

**City Council Memorandum**

To: Mayor Fasbender & City Council Members
From: Cody Mathisen – Principal Engineer
Date: April 24, 2023
Item: Accept Permanent Utility Easement Agreements – Hiawatha Broadband Communications – Pleasant, Dakota Hills, South Pines, Tuttle, Riverwood, Greten, and Cannon Parks

Council Action Requested:

Enclosed for Council consideration are 7 Permanent Utility Easement Agreements, officially granting Hiawatha Broadband Communications access rights to install and maintain in perpetuity small areas of Pleasant, Dakota Hills, South Pines, Tuttle, Riverwood, Greten, and Cannon Parks for their facilities.

Background Information:

Hiawatha Broadband Communications (“HBC”) has been installing a new fiber optic network throughout the City to provide an alternative internet service option to residents since the summer of 2021. As part of their ongoing project, HBC would like to use a small portion of 7 separate city parks to install utility cabinets that will serve as the local hubs of their network.

The small portions of land that are being granted for these easements are all on the border of road right-of-way, and will not impact any space within these parks that is currently used for recreation. While the easements range in size, on average 20 feet by 25 feet, the cabinets that will actually be installed in these spaces only have a footprint of approximately 3 feet by 5 feet, and will stand approximately 4 feet off the ground.

On September 7th 2021, Council approved a resolution to grant a similar easement to HBC within Pioneer Park for the construction of their primary central cabinet. The cabinets that will be installed at the seven sites being considered with this resolution are considerably smaller than this central cabinet.

City Engineering and Parks Department Staff, as well as legal staff under the direction of City Attorney Kori Land, have reviewed the easements and provided comments for HBC to address. All comments have been addressed in the documents provided.

Financial Impact:

Due to the public benefit, the City is providing these easements at no cost to HBC.

HBC has paid fees for its network installation as part of both the City’s standard Right-of-Way permit process and a separate escrow account to cover Staff time spent reviewing plans and inspecting the installation.

Attachments:

- (7) Permanent Utility Easement Agreements – *Each Easement Contains 2 Exhibits:*
 - Exhibit A – Legal Description of Permanent Easement Area
 - Exhibit B – Depiction of Permanent Easement Area

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

That portion of the following described parcel, which lies in Section 32, Township 115 North, Range 17 West: Beginning at the southeast corner of Lot Six (6), Block Four (4), Highland Hills First Addition, thence South 00 degrees 21 minutes 15 seconds West a distance of 300.00 feet along the west line of Pleasant Drive; thence along a line bearing North 88 degrees 39 minutes West a distance of 842.94 feet, more or less; thence along a line bearing north 00 degrees 21 minutes 15 seconds East a distance of 687.04 feet, more or less to a point on the West line of Lot Five (5), Block Three (3), Highland Hills First Addition, said point being 69.14 feet South of the Northwest corner of said Lot 5; thence south and east along the west and south lines of Lots 5, 6, 7, 8 and 9, Block 3, Highland Hills First Addition and Lots 1, 2, 3, 4, 5 and 6, Block 4, Highland Hills First Addition to the point of beginning, according to the Government Survey thereof.

Abstract Property
PID: 19-03200-05-015

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto ("Permanent Easement") under, over, across, through and upon that real property legally described on Exhibit A and depicted on Exhibit B (the "Permanent Easement Area"), attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

- (a) To enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement; and
- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as HBC may deem appropriate relating to the purposes of the Permanent Easement.

If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants

which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

This agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Remainder of this page has been intentionally left blank]

IN TESTIMONY WHEREOF, the parties have caused this Easement to be executed as of the day and year first above written.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

ATTEST:

By: _____
Kelly Murtaugh, City Clerk

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and the City Clerk of the City of Hastings, the Minnesota municipal corporation named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

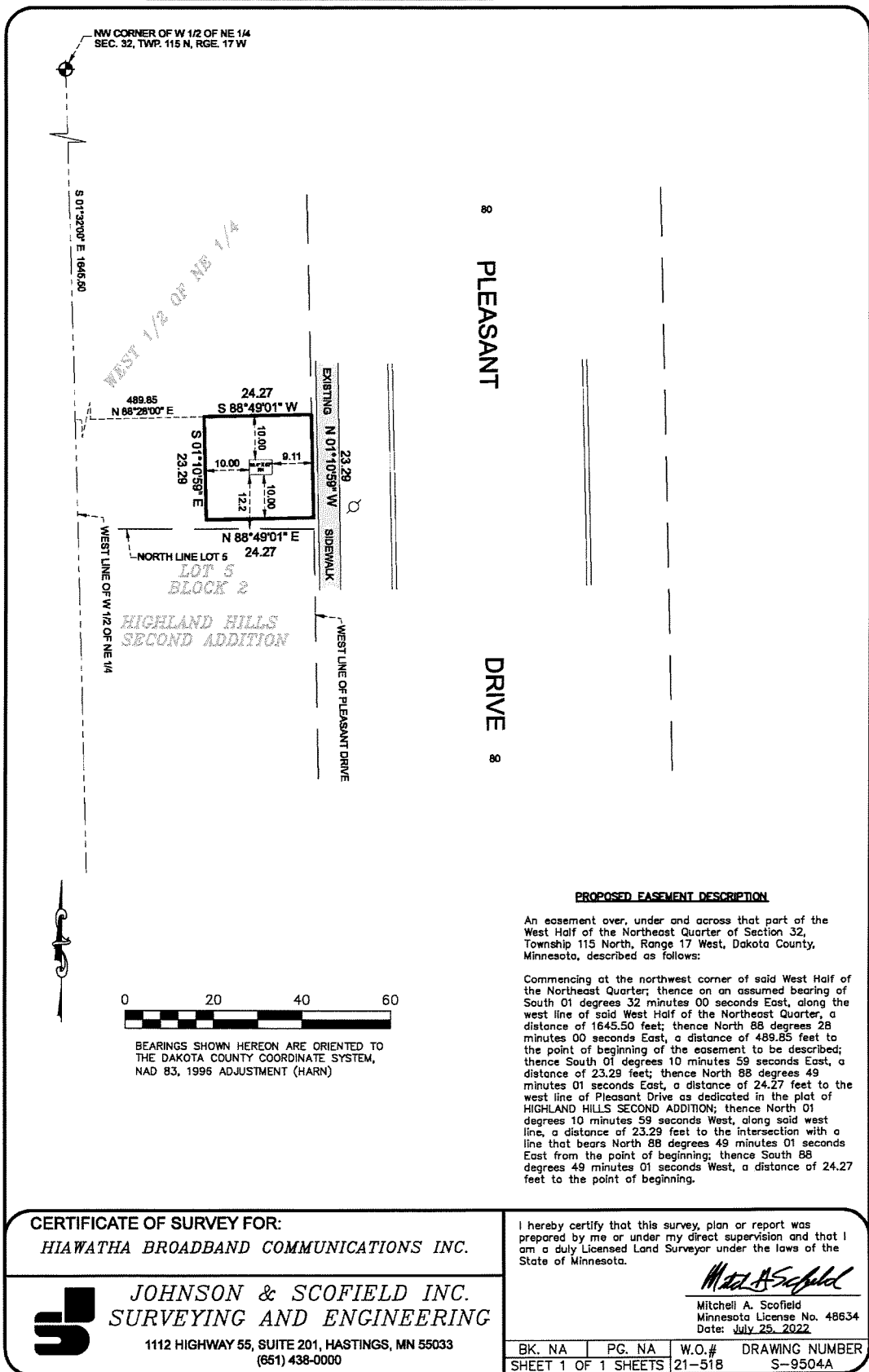
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across that part of the West Half of the Northeast Quarter of Section 32, Township 115 North, Range 17 West, Dakota County, Minnesota, described as follows:

Commencing at the northwest corner of said West Half of the Northeast Quarter; thence on an assumed bearing of South 01 degrees 32 minutes 00 seconds East, along the west line of said West Half of the Northeast Quarter, a distance of 1645.50 feet; thence North 88 degrees 28 minutes 00 seconds East, a distance of 489.85 feet to the point of beginning of the easement to be described; thence South 01 degrees 10 minutes 59 seconds East, a distance of 23.29 feet; thence North 88 degrees 49 minutes 01 seconds East, a distance of 24.27 feet to the west line of Pleasant Drive as dedicated in the plat of HIGHLAND HILLS SECOND ADDITION; thence North 01 degrees 10 minutes 59 seconds West, along said west line, a distance of 23.29 feet to the intersection with a line that bears North 88 degrees 49 minutes 01 seconds East from the point of beginning; thence South 88 degrees 49 minutes 01 seconds West, a distance of 24.27 feet to the point of beginning.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



CERTIFICATE OF SURVEY FOR:
HIAWATHA BROADBAND COMMUNICATIONS INC.



JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING

1112 HIGHWAY 55, SUITE 201, HASTINGS, MN 55033
(651) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield

Mitchell A. Scofield
Minnesota License No. 48634
Date: July 25, 2022

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS	21-518	S-9504A	

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Lot Four (4) Block Eight (8) Dakota Hills, according to the plat thereof now on file and of record in the office of the Register of Deeds within and for said County and State.

Subject to the dedicated street, drainage and utility easements shown upon the plat.

Torrens Property

PID: 19-19500-08-040

Certificate of Title No. 26114

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto (“Permanent Easement”) under, over, across, through and upon that real property legally described on Exhibit A and depicted on Exhibit B (the “Permanent Easement Area”), attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

- (a) To enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement; and
- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as HBC may deem appropriate relating to the purposes of the Permanent Easement.

If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or

assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

This agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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IN TESTIMONY WHEREOF, the parties have caused this Easement to be executed as of the day and year first above written.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

ATTEST:

By: _____
Kelly Murtaugh, City Clerk

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and the City Clerk of the City of Hastings, the Minnesota municipal corporation named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

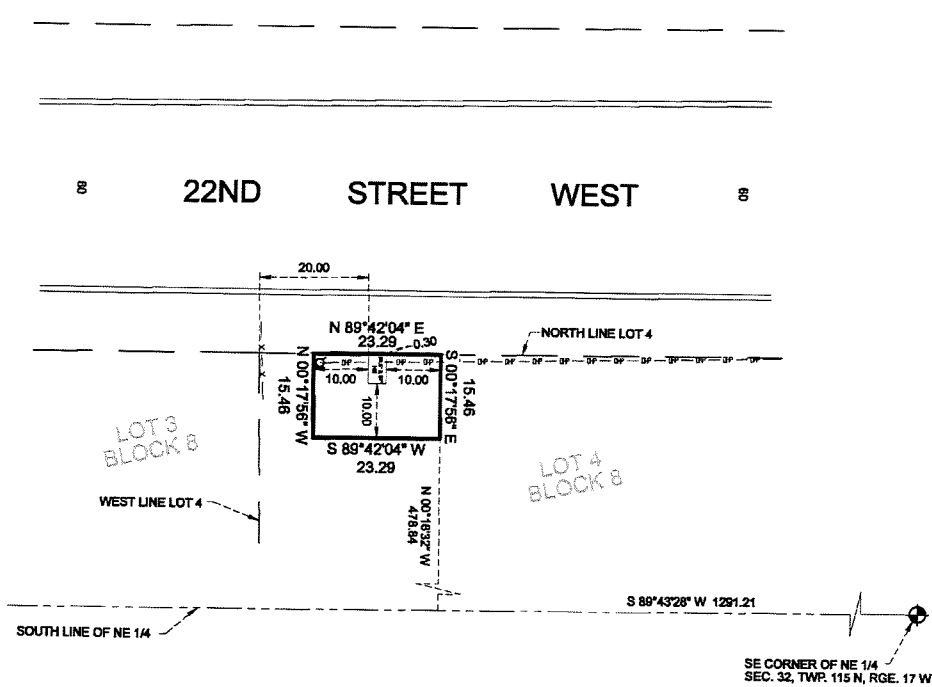
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across that part of Lot 4, Block 8, DAKOTA HILLS, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeast corner of the Northeast Quarter of Section 32, Township 115 North, Range 17 West, Dakota County, Minnesota; thence on an assumed bearing of South 89 degrees 43 minutes 28 seconds West, along the south line of said Northeast Quarter, a distance of 1291.21 feet; thence North 00 degrees 16 minutes 32 seconds West, a distance of 478.84 feet to the point of beginning of the easement to be described; thence South 89 degrees 42 minutes 04 seconds West, a distance of 23.29 feet; thence North 00 degrees 17 minutes 56 seconds West, a distance of 15.46 feet, to the north line of said Lot 4; thence North 89 degrees 42 minutes 04 seconds East, along said north line, a distance of 23.29 feet to the intersection with a line that bears North 00 degrees 17 minutes 56 seconds West from the point of beginning; thence South 00 degrees 17 minutes 56 seconds East, a distance of 15.46 feet, to the point of beginning.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA




PROPOSED EASEMENT DESCRIPTION

An easement over, under and across that part of Lot 4, Block 8, DAKOTA HILLS, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeast corner of the Northeast Quarter of Section 32, Township 115 North, Range 17 West, Dakota County, Minnesota; thence on an assumed bearing of South 89 degrees 43 minutes 28 seconds West, along the south line of said Northeast Quarter, a distance of 1291.21 feet; thence North 00 degrees 16 minutes 32 seconds West, a distance of 478.84 feet to the point of beginning of the easement to be described; thence South 89 degrees 42 minutes 04 seconds West, a distance of 23.29 feet; thence North 00 degrees 17 minutes 56 seconds West, a distance of 15.46 feet, to the north line of said Lot 4; thence North 89 degrees 42 minutes 04 seconds East, along said north line, a distance of 23.29 feet to the intersection with a line that bears North 00 degrees 17 minutes 56 seconds West from the point of beginning; thence South 00 degrees 17 minutes 56 seconds East, a distance of 15.46 feet, to the point of beginning.



BEARINGS SHOWN HEREON ARE ORIENTED TO THE DAKOTA COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

<p>CERTIFICATE OF SURVEY FOR: HIAWATHA BROADBAND COMMUNICATIONS INC.</p>		<p>I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.</p>	
 <p>JOHNSON & SCOFIELD INC. SURVEYING AND ENGINEERING</p> <p>1112 HIGHWAY 55, SUITE 201, HASTINGS, MN 55033 (651) 438-0000</p>		<p><i>Mitchell A. Scofield</i> Mitchell A. Scofield Minnesota License No. 48634 Date: July 27, 2022</p>	
BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS	21-518	S-9504B	

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Park, South Pines, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property

PID: 19-71050-00-050

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto (“Permanent Easement”) under, over, across, through and upon that real property legally described on Exhibit A and depicted on Exhibit B (the “Permanent Easement Area”), attached hereto and incorporated herein by reference.

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ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

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EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

- (a) To enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement; and
- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as HBC may deem appropriate relating to the purposes of the Permanent Easement.

