Agenda Item # 25

DISTRIBUTION
County Board
Radio Division
States Attorney
County Administrator
Finance and Administration Services

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

COUNTY BOARD, LAKE COUNTY, ILLINOIS

ADJOURNED REGULAR SEPTEMBER, A.D., 2007 SESSION

May 13, A.D., 2008

MADAM CHAIR AND MEMBERS OF THE COUNTY BOARD:

Your Financial and Administrative Committee present herewith a Resolution authorizing execution of a Lease Agreement with the Illinois Public Safety Agency Network regarding the placement of radio communication equipment and antenna at the County radio communications equipment building and tower in Libertyville, and request its adoption.

Respectfully submitted,

	Aye	Nay
	X	
Chair		
	✓	
Vice-Chair		
	X	
	✓	
	✓	
	✓	
	X	

FINANCIAL & ADMINISTRATIVE COMMITTEE

RESOLUTION

WHEREAS, the County owns the radio communications equipment building and tower located at 1303 N. Milwaukee Avenue, Libertyville; and

WHEREAS, the Illinois Public Safety Agency Network is currently occupying space in the radio communications building and on the tower for radio communication equipment and an antenna; and

WHEREAS, the Illinois Public Safety Agency Network has expressed interest in the continued use of space in the radio communications equipment building and tower for placement of radio communication equipment and an antenna; and

WHEREAS, the Illinois Public Safety Agency Network is willing to pay the County an annual rental fee for use of the radio communications building and tower; and

WHEREAS, a Lease Agreement has been prepared which sets forth the terms and conditions of placing the radio communication equipment and antenna at the radio communications equipment building and tower; and

WHEREAS, execution of a Lease Agreement must be authorized by Resolution of this County Board.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chair of the County Board is hereby authorized to execute the attached Lease Agreement with the Illinois Public Safety Agency Network for the placement of radio communication equipment and antenna at the County radio communications equipment building and tower in Libertyville.

DATED, AT WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 13th day of May, A.D., 2008.

TOWER LEASE AGREEMENT

This Agreement, made this ____ day of _____, 200__, between the **County of Lake**, a body politic, and corporation of the State of Illinois, with its principal mailing address of 18 North County Street, Waukegan, Illinois 60085, Tax ID# 36-6006600 hereinafter designated "LESSOR" and **Illinois Public Safety Agency Network**, with its principal mailing address of 8755 W. Higgins Road, Suite 190, Chicago, Illinois 60631, hereinafter designated "LESSEE." The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain space on the LESSOR's Communications Tower ("Tower") together with space, including the non-exclusive use of electricity, in the LESSOR's communications equipment building ("Building") located at 1303 North Milwaukee Avenue, Libertyville, Illinois 60048 (the entirety of LESSOR'S property is referred to hereinafter as the "Property") with the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of electronic equipment, antennas, cables, conduits, transmission lines and wiring over, under, or along a three (3) foot wide right-of-way extending from the one-hundred and eighty 180 foot mark on the Tower, to inside the building premises, said premises and right-of-way for access are made a part hereof which tower space, building space and right-of-way are collectively referred to hereinafter as the "Premises."

LESSEE shall be solely responsible for the entire cost of all construction and installation expenses associated with its use of the Premises and the contents and equipment located thereon, including non-exclusive use of tower and building structure, electricity, water, heat, data lines or any other entities used by LESSEE on the Premises. All construction and installation activities shall be reviewed and approved by the LESSOR's Communications Administrator (referred to hereinafter as "Administrator") and shall be performed in a good and workmanlike manner.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas and appurtenances including the non-exclusive use of electricity.

LESSEE reserves the right to replace the equipment with similar and comparable equipment provided said replacement does not increase tower loading, require or take up additional space in or on the said Premises, deviate from the terms and conditions of this agreement and is approved by the LESSOR's Administrator.

2. ELECTRICITY. LESSOR also hereby grants to LESSEE the non-exclusive right to use electricity located in the said Building, 24 hours a day, 7 days a week, not to exceed the power requirement, including surge and lightning protection.

LESSOR shall, if available, provide backup electricity to the premises during a commercial power outage, but will not be responsible for loss of electricity. LESSEE shall be responsible for backup UPS electricity for said equipment.

