

AGREEMENT
BETWEEN THE COUNTY OF LAKE AND THE VILLAGE OF LAKE VILLA
FOR THE ATTACHMENT OF COUNTY-OWNED WIRELESS NETWORK
ANTENNAE AND APPARATUS ONTO AND INSIDE OF
THE VILLAGE-OWNED WATER TOWER LOCATED ALONG
DEEP LAKE ROAD (COUNTY HIGHWAY 36), SOUTH OF GRASS LAKE
ROAD (COUNTY HIGHWAY 18)

THIS AGREEMENT is entered into this _____ day of _____, A.D. 2009, by and between the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter referred to as the COUNTY, and the Village of Lake Villa, an Illinois Municipal Corporation, acting by and through its Mayor and Village Board, hereinafter referred to as the VILLAGE. The COUNTY and the VILLAGE are hereinafter referred to collectively as "parties" to THIS AGREEMENT, and either one is referred to individually as a "party" to THIS AGREEMENT.

WITNESSETH

WHEREAS, the VILLAGE owns a water tower (hereinafter referred to as WATER TOWER) located along the West side of Deep Lake Road (County Highway 36) on certain Village property identified by P.I.N.s 02-28-200-012 and 02-28-200-016 (hereinafter referred to as the "VILLAGE PROPERTY"), approximately 500 feet South of Grass Lake Road (County Highway 18) (as is generally depicted in the attached EXHIBIT A to THIS AGREEMENT), onto and/or inside of which the COUNTY wishes to permanently install wireless communication equipment, including antennae, aluminum poles, mounting brackets, fittings, radios, various wires and cables, a ground-level, wall-mountable enclosure and other associated apparatus (hereinafter "NETWORK EQUIPMENT"); and,

WHEREAS, said NETWORK EQUIPMENT is intended to enable the COUNTY to wirelessly and remotely control certain traffic signal interconnections with and/or in proximity to the VILLAGE at a cost less than if doing so by way of a traditional [buried] fiber-optic cable system; and,

WHEREAS, the NETWORK EQUIPMENT shall be integrated into the County's system of interconnected traffic signals, cameras, fiber-optic network and associated

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equipment (hereinafter "PASSAGE") and shall significantly expand the PASSAGE network without the installation of additional fiber optic cable; and,

WHEREAS, the VILLAGE is willing to allow the installation of the NETWORK EQUIPMENT in the interests of promoting the safe and efficient movement of vehicular traffic in and around the VILLAGE;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, made pursuant to all applicable statutes, local ordinances and authority, the COUNTY and the VILLAGE do hereby enter into the following:

SECTION I.
Recitals/Headings

1. It is mutually agreed by and between the parties hereto that the foregoing preambles are hereby incorporated herein as though fully set forth.
2. It is mutually agreed by and between the parties hereto that the "headings" as contained in THIS AGREEMENT are for reference only and the actual written provisions, paragraphs and words of THIS AGREEMENT shall control.

SECTION II.
Installation of the NETWORK EQUIPMENT

1. The COUNTY agrees to attach and install the NETWORK EQUIPMENT in accordance with the plans and specifications which shall be prepared by or on behalf of the COUNTY and at its expense, and such plans and specifications shall then be approved in advance in writing by the VILLAGE (hereinafter "PLANS") prior to any installation of NETWORK EQUIPMENT on the WATER TOWER.
2. The COUNTY shall, at its sole expense, cause to be installed by a qualified contractor approved by the Village (which approval shall not be unreasonably withheld), the NETWORK EQUIPMENT onto and inside of the WATER TOWER. The COUNTY warrants that said contractor shall satisfy the COUNTY's licensing and bonding requirements, that said contractor shall perform the installation in accordance with the PLANS, and that said contractor shall perform the work in a

safe and conscientious manner, employing "best engineering practices." The COUNTY shall be responsible to pay one-hundred percent (100%) of all restoration costs related to the WATER TOWER and the VILLAGE PROPERTY on which it is located, subject to the reasonable satisfaction of the VILLAGE, resulting from the installation, operation, maintenance, and/or removal of the NETWORK EQUIPMENT. (Said restorations might, for instance, include, but shall not be limited to, the restoration of any pavement or landscaping disturbed in the installation, operation, maintenance, and/or removal process, and/or might also include but shall not be limited to repainting of affected metal surfaces and/or welded areas.)

3. The COUNTY shall be responsible for payment of all electric and telephone utility charges, property taxes, insurance premiums, repair and maintenance expenses and all other fees, charges, costs and expenses relating to its installation, operation, maintenance, and/or removal of the NETWORK EQUIPMENT, provided, however, notwithstanding the foregoing, it is agreed by the parties that unless and until the NETWORK EQUIPMENT draws 101 watts or more of power at any time from the Village's power service, the COUNTY shall not be responsible for the cost of the electrical power, but if the NETWORK EQUIPMENT at any time draws 101 watts or more of electricity, all electric utility charges for the NETWORK EQUIPMENT shall thereafter be the responsibility of the COUNTY, and the COUNTY shall promptly take steps to separately meter and maintain the electric service for such NETWORK EQUIPMENT, all at the COUNTY's sole cost and expense.
4. Except in cases of emergency, the COUNTY shall give no less than forty-eight hours notice to the Village Public Works Department of its intent to enter upon, onto or into the subject WATER TOWER to perform installation, maintenance, replacement or removal activities. In the event of an emergency, the COUNTY shall provide such shorter notice as is practical under the circumstances. Notice under this paragraph may be given by telephonic, facsimile or written communication.
5. Should the installation of the NETWORK EQUIPMENT, or any portion thereof, require approvals by any regulatory bodies (e.g., the Federal Communications Commission and/or the Federal Aviation Administration), the COUNTY shall, at its sole expense, prepare all necessary applications and obtain the necessary approvals from all such regulatory bodies prior to installation of the NETWORK EQUIPMENT and shall provide to the VILLAGE copies of such approvals.

6. The VILLAGE agrees to supply to the COUNTY a comprehensive listing of all users transmitting radio frequencies (RF) from any VILLAGE-owned facility. (Said users might include cellular communication carriers, police and fire departments, etc.) Said listing shall include, for each user, the name of said user, the frequency at which that user operates and the power level at which that user transmits his/her/its signal. Using the data from said comprehensive listing, the COUNTY shall then evaluate the potential for radio-frequency (RF) interference between its equipment and any of the existing equipment. Provided, however, the Village makes no warranty as to the accuracy of the information provided to the COUNTY under this Paragraph.
7. The COUNTY warrants that the operation of the NETWORK EQUIPMENT, or any part thereof, shall not create RF interference with any of the users now operating RF equipment at any VILLAGE-owned facility and the COUNTY warrants that the operation of the NETWORK EQUIPMENT, or any part thereof, shall not create RF interference with any of such users. If the VILLAGE or the COUNTY determine that the NETWORK EQUIPMENT creates RF interference with any existing users of the WATER TOWER, the COUNTY shall promptly remove the NETWORK EQUIPMENT from the WATER TOWER and the VILLAGE PROPERTY, or promptly take steps to eliminate such RF interference, subject to the approval of the Village, all at the COUNTY's sole cost and expense.
8. The COUNTY agrees to perform, or cause to have performed, at its sole expense, maintenance upon the NETWORK EQUIPMENT, ensuring that it is kept in proper working order.
9. At any time and at the request of the VILLAGE, the COUNTY shall, at its sole expense, paint, or cause to be painted, the NETWORK EQUIPMENT (or portions thereof, as specified by the VILLAGE) in a color substantially similar to that of the WATER TOWER.
10. The COUNTY shall, at its expense, keep all of the NETWORK EQUIPMENT fully insured for fire, windstorm and other casualties and shall maintain general liability insurance, workman's compensation insurance and any other insurance reasonably requested by the VILLAGE. The general liability insurance shall have a minimum limit of \$2,000,000 and the workman's compensation insurance shall meet applicable statutory requirements. The COUNTY's current self-insurance program

is acceptable to the Village so long as the minimum coverages provided herein are met. The COUNTY, and each COUNTY contractor or subcontractor which performs any work on the WATER TOWER and/or on the VILLAGE PROPERTY relative to the NETWORK EQUIPMENT, shall provide and maintain with the VILLAGE a certificate of insurance disclosing the required coverages and the VILLAGE, its officers, trustees, employees, and agents, shall be named as additional insured thereon. The certificates shall provide that coverage will not be canceled without at least thirty (30) days prior written notice to the VILLAGE.

