

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE COUNTY OF COOK
AND THE VILLAGE OF ORLAND PARK**

This Intergovernmental Agreement (Agreement) for Indefeasible Right of Use (IRU), dated as of _____, 2022, is made by and between the County of Cook (County), a body politic and corporate and home-rule unit of government under the Constitution and laws of the State of Illinois, and the Village of Orland Park (“Orland Park” or “Village”), a body politic and corporate and home-rule unit of government under the Constitution and laws of the State of Illinois.

I. RECITALS

WHEREAS, lack of reliable high-speed internet access is a barrier to economic development, educational advancement, and healthcare access. According to the United States’ Census, Cook County residents comprise over 43% of all Illinois residents who lack access to reliable high-speed internet. The communities in Cook County that lack access are those that have been historically disenfranchised; and

WHEREAS, on January 16, 2020, the Cook County Board of Commissioners adopted a Resolution titled “Creating Digital Equity in Cook County” to address barriers to connectivity for unserved and underserved communities in Cook County; and

WHEREAS, Governor Pritzker launched Connect Illinois which is a \$420M initiative to expand access to reliable high-speed internet across the State. In 2020, Cook County applied for and received a Connect Illinois Broadband Grant Program award of \$1,876,580.48 for expansion of broadband infrastructure in underserved areas of Cook County; and

WHEREAS, Cook County has committed an additional \$2,293,940.58 for expansion of broadband infrastructure in underserved areas of Cook County; and

WHEREAS, Cook County, through the Office of the President and Bureau of Technology, seeks to install additional broadband fiber in Southern Cook County to provide greater access and internet speed to residents, businesses, and institutions; and

WHEREAS, the current Cook County Connect Illinois Broadband Grant Program Project will expand the broadband fiber footprint in Chicago Southland communities in south and southwestern Cook County through publicly owned, shared fiber. The implementation will focus on fiber paths that will provide distribution and host last mile service platforms addressing those communities with the greatest need, municipalities with no fiber assets to support economic stimulus, and key regional education campus facilities with limited connectivity to online resources. The communities that will benefit from this project have some of the lowest rates of internet connectivity in the State of Illinois; and

WHEREAS, there is significant community support for the proposed Cook County Connect Illinois Broadband Project from municipalities and stakeholders in the Chicago Southland communities located in southern Cook County; and

WHEREAS, Cook County desires to complete its existing fiber path through the Village of Orland Park for service to Moraine Valley Community College and other anchor institution and municipal entities.

WHEREAS, Orland Park has conduit available for Cook County use that would allow Cook County to connect existing Cook County broadband fiber to other fiber infrastructure.

WHEREAS, use of Orland Park's conduit allows Cook County to run fiber optic cable (the IRU Property) underground without the need for additional construction resulting in greatly reduced costs for Cook County.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

II. DEFINITIONS

Cable- multiple fiber optic filaments used for communications that are bundled and surrounded by a protective jacket

Conduit- metal tube through which Cable is run typically 4" or greater in diameter and usually located underground

Cable Accessories- attachment and suspension hardware and other components necessary for the placement or protection of Cable and for the continuity of Fiber within the Structures

Fiber- fiber optic filament

Network- means the telecommunications system owned or operated by a Party

Rights- means any and all underlying IRU Agreements and any and all necessary right of way agreements, easements, licenses, leases, rights or other agreements necessary for the occupancy and use by either Party of poles, Conduit, Cable, wire, physical plant facilities, and/or access to real property underlying the Cable.

