

**AGREEMENT BETWEEN THE COUNTY OF CHAMPAIGN AND
GARGOYLE TECHNOLOGIES, INC. FOR CHAMPAIGN COUNTY
BROADBAND INFRASTRUCTURE EXPANSION PROJECT ASSISTANCE**

This Agreement is entered as of November 28, 2023, by and between the County of Champaign, Illinois (“County”), with an address of 1776 E. Washington Street, Urbana, IL 61802 and Gargoyle Technologies, Inc. DBA Volo Internet + Tech (“Volo”), with an address of 3310 N. Cunningham Avenue, Urbana, IL 61802; collectively “the Parties.”

WHEREAS, the County is in receipt of funds pursuant to the American Rescue Plan Act of 2021, P.L. 117-2 (“ARPA Funds”); and

WHEREAS, the County is authorized by Section 603 of the Social Security Act and the United States Department of Treasury Final Rule 31 CFR Part 35 to make necessary investments in broadband infrastructure; and

WHEREAS, broadband infrastructure has been shown to be critical for work, education, health care, and civic participation, and a significant disparity in broadband access and equity exists between urban and rural portions of Champaign County; and

WHEREAS, Finley Engineering Company, Inc., a broadband consultant on behalf of the County, issued a Request for Information, RFI# 2022-006 (“RFI”), to solicit qualifications and interest from last-mile internet services providers and/or contractors to build, operate, and maintain assets to provide broadband internet service throughout identified areas of the county; and

WHEREAS, the geographic areas identified in the RFI currently lack access to a connection that reliably meets or exceeds certain internet speeds, lack affordable access to broadband service, and/or lack reliable broadband connections; and

WHEREAS, after a thorough interview and evaluation process, the County selected Volo to build out, operate, and maintain broadband infrastructure and service to a portion of the geographic area identified in the RFI, and

WHEREAS, Volo is a domestic corporation that provides registered affordable connectivity of fiber optic internet access service, and currently provides such service and technical support to customers within Champaign County of Illinois; and

WHEREAS, Volo has agreed to apply for “Grant” (hereinafter defined in Section 1(d)) funding in order to extend fiber optic broadband internet service to premises in a specified geographic area (“Project”, hereinafter defined in Section 1(a)) and

WHEREAS, the geographic areas meet the ARPA definition of unserved and/or underserved, and as such, the County has allocated a portion of its ARPA funds to assist with rural broadband expansion within Champaign County; and

WHEREAS, the Parties desire to enter into this Agreement to recognize the roles and responsibilities for each Party.

NOW THEREFORE, the Parties agree as follows:

1. **Purpose and Scope.** The Parties intend for this Agreement to provide the foundation and structure for undertaking the Project through the following understanding, according to the project scope, details, budget, and map provided in Attachment 1 (the “Work”):
 - a. **“Project”:** The broadband infrastructure project (“Project”) will expand, provide, operate, and maintain reliable and affordable high-speed broadband services for households and businesses throughout specified rural areas of Champaign County. Service expansion areas, as identified at the time this agreement is executed, are depicted on the map in Attachment 1. Areas served shall conform to ‘grant-eligible areas’ as identified and included in applicable grant opportunity notices.
 - b. **Project Cost:** The total Project cost associated with the Project is estimated at \$47,249,816.43, with projected budget included in Attachment 1. Project cost includes the Work performed by Volo and its subcontractors, travel, labor hours, materials, equipment, supplies, labor, overhead, profit, filing and recording fees, and all other costs, expenses and reimbursables associated with Volo’s performance of the Work.
 - c. **“Grant” Condition Precedent:** Volo intends to apply for available state or federal grant funding to cover the majority of the total Project cost (“Grant”). Volo commits to make all reasonable efforts to secure grant and other funding in order to complete the Project. If the Grant is approved by March 31, 2024, the County shall provide ARPA Funds in a matching amount to Volo’s contribution to assist the Project, not to exceed *the lesser* of 15% of the Total Project Cost or \$4.7 million (\$1.2 million from ARPA Tranche One and \$3.5 million from ARPA Tranche Two). ARPA Funds may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute.
 - d. **If “Grant” Condition not Met:** If the Grant is not approved by March 31, 2024, Volo and the County agree to negotiate in good faith to develop a revised project plan to utilize Volo and County ARPA funds to bring internet service to rural Champaign County.
 - e. **Payment for Work:** The County will transfer ARPA funds to Volo in support of the Project, available beginning in County fiscal year 2024, according to the projected budget in Attachment 1. Payment shall be made in installments based upon monthly receipt of invoices, reporting and supporting documentation submitted to the County as defined in this Agreement.
 - f. **Affordable Service.** Volo will make available a variety of speed plans at varying prices, including at least one low-cost option for families in need. The Federal Communications Commission’s Affordable Connectivity Program (“ACP”) currently provides for a \$75/month subsidy for qualifying individuals in “high cost” rural areas such as those targeted by this project. Volo will provide service up to 1 Gbps at no more than \$75/month for as long as such subsidies are available, for

those qualifying for the ACP. Volo will provide service up to 1 Gbps at a minimum commercially reasonable rate for families in need, if the ACP is discontinued or no longer provides sufficient subsidy to cover the entire cost of 1 Gbps service.