3. TERM. This Agreement shall be effective as of the date of execution by both parties, provided however, the LESSEE provides the LESSOR with a Three-Hundred Fifty Dollar ($350.00) cash deposit or an irrevocable letter of credit for the removal of equipment abandoned by the LESSEE. The initial term of this agreement shall be for one (1) year and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments will be due at an annual rental of Two-Thousand Seven-Hundred Forty-Five Dollars ($2,745.00) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as the LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date. The Commencement Date is defined as the first (1st) day of the month following the date this Agreement is executed by both parties.

4. EXTENSIONS. This Agreement may be extended for three (3) additional one (1) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term.

5. EXTENSION RENTALS. The annual rent for each year of each extension term shall increase by three percent (3%) over the rent of previous year.

6. ADDITIONAL EXTENSIONS. If at the end of the three (3) one (1) year extension terms this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term. Annual rental for each such additional one (1) year term shall be equal to 103% of the annual rental payable with respect to the immediately preceding year.

7. USE AND GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining and operating communications equipment. All improvements or additions shall be at LESSEE's expense and the installation of all improvements and additions shall be at the approval of the LESSOR. LESSEE shall have the right to replace, repair, or modify its equipment or any portion thereof, during the term of this Agreement, as long as the equipment is comparable, does not increase tower loading, does not take up additional space and does not deviate from the terms and conditions of this agreement. LESSEE will maintain the Premises in good condition with reasonable wear and tear, and will promptly repair any damage to the person or real property and improvements thereto of LESSOR caused by LESSEE's construction, maintenance, operation and use of its equipment. LESSOR will maintain the Tower and Building, the Premises, in good condition, with reasonable wear and tear. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities. All costs incurred in obtaining required Governmental Approvals shall be the sole responsibility of the LESSEE. In the event that any of such applications for such Governmental Approvals should be finally rejected or LESSEE determines that such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that LESSEE in its sole discretion will be unable to use the Premises for its intended purposes or the LESSEE determines that the Property is no longer technically compatible for its intended use, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of this

Agreement provided that three (3) months prior written notice is given the LESSOR. All rentals paid to said termination date shall be retained by the LESSOR. Upon such termination, this Agreement shall become null and void and the LESSEE shall be obligated to remove all said equipment including electronic equipment, antennas, cables, conduits, transmission lines wiring and data line connections. If said equipment is not removed within sixty (60) days of termination, LESSOR shall exercise its right to retain the cash deposit or irrevocable letter of credit for removal of said equipment.

8. ACCESS TO TOWER and BUILDING. LESSOR agrees that LESSEE shall have free access to the Tower and Building Twenty Four (24) hours a day, Seven (7) days a week, for the purpose of installing and maintaining the said equipment provided LESSEE provides LESSOR with a two (2) hour notice before arrival. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to said Building and Tower location. LESSEE agrees to pay LESSOR for any after hours, weekend or holiday callout of personnel at the standard service rates established annually by the Lake County Radio Department. Only authorized engineers, employees or properly authorized contractors of LESSEE or persons under the direct supervision of authorized on-site personnel will be permitted to enter said premises.

9. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all federal, state, county and local laws. The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. LESSEE shall be solely responsible for all costs of modification, lightning protection, repair or maintenance ("Maintenance") of the Tower incurred by LESSOR which are directly attributable to LESSEE's use of the Tower as a communications facility and which are required by the Federal Communications Commission. Notwithstanding the foregoing, in the event that the Tower is, at the time of such Maintenance, used by one or more carriers, the cost of Maintenance shall be distributed proportionately among all carriers.

LESSEE shall not use materials in the installation for the electronic equipment, antennas, cables, conduits, transmission lines and wiring that will cause corrosion, rust, deterioration or damage of the Tower structure or its appurtenances.

LESSEE shall provide at its own expense and only at approval by LESSOR's Administrator, lightning protection to all said electronic equipment, antennas, cables, conduits, transmission lines and wiring located on the Tower and at access points to the equipment Building. All electronic equipment, antennas, cables, conduits, transmission lines and wiring must be clearly identified by a marking fastened securely to its surface. All transmission lines, cables and wiring are to be tagged at the point where it enters the equipment Building and where it attaches to the equipment.

LESSOR may, within sixty (60) days of the third (3rd) anniversary of the Commencement Date and within sixty (60) days of the first day of any extension period inspect the Tower in order to assess any damage caused directly by LESSEE's use of the Tower. Any such inspection shall be at the sole cost and expense of LESSEE.

