



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Dave Hokstad, IT Manager
Date: June 5, 2023
Item: LOGIS Fiber Management Services Agreement

Council Action Requested: Council is requested to approve the LOGIS agreement to provide fiber network management services for the City of Hastings

Background Information:

For the past four years, LOGIS has provided fiber network management services for the City of Hastings through an agreement between LOGIS and the Dakota Broadband Board (DBB). The DBB is disbanding and the existing DBB-LOGIS fiber agreement terminates on July 30, 2023. A new agreement needs to be in place by then.

Financial Impact:

LOGIS will provide fiber network management services for \$1,500/year. Membership in the Dakota Broadband Board, which included fiber network management services, cost \$18,696/year. The fee for DBB Membership will no longer be paid after the DBB disbands on July 30, 2023.

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- LOGIS Fiber Management Services Agreement

LOGIS Fiber Management Services Agreement

THIS AGREEMENT is between the City of Hastings, a Minnesota Local Government under the laws of the State of Minnesota (the “City”), and Local Government Information Systems, a joint powers organization under the laws of the State of Minnesota, located at 5750 Duluth Street, Golden Valley, MN 55422 (“LOGIS”).

WHEREAS, for the past four years LOGIS has provided fiber network management services for the county-wide fiber network through an agreement between LOGIS and the Dakota Broadband Board (DBB) joint powers entity of which the City is a member; and

WHEREAS, the City’s fiber network assets are part of the county-wide fiber network that the DBB has been granted authority to manage on behalf of the majority DBB members, including the City; and

WHEREAS, the City anticipates the DBB will dissolve or will be substantially restructured in 2023, requiring the City to individually contract with a third party for certain management services for its fiber network assets; and

WHEREAS, upon dissolution of the DBB the City will once again be solely responsible for managing its fiber network assets that are within its geographical boundary; and

WHEREAS, the City requires continuing technical services to assist in the management of its fiber network assets; and

WHEREAS, LOGIS has gained specific knowledge and expertise in managing the fiber network assets in Dakota County including the City’s fiber assets, and in constructing and updating the database catalogue of those assets, and is willing and capable of providing the management services as described in this agreement.

THEREFORE, the Parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

- A. Term and Scope. LOGIS agrees to provide fiber network management services as described separately in the attached and incorporated Statement of Work (“Services”) to the City commencing on August 1, 2023, and terminating on July 31, 2026; unless terminated earlier in accordance with the Termination provisions of this Agreement listed in Section 13. The Parties acknowledge and agree that the City may add additional fiber network assets, to be immediately covered by this Agreement upon reasonable notice to LOGIS. This Agreement may be extended only upon the written mutual consent of the Parties for such additional period as they deem appropriate.

B. Cost and Payment. The City agrees to pay a fee based on the services described separately in the Statement of Work. Payment of interest on late payments is governed by the provisions of Minnesota Statutes, Section 471.425.

- i. Any changes in the scope of work identified in the incorporated Statement of Work that may result in an increase to the compensation due to LOGIS shall require prior written approval by the authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
- ii. LOGIS shall submit itemized bills for services provided to the City on a monthly basis. Bills submitted shall be paid in the same manner as other claims made to the City.

2. COMMUNICATION AND COORDINATION OF SERVICES

LOGIS and the City mutually agree to provide regular communications to ensure all terms and conditions outlined in this Agreement and all Services outlined in the Statement of Work are being performed to each party's satisfaction.

3. USE OF INDEPENDENT CONTRACTORS

LOGIS will select the means, method, and manner of performing the Services described in this Agreement and the accompanying Statement of Work. This includes the use of third-party contractors to maintain or construct the fiber assets covered under this Agreement.

4. INTELLECTUAL PROPERTY

LOGIS hereby warrants that it will obtain the written consent of the owner and licensor to reproduce, publish or use any materials supplied to the City including, but not limited to; software, hardware, or documentation. LOGIS also warrants that any delivered material will not violate U.S. Copyright Law or any property right of another. If LOGIS determines that in the course of providing Services to the City it is violating a property right of a third party, LOGIS will promptly obtain the right to use such property or will provide other materials to the City that are free from intellectual property infringement.

5. INDEMNIFICATION AND INSURANCE

- A. Indemnification. With the exception of its proportionate obligations as a member of LOGIS, each Party to this Agreement shall be liable for the acts of their own officers, employees, and agents; and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other Party, its officers, employees, and agents.

The Parties agree that the provisions of the Municipal Tort Claims Act, M.S. 466, and other applicable laws govern liability arising from the Parties' acts or

omissions. Nothing in this Agreement is intended as a waiver of any liability limits or immunities to which the parties are otherwise entitled to under law.

B. Insurance. For the mutual protection of all Parties in this Agreement, each Party agrees to maintain the following insurance coverages:

- i. Commercial General Liability coverage in the minimum amount of \$2,000,000 on an occurrence basis.
- ii. Workers Compensation and Employer's Liability coverage in the minimum amount of \$1,500,000.

6. STANDARD OF CARE

In performing its Services, LOGIS will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the same time the Services are provided. No warranty, express or implied, is made or intended by LOGIS's undertaking herein or its performance of Services.

7. DELAY IN PERFORMANCE

Neither City nor LOGIS shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming Party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes; lockouts; work slowdowns and other labor disturbances; sabotage; and judicial restraint. If such circumstances occur, the nonperforming Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. LOGIS will be entitled to payment for its reasonable charges, if any, due to the delay.

8. CITY'S REPRESENTATIVE

The City designates its IT Manager to act as the City's representative with respect to the Services to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the Services covered by this Agreement.

9. DATA PRACTICES

All Parties to this Agreement, including their officers, employees, and agents shall abide by the provisions in the Minnesota Government Data Practices Act M.S. Chapter 13, the Health Insurance Portability and Accountability Act, and all other applicable federal and state laws, rules, regulations, and orders relating to data privacy or confidentiality.

10. RECORDS RETENTION, AVAILABILITY, AND ACCESS

Subject to the requirements of M.S. Section 16C.05, Subd. 5; all Parties to this Agreement agree that each Party, the State Auditor, the Legislative Auditor, or any of their authorized representatives, during normal business hours, and as they may deem reasonably necessary, shall have the right to examine, audit, and transcribe any documentation or records that involve transactions relating to this Agreement. The Parties further agree to maintain all pertinent materials during the term of this Agreement and for six years after its termination or cancellation.

11. SUCCESSORS, SUBCONTRACTORS, AND ASSIGNMENTS

LOGIS shall not assign, transfer, subcontract, or pledge this Agreement or any associated monies without the prior written consent of the City. If granted, any permission to assign, transfer, subcontract, or pledge shall not relieve LOGIS of its liabilities and obligations under this Agreement.

12. MERGER AND MODIFICATION

Both Parties agree that this Agreement supersedes all previous oral or written communications relating to the terms and conditions outlined in the Agreement and Statement of Work. Modifications to the Agreement or Statement of Work is valid only after both Parties have agreed to them in writing.

13. TERMINATION

- A. Termination for Convenience. This Agreement may be terminated by either Party, without cause, upon six (6) months written notice delivered to the other Party to the addresses listed in Section 14 of this Agreement. Upon termination under this provision, if there is no default by LOGIS, LOGIS shall be paid for Services rendered and reimbursable expenses until the effective date of termination.
- B. Termination Due to Default. Both Parties agree that if either Party fails to perform any provision in this Agreement or Statement of Work as to endanger the performance of the Agreement, it could be held in default and subject to cancellation.

If either Party concludes the other is in default, it shall provide a written notice detailing the circumstances of that conclusion. The defaulting Party shall have 30 days to cure the default. If the default is not cured, the non-defaulting Party may, upon written notice, cancel the Agreement and Statement of Work, and suspend all payments for work that was not completed; or suspend any Services that were underway. Both Parties agree that they remain liable for any damages sustained by the other as a result of the default.

14. NOTICES

Any notice or demand, including events of default, shall be delivered in writing to the LOGIS Executive Director and the City Chief Administrative Officer accordingly. Notices shall be sent by U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgement 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. Notices shall be communicated to the following addresses:

If to City: City of Hastings
 101 4th Street
 Hastings, MN 55033
 Attention: City Administrator

If to LOGIS: Local Government Information Systems
 5750 Duluth Street
 Golden Valley, MN 55422
 Attention: Executive Director

15. AMENDMENT

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

16. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement, and the legal relations between the Parties and their performance. The venue and jurisdiction for any litigation between the two Parties will be initiated in the Dakota County district court where the City resides, and as necessary; with the Appellate and Supreme Court of the State of Minnesota.

CITY OF HASTINGS

By: _____

Printed Name: Mary Fasbender

Printed Title: Mayor

Date: _____, 2023

By: _____

Printed Name: Kelly Murtaugh

Printed Title: City Clerk

Date: _____, 2023

LOGIS

By: _____

Printed Name: Christopher K. Miller

Printed Title: Executive Director

Date: _____, 2023

LOGIS Fiber Management Statement of Work

In accordance, with the LOGIS Fiber Management Services Agreement, this Statement of Work outlines the scope of services and costs for the City, and associated fee. Services include:

- Assigned Project Manager to serve as primary liaison between the member, LOGIS, and vendors.
- Planning and budgeting assistance regarding fiber upgrades & enhancements, replacements, and budget estimates
- Managing fiber installs, repairs, maintenance, and relocates. Vendor costs and project expenses will be billed to the member.
- Providing a lead role in the preparation of formal quotes or bids in accordance with MN Statutes, as well as general fiber-related procurement.
- LOGIS will manage the following vendor relationships:
 1. Fiber 24-hour break-fix vendors
 2. Fiber burial and installation vendors
 3. Locate vendors
 4. Splicing and testing vendors
- Provide change management oversight including project timelines, communications & notifications, and documentation.
- Organize, update, and maintain all available fiber documentation related to the member.
- Maintain a service-level standard of a 2-hour on-site response for fiber cuts/outages.
- LOGIS agrees to perform all actions, activities, and other undertakings pursuant to this Agreement in a reasonable and timely manner.

Total 2023 Cost to City **\$1,500.00**