Route- path along which the Conduit is located

Structures- towers, poles, conduit, access points, and associated civil works on or in which the Cable is located

III. INCORPORATION OF RECITALS AND EXHIBITS

A. The above recitals and attached exhibits are incorporated into this Agreement as if fully set forth herein.

B. Exhibits.

Exhibit A: Route Description Map

IV. GRANT OF IRU

A. Subject to the terms and conditions of this Agreement, Orland Park hereby grants to County an IRU to its Conduit in Exhibit A. Notwithstanding the foregoing, title to the Conduit shall be owned by Orland Park. Each Party hereby agrees to be bound by all laws, regulations, and any requirements of Rights agreements. County agrees and acknowledges that it has no right to use any of the Village's property other than the IRU Property conveyed herein. The County shall endeavor to keep the IRU property free of any lien caused by a County or County subcontractor act or omission.

B. County shall not use the IRU Property in a manner that materially and adversely interferes in any way with, or otherwise adversely affects the use of the Village's Network, Fibers, Cable, Conduit (or any equipment or element thereof), or of the fiber, cable, or equipment of any person along the route.

C. County shall not individually, nor shall it permit others, to access, rearrange, disconnect, remove, attempt to repair, or undertake any other unauthorized work on any Village property without the prior, written consent of the Village. The Parties agree that no Party other than the Village or a contractor under the direct supervision of the Village shall be permitted to perform maintenance or splicing. In the event that County, or County's representative, agent or any other Party associated with County, violates this provision, County shall be responsible to pay the Village for all direct damages to Village property that are directly the result of County's work on the IRU property. In no event shall Village be liable to County or any other entity for interruption of services provided via the IRU Property, or for any other loss, cost, or damage, in each case caused or related to County's unauthorized work on Village property.

D. Subject to the provisions of this Agreement, each Party shall have responsibility for determining any Network and service configurations or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related function with regard to the use of that Party's Fiber and, as to County, the IRU Property.

E. Each Party acknowledges and agrees that the other Party is not supplying nor is obligated to supply to the other any optronics or electronics or optical or electrical equipment, all of which are the sole responsibility of the Party using a Fiber; nor is either Party responsible for performing any work other than as specified in this Agreement or for providing other facilities, including, without limitation, generators, batteries, air conditioners, fire protection, and monitoring and testing equipment, unless specifically otherwise agreed in writing.

F. County shall cause all work performed and activities undertaken in connection with this Agreement to be performed and undertaken in compliance with all applicable federal, state and local laws, statutes and ordinances, and all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction (collectively, the "Rules and

Regulations”). Compliance under this provision includes compliance with all provisions of the Municipal Code of the Village of Orland Park. All work performed and activities undertaken shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, whether discretionary or ministerial, and the County shall be responsible to the Village for the procurement and maintenance thereof, as may be required of the County. The County shall require all contractors, subcontractors, employees, officers, guests, invitees, and assigns to obey and observe all terms of this Agreement and all Rules and Regulations.

V. TERM

This Agreement shall continue in full force and effect for 20 years from the date of execution.

Upon request, County shall provide to the Village record drawings regarding the as-built Cable containing the IRU Property. The record drawings shall contain the technical specifications of the Cable, associated splices and other details consistent with industry standards. At the request of the Village, the record drawings shall also be provided in electronic format if possible.

VI. PREMISES LEASE; CONSIDERATION; FRANCHISE/LICENSE/PERMIT FEES; MAINTENANCE AND REPAIR

A. In consideration of this Grant of IRU, Orland Park shall provide Cook County rights and access to use real property identified in attached IRU Exhibit A subject to the terms and conditions of this Agreement.

B. Within thirty (30) days of the execution of this Agreement, Cook County will pay to Orland Park a one-time IRU fee of **\$15,000.00** for use of Orland Park’s Conduit as set forth in Exhibit A.

C. Subject to Section D below, the County shall be responsible for any government filings, licenses, or other requirements to place its IRU Property into operation, including, but not limited to any necessary municipal licenses and/or franchise agreements. The Village shall promptly grant any permit applications filed with the Village and required for the County to take the actions contemplated by this Agreement.

D. Each Party shall bear the cost of payment for Rights applicable to its facilities as required from time to time by property owners, government agencies, taxing authorities, or otherwise imposed by law or contract; provided that the Village shall not impose any governmental fees on County for construction, operation, or use of the IRU Property, or any other facilities constructed, operated, or used by the County under this Agreement.