If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its

successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

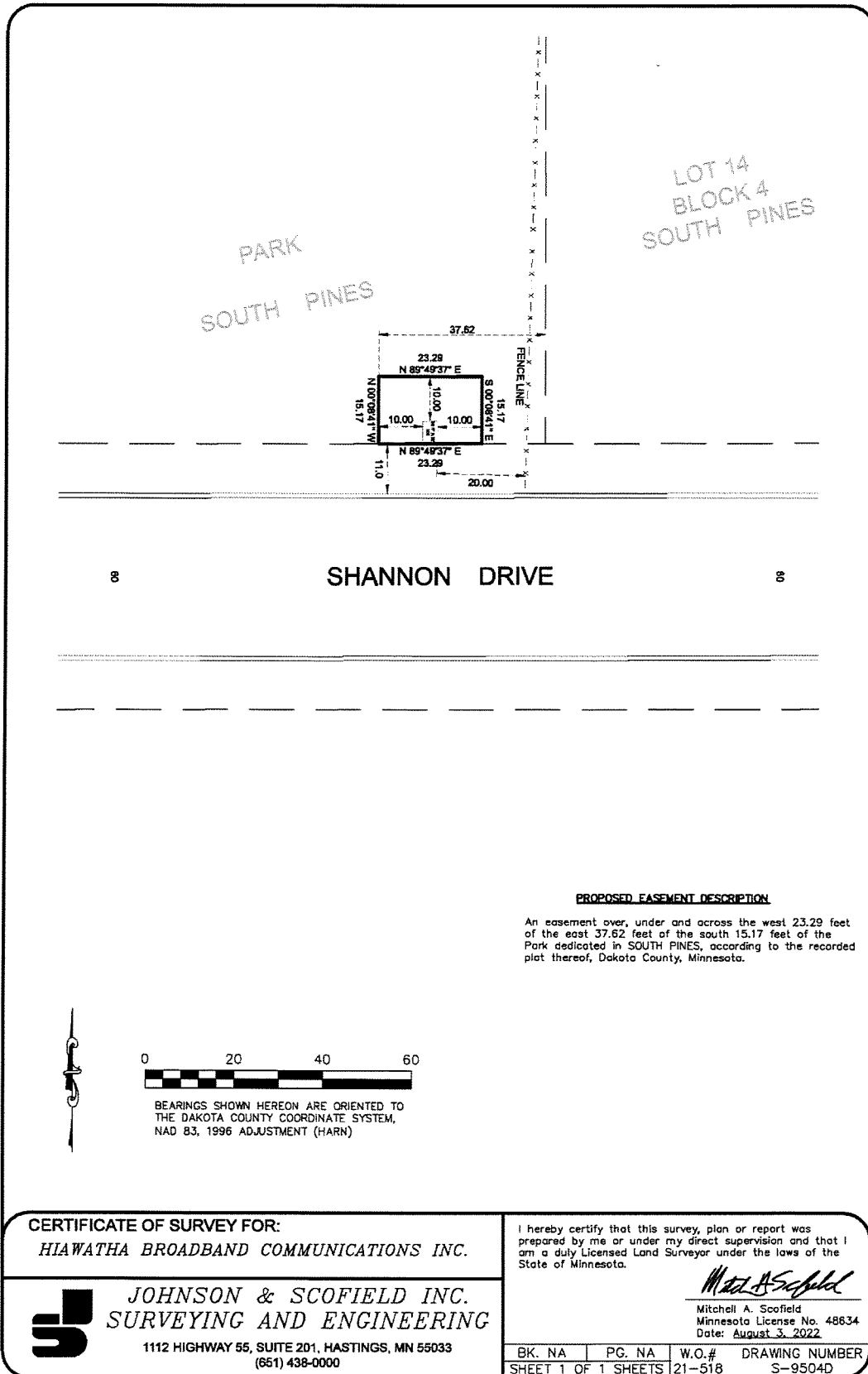
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[Remainder of this page has been intentionally left blank]

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across the west 23.29 feet of the east 37.62 feet of the south 15.17 feet of the Park dedicated in SOUTH PINES, according to the recorded plat thereof, Dakota County, Minnesota.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



PROPOSED EASEMENT DESCRIPTION

An easement over, under and across the west 23.29 feet of the east 37.62 feet of the south 15.17 feet of the Park dedicated in SOUTH PINES, according to the recorded plat thereof, Dakota County, Minnesota.



BEARINGS SHOWN HEREON ARE ORIENTED TO THE DAKOTA COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

CERTIFICATE OF SURVEY FOR:
 HIAWATHA BROADBAND COMMUNICATIONS INC.

JOHNSON & SCOFIELD INC.
 SURVEYING AND ENGINEERING
 1112 HIGHWAY 55, SUITE 201, HASTINGS, MN 55033
 (651) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield
 Mitchell A. Scofield
 Minnesota License No. 48634
 Date: August 3, 2022

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS	21-518		S-9504D

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Park, South Pines 4, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property

PID: 19-71053-00-050

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

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- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
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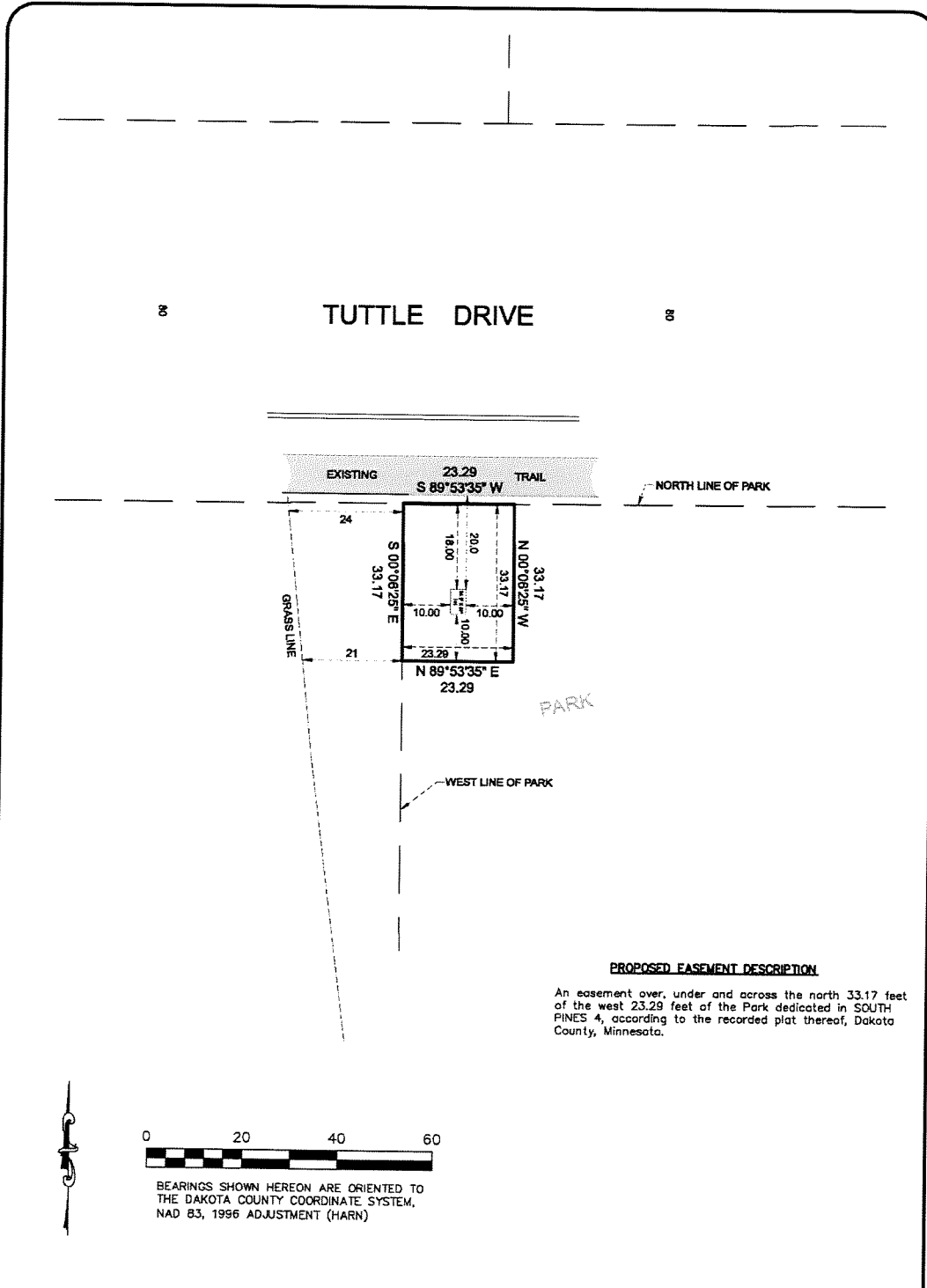
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EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across the north 33.17 feet of the west 23.29 feet of the Park dedicated in SOUTH PINES 4, according to the recorded plat thereof, Dakota County, Minnesota.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



