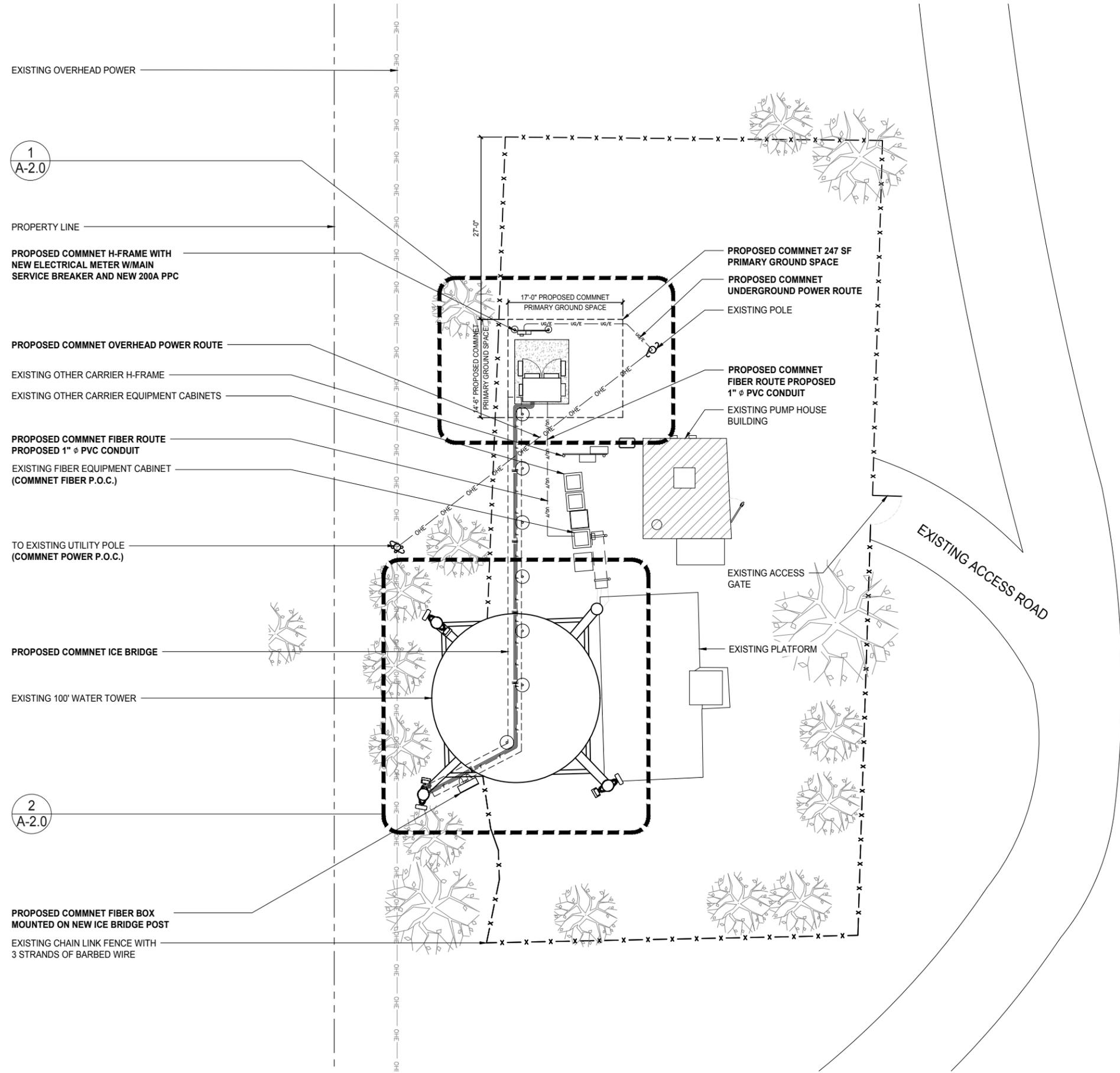
OVERALL SITE PLAN

0 10' 20' 30' SCALE: 1/32"=1'-0" (22x34)
(OR) 1/64"=1'-0" (11x17)



1

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



DISCLAIMER

- THIS SITE PLAN WAS GENERATED WITHOUT THE BENEFIT OF A CURRENT SURVEY OR ANY SURVEY. LOCATIONS OF PROPERTY LINES AND UTILITIES ARE PRELIMINARY.

