



## City Council Memorandum

**To: Mayor Hicks & City Councilmembers**  
**From: Melanie Mesko Lee, City Administrator**  
**Date: March 15, 2016**  
**Item: Collaborative Joint Powers Agreement--Broadband**

**Council Action Requested:**

Approve the attached Joint Powers Agreement to authorize the preparation of systems plans related to a collaborative broadband

**Background Information:**

Over the last several years, the issue of broadband has been a topic for both HiPP initiatives and within the City Manager/Administrator group. In 2014, the City of Hastings participated in a study to evaluate the current state of broadband in Dakota County within each community, and what some possible next steps could be to better coordinate and expand broadband throughout the community. This effort is currently being coordinated by the City Managers/Administrators group along with the Dakota County Community Development Agency (CDA).

Craig Ebeling, retired City Manager for the City of Burnsville, has been retained by the CDA to coordinate the studies and the next steps for interested communities. Lisa Alfson, CDA Director of Community & Economic Development is managing the project as the CDA has been a strong financial partner in the initiative to date. The report was presented to the Dakota County Mayor/Managers in 2015 and there was interest indicated by that group to proceed on this initiative. A Special City Council meeting was held on June 29, 2015 and the Council indicated support for Hastings to remain a partner for the next stage.

Following that meeting, the group has had several meetings to vet out next steps. A JPA was initially structured as a low cost "agreement to agree" with no penalty for withdrawal at the end of the initial phase which was expected for late 2016. In late 2015 however, there were some concerns by one of the attorneys which resulted in an alternative JPA being prepared. This alternative JPA is a simplified agreement that authorizes the CDA to exercise the powers jointly held by the participant cities to prepare a study—the Systems Plans. Essentially this will provide us information sufficient to evaluate the Systems' physical aspects and the methods for funding or financing the costs associated with the operations, maintenance, and development of the Systems. Essentially, this is the next step to be completed; after which we can choose to withdraw or continue.

**Financial Impact:**

Two-thirds of the study costs are being borne by Dakota County and the Dakota County CDA. The City's cost for participating in this next step is \$3,326.96, which has been included in the 2016 budget.

**Advisory Commission Discussion:**

N/A

**Council Committee Discussion:**

A Council Workshop on this issue was held in June 2015.

**Attachments:**

- Draft JPA

**JOINT POWERS AGREEMENT  
Preparation of the Dakota County Broadband Systems Plan**

**Dated as of \_\_\_\_\_, 2016**

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THIS JOINT POWERS AGREEMENT (as amended from time to time, this “**Agreement**”) is entered into as of \_\_\_\_\_, 2016, by and between the parties described on Schedule A attached hereto (the “**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), to prepare Systems Plans; including, but not limited to, the power to enter into agreements necessary or convenient to the exercise of such powers and to take such other actions reasonably necessary to complete the System Plans (together with other powers described herein, the “**Joint Powers**”). Notwithstanding any other provision of this Agreement, this Agreement does not authorize the use of Participants’ statutory authority to: (a) establish, operate, maintain and improve the existing Systems or establish fees and charges with respect thereto; (b) acquire, own and convey real or personal property; (c) issue bonds or obligations under any law under which the Participants may independently issue and use the proceeds of the bonds or obligations to carry out the purposes of the law; (d) exercise power of eminent domain; (e) exercise any taxing powers; (f) pledge the full faith or taxing power of any of the Participants for any purpose whatever; or (g) issue general obligation indebtedness of any Participant. Participants agree that any of the powers specifically excluded from this Agreement may be authorized by the Participants pursuant to a subsequent joint power agreement as described in paragraph 7.

2. Manner of Exercising Powers. The Joint Powers of the Participants will be exercised through the Dakota County Community Development Agency (the “CDA”), having the powers and duties described herein. The CDA 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, but not otherwise defined, herein shall have the following meanings:

“Backbone” means 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 co-location facility or facilities. Generally, the backbone capacity is greater than the networks connected to it.

“C-Net” means the use of the System on any basis other than by the Participants for their governmental and institutional purposes.

“CDA” means the Dakota County Community Development Agency, and its successors and assigns.

“I-Net” means the use of the System by the Participants for their governmental and institutional purposes.

“Inventory” means a detailed list and summary of the Participants’ Systems Components and Backbone, which may become a part of a consolidated system, if any, in the future.

“IRU” or “Indefeasible Rights to Use” means agreements between a Participant with respect to the use of System Components in which the Participant has an ownership or other legal interest.

“Participation Fee” means, as to Participants, the non-refundable fees identified on Schedule A hereto next to their respective names.

“Systems” means each Participants’ telecommunication infrastructure including, without limitation, fiber optic cables, hand holes, switches and routers and other network elements that provide broadband, I-Net and C-Net services within the boundaries of each of the Participants.

“Systems Components” means the various necessary or convenient elements of the Systems, including, without limitation, fiber optic cables, hand holes, switches and routers, together with contract rights and agreements necessary or convenient in connection with the operation, maintenance, development and use of such components.

“Systems Plans” means general information sufficient for Participants to evaluate the Systems’ physical aspects and the methods for funding or financing the costs associated with the operation, maintenance, and development of the Systems. The Systems Plans shall identify the ownership, operation, maintenance, improvement use, and methods of funding, and/or financing, the Systems.

**4. Participants.**

**A. *General.*** The Participants are: the CDA, Dakota County, Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Mendota Heights, Rosemount, South St. Paul and West St. Paul.

**B. *Participation Fee.*** The aggregate of the Participation Fees described on Schedule A is intended to be an amount sufficient to pay the costs identified on Schedule B attached hereto. Such fees were allocated to the Participants using the formula that was used for cost sharing for the initial Design Nine study.

**5. CDA’s Powers.** The CDA shall have the general powers described in paragraph 1 of this Agreement, including, but not limited the powers to do the following:

- A.** To negotiate and enter into contracts for professional services and consultants for the gathering of information necessary to complete the System Plans and determine the cost of operating the Systems;
- B.** To sue and be sued with regard to contracts entered into pursuant to the authority granted hereunder;
- C.** To review and present the Systems Plans to the Participants; and
- D.** To discharge other duties consistent with the purposes of this Agreement and/or as required by statute.

6. Systems Plans.

A. *Content.* The Systems Plans shall include the following components:

- i. The design, construction, operation, marketing, public relations, maintenance, expansion and lifecycle replacement costs of the Systems and Systems Components;
- ii. An Inventory;
- iii. The terms under which Systems Components presently owned by Participants will be available for use as part of the Systems;
- iv. A valuation for all Systems Components presently owned by Participants which will be available for use as part of the Systems;
- v. User fees for the Systems; and
- vi. Methods of funding and financing.

B. *Methodology.* They Systems Plans shall be prepared capitalizing on the recent work completed by the various committees of the City-County Managers group utilizing it to the extent deemed appropriate by the Participants. City-County Managers will review the Systems Plans or portions thereof as they are prepared or become available.

C. *Review of the Systems Plans.* Following the preparation of the Systems Plans, the CDA shall distribute the Systems Plans to the Participants for review.

7. Acquisition of Interests in System Components. Upon completing their review of the Systems Plans, Participants may elect to proceed with a joint powers agreement for the following purposes: (a) creating a board to manage and operate consolidated Systems; (b) potential expansion of the Systems; (c) operation and maintenance cost sharing associated with the Systems; (d) complete, update and/or expand the Backbone network interconnecting the Systems; (e) establishment of usage rates; and (f) identifying funding. Those participants that choose to proceed with a subsequent joint powers agreement will enter into an IRU with the board created thereby and other electing participants pursuant to the terms of the subsequent joint powers agreement and the IRU(s).

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

9. Limitation of Liability. As provided in Minnesota Statutes, Section 471.59, Subd. 1a, 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. For purposes of determining total liability for damages, each Participant and the CDA are considered a single governmental unit and the total liability for all of the Participants and the CDA shall not exceed the limits on governmental liability for a single governmental unit as specified under Minnesota Statutes, Sections 466.04, Subd. 1, or as waived or extended by the CDA or all Participants under Minnesota Statutes Sections 466.06; or 471.981. This provision does not protect a Participant or the CDA from liability for its

own independent acts or omissions not directly related to the exercise of the Joint Powers under this Agreement. Neither the CDA nor any Participants shall have the power hereunder to do any act or thing the effect of which is to create a charge or lien against the property or revenues of the CDA or another Participant, except as expressly provided in herein or in any of the documents authorized herein.

**10. Amendments.** This Agreement may be amended, at any time and from time to time, by the Participants.

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 COMMUNITY  
DEVELOPMENT AGENCY**

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_



**DAKOTA COUNTY, MINNESOTA**

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_

Approved as to Form

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

**CITY OF APPLE VALLEY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Hamann-Roland, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Pamela Gackstetter, Clerk

**CITY OF BURNSVILLE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elizabeth Kautz, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Macheal Collins, Clerk

**CITY OF EAGAN**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mike Maguire, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dave Osberg, City Administrator

**CITY OF FARMINGTON**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Todd Larson, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David McKnight, City Administrator

**CITY OF HASTINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Paul Hicks, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Melanie Mesko Lee, City Administrator

**CITY OF INVER GROVE HEIGHTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
George Tourville, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joe Lynch, City Administrator

**CITY OF LAKEVILLE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Matt Little, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Justin Miller, City Administrator



**CITY OF MENDOTA HEIGHTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sandra Krebsbach, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Lorri Smith, Clerk

**CITY OF ROSEMOUNT**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Droste, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Clarissa Hadler, Clerk

**CITY OF SOUTH ST. PAUL**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Beth A. Baumann, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Christy Wilcox, Clerk

**CITY OF WEST ST. PAUL**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Meisinger, Mayor

Attest:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chantal Doriott, Clerk

SCHEDULE A

Dakota County Broadband  
Systems Plan Participation Fee

**Cost-Share Concept**

One-third of costs borne by Dakota County Community Development Agency

One-third of costs borne by Dakota County

One-third of costs borne by cities of over 10,000 pro-rata on population

Estimated Systems Plan Costs		\$ 148,490.00
Contingency	15%	\$ 22,273.50
<b>Total Estimated Cost</b>		<b>\$ 170,763.50</b>

CDA Share		\$ 56,921.17
County Share		\$ 56,921.17
City Share		\$ 56,921.17

**City cost distribution based on % of total of 11 cities with population over 10,000**

<u>Participants</u>	<u>Population</u>	<u>% of Population</u>	<u>Amount Due</u>
Apple Valley	49,084	12.94%	\$ 7,365.17
Burnsville	60,306	15.90%	\$ 9,049.06
Eagan	64,206	16.93%	\$ 9,634.26
Farmington	21,086	5.56%	\$ 3,164.00
Hastings	22,172	5.84%	\$ 3,326.96
Inver Grove Heights	33,880	8.93%	\$ 5,083.77
Lakeville	55,954	14.75%	\$ 8,396.03
Mendota Heights	11,071	2.92%	\$ 1,661.23
Rosemount	21,874	5.77%	\$ 3,282.25
South St Paul	20,160	5.31%	\$ 3,025.06
West St Paul	19,549	5.15%	\$ 2,933.37
<b>TOTAL</b>	<b>379,342</b>	<b>100.00%</b>	<b>\$ 56,921.17</b>

## SCHEDULE B

Dakota County Broadband  
Estimated Systems Plan Elements and Costs

Project Component	Est. Costs	Provider
Legal Services	\$8,000	
<b>Preparation of Systems Plan</b>		
Inventory, Design, etc	\$68,990	Elert 4/17/15 proposal, all options
Balance of Systems Plan work	\$15,000	Design Nine - assumed split
Preparation of Systems Funding Plan	\$51,500	Design Nine - assumed split
Additional consulting costs	\$5,000	
Contingency	\$22,274	
<b>Total</b>	<b>\$170,764</b>	