



Jess L. Greenwood, P.E.
Public Works Director – County Engineer

2140 Pioneer Road
Red Wing, MN 55066
Office: (651) 385.3025

TO: Honorable County Commissioners
Scott Arneson, County Administrator

FROM: Jess L. Greenwood, P.E. – Public Works Director / County Engineer

RE: 19 March 2024 County Board Meeting – CONSENT AGENDA
**Authorization to Execute Fiber Optic Indefeasible Right-to-Use Agreement with
Dakota County**

Date: 14 March 2024

Summary

It is requested that the County Board approve the attached resolution authorizing the County Board Chair to sign and enter into the attached agreement on behalf of Goodhue County.

Background

Goodhue County has recently made significant improvements at Byllesby Park, including the construction of the Richard Samuelson Pavilion, modern restrooms, drinking fountains, and utility updates. As part of the Byllesby Park Pavilion & Essential Services Project, a security system was installed that ties into the County's current Genetec system. Dedicated in-ground fiber is required to allow a high-resolution setting on the cameras and enable staff to capture license plates on vehicles and images of people in case there were damage or vandalism to County property and to make it possible to review camera footage in a reasonable manner.

Dakota County is willing to allow Goodhue County use of a portion of their fiber for this purpose, in exchange for mounting a security camera on Goodhue County property that will allow them to better view the Byllesby Dam from the south. Goodhue County would pay for fiber installation from the dam's southern control building into the mechanical room of the pavilion. There is no ongoing cost for use of the fiber once it is installed.

Alternatives

- Approve the attached resolution and enter into the agreement as requested.
- Request a change in the agreement.
- Choose not to provide an in-ground fiber option for the park security system.

Recommendations

It is recommended that the County Board approve the attached resolution and authorize this fiber optic agreement.

"To effectively promote the safety, health, and well-being of our residents"

Contract #DCA20817

FIBER OPTIC INDEFEASIBLE RIGHT TO USE

AGREEMENT BY AND BETWEEN

COUNTY OF DAKOTA

AND

COUNTY OF GOODHUE

FIBER OPTIC INDEFEASIBLE RIGHT TO USE AGREEMENT

This agreement for the indefeasible right to use (or “IRU”) together with attachments A, B and C (collectively the “Agreement” or the “IRU Agreement”) is made by and between the County of Dakota, a Minnesota County governmental unit, acting by and through its Board of Commissioners (“Dakota”) and the County of Goodhue, a Minnesota County governmental unit, acting by and through its Board of Commissioners (“Goodhue”). Dakota and Goodhue may be referred to herein individually as a “party” or collectively as the “parties.”

BACKGROUND

Dakota has constructed a fiber optic communications system throughout Dakota County, which includes unused strands of fiber optic cable. Dakota is developing a broadband fiber optic network to facilitate electronic communications between government owned facilities and infrastructure. To further the development of the Lake Byllesby Dam and recreational area by providing better security Goodhue requires the use of two existing strands of fiber from the Northside and within the dam to the South side of Lake Byllesby Dam for security cameras, remote door locking, and public Wi-Fi. Dakota requires the use of two new strands of fiber to be constructed by Goodhue to their new shelter on the South of the dam to enable a southern view of the dam by a new Dakota security camera.

- A. Goodhue wishes to trade two fibers from Dakota as described in this Agreement; and
- B. Dakota wishes to trade two fibers from Goodhue as described in this Agreement; and
- C. Dakota agrees to grant to Goodhue the right to use two fibers within Certain fiber optical cable segments on the terms and conditions set forth below; and
- D. Goodhue agrees to grant to Dakota the right to use two fibers within certain fiber optical cable segments on the terms and conditions set forth below.

DEFINITIONS

The following terms are used in this Agreement:

- A. “Right-of-Way” means the real property, including all fee simple, easements, access rights, rights of use and other interests, owned by or operated by a government entity, devoted to road or highway purposes.
- B. “Effective Date” is the date upon which all Parties have executed this Agreement.
- C. “Fiber” means a glass strand or strands which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.

