

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: February 24, 2009
RE: Intergovernmental Agreement – Broadband Services



For the Agenda of March 1, 2010

Background. As the City Commission is aware, the City has been working in concert with Clare County, the Clare-Gladwin RESD, the Village of Farwell, and the City of Harrison to establish broadband service connectivity between these entities. An agreement has been signed (*see copy of unsigned version*) by Clare County and the RESD.

The major funding elements of this initiative have thus far been paid for by Clare County and the Clare County Enterprise Community. We are now approaching (within a matter of weeks) the point that we will be able to actually make the broadband connections. But before we are able to do so, we are required to formally enter into an Intergovernmental Agreement (*draft copy att'd*). The final details of this agreement are still being reviewed by attorneys for all respective signatories. We anticipate that the agreement will be in its final form and available for consideration and approval by the City Commission by March 1st, thus we have placed this topic on the agenda for the March 1st meeting. We do not anticipate that the draft version of this agreement will change appreciably (if at all) in content or format. We will forward the final version of the agreement to the City Commission electronically or in hard copy if we receive it prior to Monday's meeting; otherwise, we will present it at the meeting.

The City Commission is asked to review and consider the draft form of this agreement.

Issues & Questions Specified. Should the Clare City Commission approve the proposed Intergovernmental Broadband Contract?

Alternatives.

1. Approve the contract.
2. Approve the contract with modification, stipulations, or changes.
3. Disapprove the proposed Agreement.
4. Set the matter aside for consideration at a later-scheduled commission meeting.

Financial Impact. The preponderance of all costs associated with the City's connectivity to the broadband connection have been borne by Clare County and the Clare County Enterprise Community. However, we know we will incur costs (currently indeterminable) associated with our internal (department-to-department; internal cabling, etc.) connectivity. We will apprise the Commission of the amount of these costs when we can accurately quantify them.

Recommendation. I recommend that the Clare City Commission approve the Intergovernmental Agreement by adoption of Resolution 2010-017 (*copy att'd*).

Attachments.

1. Clare County-RESA Contract.
2. Draft Intergovernmental Agreement.
3. Resolution 2010-017.

NETWORK LEASE AGREEMENT
Between
CLARE COUNTY AND CLARE-GLADWIN WIDE AREA NETWORK
CONSORTIUM

A. This agreement ("Agreement") is made between Clare-Gladwin Regional Education Service District ("CGRES D") as fiscal agent of the Clare-Gladwin Wide Area Network Consortium ("Consortium") and Clare County ("Clare County").

The Consortium and Clare County agree as follows:

1. Term of this Agreement. The term of this Agreement shall commence on the later date signed below by both parties and continue until June 30, 2010 and shall be automatically renewed for one-year periods from July 1st to June 30th of each year.

2. Lease of Network.

(a) The Consortium hereby leases to Clare County network usage, including and defined as:

(i) Network bandwidth on the frequency of 1470 for Harrison and Farwell and 1510 for Clare to fulfill the limited purposes set forth in subsection (b) and also subject to bandwidth limits set forth in subsection (c).

(ii) The right to house and collocate Clare County equipment, hardware and cabling and wiring (collectively "Clare County equipment").

(b) Network usage by Clare County shall be limited to the purpose of supplying data communications between Clare County, City of Clare, City of Harrison, and Village of Farwell.

(c) Bandwidth limitations shall mean that not more than the 1470 or 1510 frequencies of Network bandwidth capacity leased shall be used by Clare County to provide services to itself or other municipalities within Clare County and that Clare County's Network usage shall not diminish bandwidth performance of the Network for the benefit of Consortium members.

