

LEASE AGREEMENT

CAO DOC 208293

This Lease Agreement (“Lease”), is made as of this ____ day of _____, 2014 (the “Effective Date”), and is by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter referred to as “City,” as the LANDLORD, and MILWAUKEE COUNTY, also a Wisconsin municipal corporation, hereinafter referred to as “County,” as the TENANT. Herein after City and County, together shall be referred to as “Party” or “Parties”.

RECITALS

- A. City owns certain real estate and improvements located at 8463 North Granville Road, in Milwaukee, Wisconsin, (“Property”).more particularly described on Exhibit A. City currently operates Milwaukee Fire Department Engine 38 from a fire station located on the Property.
- B. There is currently a 180 foot_ high City-owned tower on the Property on which County has installed systems for its Public Safety Radio System (“Existing Tower”). County currently houses the equipment for the Public Safety Radio System inside the portion of the Property in which City operates its fire station.
- C. County wishes to construct a new tower on the Property and an equipment shelter on the Property.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City as Landlord, County as Tenant, hereby agree as follows.

1. Lease of Part of the Property. City hereby leases to County, and County leases from City: (a) so much of the Property to build a hundred eighty foot (180’) radio tower (the “New Tower”) for the County’s radio-communication system; (b) that portion of the Property depicted on Exhibit B hereto (the “Map”) that County will use to build a Radio Equipment Shelter (the “New Shelter”) in which

to house radio communications system equipment.. The portion of the Property used for the New Tower and the New Shelter is herein called the “County Ground Area.”

2. **Term.** The term of the Lease (the “Term”) shall be for twenty-five (25) years. County may, at its option, extend the Lease for an additional term of five (5) years upon mutual written agreement by both Parties sixty (60) days prior to the expiration of the original term. All provisions of this Lease applicable to the original term thereof shall apply with equal force to the extended term.
3. **Rent.** Rent hereunder shall be one (\$1.00) dollar per year, and shall be prepaid as follows. For the first year, rent shall be paid upon execution of the Lease, at the rate of one (\$1.00) dollar for the number of days remaining from the Effective Date of this Lease to December 31 of that same year. For each year thereafter, annual rent of one (\$1.00) dollar per year shall be paid on or before January 31 for the particular year at issue. The parties deem the \$1.00 per year rent payment as adequate consideration for this agreement. Rent shall be tendered to the City’s Office of the City Treasurer and shall be in the form of a County check made payable to the City of Milwaukee.
4. **County to Construct and Install; Compliance with all Laws.** The County shall, at its sole expense, and according to plans that have first been approved by the City, build a twelve (12) foot by twenty-four (24) foot New Shelter to house all necessary radio communication equipment, network equipment, and related primary and secondary electrical, gas, heating, ventilation and air conditioning to service the Milwaukee County Public Safety Radio system. County shall, at its sole expense, and according to plans that have first been approved by the City, build a 180’ Tower for County’s Public Safety Radio system. Construction and installation will be performed in a professional, and good and workmanlike manner, and in accordance with all federal, state, and local laws. County shall, at its sole expense and according to plans that have first been approved by the City, construct the concrete approach required to gain access to the County Ground

Area from the nearest City-owned road, in accordance with all laws, rules and regulations, federal, state, and local. County shall construct at the Property a separate fully enclosed fence system with a lockable gate (the “County-Related Fencing”), such that County personnel can access the County Ground Area. Upon completion of the New Tower, New Shelter, and migration of Milwaukee County Public Safety Radio system equipment from the Existing Tower to the New Tower, County shall be responsible for the removal of the Existing Tower. County shall be responsible for obtaining all necessary governmental licenses, permits, and approvals for such. Further, County shall comply with all laws, rules and regulations, federal, state, and local regarding County’s use and operation of County’s equipment at the Property – including, but not limited to, any FCC or FAA regulation and any Homeland Security rule or order, regarding the operation of radio transmitting and receiving equipment, and County’s other equipment at the County Ground Area. Upon completion of the installation, County shall provide City with a copy of the as-built drawings.

5. **Reservation of City Rights.** City reserves for itself the following express rights:
- A. The right to install, at its sole expense, City emergency communication systems and related components, devices, and antennae at the County Ground Area in the New Shelter and on the New Tower as City deems necessary for City emergency communication systems and according to plans that have first been mutually agreed upon by both the City and the County.
 - B. The right of entry by City Radio personnel, registered/approved vendors, and City of Milwaukee Information Technology Management Division personnel to the County Ground Area and the New Shelter. Any and all other City personnel are restricted.

6. **Reservation of County Rights.** County reserves for itself the following express rights:

- A. The continuing right to, from time to time, promulgate reasonable rules concerning the County Ground Area, Tower, New Shelter, and the City's use and occupancy of same, including, but not limited to, added security measures.
- B. The right to improve, replace and upgrade the radio system at the Property so long as the physical area taken up, either on the Tower or in the County Ground Area, is approximately the same.
- C. The right to enter the County Ground Area in accordance with this Lease at such times as County desires.

7. **Placement of Equipment.**

- A. Placement of County's equipment in County's New Shelter shall be within the County's discretion, taking into account certain engineering and environmental concerns including, but not limited to, spacing intervals and transmission frequencies. Additionally, City and County will work together to identify mutually agreeable placements for City's antennae and amplifier.
- B. Parties agree that a structural assessment will be required for future installations on the Tower. Current and future installations will not exceed structural load capacity.
- C. The new Tower and related County Ground Area are currently designated for City and County public safety communications. Future contracts with government, private, non-profit, commercial or cellular communication system providers must be mutually agreed to, in writing, by both Parties.

8. **County Maintenance.** County shall, at all times during the Term, be solely responsible, at County's expense, for the maintenance and upkeep of the County's equipment including, but not limited to, antennae, radio communication equipment, and Tower.

9. **City Maintenance.** City shall be solely responsible, at City's expense, for all expenses associated with the maintenance and upkeep of the City-owned radio communication equipment. County shall, at no time during the Term, bear any responsibility for expenses associated with the maintenance or upkeep of City-owned equipment. City shall, at no time during the Term, bear any responsibility for expenses associated with the maintenance or upkeep of County-owned equipment. City shall, at all times during the Term, be solely responsible, at City's own expense, for expenses associated with the maintenance and upkeep of the access road to the Property, and lawn care including, but not limited to mowing and weeding of the lawn on the Property at regular intervals, and in compliance with local ordinances for such.

10. **Utilities.**

City shall, at all times during the Term, be solely responsible, at City's expense, for all utility expenses, including gas and electric expenses associated with the radio communication equipment owned by City and with the radio communications equipment owned by County, including any gas or electrical lines, wires, cables, or hook-ups needed for same. County shall, during the construction phase, make every available effort to connect utility lines to the existing lines located at the City's fire station. The amount of equipment being relocated from the basement of the City's fire station into the New Shelter will be approximately the same; therefore it is estimated that existing utility connections will be sufficient to connect the New Shelter to the City's fire station hook-ups and metering.

11. **Hold Harmless and Indemnification.**

- A. City agrees to defend, indemnify, and hold harmless County, County's employees, officers, agents, contractors, and volunteers from and against any and all claims, demands, action and causes of actions and resulting liability, loss, damages, costs and expenses, including attorneys' fees arising out of or in any way related to or associated with or arising from the activities covered by this Lease including but

not limited to any wrongful, intentional, or negligent act or omission of City its employees, officers, agents, contractors, and volunteers who participate in the activities covered by this Lease including but not limited to violations of Section 25.

- B. County agrees to defend, indemnify, and hold harmless City, City's employees, officers, agents, contractors, and volunteers from and against any and all claims, demands, action and causes of actions and resulting liability, loss, damages, costs and expenses, including attorneys' fees arising out of or in any way related to or associated with or arising from the activities covered by this Lease including but not limited to any wrongful, intentional, or negligent act or omission of County its employees, officers, agents, contractors, and volunteers who participate in the activities covered by this Lease including but not limited to violations of Section 25.
- C. In the event that City's antennae damage the New Tower, or any County-owned equipment, then City agrees to repair or replace the New Tower or equipment, and to indemnify County and to pay for such direct or consequential damage.
- D. In the event that the County's antennae damage the fire station, fire equipment or any City owned equipment, then the County agrees to repair or replace said City property and to indemnify City and to pay for such direct or consequential damage.

