



---

# Le Sueur County, MN

Tuesday, October 20, 2015

Board Meeting

## Item 11

**11:45 a.m. Scott Gerr, MIS (10 min)**

*RE: Optical Fiber Network JPA*

Staff Contact:

## **JOINT POWERS AGREEMENT FOR DEVELOPMENT OF OPTICAL FIBER NETWORK**

This agreement is between the State of Minnesota, acting through its Commissioner of the Office of MN.IT Services (“MN.IT” and/or “State”), and the County of Le Sueur (“County”). The County is a Governmental Unit of the State of Minnesota.

### **1. General Purpose**

This Agreement is made and entered into pursuant to Minnesota Statutes, Section 471.59, subdivision 10, the State and the County have an interest in continuing the development of an optical fiber based network. The fiber based network will provide a resilient connection from Le Center to the State networks called MNET. MNET provides interconnectivity between public sector entities and connectivity to the internet. The network equipment provided by the State enables the County to jointly and cooperatively develop and implement communications among other institutional sites. The network will be managed by the State through the State Agency MN.IT.

### **2. Effective Date and Term**

The term of this Agreement shall commence on the *Effective date* of **October 15, 2015**, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

This agreement will expire 30 (thirty) years from date of execution of the agreement.

### **3. Agreement for each entity**

The intended use for new network fiber segment is to construct and manage a fiber optic network path providing resiliency for the purpose of delivering IP communications services among institutional sites and the State network as more fully described below.

#### **3.1 Le Sueur County will:**

- Pay a one-time fee in the amount \$100,000.00 (One Hundred Thousand Dollar) to the State of Minnesota, upon execution of this agreement, for the construction of dark fiber from Le Center intercepting an existing dark fiber path that runs from Shakopee to Mankato. Refer to Exhibit A, which is attached and incorporated into this contract.
- Provide or arrange for space and emergency access for State network equipment at Le Sueur County facilities as necessary for operating a public Institutional Network.

#### **3.2 State will:**

- Engineer, furnish, install, and maintain network equipment necessary to operate an Institutional Network on the new fiber path providing the resilient network IP path to Le Center.
- Reserve four (4) strands on the fiber provided under this agreement for the future use by Le Sueur County.
- Provide for all maintenance including locates and repairs on the new fiber path for the duration of the agreement.

#### **4. Payment**

The County will make one payment in the amount of \$100,000.00 (One Hundred Thousand Dollars), upon execution of this agreement. For future expenses, unless expressly provided in an amendment to this Agreement, each entity will bear its own to perform these duties.

#### **5. Network Development, Design, Operation and Management**

The State will design the Network and install and manage the electronic devices needed to make the network operational. The parties shall use all reasonable efforts to maintain their respective associated fiber facilities to enable the Network to remain fully functional.

#### **6. Liaisons**

To assist the Parties in the day-to-day performance of this Agreement and to ensure compliance with the specifications and provide ongoing consultation, liaisons shall be designated by the Parties. The Parties shall inform the others, in writing, of any change in the designated liaison. At the time of execution of this Agreement the following persons are the designated liaisons:

The State's Liaison is:

Jim E. Johnson, Director of Network and Telecommunications Services  
Minnesota Information Technology  
658 Cedar St  
St Paul, MN 55155  
651.201.1016  
[Jim.e.Johnson@state.mn.us](mailto:Jim.e.Johnson@state.mn.us)

Le Sueur's Liaison is:

Scott Gerr, MIS Director  
Le Sueur County  
88 park Avenue South  
Le Center, MN 56067  
507.357.8100  
[sgerr@co.le-sueur.mn.us](mailto:sgerr@co.le-sueur.mn.us)

#### **7. Assignment, Amendments, Waiver, and Contract Complete**

**7.1 Assignment.** The County and/or State may not assign or transfer any rights or obligations under this Agreement without the prior consent of the other parties and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

**7.2 Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

**7.3 Waiver.** If any Party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

**7.4 Contract Complete.** This Agreement contains all negotiations and agreements between the Parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind any party.

