

# Dakota Broadband Board

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**Board of Directors Meeting  
Preliminary Agenda  
March 9, 2022  
4pm  
Apple Valley Municipal Center  
Regent Room**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF THE AGENDA**

**4. CONSENT AGENDA**

- 4.A. Approval of meeting minutes from the regular Board meeting of February 9, 2022
- 4.B. Receive the financial report for January 2022

**5. REGULAR AGENDA**

- 5.A. Systems Plan Update and Business Analysis: Survey Questions
- 5.B. Systems Plan Update and Business Analysis: Paper Survey Utilization and Possible Design Nine Contract Amendment
- 5.C. C-NET Policy Discussion: IRU Draft

**6. EXECUTIVE DIRECTOR UPDATES**

**7. OTHER ITEMS AND BUSINESS**

**8. ADJOURN**

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**NEXT REGULAR MEETING:** April 13, 2022 at Apple Valley Municipal Center

## February 9, 2022 DBB Meeting Minutes

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**PRESENTER(S):** None-Consent Agenda Item

**ACTION:**     Recommend Approval     Receive Item/Update     Other

**BACKGROUND:**

The following items were discussed at the February 9, 2022 DBB Board meeting:

- Organizational Meeting
- Systems Plan Update and Business Analysis Project Summary and Overview
- DBB Bylaws Discussion
- C-NET Policy Discussion

**RECOMMENDATION:**

Approve the meeting minutes from February 9, 2022 following a review for any inaccuracies or additions.

**ATTACHMENTS:**

Attachment A: February 9 2022 DBB Board Meeting Minutes

**SUPPLEMENTAL DISTRIBUTION:**

None

## **ATTACHMENT A**

### **DBB BOARD OF DIRECTORS MEETING MINUTES**

February 9, 2022

The regular meeting of the Dakota Broadband Board was held via Zoom on Wednesday, February 9, December 8, 2021 due to at the Apple Valley Municipal Center. Hellier indicated the Zoom meeting was allowed according to MN State Statute 13D.021

#### **1. Call to Order**

The meeting was called to order at 4:00pm by Chair Hellier.

#### **2. Roll Call**

The following members were present: Luke Hellier (Lakeville); Joshua Hoyt (Farmington); Tom Melander (Apple Valley); Cara Schulz (Burnsville); Liz Workman (Dakota County); Tina Folch (Hastings); Tom Bartholomew (Inver Grove Heights); Stephanie Levine (Mendota Heights); Heidi Freske (Rosemount); Dick Vitelli (West St Paul)

Others Present: Carah Koch (DBB Executive Director); Marc Gade (Inver Grove Heights); Tom Lawell (Apple Valley); Cheryl Jacobson (Mendota Heights); Jennifer Wolf (DBB Legal Agent); Dan Cater (Dakota County); Joshua Lee (Lakeville); Paul Essler (Rosemount); Kelly Dumais (Mendota Heights); Dave Hokstad (Hastings); Jessie Parker Carlson (Dakota County); Justin Roggenkamp (LOGIS); Craig Birkholz (LOGIS); Jack Maytum (Design Nine); ISP representatives

#### **3. Approval of the Agenda**

Motion by Vitelli, second by Hoyt to approve the agenda as presented. Voice vote; all ayes. Motion carried.

### **ORGANIZATIONAL MEETING**

#### **4.A Election of Chair and Vice-Chair**

Hellier nominated Hoyt for DBB Chair; Bartholomew seconded. Folch nominated Workman; Workman declined. Voice vote; all ayes. Motion carried

Workman nominated Folch for Vice-Chair; no other nominations.

Wolf indicated the Board needs to do roll call for all votes. Hellier asked Koch for a roll call vote for Chair. Roll call; all ayes (Hoyt abstained).

Folch agreed to accept Vice-Chair nomination. Roll call; all ayes (Folch abstained).

#### **4.B Board Meeting Dates and Time**

Koch presented historical meeting date and time for the 2<sup>nd</sup> Wednesday of the month at 4pm. Members expressed support for the current date and time.

Motion by Hellier, second by Folch to maintain the current meeting date and time. Roll call vote; all ayes. Motion carried.

## **CONSENT AGENDA**

### **5. Approval of the Consent Agenda**

- a. DBB Board meeting minutes from December 10, 2021

Motion by Workman, second by Melander to approve the consent agenda. Voice vote; all ayes (Schulz absent). Motion carried.

## **REGULAR AGENDA**

### **6.A. Systems Plan Update and Business Analysis: Vendor Introduction and Project Overview**

Executive Director Koch introduced Jack Maytum from Design Nine; members introduced themselves. Maytum introduced himself, detailed recent experience with other current and past projects, shared his presentation, and provided an overview of the project. Chair Hoyt asked what would be a good survey response rate would be; Maytum indicated that a goal of 10% would be considered good and shared some other examples.

Vice-Chair Folch asked how stakeholder names are gathered; Maytum indicated it would be most effective for DBB Board members to do the initial introductions and set up meetings and then Design Nine will manage the meeting. Folch asked how stakeholder meeting would be grouped; Maytum indicated common stakeholder areas (i.e. schools, etc.) could make sense but individual meetings are also effective.

