

Fiscal Agency Agreement re IMBCA Restitution Payments

THIS FISCAL AGENCY AGREEMENT is made under the Illinois Intergovernmental Cooperation Act (5 ILCS 220/) by and among the City of Batavia, the City of Rochelle and the City of Rock Falls effective on the last date of the signatures below.

WHEREAS, the cities of Batavia, Rochelle and Rock Falls were members of the Illinois Municipal Broadband Communications Association (“IMBCA”), which was formed in 2007 for the purpose of promoting the development of broadband in northern Illinois;

WHEREAS, IMBCA ceased operations in 2019 and transferred its assets to a third party pursuant to a duly approved bill of sale in 2020;

WHEREAS, at the time of its dissolution, IMBCA members were aware of a pending criminal investigation involving theft of IMBCA funds by a former employee of one of the members and filed a Victim Statement with the United States Department of Justice in Case Number 2018R01064 identifying the amount of money owed to IMBCA due to this criminal activity;

WHEREAS, upon completion of the investigation the defendant was found guilty and ordered to pay restitution to IMBCA in the amount of approximately \$165,000.

WHEREAS, five restitution payments have been received thus far in the form of checks from the United States Treasury (“US Treasury”) made out to IMBCA and more are anticipated;

WHEREAS, the cities of Batavia, Rochelle and Rock Falls have agreed that all restitution payments should be pro-rated among themselves in equal amounts and have agreed to designate the City of Rock Falls as their fiscal agent to effectuate such payments;

NOW, THEREFORE, for and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. The City of Rock Falls shall be designated as the “Fiscal Agent” of IMBCA for the limited purpose of effectuating the dissemination of restitution payments to former members of IMBCA associated with Case Number 2018R01064.
2. As Fiscal Agent, City of Rock Falls shall establish and administer a new account in a local banking institution expressly designated for the purpose of depositing restitution checks issued by the US Treasury for payment to IMBCA, which such payments shall be disbursed to the cities of Rochelle, Batavia and Rock Falls as former IMBCA members (“Restitution Account”).
3. Immediately upon establishment of the Restitution Account, the City of Rock Falls shall (i) deposit existing restitution checks currently being held for IMBCA by Boardman & Clark LLP; (ii) calculate the amount that is due to each former IMBCA member on a straight pro rata basis, meaning each member will receive 1/3 of the restitution payments received; and (iii) disburse the appropriate pro-rated amount via wire transfer to accounts designated by the cities of Batavia and Rochelle.

4. Any future restitution checks issued by the US Treasury in the name of IMBCA, or any other payee on behalf of IMBCA, shall be deposited in the Restitution Account; pro-rated; and disbursed to the Cities of Batavia and Rochelle in the manner described above in section 3.
5. As Fiscal Agent for IMBCA, a designated representative of Rock Falls shall be authorized to assist the United States Department of Justice in implementing the payment of restitution in this matter on an ongoing basis, including, but not limited to, the provision of an affidavit describing this arrangement for the purpose of changing the name of the restitution payment payee or any other purpose related to this matter.
6. It is understood and acknowledged that Rock Falls is also authorized under this Agreement to (i) deduct reasonable administrative expenses incurred by Rock Falls in its role as Fiscal Agent from its disbursements of the restitution amounts to Batavia and Rochelle; (ii) deduct a pro-rated share of legal fees incurred by IMBCA from Boardman Clark LLP for assistance in implementing the restitution payment process; and (iii) undertake other administrative functions necessary to implement the payment of restitution to former IMBCA members.
7. Each party to this Agreement represents and warrants that execution thereof has been duly authorized by resolution of its governing body.
8. This Agreement is binding upon the parties hereto as well as their respective heirs, successors and assigns.
9. This Agreement shall be governed by and construed pursuant to the laws of Illinois.
10. This Agreement may be amended only by a duly authorized written instrument signed by all three parties.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the dates indicated below:

CITY OF ROCK FALLS

By: _____
 Name (date)

Attest: _____
 Name (date)

CITY OF ROCHELLE

By: _____
 Name (date)

Attest: _____
 Name (date)

CITY OF BATAVIA

By: _____
 Name (date)

Attest: _____
 Name (date)