



### ***City Council Memorandum***

**To:** Mayor Fasbender & City Council Members  
**From:** Nick Egger – Public Works Director  
**Date:** April 1, 2021  
**Item:** Approve Agreement with Hiawatha Broadband Communications (HBC) – New Fiber optic System in City Rights of Way

**Council Action Requested:**

The Council is requested to approve the attached agreement between the City and Hiawatha Broadband Communications (HBC).

**Background Information:**

Hiawatha Broadband Communications is planning to begin a multi-year construction of a fiber optic network throughout the City later this spring. The City has not before experienced this level of rapid, citywide, private utility installation, and the project will require extensive amounts of time dedicated to reviewing HBC's plans, reviewing right of way permit applications, and providing field observations to ensure that all the work is in-line with the City's expectations and installation activity is taking place in consideration of the general public. With that, through discussions between City staff and HBC representatives, the parties agreed it is prudent to memorialize a framework for how this initiative will proceed. Accordingly, City Attorney Land has assembled the attached agreement to set the stage for HBC to proceed with applications and construction of network infrastructure to begin this spring. HBC is anticipating the entire network will be installed in 4-5 years.

**Financial Impact:**

Under the City's Right of Way Ordinance requirements, the City is able to recover all project-related oversight costs associated with the plan review and activity by parties working in the City's Rights of Way. Because this project is much larger in scale and scope than anything we have previously dealt with from a right of way management standpoint, we will be bringing onboard third-party engineering consulting firm resources to be an extension of City staff for keeping on top of the work and ensuring the City's expectations are being met. For the 2021 construction season, we anticipate the cost will be \$25,000, and the agreement will allow the City to collect an upfront escrow deposit from HBC to draw upon for covering the expenses. If expenses are on track to exceed this amount, the City will request additional deposits from HBC, and if the expenses for the first construction season are less than the deposit, the remainder will be returned to HBC or rolled over to partially cover expenses in future construction seasons.

**Staff Recommendation:**

Staff recommends that Council approve the attached agreement between Hiawatha Broadband Communications and the City of Hastings, and authorize the Mayor and City Clerk to affix their signatures.

**Attachments:**

- Agreement

**AGREEMENT BETWEEN HIAWATHA BROADBAND COMMUNICATIONS,  
INC. AND THE CITY OF HASTINGS REGARDING A FIBER OPTIC SYSTEM IN  
THE CITY'S RIGHTS-OF-WAY**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between Hiawatha Broadband Communications, Inc., a Minnesota corporation, 48 Johnson Street, Winona, MN 55987 (“HBC”) and the City of Hastings, a Minnesota municipal corporation, 101 4th Street East, Hastings, MN 55033 (“City”) (collectively “the Parties”).

WHEREAS, HBC intends to construct and operate a fiber optic network in the City’s rights-of-way, which is a project that will span over several years (the “Project”); and

WHEREAS, the City welcomes the opportunity that a fiber optic network will provide and will use its best efforts to assist with the success of the Project; and

WHEREAS, the City’s Right of Way Management Ordinance, City Code §90.07, does not contemplate a multi-year right-of-way project such as is being proposed by HBC and the City desires to ensure that the Project can be adequately staffed, inspected and managed in a timely manner.

NOW THEREFORE, for mutual consideration, which is hereby acknowledged, the Parties agree as follows:

1. Compliance with Laws, Resolutions and Ordinances. HBC shall comply with the terms and conditions of Hastings City Code §90.07 as well as any other state, federal or local laws, resolutions and ordinances that address the use of rights-of-way.
2. Registration, Permits, and Construction Codes. In anticipation that the City may need to expend extraordinary resources through overtime costs of existing City Staff or by engaging a third-party consultant to manage the Project, HBC shall provide a \$25,000 cash escrow with its first permit application, which shall be used by the City to recover “management costs” for the Project. Management Costs shall be those defined in City Code §90.07 Sec. 1.03. When the escrow balance falls below \$2,000 HBC shall replenish the escrow to its original balance of \$25,000. The escrow shall not be used as payment for any permit fees due under the Right of Way Management Ordinance or any other ordinance.
3. Termination. This Agreement shall either terminate upon completion of the Project or may be terminated at any time by HBC upon 30 days’ written notice delivered to the City to the address listed above. After the City recovers payment from the escrow for services rendered by the City through the effective date of termination, any balance remaining in the escrow shall be returned to HBC within 30 days of the effective date of termination.
4. Amendment. This Agreement may be amended by mutual written agreement of the Parties.

CITY OF HASTINGS

---

Mayor Mary Fasnender

---

City Clerk Erica Henderson

HIAWATHA BROADBAND COMMUNICATIONS, INC.

---

By: \_\_\_\_\_  
Its: President