Chair Hoyt suggested it would make sense to reach out to communities to gather stakeholder names and group entities together; Maytum agreed. Workman asked how the survey will connect with non-typical and low-income families/residents in the community. Maytum indicated that anyone can attend meetings and participation can depend on promotion, and that city/county representatives play a key role in reaching out. Bartholomew suggested that city Communications staff could assist members with identifying stakeholders. Executive Director Koch indicated that she has some ideas regarding stakeholders and that she will also reach out to DBB Board members and TAC members for input/ideas on stakeholders, and reiterated that the contract includes the electronic survey but additional stakeholders can be captured should the Board move forward with a paper survey. Koch highlighted the project timeline and the importance of some upcoming decisions for the Board for survey questions and regarding a potential contract amendment for paper surveys.

Hellier suggested 360 Communities as a stakeholder to include in the meetings. Freske suggested that schools have a lot of information already regarding broadband access and that they would be a good resource for data.

Chair Hoyt expressed concerns about the timeframe and suggested that Koch is very specific to members when asking for return of information.

Discussion only; no action.

#### **6.B. Clarification of Bylaws Language Regarding Chair and Vice-Chair Terms**

Executive Director Koch highlighted the language in question in the bylaws and interpretation of the language, and shared the TAC interpretation. Board members generally agreed with the interpretation.

#### **6.C. C-NET Policy Discussion: DBB Fiscal Overview**

Executive Director Koch provided background to the topic and summarized the fiscal overview document included in the packet. Wolf offered a perspective on liability and how it would potentially be mitigated or managed based on project initiation and structure.

Koch indicated that the TAC is looking for direction from the DBB Board whether there is still additional information it needs to have policy discussion and make decisions. Hellier shared Lakeville's concerns about the revenue sharing formula. Workman indicated that the County still has concerns with the IRU and is uncomfortable with making long-term commitments for future County Boards given the amount of fiber the County has in the network; Workman also indicated concerns with the I-NET and C-NET not being separated.

Wolf clarified that the DBB could do projects versus individual members.

Vitelli shared West St Paul experience regarding DBB discussions and potential option to withdraw. Members talked about the option to leave and the process required. Cater indicated that the county is currently not pursuing agreements outside the DBB since the County is a DBB member. Hellier shared the value of the DBB for Lakeville from a redundancy perspective.

Chair Hoyt offered an overview of the current state of the DBB, the importance of resolution regarding various topics to keep the organization moving forward, and overall the importance of overall conversation regarding structure and purpose. Schulz indicated that the benefits of the DBB for Burnsville are so minor that there are questions why it is still a member and asked

members to look at the benefits they are receiving and does it match what the organization is trying to do. Hellier asked what the next steps are from a process perspective and what the TAC is working on. Koch reiterated the TAC efforts to this point regarding the categories presented for C-NET, and that the TAC is looking to the Board for direction on the C-NET categories recommendation. Koch also highlighted the potential impact of the Design Nine study on overall policy decisions, and the historical cost-sharing/cost-savings that has taken place to this point regarding I-NET projects.

Hellier expressed interest in the DBB and members pursuing upcoming state and federal grant opportunities.

Vice-Chair Folch expressed concerns with suggestions regarding opening the JPA again, and commented that there will always be long-term agreements/commitments that elected boards are honoring. Folch also shared that there are a variety of benefits from the DBB, that the conversation should focus on the definition of C-NET policy and not on value, and that a vote should take place in the near future. Bartholomew agreed with Folch that there is value for Inver Grove Heights and that a vote needs to be taken so the organization can move forward. Freske agreed.

Hellier asked what the Board is being asked to vote on. Vitelli indicated that he does not think the government should compete with private industry.

Gade indicated the network would not be competition since it would be open for use by any private provider, and that the TAC presented the categories for the DBB Board to consider to enable members who are interested to retain control over various C-Net categories. Gade reiterated that the C-NET will benefit schools, economic development, and the potential to apply for grants. Hellier asked what is being held up. Gade shared overall structure and grant applications are restricted since all the IRUs are not signed. Koch reiterated the opportunity for the organization to benefit communities and there is value in resolving issues, and indicated that the TAC is looking to the DBB Board for feedback so it can provide additional information if requested to assist the Board. Cater indicated that the IRU not being signed requires a significant number of administrative agreements to be developed at the County level.

Chair Hoyt indicated that specific needs and interests are different for each community and its important to come to a mutual agreement to move forward. Hoyt suggested that there may be value in bringing the C-NET categories to a future Board meeting for a discussion and vote. Koch summarized the TAC goal of attempting to hear all concerns from various members with the development of the categories and allowing members to opt out of C-Net categories as

they feel is appropriate. Lawell commented that it is good that the DBB Board is having the conversation and that there will be valuable information coming out of the Design Nine study. Maytum shared his experiences with conversations in other communities, indicated that the DBB is advanced over other areas in the country, and felt that it is important for the DBB Board to get the IRUs signed. Maytum provided additional insight on middle-mile networks in other communities. Vice-Chair Folch expressed a desire to resolve existing issues so the DBB Board can pursue grant funding in the coming months. Schulz asked for additional information on the federal funds; Koch indicated she would provide this information to Schulz.

