

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: 7a
	Title:	Recommendation to Approve a Resolution for a Lease License Agreement with the Kane County State’s Attorney’s Office for Digital Forensic Services and Use of the St. Charles Police Department’s Digital Laboratory and Associated Office Space	
Presenter:	Police Chief Keegan		
Meeting: Government Operations Committee		Date: February 5, 2024	
Proposed Cost: \$		Budgeted Amount: \$	Not Budgeted: <input type="checkbox"/>
TIF District: Choose an item.			
<p>Executive Summary (if not budgeted, please explain):</p> <p>The Police Department owns and operates a Forensic Recovery Evidence Device (FRED) within our digital forensic lab. As part of this lease license agreement, the Kane County State’s Attorney’s Office agrees to staff a member of their agency within this lab, along with associated equipment to assist in both internet-related crimes and technical support involving mobile device extraction.</p> <p>This lease agreement is substantially similar in nature to our on-going lease/license agreement with our police social workers and the Association for Individual Development (A.I.D.).</p> <p>This is of no cost to the City and outside of office space and the use of our digital server, all other equipment and personnel costs will be adsorbed by the Kane County State’s Attorney’s Office.</p>			
<p>Attachments (please list):</p> <p>Resolution Contract for Lease Exhibit A Exhibit B</p>			
<p>Recommendation/Suggested Action (briefly explain):</p> <p>Recommendation to approve a resolution for a Lease License Agreement with the Kane County State’s Attorney’s Office for Digital Forensic Services and use of the St. Charles Police Department’s digital laboratory and associated office space.</p>			

LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2024 (“Agreement”), by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (“Licensor” or “City”), and the County of Kane, Illinois, a unit of local government, and the Kane County State’s Attorney’s Office (“Licensee”);

WITNESSETH

WHEREAS, the Licensor is the owner of the St. Charles Police Station located at 1515 West Main Street, St. Charles, Illinois (the “Property”); and,

WHEREAS, there is certain vacant office space located on the Property that Licensor does not currently utilize, as more specifically described on Exhibit “A,” attached hereto and incorporated herein as (“Office Space”), as well as certain office equipment that the City does not currently utilize, as listed on Exhibit “B,” attached hereto and incorporated herein (“Equipment”); and,

WHEREAS, Licensee requires office space and equipment in order to conduct its activities; and,

WHEREAS, Licensor is desirous of granting a license to Licensee, and Licensee is desirous of being granted a license from Licensor, for Licensee to utilize the Office Space and Equipment, pursuant to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions hereinafter contained, the sum of One Dollar (\$1.00), and other good and valuable considerations, the adequacy and sufficiency of which the parties hereby acknowledge and agree, the parties agree as follows:

Section 1. Incorporation of Recitals. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Agreement as if fully set out in this section.

Section 2. Grant. Licensor agrees to grant, and does hereby grant, to Licensee, an exclusive license to use the Office Space and Equipment for the term of this Agreement for the purpose of conducting its activities.

Section 3. Condition and Upkeep. Licensee has examined and knows the condition of the Office Space and Equipment and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Licensor prior to all the execution of this Agreement that are not herein expressed; Licensee will keep the Office Space and Equipment in good repair, normal wear and tear excepted; and upon the termination of this Agreement, in any way, will yield up the Office Space and Equipment to Licensor, in good condition and repair, ordinary wear excepted and will deliver the keys therefor at the Property.

Licensee will not allow the Office Space or Equipment to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, and will not permit the Office Space or Equipment for any unlawful purpose, or for any purpose that will increase the fire hazard of the Property. The Licensee will not permit any alteration of the Office Space except by written consent of the Licensor; all alterations to the Office Space shall remain for the benefit of the Licensor unless otherwise provided in said consent.