E. All routine maintenance and repair functions and emergency maintenance and repair functions, including “one-call” responses and cable locate services shall be performed by the County or its designee for a period coterminous with the term of this Agreement. The County shall provide at least seventy-two hours advance notice to the Village of

maintenance or repairs that may affect the IRU Property, the Village property or the fiber, cable or equipment of any person any other.

VII. TITLE

Orland Park shall retain title in its previously installed Conduit. County shall retain title to any Cable, Cable Accessories, Fiber, and any property County installs or constructs under this Agreement.

VIII. REPRESENTATIONS AND WARRANTIES

Common Representations. Each Party represents and warrants:

1. It has authority to enter into, execute, deliver and perform its obligations under this Agreement;
2. This Agreement constitutes a legal, valid, binding obligation enforceable against such Party in accordance with its terms; and
3. The execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

IX. DEFAULT AND REMEDIES

A. Default. Neither Party shall be in default under this Agreement unless and until the other Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within forty-five (45) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the forty-five (45) day period, if the defaulting Party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice.

B. Remedies. Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party may take any action it determines necessary to pursue any legal remedies it may have under applicable law or principles of equity relating to the breach and may pursue any other remedy to which they may otherwise be entitled to hereunder by law or equity.

X. COVENANT NOT TO SUE

Intentionally Omitted.

XI. LIMITATION OF LIABILITY

THE VILLAGE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF ITS CONDUIT, CABLE, OR ITS OTHER PROPERTY, INCLUDING

WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES RESULTING FROM A PARTY'S PERFORMANCE OR FAILURE TO PERFORM ANY TERM OR PROVISION OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM IS MADE UNDER THEORIES OF CONTRACT OR THEORIES OF TORT (INCLUDING STRICT LIABILITY).

XII. INSURANCE

A. Each Party shall maintain commercially reasonable insurance policies with commercially reasonable policy limits. Each Party shall provide the other with proof of insurance upon request.

B. Cook County, its officials, employees, and agents are to be covered as additional insureds on the Village's Commercial General Liability insurance with respect to liability arising out of work or operations performed by or on behalf of the Cook County, including materials, parts, or equipment furnished in connection with such work or operations. All insurance companies providing coverage shall be licensed or approved by the Department of Insurance, State of Illinois, and shall have a financial rating no lower than (A-) VII as listed in A.M. Best's Key Rating Guide, current edition or interim report. Companies with ratings lower than (A-) VII will be acceptable only upon consent of Cook County.

XIII. INDEMNIFICATION

County shall indemnify, defend, and hold harmless the Village and its individual Board members, employees, and agents, from and against any claims, costs, liabilities or expenses whatsoever arising out of damage to Village fiber that is directly attributable to the County's use of the IRU property.

XIV. ASSIGNMENT

A. Assignment. This Agreement may not be assigned by either Party except by express mutual written consent. Any assignment of this Agreement shall be valid only if the assignee agrees in writing to be bound by this Agreement and perform all obligations of the assignor.

B. Agreement Binding; Assignees. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees. No assignment shall release the assignor from liability under this Agreement.

XV. MISCELLANEOUS TERMS

A. Force Majeure. Neither Party shall be liable for failing to fulfill any obligation under this Agreement to the extent such failure is caused by an event beyond a Party's reasonable control provided that the event is not caused by that Party's fault or negligence. Such events shall include but not be limited to acts of God, acts of war or terrorism, fires, lightning, tornados, floods, epidemics, earthquakes, and riots.

B. No Joint Venture. This Agreement shall in no event be construed in such a way that either the County or Orland Park constitutes, or is deemed to be, the representative, agent, employee, partner, or joint venture of the other. Neither Party shall not have the authority to enter into any agreement or assume any liability on behalf of the other Party, nor bind or commit the other Party in any manner, except as expressly provided herein.

C. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and addressed as set forth below. Notice shall be deemed duly given if personally delivered, or if deposited in the United States mail, registered, or certified return receipt requested, or upon receipt of email. Notice given as provided herein does not waive service of summons or process.

Contact Person for Cook County

Director of Network and Telecommunications
118 N. Clark St.
Chicago, Illinois 60602
312-603-1400

Contact Person for Orland Park

Orland Park Village Manager
14700 Ravinia Avenue
Orland Park, Illinois 60462
708-403-6151

D. Governing Law and Forum. This Agreement shall be interpreted under, and governed by, Federal and State of Illinois law, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be brought in a court of competent jurisdiction located within Cook County, Illinois.

E. Entire Agreement. This Agreement and its exhibits constitute the entire agreement of the County and Orland Park with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, representations, negotiations, and commitments between Orland Park and the County with respect to the subject matter hereof. The headings of articles, paragraphs and section in this Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement.

F. Waiver. No term or provision of this Agreement shall be deemed waived, and no breach or default shall be deemed excused, unless explicitly memorialized in writing and signed by the Party claimed to have waived or consented. Such waiver or consent shall not be construed to apply to any subsequent waiver or breach.

G. Survival. Any provisions of this Agreement that impose continuing obligations upon a Party or, by their nature or terms, would be reasonably understood to be intended to survive and continue in force and effect after expiration or termination of this Agreement.

H. Governmental Immunity. Notwithstanding anything to the contrary set forth elsewhere in this Agreement, neither the County nor Orland Park are waiving any rights or defenses of governmental immunity with respect to any matters arising out of this Agreement or performance hereunder.

I. Interpretation. For purpose of construing this Agreement, unless the context otherwise requires:

1. Words in the singular shall be deemed to include words in the plural, and vice versa; and
2. A reference to the County includes the County's officers, commissioners, employees, attorneys, agents, and assigns; and
3. A reference to Orland Park includes its officers, members, employees, attorneys, agents, and assigns.

J. Modification. This Agreement may not be altered, modified, or amended except by mutual written agreement.

K. Additional Actions and Documents. Each Party agrees to take all required actions to execute, acknowledge, deliver, and file any additional documents and instruments necessary to effectuate this Agreement. Further, each Party agrees to exercise best efforts to obtain any necessary consents to fully realize the purpose, terms, and conditions of this Agreement.

L. Construction of Agreement.

1. The headings of articles and sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The headings do not define or affect the meaning, construction, or scope of any of the provisions of this Agreement.
2. This Agreement has been negotiated by the Parties at arm's length and each Party has been represented by legal counsel. The Parties agree that any legal or equitable principles suggesting interpretation of this Agreement against the drafter do not apply.

M. Counterparts. This Agreement may be signed in counterparts with the same effect as if all signatures appeared in one instrument. A facsimile or digital transmission of a signature shall be deemed an original signature. Upon request, a Party providing a digital signature shall deliver an original counterpart to the other Party.

N. Severability. If any provision of this Agreement or the application thereof is invalid or unenforceable, the remaining provisions of this Agreement shall remain enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the parties have hereto caused their duly authorized representatives to execute this Intergovernmental Agreement on the dates hereafter set forth below.

ORLAND PARK EXECUTION: The undersigned, on behalf of the Village of Orland Park, hereby accepts the foregoing Intergovernmental Agreement:

George Koczwar
Village Manager

Dated: _____

COOK COUNTY EXECUTION: The undersigned, on behalf of the County of Cook, Illinois, a body politic and corporate of the State of Illinois, hereby accepts the foregoing Intergovernmental Agreement:

Toni Preckwinkle
President, Cook County Board of Commissioners

Dated: _____

ATTEST:

Karen Yarbrough
Cook County Clerk

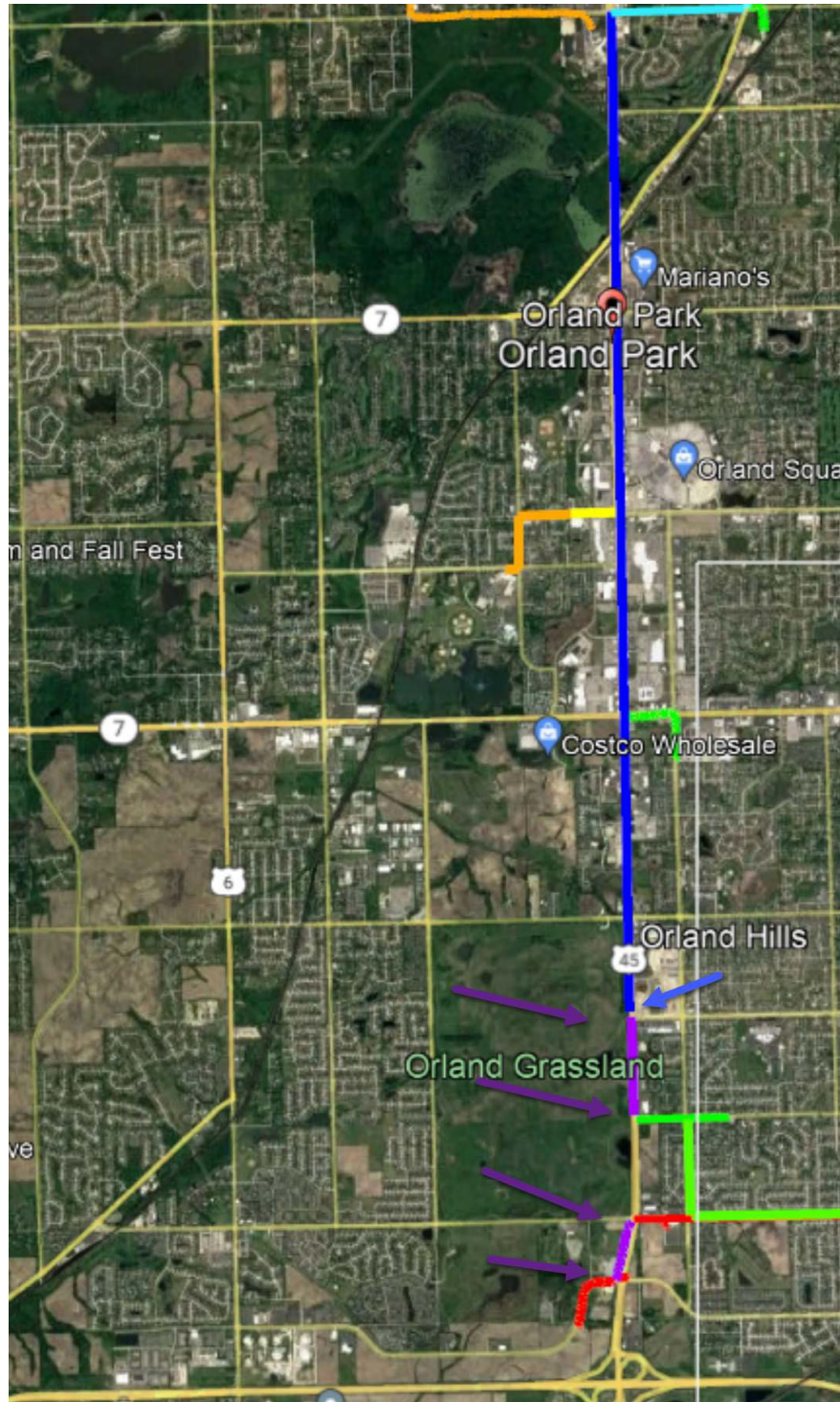
Dated: _____

Approved as to Form:

Assistant State's Attorney

Dated: _____

EXHIBIT A



The purple line represents Orlando Park Conduit to be utilized by County.