

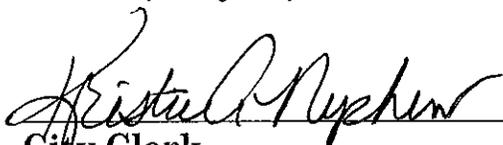
**City of St. Charles, Illinois**

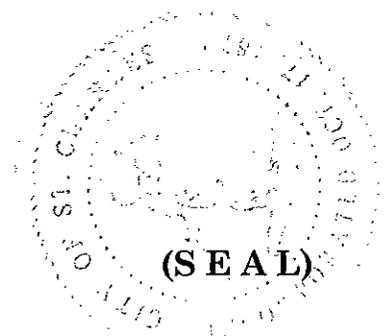
**Ordinance No. 2004-M-40**

**An Ordinance Authorizing an Agreement Between the  
City of St. Charles and the County of Kane**

**Adopted by the  
City Council  
of the  
City of St. Charles  
May 17, 2004**

**Published in pamphlet form by  
authority of the City Council  
of the City of St. Charles,  
Kane and Du Page Counties,  
Illinois, May 21, 2004**

  
\_\_\_\_\_  
City Clerk



DATE OF PUBLICATION 5/17/04  
NEWSPAPER Pamphlet Form

REFER TO:  
MINUTES 5/17/04  
PAGE \_\_\_\_\_

ORDINANCE NO. 2004-M-40

AN ORDINANCE AUTHORIZING AN AGREEMENT BETWEEN THE  
CITY OF ST. CHARLES AND THE COUNTY OF KANE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE  
AND DU PAGE COUNTIES, ILLINOIS, AS FOLLOWS:

1. That a certain agreement entitled, "Intergovernmental Cooperation Agreement," be and is hereby approved and the Mayor is authorized to sign the same in substantially the same form as attached Exhibit A, and the City Clerk is directed to attest her signature thereto.
2. This ordinance shall be in full force and effect from and after its passage in accordance with law and this ordinance is authorized to be printed or published in book or pamphlet form by the authority of the City Council.

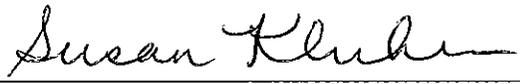
PRESENTED to the City Council of the city of St. Charles, Illinois, this 17th day of May, 2004.

PASSED by the City Council of the city of St. Charles, Illinois, this 17th day of May, 2004.

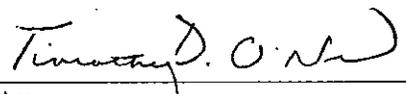
APPROVED by the Mayor of the city of St. Charles, Illinois, this 17th day of May, 2004.

ATTEST:  
  
City Clerk



  
\_\_\_\_\_  
Mayor

Council Vote:  
Ayes: 10  
Nays: 0  
Absent: 0  
Abstain: 0

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney

DATE: 5/17/04

## INTERGOVERNMENTAL COOPERATION AGREEMENT

WHEREAS, the City of St. Charles, Illinois, a home rule Municipal Corporation (“City”), owns and operates an electrical transmission and distribution utility and has undertaken various telecommunications activities in support thereof; and

WHEREAS, the County of Kane, State of Illinois (“County”), is a non-home-rule unit of government and as that term is used herein shall include its Elected and Appointed officials; and

WHEREAS, Article VII, Section 10 of the Constitution of the State of Illinois, and the Intergovernmental Cooperation Act (5 ILCS 220/9 et seq.) provide that units of government may contract among themselves to obtain or share Services and to exercise powers and functions; and

WHEREAS, the City has constructed a Fiber Optic Telecommunications System connecting its operations center with various operating facilities and office locations, and provides data transmission and Internet access services for its own use; and

WHEREAS the City and County find that it is in their respective best interest to enter into an agreement for the purpose of allowing the County to utilize the City’s fiber optic infrastructure.

NOW THEREFORE, it is hereby agreed to by the City and the County as follows:

I. **Scope of Agreement.** The County desires to establish a dedicated fiber communications capability between the Office of the Clerk of the Circuit Court located at 540 South Randall Road, St. Charles and the Judicial Center located at 37W777 Route 38, St. Charles. This connection would be established by extending the City’s Fiber Optic System to these two facilities. The City will provision four fibers between these points for the exclusive use of the County. The County shall use this connection for its own communications needs for the performance of government functions, and in no case shall the County resell, lease, license or otherwise transfer to any other person, partnership, corporation or entity any rights or interests in and to this connection.

II. **Installation Schedule.** The City shall provide installation services necessary and appropriate to extend the Fiber Optic Telecommunications System to each facility. The schedule for this work will commence as soon as possible after mutual acceptance of this agreement, weather conditions allowing.

III. **Installation Costs.** County shall pay City for its labor and material costs incurred in the extension of such system to County facilities. These expenses, estimated at \$19,363.46, are due at contract signing. At the end of the construction phase of this project, the city will determine the actual cost of the project including interest and will bill or rebate to the County any difference from the amount estimated and paid. After the initial project, the County may request additional facilities connected under this agreement by paying the actual cost incurred by City for the connection.

IV. **Annual Maintenance Expenses.** City shall have the responsibility to maintain and repair the fiber plant between demarcation points established at each location, provided that County shall pay City the sum of \$518.00 per year for its share of such maintenance and repair expenses. In addition, County shall pay City the sum of \$468.00 per year for its estimated share of the existing fiber-optic infrastructure. The basis for these costs will be reviewed by the parties at least once per year (on or about the contract date) and revised as appropriate by increases in costs, such as labor rates and inflation, for the term of this agreement. Cost revisions may also reflect changes in the number and type of connections and may also be requested by either party one other time during any given year, if agreed to by both parties, due to changes in operation, equipment, or other cost impact issues. In addition, the County shall be responsible for any applicable telecommunications taxes that may be levied during the term of this agreement.

V. **Repairs.** The City will furnish necessary labor and materials to repair problems with the fiber plant between demarcation points, provided the problem is not due to negligence or other fault on the part of the County, its employees, contractors or agents. In this case and in the case of a problem being reported that is determined not to

be between the points of demarcation, the City will bill the County for actual time and material. Labor will be billed at the published hourly rate current at the time the work is performed. The City does not commit to any specific timeframe for repairs, but will make every effort to diagnose and repair problems as quickly as possible. Redundancy in the case of an outage will be the sole responsibility of the County.

VI. **Maintenance.** From time to time it may be necessary for the City to perform maintenance operations that would affect the proposed connection. In case this necessity arises, the City will provide as much advance notice as possible and work with the County to schedule any downtime as to minimize the impact on County operations.

VII. **Term and Termination.** This Agreement shall remain in effect for a term of at least ten years. Notwithstanding such ten-year minimum term, County may elect to terminate this Agreement at any time without cause, provided that County shall thereupon forfeit any sums theretofore paid to City hereunder. After the expiration of such minimum ten-year term, City may elect to terminate this Agreement without cause.

If County shall default and fail to cure as provided in Section IX.C. hereunder, then City may terminate this Agreement for cause and County shall forfeit all payments theretofore made to City hereunder. Upon termination of this agreement, City reserves the right to remove, or abandon in place, all City owned equipment from County facilities as City deems appropriate, and County agrees to provide City access to said facilities as required by City.

VIII. **Use of County Property.** County shall provide City with a location at each County Facility for installation of a fiber optic distribution unit. County acknowledges and agrees that City may use such distribution unit for extension of the Fiber Optic System to other locations, and County agrees to permit City access to such distribution unit during normal business hours upon reasonable advance notice from City or pursuant to such procedures as hereafter established by City and County. County also acknowledges the existing fiber communications system and the fiber and plant

equipment additions necessary to serve the County are, will be, and remain the sole properties of City. Monetary contributions, now or in the future, by the County do not indicate ownership of equipment or facilities unless explicitly stated as such. County also acknowledges that the system installed by City may be used to provide communication services to city facilities or facilities of others at City's sole discretion.

**IX. General Conditions.**

A. **Force Majeure.** Performance by either party shall be excused by an unforeseen occurrence beyond the control of a party, which causes a delay or total or partial failure of performance by such party, including but not limited to (1) acts of God; (2) acts of failure to act on the part of any governmental authority other than City or County (including but not limited to changes in or enactment of laws, rules, regulations, codes or ordinances subsequent to the date of this Agreement); (3) acts of war or public disorders, civil violence or disobedience, blockages, strikes, lockouts, labor disputes, sabotage, insurrection or rebellion; (4) floods, hurricanes, earthquakes, tornadoes, or other similar calamities; (5) explosions or fires; (6) accidents in transportation; (7) vandalism or cable cuts; or (8) other unforeseen circumstances.

B. **Liability.** Each party shall otherwise indemnify and hold the other party harmless from and against any losses, damages, costs or expenses to the extent such losses, damages, costs or expenses are in consequence of a party's negligence or willful misconduct. Each party shall further indemnify and hold the other party harmless from, against and in respect of and shall on demand reimburse the other for:

- 1) Any and all loss, liability or damage resulting from any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement contained herein; and
- 2) Any claims from third parties arising out of the acts or omissions of a party under this Agreement; and

C. **Default.** A default shall be a failure to make a payment under this Agreement within 60 days of its due date, or a failure by either party to perform any material obligation, duty or responsibility under this Agreement. A default in a payment may be cured by making such payment plus interest at 7% per annum within 30 days. A party in default for failure to perform shall have 90 days from receipt of written notice from the other party to cure such default. A non-defaulting party may terminate this Agreement as provided in Section V hereof, if such default is not cured within the period provided. No waiver of any default shall extend to or affect any subsequent default or impair any rights or remedies of the non-defaulting party. A non-defaulting party shall have available to it all remedies, legal and equitable, including without limitation those available in order to enforce payment of any amounts due hereunder or performance or observance of any other provision or condition hereof.

D. **Notices.** Any requirement for a notice in writing under this Agreement may be met by facsimile transmission with subsequent written confirmation, or by mail, to the City Administrator, City of St. Charles, 2 East Main St., St. Charles, IL 60174, with a copy to the Electric Superintendent of the City, at the same address, and the Director of Information Technologies of Kane County, 719 South Batavia Ave., Geneva, IL 60134.

Dated \_\_\_\_\_, 2004

Dated \_\_\_\_\_, 2004

City of St. Charles,

County of Kane,

By \_\_\_\_\_  
Susan L. Klinkhamer, Mayor

By \_\_\_\_\_  
Michael McCoy, County Board Chairman

Attest \_\_\_\_\_  
Kristie A. Nephew, City Clerk

Attest \_\_\_\_\_  
\_\_\_\_\_

State of Illinois )  
 )  
 ) ss.  
Counties of Kane and DuPage )

## Certificate

I, KRISTIE A. NEPHEW, certify that I am the duly elected and acting Municipal Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

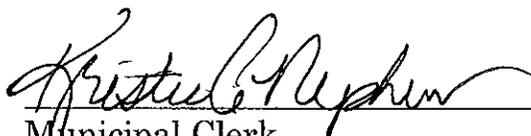
I further certify that on May 17, 2004, the Corporate Authorities of such municipality passed and approved Ordinance No. 2004-M-40, entitled

"An Ordinance Authorizing an Agreement Between  
the City of St. Charles and the County of Kane,"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2004-M-40, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on May 21, 2004, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 18th day of May, 2004.

  
\_\_\_\_\_  
Municipal Clerk