Section 4. Access. Licensee, its officers, contractors, agents, volunteers and/or employees, shall at all times have the right of access to the Office Space and such other areas of the Property as are necessary to access the Office Space, subject to any and all rules imposed by the City. The Licensee, its officers, contractors, agents, volunteers and/or employees shall also have access to other areas of the Property as follows: (a) conference and meeting rooms shall be available during normal business hours provided that said rooms are not in use by, or needed by, the City, and (b) use of conference and meeting rooms during non-business hours shall be available on the same basis as the City makes such rooms available to other non-City users, by scheduling in advance and pursuant to the City's policy.

Section 5. Assignment. Licensee shall not assign or otherwise transfer its right in whole or in part under this Agreement without the express written consent of Licensor, which consent may be withheld in the City's sole and absolute discretion.

Section 6. Insurance. Licensee shall procure and maintain at its sole and exclusive expense, comprehensive personal injury, workman's compensation and property damage insurance in such amounts as Licensee deems necessary and Licensor deems satisfactory to adequately cover all operation under the exercise of the privileges herein granted. Evidence of insurance shall be provided by Licensee to Licensor. The insurance policy shall be expressly endorsed to include the City as an additional insured. Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be fully maintained during the term of the License Agreement.

Section 7. Hold Harmless and Indemnification. To the fullest extent permitted by law, both parties shall indemnify and hold harmless the other party and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (reasonably attorney and paralegal fees and court costs), arising from or in any way connected with (i) any act, omission, wrongful act or negligence of either party or any of its officers, agents, employees, volunteers, contractors, subcontractors, vendors, or of anyone acting on behalf of the other party; and (ii) any accident, injury, death or damage whatsoever occurring, growing out of, incidental to or resulting directly or indirectly from either party's use of the Office Space and Equipment. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Either party's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses, or expenses arising out of or resulting from the negligence, misconduct or breach of this section by the other party, its officials, officers, employees, agents, or representatives. In no event shall either party be entitled

to damages for lost profits, lost opportunity or lost income arising from either party's performance under this Agreement.

Section 8. Financial Responsibility/No Third-Party Beneficiaries. Licensor shall have no financial responsibility or obligation to Licensee or any third party as a result of Licensor's granting the privileges described herein to Licensee. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary theory or otherwise) other than the Licensee and the Licensor.

Section 9. No Lease or Easement. Licensee expressly acknowledges that nothing herein is intended to create a corporal or possessory interest of Licensee and, accordingly, this Agreement shall not be construed as a lease, easement or any other interest running with the land. Neither this Agreement nor any summary or memorandum thereof shall be recorded with any public authority.

Section 10. Relationship of the Parties. Under no circumstances shall this Agreement be construed to create a relationship of agency, partnership, joint venture, or employment between the Licensor and the Licensee.

Section 11. Term. Unless otherwise terminated pursuant to Section 12, this Agreement shall be effective as of the date set forth above and shall continue through December 31, 2024 ("Initial Term"), and thereafter continue on a month-to-month basis, at which time each party may cancel this Agreement upon thirty (30) days written notice to the other.

Section 12. Termination. If the Licensee breaches any of the provisions of this Agreement, or abandons or vacates the Office Space, the Licensor may declare this Agreement terminated upon five (5) days written notice to the Licensee. In addition, either party may, for any reason and in its sole discretion, declare this Agreement terminated upon one hundred twenty (120) days written notice to the other.

Section 13. Damage and Destruction. Licensor and its officers, contractors, agents, invitees and/or employees shall not be liable or responsible to Licensee for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, or court order, or for any damage or inconvenience which may arise from this Agreement, only to the extent that such loss or damage is a result of Licensor's negligence or misconduct

Section 14. Enforceability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 15. Miscellaneous. This Agreement sets forth the entire understanding of the parties, and may only be amended, modified or terminated by a written instrument signed by the parties unless herein otherwise provided. Either party's waiver of any breach of failure to enforce

any of the terms or conditions of the Agreement, at any time, shall not in any way affect, limit or waive that party's right thereafter to enforce or compel strict compliance with every term and condition hereof.

Section 16. Effective Date. This Agreement shall become effective upon execution by both parties hereto.