Discussion only; no action.

#### **EXECUTIVE DIRECTOR UPDATES**

Executive Director Koch provided updates regarding federal and state grant programs, and additional information on the Final Rule for use of ARPA funds for broadband projects.

Vitelli left the meeting at 5:31pm.

#### **OTHER ITEMS AND BUSINESS**

None.

#### **ADJOURN**

Motion by Workman, second by Freske to adjourn. Voice vote; all ayes. Motion carried. Meeting was adjourned at 5:49pm.

January 2022

DBB Expense and Revenue Report

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**PRESENTER(S):** None-Consent Agenda Item

**ACTION:**     Recommend Approval     Receive Item/Update     Other

**BACKGROUND:**

As the DBB Fiscal Agent, Dakota County provides monthly reports of the expenses and revenues as it pertains to the approved budget line items. Per Board decision, any unspent funds at the end of 2022 will move to the contingency fund account in 2023.

**RECOMMENDATION:**

Receive the report as presented.

**ATTACHMENTS:**

None

**SUPPLEMENTAL DISTRIBUTION:**

The January 2022 Expense and Revenue report will be distributed in advance of the meeting on March 9, 2022.



## Systems Plan Update and Business Analysis: Survey Questions

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**PRESENTER(S):** Executive Director Koch

**ACTION:**     Recommend Approval     Receive Item/Update     Other

**BACKGROUND:**

The Design Nine contract includes the administration of an electronic survey for the Systems Plan Update and Business Analysis. Design Nine provided the TAC with a copy of their standard template questions which the TAC reviewed at its March 2, 2022 meeting. The TAC identified some changes to be made to some questions, and these changes have been incorporated into the surveys attached. Approval of the survey questions is important to the overall project as it takes time to distribute the surveys, provide a timeframe for responses, and ultimately analyze and report on data.

**RECOMMENDATION:**

The TAC recommends the approval of the residential and business survey questions as presented, with the acknowledgement that some additional changes may be made to the front side of the survey describing the project, including the addition of city/county logos for DBB members.

**ATTACHMENTS:**

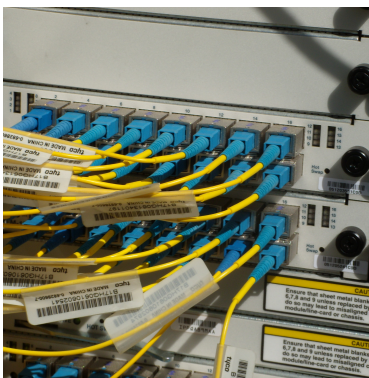
Attachment B: Residential and Business Surveys

# Dakota Broadband Board



**The Dakota Broadband Board is conducting a broadband feasibility study to determine the best path to a faster and better broadband Internet services in Dakota County.**

For more information or if you want to ask a question, send us an email:  
[broadband@<correct domain>](mailto:broadband@<correct domain>)



**Help Us Improve Your Internet!**

**RETURN BY [MONTH DAY]**

The Dakota Broadband Board is conducting a Broadband Survey to assess the current broadband service and needs in your community. The goal is to develop a comprehensive set of strategies to bring high performance broadband and Internet services to all residents and businesses in your community.

Your participation in this survey will help us understand how to connect every home, school, doctor's office, and government agency to improved and more affordable broadband Internet.

The results will help the Broadband Board determine where the need is greatest and help guide us on how to ensure that all citizens and businesses have affordable, equitable, and adequate access to broadband services.

Take the survey online in less than 5 minutes at



<https://projects.designnine.com/survey/dakota-residential>

Or return the this survey by the U.S. Postal Service. Place the survey in a stamped envelope and use the address below:

**<appropriate mailing address>**

**We need your response!**

**We thank you for your participation!**

**If you are a business - Please complete the business survey**

at <https://projects.designnine.com/survey/dakota-business>

Street Address: \_\_\_\_\_

*Please supply full street address with street or road number.*

City/State/Zip: \_\_\_\_\_

1. Check the items you agree with below:

- I need better landline telephone service
- I need better cellular telephone service
- I need better Internet/data service
- I need better Internet for work from home
- I am satisfied with all of my services

2. Total number in household (if none, write zero):

- a) Adults \_\_\_\_\_ b) K-12 Students \_\_\_\_\_
- c) College Students \_\_\_\_\_ d) Internet users \_\_\_\_\_

3. How important is Internet access to you or your household?

- Unimportant  Neutral
- Somewhat Important  Very Important

4. For your household, how much do you spend each month for local and long distance telephone, TV, and/or Internet?

Do NOT include cellphones.