- PROPOSED RAD CENTER @ 45'-0"

Page 98 of 100

Commnet
Connecting Rural America

SAC
A Nokia company
5015 SHOREHAM PLACE, SUITE 150
SAN DIEGO, CA 92122
www.sacw.com

WESTCHESTER SERVICES LLC
604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847.277.0070
FAX : 847.277.0080
ae@westchesterservices.com

JOHN M. BANKS ARCHITECT
604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847-277-0070
FAX : 847-277-0080
jbanks@westchesterservices.com

REVISIONS				
REV.	DATE	DESCRIPTION	INITIALS	
0	07/24/20	PERMIT/CONSTRUCTION	JM	
1	09/24/20	PERMIT/CONSTRUCTION	RA	

STATE OF NEW MEXICO
JOHN M. BANKS
No. 004076
REGISTERED ARCHITECT
09/24/20 EXP. DATE: 12/31/21

I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME AND UNDER MY DIRECT SUPERVISION AND THAT I AM DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF NEW MEXICO

FIRSTNET
EL RITO
NML02653A
1140 STATE ROAD 554
EL RITO, NM 87530

SHEET TITLE

SITE PLAN

SHEET NUMBER

A-1.1



5015 SHOREHAM PLACE, SUITE 150
SAN DIEGO, CA 92122
www.sacw.com



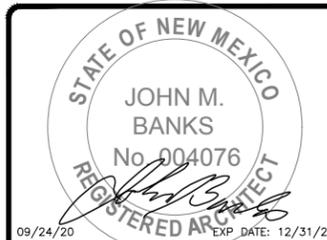
604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847.277.0070
FAX : 847.277.0080
ae@westchesterservices.com



604 FOX GLEN
BARRINGTON, IL 60010
TELEPHONE: 847-277-0070
FAX : 847-277-0080
jbanks@westchesterservices.com

REVISIONS

REV	DATE	DESCRIPTION	INITIALS
0	07/24/20	PERMIT/CONSTRUCTION	JM
1	09/24/20	PERMIT/CONSTRUCTION	RA



"I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME AND UNDER MY DIRECT SUPERVISION AND THAT I AM DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF NEW MEXICO"

