


## AGENDA REPORT

TO: Mayor & City Commission  
FROM: Ken Hibl, City Manager  
DATE: March 9, 2010  
RE: Water Tower Lease – ISP Management 

For the Agenda of March 15, 2010

---

Background. KASL.Net, a wireless company from Alma that purchased Great Lakes Computers in Clare approximately two years ago, is presently our Internet Service Provider (ISP). We have an expired contractual agreement with KASL.Net that allows them to place their primary antenna array for wireless services on our water tower in return for providing us internet services, which is one of our primary means of communication and data/information sharing between our City departments. We also pay KASL.Net for providing internet services for three of our City Commissioners (Commissioner Bill, Mayor Pro Tem Jean, and Mayor Pat). KASL.Net is being purchased by ISP Management of Alma. The City met with Mr. Jeff Hall, the President and owner of ISP Management, on February 23rd regarding the renewal of the expired contractual agreement with KASL.Net. As the City intends to change ISPs concurrent with our connectivity to broadband (the Clare County/RESO initiative we have discussed with the City Commission), we informed Mr. Hall that it is our desire to change our current relationship to a monthly payment schedule versus our current “barter” arrangement. ISP Management has agreed to our proposal, thus the City Commission is now asked to consider approving a proposed contractual (*copy att'd*) agreement, which has been reviewed by our City Attorney, stipulating the terms of the proposed agreement.

Issues & Questions Specified. Should the Clare City Commission approve a contractual agreement with ISP Management?

Alternatives.

1. Approve the proposed agreement with ISP Management.
2. Approve a modified version of the proposed agreement
3. Disapprove the agreement, thereby also invalidating our contractual agreement with Clare County in respect to broadband services.
4. Set the matter aside for consideration at a later-scheduled commission meeting.

Financial Impact. The proposed agreement will provide the City's Water Fund a minimum of \$1,200 in annual revenues (up to a maximum of \$1,800 annually when the four “trade” accounts are eliminated) for the term of the contract.

Recommendation. I recommend that the Clare City Commission approve the proposed agreement with ISP Management by adoption of Resolution 2010-020 (*copy att'd*).

Attachments.

1. Proposed Contractual Agreement.
2. Resolution 2010-020.

## LEASE AGREEMENT

THIS LEASE AGREEMENT entered into as of this \_\_\_\_\_ day of, \_\_\_\_\_ 2010, (Effective Date) by and between City of Clare, a Michigan municipal corporation, whose address is 202 West Fifth Street, Clare, Michigan 48617 (“Landlord”) and ISP Management Inc., (“Tenant”) whose address is 409 Gratiot Ave., Alma, Michigan 48801.

### BACKGROUND

- a. Landlord is the owner of a parcel of land located on West Fourth Street, Clare Michigan commonly referred to as the Clare Water Tower. (the “Premises”).

Tenant desires to lease space at the Clare Water Tower described below for the installation, operation and/or continuance of operations of certain Antenna Facilities previously owned or operated or installed by Great Lakes Computers and/or KASL Technologies, (previous Tenant) which may include directional Antenna(s), connecting cables and appurtenances (collectively, “Antenna Facilities”) for use in connection with its Internet business.

- b. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

### AGREEMENT

In consideration of their mutual covenants, the parties agree as follows:

1. **Leased Premises.** Landlord leases to Tenant and Tenant leases from Landlord, on the terms and subject to the conditions contained herein, a portion of the Premises, consisting of space on the top of the Clare Water Tower, for the Tenant’s Antenna Arrays and approximately 150 square foot of space nearby or at the base of the tower within the City’s discretion (some space is currently offered within the water tower for this purpose) as required for the construction of an electronics cabinet shelter building for a suitable service of electricity, telephone, fiber backbone connection and other utility facilities, cable runs for the Tenant’s Antenna Arrays, (collectively, “Antenna Facilities”) and an easement for the right of access thereto.
2. **Term.** The “Initial Term” of this Lease shall commence on the date in the first paragraph of this Lease (“Effective Date”) and end on December 31 of the fifth calendar year of the Lease. Subject to the terms and conditions of this Lease, Tenant shall have the right to extend this Lease for three (3) additional five (5) year renewal periods (“Renewal Term”) commencing on January 1 following the expiration date of the Initial Term or of any subsequent Renewal Term. This Lease shall be automatically renewed for each successive Renewal Term unless either Landlord or Tenant sends written notice of non-renewal to the other no later than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, such notice to be provided in accordance with Paragraph 21 of this Lease. Prior to the end of each five (5) year term either the Landlord or Tenant may request to reevaluate the amount of monthly rent. The monthly rent may be adjusted to a mutually agreeable amount not to exceed the mean rental for similar low power,

unlicensed wireless internet services in the rural Clare and Isabella County Michigan market in the previous year, based on a 120 foot antenna site.