- \$50 or less  \$50 to \$75
- \$75 to \$100  \$100 to \$150
- \$150 to \$200  More than \$200/month

5. How much do you pay now for at home Internet access each month?

- No Internet  I only use free hotspots
- \$10 to \$20  \$21 to \$40  \$41 to \$60
- \$61 to \$80  More than \$80/month  I don't know

6. What type of Internet do you have at home?

- Dial-up  DSL line  Fiber
- Cable modem  Satellite  Cellular wireless
- Wireless ISP  I don't know  No Internet
- Other \_\_\_\_\_

7. Based on the type of Internet connection you selected above, why do you still have it? (check all that apply)

- Too expensive to change  Not interested in changing
- Best price available  No other options
- Most reliable service available  Limited other options
- Still in contract

8. How many devices (for example computers, cellphones, smart speaker, smart TVs) connect to the Internet in your household?

- 1-4  5-8  9-12  13-15  16+

9. What is the download speed of your Internet connection? You can use <https://nperf.com/en/> to test your speed if you do not know it.

- Less than 10 Mbps download
- Between 10 Mbps and 25 Mbps download
- Between 25 Mbps and 100 Mbps download
- Greater than 100 Mbps download
- I don't know

10. What is the upload speed of your Internet connection? You can use <https://nperf.com/en/> to test your speed if you do not know it.

- Less than 1 Mbps upload
- Between 1 Mbps and 3 Mbps upload
- Between 3 Mbps and 20 Mbps upload
- Between 20 Mbps and 100 Mbps upload
- Greater than 100 Mbps upload
- I don't know

11. Check the items you agree with below:

- I have trouble loading pictures to my social media account(s)
- I have trouble viewing online videos/lectures/movies/tv shows
- I have trouble using the Internet when other users are using it
- I have trouble using FaceTime, Skype, or other video chats
- I do not have trouble performing any of these activities

12. How satisfied are you with the speed of your Internet service?

- Very Dissatisfied  Dissatisfied  Neutral
- Satisfied  Very Satisfied

13. How satisfied are you with the reliability of your Internet service?

- Very Dissatisfied  Dissatisfied  Neutral
- Satisfied  Very Satisfied

14. Check all items you use the Internet for now:

- Learn about Covid-19 pandemic issues and information
- Homework / Schoolwork / Distance learning
- Work from home
- VoIP Internet phone (Vonage, Skype, FaceTime, etc.)
- Online Backup (files, photos, music)
- Telemedicine, telehealth
- Online gaming
- Streaming video services (e.g. Netflix, Hulu, Prime, etc.)
- Home security (e.g. video doorbells, security cameras, etc.)
- Smart speakers (e.g. Alexa, Echo Dot, Google Assistant, Homepod)
- Other \_\_\_\_\_

15. Does access to high speed, affordable Internet influences where you choose to live?  Yes  No

16. Has the Covid crisis had a negative economic impact on your household?  Yes  No

17. Does anyone in your household use / need the Internet to complete school assignments, distance learning, or job training course work?

- Yes, several times a week  Yes, at least once a week
- Yes, at least once a month  No

18. Who is your Internet service provider? (will be updated)

- CenturyLink  \_\_\_\_\_
- Comcast/Xfinity  \_\_\_\_\_
- US Cellular  \_\_\_\_\_  Satellite Internet
- Cellphone hotspot  T-Mobile  Other \_\_\_\_\_

19. Do you have data limits (caps) on your current Internet service?

- Yes  No  I don't know

20. If you have data limits, have you exceeded those limits?

- Yes  No  I don't know  I don't have data caps

21. Do you work from home? (check all that apply)

- I never work from home
- I am self-employed and work part time from home
- I am self-employed and work full time from home
- I work part time at home for my employer
- I work full time at home for my employer
- I need nights and weekends access for my job
- I would if I had better Internet at home
- I am retired and do not work from home

22. Do you think lack of high speed internet would be a barrier for future growth in your community?

- Yes  No

23. Should local government have a role in facilitating access to broadband services?

- Yes  No

24. Any other comments?

\_\_\_\_\_

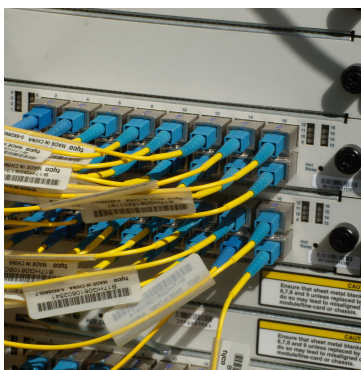
# Dakota Broadband Board



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Help Us Improve  
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**RETURN BY [MONTH DAY]**

The Dakota Broadband Board is conducting a Business and Residential Broadband Survey to assess the business broadband service and needs in your community. The goal is to develop a comprehensive set of strategies to bring high performance broadband and Internet services to business community and residential areas of your community.

Your participation in this survey will help us understand how to connect every home, school, doctor's office, and government agency to a high-speed network for our County.

The results will help the Broadband Board determine where the business need is greatest in your community and help guide us on how to ensure that all businesses have affordable and adequate access to broadband services.

Take the survey online in less than 5 minutes at



<https://projects.designnine.com/survey/dakota-business>

Or return the this survey by the U.S. Postal Service. Place the survey in a stamped envelope and use the address below:

<appropriate mailing address>

We need your response!

We thank you for your participation!

Business Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Please supply full street address with street or road number.

City/State/Zip: \_\_\_\_\_

1. Check the items you agree with below
- My business needs better landline telephone service
  - My business needs better cellular telephone service
  - My business needs better Internet/data service
  - I need better Internet for Covid-19 work from home
  - Downtown areas of the county need free WiFi for visitors
  - We are satisfied with all of our services

2. How important do you think Internet technology will be for the success of your business over the next five years?
- Unimportant
  - Neutral
  - Somewhat Important
  - Very Important

3. Total number of : a) employees \_\_\_\_\_ b) Internet users \_\_\_\_\_

4. If you are a business, what type? (check all that apply)
- Retail / Wholesale
  - Professional/Office
  - Government
  - Educational
  - Medical
  - Non-Profit
  - Restaurant / Food Services
  - Communications / Technology
  - Agriculture / Forestry
  - Manufacturing
  - Construction / Maintenance / Repair
  - Other \_\_\_\_\_

5. Is this a home-based business?  Yes  No

6. How much do you pay now for Internet access each month?
- \$0 to \$100
  - \$101 to \$150
  - \$151 to \$500
  - \$501 to \$1000
  - \$1001 to \$5000
  - \$5000+
  - I don't know

7. Satisfied with what you pay for Internet service?  Yes  No

8. What type of Internet access do you have?
- Dial-up
  - DSL line
  - Fiber
  - Cable modem
  - Satellite
  - Cellular wireless
  - Wireless ISP
  - I don't know
  - No Internet
  - Other \_\_\_\_\_

9. Based on the type of Internet connection you selected above, why do you still have it? (check all that apply)
- Too expensive to change
  - Best price available
  - Not interested in changing
  - No other options
  - Most reliable service available
  - Limited other options

10. What is the download speed of your Internet connection? You can use <https://nperf.com/en/> to test your speed if you do not know it.
- Less than 1 Mbps
  - 1 - 10 Mbps
  - 10 - 50 Mbps
  - 50 - 100 Mbps
  - 100 - 1,000 Mbps
  - 1,000+ Mbps (Gigabit)
  - I don't know

11. What is the upload speed of your Internet connection? You can use <https://nperf.com/en/> to test your speed if you do not know it.
- Less than 1 Mbps upload
  - Between 1 Mbps and 3 Mbps upload
  - Between 3 Mbps and 100 Mbps upload
  - Greater than 100 Mbps upload
  - I don't know

12. How satisfied are you with the speed of your current Internet service?
- Very Dissatisfied
  - Dissatisfied
  - Neutral
  - Satisfied
  - Very Satisfied

13. How satisfied are you with the reliability of your current Internet service?
- Very Dissatisfied
  - Dissatisfied
  - Neutral
  - Satisfied
  - Very Satisfied

14. How important is a redundant or second Internet connection to your business?
- Unimportant
  - Neutral
  - Somewhat Important
  - Very Important

15. Please select all that apply to your current Internet provider:
- Cannot rely on the service
  - Slow or poor technical support
  - Price is unreasonable for the service I receive
  - Poor customer service
  - The speed I want is not available at my business location
  - I am satisfied with my current Internet provider

16. Check all items you use the Internet for now:
- VoIP Internet phone (Vonage, Skype, etc.)
  - Offer customers free WiFi service while shopping
  - Online Backup (files, photos, music, company data)
  - Monitor / control security, alarms, health, processes, etc.
  - Processing credit card / debit card transactions
  - Ordering / managing inventory
  - Social Media (Facebook, LinkedIn, Twitter, Instagram)
  - Receiving and processing online orders
  - Cloud-based business, accounting or other services
  - Other \_\_\_\_\_

17. Who is your Internet service provider? (will be updated)
- CenturyLink
  - Comcast/Xfinity
  - US Cellular
  - Satellite Internet
  - Cellphone hotspot
  - T-Mobile
  - Other \_\_\_\_\_

18. What kind of telephone service do you have?
- Landline only, no cellphone service
  - Cellphone service only
  - Landline and cellphone service

19. Do you or your employees use a VPN (Virtual Private Network) to obtain remote access for your work or to a company network?
- Yes
  - No
  - I don't know

20. Do you or your employees need or want to work from home?
- No
  - It would be nice, but it's not important
  - Occasionally
  - Very important occasionally
  - Very important on a consistent basis

21. Does limited Internet access at employees' residences impact your business?
- Yes
  - No

22. Do the existing Internet service options impact your business's decision to relocate or stay in the County?
- Yes
  - No

If yes, briefly state why:

\_\_\_\_\_

23. Are you interested in fiber delivered Internet service?
- Yes
  - No
  - Maybe, but I need to know more about fiber Internet first

24. Should local government have a role in facilitating access to broadband services?
- Agree strongly
  - Agree
  - Neutral
  - Disagree
  - Disagree strongly

25. Any other comments?

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**Systems Plan Update and Business Analysis:**  
**Paper Survey Utilization and Design Nine Contract Amendment**

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**PRESENTER(S):** Executive Director Koch

**ACTION:**     **Recommend Approval**     **Receive Item/Update**     **Other**

**BACKGROUND:**

The Design Nine contract includes the administration of an electronic survey for the Systems Plan Update and Business Analysis but requires a contract amendment to add the utilization of paper surveys as well. Board members should determine to what degree, if any, a paper survey mailed to residents would improve overall data regarding the current state of broadband in Dakota County. Design Nine has indicated that the use of paper surveys has historically increased the response rate, and is also important to capture feedback from those who do not have internet access.

The mailing service utilized by Design Nine provided the following costs estimates from mailing a survey to all addresses to different random sampling categories:

Dakota Co MN	Assorted zips				
qty:	182,670 (All)	125,000	100,000	75,000	50,000
Total	\$ 69,361	\$ 48,983	\$ 39,442	\$ 29,917	\$ 20,392

**RECOMMENDATION:**

The TAC recommends amending the contract with Design Nine to include the utilization of a paper survey, and the amendment of the Design Nine contract with a not-to-exceed amount to cover the paper survey costs. TAC members felt it was appropriate for the DBB Board to determine the degree to which a paper survey was used.

**ATTACHMENTS:**

None

### C-NET Policy Discussion: IRU Draft

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**PRESENTER(S):** Executive Director Koch

**ACTION:**      Recommend Approval      Receive Item/Update      Other

**BACKGROUND:**

At the request of the DBB Board in 2021, the TAC created a recommendation regarding C-NET that attempted to acknowledge the different member perspectives communities have about C-NET, but still enable the signing of the IRU by the remaining members who have not yet signed. The DBB Board had initial discussions about this recommendation at its meetings in December 2021 and February 2022.

**RECOMMENDATION:**

None. The intent of this agenda item is to enable the DBB Board to discuss a draft IRU with the C-NET categories proposed by the TAC added. Members who have already signed the IRU would not need to sign this version, but would have the option of doing so. Members could select which C-NET uses they would allow by checking the boxes in the IRU. C-NET categories not selected would mean the member fiber assets are not available for the DBB to use.

**ATTACHMENTS:**

Attachment C: March 2022 Draft IRU with C-NET Categories

**SUPPLEMENTAL DISTRIBUTION:**



DBB Contract # \_\_\_\_\_

**FIBER OPTIC INDEFEASIBLE RIGHT TO USE  
AGREEMENT BY AND BETWEEN  
DAKOTA COUNTY AS GRANTOR  
AND  
DAKOTA BROADBAND BOARD AS GRANTEE**

## **FIBER OPTIC INDEFEASIBLE RIGHT TO USE AGREEMENT**

This Agreement for the indefeasible right to use (or “IRU”) together with the attached exhibit (collectively the “Agreement” or the “IRU Agreement”) is made by and between Dakota County, a Minnesota county corporation (“IRU Grantor” or “the County”), and Dakota Broadband Board, a Minnesota independent joint powers organization, acting by and through its Board of Directors (“IRU Grantee”, or “the DBB”). The IRU Grantor and IRU Grantee may be referred to herein individually as a “Party” or collectively as the “Parties.”

### **BACKGROUND**

- A. The County has installed and maintained, or plans to install and maintain, certain Fibers and Fiber Facilities, and
- B. The County is a participant in and a member of the Dakota Broadband Board and to further the purpose and goals of the DBB, the County agrees to grant to the DBB the right to use, manage and maintain Fibers and Fiber Facilities within certain Fiber Optic Cable segments on the terms and conditions set forth below.
- C. The DBB desires to use, manage and maintain optic Fibers and Fiber Facilities from the County as described in this Agreement.

### **DEFINITIONS**

The following terms are used in this IRU Agreement:

- A. “County Right-of-Way” means the real property, including all fee simple, easements, access rights, rights of use and other interests, owned and/or operated by Dakota County, devoted to County road or highway purposes.
- B. “City Right-of-Way” means the real property, including all fee simple, easements, access rights, rights of use and other interests owned and/or operated by the City, devoted to City road or highway purposes.
- C. “Dakota Broadband Network” means a high-performance network connecting local government facilities in Dakota County with the physical assets (conduit, fiber optic cable, handholes, cabinets, network equipment) owned by DBB members but maintained and managed by the DBB.
- D. “Effective Date” is the date upon which all Parties have executed this Agreement.
- E. “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.
- F. “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.

- G. "Fiber Optic Cable" or "Cable" means a collection of fibers with a protective outer covering.
- H. "IRU Assets" means the County's IRU conduit, IRU Cable, IRU Fibers and Fiber Facilities that is subject to this Agreement as more specifically described in Exhibit A.
- I. "IRU Cable" means a Cable containing one or more Fibers, constructed and owned by the County in which the DBB has an IRU pursuant to the terms of this Agreement.
- J. "IRU Fibers" means the specific County owned Fiber described in Exhibit A, an IRU for which is granted to the DBB in the IRU Cable pursuant to the terms of this Agreement.
- K. "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.
- L. "Optical Splice Point" means a point where the County's Cable is connected to another entity's Cable within a splice enclosure.
- M. "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** The DBB desires to obtain an IRU in the County's ~~IRU~~-Assets further described in Exhibit A to this Agreement, which is incorporated into this IRU by reference. In consideration of the promises by the DBB in this Agreement, the County grants an IRU to the DBB in the IRU Assets identified in Exhibit A hereto, subject to any interests the County has previously granted to other cities, pursuant to IRUs or other contractual arrangements and for the following uses :

- I-NET Participant use of the system for governmental purposes.
- C-NET G: Non-Participant use of the System by federal, state, or local governmental entities for public purposes.
- C-NET E: Non-Participant use of the System by educational institutions.
- C-NET NP: Use of the System by non-profit organizations that serve the public good.

