AMENDED AND RESTATED
BROADBAND NETWORK AGREEMENT
FOR DEVELOPMENT AND USE OF BROADBAND NETWORK
BETWEEN DAKOTA COUNTY AND DAKOTA ELECTRIC ASSOCIATION

This Amended and Restated Agreement for the use of certain fiber optic strands within a fiber optic broadband network owned or operated by the County (the "Restated Agreement" or "Agreement") is entered into by and between the County of Dakota ("Dakota County" or "County"), 1590 Highway 55, Hastings, Minnesota 55033, and the Dakota Electric Association ("DEA"), 4300 - 220th Street W, Farmington, Minnesota 55024, individually referred to herein as a "Party" and collectively referred herein to as the "Parties."

1. General Purpose and Background

1.1 Dakota County has access to existing broadband network facilities in various locations within the County. These facilities include fiber optic strands owned by the County or licensed to the County by other municipalities, which licenses permit the County to use the municipal fiber strands for any lawful purpose (the "Fiber Network").

1.2 The Parties previously entered into a Broadband Network Agreement executed on February 10 and 14, 2017 (the "Original Agreement") under which the County provided a license to DEA for use of certain fiber optic strands within the Fiber Network, as identified in the Original Agreement.

1.3 The purpose of the Original Agreement was to provide high speed, high capacity and reliable communication for DEA electrical substations and key communication locations in and near Dakota County in order to support the reliable distribution of electric power to County residences and businesses.

1.4 Since the Original Agreement was executed, the Parties have completed the anticipated connections to the Fiber Network and the Parties therefore desire to terminate and replace the Original Agreement with this Restated Agreement in order to identify the fiber strands currently used by DEA and to update the terms of use for the Fiber Network.

2. Restated Agreement Effective Date and Term; Termination of Original Agreement.

2.1 This Restated Agreement is effective on the date it is executed by all Parties (the "Restated Agreement Effective Date'').

2.2 This Restated Agreement has an initial term of ten (10) years, with two separate five-year renewals. Each renewal term shall be effective unless a Party affirmatively decides to not renew and provides written notice to the other party at least 90 days prior to expiration of the initial or first extension term, or unless this Agreement is otherwise terminated at any other point by agreement of the Parties in writing or pursuant to the terms of this Restated Agreement.

2.3 Pursuant to section 16.2 of the Original Agreement, the Parties agree that the Original Agreement shall terminate as of the Restated Agreement Effective Date.

3. License for Use of Fiber Network Strands

3.1 In consideration of the mutual promises by the County and DEA in this Agreement, the County grants a license to DEA for the use of two fiber strands within the Fiber Network segments identified in Exhibit A (the "Licensed Fibers"). DEA shall be entitled to use the Licensed Fibers for its own lawful business use subject to (i) agreeing to be bound by all laws, regulations, and any requirements of the access to rights of way, and (ii) otherwise complying with the terms and conditions of this Agreement.

3.2 DEA shall be charged a monthly fee for the use of the Licensed Fibers of $65 per month for each mile of the Licensed Fibers (the "License Fee"). For the avoidance of doubt, the License Fee is calculated based on the per mile length of the pair of strands licensed to DEA and is not charged for each individual strand. The License Fee shall be payable to the County within thirty (30) days of the close of each calendar quarter (defined as March 31, June 30, September 30, and December 31).

3.3 The License Fee is established by the County Board of Commissioners and is subject to modification during the Term of this Agreement, provided that the License Fee shall not be modified for a minimum of 5 years after the Restated Agreement Effective Date. Thereafter, the License Fee may be modified based on the then-current License Fee established by the County Board. The County shall provide at least 60 days written notice to DEA prior to the effective date of any License Fee modification. DEA may accept the License Fee modification or may elect to terminate this Agreement and DEA's use of the Licensed Fibers at the end of the then-current Term year by providing written notice of termination to the County within 60 days following the date of the County's notice. If DEA does not provide the notice of termination, the License Fee shall be effective and payable as modified for the next quarterly payment.

3.4 The DEA Fibers are provided to DEA "as is." If any new fiber facilities or any fiber splices are needed to interconnect DEA Fibers to DEA's network, DEA shall be responsible for coordinating this work with County and DEA shall pay all costs and fees associated with connecting the DEA Fibers to other fibers not owned by County for DEA network purposes.

3.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that nothing in this Agreement shall operate to limit, interfere with, or otherwise adversely affect either Party's right to manage, control, construct, relocate, maintain, replace, and expand the portion of its fiber optic network equipment and infrastructure that is not subject to this Agreement, and is not included in the description of the interconnection points and DEA Fibers identified on Exhibits A and B.

3.6 DEA may not assign or transfer any rights or obligations under this Agreement, including but not limited to the license provided under this Agreement, without the prior consent of the County. If assignment of this Agreement is approved, an assignment agreement shall be fully executed and approved by the same Parties, or their successors in office.

3.7 DEA agrees that it will not provide access to or otherwise permit the use of the Licensed Strands by any third party, not otherwise approved by the County. Notwithstanding the foregoing, DEA may permit Great River Energy to use the Licensed Strands for its normal business operations. DEA may not permit any other party to use the Licensed Strands without the express approval of the County as incorporated into this Agreement by written amendment.

3.8 The County's obligation to provide DEA with access to and use of the licensed DEA Fibers identified on Exhibit A is subject to the County's right to use and license those portions of the Fiber Network owned and controlled by other municipalities. Notwithstanding anything to the contrary in this Agreement, if the County's right to use and license the DEA Fibers to DEA is terminated at any time, the County may immediately terminate this Agreement upon written notice to DEA, either in whole or as applicable to any DEA Fiber segments that the County may no longer license to DEA.

3.9 This Agreement does not grant DEA any property interest, or estate in, or lien upon County's property, the Licensed Fibers, or any components thereof, or any intellectual property, except for use of the Licensed Fibers during the term of this Agreement. All liens, claims, and charges of DEA shall not attach to any interest of the County or in any property owned by the County.

4. Exhibits

The following Exhibits are incorporated into this Agreement by reference:

Exhibit A —A listing of the segments where a pair or pairs of fiber have been reserved on the Fiber Network for use by DEA. The length of the reserved fiber is documented within this Exhibit and is used for calculating the amount of payments to be made by DEA to the County for use of the fiber.

Exhibit B — A listing of the minimum insurance requirements which DEA shall maintain while this Agreement is in force.

Exhibit C — Operational Procedures and contact information to be used to help in the administration of this Agreement.

5. Maintenance, Repair, Relocation

5.1 The County shall maintain the Licensed Fibers or contract with a third party for maintenance, breaks and fixes. The County agrees to be responsible for 100% costs in maintenance, breaks, and fixes in the Licensed Fibers described on Exhibit A.

5.2 Costs for future splicing shall be the responsibility of the Party requesting the splicing. Splicing shall be performed by a third party under contract with the County to perform maintenance or as agreed by the Parties.

5.3 The County will be responsible for any required relocation of Licensed Fibers.

5.4 DEA will provide emergency access to DEA's facilities as required for the County and/or its agents as necessary to address fiber outages in connection with the Licensed Fibers. DEA may require the County and/or its agents to be accompanied and/or supervised by DEA during any such activities.

6. Assignment, Amendments, Waiver, and Contract Complete

6.1. <u>Assignment</u>. No Party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other Party and an assignment agreement executed and approved by all Parties who executed and approved this Agreement, or their successors in interest.

6.2. <u>Amendments</u>. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by all Parties who executed and approved this Agreement, or their successors in interest.

6.3. <u>Waiver</u>. If any Party fails to enforce any provision of this Agreement, that failure does not waive such provision or its right to enforce such provision.

6.4. <u>Contract Complete</u>. This Agreement contains all negotiations and agreements between the Parties. No other understanding, whether written or oral, is binding on any Party.

7. Liability, Insurance, Indemnification, and Limitation of Liability

7.1. Liability. Each Party to this Agreement shall be liable for the acts of its agents, volunteers, officers and employees and the results thereof to the extent authorized by law; however, a Party 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 County's acts and omissions are governed by the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466, and other applicable laws. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the County may be entitled under Minnesota Statutes Chapter 466 or any other applicable laws governing the County's liability.

7.2. Insurance. DEA and the County each warrant that it has and will maintain insurance or self-insurance as described in Exhibit C to this Agreement. The County further warrants that it has and will maintain insurance coverage or a self-insurance program that, at a minimum, meets the liability limits contained in Minn. Stat. Ch. 466. The County warrants that it is able to comply with the aforementioned liability and insurance requirements through an insurance or self-insurance program.

7.3. Indemnification. Notwithstanding anything to the contrary stated elsewhere in this Agreement, each Party shall be liable for its own acts to the extent provided by law and, unless the liability for damage or loss is caused by the negligence or intentional act or omission of the other Party, each Party hereby agrees to indemnify, hold harmless and defend the other Party, its officers and employees against any and all liability, loss, costs, damages excluding consequential damages, expenses, claim or actions, including attorney's fees, which the other Party, its officers and employees may sustain, incur, or be required to pay, arising out of or by reason of any act or omission of the Party, its agents, servants, or employees, in the execution or performance of its obligations pursuant to this Agreement.

7.4. Limitation of Liability. In no event shall either Party be liable to the other Party under this Agreement for any indirect, special, or consequential damages, including but not limited to, loss of use, loss of revenue, loss of profit, arising from either Party's obligations under this Agreement.

8. State Audits

Each Party's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State of Minnesota and/or the State of Minnesota Auditor or Legislative Auditor, as consistent with applicable Minnesota law.

9. Government Data Practices

The Parties agree and recognize this Agreement as well as information and documents the Parties receive from one another during the term of this Agreement may be considered public data under the Minnesota Government Data Practices Act, Minn. Stat. Ch 13, as amended and all associated rules. The Parties agree to comply with the Minnesota Government Data Practices Act to the extent applicable to the data provided by the Parties under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by either Party under this Agreement.

10. Termination

10.1. Termination Without Cause. Should DEA decide it no longer requires use of the Licensed Fibers during the term of this Agreement, it may terminate the agreement by providing sixty (60) days' notice informing the County in writing of its intent to terminate this Agreement.

10.2. Termination by Agreement of the Parties. This Agreement may be terminated at any time by mutual agreement of both of the Parties.

10.3. Termination for Inadequate Service. If the service level, usability, or quality of the County Network does not meet DEA's satisfaction, in DEA's sole discretion, DEA may terminate this Agreement upon (30) days' written notice to the County. DEA shall immediately notify the County of the usability or quality issues that may result in termination of this Agreement. If the County cures the deficiency to the satisfaction of DEA within 30 days of notice of termination, the Agreement shall not terminate until the expiration of its term.

10.4. Termination With Cause. If either Party breaches its obligations under this Agreement, the non-breaching Party may terminate this Agreement thirty (30) days after the non-breaching Party gives notice of a breach to the other Party if the other Party has not cured its breach within such thirty (30) day period.

10.5. Ownership of Property After Termination. At the end of the term of this Agreement or upon the termination of this Agreement, the Parties will continue to own all sections of fiber optic cable and equipment that they then own.

11. Notices

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

If to DEA:	If to County:
	David McKnight Deputy County Manager 1560 Highway 55 Hastings, MN 55033 david.mcknight@co.dakota.mn.us

11.2 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.

12. Miscellaneous Provisions

12.1. The obligations of the Parties hereto are subject to force majeure and neither Party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either Party. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

12.2. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without regard to its conflict of laws provision. The Parties agree any action arising out of this Agreement or with respect to the enforcement of this Agreement shall be venued in the Dakota County District Court, State of Minnesota.

12.3. The performance by County and DEA of all duties and obligations under this Agreement shall be as independent local government unit and independent commercial operator and not as agents of the other Party, and no person employed or utilized by a Party shall be considered the employee or agent of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The Parties agree this Agreement does not create a partnership between, or a joint venture of, DEA and the County.

12.4. This Agreement may be amended only by a written instrument executed by all Parties.

12.5. 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.

12.6. 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 section of this Agreement 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 section of this Agreement.

12.7. Both Parties shall cooperate with each other and provide reasonable access to areas where the other Party needs to gain access to fulfil its duties/obligations consistent with this Agreement. 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 such Party, or such Party's employees or agents, being granted access.

12.8. The Parties shall abide by all federal, state and local laws, statutes, ordinances, rules and regulations (collectively "laws 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. If any Party becomes aware of any laws or regulations applicable to this Agreement that Party shall notify the other Party.

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

Signature page follows.

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

DAKOTA ELECTRIC ASSOCIATION

By: ______________________________

Name:___________________________

Title:_____________________________

Date: _____________________________

DAKOTA COUNTY

By: ___________________________________
David McKnight
Deputy County Manager

Date: __________________________________

Approved as to Form

____

Assistant County Attorney Date
File No. KS-25-252

EXHIBIT A

ANNUAL USE FEE CHARGED BY DAKOTA COUNTY FIBER SEGMENTS

		Monthly	2026 Yearly	2027 yearly
Seg # 1 Lakeville Sub to Nininger Sub	15.9 miles	$1,033.50	$12,402.00	
Seg # 2 Lakeville Sub to Lebanon Hills Sub	9.17 miles	$596.05	$7,152.60	
Seg # 3 Lebanon Hills Sub Eagan Sub	1.95 miles	$126.75	$1,521.00	
Seg # 4 Nininger to Hastings Sub	6.53 miles	$424.45	$5,093.40	
Seg # 5 Hastings Sub to Miesville Sub	15.3 miles	$994.50	$11,934.00	
Seg # 6 Miesville Sub to Byllesby Sub	10.3 miles	$669.50	$8,034.00	
Seg # 7 Vermillion River Sub to DEA HQ	1.75 miles	$113.75	$1,365.00	
Seg # 8 Yankee Doodle Sub to LeMay Lake Sub	1.25 miles	$81.25	$975.00	
Seg # 9 Pilot Knob to SES Tower	3.0 miles	$195.00	$2,340.00	
Seg # 10 Fisher Sub to SES Tower	5.14 miles	$334.10	$4,009.20	
Seg # 11 Apple Valley Sub to Fisher Sub	2.17 miles	$141.05	$1,692.60	
Seg # 12 LeMay Sub to Pilot Knob Sub	3.59 miles	$233.35	$2,800.20	
Seg # 13 Burnscott Sub to Colonial Hills Sub	1.89 miles	$122.85	$1,474.20	
Seg # 14 Colonial Hills Sub to Burnsville Sub	4.32 miles	$280.80	$3,369.60	
Seg # 15 Colonial Hills Sub to River Hills Sub	6.69 miles	$434.85	$5,218.20	
Seg # 16 Miesville Sub to Ravenna Sub	15.1 miles	$981.50	$11,778.00	
Seg # 17 Hastings Sub to Marshan Sub	11.7 miles	$760.50	$9,126.00	
Seg # 18 Miesville Sub to Ravenna Sub	12.9 miles	$838.50	$10,062.00	
Seg # 19 Dakota Heights Sub to Orchard Lake Sub	2.64 miles	$171.60	$2,059.20	
Seg # 20 Burnscott Sub to Orchard Lake Sub	3.42 miles	$222.30	$2,667.60	
Seg # 21 River Hills to Deerwood Sub	4.53 miles	$294.45	$3,533.40	
Seg # 22 Byllesby Sub to Randolph Sub	11.4 miles	$741.00	$8,892.00	
Seg # 23 Randolph Sub to Randolph Tower	5.98 miles	$388.70	$4,664.40	
Seg # 24 Castle Rock Sub to Randolph Tower	5.88 miles	$382.20	$4,586.40	
Seg # 25 DEA Headquarters to Castle Rock Sub	6.27 miles	$407.55	$4,890.60	
Seg # 26 River Hills to Pilot Knob Sub	3.82 miles	$248.30	$2,979.60	
Seg # 27 Future Substation Segment				
Seg # 28 Lakeville Sub to Barnes Grove Sub	13.4 miles	$871.00	$10,452.00	
Seg # 29 Nininger Sub to Barnes Grove Sub	12.3 miles	$799.50	$9,594.00	
Seg # 30 Cedar Sub to Lakeville Sub	10.3 miles	$669.50	$8,034.00	
Seg # 31 LeMay Lake Sub to DataBank North	2.97 miles	$193.05	$2,316.60	
Seg # 32 Yankee Doodle Sub to DataBank South	.86 mile	$55.90	$670.80	
Seg # 33 Lakeville HQ to DataBank North	24 miles	$1,560.00	$18,720.00	
Seg # 34 Farmington HQ to DataBank South	20.7 miles	$1,345.50	$16,146.00	
Seg # 35 Lakeville HQ to Farmington HQ	3.26 miles	$211.90	$2,542.80	
Seg # 36 Cedar Sub to Lakeville Headquarters	1.97 miles	$128.05	$1,536.60	
Seg # 37 Lake Marion Sub to Eidswold Sub	2 miles	$130.00		$1,560.00
Seg # 38 Eidswold Sub to Castle Rock Sub	8.65 miles	$562.25		$6,747.00
Seg # 39 Empire to Randolph Tower	6.6 miles	$429.00		$5,148.00
	279.6 miles	$18,174.00	$204,633.00	$13,455.00

EXHIBIT B

DAKOTA COUNTY AND DEA MINIMUM INSURANCE REQUIREMENTS

The Parties will provide and maintain at all times during the term of this Contract the insurance coverages or a self-insurance program as indicated. The insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the mutual indemnity provisions of the agreement between the Parties.

1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than $500,000.

2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury. Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. Such policy will have a total combined general liability policy limit of at least $1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

The liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Party to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed $25,000 each occurrence.

3. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by a Party in connection with its performance under this Agreement. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least $1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy

4. Evidence of Insurance. Upon request, each Party shall promptly provide the other Party with evidence that the insurance coverage required hereunder is in full force and effect. Such evidence of insurance shall be in the form of a Certificate of Insurance, or in such other form as the other Party may reasonably request and shall contain sufficient information to determine whether there is compliance with these provisions.

5. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota. An insurer with a current A.M. Best Company rating of at least A: VII shall be conclusively deemed to be acceptable.

6. Release and Waiver. Each Party agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of that Party.

EXHIBIT C

OPERATIONAL PROCEDURES

1) Communication and Contact Information for day-to-day operations relating to the Agreement:

Contact	Phone #	Email
Dakota County IT Help Desk	651- 438-4346	helpdesk@co.dakota.mn.us
DEA Dispatch	651-463-6201	outagedispatch@dakotaelectric.com

2) Operational Procedures

a. Communication of Planned Outages.

i. For planned outages of the Fiber Network which may affect the operation of the Licensed Fibers or DEA's Network, Dakota County will attempt to contact DEA at least seven (7) days prior to the scheduled interruption of the broadband network.

ii. Dakota County will email DEA the information concerning the outage and within the email include the segment or segments which will be affected and the reason for the planned outage and expected duration.

b. Loss of Communication between Dakota Electric Facilities over the DEA Integrated Network.

i. Upon loss of communication links between DEA facilities which utilize the Fiber Network, DEA will call the Dakota County IT Help Desk and communicate with the County personal the loss of that segment.

ii. DEA will log a ticket with the County IT help desk and the County will email or call the DEA emergency phone back when the County knows more about the extent of the damage and possible restoration.

iii. If the County knows about a failure or damage to the Fiber Network which could affect the Licensed Fibers, the County will communicate the known information to the DEA Emergency Phone. The County will attempt to periodically update DEA as to the status of repair for any segment damaged.

c. Notification of Planned Construction

i. If the County or DEA has any planned construction on the Parties' respective network facilities which has a reasonable chance of affecting the other Party, they will notify the other Party prior to starting the construction activity.

d. Requests for Extension or removal of a point of interconnection

i. DEA may request to add new points of interconnection and reserve additional segments of the Fiber Network. The County may grant or deny such requests in its sole discretion. To initiate new interconnections to the Fiber Network, DEA will call the County IT Help Desk phone number to start a ticket. If a request is approved, the County will assign personnel to work with DEA to design and coordinate the new point of interconnection. No new fiber segments shall be added to the Licensed Fibers without a written amendment to this Agreement.