

Contract #

FIBER OPTIC INDEFEASIBLE RIGHT TO USE
AGREEMENT BY AND BETWEEN
DAKOTA COUNTY AS GRANTOR
AND
INDEPENDENT SCHOOL DISTRICT 196 AS
GRANTEE

FIBER OPTIC INDEFEASIBLE RIGHT TO USE AGREEMENT

This Agreement for the indefeasible right to use (or “IRU”) together with Attachments A and B, (collectively the “Agreement” or the “IRU Agreement”) is made by and between, County of Dakota, a Minnesota County government unit, acting by and through its Board of Commissioners (“IRU Grantor” or “County”) and Independent School District No. 196 acting through its, School Board (“IRU Grantee” or “School District”). The IRU Grantee and IRU Grantor may be referred to herein individually as a “Party” or collectively as the “Parties.”

BACKGROUND

The School District desires to obtain the use of twelve fibers from County to connect to Emerald Trail Elementary and two fibers for redundancy, as described in this Agreement; and County agrees to grant to the School District the right to use twelve fibers and two strands for redundancy 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 County facilities.
- E. “Fiber Optic Cable” or “Cable” means a collection of fibers with a protective outer covering.
- F. “IRU Assets” means the County’s IRU conduit, IRU Cable, IRU Fiber Facilities subject to this Agreement as more specifically described in Attachment A.
- G. “IRU Cable” means Cable containing one or more Fibers, constructed, and owned by the County in which the School District has a IRU pursuant to the terms of this Agreement.
- H. “IRU Fibers” means the specific County owned Fiber described in Attachment A, for which an IRU is granted to the School District 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

INSTALLATION AND LICENSES

Section 1.1 Subject to the terms of this Agreement, the County shall install Fibers for Segment 1 in the location shown on Attachment A, using existing conduit owned by the City of Rosemount. The Parties acknowledge that the IRU grant provided for on this Agreement is contingent upon the County entering into a separate agreement with the City of Rosemount for the use of the City's conduit and other Fiber Facilities. Following installation, the County will submit an invoice to the School District for 50% of the County's costs to install the Fibers for Segment 1. The School District shall pay the invoice in full within 35 days from the date of the invoice. In consideration for the School District's payment of its share of the costs for the Segment 1 Fibers, there shall be no monthly charge from the County for the use of the Segment 1 Fibers during the initial term or the first or second extension terms of this Agreement.

Section 1.2 The School District desires an IRU in the County's IRU Fibers further described in Attachment A to this Agreement. In consideration of the mutual promises by the County and School District in this Agreement, County grants an IRU to the School District in the IRU Fibers identified in Attachment A, subject to the cost sharing formula for Segment 2 more fully described in Attachment B. School District 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 the School District 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 Assets shall be paid to the County.

Section 1.3 Subject to the terms and conditions of this Agreement, County hereby grants to School District a license to access and use the IRU Fibers within the IRU Cable as delineated in Attachment A for School District use in accord with and during the term of this Agreement. Along with any revenue articulated in Section 1.2, School District shall be charged a monthly fee for the use of Segment 2 IRU Fibers of \$65 Dollars per mile per month per pair of strands over a distance of 13.4 miles for Segment 2 for a total of \$10,452.00 per year, as delineated in Attachments A and B, which shall be payable to the County in advance on or before each subsequent year from the Effective Date. There shall be no monthly charge from the County for the use of the Segment 1 Fibers during the initial term or the first or second extension terms of this Agreement.

Section 1.4 The IRU Fibers are provided to the School District "as is." If any new Fiber Facilities or any fiber splices are needed to interconnect IRU Fibers to the School District network, the School District shall

be responsible for coordinating this work with County and shall pay all costs and fees associated with connecting the IRU Fibers to other fibers not owned by County for School District network purposes.

Section 1.5 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 1.6 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

The School District can use the IRU Fibers commencing on the date the last party executes this Agreement. This Agreement has an initial term of ten (10) years, with two separate five-year renewals. Each renewal term shall be effective unless the County affirmatively decides to not renew and provides 6 months' notice to School District prior to expiration of the preceding initial or first extension term, or unless this Agreement is otherwise terminated at any other point by agreement of the Parties in writing or by one of the events in Article IX, Section 9.2 of this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 School District's use of the IRU Fibers shall comply with all applicable governmental codes, ordinances, laws, rules, regulations, and/or restrictions.

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

ARTICLE IV

LIABILITY; INDEMNIFICATION

Section 4.1 Neither School District 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, County assumes, releases and agrees to indemnify, defend, protect and save the School District (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.

To the extent permitted by law, the School District 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 the School District, 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 the County's and the School District'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 Facilities, 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. County shall maintain the IRU Fibers and Fiber Facilities or contract with a third party for maintenance, breaks and fixes. County agrees to be responsible for 100% costs in maintenance, breaks, and fixes in Segments 1 and 2, as described on Attachment A .

Section 6.2 Fees. Neither Party will impose, and neither Party shall pay a fee, maintenance, or repair cost for the use of the Fiber Facilities and IRU Fibers 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 a contracted third party as agreed by the Parties.

Section 6.4 Relocation. County will be responsible for relocation of Fiber Facilities.

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 the County decide to abandon all or part of the IRU Fibers during the term of this Agreement, it may do so by providing six (6) months' notice informing School District 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 County provides notice of intent to abandon, School District may notify the County prior to the expiration of the notice period of its intent to take ownership of the IRU Fibers. If the School District 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 School District. 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 School District 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. In addition, notwithstanding anything to the contrary in this Agreement, if the County is unable to enter into a satisfactory agreement with the City of Rosemount for the use of the City's conduit for the Segment 1 Fibers, as determined by the County, the County may terminate this Agreement by providing notice to the School District, which notice shall specify the effective date of termination.

Section 8.4 If the Agreement terminates under Article VIII, Section 8.3 based on a Party's default, 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 School District:

Independent School District 196

Attn: Edward Heier

Coordinator of Technology

3455 153rd Street West

Rosemount, MN 55068

If to County:

Dakota County Board

Attn: Deputy County Manager

1560 Highway 55

Hastings, MN 55033

With a copy to:

With a copy to: Independent School District 196

Attn: Adam Wattenbarger Deputy General
Counsel3455

153rd Street West

Rosemount, MN 55068

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

LIMITATION ON PROPERTY INTEREST

This Agreement does not grant the School District any property interest, or estate in, or lien upon County's property, County's IRU Assets, 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 the School District shall not attach to any interest of County or in any property owned by County.

This Agreement does not grant County any property interest, or estate, in or lien upon School District's property, any optical fiber network owned by the School District or any components thereof, or any intellectual property. All liens, claims, and charges of the County shall not attach to any interest of School District or in any property owned by School District.

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 XIII

INDEPENDENT CONTRACTOR

The performance by County and the School District 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, School District and County.

ARTICLE XIV

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:

SCHOOL DISTRICT

By: _____

Cory Johnson

Its: Chairperson of the School Board

By: _____

Date: _____

Sakawdin Mohamed

Clerk of the School Board

By: _____

Assistant County Attorney

Date: _____

File No : _____

Board. Resolution

IRU GRANTOR:

DAKOTA COUNTY

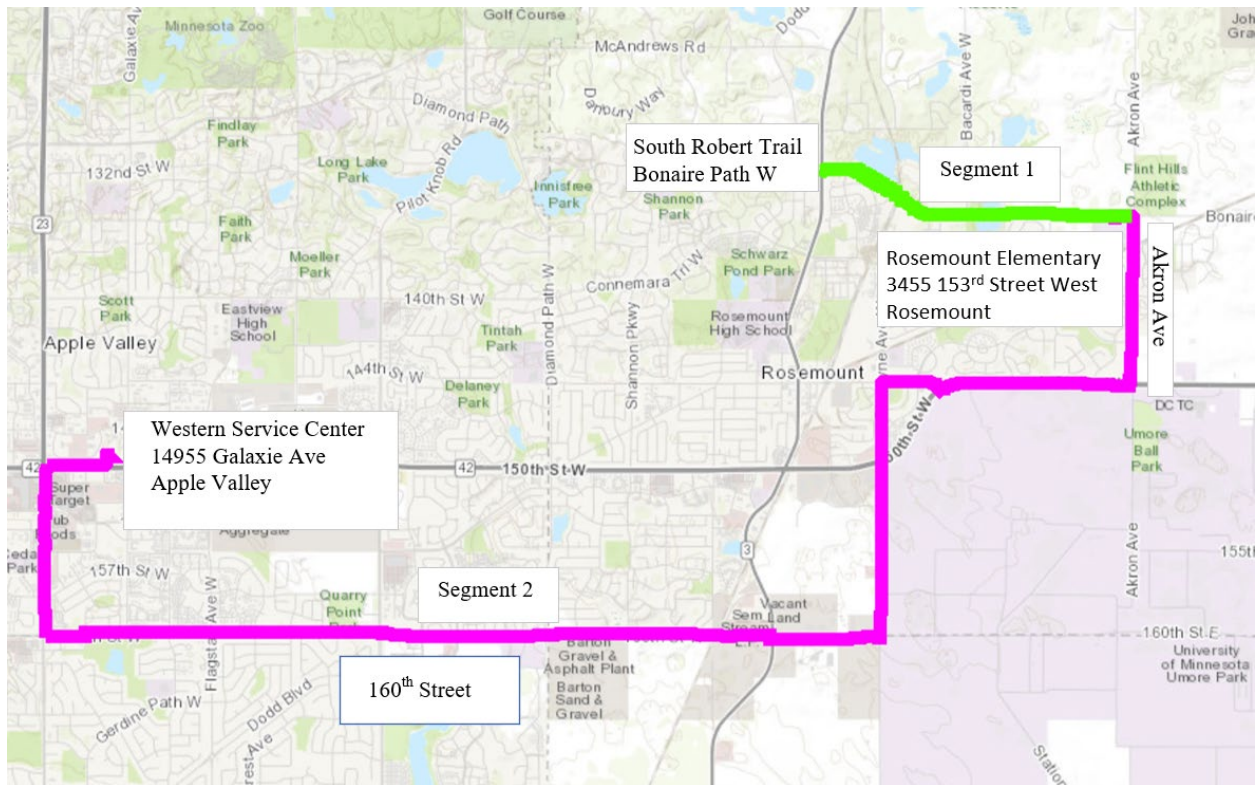
By: _____

Deputy County Manager

Date: _____

ATTACHMENT A

Showing the fiber optic route between South Robert Trail Bonaire Path W to Western Service Center



Segment 1

This segment consists of installation of 12 strands of fiber from Emerald Trail Elementary, 13600 Ardroe Ave., Rosemount, Minnesota to NW South Robert Trail and Bonaire Path W,

Rosemount, Minnesota 55124.

The County will own and maintain the fiber in Segment 1. The School District will have use of the following 12 strands of fiber within the cables:

Strands 1-12 of the 12F cable Emerald Trail Elementary, 13600 Ardroe Ave., Rosemount, Minnesota spliced to

Strands 61-72 of the 288F cable E of Bonaire Path and Akron Ave spliced to

Strands 61-72 of the 288f cable W of Barcardi Ave W and Bonaire Path W spliced to

Strands 61-72 of the 288F cable NW of South Robert Trl and Bonaire W spliced to School District

Segment 2

This segment consists of installation of 2 strands of fiber from Emerald Trail Elementary, 13600 Ardroe Ave., Rosemount, Minnesota to Western Service Center at 14955 Galaxie Ave, Apple Valley, Minnesota 55124.

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

- Strands 7-8 of the 12F cable at Emerald Trail Elementary, 13600 Ardroe Ave. Rosemount, Minnesota to

Strands 7-8 of the 12F cable at E of Bonaire Path and Akron Ave spliced to

Strands 67-68 of the 288F cable at NE of Akron Ave and 145th St spliced to

Strands 143-144 of the 288F cable at NE of Biscayne Ave and 145th St spliced to

Strands 143-144 of the 288F cable at NE of Biscayne Ave and 150th St spliced to

Strands 143-144 of the 288F cable at SE of Biscayne Ave and Boulder Trl spliced to

Strands 143-144 of the 288F cable at SE of Biscayne Ave to

Strands 143-144 of the 288F cable at SE of Biscayne Ave and 160th St spliced to

Strands 143-144 of the 288F cable at NW of Foliage Ave and 160th St W spliced to

Strands 143-144 of the 288F cable NW of Cedar Ave and 160th St W spliced to

Strands 143-144 of the 288F cable NE of 157th St W and Cedar Ave spliced to

Strands 143-144 of the 288F cable NE of 153rd St W and Cedar Ave spliced to

Strands 143-144 of the 288F cable NE of 150th St W and Cedar Ave spliced to

Strands 143-144 of the 288F cable NW of Garrett Ave and 150th St W spliced to

Strands 143-144 of the 288F cable spliced to Western Service Center 14955 Galaxie Ave, Apple Valley

ATTACHMENT B

COST ALLOCATION AND PAYMENT LOGISTICS

Segment 2 -Western redundant route (red)

| | |
|-----------------------------------|--------------|
| 13.4 miles x \$65/pair/mile/month | \$871.00 |
| 12 months | \$10,452.00 |
| Initial Term (ten year) cost | \$104,452.00 |
| First five-year renewal | \$52,226.00 |
| Second five-year renewal | \$52,226.00 |
| Total twenty-year term | \$209,040.00 |