11. Unless and until the NETWORK EQUIPMENT draws 101 watts or more of electricity at any time, the VILLAGE agrees to pay one-hundred percent (100%) of all energy costs required for the operation of the NETWORK EQUIPMENT, and if the NETWORK EQUIPMENT at any time draws 101 Watts or more of electricity, all electric utility charges for the NETWORK EQUIPMENT shall thereafter be the responsibility of the COUNTY, and the COUNTY shall promptly take steps to separately meter and maintain the electric service for such NETWORK EQUIPMENT, all at the COUNTY's sole cost and expense.

12. The VILLAGE reserves the right to perform maintenance on the WATER TOWER as it sees fit, in its sole discretion. The VILLAGE reserves the right to request that the COUNTY, at its sole expense, fully protect, or if the VILLAGE deems it necessary, to temporarily remove (or at a minimum, protect) all or a portion of the NETWORK EQUIPMENT, and the COUNTY agrees to promptly comply with any such request by the VILLAGE. At the completion of the VILLAGE's maintenance activity, the COUNTY shall, also at its sole expense, reinstall the necessary NETWORK EQUIPMENT or portions thereof and return the installation to its condition prior to the commencement of the VILLAGE's maintenance activity. The COUNTY shall also be responsible to pay one-hundred percent (100%) of all restoration costs related to the WATER TOWER and the VILLAGE PROPERTY for all restorations requested by the VILLAGE as a result of the maintenance, repair, re-installation, operation, and/or removal of the NETWORK EQUIPMENT. Except under emergency conditions, the VILLAGE shall provide to the COUNTY a minimum of thirty (30) days written notice prior to the commencement of the VILLAGE's maintenance activity.

SECTION III.
General Provisions

1. The COUNTY shall indemnify and hold harmless the VILLAGE (including its elected officials, duly appointed officials, officers, employees and agents) from any and all losses, damages, claims and causes of action, including attorneys' fees and court costs (hereinafter CLAIMS) arising from the installation, operation or maintenance of the NETWORK EQUIPMENT.
2. It is mutually agreed by and between the parties hereto that nothing contained in THIS AGREEMENT is intended or shall be construed as in any manner or form creating or establishing a relationship of co-partners between the parties hereto, or as constituting the VILLAGE (including its elected officials, duly appointed officials, officers, employees and agents) the agent, representative or employee of the COUNTY for any purpose or in any manner, whatsoever. The VILLAGE is to be and shall remain independent of the COUNTY with respect to all services performed under THIS AGREEMENT.
3. It is mutually agreed by and between the parties hereto that each party warrants and represents to the other party and agrees that (1) THIS AGREEMENT is executed by duly authorized agents or officers of such party and that all such agents and officers have executed the same in accordance with the lawful authority vested in them, pursuant to all applicable and substantive requirements; (2) THIS AGREEMENT is binding and valid and will be specifically enforceable against each party; and (3) THIS AGREEMENT does not violate any presently existing provision of law nor any applicable order, writ, injunction or decree of any court or government department, commission, board, bureau, agency or instrumentality applicable to such party.
4. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be deemed to take effect on May 1, 2009 provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to May 1, 2009. In the event the date that the last authorized agent of the parties hereto affix their signature to THIS AGREEMENT is subsequent to May 1, 2009, the effective date of THIS AGREEMENT shall then be the first day of the month which follows the date that the last authorized agent of the parties hereto affixes his/her signature.
5. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be enforceable in any court of competent jurisdiction by each of the parties

hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements and obligations contained herein.

6. It is mutually agreed by and between the parties hereto that the provisions of THIS AGREEMENT are severable. If any provision, paragraph, section, subdivision, clause, phrase or word of THIS AGREEMENT is for any reason held to be contrary to law or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of THIS AGREEMENT.
7. It is mutually agreed by and between the parties hereto that the agreement of the parties hereto is contained herein and that THIS AGREEMENT supersedes all oral agreements and negotiations between the parties hereto relating to the subject matter hereof. Any prior agreements between the parties hereto shall remain in full force and effect, except as modified by THIS AGREEMENT.
8. It is mutually agreed by and between the parties hereto that, at such time as the NETWORK EQUIPMENT is no longer of use to the COUNTY, the COUNTY shall, at its sole expense, remove, or cause to be removed, the NETWORK EQUIPMENT from the WATER TOWER. Following said removal, the COUNTY shall be responsible for restoring and returning the WATER TOWER and the VILLAGE PROPERTY on which such tower is located to, as nearly as possible, the same state and condition existing prior to the installation of the NETWORK EQUIPMENT.
9. It is mutually agreed by and between the parties hereto that any alterations, amendments, deletions or waivers of any provision of THIS AGREEMENT shall be valid only when expressed in writing and duly executed by the parties hereto.
10. Except as specifically provided in Sections II.4. and II.12. with respect to emergencies, it is mutually agreed by and between the parties hereto that any written communication required under THIS AGREEMENT (including, but not limited to, that pursuant to Sections II.6., II.9., II.12. and III.9 of THIS AGREEMENT) shall be conducted through standard U.S. Postal Service delivery, proper postage prepaid, and shall be addressed as follows:

If to the COUNTY:

County Engineer

Lake County Division of Transportation
600 W. Winchester Rd.
Libertyville, IL 60048
(or current address)

If to the VILLAGE:

Mayor
Village of Lake Villa
65 Cedar Avenue
Lake Villa, IL 60046
(or current address)

Notice shall be deemed received by a party two (2) business days after mailing of said notice.

12. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. Provided, however, the COUNTY shall not sell, transfer or assign all or any portion of its rights under THIS AGREEMENT without first obtaining the prior written consent of the VILLAGE, which consent shall not be unreasonably withheld.
13. It is mutually agreed by and between the parties hereto that THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
14. THIS AGREEMENT shall continue until terminated by either party on ninety (90) days prior written notice to the other party, except that in the event of a default or violation of any of the terms and conditions of THIS AGREEMENT by the COUNTY, the VILLAGE may terminate THIS AGREEMENT on thirty (30) days written notice to the COUNTY unless the COUNTY cures such default or violation within such 30-day time period.
15. Upon termination of THIS AGREEMENT, the COUNTY shall, at its sole expense, remove the NETWORK EQUIPMENT within thirty (30) days thereafter and shall, pursuant to THIS AGREEMENT, restore, also at the COUNTY's sole expense, the WATER TOWER and the VILLAGE PROPERTY on which such tower is located to the condition which existed prior to the date of THIS AGREEMENT. In the

event the COUNTY fails to do so, the VILLAGE may thereupon remove or cause to be removed the NETWORK EQUIPMENT and the COUNTY shall reimburse the VILLAGE for the cost thereof within thirty (30) days of being invoiced by the VILLAGE for such cost.

- 16. Upon being invoiced therefor, the COUNTY shall promptly reimburse the Village in an amount not to exceed Eight Hundred Dollars (\$800.00) as and for the Village's costs of its legal review and negotiation of THIS AGREEMENT.

VILLAGE OF LAKE VILLA

ATTEST:

By:

Alice Brownlee
Village Clerk

Jack L. Sefford
Mayor

Date: 4/22/09

RECOMMENDED FOR EXECUTION

Martin G. Buehler, P.E.
Director of Transportation / County Engineer
Lake County

ATTEST BY:

COUNTY OF LAKE

Chair
Lake County Board

County Clerk
Lake County

Date: _____

04/14/09

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EXHIBIT A

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The Water Tower ("WATER TOWER")

