

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager 
DATE: March 10, 2009
RE: Intergovernmental Agreement – Broadband Services

For the Agenda of March 15, 2010

Background. We presented (see copy of March 1st Agenda Report) a draft of the proposed intergovernmental agreement for broadband services between Clare County and the municipalities of Clare, Farwell, and Harrison to the City Commission at its March 1st meeting with what we presumed to be relative assurance that the agreement would be finalized prior to our meeting. Since it was not, the City Commission set it aside for consideration at the March 15th meeting.

We are again presenting the agreement to the City Commission and have again been assured that it will be ready for final consideration by all the governmental entities on March 15th. The matter is tentatively on the agenda for the March 15th agenda of the Harrison City Council, and Farwell has convened a special meeting for the primary purpose of considering this agreement and a related internet service provider agreement. However, all we can current present to the City Commission is a finalized version (*copy att'd*) of the draft agreement everyone believes will be final document. Also attached is a related document (a proposed bill of sale – *the copy prepared for Farwell is att'd*; Clare's will be similar except the equipment listing may be a bit different...the cost to us will be the same - \$1).

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

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

Alternatives.

1. Approve the contract and bill of sale.
2. Approve the contract with modification, stipulations, or changes.
3. Disapprove the proposed Agreement and bill of sale.
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 and bill of sale by adoption of Resolution 2010-017 (*copy att'd*).

Attachments.

1. March 1st Agenda Report.
2. Draft Intergovernmental Agreement.
3. Sample Bill of Sale.
4. Resolution 2010-017.

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.

CLARE COUNTY ENTERPRISE COMMUNITY

A grassroots revitalizing effort at work... the essence of collaboration

BILL OF SALE

THE GRANTOR, **Clare County Enterprise Community, an IRS 501(c)3 nonprofit organization,**
WHOSE ADDRESS IS **225 West Main Street, PO Box 678, Harrison, Michigan 48625**

ASSIGNS TO THE GRANTEE, **City of Clare,**
WHOSE ADDRESS IS **202 West Fifth Street, Clare, Michigan 48617.**

THE FOLLOWING DESCRIBED FIBER AND EQUIPMENT IN THE CITY OF CLARE, CLARE COUNTY,
MICHIGAN:

<u>Qty.</u>	<u>Description</u>	<u>Value</u>	<u>Total</u>
	Pole Design & Permit Fees for Fiber	\$ 1,575.00	\$39,752.93
	Fiber Project Installation Costs	\$28,718.00	
	Fiber Make Ready Costs	\$ 5,743.60	
2	1000 –BASE-CWDM Coarse Wavelength Division Multiplexing 1510 NM SFP Transceiver Modules	\$ 549.90	
2	1000-BASE-LX/LH SFP Transceiver Modules	\$ 179.90	
1	Cisco Catalyst 2960G-24TCSwitch	\$ 1,898.55	
2	HP Procurve Mini-GBIC LX – LC Transceiver Modules	\$ 380.00	
2	HP Procurve 2610-24 Ethernet Switches	\$ 707.98	

FOR THE FULL CONSIDERATION OF \$1.00 DOLLAR.

DATED: March 11, 2010

Rod Williams, President
Clare County Enterprise Community, Inc.

Ken Hibl, Manager
City of Clare

Fiber and Pole Map Attached

INTERGOVERNMENTAL CONTRACT ALLOWING ACCESS TO THE
CLARE COUNTY BROADBAND NETWORK INFRASTRUCTURE

Agreement made among the following:

Clare County, a Michigan Municipal corporation (Clare County)
City of Clare, a Michigan municipal corporation (City of Clare)
Pere Marquette District Library

WHEREAS, the purpose of this agreement is to make access to the network infrastructure available to Clare County, City of Clare, City of Harrison, Village of Farwell, Pere Marquette District Library, Harrison District Library, Surrey Township Public Library, Surrey Township,

WHEREAS, it is the intention of the parties to share access to the network infrastructure between one another, and

WHEREAS, it is the intention of the network lease agreement to provide access to the network infrastructure from the City of Clare to the Pere Marquette District Library,

WHEREAS, it is the intention of the network lease agreement to provide network service from the City of Harrison to the Harrison District Library and from the Village of Farwell to Surrey Township District Library and Surrey Township (based on proximity), and

WHEREAS, the parties to this contract are entering into an Intergovernmental Contract pursuant to MCL 124.1, *et seq.*

Article I – Provisions related to provision and maintenance of network infrastructure.