Section 17. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

Section 18. Notices. Any and all notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed properly served (i) on the date sent if transmitted by personal delivery with receipt therefore, (ii) on the date sent if transmitted by electronic mail (with confirmation by hard copy to follow by first class mail), (iii) on day after notice if deposited with an overnight courier, or (iv) three (3) days after being sent by registered or certified mail, return receipt requested, first class postage prepaid, addressed as follows (or to such new address as the addressee of such a communication may have notified the sender thereof):

To the City: City of St. Charles
Attn: City Administrator
2 East Main Street
St. Charles, Illinois 60174
Email: hmcguire@stcharlesil.gov

With a copy to: Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
Email: npeppers@srd-law.com

To Licensee: Kane County State's Attorney
37W377 Route 38, Suite 300
St. Charles, Illinois 60175

With a copy to: Kane County State's Attorney; Civil Division
100 South 3rd Street, 4th Floor
Geneva, Illinois 60134
Email: vargascaitlin@KaneCountyIL.gov

Section 19. Counterparts. This Agreement may be executed in multiple execution counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first written.

CITY OF ST. CHARLES

By: _____
Mayor

Kane County State's Attorney's Office

By: _____

EXHIBIT A– DIGITAL FORENSICS SERVICES

The Kane County State’s Attorney’s Office (“KCSAO”) agrees to provide access to digital forensics services by authorized KCSAO Forensic Examiner(s) to the Criminal Investigations Division of the St. Charles Police Department (“SCPD”), per the terms below:

Mobile Device Forensics

KCSAO Forensic Examiner(s) will provide technical support assistance to SCPD investigators for any technical issues arising from the use of mobile device extraction tools licensed by SCPD.

In the event existing mobile device extraction tools licensed by SCPD are unable to provide an adequate mobile device extraction, KCSAO Forensic Examiner(s) will attempt to extract and return the data from the mobile device(s) using mobile device extraction tools licensed by KCSAO.

Alternatively, KCSAO Forensic Examiner(s) may liaison between SCPD and other law enforcement jurisdictions that license mobile device extraction tools and attempt to extract and return the data from the mobile device(s).

Alternatively, KCSAO Forensic Examiner(s) may provide St. Charles Police Department investigators physical custody and use of mobile device extraction tools licensed by KCSAO, such as Cellebrite Premium and/or GrayKey, at its discretion and subject to its availability.

KCSAO Forensic Examiner(s) will process phone extractions using forensic software tools (such as Cellebrite Physical Analyzer and Magnet AXIOM) into “portable” cases so that extracted artifacts may be opened and viewed by St. Charles Police Department investigators without needing specialized forensic software to be installed on St. Charles Police Department computers.

Computer Forensics

KCSAO Forensic Examiner(s) will provide preview and data acquisition (“imaging”) services for computer storage media, such as hard drives, flash drives, memory cards, and other storage media.

KCSAO Forensic Examiner(s) will process computer forensic images using forensic software tools (such as Magnet AXIOM) into “portable” cases so that extracted artifacts may be opened and viewed by St. Charles Police Department investigators without needing specialized forensic software to be installed on St. Charles Police Department computers.

Analysis of Extracted Data

In consideration of the intensive resources required for the analysis of digital data, KCSAO Forensic Examiner(s) may provide data analysis services in limited circumstances, depending on case triage and forensic examiner availability.

Search Warrant Operations

KCSAO Forensic Examiner(s) will provide on-scene digital forensics services for knock-and-talk and search warrant operations conducted by SCPD, subject to scheduling and forensic examiner availability.

Reports

KCSAO Forensic Examiner(s) will provide summary report(s) documenting data extractions and on-scene forensics assistance for law enforcement operations conducted for SCPD. KCSAO Forensic Examiner(s) will provide more detailed reports for cases involving data analysis.