12. **Installations at End of Term.** Neither County's nor City's ownership rights to previously owned equipment installed at the Property shall be affected by the termination of this Lease. At the end of the term of the Lease whether due to expiration of the Term or due to termination, City shall be given the opportunity to purchase from the County, at fair market value, the New Tower, the New Shelter and the New generator, for continued used for the City's Public Safety Radio System. Should the City not exercise its option to purchase the New Tower, the New Shelter, and the New Generator, then the County will be responsible for

the removal of the New Tower, the New Shelter, and the New Generator and any remediation that is necessary to return the site to its original condition.

13. **Interference.** Each Party agrees that it will promptly eliminate any electromagnetic or other signal interference problems caused by that Party's use of or tenancy at the Property upon notice of same from the other Party. If the interference cannot be eliminated by the interfering Party within thirty (30) days of notice, the interfering Party shall, upon the other Party's request, remove the equipment causing said interference from the Property, and restore any damage to the Property caused thereby. If any electromagnetic or other signal interference problems that are caused by either Party's use of or tenancy at the Property adversely affect the other Party's critical public-service-communications system or other radio systems at the Property, the other Party may demand that the interfering Party immediately cease operations until the problem is corrected.

14. **Certain Express Termination Rights.**

A. County reserves the right to terminate this Lease after ninety (90) days' advance written notice: (a) if County is unable to secure, despite good faith and diligent efforts, requisite governmental licenses, permits and/or approvals to maintain and operate its equipment at the Property; (b) if the FCC or FAA or other governmental body or agency issues regulations that make County's continued operation or maintenance of its equipment at the Property imprudent and unfeasible, such as, but not limited to, a take-back of bandwidth or channels that makes County's equipment unusable for its intended purpose; and/or (c) if County reasonably determines that the Property is not suitable for County's operation of its communications system due to technical reasons, including, but not limited to, unreasonable signal interference or inadequate signal strength.

15. **Force Majeure.** City shall not be liable to County for any loss or damage to the County's equipment, use or equipment due to fire, other casualty, act of God, the

state of repair of the New Shelter, the bursting or leakage of any water, gas, sewer or steam pipes, or theft or any other act of neglect of any third party unless such loss or damage was caused by the sole negligent act or omission of City, its agents, servants, employees, contractors, licensees or invitees.

16. **Successors and Assigns.** This Lease binds and inures to the benefit of the Parties hereto and their successors and assigns. Notwithstanding the foregoing, however, County may assign, convey, sublease, license, or transfer any right, title, or interest hereunder or in the County Ground Area with express written agreement from the City.
17. **Entire Agreement.** This Lease constitutes the entire agreement between the parties and all prior statements, written or oral, are terminated and of no effect. This Lease may only be amended by a written agreement signed by all the parties hereto.
18. **Severable.** The terms and provisions of this Lease are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity of enforceability of the remaining terms and provisions.
19. **Authority to Sign.** County and City each represent that their respective signatories have authority to sign this Lease.
20. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by electronic mail, then the notice must be sent during business hours (i.e. 8:30 A.M. to 4:30 P.M., Monday through Friday) so long as the notice is successfully sent (i.e. the sender does not receive any error or “account disabled” or “inability to send” notification), and (iii) within two

business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

A. If to City:

City of Milwaukee Police Department
John M. Mesich
Radio Communications Manager
749 West State Street, 7th Floor
Milwaukee, Wisconsin 53233
Phone: 414-935-7473

With a Copy to:

Milwaukee Fire Department
Attn. Chief Engineer
711 E. Wells Street
Milwaukee, WI 53233
Fax: 414-
Phone: 414-286-8948

With a further copy to:

Office of the City Attorney
800 City Hall
200 East Wells Street
Milwaukee, Wisconsin 53202
Fax: 414-286-8550
Phone: 414-286-2620

B. If to County:

Milwaukee County
Attn: Hugh Morris
2711 West Wells Street
Milwaukee, Wisconsin 53208
Phone: 414-278-2055
Fax: 414-223-1289

With a further copy to:

Milwaukee County Corporation Counsel
Attn: Attorney Paul Bargren
901 North 9th Street, Room 303
Milwaukee, Wisconsin 53233
Fax: 414-223-1249
Phone: 414-278-4300

The parties hereto may, from time to time, as needed, change the recipient and address information above by providing notice of new/replacement information by notice as required hereunder.

