



To: MAYOR & COUNCIL

Agenda Item #: IV. L.

From: Ryan Browning
I.T. Manager

Action

Discussion

Date: January 20, 2015

Information

Subject: Agreement For Fiber Connection To Hennepin County

Action Requested:

Approve I-Net Agreement to complete a fiber optic connection between the City of Edina and the Hennepin County Sheriff facility at Parkers Lake.

Information / Background:

Attached is an I-Net agreement with LOGIS, which is, in turn, is working with Hennepin County on our behalf. This agreement will allow a connection between the Edina Public Safety Dispatch Center and the new Shared 9-1-1 Phone System hosted by Hennepin County. This connection is made possible by the exchange (no cost) of fiber strands between the City of Edina and Hennepin County. Our costs will be limited to work that LOGIS will perform to complete the connection. The City of Edina benefits by acquiring a high-speed connection to this vital service for a fraction of the cost we would otherwise incur to bury our own new fiber. Hennepin County benefits with a new fiber path to other county facilities.

The agreement specifies the responsibilities of each party with regard to these connections and is in line with other existing agreements with LOGIS. This agreement has been reviewed by legal counsel.

Staff recommends approval of this agreement.

AGREEMENT FOR DEVELOPMENT, OPERATION, AND MAINTENANCE OF
AN INSTITUTIONAL COMMUNICATIONS NETWORK

THIS AGREEMENT (“Agreement”) is entered into this 22nd day of December, 2014, by and between Local Government Information Systems, a Minnesota joint powers organization (“LOGIS”), and the City of Edina, a Municipal corporation and Member of LOGIS (“Edina”).

WHEREAS, Edina is constructing a fiber optic network to the Hennepin County Sheriff facility in Parkers Lake;

WHEREAS, The mission of LOGIS is to provide voice, data and video information services to Member governmental entities (“Information Services”). To provide and enhance the quality of its Information Services, LOGIS utilizes or seeks to utilize advanced computer software and other technology.

WHEREAS, LOGIS will utilize the fiber optic strands to connect organization facilities and networks.

WHEREAS, this agreement is for the unlimited right to use the strands of fiber specified:

WHEREAS, The purpose of this Agreement is to establish the terms and conditions of the planning, installation, operation, maintenance and improvement of an independent institutional communications network (“I-Net”) that will serve Edina’s independent interests and the interests of LOGIS and all of its Members in providing and receiving Information Services.

WHEREAS, LOGIS and Edina jointly and cooperatively, intend to plan, design, install, operate, maintain and develop an I-Net system as more particularly described in Exhibit A that will be part of a larger I-Net.

WHEREAS, LOGIS has entered into other agreements, substantially identical to this Agreement, with other organizations regarding other portions of the I-Net. Edina acknowledge that unique circumstances presented by the I-Net within other boundaries may require additional or modified provisions and therefore agrees that this Agreement is independent from other similar agreements with other Members or other non-Member parties, and LOGIS.

WHEREAS, This I-Net fiber agreement does not replace or invalidate existing I-Net agreements and is in addition to any other I-Net agreements that are in effect.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings herein contained, the parties agree that each party’s ownership rights in the I-Net will survive Edina

withdrawal from LOGIS or termination of this Agreement as set forth in section 13. In addition the parties agree as follows:

1. **Responsibilities of LOGIS.** LOGIS agrees as follows:
 - 1.1 To supply Edina with 2 strands of fiber that spans from the City of St. Louis Park Recreation Center to the Sheriff facility located in Golden Valley at Naper Street.
 - 1.2 To supply Edina with fiber access from the Sheriff Naper Street facility to the Parkers Lake Sheriff dispatch center.

2. **Responsibilities of Edina.** Edina agrees as follows:
 - 2.1 To supply LOGIS with 4 strands of fiber for LOGIS's use that will span between the City of St. Louis Park Recreation Center to the corner of York and Parklawn Avenue in Edina
 - 2.2 To supply LOGIS with 4 strands of fiber from Edina city hall to the Edina Senior Center.

3. **Operation, Maintenance, Repair.** Edina and LOGIS are each solely responsible for their respective I-Net operations, maintenance, and repair. Each party owns and is responsible for any additional conduit or strands it installs subsequent to this agreement. Each party must give the other party written notice of any intended service, repair, or replacement of the I-Net fiber or other facilities ("Facilities") as defined under "Right of Access".

4. **Right of Access.** LOGIS, and Edina and their respective authorized designees, may access the I-Net for the purposes described in this Agreement, subject to all necessary governmental approvals. Each must provide the other with seven (7) days notice prior to such access, except in the case of emergencies. In an emergency, either party may respond as necessary and must provide notice to the other within 24 hours of the action taken. LOGIS and Edina agree to make arrangements to have their termination facilities available to LOGIS or maintenance personnel on a twenty-four hour, seven day a week basis.

5. **Costs.** Costs associated with the I-Net will be allocated as follows:
 - 5.1 **Installation.** Each party is responsible for the costs related to the connection, splicing, and termination of the fiber optic strands allocated to them.
 - 5.2 **Operations and Maintenance.** Edina, and LOGIS will share the operations and maintenance costs on the basis of INET ownership for general operations and maintenance. The expense of I-Net operational, maintenance, or repair work necessary will be borne solely by the party requiring it. In situations where operational, maintenance, or repair work is required by more than one party, expenses will be borne by all parties requiring said work and shared based on each party's share of fiber optic strands at the location(s) of repair.
 - 5.3 **Locates.** Each party is solely responsible for locates and the cost of locates required under Minnesota Statutes § 216D.01, Gopher One Call for the fiber optic strands and segments provided to the other party. Said provision notwithstanding, each party may arrange and coordinate locate services in any manner they deem to comply with this statute. (e.g., Gopher One Call notifications, locate service requests, billing, and payments)

6. **Additional Facilities.** Each party reserves the right to add facilities to the I-Net as needed. If a party decides to add facilities, it will notify the other parties prior to entering into any commitment regarding the addition. Notice of the intended additional facilities purchase is for the purpose of identifying potential shared or reduced costs if the other parties seek or agree to add their own additional facilities. No party may prevent any other from purchasing and installing additional facilities for its own uses, provided, however, that no additional facility may materially impede or jeopardize the Information Services of LOGIS or Edina uses of the I-Net.

7. **I-Net Use by Non-LOGIS Member.** If Edina or LOGIS decides to serve non-members using the I-Net, the party so choosing is fully responsible for gaining all regulatory approvals necessary, if any, and must indemnify and hold harmless the other party against any and all claims or damages by the non-member or other third party. Said provision notwithstanding, each party to this agreement shall indemnify and hold harmless all other parties to this agreement only to the extent allowed by law.

8. **Liability Limitation.** Each party is liable to the other only to the extent the negligent actions or inactions of one proximately cause direct out-of-pocket cost to the other. No party is responsible for lost services, lost revenues, lost profits, indirect, consequential or special damages or attorneys' fees incurred by another.

9. **Indemnity and Duty to Defend.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law. Minnesota Statutes Chapter 466 and other applicable law govern the parties' liability. To the full extent permitted by law, this Agreement is intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minnesota Statutes, Section 471.59, Subd. 1a (a); provided further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of the other party. In addition to the foregoing, nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise.

9. **Insurance.** Each party represents that it carries the insurance coverages necessary for municipal or joint powers organizations under Minnesota law and has and will maintain coverage for I-Net operations. No party waives its immunities under Chapter 466.

10. **Termination.** This Agreement may be terminated only under the following circumstances:
 - 11.1 By mutual agreement of the parties expressed in writing.
 - 11.2 By material breach of a party that has not been cured after written notice and a reasonable opportunity to cure.
 - 11.3 Subject to receipt of full payment for the pro-rata I-Net share, the parties' respective ownership of the I-Net shall survive any termination of this Agreement, whether by material breach by either party, withdrawal of Edina from LOGIS, dissolution of LOGIS or otherwise. Each party agrees that the other party's right of access to the I-Net for operation, maintenance, expansion, or other necessary purposes shall survive termination and that the

Edina shall cooperate fully with each other and with the other Members under this provision to allow LOGIS to continue its operations of the I-Net for LOGIS purposes.

11.4 **Dissolution of LOGIS.** Edina's ownership rights in the I-Net shall be governed by the terms set forth in the LOGIS Joint and Cooperative Agreement and By-Laws.

11. Dispute Resolution. If LOGIS and Edina cannot agree on any matter arising out of this Agreement, after a reasonable period of good faith negotiations, they agree to engage a qualified third party to mediate the disagreement, and share the costs of the mediator on an equal basis. The parties will work in good faith with the mediator to find an acceptable solution and must reduce any settlement agreement to writing. Any such agreement must be incorporated into and made a part of this Agreement. If a mediated agreement cannot be reached, each party has available to it all rights in law or equity.

12. Licenses, Permits and other Regulatory Approvals. Each party agrees to obtain any and all required licenses, permits or other governmental approval necessary to effectuate any work initiated by the party. For joint projects, Edina will have primary responsibility for obtaining such permission or approvals from the participating City or non-member.

13. Covenant of Mutual Cooperation and Continued Access. Notwithstanding any provision in this Agreement to the apparent contrary, the parties agree that the intent of this Agreement is to allow the parties to share the cost of an I-Net installation, operation, maintenance, repair and expansion on fair and equitable terms and that each party will cooperate in effectuating the fulfillment of that intent by the other party, including but not limited to allowing continued access to the I-Net whether this Agreement remains in existence and whether Edina withdraws from LOGIS.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned have executed this Agreement on behalf of the parties hereto.

For City of Edina

By: _____

Title: _____

(Mayor)

Date: _____

By: _____

Title: _____

(City Manager)

Date: _____

For LOGIS

By: _____

Title: _____

Date: _____