CERTIFICATE OF SURVEY FOR:
 HIAWATHA BROADBAND COMMUNICATIONS INC.



JOHNSON & SCOFIELD INC.
 SURVEYING AND ENGINEERING

1112 HIGHWAY 55, SUITE 201, HASTINGS, MN 55033
 (651) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield

Mitchell A. Scofield
 Minnesota License No. 48634
 Date: July 27, 2022

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS	21-518	S-9504C	

IN TESTIMONY WHEREOF, the parties have caused this Easement to be executed as of the day and year first above written.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

ATTEST:

By: _____
Kelly Murtaugh, City Clerk

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and the City Clerk of the City of Hastings, the Minnesota municipal corporation named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Park, Riverwood 5th Addition, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property
PID: 19-64379-00-100

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto (“Permanent Easement”) under, over, across, through and upon that real property legally described on Exhibit A and depicted on Exhibit B (the “Permanent Easement Area”), attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements

ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

- (a) To enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement; and
- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as HBC may deem appropriate relating to the purposes of the Permanent Easement.

If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its

successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

This agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Remainder of this page has been intentionally left blank]

IN TESTIMONY WHEREOF, the parties have caused this Easement to be executed as of the day and year first above written.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

ATTEST:

By: _____
Kelly Murtaugh, City Clerk

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and the City Clerk of the City of Hastings, the Minnesota municipal corporation named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

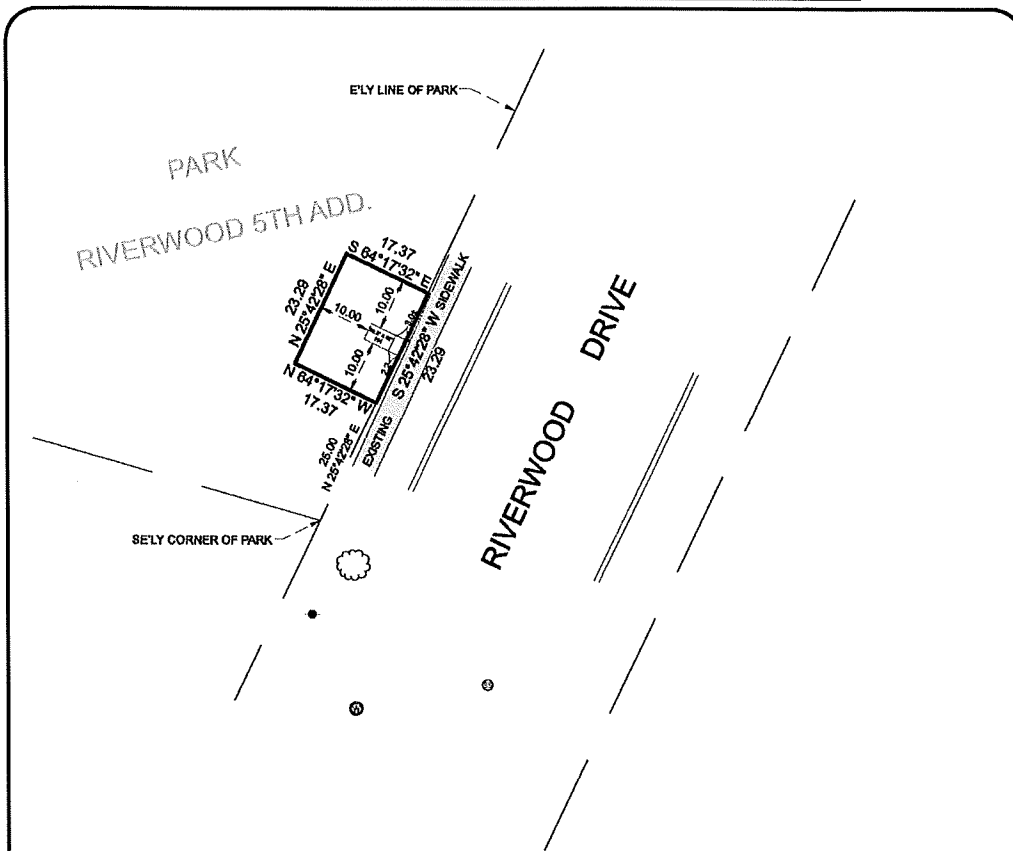
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across that part of the Park dedicated in RIVERWOOD 5TH ADDITION, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeasterly corner of said Park; thence on an assumed bearing of North 25 degrees 42 minutes 28 seconds East, along the easterly line of said Park, a distance of 25.00 feet to the point of beginning of the easement to be described; thence North 64 degrees 17 minutes 32 seconds West, a distance of 17.37 feet; thence North 25 degrees 42 minutes 28 seconds East, a distance of 23.29 feet; thence South 64 degrees 17 minutes 32 seconds East, a distance of 17.37 feet to the easterly line of said Park; thence South 25 degrees 42 minutes 28 seconds West, along said easterly line, a distance of 23.29 feet to the point of beginning.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



PROPOSED EASEMENT DESCRIPTION

An easement over, under and across that part of the Park dedicated in RIVERWOOD 5TH ADDITION, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeasterly corner of said Park; thence on an assumed bearing of North 25 degrees 42 minutes 28 seconds East, along the easterly line of said Park, a distance of 25.00 feet to the point of beginning of the easement to be described; thence North 64 degrees 17 minutes 32 seconds West, a distance of 17.37 feet; thence North 25 degrees 42 minutes 28 seconds East, a distance of 23.29 feet; thence South 64 degrees 17 minutes 32 seconds East, a distance of 17.37 feet to the easterly line of said Park; thence South 25 degrees 42 minutes 28 seconds West, along said easterly line, a distance of 23.29 feet to the point of beginning.



BEARINGS SHOWN HEREON ARE ORIENTED TO THE DAKOTA COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

CERTIFICATE OF SURVEY FOR:
HIAWATHA BROADBAND COMMUNICATIONS INC.



JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING

1112 HIGHWAY 55, SUITE 201, HASTINGS, MN 55033
 (851) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield

Mitchell A. Scofield
 Minnesota License No. 48634
 Date: March 31, 2023

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS		21-51B	S-NA

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Outlot D, Century South, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property
PID: 19-17500-00-040

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto (“Permanent Easement”) under, over, across, through and upon that real property legally described on Exhibit A and depicted on Exhibit B (the “Permanent Easement Area”), attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements

ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

- (a) To enter upon the Permanent Easement Area at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of the Permanent Easement; and
- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Permanent Easement Area as HBC may deem appropriate relating to the purposes of the Permanent Easement.

If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its

successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

This agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

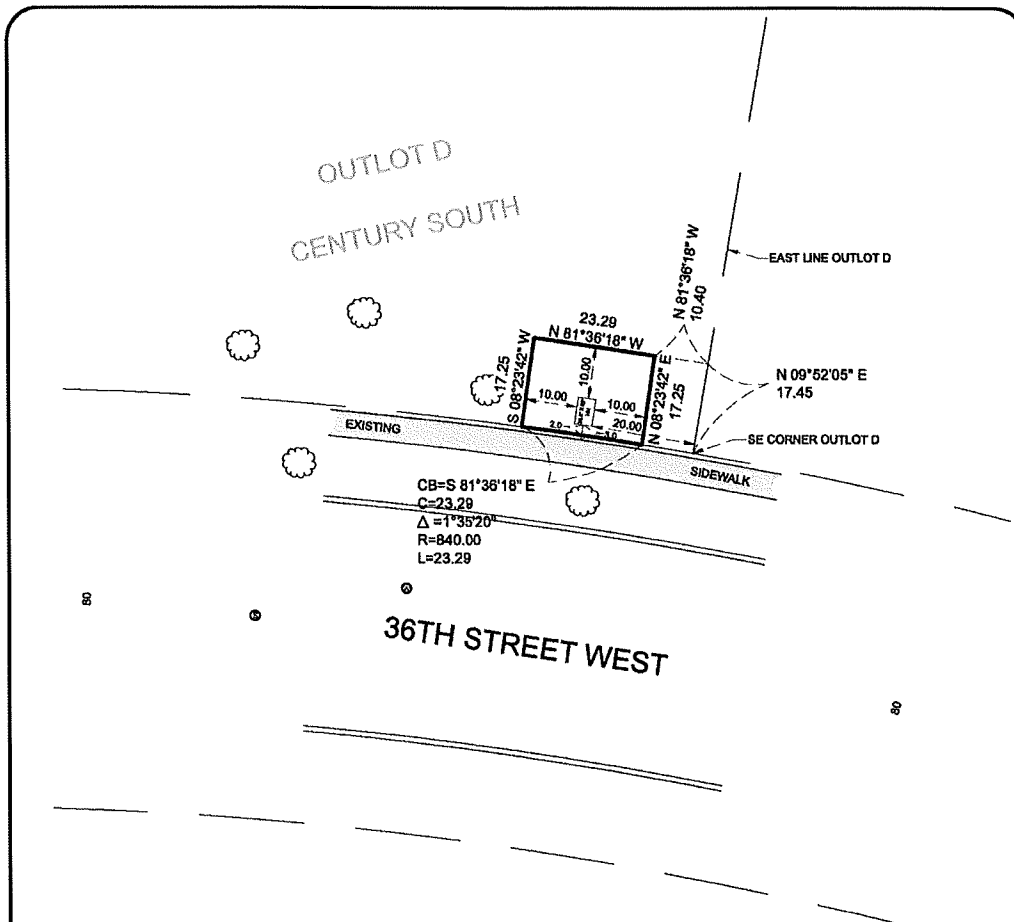
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EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across that part of Outlot D, CENTURY SOUTH, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeast corner of said Outlot D; thence on an assumed bearing of North 09 degrees 52 minutes 05 seconds East, along the east line of said Outlot D, a distance of 17.45 feet; thence North 81 degrees 36 minutes 18 seconds West, a distance of 10.40 feet to the point of beginning of the easement to be described; thence North 81 degrees 36 minutes 18 seconds West, a distance of 23.29 feet; thence South 08 degrees 23 minutes 42 seconds West, a distance of 17.25 feet to the south line of said Outlot D; thence easterly, a distance 23.29 feet, along said south line, along a nontangential curve concave to the south, having a central angle of 01 degrees 35 minutes 20 seconds, a radius of 840.00 feet and a chord that bears South 81 degrees 36 minutes 18 seconds East; thence North 08 degrees 23 minutes 42 seconds East, a distance of 17.25 feet to the point of beginning.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