10. INTERFERENCE. LESSEE agrees to have installed radio equipment of the type and frequency which will not cause measurable interference to the equipment existing as of

the date this Agreement is executed by the Parties of the LESSOR or other lessees of the Property. In the event LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE of such interference, LESSEE will take all steps necessary to correct and eliminate the interference. In the event of LESSEE interference with LESSOR's emergency or public safety radio system or other communications activities on the Property, and in the event LESSEE cannot resolve such interference within twenty four (24) hours of notice, LESSEE shall cease operations until such interference is resolved. Thereafter, LESSEE may operate intermittently solely for the purpose of testing and interference resolution until the interference is finally cured, at which time LESSEE may continue normal operations again. LESSOR agrees that any future, additional tenants of the Property who take possession of the Property will be permitted to install only such radio equipment that is of the type and frequency which will not cause measurable interference to the existing equipment of the LESSEE.

11. LESSEE COMPLIANCE. All installations and operation in connection with this Agreement by LESSEE shall meet with all applicable Rules and Regulations of the Federal Communications Commission, Federal Aviation Agency and all applicable codes and regulations of the township, county and state concerned. Under this Agreement, the LESSOR assumes no responsibility for the licensing, operation, and/or maintenance of LESSEE's radio equipment.

12. INDEMNIFICATIONS. Each PARTY agrees to indemnify, save harmless and defend the other PARTY, its agents, servants and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any bodily injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this AGREEMENT. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the negligent conduct or omission of the other PARTY, its agents, servants or employees or any other person indemnified hereunder.

13. INSURANCE. The LESSEE hereby waives any and all rights of action for negligence against the LESSOR which may hereafter arise on account of damage to the premises or to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. LESSEE agrees that at its own cost and expenses, will maintain comprehensive general liability and property liability insurance with liability limits of not less than $1,000,000 for injury to or death of one or more persons in any one occurrence and $500,000 for damage or destruction to property in any one occurrence. LESSEE agrees that LESSOR may self-insure against any loss or damage which could be covered by a comprehensive general public liability insurance policy.

14. ANNUAL TERMINATION. LESSEE shall have the right to terminate this Agreement upon the annual anniversary of this Agreement provided that three (3) months prior written notice is given to the LESSOR. All rentals paid to said termination date shall be retained by the LESSOR. Upon such termination, this Agreement shall become null and void and the LESSEE shall be obligated to remove all said equipment including electronic equipment, antennas, cables, conduits, transmission lines wiring and data line connections. If said equipment is not removed within sixty (60) days of termination, LESSOR shall exercise its right to retain the cash deposit or irrevocable letter of credit for removal of said equipment.

15. REMOVAL UPON TERMINATION. LESSEE, upon termination of the Agreement, shall, within sixty (60) days, remove all its electronic equipment, antennas, cables,

conduits, transmission lines, wiring, data lines and personal property and otherwise restore the Property to its original condition, taking into consideration reasonable wear and tear. LESSOR agrees and acknowledges that all of the electronic equipment, antennas, cables, conduits, transmission lines, wiring, data lines and personal property of the LESSEE shall remain the personal property of the LESSEE and the LESSEE shall have the right to remove the same. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the electronic equipment, antennas, cables, conduits, transmission lines, wiring, data lines and all personal property is completed.

16. SUBCONTRACTOR . LESSEE has the right and will have sole responsibility at its own expense to subcontract for the installation of electronic equipment, antennas, cables, conduits, transmission lines, wiring, data lines on said Premises. Subcontractor(s) shall be an agent to the LESSEE and will be required to comply with all terms and conditions of this agreement. LESSEE shall be responsible for all actions of its subcontractor.

17. RIGHTS UPON SALE. Should the LESSOR, at any time during the term of this Agreement, decide to sell all or any part of the Property to a purchaser other than LESSEE, such sale shall be under and subject to this Agreement and LESSEE's rights hereunder, and any sale by the LESSOR of the portion of this property underlying the right of way herein granted shall be under and subject to the right of the LESSEE in and to such right of way.

18. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants shall peaceably and quietly have, hold and enjoy the Premises.

19. TITLE. LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same, and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above.

20. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between the LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon the LESSOR in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of LESSOR to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and the LESSOR shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

21. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Illinois and the 19th Judicial District in which the Property is located.

22. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE to the LESSEE's principal, affiliates, or subsidiaries of its principal without any approval or consent of, but with 15 days written notice to, the LESSOR. As to any entity which

acquires all or substantially all of the LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of merger, acquisition or other business reorganization, this Agreement may be sold, assigned or transferred by the LESSEE to such entity, provided that the entity to whom this Agreement is proposed to be sold, assigned or transferred affirms and warrants to LESSOR in writing that it will be fully bound by the terms of this Agreement and LESSEE's obligations thereunder and to operate the same or substantially the same equipment on the Premises as LESSEE. As to all other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld or delayed.

23. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: County of Lake
18 North County Street
Waukegan, Illinois 60085
Attention: Gary O. Gordon, Director Finance and Administration Services

LESSEE: Illinois Public Safety Agency Network
8755 W. Higgins Road, Suite 190
Chicago, Illinois 60631
Attention: Rose Rossi, Executive Director

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

24. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

25. DEFAULTS. In the event there is a default by the LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment or rent, the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, the LESSEE shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default, provided the LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The LESSOR may not maintain any action or effect any remedies for default against the LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this paragraph.

26. ENVIRONMENTAL.

a. LESSEE will be responsible for all obligations of compliance with any and all environmental and industrial hygiene and exposure laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene and exposure conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the activities of the LESSOR.

b. LESSEE shall hold LESSOR harmless and indemnify the LESSOR from and assume all duties, responsibility and liability at LESSEE's sole cost and expense, for all duties, responsibilities and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene and exposure law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene and exposure concerns or conditions as may now or at any time hereafter be in effect, unless such compliance results from conditions caused by the LESSOR; and b) any environmental or industrial hygiene and exposure conditions arising out of or in any way related to the conditions of the Property or activities conducted thereon, unless such environmental conditions are caused by the LESSOR.

27. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

28. SUBMISSION OF LEASE. The submission of this Lease for examination does not constitute an offer to lease the Premises and this Lease becomes effective only upon the full execution of this Lease by the Parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions of this Lease. Each of the Parties hereto warrants to the other that the person or persons executing this Lease on behalf of such party has the full right, power and authority to enter into and execute this Lease on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Lease.

29. APPLICABLE LAWS. LESSEE shall use the Premises as may be required or as permitted by applicable laws, rules and regulations. LESSOR agrees to keep the Property in conformance with all applicable, laws, rules and regulations and agrees to reasonably cooperate with the LESSEE regarding any compliance required by the LESSEE in respect to its use of the Premises.

30. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

31. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

32. INSTALLATIONS AND CONSTRUCTION PLANS. Prior to installation, LESSEE shall provide to LESSOR: plans and specifications for the construction and installation of any equipment which shall be mounted on the Tower or installed in the Building, and engineering studies which shall demonstrate that any such installation or construction shall not adversely affect the structural integrity of the Tower or Building. LESSEE shall be solely responsible for the cost of such studies. If required, LESSEE shall reimburse LESSOR for the cost of an independent review of the aforementioned studies.

33. MAINTENANCE OF THE TOWER and BUILDING. LESSOR may, at its sole discretion, maintain or cause the Tower and Building to be maintained. LESSOR shall notify LESSEE no less than thirty (30) days prior to such scheduled activity. LESSEE shall have the right to supervise and direct the maintaining of its equipment in order to prevent any damage caused by the maintenance thereof. LESSEE will be responsible at its own expense for maintenance performed to its equipment.

34. TAXES. LESSEE shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.
The parties hereby acknowledge that as of the time of the Agreement the Property is not used for private commercial purposes and is not subject to real estate taxes.

In the event that the Property becomes subject to real estate taxes in the future, LESSOR shall be solely responsible for and shall timely pay all real estate, special assessments or similar taxes relating to the Leased Property including any improvements made by LESSEE. Provided LESSOR requests reimbursement within sixty (60) days of receipt of the tax bill, and such taxes are directly attributable to the LESSEE's use of the property, LESSEE shall pay one hundred percent (100%) of the real estate taxes assessed to the Property. Notwithstanding the foregoing, in the event that the Property is used for any additional commercial purpose and the assessment of real estate taxes is, in whole or in part, attributable to such commercial use by LESSEE and others, LESSEE shall be responsible for only that portion of the taxes which are directly attributable to its use of the Property.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their irrespective seals the day and year first above written.

LESSOR:

The **County of Lake**, a body politic, and Corporation of the State of Illinois

_____ BY: _____

WITNESS

Suzi Schmidt
Its: County Board Chairman

LESSEE:

_____ BY: _____

WITNESS

Its: