

FIBER OPTIC INDEFEASIBLE RIGHT TO USE

AGREEMENT BY AND BETWEEN

COUNTY OF DAKOTA AS GRANTOR

AND

CITY OF APPLE VALLEY AS GRANTEE

FIBER OPTIC INDEFEASIBLE RIGHT TO USE AGREEMENT

This Agreement for the indefeasible right to use (or “IRU”) together with attachments A, B, C and D (collectively the “Agreement” or the “IRU Agreement”) is made by and between County of Dakota, a Minnesota County governmental unit, acting by and through its Board of Commissioners (“IRU Grantor” or “County”) and City of Apple Valley, acting by its City Council (“IRU Grantee” or “Apple Valley”). The IRU Grantor and IRU Grantee may be referred to herein individually as a “Party” or collectively as the “Parties.”

BACKGROUND

- A. Apple Valley desires to trade the use of two fibers from the County for a utility easement as described in this Agreement; and
- B. The County agrees to grant Apple Valley the right to use two fibers within certain Fiber Optical Cable segments on the terms and conditions set forth herein.

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 county facilities.
- E. “Fiber Optic Cable” or “Cable” means a collection of fibers with a protective outer covering.
- F. “IRU Assets” means County’s IRU conduit, IRU Cable, IRU Fibers and Fiber Facilities subject to this Agreement as more specifically described in Attachments A and B.
- G. “IRU Cable” means a Cable containing one or more Fibers, constructed, and owned by the County in which Apple Valley has an IRU pursuant to the terms of this Agreement.

- H. "IRU Fibers" means the specific County owned Fiber in the location depicted in Attachment A and as described in Attachment B, for which an IRU is granted to the Apple Valley 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 The County's 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 Apple Valley desires an IRU in the County's IRU Cable further described in Attachment B to this Agreement. In consideration of the promises by Apple Valley in this Agreement and in exchange for the utility easement as described in Attachment C, and conditioned on the County obtaining an encroachment easement from the Metropolitan Council, as described in Attachment D, the County grants an IRU to Apple Valley in the IRU Fibers identified in Attachment A, and more fully described in Attachment B which is attached hereto and incorporated herein by reference, pursuant to IRUs or other contractual arrangements. Apple Valley shall be entitled to use the IRU Fibers for any lawful government purposes subject to (i) agreeing to be bound by all laws, regulations, and any requirements of the access to rights of way, and (ii) otherwise complying with the terms and conditions of this Agreement. If Apple Valley 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 IRU Fibers, 100% of the revenue generated by use of the IRU Fibers shall be paid to the County.

Section 1.2 Subject to the terms and conditions of this Agreement, County hereby grants to Apple Valley a license to access and use IRU Fibers within the IRU Cable as delineated in Attachment B for Apple Valley use in accord with and during the term of this Agreement. Apple Valley shall trade a utility easement for the use of two strands of fiber in Attachment B.

Section 1.3 The IRU Fibers are provided to the Apple Valley "as is." If any new Fiber Facilities or any fiber splices are needed to interconnect IRU Fibers to the Apple Valley network, Apple Valley shall be responsible for coordinating this work with the County and shall pay all costs and fees associated with connecting the IRU Fibers to other fibers not owned by the County for Apple Valley network purposes.

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 B.

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. If assignment of this Agreement is approved, 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

Apple Valley can use the IRU Assets commencing on the Effective Date of this Agreement. This Agreement has an initial term of ten (10) years, with two separate five-year renewals, which second term shall be effective unless the County affirmatively decides not to renew and provides ninety (90) days' notice to Apple Valley prior to expiration of the first five-year term, or unless this Agreement is otherwise terminated at any other point during the ten (10) year term 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 3.1 Apple Valley's use of the IRU Fibers shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and/or restrictions.

Section 3.2 County represents and warrants it has the right to grant an IRU in its IRU Assets.

