

**JOINT POWERS AGREEMENT  
DAKOTA BROADBAND BOARD**

**November 30, 2017**

## Table of Contents

1. Statement of Purpose and Powers to be Exercised.....	1
2. Manner of Exercising Powers; Creation of Dakota Broadband Board .....	1
3. Defined Terms.....	1
4. Participant.....	3
5. Board.....	4
6. Acquisition of Interests in System Components .....	7
7. Ownership of System Components .....	8
8. Expansion of System .....	8
9. Operating and Maintenance Cost Sharing.....	8
10. Financing Initial I-Net and Initial C-Net Capital Improvements .....	9
11. Revenue Generation .....	9
12. Establishment of a Relocation Fund; Submission of Capital Plans.....	9
13. Default; Remedies .....	10
14. Liability; Indemnification.....	10
15. Termination of Board; Disposition of Assets .....	11
16. Amendments.....	11

THIS JOINT POWERS AGREEMENT (as amended from time to time, this "Agreement") is entered into as of \_\_\_\_\_ (Effective Date), by and between the parties described on Schedule A attached hereto (the "Initial Participants"), pursuant to Minnesota Statutes, Section 471.59.

1. Statement of Purpose and Powers to be Exercised. The purpose of this Agreement is to provide for the joint exercise of the statutory powers common to the Participants (defined below), pursuant to Minn. Stat. § 471.59, to establish, operate, maintain and improve the System (defined below) for use by the Participants and potentially other users including, but not limited to: the power to enter into agreements necessary or convenient to the exercise of such powers; to establish fees and charges with respect thereto; to acquire, own and convey real or personal property; to issue bonds or obligations under any law under which the Participants may independently issue bonds or obligations, and use the proceeds of the bonds or obligations to carry out the purposes for which the bonds or obligations are issued; and to take such other actions reasonably necessary to the establishment, operation, maintenance and improvement of the System (together with other powers described herein, the "Joint Powers"). Notwithstanding any other provision of this Agreement, the joint powers organization created by this Agreement shall not have: any power of eminent domain; any taxing powers; any power to pledge the full faith or taxing power of any of the Participants for any purpose whatever; or to issue general obligation indebtedness of any Participant.

2. Manner of Exercising Powers; Creation of Dakota Broadband Board. The Joint Powers of the Participants will be exercised through a joint powers board, which is hereby created, to be designated the Dakota Broadband Board (the "Board"), having the powers and duties described herein. The Board is authorized to exercise the Joint Powers on behalf of and in cooperation with the Participants as provided herein.

3. Defined Terms. Capitalized terms used herein shall have the following meanings:

"Access Fee" means an annual fee paid by each Participant as described in the System Plan or bylaws of the Board, which will include, but not be limited to, a fee (which shall be an equal amount for each Participant) in exchange for the Participant's use of the I-Net.

"Access the System" or "Accessing the System" means that a Participant has at least one System Component that is connected to elements owned by other Participants and is relying on the Board to operate and maintain the System Component(s) on its behalf.

"Agreement" has the meaning given in Section 1 of this agreement.

"Annual Participation Fees" means all payments made to the Board by Participants including but not limited to Access Fees, the Basic Membership Fees and Operations and Maintenance Fees.

"Backbone" the central portion of the network consisting of redundant optical fiber ring segments interconnecting diverse communications network elements (switches, routers, etc.),

including connections at the colocation facility or facilities. Generally, the backbone capacity is greater than the networks connected to it.

"Basic Membership Fee" means an annual fee paid by a Participant regardless of whether or not it accesses any part of the System.

"Board" has the meaning given in Section 2 of this Agreement.

"C-Net" means the use of the System on any basis other than by the Participants for governmental purposes.

"CDA" means the Dakota County Community Development Agency and its successors and assigns.

"Drops" means the fiber optic cable and associated equipment necessary to serve individual retail customers. Drops typically begin at a handhole and terminate in the building of the retail customer.

"I-Net" means the use of the System by the Participants for governmental purposes.

"IRU" or "Indefeasible Right to Use" means agreements between a Participant and the Board, on behalf of itself and all other Participants, with respect to the use of System Components in which the Participant has an ownership or other legal interest.