- g. ARPA Funding:** The transfer of ARPA funds shall be provided to Volo based on invoice(s) and other documentation for related broadband deployment activities. A Risk Assessment Form, copy of invoice and documentation for broadband deployment activities, and Reporting Form shall be submitted by Volo to the County prior to the first payment. Monthly reimbursement requests may be submitted, and Volo shall submit a copy of invoices and related documentation, along with submission of a Reporting Form by Volo to the County for each payment. The County shall provide the Risk Assessment Form and Reporting Form templates to Volo.

2. Roles and Responsibilities of Volo.

a. Implementation and Oversight

- i. Volo shall incur program costs in accordance with this Agreement and the proposed Project details provided in Attachment 1.
- ii. Volo represents that it now has or will secure all equipment and personnel required to perform the Work under this Agreement. Volo shall assign such personnel as are necessary to carry out timely delivery of the Work pursuant to the requirements of this Agreement. Personnel assigned to perform the Work shall comply with the terms of the Agreement, shall have current licenses and permits as required to perform the Work, and are fully qualified and capable to perform their assigned tasks.
- iii. Volo agrees to reasonably cooperate with meetings conducted by Champaign County Board Members, Staff Members, or Designees, as requested, to review the Project in progress.
- iv. Volo agrees to provide copies of all Grant submittals for the Project in near final form to County staff for review at least one week prior to the Grant deadline.
- v. Volo shall adhere to the ARPA Funds fiscal, accounting, and audit procedures that conform to Generally Accepted Accounting Principles (GAAP) and the requirements of federal Uniform Guidance (2 CFR Part 200).
- vi. Volo shall fulfill the broadband project requirements of the Department of Treasury ARPA Funding which include:
 - 1. Participation in the Federal Communications Commission (FCC) Affordable Connectivity Program (ACP) through the lifetime of the ACP, or otherwise provide access to a broad-based affordability program that provides benefits to households commensurate with those provided under the ACP to low-income consumers in the proposed service area of the broadband infrastructure through the lifetime of the ACP.
 - 2. Reliably meet or exceed symmetrical 100 Mbps download and upload speeds. If these speeds are not met, Volo will explain why not and will confirm that the Project will reliably meet or exceed

100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

- vii. Volo shall submit reporting information to the County as required by the Department of Treasury, upon request of the County. Information may include, but is not limited to: Unique Entity ID Number (UEI), program details and purpose, program timeline and status, program impact, expenditure information and status, capital expenditure amounts and details, impacted populations, technology types used, total miles of fiber deployed, total number of funded locations served by speed, total number of funded locations served by type, latitude/longitude information that conforms with location information in the FCC's Broadband Serviceable Location Fabric, broadband speed, broadband latency, status of other funding sources, participation in an affordability program to benefit low-income consumers, number of households served, Davis Bacon and Labor Reporting for capital expenditures over \$10 million. Reporting requirements will be reasonable and specified by the County. Reporting requirements are *per se* reasonable if they arise out of federal Uniform Guidance requirements (2 CFR Part 200).
- viii. Volo shall provide to the County, upon reasonable notice, access to and the right to examine such books and records of Volo as related to this project and will make such reports to the County as the County may reasonably require so that the County may determine whether there has been compliance with this Agreement.
- ix. No person shall be excluded from participation in programs the County is funding, be denied the benefits of such program, or be subjected to discrimination under any program or activity funded in whole or in part with the funds provided under this Agreement on the ground of race, ethnicity, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, or on any other ground upon which such discrimination is prohibited by law. Volo understands that Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, applies to the use of ARPA Funds.
- x. Volo shall comply with all applicable statutes, ordinances, and regulations. Volo will not use any of these ARPA Funds for lobbying purposes. If it is determined by the County that any expenditure made with the ARPA Funds provided under this Agreement is prohibited by law, Volo will reimburse the County any amount that is determined to have been spent in violation of the law.
- xi. Volo shall not subcontract, delegate, transfer, or assign its rights and duties under this agreement without the written consent of the County. Any approved subcontractor, delegee, transferee, or assignee will be subject to federal Uniform Guidance requirements for the administration and expenditure of ARPA grants. *See* 2 CFR 200.332.
- xii. Volo shall adhere to the Memorandum of Understanding entered into by and between AMG Illinois ISP, LLC d/b/a Nextlink Internet and Gargoyle Technologies, Inc. d/b/a Volo Internet + Tech, a copy of which is included

in Attachment 1, and incorporated by reference herein.

xiii. Volo is not responsible in any way for the operations of the County.

b. Project.

i. Term and Timely Performance:

1. The Parties recognize that ARPA Funds have a limited timeframe in assisting the performance and completion of the Project, according to the United States Department of Treasury Final Rule for ARPA Funds. Volo agrees to perform all ARPA-funded Work as provided for in this Agreement within the required timeline.
2. Volo shall obligate all ARPA Funds under this Agreement for Project costs between March 3, 2021 and December 31, 2024. Volo must expend ARPA Funds obligated under this Agreement and submit all reimbursement requests to the County by June 30, 2026. Any costs that are incurred for obligation after December 31, 2024 are not eligible for County ARPA Funds reimbursement.

ii. Right-of-Way Permits and Easements:

1. In some locations, Volo may be required to seek permission from township road authorities and/or adjacent property owners for construction access. The Illinois Highway Code (Sec. 9-113) requires that contractors wanting to install fiber optic lines, telephone equipment, or other types of utility installations in a road right-of-way receive a permit from the road authority for that roadway. However, in some rural areas of the County, landowners also continue to own to the middle of the road for anything other than road use purposes. In these instances, Volo must also seek an easement from the landowner for the installation.
2. Volo shall ensure that all utility easements, or any other instruments relating to or affecting the title to real estate, entered into between Volo and affected property owners in the Project Area are recorded in the Office of the Champaign County Recorder of Deeds.

3. Roles and Responsibilities of the County.

- a. Pending commitment of additional funding sources, the County shall provide ARPA Funds to Volo in an amount not to exceed *the lesser* of 15% of the Total Project Cost or \$4.7 million (\$1.2 million from ARPA Tranche One and \$3.5 million from ARPA Tranche Two). The transfer of ARPA Funds shall be provided to Volo based on invoice(s) and other documentation for related broadband deployment activities. A Risk Assessment Form, copy of invoice and documentation for broadband deployment activities, and Reporting Form shall be submitted by Volo to the County prior to the first payment. Monthly reimbursement requests may be submitted, and Volo shall submit a copy of invoices and related documentation, along with submission of a Reporting Form by Volo to the County for each payment. The County shall provide the Risk Assessment Form and Reporting Form templates to Volo.

- b. The County shall provide letters of support as needed for Volo to apply for Project funding assistance.
 - c. The County shall provide oversight as described in this Agreement for the purpose of ensuring that ARPA Funds are spent in compliance with federal law, and in compliance with the intended purpose of the funds as set forth in this Agreement.
 - d. The County shall assist Volo in obtaining the permits and easements detailed in this Agreement in order to complete the Work.
 - e. The County is not responsible in any way for the operations of Volo.
4. **Term.** This Agreement shall commence upon its execution between the Parties.
5. **Termination.** The Agreement may be terminated by either party upon a thirty-day notice in writing to the other party. Upon termination, Volo shall provide to the County an accounting of the ARPA Funds and shall remit unspent ARPA Funds to the County. Additionally, if Volo does not spend the ARPA Funds in accordance with the regulations and requirements specified in this Agreement, Volo will be required to repay the County in the amount of ARPA funds that were not utilized in accordance with federal regulations and the requirements specified in this Agreement.
6. **Amendments.** This Agreement may be amended only by an agreement of the Parties executed in the same manner in which this Agreement is executed.
7. **Representations and Warranties.** Both Parties represent that they are fully authorized to enter into this Agreement. The performance and obligations of either Party will not violate or infringe upon the rights of any third-party or violate any other agreement between the Parties, individually, and any other person, organization, or business or any law or governmental regulation.
8. **Indemnity.** Each Party agrees to indemnify and hold harmless the other Party, its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from the negligence of or breach of this Agreement by the indemnifying Party, its respective successors and assigns that occurs in connection with this Agreement. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party.
9. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM ANY PART OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, WHICH ARE NOT RELATED TO OR THE DIRECT RESULT OF A PARTY'S NEGLIGENCE OR BREACH.

10. **Unavoidable Circumstances.** A Party shall not be deemed to be in breach or in violation of this Agreement or Attachment 1 if that Party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.
11. **Severability.** In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, that part shall be severed from the remainder of the Agreement and all other provisions should continue in full force and effect as valid and enforceable.
12. **Waiver.** The failure by either party to exercise any right, power or privilege under the terms of this Agreement will not be construed as a waiver of any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
13. **Conflicts.** In the event of an unresolvable dispute, both Parties agree to participate in a mediation process and to split equally any costs associated with such. Any outcomes of mediation shall be in writing and binding on the Parties.
14. **Legal and Binding Agreement.** This Agreement is legal and binding between the Parties as stated above. The Parties each represent that they have the authority to enter into this Agreement.
15. **Entire Agreement.** The Parties acknowledge and agree that this Agreement represents the entire agreement between the Parties. In the event that the Parties desire to change, add, or otherwise modify any terms, they shall do so only by an agreement of the Parties executed in the same manner in which this Agreement is executed.

The Parties agree to the terms and conditions set forth above as demonstrated by their signatures as follows:

THE COUNTY OF CHAMPAIGN



Steve Summers, County Executive

**GARGOYLE TECHNOLOGIES, INC.
DBA Volo Internet + Tech**



Peter Folk, President

ATTACHMENT 1

GARGOYLE TECHNOLOGIES, INC PROPOSAL FOR CHAMPAIGN COUNTY BROADBAND INFRASTRUCTURE EXPANSION PROJECT

I. PROJECT DETAILS

- A. **Gargoyle Technologies, Inc. DBA Volo.net Internet + Tech (“Volo”)** is an Illinois Corporation that provides high-speed internet and voice services throughout Champaign County Illinois to residential, business, K-12, rural Healthcare, and governmental agencies.
- B. **Scope:** Volo proposes to expand true fiber optic broadband internet to every premise and business in *designated* unserved and underserved rural areas within Champaign County. Volo proposes:
- a. To design, develop, and install fiber optic-based service resulting in high-speed internet of gigabit speeds across the fiber served locations using Nokia hardware to power and distribute its fiber network on both access and middle mile.
 - b. A project start date subject to, and adjusted as necessary based on the availability of grant programs and award dates. Operational planning and preparation will be ongoing until grant award date. Upon award, finalized engineered drawings will be utilized for all permitting jurisdictions. Feeding fiber circuits and data center configurations will be ordered within a reasonable timeframe after award. Construction will begin within a reasonable timeframe after award with full deployment of the fiber network proposed for completion within two years after award.
 - c. To serve an estimated 2,086 grant-eligible, unserved and underserved households and premises in its designated service area, adjusted and updated as required by federal and/or state broadband grant providers. The number of served households and premises will be reduced pro rata if no subsequent state or federal award is granted by March 31, 2024. In the event the County does not desire a pro rata reduction, Volo will develop a project plan to serve all households with gigabit fixed wireless connectivity, to be approved by the County.
 - d. To seek grant and/or loan funding through USDA ReConnect Loan and Connect Illinois Grant programs, as appropriate.
 - e. To participate in the Affordable Connectivity Program, or other similar program, designed to provide low- or no-cost high-speed, reliable internet services to qualifying low-income households. Volo also proposes to offer

financial assistance through the ACP to make devices available for qualifying households.

- C. **Affordable Service:** Volo will offer fiber broadband internet service at the following price points:

Basic - Gigabit Fiber Service:

Gigabit Service with speeds up to 1,000 Mbps
symmetrical speeds

No data caps

Installation: \$0 for standard installation

Monthly Service Cost including Taxes and Fees:
\$84.95

Top Tier - 10 Gigabit Fiber Service:

10 Gigabit Service with speeds up to 10,000 Mbps
symmetrical speeds

No data caps

Installation: \$500 for standard installation

Monthly Service Cost including Taxes and Fees:
\$129.95

ACP Qualified Gigabit Fiber Service:

Gigabit Service with speeds up to 1,000 Mbps
symmetrical speeds

No data caps

Installation: No installation cost for grant-funded
installations

Monthly Service Cost including Taxes and Fees: \$75,
with ACP discount there will be no out of pocket
expense for ACP Verified Households.

- D. **Speed and Latency:** Volo will ensure that the deployment of internet reliably meets or exceeds symmetrical 100 Mbps download and upload speeds. If these speeds are not met, Volo will explain why not and will confirm that the project will reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Internet service provided by Volo will also maintain an average latency of less than 100 milliseconds measured during peak daily traffic times, calculated on a monthly basis.

- E. **Fiber Reserved for County Use.** Volo agrees to work with the County to, when feasible, reserve sufficient capacity within its expansion network for County use in connecting its facilities, operations, and sites.

