

Distribution:  
County Board  
County Administrator  
CA/OMB - Controller  
CA/OMB - Budget  
Radio Department

STATE OF ILLINOIS )  
                                  )SS  
COUNTY OF LAKE )

COUNTY BOARD, LAKE COUNTY, ILLINOIS  
REGULAR SEPTEMBER, A.D. 2005 SESSION  
SEPTEMBER 13, A.D., 2005

MADAM CHAIRMAN AND MEMBERS OF THE COUNTY BOARD:

Your Law and Judicial and Financial and Administrative Committees present herewith a joint Resolution authorizing the Chair of the Board to execute an intergovernmental agreement with Park City for the purpose of the joint usage of the County's Public Safety and Public Service Radio System, and request its adoption.

Respectfully submitted,

Aye    Nay

Aye    Nay

Audrey Nixon ✓    \_\_\_  
Chairman

John P. Kelly X    \_\_\_  
Chairman

Dorothy White ✓    \_\_\_  
Vice Chairman

William M. Felt X    \_\_\_  
Vice-Chairman

Janella D. Heister ✓    \_\_\_

Ann Floriga Di ✓    \_\_\_

Teresa L. Grounds ✓    \_\_\_

Robert Sabour X    \_\_\_

Carol Calabrese ✓    \_\_\_

Carol Calabrese ✓    \_\_\_

Steph E. Cook ✓    \_\_\_

Steph E. Cook ✓    \_\_\_

Andy Cole ✓    \_\_\_  
Law and Judicial Committee

[Signature] X    \_\_\_  
Financial and Administrative Committee

## RESOLUTION

**WHEREAS**, the County owns and maintains a Com-Net Ericsson Enhanced Digital Access Communications System (EDACS) 800 MHz Public Safety and Public Service Radio System that provides radio communication coverage for areas within the boundaries of Lake County, and

**WHEREAS**, the radio system provides communications infrastructure for EDACS portable, mobile and base radio equipment, and

**WHEREAS**, the County intends to offer the use of its radio system to other local governments in Lake County, and

**WHEREAS**, the County adopted a model agreement in 2001, and amended in 2002, which authorized the County Board Chairman to execute said agreement with a public body so long as the agreement was not modified; and

**WHEREAS**, the intergovernmental agreement is a fair and standardized method of allowing other local governments to use the Lake County radio system while providing for their share of the maintenance costs; and

**WHEREAS**, the City of Park City has approached the County and requested that the County allow the City to use the County's radio system; and

**WHEREAS**, the City has requested one modification to the County's standard agreement by inserting the following clause in the agreement: "Both parties acknowledge that user shall not be utilizing the County for radio maintenance, unless otherwise requested in writing.";

**WHEREAS**, the insertion of the additional language requires that the County Board approve the agreement per the earlier Resolution of the County Board.

**NOW, THEREFORE, BE IT RESOLVED**, by this County Board of Lake County, Illinois, that the Chairman of the County Board is hereby authorized to enter into an intergovernmental agreement with the City of Park City, a copy of which is attached hereto and made part hereof, for use of the County's radio system.

**DATED**, at Waukegan, Lake County, Illinois, on this 13th day of September, A.D., 2005.

**AN INTERGOVERNMENTAL AGREEMENT PERMITTING THE USE  
OF THE COUNTY OF LAKE'S 800 MHz RADIO SYSTEM BY THE (CITY,  
TOWN, VILLAGE) OF PARK CITY FOR PUBLIC SAFETY AND  
PUBLIC SERVICE RADIO COMMUNICATION**

This Agreement is entered into as of the date of the last signature hereto ("Effective Date") between the County of Lake, a body politic and corporate ("COUNTY"), with its principal offices at 18 North County Street, Waukegan, Illinois 60085, and the (City, Town, Village) of Park City ("User"), with its principal offices at 3420 Kehm Blvd. Park City, Illinois 60085. This Agreement is created under the existing laws of the State of Illinois and the Federal Communications Commission.