"Initial Participant" has the meaning given in the Preamble of this Agreement.

"Joint Powers" has the meaning given in Section 1 of this Agreement.

"Lateral" means a fiber optic cable that is not part of the Backbone but instead extends fiber optic access into areas away from the Backbone.

"Operating and Maintenance Costs" means all expenses relating to the operation and maintenance of facilities controlled by the Board or used in connection with the System, including but not limited to, labor, contracted services, energy costs, monitoring costs, system configuration cost, switch-related costs, relocation costs, break repair costs, marketing costs, insurance, taxes, fees or similar charges.

"Participant" means the Initial Participants to the Agreement and each other qualified governmental unit satisfying the requirements of Section 4.B after the Effective Date of this Agreement, but excluding any governmental unit that has withdrawn from the Board pursuant to Section 4.D hereof.

"Supermajority" means a vote of two-thirds of the members of the Board, counted as one vote per member or on the basis of Weighted Voting, when required.

"System" means the telecommunication infrastructure necessary for the Participants to collectively provide more robust broadband, I-Net and C-Net services within Dakota County, including, without limitation, System Components and other network elements together with

contract rights and agreements necessary or convenient in connection with the operation, maintenance, development and use of such components.

"System Components" means the various necessary or convenient elements of the System, including, without limitation, fiber optic cables, hand holes, switches and routers.

"System Plan" means the plan defining both the physical aspects of the I-Net and C-Net System and the methods for funding or financing the costs associated with the operation, maintenance, and development of the System, as more fully described in Section 18 of this Agreement.

"Weighted Voting" means a vote of the Board in which each member's vote is weighted by the proportion that the Operations and Maintenance costs allocated to the Participant the member represents bears to the total Operations and Maintenance cost during the year in which the vote is taken; provided, however that no prevailing vote will pass without the support of at least three members.

"Withdrawing Participant" means a Participant that has given notice of its intent to withdraw from the Board pursuant to Section 4.D.

#### 4. Participant

A. *General.* A county, city, town, school district, or other local unit of government whose jurisdiction is within Dakota County, and who has the authority to exercise the Joint Powers under Minnesota Statutes may be a Participant.

B. *Additional Participants.* In addition to the Initial Participants, any government entity described in Section 4.A is eligible to be a Participant, subject to the prior approval of the Board, by:

i. executing and delivering to the Board a counterpart signature page to this Agreement, indicating its acceptance of the terms and conditions hereof;

ii. satisfying such other conditions mandated by the Board at the time as a condition to becoming a Participant.

C. *Annual Participation Fees.* The Board shall establish and collect, and the Participants shall pay non-refundable Annual Participation Fees. Withdrawing Participants shall continue to pay Annual Participation Fees due and payable during any required notice period under Section 4.D hereof. The Board shall not impose the Basic Membership Fee on the CDA unless the CDA is a Participant and is accessing the System.

D. *Withdrawal of Participants.*

i. A Participant that has not provided any System Components may withdraw, effective immediately, by providing written notice to the Chair of the Board.

ii. A Participant that has provided System Components may withdraw by providing not less than eighteen months advance written notice to the Chair of the Board, and by paying to the Board a "withdrawal payment." The withdrawal payment shall be determined through a good faith negotiation between the Board and the Withdrawing Participant. The purpose of the withdrawal payment is to require a Withdrawing Participant to pay actual and direct expenses incurred by the Board or another Participant which are reasonably related to the Withdrawing Participant's withdrawal including, without limitation, System Components relocation costs, leasing costs, and permit fees. If the Board and the Withdrawing Participant are unable to reach an agreement on the amount of the withdrawal payment, the disagreement shall be settled by binding arbitration, or in such other manner as is acceptable to the Board and the Withdrawing Participant. The amount of the withdrawal payment may be reduced to the extent the Withdrawing Participant and the Board enter into agreements which extend the Board's right to use System Components owned or controlled by the Withdrawing Participant. The provisions of Section 6.C hereof regarding termination of IRUs will continue to apply to Withdrawing Participants for the duration of any IRU.

