

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this _____ day of November, 2019, between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the "Village") and the Board of Education of Oak Park Elementary School District 97 ("District 97") (also collectively referred to as the "Parties" and individually as "Party").

RECITALS

WHEREAS, the Village is an Illinois home rule municipal corporation Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, District 97 is a School District created under the laws of the State of Illinois; and

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, intergovernmental cooperation is further authorized by the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (hereinafter referred to as "the Act"); and

WHEREAS, the Village and District 97 are public agencies as that term is defined by the Act, 5 ILCS 220/2; and

WHEREAS, the Parties have agreed to cooperate with each other in making provisions for the installation, operation and maintenance/repair/troubleshooting of an underground fiber optic cabling system to enhance communications and computer systems connectively among and between the Parties and their respective institutional departments; and

WHEREAS, the Village will construct and own approximately 12.4 miles of open and unencumbered underground conduit containing a minimum of two (2) microcells with a minimum of one hundred and forty four (144) strands of fiber optic cabling for each microcell (hereinafter referred to as the "Project") to be located in Village rights-of-way; and

WHEREAS, the Project shall be substantially the same as set forth in the Request for Proposals issued by the Village and District 97 on or about February 21, 2019; and

WHEREAS, the Parties will each have exclusive use of one (1) microcell and the associated fiber optic cable located within that microcell; and

WHEREAS, a third and fourth microcell and associated fiber optic cable located in said microcells may be constructed by the Village in the future at the Village's costs to be used and owned by the Village for expected future growth; and

WHEREAS, the Village agrees to provide District 97 a non-exclusive license to use the areas of the Village's rights-of-way where the constructed conduit and fiber optic cabling system shall be located.

NOW, THEREFORE, in consideration of these recitals and the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The above recitals are incorporated into this Agreement.

2. **OWNERSHIP OF CONDUIT AND MICROCELLS.** The Village shall own the Project and shall provide an irrevocable license to District 97 subject to this Agreement for its microcell and associated fiber optic cabling.

3. **VILLAGE'S EXCLUSIVE USE OF MICROCELLS NO. 1 AND 3-4.** The Village shall have the right to exclusively use microcells nos. 1 and microcells nos. 3-4 if constructed by the Village and the fiber optic cabling associated with those microcells.

4. **VILLAGE LICENSE GRANT.** The Village hereby grants to District 97 a non-exclusive license during the term of this Agreement to use the Village's right of way for the conduit. The Village hereby grants to District 97 an exclusive license to use microcell no. 2 and associated fiber optic cable during the term of this Agreement. The license granted herein does not give District 97 any right of ownership or right of entry into the Village's right-of-way.

5. **PAYMENT FOR LICENSE.** District 97 shall pay to the Village a fee of \$16,093.75 on an annual basis for the license granted herein with the first payment due within thirty (30) days after completion of the Project by the Village pursuant to written notice provided by the Village. Payments thereafter shall be due on or before the anniversary date of the due date of the initial payment for each successive year this Agreement is in effect. Any payment under this Agreement, including payments due for JULIE locates and relocation, repair, maintenance and/or troubleshooting under Sections 6 and 7 below, more than thirty (30) days past due shall be deemed delinquent, and shall accrue interest at the rate set forth in the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* District 97 shall be responsible for reasonable attorneys' fees and costs of collection, including litigation costs, should it fail to make any payment due pursuant to this Agreement or otherwise be in breach of this Agreement. A failure to pay an invoice on a timely basis pursuant to this Section shall subject this Agreement to automatic termination by the Village.

6. **LOCATE COST SHARING.** The Parties shall cooperate with each other and the locating agency (e.g., JULIE) upon receipt of a location request in those instances and at such locations where the conduit has been installed. The costs of such locate services shall be shared with the Village paying 75% (3/4) of the costs and District 97 also paying 25% (1/4) of the costs. In the event that a third party locating service or agency is utilized, the Parties shall cooperate with each other to establish an appropriate level of service and to secure the best possible price, taking into consideration the qualifications of the service or agency.

7. **RELOCATION/REPAIR/MAINTENANCE/TROUBLESHOOTING COST SHARING.** In the event the shared conduit must be relocated due to a request for such relocation by a local, County, State or Federal agency having jurisdiction over the right-of-way in which the conduit is located or the conduit is in need of repair, maintenance, including ongoing maintenance, and/or troubleshooting, the Parties shall cooperate with each other to secure the best possible price taking into consideration time and bidding requirements, and the qualifications of the contractor and the costs shall be shared by the Parties sharing in the costs thereafter on an equal basis with the Village paying 75% (3/4) of the costs and District 97 also paying 25% (1/4) of the costs. Each Party shall be responsible for any repair, maintenance and/or troubleshooting of the conduit located on the individual Party's property, excluding Village right-of-way for which both Parties shall be responsible as set forth herein.

8. **TERM AND TERMINATION.** The term of this Agreement shall commence on the date of the last Party to sign this Agreement and shall continue in effect for a ten (10) year period. It shall renew for a successive ten (10) year period unless terminated by one of the Parties pursuant to eighteen (18) months' written notice prior to the expiration of the initial ten (10) year term. If any Party breaches the terms of this Agreement and fails to cure said breach within one hundred and eighty (180) days of a receipt of a written notice of breach except as provided in Section 5 above, then this Agreement shall terminate as to the breaching Party immediately thereafter but shall continue in full force and effect, to the extent applicable, as to the non-breaching Party. A Party who has provided such notice of termination shall not be entitled to any refund or reimbursement for any costs paid pursuant to this Agreement and shall be responsible to pay any and all cost obligations under this Agreement through the effective date of the termination. The Village shall provide District 97 with written notice pursuant to Section 20 below of the award of the construction contract for the Project and the schedule set forth therein. If the Village fails to award a construction contract for the Project on or before March 1, 2020, this Agreement shall be null and void.