3. **Rent.** Tenant shall compensate Landlord as monthly rent for the Premises:
  - a. One hundred dollars (\$100.00) per month for Base Rent.
  - b. Service – In – Kind
    1. High Speed Internet Access in Trade. The Tenant shall provide up to (4) four high speed trade accounts with up to 1.5 mbps of internet bandwidth each for the use of the Landlord. Tenant shall have sole discretion in regards to the delivery method of trade service.
    2. Cash in Lieu of High Speed Internet Access Trade Noted in Paragraph 1. Twelve dollars and fifty cents (\$12.50) per month for every non-used trade account commencing on the 1<sup>st</sup> day of the month following trade service cancellation.
    3. Network Consultation. The Tenant shall provide Landlord network consultation from time to time on a per need basis.
    4. Public IP addresses. Tenant shall provide Landlord up to (2) two Public IP addresses for Landlords use.
4. **Use of Premises.**
  - a. Tenant shall use the Premises for the installation, operation and maintenance of its Antenna Facilities for the transmission, reception and operation of an Internet System and uses incidental thereto and for no other uses.
  - b. Tenant agrees that all installations and constructions described in this Lease shall be completed promptly in a neat, workmanlike manner, consistent with good engineering practices and in compliance with all applicable codes and regulations. All costs of the installation, including, but not limited, the cost of extending of Landlord's electrical service to Tenant's equipment, shall be paid by the Tenant.
  - c. When the Tenant does any work on the Premises, it shall, at its own expense, remove any obstructions there from and restore the Premises to as good a condition as existed before the work was undertaken, unless otherwise directed by Landlord.
  - d. Tenant shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety) in connection with the use, operation, maintenance, construction and/or installation of the Antenna Facilities and/or the Premises. Landlord agree to cooperate reasonably with Tenant in obtaining, at Tenant's expense licenses and permits required for or substantially required by Tenant's use of the premises.
  - e. Landlord represents that to the best of its knowledge, the pre-existing installation did not damage the structural integrity of the water tower, did not cause, nor is in imminent danger of causing contamination, that there are no pending or outstanding

claims, orders, notices, judgments, penalties or encumbrances against previous Tenant in regards to use of the Premises.

- f. The Tenant shall remove its Antenna Facilities from the Premises upon termination of the Lease. 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 Premises, including use of the Premises by Landlord or any of Landlord's assignees or leases. Tenant shall restore the affected area of the Premises to the reasonable satisfaction of Landlord ordinary wear and tear accepted. Upon removal of the Antenna Facilities (or portions thereof) as provided above, all costs and expenses for the removal and restoration of the affected area shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof. If however, Tenant requests permission not to remove all or a portion of the improvements, and Landlord consents to such non-removal, title to the affected improvements shall thereupon transfer to Landlord and the same thereafter shall be the sole and entire property of Landlord and Tenant shall be relieved of its duty to otherwise remove same.
- g. Landlord reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. Landlord agrees, as a precondition to any such additional installation, to provide all reasonable and necessary assurances to the Tenant that such co-location will not disturb, disrupt or cause harm to Tenant's antenna or radiation equipment.

#### 5. **Installation of Equipment.**

- a. Tenant shall have the right, at its sole cost and expense, to install, operate and maintain Tenant's Antenna Facilities on the Premises, in accordance with good engineering practices and with all applicable FCC rules and regulations. All installation of equipment by Tenant shall be inspected and approved by the City's water tower engineer of record at the Tenant's expense.
- b. Tenant's installation of all such Antenna Facilities shall be done according to plans approved by Landlord, which approval shall not be arbitrarily withheld, conditioned or delayed. Any damage done to Premises during installation and/or during operations shall be repaired or replaced immediately at Tenant's expense and to Landlord's reasonable satisfaction.

6. **Equipment Upgrade.** Tenant may update or replace defective Antenna Facilities from time-to-time without prior approval of the Landlord. Any change in their general location on the Premises shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If the upgrade involves additional equipment installed on Premises, or a change in location on the Premises, Tenant shall submit to Landlord a proposal for any such replacement facilities and any supplemental materials as may be requested, for Landlord's evaluation and approval.