A. It is the intent of the parties that network infrastructure will be shared between all governmental units within Clare County and all public libraries, to the extent of system capacity.

B. It is also the intent of the parties that, in addition to the governmental and public users noted above, the infrastructure be utilized to foster development of new internet service providers that will foster and provide broadband capabilities to unserved or underserved areas of the county.

1. Pursuant to the network lease between Clare County and the Clare Gladwin Wide Area Network Consortium and the Clare Gladwin Regional Educational Service District, Clare County is obligated to pay network maintenance charges between

the Harrison Middle School main distribution frame and the other connected schools in the sum of \$1,120 per year. Those sums will be prorated between the City of Clare, the City of Harrison and the Village of Farwell in accordance with the number of miles of network dedicated to their use. Said charges will be billed to the municipalities noted above from the County on an annual basis without markup by the County. The sums due on the invoices will be remitted to the County within sixty (60) days of the date of invoice.

2. In order to provide and facilitate a single point of approval for attaining permission for a prospective internet service provider to utilize the system, the parties agree as follows:
 - a. All applications for use of the network infrastructure shall be made by any network service provider to the Clare/Gladwin RESD. The RESD shall evaluate the request and its feasibility. If the request is feasible and will not impair the other users on the network, the Clare/Gladwin RESD is authorized to give approval for use by internet service providers. This approval shall be provisionally made in writing by the Clare/Gladwin RESD. The written notice of approval by CGRESD will be mailed to each of the signatories to this agreement at the addresses in the section devoted to notice.
 - b. The City of Clare, the City of Harrison, the Village of Farwell shall have an opportunity to veto any internet service provider application or permission granted by the CGRESD. Any veto issued under the provision of this paragraph shall be on the basis that the application or permission granted by the CGRESD would if granted impair the usage of other network users or is not in the public interest. Said veto shall be issued if at all within forty-five (45) days of the receipt of the notice set forth in paragraph above. In the event the cities or village fail to act within forty-five (45) days of receiving the notice noted above, the application by the proposed ISP shall be deemed approved, and converted from provisional to final.
3. The City of Clare is authorized under the terms of this agreement to permit and grant access on similar terms to the Pere Marquette District Library. The City of Harrison is authorized under the terms of this agreement to permit and grant access on similar terms to the Harrison District Library. The Village of Farwell is authorized under the terms

of this agreement to permit and grant access on similar terms to Surrey Township and the Surrey Township Library.

- a. Apart from the access noted above, the City of Clare, City of Harrison and Village of Farwell shall not allow further connections to the infrastructure without agreement of all parties hereto.

C. Infrastructure costs.

1. Consumer Energy pole attachments. It is expected that exercise of this agreement will incur certain costs for pole attachment. At the time of this writing, the costs are \$15.41 per pole attachment per year, which sum is payable to Consumers Energy for use of its poles. At the installation of the infrastructure, the pole attachment costs are being paid by the Clare County Enterprise Community. However, as the agreement continues, the annual and continuing cost of pole usage shall be allocated as follows:
 - a. Normal annual pole attachment costs shall be borne by the City of Clare, the City of Harrison, the Village of Farwell within its boundaries or to bring service to its users.
 - b. In the event of unexpected additional costs the parties shall submit any potential claims to their respective insurance companies for recompense (i.e. in the event of destruction by severe weather). In the event that there are unexpected additional costs related to maintenance of the system upon Consumers Energy's poles, the cost of restoring the poles shall be evenly divided between all network infrastructure users whose traffic passes across the poles. For instance, should the destruction be within the City of Clare and the poles that lie between Pere Marquette District Library and the CGRESD connection, both the City of Clare and the Pere Marquette District Library would share in the costs thereof.
 - c. Should the City of Clare, the City of Harrison or the Village of Farwell find this approval process unacceptable for any reason, the municipality may opt out of the approval process set forth within these paragraphs on or after January 1, 2013, by delivering a writing to Clare County, the Clare Gladwin RESD and the other signatories to this agreement in accordance with the

notice section below. Said opt out or withdrawal from the approval process set forth above shall be effective ninety days after mailing in accordance with the notice provisions hereunder.