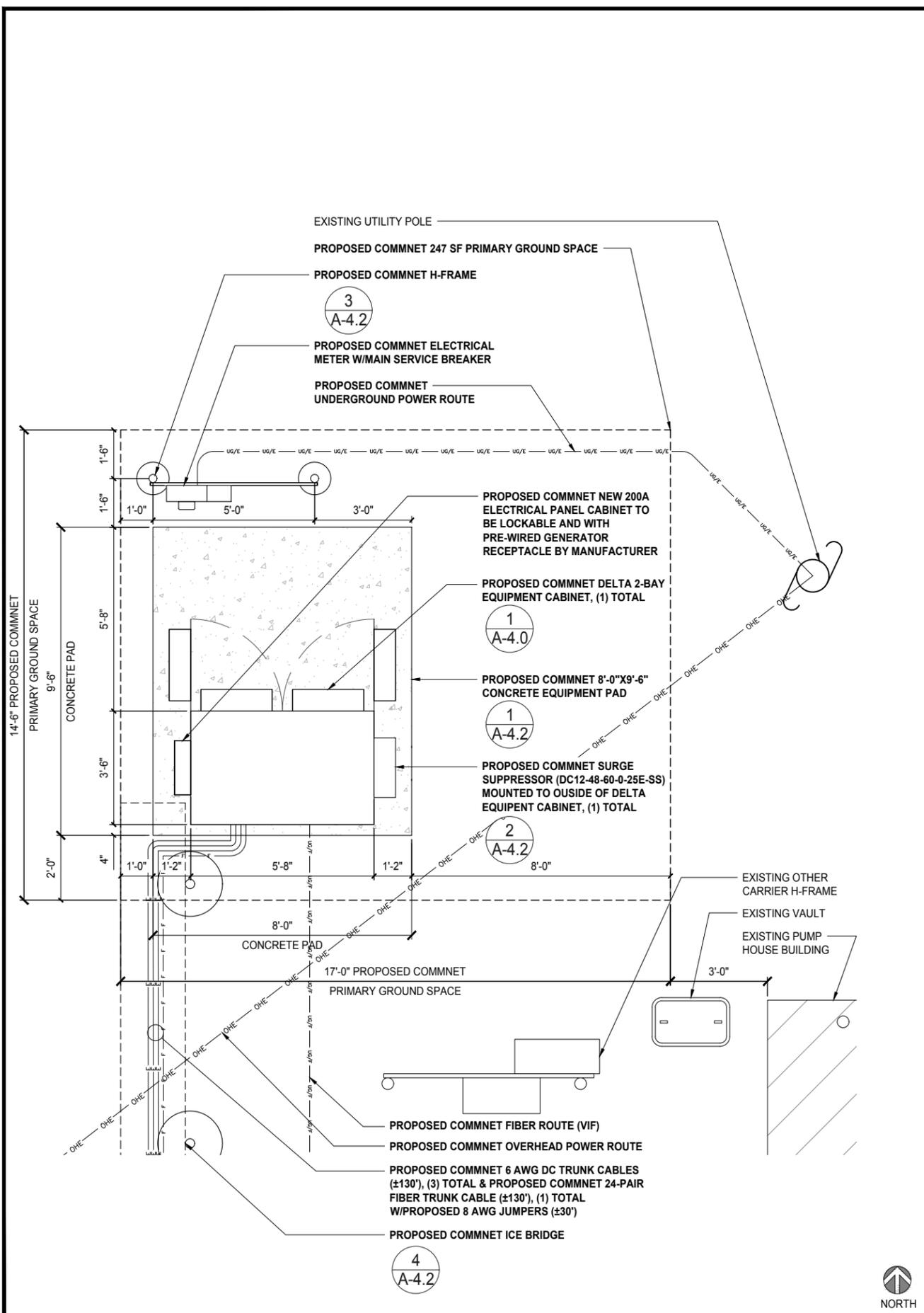
FIRSTNET
EL RITO
NML02653A
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EL RITO, NM 87530