#### 7. **Maintenance.**

- a. Tenant shall, at its own expense, maintain its Antenna Facilities attached to the Premises in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of or other leasing of the Premises by Landlord and so as not to interfere with related facilities or other equipment of other tenants.
- b. Tenant shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the lease.
- c. Tenant shall keep the Premises free of Tenant owned debris or anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.

**8. Cooperation.**

- a. Landlord agrees to cooperate with Tenant in any efforts by Tenant to secure any governmental; permits necessary to use the Leased Premises as contemplated in this Lease, and to join in any application or other documents reasonably requested by Tenant within twenty-one (21) days of Tenant's written request.
- b. Each party shall provide to the other a telephone number which will be answered by a representative of such party twenty-four (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.

**9. Premises Access.** Tenant shall have reasonable, undelayed access to the Premises at all times. The Landlord shall have the right to have its designee, to accompany Tenant whenever Tenant accesses the Premises.

**10. Utilities.** Landlord agrees to cooperate with Tenant in its efforts to obtain electric and other utilities from any location provided by Landlord or the serving Utility. During the term of this Lease, Tenant may elect to either install its own electrical service to the Site or Utilize the Landlord's existing electrical system on a pro-rated cost basis established by the Landlord. If Tenant elects to install its own electrical service, all costs to maintain, repair, operate and replace the electric facilities, upgrades, extensions or tie-ins to the Site requested by Tenant shall be paid by Tenant. Tenant shall promptly repair at its expense any damage occasioned by said construction or maintenance on the Site.

**11. Taxes.** Tenant shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the Site during the term of this Lease.

**12. Interference.** Tenants installation, operation, and maintenance of its transmission facilities shall not damage or interfere in any way with the Landlord's water tower operations or related repair and maintenance activities or with such activities of other tenants of the water tower. Landlord, at all times during this Lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the premises in connection with the Tower operations as may be necessary,

including leasing parts of the water tower and surrounding ground space to others. Landlord will exercise reasonable care to prevent non-interference with its internet operations. If the Landlord receives a request for co-location on the water tower from any other third-party, it shall submit a proposal complete with all technical specifications reasonably requested by Tenant to review for non-interference; however, Landlord shall not be required to provide Tenant with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing technical specifications for its proposed transmission facility. Tenant shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by Tenant to the installation of antennas or transmission facilities pursuant to said proposal. After having received Tenant's objections pursuant to this paragraph, the City shall review Tenant's objections and may enter into the proposed additional use or lease within its sole discretion.

13. **Insurance.** Tenant shall maintain, at its sole cost during the entirety of this Lease, commercial general liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of the use of the Site by Tenant. Such insurance shall provide coverage in an amount not less than one million dollars for property damage. Tenant shall provide Landlord with a certificate of insurance evidencing such coverage which states the carrier has insured Tenant for all liabilities under this Lease and that it will not cancel or change any policy of insurance issued to Tenant except after thirty (30) days notice in writing to Landlord. Landlord shall be added to the policy as an additional insured. The fact that Tenant is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve Tenant from its obligations to Landlord under the provisions under other parts of this Lease for any deficiency amount of which Tenant is responsible to Landlord. Landlord shall insure the property and building of which the Site is part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage. All of the Landlord's and Tenant's policies of insurance shall include standard waiver of subrogation clause or endorsement. Landlord and Tenant each hereby waive all right of recovery against the other for losses covered by insurance.
14. **Tenants Property.** All Antenna Facilities installed by Tenant at the Site shall remain the property of Tenant and shall not be subject to any lien or encumbrance of Landlord or any third party acting pursuant to an agreement with Landlord.
15. **Water Tower Maintenance.** The Landlord shall maintain in good order and repair the water tower so that it will adequately support all of the Tenant's Antenna Facilities.
16. **Indemnity.** Tenant shall indemnify and hold the City harmless from any and all costs (including but not limited to, reasonable attorney's fees and court costs) and claims of liability or loss which arise out of the Tenant's use and/or occupancy of the Site including liability or loss arising from environmental contamination.
17. **Hazardous Substances.** Landlord represents and warrants that it has no knowledge, nor should it have any knowledge, of any substance, chemical or waste (collectively, "Substance") on the Site that is identified as hazardous, toxic or dangerous in any

applicable federal, state or local law or regulation. Tenant agrees not to introduce or use any Substance on the Site in violation of any applicable law.