**Commented [WJ1]:** The intent here is for the entity to either check what use is permitted or only include the uses it is granting

- C-NET M: Participant use of the System for C-NET projects that utilize other members' assets for backbone or transport to enable a project in the requesting member's community.
- C-NET C: Use of the System by private, commercial entities.

The DBB shall be entitled to use the IRU Assets for any lawful purposes in the above selected categories subject to (i) agreeing to be bound by all laws, regulations and any requirements of the County regarding access to County rights of way, and (ii) otherwise complying with the terms and conditions of this IRU.

**Section 1.2 Subject** to the terms and conditions of this IRU Agreement, County hereby grants to the DBB a license to access and use the IRU Assets during the term of this Agreement and any extension of this Agreement. The Parties acknowledge and agree that they may add additional IRU Assets owned by the County to become subject to this Agreement, and will agree upon an amended Exhibit A that reflects the changes to the County IRU Assets to be subject to DBB use and management, which shall supersede all previous versions of Exhibit A. Such amended Exhibit A need not be formally approved by the DBB Board or the County Board in order for the amendment to become effective.

**Section 1.3 The** IRU Assets are provided to the DBB "as is." If any new Fiber Facilities or any fiber splices are needed to interconnect IRU Fibers to the Dakota Broadband Network, the DBB shall be responsible for coordinating this work with the County and shall pay any and all costs and fees associated with connecting the IRU Fibers to other fibers not owned by the County for Dakota Broadband Network purposes. The DBB and the county/city or cities that own the Dakota Broadband Network 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 Dakota Broadband Network purposes of parties outside of the DBB or shall agree upon an allocation of the costs and fees between the Parties. If the Parties cannot agree upon the responsibility for costs and fees related to Dakota Broadband Network connections, the issue shall be presented to the DBB Board and the DBB Board decision on cost responsibility shall be final.

**Section 1.4** Notwithstanding anything contained to the contrary in this Agreement, the Parties acknowledge and agree nothing contained in this Agreement shall operate to limit, interfere with, or otherwise adversely affect each 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 Exhibit A.

## ARTICLE II EFFECTIVE DATE AND TERM

The DBB may use the granted IRU Assets commencing on the Effective Date. This Agreement has an initial term of 10 years, with two separate five-year renewals which shall be effective unless the DBB Board affirmatively decides not to renew and provides ninety (90) days'

notice to the County 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  
LICENSE FEES**

The County will not impose, and the DBB shall not pay a fee for the use of the IRU Assets during the term of this Agreement on any renewal of this Agreement. The County will contribute to the cost of using, managing and maintaining the County's Fiber Assets through its DBB participant fees and other financial contributions as approved by the DBB Board.

**ARTICLE IV  
MAINTENANCE AND REPAIR**

The DBB shall be responsible for the maintaining, repairing and when necessary replacing the County's IRU Assets assigned to the DBB as described in Exhibit A within the Dakota Broadband Network managed by the DBB. Responsibility for the cost of maintenance and repair of new County Fiber Facilities used within the Dakota Broadband Network will be as follows:

If the County has amended Exhibit A of its IRU Agreement with the DBB to include the new Dakota Broadband Network/county fiber among the IRU Assets to be managed and maintained by the DBB, the cost of maintenance and repair of the new Dakota Broadband Network fiber is the responsibility of the DBB.

If the County has not amended Exhibit A of its IRU Agreement with the DBB to include the new county fiber among the IRU Assets to be managed and maintained by the DBB, the cost of maintenance and repair of the new Dakota Broadband Network/County fiber is the responsibility of the county until the new Dakota Broadband Network fiber is added to Exhibit A.

The response time to repair breaks or other failures causing an interruption in communications through County IRU Assets will be the response time standards set forth in the break/fix contract between the DBB, or its network administrator, and the selected break/fix repair contractor.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES**

**Section 5.1** The DBB's use of the IRU Assets shall comply with all applicable governmental codes, ordinances, laws, rules, regulations and/or restrictions.

**Section 5.2** The County represents and warrants that it has the right to grant this IRU in its IRU Assets.

**ARTICLE VI  
LIABILITY; INDEMNIFICATION**

**Section 6.1** Neither the County nor the DBB 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** The DBB assumes, releases and agrees to indemnify, defend, protect and save 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 to act, negligence or willful misconduct of the

DBB, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this IRU.

The County assumes, releases and agrees to indemnify, defend, protect and save DBB (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 to act, negligence or willful misconduct of the 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 IRU.