3. Rentals and Usage Fees; Related Clare County Warranty. Clare County shall pay the Consortium the following amounts of rental and usage fees, and shall incur costs upon the following terms:

(a) For each Agreement year, payable to CGRES D as fiscal agent for the Consortium, within 30 days following the beginning of the fiscal year, an amount of \$1120.00 will be charged for Network services between Harrison Middle School Main Distribution

strictly for maintenance of network

Frame (MDF), Clare High School MDF, and Farwell High School MDF and the Clare-Gladwin RESD Administration building. The rate for usage is \$35 per mile per year. The total amount of fiber being used to bridge all of the connections together is 32 miles.

- (b) The amount listed above will be prorated based on the date that each segment of the network is connected.

4. Clare County Removal of Equipment.

- (a) Clare County shall remove Clare County equipment from the Network premises upon expiration or termination of this Agreement within 60 days. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Network premises, including use of the Network premises by the Consortium or its assignees or lessees. If, however, Clare County requests permission not to remove all or a portion of the Clare County equipment, title to such equipment shall thereupon transfer to the Consortium, such equipment thereafter shall be the sole and entire property of the Consortium, and Clare County shall be relieved of its duty to otherwise remove such equipment.
- (b) Upon expiration or termination of this Agreement for any reason, the Consortium shall have the right to cause Clare County to remove all supporting attachments placed by Clare County, or elect not to cause Clare County to remove its supporting attachments.

5. Indemnification.

- (a) To the extent allowed by law, no Consortium member shall at any time be liable for injury or damage occurring to any person or property arising out of Clare County's Network usage or Clare County installation, maintenance, repair, use, operation or removal of Clare County equipment.
- (b) Clare County shall hold harmless and indemnify the Consortium, CGRESD or any other Consortium member, or any official or employee thereof, from and against, and shall at the request of affected Consortium members, undertake the defense of, any and all claims, losses, liability and damage and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against any Consortium member, its agents or employees, by reason of any act, omission, misrepresentation, or breach of warranty of Clare County, its personnel, employees, agents, contractors, subcontractors, or persons under control and direction of Clare County, which may arise out of or be in any way related to this Agreement or to Clare County obligations and responsibilities under this Agreement, including particularly, but not limited to, Clare County's failure to comply with any federal, state or local statute, ordinance or regulation, to the extent allowed by law.

6. Notices and Contacts.

- (a) All notices, request, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed to the following addresses:

Consortium: Clare-Gladwin Regional Education Service District
4041 East Mannsiding Road
Clare, Michigan 48617
Attention: Ken Chinavare, Technology Director
Emergency contact telephone number:
989-386-8627 (Work)
989-387-5588 (Cell)

Clare County: Clare County
225 West Main Street
P.O. Box 438
Harrison, Michigan 48625
Attention: Jim Neff
Emergency contact telephone number:
989-539-6402 (Work)
989-339-7792 (Cell)

- (b) Each party shall provide the other party with notice of a telephone number which will be answered by a party representative 24 hours a day for use only in the event of an emergency. Each party agrees to notify the other party if there is a change in the emergency telephone number.

7. Assignment and Successorship.

- (a) Clare County may not assign this Agreement without prior written approval of such assignment by the Consortium.
- (b) This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

8. Termination.

- (a) Either party may terminate this Agreement at anytime for any reason upon 180 days prior written notice. Payments are due up to date of termination.

9. Miscellaneous.

- (a) CGRESA and Clare County each represent that they have full right, power, and authority to execute this Agreement.

(b) Any modification of or amendment to this Agreement must be in writing and executed by both parties.

(c) This Agreement shall be construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, the undersigned each hereby acknowledge that s/he has read and fully understand the foregoing Agreement and, further, that each agrees to the terms and conditions contained herein.