iii. The withdrawal of a Participant will not, in and of itself, modify any IRUs or similar agreements executed by the Withdrawing Participant related to the use by the Board or other Participants of System components owned by the Withdrawing Participant. The term and termination of such IRUs and similar agreements are governed by the provisions in each individual IRU or similar agreement. In addition, each Withdrawing Participant shall remain liable for all financial liabilities incurred during the period it was a Participant, but shall not be liable for any new financial liabilities incurred after the date of delivery of its notice of withdrawal.

iv. Notwithstanding the eighteen month notice required for withdrawal under Section 4.D.ii above, the Board and the Withdrawing Participant may negotiate a shorter notice period in exchange for an additional payment by the Withdrawing Participant, designed to satisfy ongoing financial obligations of the Withdrawing Participant to the Board.

v. To the extent that IRUs granted by the Withdrawing Participant to the Board for System Components owned by the Withdrawing Participant continue beyond the withdrawal date, the obligations of the Withdrawing Participant to pay associated Operating and Maintenance Costs for such IRUs will survive withdrawal.

## 5. Board.

A. *Creation.* A joint powers board, known as the Dakota Broadband Board, is hereby established for the purposes contained herein with the powers and duties set forth in this Agreement.

B. *Members.* Each Participant that is accessing the System is entitled to appoint two members of its governing body as a member and an alternate member to the Board. The terms of each member and alternative member shall be as established in by-laws to be adopted by the Board, but in any event, shall terminate at such time as the member or alternate member ceases to be a member of the governing body of the applicable Participant.

C. *Committees.* The Board may appoint standing and ad hoc committees including, without limitation, an operations committee, with the powers to be described in the Board's bylaws.

D. *Governance-Voting.* As shall be required in bylaws to be adopted by the Board:

i. Actions of the Board will be taken by vote of the Board in which each member of the Board shall have one equal vote unless Weighted Voting is required. Decisions will be made by a majority of the votes cast except where a Supermajority is required.

ii. Weighted Voting is required: to approve or revise the System Plan; to approve periodic budgets, including required contributions to be made by each Participant in support of such budgets; to employ any personnel of the Board; and to approve the issuance of any bonds or debt obligations of the Board. In the case of the issuance of debt, an affirmative vote of two-thirds Supermajority of the votes cast is required.

iii. When weighted voting is required, the weight of each Participant's vote is determined by the Participant's proportional contribution to the total annual Operations and Maintenance costs of the Board in the year the vote is taken, multiplied by one hundred. In no event shall the total of the weighted votes be in excess of, or less than, one hundred (100). However, no prevailing vote will pass without the support of at least three Participants.

E. *Governance-Officers.* At its first meeting, and its first regular meeting of each subsequent year, the Board shall elect a Chair and Vice Chair from among the members designated by the governing bodies of the Participants. The Chair and Vice Chair shall be elected by the Board for one year terms. The Chair shall preside at all meetings of the Board and shall perform other duties and functions as may be determined by the Board. The Vice Chair shall preside over and act for the Board during the absence of the Chair.

F. *Purposes.* The Board shall: provide the structure for administrative and fiscal oversight of the System; set appropriate policies for the Board and the System; maximize the use of resources available to the various Participants for the benefit of the System; and establish and oversee any appropriate committees.



G. *Powers.* The Board shall have the general powers described in Section 1 of this Agreement, including the powers to do the following:

i. To negotiate and enter into contracts, including contracts: for the acquisition of real or personal property and equipment; employment of Board personnel, professional services and consultants; with wholesalers or resellers that desire to utilize the System;

ii. To acquire, construct, manage, maintain, or operate any interest in the System and any System Components;

iii. To apply for and hold any required licenses or permits;

iv. To sue and be sued;

v. To apply for, receive and utilize grants and loans;

vi. To accept donations;

vii. To issue bonds or debt obligations as permitted by law, by vote of a Supermajority of the Board, using Weighted Voting, provided that such obligations shall not constitute an obligation of any individual Participant;

viii. To promulgate, adopt, and enforce any rules and regulations, as may be necessary and proper to implement and effectuate the terms, provisions, and purposes of this Agreement.

H. *Additional Powers and Responsibilities.* In addition to the foregoing, the Board shall have the following specific powers and responsibilities, as further described and developed in the System Plan:

i. To approve contracts with commercial vendors regarding development, operation, marketing, public relations, maintenance and expansion of the System;

ii. To adopt an annual budget for operation and maintenance of, and capital improvements to, the System;

iii. To develop policies regarding accounting, contracting and procurement, employment, operations and maintenance, and asset replacement. The Participants expectation is that one or more of the Participants may provide financial accounting and or human resources services for the Board.

iv. To establish processes for setting the fees for Participants and non-Participants to access and use the System in accordance with the duly adopted System Plan and to administer the processes for setting fees that apply uniformly or equitably to all Participants;



- v. To acquire or lease real property as required for operations;
- vi. To discharge other duties consistent with the purposes of this Agreement or as required by law.

I. System Plan. A System Plan has been developed by the Participants in coordination with an outside consultant, Design Nine Broadband Planners, and titled "C-Net/I-Net Systems and Business Plan v7." The System Plan is fully incorporated into this Agreement by reference. The Board will formally adopt the System Plan at its first organizational meeting and may thereafter amend the System Plan from time to time as it deems appropriate. If there are any conflicts between the terms of this Agreement and the terms of the System Plan, the terms in this Agreement shall prevail. The vote to approve or modify the System Plan shall be by Weighted Voting.

6. Acquisition of Interests in System Components. The Board will acquire interests in the use of System Components as follows.

A. Participants will identify System Components for which they will grant to the Board IRUs with any qualifications or conditions, each of which will have an initial term of 10 years, with two five-year renewals which shall be automatic unless the Board affirmatively decides not to renew, by giving ninety (90) days' notice to the Participant prior to termination. In connection with, and as a part of the grant of each IRU, the Participant will grant to the Board all rights necessary or convenient for the Board to operate the System within the geographic boundaries of the Participant. The preceding sentence is not intended to grant to the Board prior approval of any permits required to be obtained in connection with any System Components to be constructed by the Board, provided however that such permits will not unreasonably be withheld by any Participant.

B. In connection with the grant by any Participant of an IRU to the Board for the benefit of the Participants as to any System Components, the Board will assume operating and maintenance costs and responsibilities with respect to such System Component.

C. With the prior consent of the Board, Participants may terminate an IRU as to any System Components owned by it with not less than two year's prior written notice to the Board. The Board will consent to such termination unless the removal will render the Backbone to be less than carrier class or violate any Board contracts. The Participants recognize that the two-year notice period is necessary and appropriate to permit the Board to make alternative provisions for the continuance of service. The Board may waive the two-year notice if it determines, in its sole discretion, that early termination will not adversely impact the System.

**7. Ownership of System Components.**

A. Each Participant retains the ownership interests it has in System Components, subject to the interests it grants to other Participants or the Board pursuant to IRUs or other contractual arrangements.

B. The Board recognizes that Participants may have partial ownership interests in System Components, or may have granted to third parties certain interests in such assets, which may limit the Participants' ability to dedicate or grant IRUs in such System Components.

C. The Participants' intent is that the Board will not own System Components unless in a specific situation the Board determines that it will construct and own certain System Components.

**8. Expansion of System**

A. Each Participant retains the authority to undertake and finance additional System Components to be owned by it, however each additional System Component that will be designated for operation and maintenance by the Board shall be constructed consistent with standards established by the Board and shall require prior review and approval as determined by the Board, in order to ensure that additions to the System will be undertaken in a coordinated manner. A decision to expand the System Components owned by a Participant remains with each Participant.

B. Each Participant must evaluate the financial viability for new System Components and System expansions. The Board will not participate in the cost of expansions to be owned by a Participant. The costs for new Laterals and Drops will be borne by individual Participants.

C. The Board may provide tools for Participants to expand the System by the addition of Laterals or Drops in accordance with the System Plan. This assistance would be in the form of technical assistance in implementation of the projects. The Dakota County Community Development Agency may provide financing assistance to Participants but will not participate in paying such costs.

**9. Operating and Maintenance Cost Sharing.** As is further described in the System Plan, Operating and Maintenance Costs will be separated into their logical parts. Responsibility for each cost category then will be shared by Participants based on distribution parameters appropriate for each category as determined by the Board.

Payment by Participants of their allocated share of Operating and Maintenance Costs will be in addition to the annual Access Fee. The Board shall use the Access Fees and Basic Membership Fees to offset a portion of the Operating and Maintenance Costs, as provided in the System Plan.

10. Financing Initial I-Net and Initial C-Net Capital Improvements

The following cost sharing provisions apply ONLY to the Initial Capital Projects. They do NOT apply to System expansions as described in Section 8. As is further described in the System Plan, Initial Capital Project costs will be shared as follows:

A. *Initial I-Net Capital Improvements Costs.* All municipal Participants and the CDA will pay for their own switches and their associated optics along with the fit-up costs relating to placement of the switches. Municipal Participants and the CDA will also pay for their own Drops and Laterals along with all associated splicing and other incidental costs, except that no municipal Participant or the CDA will be required to extend more than two thousand (2,000) feet of fiber optic cable to reach its primary access point. Each Municipal Participant will also contribute the same amount of funds as other Municipal Participants, with the equal share amount to be determined by the Board, to create an initial break/fix fund balance. Dakota County will pay for all other Laterals necessary to provide adequate access to the System for all Participants along with splicing and other costs associated with constructing the other Laterals. Dakota County will also pay for all costs related to the creation of the core nodes.

B. *Initial C-Net Capital Improvement Costs.* The CDA will pay for all costs relating to the Initial C-Net Capital Improvements as described in the System Plan.

11. Revenue Generation. As is further described in the System Plan, charges for use of the System will be imposed as follows.

A. *I-Net Usage and Charges.* Each Participant may use the System to the extent available within its boundaries for its own I-Net purposes on an unlimited basis, in exchange for annual payment of its Access Fee. Other than through the payment of the Access Fee, the Board shall not charge Participants for I-Net usage of the System.

B. *C-Net Revenues.* As further described in the System Plan, the Board will establish and collect charges for use of the C-Net, including different rates or charges for protected, versus unprotected, services. An amount equal to fifty per cent (50%) of revenue generated by C-Net usage will go the Participant in whose geographic limits the revenue is generated. An amount equal to forty five percent (45%) of revenue generated will be distributed pro rata to the Participants based on value of System assets provided by the Participants. An amount equal to 3.33% will be distributed pro rata to non-county members only based on their population. An amount equal to 1.67% will be distributed to Dakota County.

12. Establishment of a Relocation Fund; Submission of Capital Plans.

A. As further described in the System Plan, in the event of unanticipated need to relocate System fiber optic cable and associated structures and equipment, the CDA, at its option, may establish a fund which can be accessed by Participants for temporary construction financing on terms determined by the CDA. If the CDA creates a relocation fund, the Participants accessing relocation funds will repay the CDA beginning in the

Participant's next budget year. The intent of this fund is to provide temporary construction financing to be repaid in the next budget year. However, in the case of hardship, the CDA Board at its sole discretion may authorize a multi-year repayment plan. All fund repayments will include interest at a rate to be established by the CDA Board.

B. In order to minimize the unexpected need to relocate facilities, each Participant shall submit its Capital Improvements Plans relating to any System Components to the Board for review and comment prior to adoption thereof.

13. Default; Remedies. Upon the occurrence of any default hereunder, the Board and each Participant shall have any and all remedies available to it at law or in equity.

14. Liability; Indemnification.

A. *Responsibility for Own Acts and Omissions.* No Participant shall be liable for the acts or omissions of another Participant, unless it has specifically agreed in writing to be responsible for the same. Each Participant acknowledges and agrees that it is insured or self-insured consistent with the limits established in Minnesota State Statutes. Each Participant agrees to promptly notify all Participants if it becomes aware of any potential Board related claims or facts that are likely to give rise to such claims. Neither the Board nor any Participant shall have the power to do any act or thing the effect of which is to create a charge or lien against the property or revenues of the Board or another Participant, except as expressly provided herein or in any of the documents authorized herein.

B. *No Waiver.* Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of a Participant's statutory or common law immunities or limitations on liability, including by not limited to, Minnesota Statutes Chapter 466. Further, the Participants' obligations set forth in this Agreement are expressly limited by the provisions of Minnesota Statutes Chapter 466 and Minnesota Statutes section 471.59, and any other applicable law or regulation providing limitations, defenses or immunities to the Participants and the Board. For purposes of determining total liability for tort damages, each Participant and the Board are considered a single governmental unit and the total liability for all of the Participants and the Board shall not exceed the limits on governmental liability for a single governmental unit as specified under Minnesota Statutes Section 466.04, Subd. 1, or as waived or extended by the Board or all Participants under Minnesota Statutes Sections 466.06 or 471.981.

C. *Indemnification.* The Board shall be considered a separate and distinct government joint powers entity to which the Participants have transferred all responsibility and control for actions taken pursuant to this Agreement. The Board shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes Chapter 466. Without limiting the application of Section 14.A, to the extent of any liability insurance carried by the Board and available for such purpose, the Board shall defend, indemnify and hold harmless each Participant from any and all liability

arising from or as a result of: (i) any accident, injury to or death of any person or loss or damage to property that may be directly or indirectly caused by the acts or omissions of the Board; (ii) any act of the Board in the observation or performance of any of its responsibilities, or any failure by the Board to perform any such responsibilities; and/or (iii) any actions or inactions of Participants taken as a result of their membership on the Board. Nothing in this Agreement shall be construed to provide liability coverage or indemnification to an officer, employee, or volunteer of any Participant for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith. The Board shall carry insurance which provides for coverage equal to or greater than commercial general liability insurance in the amount of at least two million (\$2,000,000) dollars. If the Board employs any personnel, it shall also provide for worker's compensation benefits in the amount consistent with state statutes.

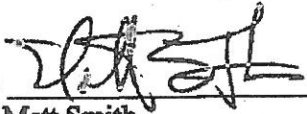
D. *Uninsured Liability.* If the Board incurs liability that is in excess of the insurance obtained by the Board, or incurs liability that is outside the coverage of such insurance, the liability shall be distributed among the Participants on the basis of each Participant's proportional contribution to the total Operations and Maintenance costs of the Board in the year in which the action or inaction giving rise to the liability has occurred.

15. Termination of Board; Disposition of Assets. This Agreement may be terminated, and the Board dissolved, upon the vote of a Supermajority of the Board using Weighted Voting. Prior to voting to terminate this Agreement, the Board shall adopt a plan providing for the orderly disposition of assets and unwinding of agreements of the Board. Such plan shall provide that following the disposition of any assets owned by the Board and the payment of all obligations of the Board, any funds remaining shall be distributed to the Participants who have not previously withdrawn in proportion to the total of all contributions made by the remaining Participants in place at the time of dissolution.

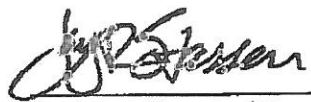
16. Amendments. This Agreement may be amended at any time and from time to time by agreement of all Participants who are members of the Board. Notwithstanding the foregoing, no amendment shall adversely affect the security for any bonds or debt obligations issued by the Board and outstanding at the time of the amendment.

IN WITNESS WHEREOF, each of the Participants has caused this agreement to be executed on its behalf by its respective authorized officers, all as of the date first above written.

DAKOTA COUNTY, MINNESOTA

By:   
Matt Smith  
County Manager  
1/5/18  
Date of Signature

Approved as to form

 1-4-2018  
Assistant County Attorney Date

File # KS17-419

Resolution # 17-650

KS17-419 JPA – Dakota Broadband Board vFinal

[Additional Participant Signature Pages to be added.]



**Schedule A**  
**Initial Dakota Broadband Participants**

City of Apple Valley  
City of Burnsville  
City of Farmington  
City of Hastings  
City of Inver Grove Heights  
City of Lakeville  
City of Mendota Heights  
City of Rosemount  
City of South St. Paul  
City of West St. Paul  
County of Dakota  
Dakota County Community Development Agency