**RECITALS**

WHEREAS, The COUNTY owns and maintains a Com-Net Ericsson Enhanced Digital Access Communications System ("EDACS") 800 MHz Public Safety and Public Service Radio System ("Radio System") that provides radio communications coverage for areas within the boundaries of the County of Lake. The radio system provides communication infrastructure for EDACS portable, mobile and base radio equipment, and

WHEREAS, the User desires to utilize the County Radio System for public safety and public service radio communications, and

WHEREAS, the County Radio System will provide interagency radio communication between the County and User, and

WHEREAS, Part 90 of the Federal Communications Commission Rules and Regulations promote the use of interagency interoperability, and

WHEREAS, the User agrees to compensate the County of Lake for infrastructure and terminal equipment maintenance, and

WHEREAS, the User agrees to abide by the rules and regulations set forth by Part 90 of the Federal Communication Commission Rules and Regulations for public safety and public service radio communications, and

WHEREAS, intergovernmental cooperation between Illinois governmental entities, including, but not limited to, intergovernmental agreements are specifically provided by law, and units of local government are authorized and encouraged to enter into intergovernmental cooperation agreements pursuant to Section 10 of Article VII of the Illinois Constitution of 1970 as well as Section 3 of the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, the COUNTY and the user have determined that this intergovernmental agreement is in the best interest to each of them and to the residents and taxpayers within their authorities to execute this agreement.

## AGREEMENT

Now, therefore, both parties agree that the above and foregoing recitals background and agreements are incorporated by reference as fully set forth and further agree herein as follows:

1. Use of the System

User wishes to utilize the COUNTY's EDACS 800 MHz radio system for its Public Safety and Public Service radio communications coverage and to establish interagency communication with the COUNTY. User agrees to utilize the system in accordance to the rules and regulations of the FCC, the COUNTY, and the State of Illinois and will operate the system in a professional manner and only for User's official business purposes. The COUNTY will not be responsible for additional coverage requirements as the User's needs may grow, but will allow the User to purchase, at the User's expense, additional infrastructure to increase the User's area of radio communication coverage.

2. Equipment Requirements

User shall purchase terminal equipment, at the user's expense, that will allow access to the COUNTY's EDACS 800 MHz Radio System and User shall be responsible for the operation and maintenance of said terminal equipment. The user shall only utilize mobiles, portables, bases, dispatch consoles, and accessories that meet the specification established by Com-Net Ericsson for use on a 800 MHz EDACS Radio System. User shall be solely responsible for purchasing equipment appropriate and necessary for its purposes and shall be responsible for determining whether its equipment will be operational on COUNTY's 800 MHz Radio System. User agrees that, unless otherwise explicitly provided herein, the COUNTY is not responsible for equipment purchased by User.

3. System Access

Access to the Radio System will only be granted after an intergovernmental agreement has been signed by both parties and the User has paid a system setup fee of \$31.20 per radio.

4. Infrastructure Maintenance Fees and Terms

The monthly usage fees for User's access and use of the Radio System are set forth in attached Exhibit "A" entitled "Lake County Radio Department 800 MHz Inter-Agency Agreement Fee Schedule." Both parties agree that the terms of this fee schedule shall govern payments pursuant to this Agreement. User agrees to pay the fees listed in said schedule for the Infrastructure Maintenance Cost, which will be assessed on an annual basis, pursuant to the Illinois Prompt Payment Act.

5. Equipment Maintenance Fees and Terms

The equipment maintenance fees and terms of the Lake County Radio Department are set forth in attached Exhibit "B" entitled "Lake County Radio Department Maintenance Terms and Conditions, Effective July 13, 2004." User also shall have the option of having COUNTY maintain User's equipment for the fees listed in said fee schedule. Both parties agree that these terms and conditions shall govern any and all maintenance of equipment. Both parties acknowledge that user shall not be utilizing the County for radio maintenance, unless otherwise requested in writing.

6. License

COUNTY shall hold and maintain a Federal Communications Commission license to operate the Lake County 800 MHz Radio System. User agrees to operate under and comply with all specifications, limitations, requirements, and conditions of the COUNTY's license. User agrees that COUNTY's Radio Department Administrator ("Administrator") shall monitor all communication on the Radio System to ensure compliance with Part 90 of Title 47 the Code of Federal Regulations (Private Land Mobile Radio Services). Administrator reserves the right to rectify any misconduct constituting a violation of Part 90 of the Code of Federal Regulations so as not to jeopardize COUNTY's FCC License. User agrees that the exercise of a remedy for any such misconduct rests entirely within the discretion of the Administrator. User also agrees and understands that said remedies may include an immediate cessation of service.

7. Non-Interference

User agrees and warrants that its use of the Lake County 800 MHz Radio System shall not cause interference to or with other users of the Radio System, including Lake County. User also agrees not to install any infrastructure that will cause coverage interference to the System. Further, if there is interference, User shall have sixty (60) days to correct, test, and remove such interference.

8. Lease Terms and Termination

8.1 This agreement shall commence upon the Effective Date and shall continue until December 31, 2009 (the "Initial Term"). Unless written notice is provided not less than 30 days prior to the expiration of the Initial Term, this Agreement shall automatically renew for consecutive one year terms until terminated by either party by providing at least thirty (30) days' written notice to the other party prior to the commencement of any subsequent renewal term.