SHEET TITLE

PROPOSED ANTENNA & EQUIPMENT PLANS

SHEET NUMBER

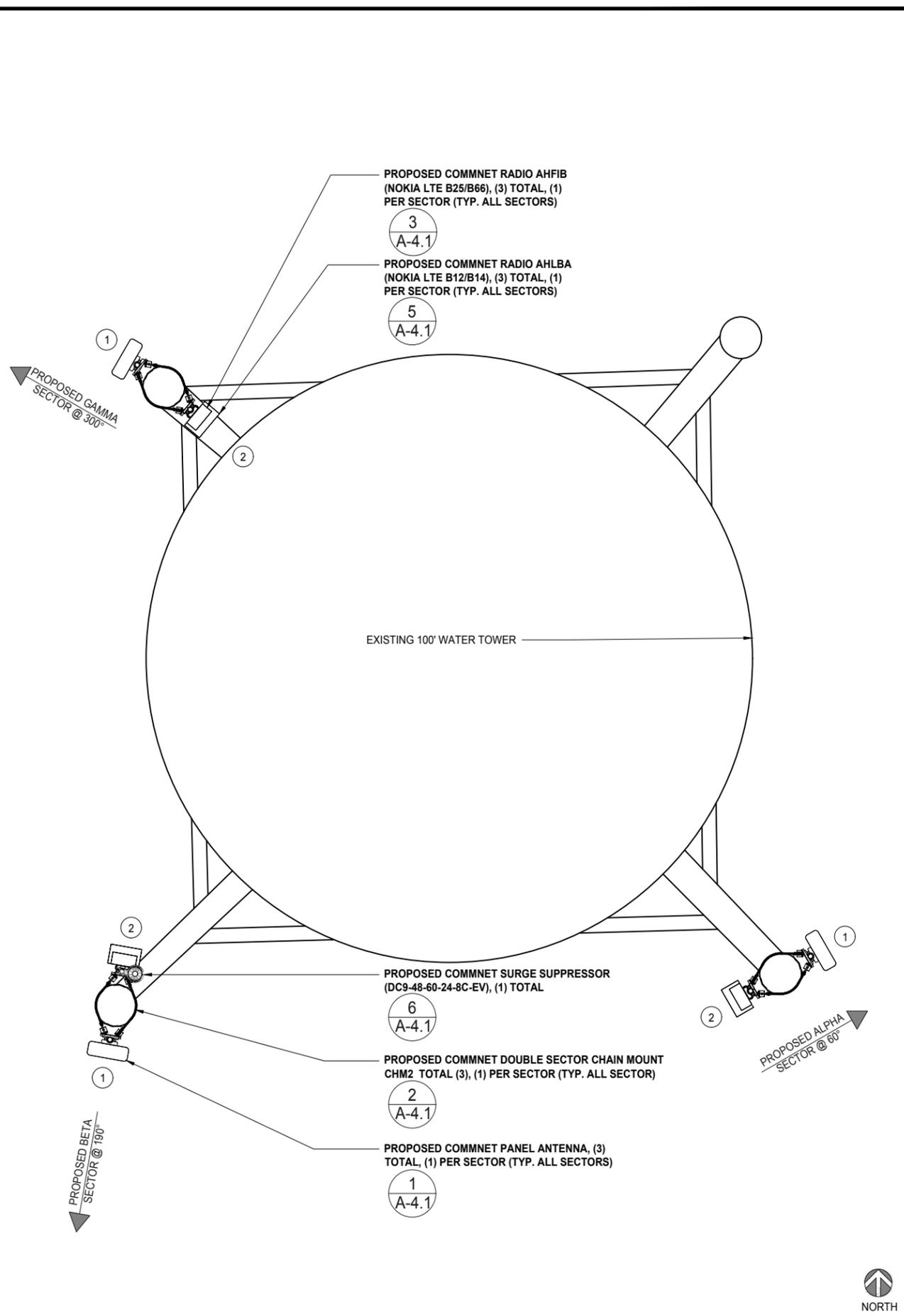
A-2.0



PROPOSED EQUIPMENT PLAN

0 6" 1" 2" SCALE: 1/2"=1'-0" (22x34)
(OR) 1/4"=1'-0" (11x17)

2



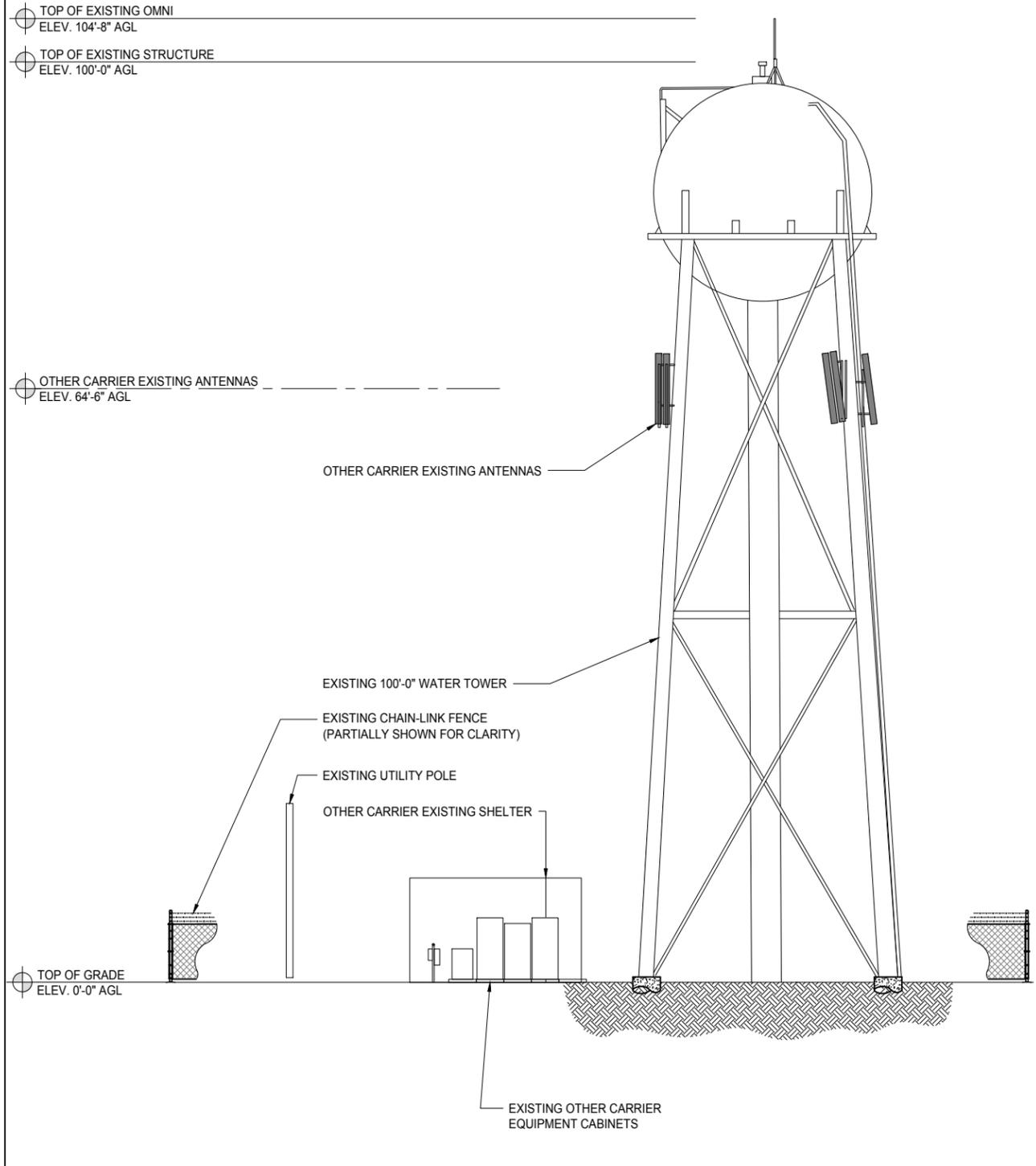
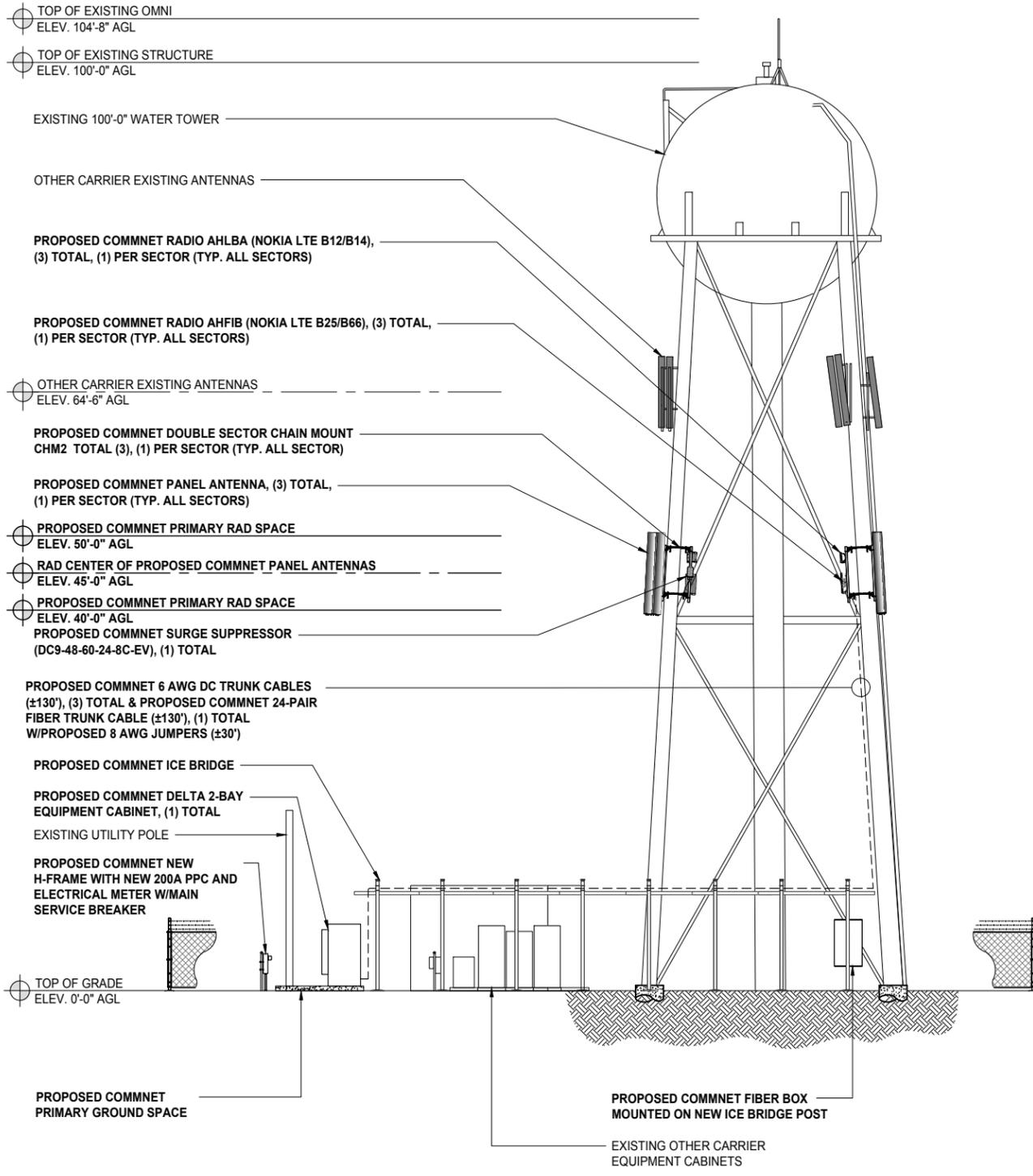
PROPOSED ANTENNA PLAN

0 1' 2' 4' SCALE: 1/4"=1'-0" (22x34)
(OR) 1/8"=1'-0" (11x17)

1

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

NOTE:
 • ALL PROPOSED ANTENNAS AND MICROWAVE DISHES SHALL BE PAINTED TO MATCH THE EXISTING STRUCTURE.



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

PROPOSED NORTHWEST ELEVATION

0 2' 4' 8" SCALE: 1/8"=1'-0" (22x34)
 (OR) 1/16"=1'-0" (11x17)

2

EXISTING NORTHWEST ELEVATION

0 2' 4' 8" SCALE: 1/8"=1'-0" (22x34)
 (OR) 1/16"=1'-0" (11x17)

1

Page 100 of 100

Commnet
 Connecting Rural America

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 jbanks@westchesterservices.com

REVISIONS				
REV.	DATE	DESCRIPTION	INITIALS	
0	07/24/20	PERMIT/CONSTRUCTION	JM	
1	09/24/20	PERMIT/CONSTRUCTION	RA	

STATE OF NEW MEXICO
 JOHN M. BANKS
 No. 004076

 REGISTERED ARCHITECT
 09/24/20 EXP. DATE: 12/31/21
 "I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME AND UNDER MY DIRECT SUPERVISION AND THAT I AM DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF NEW MEXICO"

FIRSTNET
 EL RITO
 NML02653A
 1140 STATE ROAD 554
 EL RITO, NM 87530

SHEET TITLE
EXISTING & PROPOSED ELEVATIONS

SHEET NUMBER
A-3.0