9. **INDEMNIFICATION.** Each Party shall indemnify, defend, and hold harmless the other Parties from all claims, demands, causes of action, losses, liabilities, damages, penalties, fines, and expenses, including reasonable attorney's fees and court costs, which are incurred by another Party, but only to the extent arising from the indemnifying Party's breach of this Agreement or negligence.

10. **NO THIRD PARTY BENEFICIARIES.** This Agreement is not intended to confer any right upon any third party who is not a Party to this Agreement.

11. **NO ASSIGNMENT OR DELEGATION.** Each Party represents and warrants that it has not and will not assign, sublet or transfer any rights or obligations under this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may not be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Village and District 97.

12. **ADVICE OF COUNSEL AND UNDERSTANDING OF AGREEMENT.** The Parties each understand their right to discuss all aspects of this Agreement with their legal counsel, and have done so if desired. The Parties acknowledge that they have carefully read and fully understand all provisions of this Agreement.

13. **BINDING EFFECT AND INTERPRETATION.** The Parties intend this Agreement to be legally binding. This Agreement shall bind and inure to the benefit of the Parties and their legal representatives, successors and assigns. The provisions of this Agreement are severable and no provision shall be affected by the invalidity of any other provision. This Agreement has been jointly drafted by the Parties, and in the event any court determines any provision of this Agreement to be ambiguous, the ambiguity shall not be construed against any Party.

14. **INSURANCE.** Each Party shall keep in force at all times during the term of this Agreement, general liability insurance, on an occurrence basis, with limits of not less than one million dollars (\$1,000,000.00) per occurrence and the aggregate and at all times naming the other Party to this Agreement, and their respective officers, officials, employees, volunteers, and agents as additional insureds thereon. Each Party's insurance coverage shall include its indemnification obligation under Section 9 of this Agreement. In addition, within five (5) days of the last party to execute this Agreement, each Party shall furnish to the other a certificate of the insurance evidencing the insurance required under this Agreement. The Parties may self-insure for all or a portion of the required amount set forth in this Section 14.

15. **COMPLIANCE WITH LAWS.** The Parties shall comply with all federal, state, county and municipal laws, rules and regulations that apply to the performance of each party's respective obligations under this Agreement.

16. **AMENDMENTS AND MODIFICATIONS.** This Agreement may be modified or amended from time to time by the authorized representatives of the Village and District 97, provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of District 97.

17. **SAVINGS CLAUSE.** If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

18. **CAPTIONS AND SECTION HEADINGS.** Captions and section headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

19. **NON-WAIVER OF RIGHTS.** No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

20. **NOTICES, INVOICES AND COMMUNICATIONS.** All notices, invoices or other communications under or in respect to this Agreement shall be in writing and sent by United States mail, personal service or by electronic transmission to the persons and addresses indicated below, or said persons designees who shall be designated in writing pursuant to this Section, or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

TO THE VILLAGE:

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Email: villagemanager@oak-park.us

TO DISTRICT 97:

Superintendent
OPESD #97
260 Madison Street
Oak Park, Illinois 60302
Email: ckelley@op97.org

Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing. Notice by electronic transmission shall be effective as of date and time of electronic transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event electronic notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

21. **CONFIDENTIALITY.** In connection with this Agreement, the Village or District 97 may provide the other Party with confidential information regarding the location of the conduit or the fiber located therein or other such information that a Party may deem confidential. The receiving Party agrees: (i) to treat and to obligate its employees or agents to treat as confidential all such information; (ii) not to disclose any such information to any person, company or corporation or use the same in any manner whatsoever without first obtaining the other Party's written approval; and (iii) not to disclose to the other Party any information obtained from a third party on a confidential basis unless written permission is received from such third party to disclose such information. Nothing in this Section 21 shall limit or restrict a Party from producing such information if required pursuant to a court order, subpoena, or valid Freedom of Information Act request. The Parties will coordinate and cooperate to address any legal objections or response to such court order, subpoena, or Freedom of Information Act request.

22. **ENTIRE AGREEMENT.** This Agreement sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Agreement.

23. **ATTORNEY FEES.** If a lawsuit is filed by either Party against the other Party relating to the Project or this Agreement, the prevailing Party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee. Prior to the filing of a lawsuit relating to the Project of this Agreement, the Parties shall meet to attempt to resolve any dispute. The chief elected officials, chief appointed officials and applicable legal counsel shall participate in any such meeting.

24. **GOVERNING LAW AND VENUE.** The laws of the State of Illinois shall apply to the interpretation of this Agreement. Venue for any action taken by either the Village or District 97 to enforce the terms of this Agreement shall be in the Circuit Court of the Cook County, Illinois.

25. **BINDING AUTHORITY.** The individuals executing this Agreement on behalf of the Parties represent that they have the legal power, right, and actual authority to bind their respective Party to the terms and conditions of this Agreement.

26. **EFFECTIVE DATE.** The effective date of this Agreement as reflected above shall be the last date that it is executed by one of the Parties as reflected below.

27. **COUNTERPARTS; FACSIMILE OR PDF SIGNATURES.** This Agreement shall be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement. A facsimile or pdf/email copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

VILLAGE OF OAK PARK

**BOARD OF EDUCATION OF OAK PARK
ELEMENTARY SCHOOL DISTRICT 97**

By: Cara Pavlicek
Its: Village Manager

By: Keecia Broy
Its: Board President

Date: _____, 2019

Date: _____, 2019

ATTEST

ATTEST

By: Vicki Scaman
Its: Village Clerk

By: Sheryl Marinier
Its: Board Secretary

Date: _____, 2019

Date: _____, 2019