ARTICLE IV LIABILITY; INDEMNIFICATION

Section 4.1 Neither Apple Valley nor the County 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 4.2 To the extent permitted by law, Apple Valley assumes, releases and agrees to indemnify, defend, protect and save the County (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 Apple Valley, 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, County assumes, releases and agrees to indemnify, defend, protect and save Apple Valley (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 County, 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 Apple Valley's and the County's statutory tort limits under Minn. Stat. Chap. 466.

Section 4.3 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 V 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 VI MAINTENANCE, REPAIR, FEES RELOCATION OF CABLE

Section 6.1 Maintenance. The County shall maintain the IRU Cable or contract with a third party for maintenance, locates, breaks and fixes. County agrees to be responsible for 100% costs in maintenance, locates, breaks, and fixes in Segment 1 described in Attachments A and B.

Section 6.2 Fees. The County will not impose, and Apple Valley shall not pay a fee, maintenance or repair cost for the use of the IRU Assets during the term of this Agreement except as outlined in Attachment B.

Section 6.3 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 the County to perform maintenance or other contracted Party as agreed.

Section 6.4 Relocation. The County will be responsible for relocation of conduit. Relocation costs for the conduit and fiber in the shared conduit shall be allocated based upon the proportion of fibers owned/licensed as outlined in Attachment B.

ARTICLE VII 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 VIII ABANDONMENT; TERMINATION; EFFECT OF TERMINATION

Section 8.1 Should County decide to abandon all or part of the IRU Fibers during the term of this Agreement, it may do so by providing sixty (60) days' notice informing Apple Valley 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 the County provides notice of intent to abandon, Apple Valley may notify County prior to the expiration of the notice period of its intent to take ownership of the IRU Fibers. If the Apple Valley 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 Apple Valley. Each Party to bear their own costs associated with executing any agreements or documents to transfer legal title under this Article.

Section 8.2 Should Apple Valley 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 County in writing of its intent to terminate the IRU Agreement.

Section 8.3 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 8.4 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. Upon termination of this Agreement for any reason, the Parties agree to promptly execute any documents reasonably required to affect such termination.

ARTICLE IX DEFAULT

Section 9.1 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 9.2 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 X NOTICES

Section 10.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to Apple Valley: City of Apple Valley
 Attn: City Administrator
 7100 147th Street W
 Apple Valley, MN 55124

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

With a copy to: Dakota County Attorney's Office
 Attn: Civil Division
 Dakota County Judicial Center
 1560 Highway 55
 Hastings, MN 55033

Section 10.2 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 XI LIMITATION ON PROPERTY INTEREST

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

This Agreement does not grant the County any property interest, or estate, in or lien upon Apple Valley's property, except as otherwise stated in the utility easement described in Attachment C, or in its Optical Fiber Network or any components thereof, or any intellectual property. All liens, claims, and charges of the County shall not attach to any interest of Apple Valley or in any property owned by Apple Valley.

ARTICLE XII 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 the County and Apple Valley 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, the County and the Apple Valley.

ARTICLE XII MISCELLANEOUS

Section 14.1 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 14.2 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 14.3 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 14.4 This Agreement may be amended only by a written instrument executed by all Parties.

Section 14.5 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 14.6 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 14.7 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

Section 14.8 This Agreement is solely for the benefit of the Parties hereto and their permitted successors and assigns.

ARTICLE XV 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.

**IRU GRANTEE:
CITY OF APPLE VALLEY**

By: _____
Clint Hooppaw
Its: Mayor

By: _____
Pamela J. Gackstetter
Its: City Clerk

Date: _____

**IRU GRANTOR:
COUNTY OF DAKOTA**

By: _____
David McKnight
Deputy County Manager

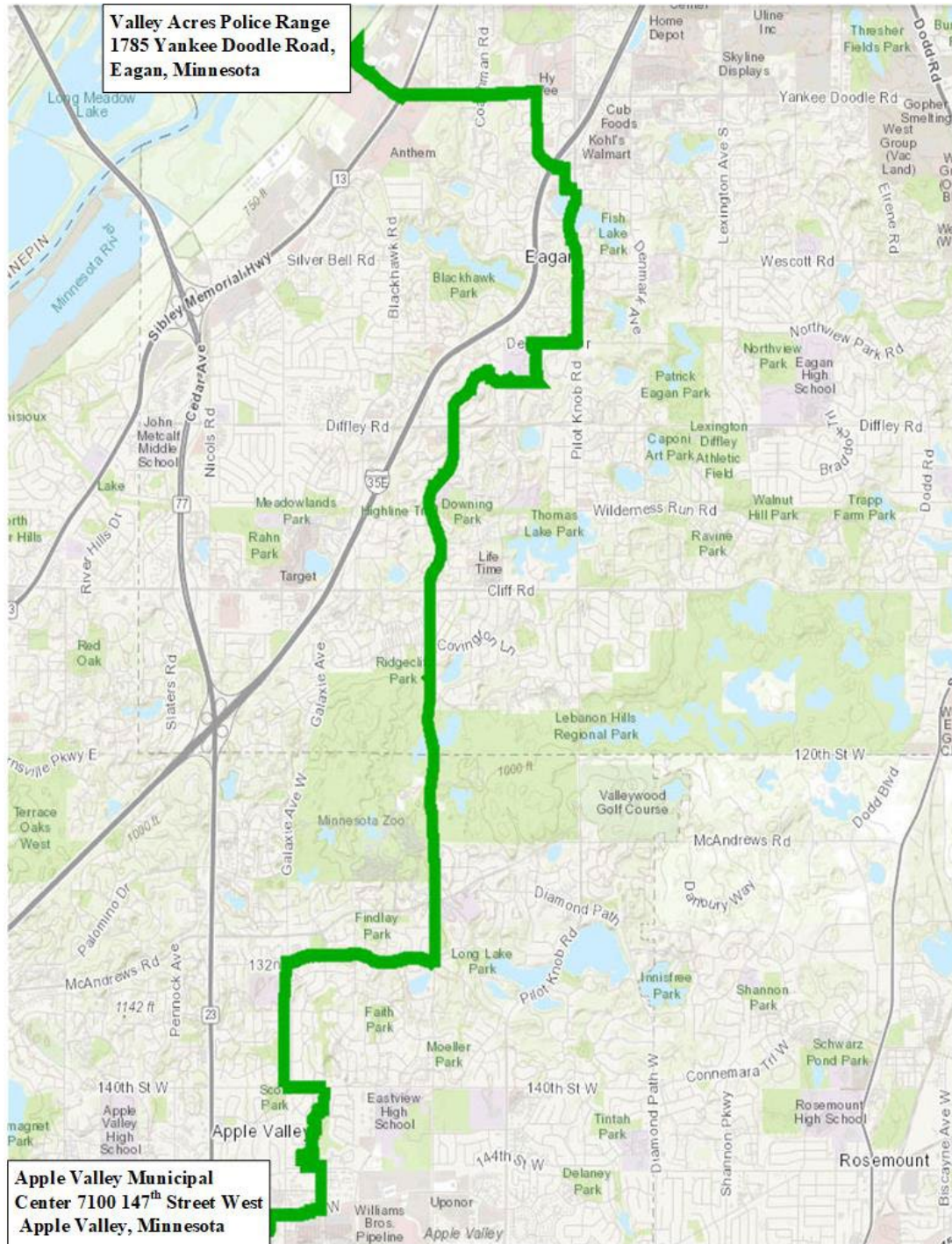
Date: _____

Board Resolution Number:

Approved as to Form

Assistant County Attorney Date
File No KS-23-686

ATTACHMENT A - FIBER SEGMENT



ATTACHMENT B
Description of Fiber Details, Ownership, and Use

Segment 1

This segment consists of installation of 2 strands of fiber from Valley Acres Police Range at 1785 Yankee Doodle Road, Eagan, Minnesota to Apple Valley Municipal Center at 7100 147th Street West, Apple Valley, Minnesota 55124.

The County will own and maintain the fiber in Segment 1. Apple Valley will have use of the following 2 strands of fiber within the cables:

Strands 1-2 of the 48F cable at Valley Acres Police Range 1785 Yankee Doodle Rd, Eagan to

Strands 1-2 of the 48F cable at SE of Yankee Doodle Rd and Yankee Dr spliced to

Strands 13-14 of the 144F cable at SW of Yankee Doodle Rd and Blue Cross Rd spliced to

Strands 13-14 of the 144F cable at SE of Yankee Doodle Rd and Coachman Rd spliced to

Strands 13-14 of the 144F cable at NW of Yankee Doodle Rd & Federal Dr spliced to

Strands 13-14 of the 288F cable at SW of Central Pkwy and Pilot Knob Rd spliced to

Strands 13-14 of the 288F cable at NW of Denmark Ave and Yankee Doodle Rd spliced to

Strands 13-14 of the 288F cable at NE of Yankee Doodle Rd and Lexington Ave S spliced to

Strands 13-14 of the 144F cable at NE of Yankee Doodle Rd and Lexington Ave S spliced to

Strands 13-14 of the 144F cable NE of Neil Armstrong Blvd and Lexington Ave spliced to

Strands 13-14 of the 144F cable Data Bank Data Center 3255 Neil Armstrong Way Eagan

Ports 121-122 into ports 409-410 in South Suite

Strands 121-122 of the 144F cable NE of Neil Armstrong Blvd and Lexington Ave spliced to

Strands 121-122 of the 144F cable NE of Yankee Doodle Rd and Lexington Ave S spliced to

Strands 121-122 of the 144 cable NW of Yankee Doodle Rd and Wescott Woodlands spliced to

Strands 121-122 of the 144 cable Eagan Fire Station 2 vault spliced to

Strands 75-76 of the 96F cable SW of Wescott Rd and N Ridge Dr spliced to

Strands 111-112 of the 288F cable NW of Lexington Ave S and Wescott Rd spliced to

Strands 111-112 of the 288F cable SE of Pilot Knob Rd and Wescott Rd spliced to

Strands 111-112 of the 288f cable NE of Deerwood Dr and Pilot Knob Rd spliced to

Strands 111-112 of the 288F cable E of Johnny Cake Ridge Rd and Oakbrooke Trail spliced to

Strands 111-112 of the 288F cable SE of Johnny Cake Ridge Rd and Diffley Rd spliced to

Strands 111-112 of the 288F cable S of Johnny Cake Ridge Rd and Clemson Dr spliced to

Strands 111-112 of the 288F cable NE of Jonny Cake Ridge Rd and Cliff Rd spliced to

Strands 111-112 of the 288F cable 200' N of Johnny Cake Ridge Rd & Sherwood Way spliced to

Strands 111-112 of the 288F cable NE of Johnny Cake Ridge Rd and McAndrews Rd spliced to

Strands 111-112 of the 288F cable SE of Johnny Cake Ridge and McAndrews Rd spliced to

Strands 111-112 of the 288F cable NW of 132nd St W and Foliage Ave (Nordic Tower) spliced to

Strands 111-112 of the 288F cable 100' N of 133rd Street W and Galaxie Ave West spliced to

Strands 111-112 of the 288F cable SW of 140th Street W and Galaxie Ave West spliced to

Strands 111-112 of the 288F cable SE of 140th Street West and Fountain Ave spliced to

Strands 111-112 of the 288F cable NW of 145th Street West and Flora Way spliced to

Strands 111-112 of the 288F cable SW of 147th Street West and Foliage Ave spliced to

Strands 111-112 of the 288F cable AV City Hall Vault spliced to Western Service Center spliced to

Strands 27-28 of the 96F cable Apple Valley Municipal Center 7100 147th St West, Apple Valley, MN

ATTACHMENT C



Real People. Real Solutions.

3507 High Point Drive North
Bldg. 1 Suite E130
Oakdale, MN 55128

Ph: (651) 704-9970
Bolton-Menk.com

June 12, 2023

A PERMANENT UTILITY EASEMENT

OVER:

LOT 1, BLOCK 1, VALLEY ACRES

FOR:

CITY OF APPLE VALLEY, MN

BMI Project No. 0N1.130545

A permanent easement being a strip of land 10.00 feet in width for utility purposes over, under and across Lot 1, Block 1, VALLEY ACRES, according to said plat on file and of record in the office of the County Recorder, in and for, Dakota County, Minnesota which lies to the left of and contiguous with the following described line; commencing at the most southerly corner of said Lot 1; thence North 38 degrees 49 minutes 00 seconds East, assumed bearing, along the southeasterly line of said Lot 1, distant 27.11 feet to the point of beginning of the line to be described; thence northerly 57.29 feet, along a non-tangential curve, concave to the East having a radius of 56.69 feet, a central angle of 57 degrees 54 minutes 20 seconds and the chord of said curve bears North 00 degrees 52 minutes 30 seconds East; thence North 29 degrees 49 minutes 40 seconds East, tangent to the last described curve, 154.12 feet; thence northerly, 141.27 feet, along a tangential curve concave to the West, having a radius of 108.79 feet and a central angle of 74 degrees 23 minutes 45 seconds; thence North 44 degrees 34 minutes 05 seconds West, tangent to the last described curve, 190.24 feet; thence North 38 degrees 53 minutes 52 seconds East 154.10 feet; thence North 65 degrees 25 minutes 04 seconds East 52.17 feet and said line there terminating. Said strip is to extend by its full width from the southeasterly line of said Lot 1 to a line drawn at a right angle to said strip and which passes through the point of termination.

Sincerely,

Bolton & Menk, Inc.

Minnesota Licensed Land Surveyor No. 17765

ATTACHMENT D

ENCROACHMENT AGREEMENT ON METROPOLITAN COUNCIL PROPERTY

PROPERTY LOCATION

Encroachment Number 2023-0002

Dakota County, Dakota County

RECITALS

- A. The Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council"), the address of which is 390 North Robert Street, St. Paul, Minnesota 55101, is the easement owner of property in Dakota County, identified as Easement Document record as Document Number 388533, recorded September 4, 1971 ("Council Property" or "Property").
- B. Dakota County ("Requestor") seeks to encroach on Council real property to install certain improvements or infrastructure consisting of installation of new fiber optic cable by horizontal directional drill across existing Metropolitan Council Sanitary Sewer Easement (per document 388533). In the encroachment area, the fiber optic cable will run parallel to the existing roadway and approximately 3 feet behind the curb. (the "Work").
- C. The Requestor's Work and the non-exclusive right of ingress and egress on and across Council property shall be located within an area legally described on Exhibit B-1 ("Encroachment") and depicted on a sketch as Exhibit B-2.

TERMS AND CONDITIONS

In consideration of the sum of one dollar and other good and valuable consideration to it in hand paid, the receipt and sufficiency of which is hereby acknowledged, Council agrees to the Encroachment on Council Property (Easement Document Number 388533), subject to the terms and conditions stated in this Agreement.

- 1. The Requestor shall have the right to use the Encroachment for the installation of new fiber optic cable by horizontal directional drill across existing Metropolitan Council Sanitary Sewer Easement (per document 388533). In the encroachment area, the fiber optic cable will run parallel to the existing roadway and approximately 3 feet behind the curb. The Requestor shall be solely responsible for the costs to install and maintain any improvements within the Encroachment area.
- 2. This Encroachment shall only be used as expressly identified in this Agreement and for no other purpose, and shall not be moved, relocated or expanded by Requestor without express written amendment of this Agreement.
- 3. Before Work may commence in the Encroachment, Dakota County shall:
 - a. Provide a schedule to the Council of work activities

- b. Have received final approval of Plans and Specifications by Council.
- c. Have received all necessary approvals from local jurisdiction(s) in which the Encroachment is situated.
- d. Have provided Council and Council's Risk Management division all required liability insurance demonstrating that Dakota County, its contractors or any party doing work on behalf of Dakota County has included the Council as additional insured on the policy.
- e. Notify Council at least 72 hours in advance of the actual physical commencement of any construction, repair or replacement of any encroaching improvement on Council Property.

Such Notice shall be provided to:

COUNCIL:

Tim Wedin, Assistant Manager
 Environmental Services
 390 North Robert Street
 St. Paul, MN 55101
 651-602-4571
 Timothy.Wedin@metc.state.mn.us

- 4. Nothing in this Agreement shall be deemed an assumption of responsibility by the Council for any construction, maintenance, replacement or repair of the Requestor's encroaching improvements.
- 5. Dakota County will indemnify, save, defend and hold the Council harmless from and against any loss, cost, or expense incurred by the Council, including any losses resulting from claims or damages to property, personal injuries or deaths, judgments, court costs and reasonable attorneys' fees, which arise out of or are claimed to have arisen out of the Encroachment.
- 6. Dakota County and its/his/her successors and assigns hereby agree that construction and placement of improvements or infrastructure in the Encroachment is granted at the sole discretion of the Council and Requestor shall adhere to the terms and conditions of this Agreement and approved plans and specifications as attached or referenced Exhibit B-2. Further, Dakota County, their successors and assigns shall submit any alterations, modifications or amendments to the improvements to Council for Council's prior review and for separate written agreement and consent.
- 7. Under no circumstances, shall Dakota County commence construction, either for initial construction or any future reconstruction, relocation or realignment of the improvements until Council has provided to the written acceptance of either amendments or modifications to the original improvement or future plans for reconstruction, relocation or realignment of the original improvements.

Such Notice shall be provided to:

COUNCIL:

Tim Wedin, Assistant Manager
Environmental Services
390 North Robert Street
St. Paul, MN 55101
651-602-4571
Timothy.Wedin@metc.state.mn.us

and

Real Estate Office
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

13. This Encroachment Agreement is terminable by the Council at its sole discretion upon providing Requestor, their successor or assign, no less than sixty (60) days written notice to the Owner in the event this Encroachment area is needed exclusively for Council purposes. Nothing in this agreement shall be construed to convey a permanent right or interest in Council's real property.
14. This Agreement shall be recorded with the Dakota County Recorder's Office.

The remainder of this page is left blank

REQUESTOR:

By: _____
David McKnight

Its: Enterprise Finance and
Information Services Director

Date: _____

STATE OF MINNESOTA)
)ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by David McKnight, Enterprise Finance and Information Services Director, Dakota County, a municipal corporation, under the laws of the State of Minnesota, on its behalf.

Notary Public

METROPOLITAN COUNCIL

By: _____

Its: Acting Regional Administrator

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Phillip Walljasper, Acting Regional Administrator of the METROPOLITAN COUNCIL, a public corporation and political subdivision of the State of Minnesota, on its behalf.

Notary Public

Drafted by:

Metropolitan Council
Real Estate Office
390 North Robert Street
St. Paul, MN 55101

Exhibit A – Council Easement Property Legal Description as Described in
Document Number 388533

A 35-foot perpetual easement for sanitary sewer purposes over and across the following described land:

That part of Government Lot 4 and Government Lot 5 and that part of the Southwest Quarter of Section 8, Township 27, Range 23, Dakota County, Minnesota lying southeasterly of the Chicago, St. Paul, Minneapolis and Omaha Railroad; except that part taken by Sibley Terminal Industrial Park,, according to the recorded plat thereof, Dakota County, Minnesota and except that part described as follows:

Beginning at the most northerly corner of Lot 10, Block 1, Sibley Terminal Industrial Park; according to the plat thereof on file and of record in the office of the Register of Deeds, Dakota County; thence southwesterly along the northwesterly line of said Lot 10 to the most westerly corner of said Lot 10; thence northwesterly deflecting to the right 90 degrees a distance of 350 feet; thence northeasterly parallel with the northwesterly line of said Lot 10 to its intersection with a line drawn perpendicular to the northwesterly line of said Lot 10 from the point of beginning thence southeasterly a distance of 350 feet to the point of beginning.

AND except that part described as follows:



Commencing at the intersection of the easterly right-of-way line of the Chicago, St. Paul, Minneapolis and Omaha Railroad and the south line of said Section 8; thence easterly along said south line a distance of 448 feet to the point of beginning; thence northeasterly deflecting to the left 51 degrees 20 minutes a distance of 950 feet; thence easterly deflecting to the right 46 degrees 47 minutes 25 seconds a distance of 90.5 feet; thence northeasterly deflecting to the left 46 degrees 47 minutes 25 seconds a distance of 235.1 feet; thence southeasterly deflecting to the right 83 degrees 25 minutes a distance of 1741.8 feet; thence westerly to the point of beginning.

Said perpetual easement being 10 feet northwesterly and 25 feet southeasterly of the following described line:

Described as commencing at the southwest corner of the Southwest Quarter of said Section 9; thence on an assumed bearing of East along the south line of said Southwest Quarter a distance of 1677.21 feet to the beginning of the line to be described; thence North 45 degrees 01 minutes 08 seconds East a distance of 330.39 feet; thence North 42 degrees 12 minutes East a distance of 493.52 feet; thence North 37 degrees 34 minutes 17 seconds East a distance of 505.86 feet; thence North 40 degrees 50 minutes 50 seconds East a distance of 501.28 feet; thence North 34 degrees 32 minutes 05 seconds East a distance of 235.59 feet; thence North 42 degrees 44 minutes 26 seconds East a distance of 540.97 feet; thence North 29 degrees 16 minutes 46 seconds East a distance of 201.95 feet; thence South 76 degrees, 57 minutes 41 seconds East a distance of 40.51 feet; to a point in the northwesterly line of Sibley Terminal Industrial Park and there terminating.

The side lines are to be lengthened or shortened to terminate in the south line of said Government Lot 5 and the northwesterly line of Sibley Terminal Industrial Park.

Exhibit B-1 –Encroachment Legal Description

PERMANENT ENCROACHMENT AREA OVER METROPOLITAN SEWER BOARD 35 FOOT WIDE SANITARY SEWER EASEMENT PER DOC. NO. 388533	
<p>A strip of land 10.00 feet in width for utility purposes over, under and across Lot 1, Block 1, VALLEY ACRES, according to said plat on file and of record in the office of the County Recorder, in and for, Dakota County, Minnesota which lies to the left of and contiguous with the following described line; commencing at the most southerly corner of said Lot 1; thence North 38 degrees 49 minutes 00 seconds East, assumed bearing, along the southeasterly line of said Lot 1, distant 27.11 feet; thence northerly 57.29 feet, along a non-tangential curve, concave to the East having a radius of 56.69 feet, a central angle of 57 degrees 54 minutes 20 seconds and the chord of said curve bears North 00 degrees 52 minutes 30 seconds East; thence North 29 degrees 49 minutes 40 seconds East, tangent to the last described curve, 154.12 feet; thence northerly 47.22 feet, along a tangential curve, concave to the West, having a radius of 108.80 feet, and a central angle of 24 degrees 52 minutes 14 seconds to the southeasterly line of the Metropolitan Sewer Board 35 foot wide sanitary sewer easement per doc. No. 388533, said point being the point of beginning of the line to be described; thence northerly 47.11 feet along the northerly extension of the last described curve to the northwesterly line of said Metropolitan Sewer Board 35 foot wide sanitary sewer easement per doc. No. 388533 and said line there terminating.</p> <p>Said 10.00 foot wide strip is to extend by its full width from said southeasterly line to the northwesterly line.</p> <p>Bearings are based on Dakota County Coordinate System.</p>	
<p>SURVEYOR'S CERTIFICATION I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.</p> <p> Ron P. Alwin License Number 17765</p> <p>06/20/2023 Date</p> <p>©Bolton & Menk, Inc. 2023, All Rights Reserved</p>	
<p>CERTIFICATE OF ENCROACHMENT</p> <p> BOLTON & MENK 3507 HIGH POINT DRIVE NORTH BUILDING 1 - SUITE E130 OAKDALE, MN 55128 (651) 704-9970</p>	<p>LOT 1, BLOCK1, VALLEY ACRES, DAKOTA COUNTY, MN</p> <p>FOR: METROPOLITAN COUNCIL</p>
<p>JOB NUMBER: ON1.130545</p>	<p>FIELD BOOK: DRAWN BY: ARK</p>

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SHEET 1 OF 2

Exhibit B-2 –Sketch Depicting Encroachment Areas