- F. **Community Anchor Institutions.** Volo will install fiber-to-the-curb to every Community Anchor Institution in its designated expansion area, and will connect any Community Anchor Institution that wishes to pay for service for zero installation fee, and will offer Community Anchor Institutions their lowest cost commercial or non-profit service package.

Phase <input type="button" value="v"/>	Premises	Est Route	Engineering &		Total Cost	Volo Match	CC Match	Total Nonstate		Match %
	Passed	Mileage	OSP Cost	Contingency				Match	State	
⊕ Phase 1	350	122.57	\$ 9,706,097	\$ 3,027,353	\$ 13,043,450	\$ 1,231,800	\$ 4,700,000	\$ 5,931,800	\$ 7,111,650	45%
⊕ Phase 2	1,736	417.61	\$ 24,148,330	\$ 7,509,837	\$ 31,658,167	\$ 3,468,760	\$ -	\$ 3,468,760	\$ 28,189,407	11%
Total	2,086	540.18	\$ 33,854,427	\$ 10,537,190	\$ 44,701,617	\$ 4,700,560	\$ 4,700,000	\$ 9,400,560	\$ 35,301,057	21%

Memorandum of Understanding

This Memorandum of Understanding (MOU) is entered into by AMG Illinois ISP, LLC d/b/a NextLink Internet, a limited liability company, with headquarters at 95 Parker Oaks Lane, Hudson Oaks, Texas 76087 (“Nextlink”) and Gargoyle Technologies, Inc. d/b/a Volo Internet + Tech, an Illinois corporation with headquarters at 3310 N. Cunningham Avenue, Urbana, IL 61802 (“Volo”), together hereinafter identified as “either Company” or “both Companies”.

Both Companies agree to:

1. Work in cooperation to expand and improve broadband service to areas of Champaign County;
2. To provide information to the Champaign County Board regarding the Companies' efforts in a manner to be agreed later by both parties;
3. Explore grant opportunities, and cooperate in proposal preparation and submission to provide financial support to the Companies' efforts to expand and improve broadband service in Champaign County;
4. Pursue ways to maximize both Companies likelihood of receiving grant funding, and minimize the burdens of grant compliance, including to the extent mutually acceptable by both Companies, submitting joint or “package” grant proposals;
5. Work in collaboration with the Champaign County Board and Champaign County Farm Bureau wherever necessary, to effectively inform, educate, and execute appropriate contracts with Champaign County property owners regarding the expansion and improvement of broadband services in their county;
6. Divide County by serviceable locations and road miles, with the goal of both Companies having a logical, contiguous service area, in accordance with the attached map labeled Addendum A;
7. Develop a mutually acceptable breakdown of grant funding, scopes of work, shared and separate, identifying geographical areas of responsibility and tasks undertaken by each Company;
8. Develop a mutually agreeable plan for covering RDOF and non-RDOF grant-eligible areas that minimizes redundant infrastructure and fairly attributes state and federal funds by region;
9. Agree upon a method by which each Company will share inquiry for new service in the others agreed territory;
10. Share letters of support pertaining to the project, particularly those involving individual parcels in the other Company’s agreed-upon territory;
11. Allow use of respective trademarked logo(s) inside of mutually approved marketing campaigns;
12. Share network designs to ensure both Companies’ networks are compatible and create redundancy to boost reliability;
13. Develop a fair and open pricing and infrastructure sharing model for each Company’s access to backbone strands and/or lambdas and/or VLANs on the other’s network, including potential for mileage-based fiber swaps to accomplish redundancy and reduce costs for uplinks and backbones.
14. Share lay-down space throughout the county to both Companies mutual benefit.
15. Provide the other Company with a Right of First Refusal for any contracts involving backbone deployment, operating the network, and/or providing contracted maintenance to the network.
16. Execute mutually agreeable Non-Disclosure Agreements to allow for sharing of design and



VOLO INTERNET + TECH
3310 N. Cunningham Ave.
Urbana, IL 61802
217.367.8656

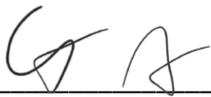
network technical details.

- 17. Establish a file sharing system to support access to easements, communications, and other documentation that shall provide benefit to both parties, or involve parcels that overlap individual partner territories.
- 18. Keep the other Company apprised of any events or factors that may impact the other's performance or participation in shared or individual projects.

Hereby agreed by both parties on this 12th day of October, 2022.

For AMG:

For Volo:

Signature: 

Signature: 

Printed Name: Claude Aiken

Printed Name: Peter Folk

Title: Chief Strategy Officer

Title: President

Addendum A – PROPOSED Geographical Breakdown Plan