Article II – Provisions regarding bandwidth or services carried across the infrastructure.

The purpose of this section set forth is to delineate the terms under which the County will act as purchasing agent for bandwidth to be provided under this agreement.

A. Clare County shall act as the purchasing agent for bandwidth to be provided to all the signatories to this agreement. In addition, the three libraries noted above shall be permitted to and shall be counted within the shared bandwidth purchased for purposes of measuring or metering the bandwidth utilized. Each of the libraries may, however, enter into separate contracts or collective contracts between the libraries as the case may be, and the Internet Service Provider directly and not through the County. This provision is made in order that the libraries may take advantage of reimbursement subsidies available.

B. The County will purchase sufficient bandwidth that all users enjoy at least six megabyte service. The cost of the bandwidth shall be divided between the parties as set forth in Exhibit “A”.

C. The City of Clare, the City of Harrison, the Village of Farwell shall be obligated under this contract to purchase the bandwidth procured by the County for the periods noted in Exhibit “A” for each guaranteed pricing period. It is anticipated that the County will obligate itself under contract in order to obtain favorable prices and during that obligated period the cities shall remain obligated as well. However, upon expiration of the terms noted in Exhibit “A” for each guaranteed price unit, the cities may elect to terminate coverage under this article. The termination of services under this article shall not affect the remainder of the agreement which shall remain valid in all events. In the event that the broadband services contracted for the County are proposed to increase at a rate of greater than fifteen (15%) percent over any previous contract year, the cities may elect to terminate their participation in the bandwidth purchase upon sixty (60) days notice.

D. It is anticipated at this time that the bandwidth procured by the County from the ISP will be approximately 21 megs. If, however, the measured service exceeds 21 megs on a sustained basis as noted below, the excess usage will result in the pass-through of excess charges to the County by the ISP.

ARTICLE 3 – OTHER PROVISIONS

A. The parties are aware of and will abide by the terms of the Network Lease Agreement between Clare County and the Clare Gladwin Wide Area Network Consortium, Clare County hereby grants and permits the City of Clare, the City of Harrison and the Village of Farwell to have access to the network infrastructure constructed by and between Clare Gladwin Area Wide Network Consortium, the Clare Gladwin RESD and the Clare County Enterprise Community.

B. Changes Or Modification. No change or modification of this agreement shall be valid unless the same be in writing and signed by all the parties hereto.

C. State Law Governing Agreement. This Agreement shall be governed by the laws of the State of Michigan.

D. Choice Of & Consent To Forum. The parties hereby affirmatively waive and release any and all recourse to any and all courts federal and/or foreign courts; and irrevocably consent to submit all disputes arising under this Agreement to resolution within state courts in the State of Michigan. The parties consent to the exercise of personal jurisdiction by the courts of the State of Michigan.

E. Situs. The situs of this Agreement is Isabella County, State of Michigan because all obligations hereunder pertain to activities therein.

F. Venue. Venue shall be laid in Clare County, State of Michigan.

G. Severability. If any of the provisions of this document are rendered void by acts of the legislature or the courts, this agreement shall be construed as if the offending portion had been omitted.

H. Anti-Waiver. No provision of this Agreement, right or remedy hereunder may be waived except by in a writing signed by the party expressly waiving such right, remedy or obligation. No waiver shall be implied upon the conduct, enforcement, non-enforcement or course of performance of the parties.

I. Consent To Jurisdiction, Forum, And Venue. The parties consent to submit to the jurisdiction of the courts of the State of Michigan, said consent to be deemed irrevocable and a waiver of right of recourse (if any) to any Federal or foreign court, whether claim to Federal jurisdiction is laid upon diversity or subject matter (or both).

IN WITNESS WHEREOF, the parties have hereunto signed their names on the day and date set forth above.

WITNESSES

CLARE COUNTY

BY:
ITS:

WITNESSES

CITY OF CLARE

BY: PAT HUMPHREY
ITS: Mayor

WITNESSES

PERE MARQUETTE DISTRICT LIBRARY

BY: SHEILA BISSONNETTE
ITS: Library Director

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 15th day of March 2010.

Diane Schmidt, City Clerk