PROPOSED EASEMENT DESCRIPTION

An easement over, under and across that part of Outlot D, CENTURY SOUTH, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the southeast corner of said Outlot D; thence on an assumed bearing of North 09 degrees 52 minutes 05 seconds East, along the east line of said Outlot D, a distance of 17.45 feet; thence North 81 degrees 36 minutes 18 seconds West, a distance of 10.40 feet to the point of beginning of the easement to be described; thence North 81 degrees 36 minutes 18 seconds West, a distance of 23.29 feet; thence South 08 degrees 23 minutes 42 seconds West, a distance of 17.25 feet to the south line of said Outlot D; thence easterly, a distance 23.29 feet, along said south line, along a nontangential curve concave to the south, having a central angle of 01 degrees 35 minutes 20 seconds, a radius of 840.00 feet and a chord that bears South 81 degrees 36 minutes 18 seconds East; thence North 08 degrees 23 minutes 42 seconds East, a distance of 17.25 feet to the point of beginning.



BEARINGS SHOWN HEREON ARE ORIENTED TO THE DAKOTA COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

CERTIFICATE OF SURVEY FOR:

HIAWATHA BROADBAND COMMUNICATIONS INC.



JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING

1112 HIGHWAY 65, SUITE 201, HASTINGS, MN 55033
(651) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield

Mitchell A. Scofield
Minnesota License No. 48634
Date: March 31, 2023

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS		21-51B	S-NA

PERMANENT UTILITY EASEMENT

THIS PERMANENT UTILITY EASEMENT (“Easement”) is made, granted and conveyed this _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Hiawatha Broadband Communications, Inc., a Minnesota corporation (“HBC”).

PROPERTY DESCRIPTION

The City owns real property situated within Dakota County, Minnesota, legally described as follows:

Lot One (1), except the South 48 feet thereof;

Lot Nine (9) except the South twenty feet (20’) thereof and except the north 66 feet of the south 86 feet thereof;

All in Powers Place, according to the plat thereof now on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota.

Torrens Property

PIDs: 19-58500-00-011 and 19-58500-00-092

Certificate of Title No. 75130

(“City’s Property”).

PERMANENT EASEMENT DESCRIPTION

The City for and in consideration of One Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto HBC, its successors and assigns, the following:

A permanent easement for utility purposes and all such purposes ancillary, incident or related thereto (“Permanent Easement”) under, over, across, through and upon that

real property legally described on Exhibit A and depicted on Exhibit B (the "Permanent Easement Area"), attached hereto and incorporated herein by reference.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the Permanent Easement Area.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Permanent Easement Area to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of any above ground and below ground communication lines and facilities, culverts and other utilities, and all facilities and improvements ancillary, incident or related thereto.

EXEMPT FROM STATE DEED TAX

The rights of HBC also include the right of HBC, its contractors, agents and servants:

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- (b) To maintain the Permanent Easement Area and any underground communication lines, together with the right to excavate and refill ditches or trenches for the location of such communication lines; and
- (c) To remove from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, and to deposit earthen material in and upon the Permanent Easement Area; and
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If HBC removes from the Permanent Easement Area trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any above ground and below ground communication lines and facilities, culverts and other utilities, HBC shall restore the Permanent Easement Area to the satisfaction of the City, at its own expense.

HBC shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Permanent Easement Area or the City's Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by HBC or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The City, for itself and its successors and assigns, does hereby warrant to and covenant with HBC, its successors and assigns, that it is well seized in fee of the City's Property described above, the Permanent Easement Area described on Exhibit A and depicted on Exhibit B and has good right to grant and convey the Permanent Easement herein to HBC.

This agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

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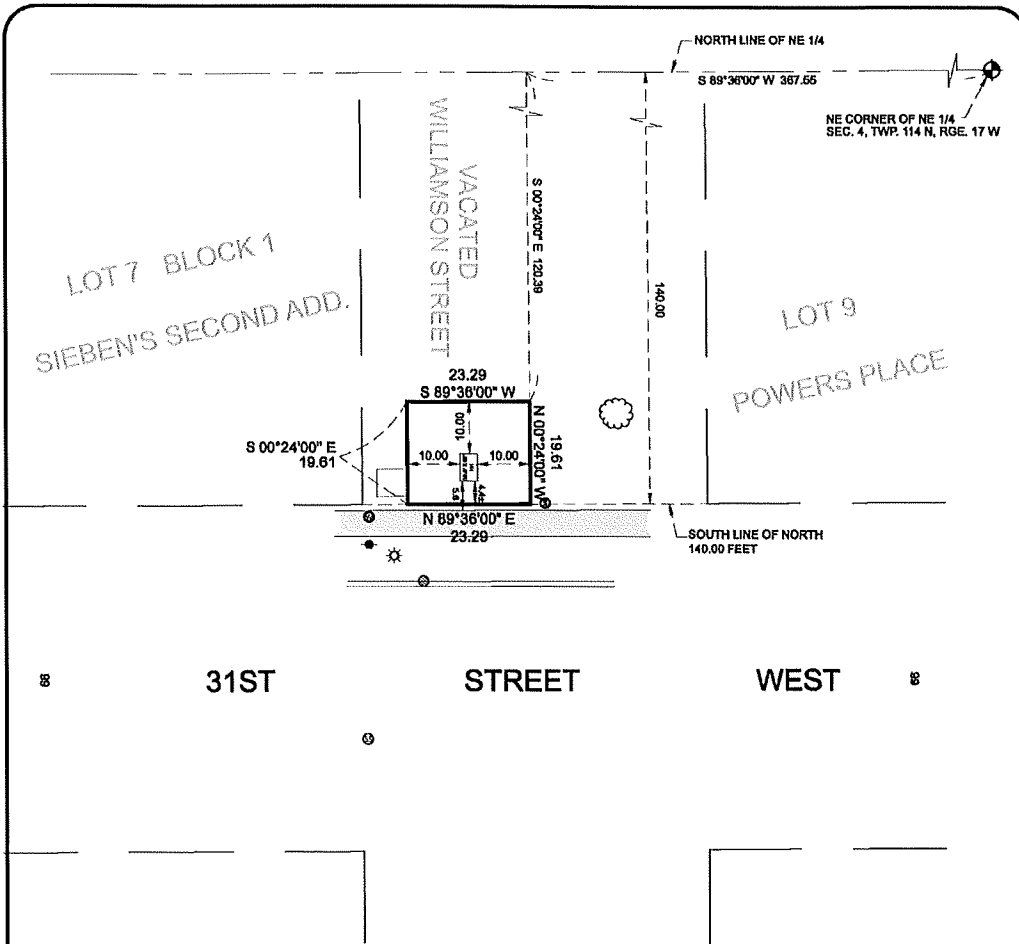
[Remainder of this page has been intentionally left blank]

EXHIBIT A
LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

An easement over, under and across that part of vacated Williamson Street as dedicated in POWERS PLACE, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the northeast corner of the Northeast Quarter of Section 4, Township 114 North, Range 17 West, Dakota County, Minnesota; thence on an assumed bearing of South 89 degrees 36 minutes 00 seconds West, along the north line of said Northeast Quarter, a distance of 367.55 feet; thence South 00 degrees 24 minutes 00 seconds East, a distance of 120.39 feet to the point of beginning of the easement to be described; thence South 89 degrees 36 minutes 00 seconds West, a distance of 23.29 feet; thence South 00 degrees 24 minutes 00 seconds East, a distance of 19.61 feet to the south line of the north 140.00 feet of said vacated Williamson Street; thence North 89 degrees 36 minutes 00 seconds East, along said south line, a distance of 23.29 feet to the intersection with a line that bears South 00 degrees 24 minutes 00 seconds East from the point of beginning; thence North 00 degrees 24 minutes 00 seconds West, a distance of 19.61 feet to the point of beginning.

EXHIBIT B
DEPICTION OF PERMANENT EASEMENT AREA



PROPOSED EASEMENT DESCRIPTION

An easement over, under and across that part of vacated Williamson Street as dedicated in POWERS PLACE, according to the recorded plat thereof, Dakota County, Minnesota, described as follows:

Commencing at the northeast corner of the Northeast Quarter of Section 4, Township 114 North, Range 17 West, Dakota County, Minnesota; thence on an assumed bearing of South 89 degrees 36 minutes 00 seconds West, along the north line of said Northeast Quarter, a distance of 367.55 feet; thence South 00 degrees 24 minutes 00 seconds East, a distance of 120.39 feet to the point of beginning of the easement to be described; thence South 89 degrees 36 minutes 00 seconds West, a distance of 23.29 feet; thence South 00 degrees 24 minutes 00 seconds East, a distance of 19.61 feet to the south line of the north 140.00 feet of said vacated Williamson Street; thence North 89 degrees 36 minutes 00 seconds East, along said south line, a distance of 23.29 feet to the intersection with a line that bears South 00 degrees 24 minutes 00 seconds East from the point of beginning; thence North 00 degrees 24 minutes 00 seconds West, a distance of 19.61 feet to the point of beginning.



BEARINGS SHOWN HEREON ARE ORIENTED TO THE DAKOTA COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN)

CERTIFICATE OF SURVEY FOR:
HIAWATHA BROADBAND COMMUNICATIONS INC.

JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
1112 HIGHWAY 66, SUITE 201, HASTINGS, MN 55033
(851) 438-0000

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mitchell A. Scofield

Mitchell A. Scofield
Minnesota License No. 48634
Date: March 31, 2023

BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS	21-518	S-NA	