Case Types

In consideration of KCSAO Forensic Examiner(s) membership to the Internet Crimes Against Children (“ICAC”) Task Force and assignment to the county’s Child Exploitation Unit – which is comprised of the partnership between the Kane County State’s Attorney’s Office and the Kane County Sheriff’s Office, along with the assistance of the St. Charles Police Department – digital forensics services involving cases of technology-facilitated sex crimes against children will generally be given priority in case triage. Priority exceptions may be made for major crime types (such as homicides, human trafficking, kidnappings, etc.), subject to forensic examiner availability.

Availability

In consideration of KCSAO Forensic Examiner(s) support for multiple law enforcement agencies within Kane County and occasionally in surrounding areas, the physical presence of the examiner at SCPD and availability of digital forensics services is subject to vary extensively. KCSAO Forensic Examiner(s) will nevertheless make themselves accessible by phone or e-mail, including 24/7 support in the event of exigent investigations. KCSAO Forensic Examiner(s) will keep St. Charles Police Department investigators apprised of any gaps in forensic examiner availability due to scheduled trainings or benefit time.

Risks of Data Extraction

The ability to successfully acquire data varies greatly based on a number of factors, and therefore, successful data extraction is not guaranteed. While data extractions are generally considered non-destructive, a minimal risk for data loss or data inaccessibility exists. Data loss or inaccessibility may occur as a result of remote wiping, software updates and/or errors, accidental damage, device security, etc.

Request Form

Individual requests for digital forensics services by SCPD to KCSAO will be made via a standardized Request for Digital Forensics Services form (Exhibit x) prior to services being performed for the purposes of efficient case management.

Evidence and Evidentiary Procedure

Any custodial exchanges of evidence between SCPD and KCSAO Forensic Examiner(s) (or other departments when KCSAO is acting as liaison) must adhere to accepted evidentiary procedures, including chain-of-custody and appropriate search authority.

SCPD agrees to provide KCSAO Forensic Examiner(s) the ability to store evidence within its evidence vault and/or temporary evidence storage lockers, and provide access to the services of its evidence custodian(s).

SCPD agrees to provide evidence item number designations for any evidence to be processed by KCSAO Forensic Examiner(s) for the purposes of efficient evidence management.

County Scope

The agreement for KCSAO to provide digital forensics services to SCPD includes its jurisdiction in both Kane and DuPage Counties.

Exhibit B – Computer/Phone Equipment

The following equipment is provided by the City of St. Charles, assigned to the ICAC office located within Investigations office of the St. Charles Police Department, and available for use by assigned KCSAO ICAC Investigator(s) and/or Forensic Examiner(s):

Computer Related Equipment:

- 10-Gigabit Ethernet LAN connection between the ICAC office and the Forensic Recovery of Evidence Device server (“FRED-C”) located in the digital forensics lab
- Volume storage space on the FRED-C server reserved to ICAC sensitive materials and segregated under an access-controlled folder accessible only with proper login authentication by authorized users
- Tape backup drive and archive magnetic tapes for scheduled backups of ICAC reserved volume storage space per City of St. Charles PD tape backup policy
- Internet connectivity via hard-wired and wireless access to the ICAC office

Access Control Related Equipment:

- Installed card reader to allow audited access control to the ICAC office within the Investigations Office of the St. Charles Police Department

Other Office Related Equipment:

- Access to Xerox AltaLink C8135 Printer/Copier/Fax in the common area of Investigations
- Cisco CP-7965G Phone

City of St. Charles, Illinois
Resolution No. _____

A Resolution to approve a Lease Agreement with the Kane County State's Attorney's Office for Digital Forensic Services

**Presented & Passed by the
City Council on _____**

WHEREAS the lease agreement with the Kane County State's Attorney's Office for digital forensic services within the St. Charles Police Department has been established.

THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane, and DuPage Counties, Illinois, that the Social Worker Agreement between the City of St. Charles and the Kane County State's Attorney's Office be executed.

Presented to the City Council of the City of St. Charles, Illinois this ____ day of February 2024.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of February 2024.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of February 2024.

Mayor Lora Vitek

ATTEST:: _____
City Clerk

COUNCIL VOTE:

Ayes:
Nays:
Abstain:
Absent: