

RESOLUTION NO. 2-0223

RESOLUTION ESTABLISHING A PUBLIC-PRIVATE PARTNERSHIP TO FACILITATE THE DEPLOYMENT OF AFFORDABLE, RELIABLE, HIGH-SPEED INTERNET SERVICES THROUGHOUT THE COUNTY

WHEREAS, access to affordable, reliable, high-speed broadband services, including for residential, commercial, and governmental use, provides enhanced educational possibilities, furthers workforce development opportunities, and stimulates economic development within the County; and

WHEREAS, the County's residents increasingly depend on their ability to access affordable, reliable, high-speed broadband services to improve their economic and financial position, to enhance their social networking capabilities, and to meet their basic consumer needs; and

WHEREAS, the County's businesses rely on their ability to access affordable, reliable, high-speed broadband services to effectively compete in a global economy; and

WHEREAS, the County's ability to timely deliver cost-effective governmental services to its residents, including emergency medical services and law enforcement protection, is enhanced by its ability to access affordable, reliable, high-speed broadband; and

WHEREAS, the County, along with its residents and businesses, desire expanded access to affordable, reliable, high-speed broadband services to effectively deliver basic services to its residents, to more fully engage in commerce, and to better compete in a global economy; and

WHEREAS, the County's topography and population density has made it cost-prohibitive for private sector development of a reliable, affordable, high-speed broadband network throughout the County; and

WHEREAS, as a result, many areas of the County have limited or no access to affordable, reliable, high-speed broadband services; and

WHEREAS, the County desires to develop and implement a plan to facilitate the provision of reliable, affordable, high-speed broadband services to residents and businesses throughout the County; and

WHEREAS, the County believes that cooperation with private-sector partners is necessary for the development of a county-wide broadband network that meets the needs of the County, its residents, and its businesses; and

WHEREAS, MH Telecom, LLC, doing business as MHTC, is an Internet Service Provider (ISP) with experience providing reliable, affordable, high-speed broadband services to underserved and unserved communities throughout Wisconsin for commercial, governmental, and emergency response purposes; and

WHEREAS, MHTC is able to and desires to assist the County with the development of a plan to facilitate the deployment of reliable, affordable, high-speed broadband services throughout the County; and

WHEREAS, the County believes that the economic activity and public benefits likely to occur as a result of the development and deployment of a reliable, affordable, high-speed broadband network throughout the County constitutes a valid public purpose; and

WHEREAS, the Parties desire to work together for the mutual benefit of the County’s residents, businesses, government, and emergency responders by jointly developing a plan to facilitate the provision of reliable, affordable, high-speed broadband services throughout the County.

NOW, THEREFORE, BE IT RESOLVED, the Iowa County Board of Supervisors authorizes and directs the Chairman of the Board of Supervisors, or his designee, to enter into a Public-Private Partnership agreement, in accordance with Iowa County Policy 309, by executing a Memorandum of Understanding (“MOU”) with MHTC, attached as **Exhibit A**, expressing the Parties’ desire and intent to develop a plan to construct, develop, and deploy high-speed internet infrastructure to facilitate the provision of affordable, reliable, high-speed internet services throughout the County.

BE IT FURTHER RESOLVED, the Iowa County Board of Supervisors authorizes and directs staff to immediately enter into negotiations with MHTC to develop a comprehensive plan, including all necessary agreements and other documentation, setting forth all relevant aspects necessary for the parties to jointly, or in partnership, construct, develop, and deploy high-speed internet infrastructure throughout the County.

BE IT FURTHER RESOLVED, the Iowa County Board of Supervisors authorizes and directs staff to immediately retain bond counsel and take preliminary steps necessary to determine whether it is feasible to provide funding for this project through the use of General Obligation bonds or some other financing mechanism.

BE IT FURTHER RESOLVED, all plans, applications, and Agreements referenced herein shall not become effective unless and until each has received approval by the Board of Supervisors in accordance with Iowa County’s General Code of Ordinances and/or as otherwise required by law.

Respectfully submitted by the Executive Committee.

Adopted by the Iowa County Board of Supervisors this 21st day of February, 2023.

John M Meyers

John M. Meyers, Chairman
Iowa County Board of Supervisors

Attest:

Kristy K. Spurley

Kristy K. Spurley, Clerk
Iowa County

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN IOWA COUNTY, WISCONSIN AND MHTC ESTABLISHING A PUBLIC-PRIVATE PARTNERSHIP TO FACILITATE THE DEPLOYMENT OF AFFORDABLE, RELIABLE, HIGH-SPEED INTERNET THROUGHOUT THE COUNTY

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 21st day of February 2023, by and between IOWA COUNTY, WISCONSIN (the “County”), a political subdivision of the State of Wisconsin with its principal office located at 222 North Iowa Street, Dodgeville, Wisconsin, 53533; and MH Telecom, LLC, doing business as MHTC, a Wisconsin corporation certified by the Public Service Commission of Wisconsin as an Alternative Telecommunications Utility to provide telecommunications service in Wisconsin with its principal office located at 305 North Iowa Street, Dodgeville, Wisconsin, 53533 (collectively, the “Parties”).

RECITALS

WHEREAS, the County, a certified Broadband Forward! Community, seeks to promote the development of affordable, reliable, high-speed broadband service within its boundaries for the public purpose of supporting its residents’ desired quality of life and its businesses’ need to compete in a global economy; and

WHEREAS, the County believes that the economic activity and public benefits likely to be generated by studying, analyzing, developing, and, ultimately, providing reliable, affordable, high-speed broadband services throughout the County constitutes a valid public purpose; and

WHEREAS, the County has areas that are underserved or unserved by affordable, reliable, high-speed broadband service; and

WHEREAS, the County desires to expand its residents’ and businesses’ access to affordable, reliable, high-speed broadband service; and

WHEREAS, the County has requested to partner with MHTC, in accordance with Iowa County Policy 309, to establish a Public-Private Partnership agreement to produce and implement a plan that will result in the development and deployment of affordable, reliable, high-speed broadband service throughout the County (the “Project”); and

WHEREAS, MHTC is an Internet Service Provider (ISP) with experience providing reliable, affordable, high-speed broadband access to underserved and unserved communities throughout Wisconsin for commercial, governmental, and emergency response purposes; and

WHEREAS, the County desires to enter into negotiations with MHTC to develop and implement a plan to provide affordable, high-speed broadband service throughout the County (the “Broadband Expansion Plan”), subject only to those limitations under the County’s ordinances and Wisconsin and federal law; and

WHEREAS, the Parties acknowledge that this MOU is merely a representation of the Parties’ desire to develop, construct and provide broadband services throughout the County and does not constitute an authorization, express or otherwise, for the County to construct, own, or

operate any facility for providing video service, telecommunications service, or broadband service, directly or indirectly, to the public; and

WHEREAS, the Parties acknowledge that the terms of this MOU may be subject to modification in order to assure compliance with the County's ordinances, state regulatory agencies' guidance and rules, and Wisconsin and federal law.

The Parties to this MOU acknowledge the foregoing recitals and agree to participate in and perform the following actions:

GENERAL PROVISIONS

- I. Preliminary Agreement. This MOU is a preliminary agreement between the Parties and, unless expressly stated otherwise, is not intended to create a binding agreement to finance, provide, maintain, develop, construct, or otherwise obligate the Parties to build or operate a broadband network within the County.
- II. Parties' Support for the Project. Notwithstanding any law, rule, guidance, ordinance, or conflicting provision contained herein, the Parties do hereby express support for the provisions contained within this MOU. The Parties acknowledge that the Project may not materialize despite their best efforts.
- III. Good Faith Negotiations. The Parties agree to identify and pursue all reasonable alternatives to effect the intent of this MOU and, where possible, take affirmative steps to implement those alternatives. The Parties further agree to voluntarily comply with the provisions of this MOU and, upon approval of the Broadband Expansion Plan by both Parties' respective governing bodies, negotiate in good faith to finalize and adopt a final Broadband Expansion Plan Agreement that is separate and distinct from this MOU and which authorizes the Parties to construct and operate an affordable, reliable, high-speed broadband network throughout the County.
- IV. Preliminary Costs. The Parties agree that unless otherwise expressly agreed to in writing, each Party will be responsible for its own expenses incurred in furtherance of this MOU.
- V. Public Purpose. The Parties acknowledge that the expansion of broadband service throughout the County will provide a public benefit to the County, its residents, and its businesses. Accordingly, the Parties agree to cooperate with one another, and diligently undertake all reasonable actions and execute all reasonable efforts to secure funding to advance the Project.

OBLIGATIONS OF THE PARTIES

- VI. Preliminary Preparations. The Parties shall make all reasonable efforts to independently and collaboratively engage all stakeholders necessary to study, analyze, and execute the provisions of this MOU, including, but not limited to, regulatory

authorities, industry stakeholders, telecommunications providers, financial advisors, legal counsel, and other professionals, as necessary to realize the Project.

- VII. Preliminary Broadband Expansion Plan. The Parties shall make all reasonable efforts to develop a Preliminary Broadband Expansion Plan, the purpose of which shall be to describe, locate, develop, and deploy reliable, affordable, high-speed broadband service throughout the County. The Parties agree to work together to jointly develop the Preliminary Broadband Expansion Plan.
- VIII. Preliminary Financing Arrangement. The Parties shall make all reasonable efforts to develop a financing plan and arrangement to fund the Project. It is anticipated that Iowa County will issue General Obligation bonds to fund the Project, and MHTC would repay Iowa County over a term of years as outlined below in the “Anticipated Broadband Expansion Plan Agreement” section. Iowa County will take necessary steps to determine the process, requirements, and feasibility of using General Obligation bonds to fund the Project.
- IX. Preliminary Broadband Expansion Plan and Preliminary Financing Arrangement Approval. After developing the Preliminary Broadband Expansion Plan and Preliminary Financing Arrangement, the Parties shall submit the Preliminary Broadband Expansion Plan and Preliminary Financing Arrangement to their respective governing bodies for consideration and approval.
- X. Broadband Expansion Plan Agreement. Should both Parties’ respective governing bodies approve the Preliminary Broadband Expansion Plan and Preliminary Financing Arrangement, the Parties shall use reasonable efforts to negotiate the specific terms of the Preliminary Broadband Expansion Plan in a Broadband Expansion Plan Agreement. Development, approval, and execution of the Broadband Expansion Plan Agreement shall be separate and distinct from this MOU and shall be subject to and conditioned upon successful negotiations between the Parties and approval by both Parties’ respective governing bodies.
- XI. Costs. Parties acknowledge that all costs borne by the Parties in executing this MOU shall be the sole liability of the Party that incurred the costs, unless otherwise agreed to in writing.

ANTICIPATED BROADBAND EXPANSION PLAN AGREEMENT TERMS

- XII. Project Costs. It is anticipated that the Project will cost \$10,000,000.00 to fully fund the construction of the Project which will deliver fiberoptic capability to homes, businesses, and government facilities throughout western Iowa County, tentatively Eden, Cobb, and Highland. It is anticipated that Iowa County would borrow the funds to fully fund the costs of construction of the Project through the issuance of General Obligation bonds, and Iowa County would enter into an agreement to make the funds available to MHTC to construct the Project. Furthermore, MHTC agrees to fully complete the Project as substantially described in the Preliminary Broadband Expansion Plan. Should the costs of the Project exceed the amount agreed to by the

County, MHTC will be responsible and liable for such costs. Should the costs of the Project be lower than the amount agreed to by the County, MHTC will only draw funds in an amount that are necessary to complete the Project, and MHTC will consult with the County prior to expanding the size of the Project with any remaining or excess funds.

- XIII. Project Funding Repayment. MHTC would repay Iowa County through an arrangement which would include “interest only” payments for the first two years, and the remaining principal balance would be repaid over a term of 20 years. MHTC would repay Iowa County at an interest rate that would be 0.5% (1/2 percent interest or 50 basis points) higher than the interest rate or yield rate at which Iowa County borrows the money through the bond issuance. MHTC will only pay accrued interest on the amount actually drawn for the Project, and MHTC will not incur a prepayment penalty on any funds made available by Iowa County for the Project. The Preliminary Financing Arrangement document will describe in greater detail the bond issuance, yield rates, draw period, interest rates, repayment schedule and other information related to project funding and repayment.
- XIV. Project Requirements. It is a requirement for the Project that any funds acquired or provided by Iowa County only be spent on the Project in Iowa County. It is also agreed to that the Project will be completed within two years of funding being made available for the Project. Furthermore, it is understood by the Parties that in addition to the Broadband Expansion Plan Agreement, several other contracts and agreements will need to be entered specifically for the financing of the Project. Some of these documents potentially include bond issuance documents; liens, mortgages, or other security interests in the Project; promissory notes, letters of credit, or other promises to pay; and similar documents.
- XV. Project Ownership and Use. It is anticipated that MHTC will have a complete ownership interest in the property of the Project. Iowa County will have a security interest in the property of the Project, and such security interest is anticipated to be for a duration of 20 years unless the financial obligations of the Project are satisfied at an earlier date. Additionally, for the duration of Iowa County’s security interest in the property of the Project, Iowa County will have available for its own use, 48-strands of fiberoptic cable. Iowa County can use these 48-strands of fiberoptic cable for any purpose, public or private. A separate Facilities Access Agreement will be negotiated between the Parties to more specifically described the terms of use of this asset.
- XVI. Project Scope. It is possible that in the future, the Project may qualify for additional funding through grant programs or matching contributions from other sources. If this occurs, the Parties shall jointly cooperate to obtain such funding and such funding will be used to repay the existing financial obligations for the Project. It will not be used to expand the Project unless specifically authorized by both Parties’ governing boards.

IN WITNESS WHEREOF, the Parties hereto have caused the execution of this MOU by the authority of their respective governing bodies and/or authorized signatory as an expression of the Parties' formal intent.

[Signature pages follow.]

IOWA COUNTY

The undersigned Iowa County officials have executed this Agreement pursuant to duly adopted Resolution No. 3-0223 dated: February 21, 2023.

John M Meyers
John M. Meyers, Chairman
Iowa County Board of Supervisors

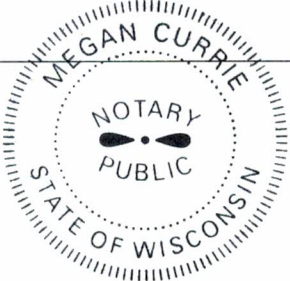
Attest:

Kristy K. Spurley
Kristy K. Spurley, County Clerk

STATE OF WISCONSIN)
)
COUNTY OF IOWA)

Personally came before me on Feb. 23, 2023, the above named Kristy K. Spurley, to me known to be the persons who executed the foregoing instrument and acknowledge same.

Megan Currie
Notary Public, State of Wisconsin
My Commission expires: 10/30/2025



MISCELLANEOUS PROVISIONS

- XVII. Duration and Termination. The Parties are entitled to terminate this MOU immediately upon written notice to the other Party. Unless one or both Parties, or a court of law, terminates or invalidates this MOU, this MOU shall remain in full force and effect until the Parties' obligations described hereunder are completed.
- XVIII. Non-Binding Effect. The Parties acknowledge that unless expressly stated otherwise, this MOU is not a binding agreement, and the obligations and rights of the Parties are yet to be negotiated and memorialized through the adoption of the Broadband Expansion Plan Agreement. The Broadband Expansion Plan Agreement shall not become effective unless and until it is approved by both Parties' respective governing bodies.
- XIX. Disclaimer. The Parties acknowledge that this MOU does not obligate either Party to provide, construct, finance, or develop a broadband network within the County or to execute a Broadband Expansion Plan Agreement. The Parties further acknowledge that the provisions of this MOU shall not be relied upon nor construed as an inducement for either party to take any action(s) or incur any costs not explicitly set forth by this MOU.
- XX. Representations and Warranties. The Parties acknowledge that this MOU does not create a financial obligation between the Parties. The Parties further acknowledge that this MOU does not guarantee completion of the Preliminary Broadband Expansion Plan, Preliminary Financing Arrangement, or execution of a Broadband Expansion Plan Agreement. Nor does this MOU represent a financing guarantee between a potential lender and a potential buyer. Any financing terms referenced in this MOU shall become effective only upon the development and ratification of the Broadband Expansion Plan Agreement by both Parties' respective governing bodies. The Parties acknowledge that the Broadband Expansion Plan Agreement is separate and distinct from this MOU.
- XXI. Confidentiality. Because of the competitive nature of the broadband industry, the County acknowledges that certain information MHTC provides to the County may be proprietary and, if specified as such, should be treated by the County as confidential and shall not be disclosed to third parties unless required by law.
- XXII. Amendments. This MOU may not be amended or modified, except in writing, by mutual agreement of the Parties.
- XXIII. Governing Law. This MOU is intended to be performed in the State of Wisconsin and shall be construed and enforced by the laws of the State of Wisconsin.
- XXIV. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

MHTC

Authorized Signatory

Date

Attest:

Notary Public

STATE OF WISCONSIN)
)
COUNTY OF DANE)

Personally came before me on _____, 2023, the above named
_____, to me known to be the persons who executed the
foregoing instrument and acknowledge same.

Notary Public, State of Wisconsin
My Commission expires: _____