- D. "Fiber Facilities" means a handhole, conduit, splice enclosures, and related equipment, but excluding any electronic or optronic equipment at termination points located in party's facilities.
- E. "Fiber Optic Cable" or "Cable" means a collection of fibers with a protective outer covering.
- F. "IRU Assets" means parties IRU conduit, IRU Cable, IRU Fibers and Fiber Facilities subject to this agreement as more specifically described in Attachment A.
- G. "IRU Cable" means a Cable containing one or more fibers, constructed and owned by parties in which parties has an IRU pursuant to the terms of this Agreement.
- H. "IRU Fibers" means the specific parties owned fiber described in attachment A, for which an IRU is granted to the parties in the IRU Cable pursuant to the terms of this Agreement.
- I. "Indefeasible Right of Use" or "IRU" means an indefeasible right to use, maintain and manage the IRU Fibers and Fiber Facilities, provided, however, that granting of such IRU does not convey legal title to the IRU Fibers or Fiber Facilities.
- J. "Optical Splice Point" means a point where parties cable is connected to another entity's cable within a splice enclosure.
- K. "Relocation" means any physical movement of fiber optic cable or conduit required due to reconstruction, modification, change in grade, expansion or relocation of a county road or highway, or a city street or other public improvement.

In consideration of their mutual promises, the parties expressly agree as follows:

ARTICLE I LICENSES

Section 1.1 Goodhue desires an IRU in Dakota's IRU Assets further described in Attachment A to this Agreement. In consideration of the promises by Goodhue in this Agreement, Dakota grants an IRU to Goodhue in the IRU Assets identified in Attachment A, subject to any interests Dakota has in the cost sharing formula with Goodhue more fully described in Attachment B which is attached hereto and incorporated herein by reference, pursuant to IRUs or other contractual arrangements. Goodhue shall be entitled to use the IRU Assets for any government purpose. If Goodhue generates revenue by allowing third-party commercial use or permits use by a third party that generate revenue for that third party from the use of fiber assets, 100% of the revenue generated by use of the Dakota fiber asset shall be paid to Dakota.

Section 1.2 Subject to the terms and conditions of this Agreement, each party hereby grants to the other party a license to access and use the IRU Assets as delineated in Attachment A for each party's use in accord with and during the term of this Agreement.

Section 1.3 The IRU Assets are provided “as is.” If any new Fiber Facilities or any fiber splices are needed to interconnect IRU Fibers to the receiving party’s network, that entity shall be responsible for coordinating this work with the granting party and shall pay all costs and fees associated with connecting the IRU Fibers to other fibers not owned by granting party. The entity that owns the assets shall confer and agree upon which party is responsible for the costs and fees associated with connecting the IRU Fibers to other fibers for the receiving party’s network purposes of non-parties to the Agreement or shall agree upon an allocation of costs and fees between the parties. If the parties cannot agree upon the responsibility for costs and fees related to connections, the issue shall be submitted to binding arbitration.

Section 1.4 Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree nothing in this Agreement shall operate to limit, interfere with, or otherwise adversely affect either party’s right to manage, control, construct, relocate, maintain, replace, and expand the portion of its fiber optic network equipment and infrastructure that is not subject to this Agreement, and is not included in the description of Fiber and Fiber Facilities in Attachment A.

Section 1.5 Assignment. No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party, which shall not be unreasonably delayed or withheld. An assignment agreement shall be fully executed and approved by the same parties, or their successors in office. The parties shall sign all papers and agreements needed to affect such transfer.

**ARTICLE II
EFFECTIVE DATE AND TERM**

Parties can use the IRU Assets commencing on the Effective Date of this Agreement, March 4, 2024 and continue for an initial term of twenty (20) years, with two separate five-year renewals which shall be effective unless a party affirmatively decides not to renew and provides ninety (90) days’ notice to the other party prior to termination or unless terminated by agreement of the parties in writing or by one of the events in Article XI, Section 11.2 of this Agreement, whichever occurs first.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES**

Section 5.1 Parties’ use of the IRU Assets shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and/or restrictions.

Section 5.2 Each party represents and warrants it has the right to grant an IRU in its IRU Assets.

**ARTICLE VI
LIABILITY; INDEMNIFICATION**

Section 6.1 Neither Goodhue nor Dakota shall be liable to the other for any indirect, special, punitive, or consequential damages arising under this Agreement or from any breach or

partial breach of the provisions of this Agreement or arising out of any act or omission of either party hereto, its directors, officers, employees, servants, contractors, and/or agents.

Section 6.2 To the extent permitted by law, Goodhue assumes, releases and agrees to indemnify, defend, protect and save Dakota (including its officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions, negligence, or willful misconduct of Goodhue, its directors, officers, employees, servants, contractors, and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

To the extent permitted by law, Dakota assumes, releases and agrees to indemnify, defend, protect and save Goodhue (including its officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any person or property arising out of or resulting in any way from the acts or omissions, negligence, or willful misconduct of Dakota, its directors, officers, employees, servants, contractors, and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

Notwithstanding the foregoing, such indemnity is limited to the amount of available insurance coverage and nothing herein shall be considered as a waiver of Goodhue's and Dakota's statutory tort limits under Minn. Stat. Chap. 466.

Section 6.3 Nothing contained herein shall operate as a limitation on the right of either party to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation, or use of the Fiber, Cable, or IRU Fibers; provided, (i) neither party to this Agreement shall have any claim against the other party for indirect, incidental, special, punitive, or consequential damages (including, but not limited to, any claim from any customer for loss of services), and (ii) each party shall assign such rights or claims, execute such documents, and do whatever else may be reasonably necessary to enable the injured party to pursue any action against such third party.

ARTICLE VII FORCE MAJEURE

The obligations of the parties hereto are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

**ARTICLE VIII
MAINTENANCE, REPAIR, FEES
RELOCATION OF CABLE**

Section 8.1 Maintenance. Dakota shall maintain the Network or contract with a third party for maintenance, locates, breaks and fixes. Dakota agrees to be responsible for 100% costs in maintenance, locates, breaks and fixes in Segment 1. Goodhue shall maintain the Network or contract with a third party for maintenance, locates, breaks and fixes. Goodhue agrees to be responsible for 100% costs in maintenance, locates, breaks and fixes in Segment 2.

Section 8.2 Fees. Neither party will impose, and neither party shall pay a fee, maintenance or repair cost for the use of the other party's IRU Assets during the term of this Agreement except as outlined in Attachment B, or any revenue articulated in Section 1.1.

Section 8.3 Future Splicing. Costs for future splicing shall be the responsibility of the party requesting the splicing. Splicing shall be performed by the third party under contract with Dakota or Goodhue to perform maintenance or other contracted party as agreed.

Section 8.4 Relocation. Dakota will be responsible for relocation of conduit and fiber in Segment 1. Goodhue is responsible for relocation costs for the conduit and fiber in Segment 2.

**ARTICLE IX
CONFIDENTIALITY**

The parties agree and recognize this Agreement as well as information and documents the parties receive from one another during the term of this Agreement may be considered public data under the Minnesota Government Data Practices Act, Minn. Stat. Ch 13, as amended and all associated rules. The parties agree to comply with the Minnesota Government Data Practices Act as it applies to all data provided by the parties under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by either party under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either party. If either party receives a request to release data arising out of or related to the Fiber Facilities or the use, operation or maintenance thereof, the party receiving the request must immediately notify the other party of the request. The parties will promptly consult and discuss the best way to respond to the request.

**ARTICLE X
ABANDONMENT; TERMINATION; EFFECT OF TERMINATION**

Section 10.1 Should either party decide to abandon all or part of its IRU Fibers during the term of this Agreement, it may do so by providing sixty (60) days' notice informing the other party in writing of its intent to abandon. Such abandonment shall be at no cost to either party except as set forth in this Article. If either party provides notice of intent to abandon, the affected party may notify the party that provided notice prior to the expiration of the notice period of its intent to take ownership of the IRU Fibers. If either party provides timely notice of its intent to take ownership, the parties will execute any agreements or documents transferring legal title of the IRU Fibers to the other party. Each party to bear their own costs associated with executing any agreements or documents to transfer legal title under this Article.

Section 10.2. Should either party decide it no longer requires use of the IRU Fibers during the term of this Agreement, it may terminate the agreement by providing sixty (60) days' notice informing the other party in writing of its intent to terminate the IRU Agreement.

Section 10.3 This Agreement shall terminate upon written notice from either party to the other if a default occurs that is not cured within the time allowed hereunder.

Section 10.4 If Goodhue is unable, for whatever reason, to complete the construction of Segment 2, it may notify Dakota, and the Agreement will be Terminated effective on the date of notice.

Section 10.5 If the Agreement terminates under Article X, Section 10.3, the non-defaulting party shall not have any liability to the defaulting party, and the defaulting party shall be liable for such damages to the non-defaulting party as the non-defaulting party may establish in a court of law, except as limited by this Agreement. If the Agreement terminates under Article X, Section 10.4, neither party is liable to the other for any damages arising out of such termination. Upon termination of this Agreement for any reason, the parties agree to promptly execute any documents reasonably required to affect such termination.

ARTICLE XI DEFAULT

Section 11.1 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 thirty (30) days after receipt of such notice; provided, that where a default cannot reasonably be cured within the thirty (30) 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 or until the default is cured, whichever is shorter.

Section 11.2 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, in its discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.

ARTICLE XII NOTICES

Section 12.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to Goodhue:	Goodhue County Attn: John Smith, Information Technology 509 West 5 th Street Red Wing, MN 55066 651-385-3122 john.smith@co.goodhue.mn.us
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With a copy to: Goodhue County
Attn. Goodhue County Attorney
454 West 6th Street
Red Wing, MN 55066

If to County: Dakota County
Attn: Enterprise Finance and
Information Services (EFIS) Director
1590 Highway 55
Hastings, MN 55033

With a copy to: Dakota County Attorney
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033

Section 12.2 Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgment of delivery, and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit; if sent by commercial overnight delivery service, upon verification of receipt.

**ARTICLE XIII
LIMITATION ON PROPERTY INTEREST**

This Agreement does not grant Goodhue any property interest, or estate in, or lien upon Dakota's property, Dakota's Optical Fiber Network, or any components thereof, or any intellectual property, except for use of the IRU Assets during the term of this Agreement. All liens, claims, and charges of Goodhue shall not attach to any interest of Dakota or in any property owned by Dakota.

This Agreement does not grant Dakota any property interest, or estate, in or lien upon Goodhue's property, its Optical Fiber Network or any components thereof, or any intellectual property. All liens, claims, and charges of Dakota shall not attach to any interest of Goodhue or in any property owned by Goodhue.

**ARTICLE XIV
GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provision. The parties agree any action arising out of this Agreement or with respect to the enforcement of this Agreement shall be venued in the Dakota County District Court, State of Minnesota.

**ARTICLE XV
INDEPENDENT CONTRACTOR**

The performance by Dakota and Goodhue of all duties and obligations under this Agreement shall be as independent local government unit and independent commercial operator and not as agents of the other party, and no person employed or utilized by a party shall be considered the employee or agent of the other. Neither party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The parties agree this Agreement does not create a partnership between, or a joint venture of, Dakota and Goodhue.

**ARTICLE XVI
MISCELLANEOUS**

Section 16.1 The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this IRU Agreement.

Section 16.2 When interpreting this Agreement, words used in the singular shall include the plural and the plural, the singular, and “of” is used in the inclusive sense, in all cases where such meanings would be appropriate.

Section 16.3 If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, then the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable and to the extent that to do so would not deprive one of the parties of the substantial benefit of its bargain. Such provision, to the extent allowable by law and the preceding sentence, shall not be voided or canceled, but instead will be modified by such court so that it becomes enforceable with all of the other terms of this Agreement continuing in full force and effect.

Section 16.4 This Agreement may be amended only by a written instrument executed by all Parties.

Section 16.5 No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

Section 16.6 All actions, activities, consents, approvals and other undertakings of the parties in this IRU Agreement shall be performed in a reasonable and timely manner.

Section 16.7 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

Section 16.8 This Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns.