8.2 Additionally, either party shall have an absolute right to terminate this Agreement without cause upon sixty (60) days written notice to the other. The COUNTY shall have the right to terminate this Agreement with cause upon thirty (30) days written notice to the user. For

purposes of this Paragraph, termination with cause includes but is not limited to nonpayment of any monies owed under this Agreement, breach or violation of any of the terms or provision of this Agreement or COUNTY's FCC license, violation of any County licensing agreement with any third party vendor, or misuse or unauthorized use of the COUNTY's 800 MHz Radio System. User shall be responsible for all monthly user fees and maintenance fees until the effective date of such termination, even after termination of this Agreement.

9. Warranties and Indemnification

9.1 EXCEPT AS SET FORTH ABOVE, COUNTY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In no event shall COUNTY be liable to User or any other party for any indirect, incidental, special or consequential damages, including, without limitation damages attributed to any malfunction of the 800 MHz Radio System; regardless of the cause of action, arising out of or in connection with a party's performance under this Agreement or COUNTY's 800 MHz Radio System, even if a party has been advised of the possibility of such damages. User waives any claim against COUNTY for punitive or exemplary damages. COUNTY's liability for all claims brought under this Agreement or relating to users of the Radio System, regardless of the form or cause of action, shall be limited to direct damages, which shall not exceed the amounts paid to the COUNTY hereunder. User's right to recover damages within the limitation as specified above is User's exclusive alternative remedy in the event that any other contractual remedy fails of its essential purpose. Any legal action arising from or in connection with any defect or failure in the performance or nonperformance of any service provided by COUNTY, must be brought within one (1) year after the event giving rise to such action. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

9.2 User agrees to defend themselves in any actions or disputes brought against the User in connection with or as the result of this Agreement and agrees to defend, indemnify and hold COUNTY harmless and free from liability of any kind whatsoever resulting from the acts or conduct of the User, its agents or representatives, or employees in the performance of this Agreement or in the furtherance thereof. Further, the User shall annually provide to COUNTY certificates of insurance detailing the actual coverages in force and effect during the term of this Agreement. County, its agents and employees shall be endorsed as additional insureds on applicable policies subject to this Agreement. The insurance shall provide for written notice to be sent to COUNTY within thirty (30) days of any cancellation or material change of said coverages. Said notice shall be sent to:

Department of Human Resources  
County of Lake  
18 North County Street  
Waukegan, IL 60085  
Attn: Risk Manager

The initial certificate of insurance shall accompany the executed copy of this Agreement.

10. Notices

Notices given by one party to the other under this Agreement shall be in writing and shall be delivered personally, sent by express delivery service, certified mail or first class U.S. mail postage prepaid and addressed to the respective parties as follows:

To COUNTY: County of Lake  
18 North County Street  
Waukegan, IL 60085  
Attn: Joni Young, Director of Contracts

To User: Park City Police Department  
3420 Kehm Blvd.  
Park City, Illinois 60085  
Attn: Chief Lay

or to such other address as either party shall designate by proper notice. Notices will be deemed given as of the earlier of a) the date of actual receipt, b) the next business day when notice is sent via express mail or personal delivery or c) three (3) days after mailing in the case of first class or certified U.S. mail.

11. Assignment

Neither party shall assign any right or obligation under this Agreement without the other party's prior written consent. Any attempted assignment shall be void.

12. Force Majeure

Neither party, nor their respective employees or agents, shall be liable in any way for delays, failure in performance, loss or damage due to any force majeure conditions, including but not limited to labor strikes or labor disputes, acts of God, civil riot restrictions by government authority, and any other causes beyond that party's reasonable control.

13. General

(a) Failure of either party to insist on performance of any term or condition of this Agreement or to exercise any right hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

(b) No third party shall have any rights under this Agreement as a third party beneficiary.

(c) The User represents that it has all requisite authority (corporate and otherwise) to enter into and perform its obligations under this Agreement.

(d) The User's rights and remedies set forth in this Agreement shall be the User's exclusive remedies, regardless of the cause of action, for the breach of this Agreement.

(e) Each party shall comply with all federal, state and local laws, rules and regulations applicable to its performance under this Agreement.

(f) If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a mutually agreeable valid and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

#### 14. Entire Agreement

This Agreement and the Exhibits referred to herein, which are incorporated herein by this reference, constitute the entire agreement between the parties with respect to the subject matter hereof superseding all previous understandings and communications, oral and written, between the parties. This Agreement may not be modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any invoice, purchase order or any other such document subsequently submitted by either party hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative as of the date of the last signature below.

Lake County

(User) Park City Police Department

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_