Clare-Gladwin RESD, as Consortium Fiscal Agent

By: _____

Its: Superintendent

Date: _____

Clare County:

By: _____

Its: Administrator

Date: _____

**INTERGOVERNMENTAL CONTRACT ALLOWING
ACCESS TO CLARE COUNTY NETWORK**

Agreement made between the following:

Clare County, A Michigan Municipal Corporation (Clare County)

City of Clare, A Michigan Municipal Corporation (City of Clare)

City of Harrison, A Michigan Municipal Corporation (City of Harrison)

Village of Farwell, A Michigan Municipal Corporation (Village of Farwell)

Whereas, a network lease agreement between Clare County and Clare-Gladwin Wide Area Network Consortium has been entered into in order to make Network connection available to Clare County, City of Clare, City of Harrison and the Village of Farwell:

Whereas, it is the intention of the parties to share access to the network:

Whereas, it is the intention of the Network Lease agreement to provide network access to the libraries situated in Clare, Farwell and Harrison:

Whereas, the parties to this contract are entering into this intergovernmental contract pursuant to MCL 124.1, et sec:

Now, in consideration of the promises and obligations contained herein, the parties agree as follows:

1. The parties are aware of and will abide by the terms of the Network Lease Agreement between Clare County and Clare-Gladwin Wide Area Network Consortium (copy attached to this intergovernmental contract).
2. The parties to this contract agree that they will make the Network available to Internet Service Providers.
3. The parties agree that no fees may be charged for equipment, fiber usage and materials provided by the Clare County Enterprise Committee as assigned to each municipality.
4. The parties confirm and agree that the equipment and fiber optic material will be conveyed to each municipality for one dollar (\$1.00) actual consideration. A material list and bill of sale is attached hereto. There is no other responsibility for purchase of existing equipment and fiber optic material. This equipment is as is.
5. It is agreed that except for reimbursement of actual out of pocket expenses incurred by connections, no fees shall be charged to Internet Service Providers in regard to access to the Network. Expenses that may be charged shall be limited to reimbursement for actual out of pocket expenses concerning hookup to the system. All costs incurred by the Internet Service Providers for connecting to the system shall be their responsibility.

6. The parties to this agreement and any Internet Service Providers connecting to the Network pursuant to this agreement may not hinder or impair the existing connections and may not block access to the network.
7. The parties to this agreement may not re-assign ownership of the fiber optic equipment associated with this contract with or to any other entities. The parties to this agreement will be responsible for fiber maintenance and electronics maintenance of the equipment they own and control.
8. Each of the parties to this agreement shall receive and maintain a separate material list of equipment and fiber optics that is conveyed to that particular entity.
9. It is the intent of the parties to comply with all requirements of the Federal Communication Commission together with any other applicable Federal, State or Local requirements. In the event that any portion of this agreement is deemed to be not in compliance with governmental regulation, the parties agree to amend the agreement in order to conform.
10. This agreement is binding on the successors and assigns of the parties.

Agreement made effective the ____ day of _____, 2010.

Clare County
By:

City of Clare
By:

City of Harrison
By:

Village of Farwell
By:

RESOLUTION 2010-017

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING AN INTERGOVERNMENTAL BROADBAND AGREEMENT

WHEREAS, Clare County and the Clare-Gladwin RESD have entered into an agreement whereby broadband access is provided to the County by the RESD; and

WHEREAS, the Clare County Enterprise Community has offered to fund similar connectivity to the RESD system for the three governmental units in Clare County, namely the City of Clare, the Village of Farwell, and the City of Harrison; and

WHEREAS, a stipulation of said offer is that all affected governmental entities shall be required to enter into an Intergovernmental Agreement outlining the terms and conditions of said offer; and

WHEREAS, the City has reviewed said proposed Agreement and considers its terms and conditions to clearly serve the best interests of the City and potentially the best interests of the City's residents and business community.

NOW THEREFORE BE IT RESOLVED THAT the Clare City Commission hereby approves a proposed Intergovernmental Agreement between Clare County, the City of Clare, the Village of Farwell, and the City of Harrison outlining terms and conditions related to receiving and participating in broadband services for said entities.

The Resolution was introduced by Commissioner _____ supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 1st day of March 2010.

Diane Schmidt, City Clerk