21. **County's Emergency Contact Person.** County shall provide to City, the name, work phone, home phone, and cell phone of an emergency contact person for the County who City may contact, on a 24- hour-per-day, 7- day-per-week, 365-day-per-year basis regarding the New Tower, the Property, or County's equipment at the Property, and attached hereto as **Exhibit C.** County shall ensure that such emergency contact data is kept current and up-to-date.

22. **Headings.** The headings used herein are for convenience only

23. **County Insurance.** The County is self-insured.

24. **Open Records Law.** County and City are each subject to Wisconsin's open records law, and each understands that this Lease and certain documents and records relating thereto or required hereunder may be subject to disclosure under such law. Each agrees to cooperate with the other concerning open records requests that may be made against either.

25. **Environmental.** With the exception of natural gas hook-up for County's back-up power generator and standard over-the-counter cleaners that County shall use in a careful and reasonable manner as part of its maintenance duties, County shall not introduce environmental hazards, solvents, or pollutants to the Property. And, in any event, County shall not release environmental hazards, solvents, or pollutants that could subject the Property or its owner to any state or federal clean-up or remediation order, or in any manner that adversely affects health, safety, or welfare, or that pollutes or contaminates soils or groundwater at the Property.

26. **Occupational/Controlled Exposure.** County shall provide information as may be necessary to enable City to meet (concerning any City personnel who may be required to be or work at the Property) any published guidelines establishing maximum permissible exposure limits for occupational/controlled exposure to radio frequency electromagnetic fields (as referenced in Part 1 of the FCC's Rules and Regulations, including 47 CFR § 1.1310).

[Signature page to follow]

IN WITNESS WHEREOF, the parties caused this Lease to be entered into and executed as of the Effective Date first written above.

LANDLORD:
CITY OF MILWAUKEE

TENANT:
MILWAUKEE COUNTY

By: _____
Tom Barrett, Mayor
City of Milwaukee

By: _____
Chris Abele, County Executive
Milwaukee County

And By: _____
James Owczarski, City Clerk

And By: _____
Amy Pechacek, Director
DAS- Risk Management

COUNTERSIGNED:

By: _____
Martin Matson, City Comptroller

And By: _____
Scott Manske, County Comptroller

CITY ATTORNEY APPROVAL
(Ord. § 304-21)

COUNTY APPROVAL FOR
EXECUTION

Assistant City Attorney

Timothy R. Karaskiewicz
Assistant Corporation Counsel

EXHIBIT A

Legal Description of Property

LANDS IN NW ¼ Sec 8-8-21 COMW LI of N Granville Rd & NLV LI of W Donna Drive of SD ¼ Sec-
Th NWLY ALG SD W LI SD RD 262' – TH SWLY 172.95' –TH SELY 171.49' – TH E 191.87'-TH
NELY 66.50' TO BEG

TK# 040997710

Exhibit B

Map of Leased Premises

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EXHIBIT C

COUNTY'S EMERGENCY CONTACT LIST

Hugh Morris

Milwaukee County Radio Systems Manager

Milwaukee County, IMSD

2711 West Wells Street Rm#532

Milwaukee, Wisconsin 53208

414.278.2055 Office

414.702.2912 Work Cell (24-Hour)

414.278-7899 Fax

414.902-0069 Personal Cell

Hubert.morris@milwaukeecountywi.gov

Clyde Gestl

Motorola Service Technician

Milwaukee County

414.278-5142 Office

414.234.1121 Work Cell (24-Hour)

Clyde.Gestl@milwaukeecountywi.gov

Clyde.gestl@motorolasolutions.com

Baycom

24-Hour Answering Service

414.546.2011



SHEET NO. 1 OF 1 1	PROJECT NO. 0814-14602	SHEET NO. 1	PROJECT TITLE ENGINE 38 TOWER SITE	SCALE 1"=80'	DRAWN BY DSG
		DRAWING NO. 1	DRAWING DESCRIPTION SITE PLAN	DATE 10/10/14	CHECKED BY DSG



MILWAUKEE COUNTY DEPARTMENT OF
 ADMINISTRATIVE SERVICES
 Architecture, Engineering &
 Environmental Services Section

CITY CAMPUS 8711 N. WILCOX ST. SECOND FLOOR MILWAUKEE, WI 53200

