

AGENDA REPORT

TO: Mayor Pat Humphrey and the Clare City Commission
FROM: Ken Hibl, City Manager
DATE: July 14, 2010
RE: Approval of Intergovernmental Contract Agreement: Access to the Clare County
Broadband Network Infrastructure

For the Agenda of July 19, 2010

Background. On March 1, 2010, we presented (*see copy of att'd March 1st Agenda Report*) the City Commission a draft agreement (*copy att'd*) with Clare County for broadband services. Approval of the agreement was set aside due to the lack of completion of review by the County's attorney. The final, attorney-approved agreement (*copy att'd*) has changed significantly in format but is not considered onerous or detrimental to the initial intent or objectives of joint broadband initiative. I ask that the City Commission review, consider, and approve the proposed contractual 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. To date (Jan 1, 2010 thru Jul 14, 2010) the cost to the City to install and bring broadband services into operation at City Hall and the Public Safety Building has been \$2,039.84. Annual costs are outlined in the agreement and are considered unequivocally reasonable; funds have been appropriated for the 2010/2011 budget to defray all anticipated system costs.

Recommendations. I recommend that the Clare City Commission approve the Intergovernmental Agreement by adoption of Resolution 2010-077 (*copy att'd*).

Attachments.

1. March 1st Agenda Report.
2. Initial Draft Intergovernmental Agreement.
3. Proposed Agreement.
4. Resolution 2010-077.

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.

**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:

**INTERGOVERNMENTAL CONTRACT ALLOWING ACCESS TO THE CLARE
COUNTY BROADBAND NETWORK INFRASTRUCTURE**

THIS AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the County of Clare, a Michigan public entity (hereinafter referred to as "Clare County"), the City of Clare, a Michigan municipal corporation (hereinafter referred to as "City of Clare"), and the 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, and Surrey Township, and

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, and

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. This Article shall not be construed to include the County purchasing or paying any cost for providing internet service over the network.

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 internet 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. 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 delivery of 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.
4. 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.

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 for all users subject to the agreement of all the users. At the time of the signing of this agreement, the cost of the bandwidth shall be divided equally between the County of Clare, City of Clare, the City of Harrison, and the Village of Farwell as follows:

<u>Service</u>	<u>Total Broadband Cost</u>	<u>Broadband Cost per Party</u>
If combined service 6 Mbps:	\$8,250.00 per year	\$2,062.50 per year
If combined service 16 Mbps:	\$24,750.00 per year	\$6,187.50 per year
If combined service 26 Mbps:	\$41,250.00 per year	\$10,312.50 per year
If combined service 36 Mbps:	\$99,000.00 per year	\$24,750.00 per year

The bandwidth purchased shall be purchased by agreement of all the parties depending upon the collective needs of the users. As more governmental units come online as users, the cost of the Broadband will be further divided equally such that each party pays their equivalent share of the broadband cost.

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 No. 1 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 No. 1 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. The County will bill each user of the service under the Broadband Contract as it is billed by the provider. For example, if the County is billed quarterly for the services, the County will invoice the users quarterly. All users will be entitled to proration for partial years at the entry or exit from this agreement.

E. It is anticipated at this time that the bandwidth procured by the County from the ISP will be approximately 6 megs, with each of the participating libraries (Pere Marquette District Library, Harrison District Library, and Surrey Township Library) also each procuring services subject to their own needs (at this time estimated to be at 5 megs). If, however, the measured service exceeds 21 megs on a sustained basis, the excess usage will result in changes to service and/or costs by the ISP as reflected in Subsection B of this Article and in Exhibit 1.

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, along with the additional parties as they become participants.

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 Clare 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 part of this Agreement is invalid, unconstitutional or beyond the authority of either party to enter into or carry out, or is rendered void by acts of the legislature or the courts, such part shall be deemed deleted and shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect. If the removal of such provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall terminate as of the date in which the provision was found invalid, unconstitutional or beyond the authority of the parties.

H. Anti-Waiver. No provision of this Agreement, right or remedy hereunder may be waived except by 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).

J. Liability.

1. To the extent allowed by law, the City of Clare and the Pere Marquette District Library shall not 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; and Clare County shall not at any time be liable for injury or damage occurring to any person or property arising out of any City of Clare and the Pere Marquette District Library's Network usage or any City of Clare and the Pere Marquette District Library's installation, maintenance, repair, use, operation or removal of equipment.
2. All liability to third parties, loss or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by the City of Clare and the Pere Marquette District Library in the performance of this Agreement shall be the responsibility of the City of Clare and the Pere Marquette District Library, and not the responsibility of the County, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the City of Clare and the Pere Marquette District Library, any subcontractor, anyone directly or indirectly employed by the City of Clare and the Pere Marquette District Library, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the City of Clare and the Pere Marquette District Library or their employees by statutes or court decisions.

3. All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as the provision of policy and procedural direction, to be carried out by the County in the performance of this Agreement shall be the responsibility of the County and not the responsibility of the City of Clare and the Pere Marquette District Library if the liability, loss, or damage is caused by, or arises out of, the action or failure to act on the part of any County employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the County or its employees as provided by statute or court decisions.
4. In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the County and the City of Clare and the Pere Marquette District Library in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by the County and the City of Clare and the Pere Marquette District Library in relation to each party's responsibilities under these joint activities provided that nothing herein shall be construed as a waiver of any governmental immunity by the County, the City of Clare and the Pere Marquette District Library or their employees, respectively, as provided by statute or court decisions.
5. Risk Management Systems. Each of the parties to this Agreement agrees to cooperate with the other parties in the constitution and operation of their respective risk management systems. Each party agrees that if an incident occurs and is reported as a part of its respective risk management system, and if the incident report involves either institution or its respective staff or agent, a copy of said incident report will be immediately delivered to the designated representative of the other party. It is agreed and understood that said incident reports will be held in the strictest of confidence and that each party agrees to cooperate fully with the other in the investigation and resolution of the incident or liability exposure revealed as a result of its respective risk management system.
6. Non-Beneficiary Contract. This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties hereto.
7. Nondiscrimination. In carrying out the terms to this Agreement, the parties hereto shall adhere to all Federal, State and local laws and regulations prohibiting discrimination. The parties hereto, as required by law, shall not discriminate against persons to receive services under this Agreement or against an employee or applicant for employment because of race, color, religion, national origin, age, sex, handicap, height, weight, marital status, political affiliation or beliefs, or citizenship. Breach of this covenant shall be regarded as a material breach of this Agreement.
8. Compliance with the Law. The parties to this Agreement shall perform all their respective duties and obligations hereunder in complete compliance with all

applicable Federal, State and local statutes, laws, ordinances, rules and regulations.

9. Meetings. Any of the participating public entities contracting to participate in this broadband network system may schedule meetings for the purpose of improving contracted operations and costs. A minimum of fifteen (15) days notification shall be given to the other parties to insure the attendance of any staff person(s) performing services under this Agreement whose presence is required.

K. Certification. The persons signing this Agreement on behalf of the parties hereto certify by said signatures that they are duly authorized to sign on behalf of said parties and that this Agreement has been authorized by said parties.

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 2010-077

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 19th day of July 2010.

Diane Schmidt, City Clerk