18. **Assignment.** Tenant may not assign this Lease or sublet the Premises without prior written consent of the Landlord accept to an affiliate or successor of interest. The terms and conditions of this Lease shall extend and bind the heirs, personal representatives, successors and assigns of Landlord and Tenant.
19. **Lease Termination.** Events of Termination. Except as otherwise provided herein, this Lease may be terminated upon sixty (120) days written notice to the other party as follows:
  - a. by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (120) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);
  - b. by Tenant for cause if it is unable to obtain all certificates, permits, licenses or other approvals required from any governmental authority and/or any easements required from any third party to operate its Antenna Facilities;
  - c. by Tenant for cause if such approvals cancelled, expire, lapse, withdrawn or terminated;
  - d. by Tenant for cause if the Leased Premises is or becomes unacceptable for technological reasons including without limitation shadowing or interference under Tenant's Antenna Facilities, design or engineering specifications or the communications systems to which the Antenna Facilities belong;
  - e. by Tenant if Landlord fails to hold legal title to the property on which the Site is located;
  - f. by Tenant if Landlord does not have the authority to enter into this Lease;
  - g. by Landlord if Tenant becomes insolvent, an assignment is made for the benefit of creditors, or a voluntary or involuntary petition is filed concerning bankruptcy of Tenant;
  - h. by Landlord if any creditor of Tenant files any sort of lien or encumbrance involving City property; in that event the lien or encumbrance shall be deemed not to encumber any City property and shall encumber only Tenant's property;
  - i. by Landlord in the event of unforeseen circumstances without cause and without continuing liability on the part of the Tenant;
  - j. by Landlord if it determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted there under, after a public hearing before the Landlord's Council;

- k. by Landlord if Tenant ceases operations at the Site continuously for more than one year.
- 20. **Acceptance of Premises.** The Tenant has inspected the premises and accepts the premises as is.
- 21. **Destruction of Damage to the Leased Premises.** If the Premises, an easement, and/or the utility easements are damaged through no fault of Tenant so as to render all or any part of the Premises, the easements, and/or any utility easements substantially unusable for Tenant's intended use, rent shall abate while Landlord, at its expense, promptly restores the Premises, the easements, and/or any utility easements to a mutually agreeable condition. Provided, however, that in the event Landlord fails to repair the Premises, the easements, and/or any utility easements within a reasonable time (a maximum of thirty (30) days), Tenant shall have the right to terminate this Sublease in full or as it relates to the property so damaged without affecting its remedies permitted by law, equity, and/or this Lease.
- 22. **Notices.** All notices, request, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

**Landlord:** City of Clare  
202 W. Fifth St.  
Clare, MI 48617

**Tenant:** ISP Management Inc.  
409 Gratiot  
Alma, Michigan 48801

- 23. **Miscellaneous.**
  - a. Landlord and Tenant represent that each, respectfully, has full right, power, and authority to execute this Lease.
  - b. This Lease constitutes the entire agreement and understandings of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
  - c. This Lease shall be construed in accordance with the laws of the State of Michigan.
  - d. If any of the terms of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
  - e. The prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

- f. Tenant shall not place signage on the Site other than one sign for emergency purposes, should such sign be necessary.

This Lease was executed as of the date set forth above.

Landlord: PAT HUMPHREY  
Printed Name  
MAYOR/CITY OF CLARE  
Title

\_\_\_\_\_  
Signature

Tenant: \_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Signature

**RESOLUTION 2010-020**

**A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A CONTRACTUAL AGREEMENT WITH ISP MANAGEMENT.**

**WHEREAS**, City's contractual agreement with KASL.Net, a wireless Internet Service Provider (ISP) to lease water tower space to said company for its antenna array in return for providing the City fee-free wireless service has expired; and

**WHEREAS**, ISP Management, an Alma, Michigan based company, is in the process of purchasing KASL.Net and desires to continue a lease arrangement for water tower space with the City to allow said company to provide wireless internet services in the local area; and

**WHEREAS**, the City desires to continue said lease arrangement and has negotiated a mutually-beneficial lease agreement with ISP Management to allow said company to lease space on its water tower for placement of its antennas in return for a set fee; and

**WHEREAS**, the City Commission has reviewed said proposed contractual agreement and considers its terms and conditions to 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 contractual agreement between the City of Clare and ISP Management, the terms and conditions of said agreement as outlined therein.

**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 15<sup>th</sup> day of March 2010.

---

Diane Schmidt, City Clerk