Notwithstanding the foregoing, such indemnity is limited to the amount of available insurance coverage and nothing herein shall be considered as a waiver of its 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 hereto 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, however, that (i) the Parties to this Agreement shall not 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 hereto 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 such 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; acts of any governmental authority; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. 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 RELOCATION OF CABLE**

**Section 8.1** The County shall have the right to relocate the IRU Assets at any time upon written notice to the DBB (a "Relocation"). The County and/or member cities shall be responsible for all costs associated with a Relocation of the IRU Assets in County Right-of-Way that is required by alteration of the County Right-of-Way or by the request of a third party having

authority to require the move. The County may seek and receive funding or reimbursement from a third party for a Relocation within County Right-of-Way.

The County shall be responsible for all costs associated with a Relocation of its IRU Assets in County Right-of-Way that is required by alteration of the County Right-of-Way or by the request of a third party having authority to require the move. The County may seek and receive funding or reimbursement from a third party for a Relocation by the County.

**Section 8.2** Either Party shall give the other Party at least sixty (60) days prior notice of any Relocation, if possible. The County has the right to determine the extent of, the timing of, and the methods to use for such Relocation; provided that any such relocated IRU Assets shall be constructed and tested in accordance with industry standard specifications and requirements. In addition, the City shall use reasonable efforts to ensure Relocation does not result in an adverse change to the operations, performance or connection points with the DBB Fiber Optic Cable network

**Section 8.3** The DBB has the right to review the Relocation plans at least fourteen (14) days prior to commencement of any Relocation. Either party may submit comments on the Relocation plans, which comments shall not delay commencement of the Relocation. Both parties shall have the right to have a representative present at the time a Relocation occurs.

## **ARTICLE IX CONFIDENTIALITY**

The Parties agree and recognize that 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. 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 any 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 any 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 the 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 the DBB 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, the DBB may notify the County prior to the expiration of the notice period of its intent to take ownership of the IRU Fibers.



If the DBB provides timely notice of such intent, the Parties will execute any agreements or documents transferring legal title of the IRU Fibers to the DBB, at no cost to either Party.

**Section 10.2** This Agreement shall terminate upon the first to occur of the following:

- (a) Expiration of the term of this Agreement;
- (b) Upon written notice from either Party to the other if a default occurs that is not cured within the time allowed hereunder, or
- (a) Upon a termination as provided in Section 10.4.

**Section 10.3** If this Agreement terminates under Article X, Section 10.2(a), neither Party shall have any liability to the other Party for the use of the IRU Fibers; If this Agreement terminates under Article X, Section 10.2(b), 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 effect such termination.

**Section 10.4** The County may terminate this Agreement as to any IRU Assets owned by it with not less than two years prior written notice to the DBB. The DBB Board will consent to such termination unless the removal will render the Optical Fiber Dakota Broadband Network Backbone to be less than carrier class or violate any DBB contracts. The Parties recognize the two-year notice period is necessary and appropriate to permit the DBB to make alternative provisions for the continuance of service. The DBB Board may waive the two-year notice if it determines, in its sole discretion, that early termination will not adversely impact the Network.

**Section 10.5** Upon termination of this Agreement for any reason, the DBB shall cease to have any rights to the IRU Assets or other rights under this Agreement or any obligations under this Agreement except for obligations under this Article and any other obligations that arose prior to such termination.

**Section 10.6** If the County ceases to be a member of the DBB prior to the expiration or termination of this Agreement, this IRU Agreement will continue to be in effect until expiration.

## **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 written receipt of such notice; provided, however, that where a default cannot be reasonably 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 the County: County of \_\_\_\_\_  
Attn: IT Department  
\_\_\_\_\_, MN 55\_\_

With a copy to: County Attorney  
\_\_\_\_\_  
\_\_\_\_\_, MN 55\_\_

If to DBB: Dakota Broadband Board  
Attn: Executive Director  
\_\_\_\_\_  
Farmington, MN 55\_\_

With a copy to: Dakota Broadband Board Attorney  
\_\_\_\_\_  
\_\_\_\_\_, MN 55\_\_

**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 the DBB any property interest or estate in or lien upon the County's property, the County'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 the DBB 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 the DBB's property, its Optical Fiber Dakota Broadband Network or any components thereof or any Intellectual Property. All liens, claims and charges of the County shall not attach to any interest of the DBB or in any property owned by the DBB.

**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 that 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 DBB and the County of all duties and obligations under this Agreement shall be as independent local government units 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 DBB and the County.

**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 IRU 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 IRU Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns.

**ARTICLE XVII  
ENTIRE AGREEMENT**

This Agreement and any Exhibits referenced and attached hereto or to be attached hereto constitutes the entire agreement between the Parties and supersede any and all prior negotiations, understandings and agreements, whether oral or written.

**IRU GRANTOR:**  
**COUNTY OF** \_\_\_\_\_

By: \_\_\_\_\_  
Its: County Administrator  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Clerk

**IRU GRANTEE:**  
**DAKOTA BROADBAND BOARD**

By: \_\_\_\_\_  
Its: Board Chair  
Date: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Assistant County Attorney                      Date

**EXHIBIT A**

**Description of County IRU Assets Subject to the IRU**