**ARTICLE XVII
ENTIRE AGREEMENT**

This Agreement and any Attachments referenced and attached, or to be attached through any amendment constitutes the entire agreement between the parties and supersede all prior negotiations, understandings and agreements, whether oral or written.

GOODHUE COUNTY

By: _____

Name: _____

Title: _____

Date: _____

Goodhue Board Res. #: _____

Approved as to form for Goodhue:

County Attorney / Date

File #: _____

DAKOTA COUNTY

By: _____

David McKnight
Enterprise Finance & Information
Services Director

DocuSigned by:
David McKnight
B781BC81B31D473...

Date: 03/06/2024 | 4:19 PM CST

Dakota Board Res. #: 24-084

Approved as to form for Dakota:

/s/ Lucie O'Neill 03/05/2024
Assistant County Attorney / Date

File #: KS-23-442

ATTACHMENT A - FIBER SEGMENTS



**ATTACHMENT B
COST ALLOCATION AND PAYMENT LOGISTICS**

**EXHIBIT B
Description of Fiber Details, Ownership, and Use**

Segment 1

This segment consists of four (4) strands of fiber from Hand Hole (North-East corner of Gerlach Way and Harry Avenue, Cannon Falls, MN at Lake Byllesby Dam and Campground to the Dakota County Dam Building on the Southside of the Lake Byllesby Dam. Dakota will own and maintain the fiber in Segment 1. Goodhue will have the use of the following 2 strands of fiber within the cables. Dakota will have the use of 2 strands of fiber within the cables.

Goodhue is assigned strands 3 & 4 of cable and Dakota will be assigned strands 5 & 6.

Segment 2

This segment consists of forty-eight (48) strands of fiber from the Dakota County Dam Building on the Southside of Lake Byllesby Dam to the new Goodhue Park Building. Goodhue will own and maintain the 48 strands of fiber in Segment 2. Dakota will have the use of the following 2 strands of fiber within the cables. Goodhue will pay for the construction and splicing of this segment.

Goodhue is assigned strands 3 & 4 of cable and Dakota will be assigned strands 5 & 6.

ATTACHMENT C – MAINTENANCE AND LOCATES

- A. For maintenance of Segments 1 and 2 in Attachment A, maintenance and other costs shall be allocated as follows:
 - 1. For Segment 1, Dakota shall be responsible for all the maintenance and locate costs.
 - 2. For Segment 2, Goodhue shall be responsible for all maintenance and locate costs.

**BOARD OF COUNTY COMMISSIONERS
GOODHUE COUNTY, MINNESOTA**

Date: 19 Mar 2024

**Authorization to Execute Fiber Optic Indefeasible Right to Use Agreement
With Dakota County**

Resolution No. _____

WHEREAS, to further the development of the Lake Byllesby Dam and recreational area by providing better security, Goodhue County desires to use two available strands of Dakota County's optic fiber for security cameras, remote door locking, and public Wi-Fi; and

WHEREAS, Dakota County requires the use of two new strands of fiber to enable a southern view of the dam by a new Dakota County security camera to be installed at the Goodhue County Richard Samuelson Pavilion; and

WHEREAS, Goodhue County agrees to construct a new fiber connection from the Dakota County control building on the south side of the dam to their new pavilion; and

WHEREAS, a Fiber Optic Indefeasible Right-to-Use Agreement with Dakota County is required for use of Dakota County fiber optic cable.

NOW, THEREFORE, BE IT RESOLVED, the Goodhue County Board of Commissioners hereby authorizes the Goodhue County Board Chairperson to execute an IRU with Dakota County for use of two strands of Dakota County-owned Institutional Network Backbone, subject to approval by the County Attorney's Office as to form.

State of Minnesota
County of Goodhue

Anderson	Yes	___	No	___
Greseth	Yes	___	No	___
Majerus	Yes	___	No	___
Betcher	Yes	___	No	___
Flanders	Yes	___	No	___

I, Scott Arneson, duly appointed, qualified and County Administrator of the County of Goodhue, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Goodhue County, Minnesota at their session held on the 19th day of March 2024, now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Red Wing, Minnesota, this 19th day of March 2024.

Scott Arneson
County Administrator