## **8. Liability and Insurance**

Each party to this Agreement shall be liable for the acts of its own agents, volunteers or employees and the results thereof to the extent authorized by law and shall not be responsible for the acts of any other party, its agents, volunteers or employees.

It is understood and agreed that liability and damages arising from the parties' acts and omissions are governed by the provisions of the municipal Tort Claims Act, Minn. Stat. Ch. 466, the Minnesota Tort Claims Act, Minn. Stat. §3.736, as applicable, and other applicable laws. Each Party warrants that it is able to comply with the aforementioned liability and insurance requirements through an insurance or self-insurance program and that each has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466 or Minn. Stat. §3.736, as applicable.

This agreement shall not be construed as and does not constitute a waiver by any Party of any conditions, exclusions or limitations on the Party's liability provided by Minnesota Statutes, Chapter 466, Minnesota Statutes § 3.736 or other applicable law. This clause will not be construed to bar any legal remedies that each party may have for another's failure to fulfill its obligations under this Agreement.

## **9. State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the County's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

## **10. Government Data Practices**

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by each Party 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 the Governmental Unit receives a request to release data referred to in this Clause, the Governmental Unit must immediately notify the State from whom the data originated. The originating State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

## **11. Venue**

Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or Federal court with competent jurisdiction in Ramsey County, Minnesota.

## **12. Termination**

**12.1** Unless terminated sooner as provided by subparagraphs 12.2 & 12.3 herein, this Agreement shall terminate thirty (30) years after the effective date established in paragraph 2 of this Agreement.

**12.2 Termination.** This Agreement may be terminated by either party with or without cause, at any time after the initial ten (10) year period, from the date of execution, and after receipt of notice at least 180 days prior to termination.

**12.3 Termination for Insufficient Funding.** The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be

continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the other Parties. The State is not obligated to pay for any services that are provided after notice and effective date of termination. The State will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the other Parties notice of the lack of funding within a reasonable time of the State's receiving that notice.

**12.4 Ownership.** At the end of the term of this Agreement or upon its termination the parties will each own four (4) strands each on the fiber from Le Sueur intercepting the Mankato to Shakopee fiber and the State will own the electronic devices it installed pursuant to this Agreement.

### **13. Miscellaneous Provisions**

Except as otherwise provided herein, this Agreement may be amended by written consent of both parties. The addition of a new Party to this Agreement shall require a written amendment approved by all Parties.

Should any provision of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found unlawful, representatives of the Parties shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the governing body of each Party.

The State of Minnesota, acting through its Office of MN.IT Services and LeSueur County hereby grant each other mutual continuing Licenses for access to their respective property as reasonably needed from time to time, for the installation, maintenance and repair of the Network, which Licenses shall remain in effect for the duration of this Agreement and for such limited time thereafter as is reasonably required for the Parties' access to and removal of their respective property. To the extent practicable, advance notice will be given and mutually convenient arrangements for such access shall be made, and all relevant safety and security policies and procedures of the party to whose property access is being granted shall be followed by the Party, or the Party's employees or agents, being granted access.

The Parties shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement and to the facilities, programs and staff for which each Party is responsible.

**14. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which counterparts when so executed and delivered shall be deemed to be an original, and all of which counterparts when taken together shall constitute but one and the same Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned governmental units have caused this Agreement to be executed by its duly authorized officers.

**LE SUEUR COUNTY**

Approved by Le Sueur County Board

By: \_\_\_\_\_

Date of signature: \_\_\_\_\_

\_\_\_\_\_  
Brent Christian  
LeSueur County Attorney

By: \_\_\_\_\_

Date of signature: \_\_\_\_\_

**STATE OF MINNESOTA  
Office of MN.IT Services**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

Date of signature: \_\_\_\_\_

**Commissioner of Administration**  
*As delegated to Materials Management Division*

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

Date of signature: \_\_\_\_\_

# Exhibit A

