

AGENDA REPORT

TO: Mayor & City Commissioners
FROM: Ken Hibl, City Manager
DATE: April 28, 2016
RE: Property Lease Agreement – Lamar OCI North Corporation

For the Agenda of May 2, 2016

Background. The City has leased the property it owns adjacent to US-10/US-127 Right-of-Way (the property lies between Eberhart Road and US-10 just south of the Clare Rod & Gun Club and directly across the road from the Clare Municipal Airport – immediately west of the intersection of Washington Road and Eberhart Road) to sign/billboard companies since 1995. Most recently, the property has been leased to Lamar OCI North Corporation. That lease has expired.

Lamar has proposed a new five-year lease (*see copy of att'd correspondence and lease agreement*) for an annual lease payment of \$1,600 or 20% of sign revenue (whichever is greater) generated by Lamar at this sight.

The City Commission is asked to consider the proposed lease renewal offered by Lamar.

Issues & Questions Specified. Should the City Commission approve the lease agreement with Lamar OCI North Corporation?

Alternatives.

1. Approve the proposed lease agreement.
2. Approve a modified or amended version of the proposed lease agreement.
3. Discontinue the lease arrangement with Lamar OCI North Corporation.
4. Set aside decision regarding this matter to a later date.

Financial Impact. The renewed lease will continue to generate a minimum of \$1,600 annually in revenue for the City.

Recommendation. I recommend that the City Commission approve the proposed five-year lease agreement with Lamar OCI corporation by adoption of Resolution 2016-047 (*copy att'd*).

Attachments.

1. Correspondence & Proposed Lease Agreement.
2. Resolution 2016-047.



OCI North Corporation

This Instrument Prepared by:
James R. McIlwain
5551 Corporate Boulevard
Baton Rouge, Louisiana 70808

Co. - 155
Renewal
Lease # 205
Panel #^s 15353, 15354
15361, 15363

James R. McIlwain

SIGN LOCATION LEASE

THIS LEASE AGREEMENT, made this 18th day of March, 2016, by and between:

City of Clare

(hereinafter referred to as "Lessor") and **Lamar OCI North Corporation** (hereinafter referred to as "Lessee"), provides

WITNESSETH

"LESSOR hereby leases to LESSEE, it successors or assigns, as much of the hereinafter described lease premises as may be necessary for the construction, repair and relocation of an outdoor advertising structure ("sign"), including necessary structures, advertising devices, utility service, power poles, communications devices and connections, with the right of access to and egress from the sign by LESSEE'S employees, contractors, agents and vehicles and the right to survey, post, illuminate and maintain advertisements on the sign, and to modify the sign to have as many advertising faces, including changeable copy faces or electronic faces, as are allowed by local and state law, and to maintain telecommunications devices or other activities necessary or useful in LESSEE'S use of the sign. Any discrepancies or errors in the location and orientation of the sign are deemed waived by LESSOR upon LESSOR's acceptance of the first rental payment due after the construction of the sign.

The Premises are a portion of the property located in the County/Parish of Clare State of Michigan, more particularly described as:

11175 South Eberhart Road. East side of US-10 .2 miles & .5 miles northeast of US-127 interchange. Existing single pole stacked 12'x36' (2 faces) sign structure, and existing single pole "V" 12'x48' (2 faces) sign structure.

1. This Lease shall be for a term of five (5) years commencing on the first day of the calendar month following the date of completion of construction of the sign, or, if this is a renewal Lease, the term and payments begin June 1, 2015 ("commencement date").

LESSEE may renew this Lease, for an additional term, of equal length, on the same terms and conditions. Said renewal term shall automatically go into effect unless LESSEE shall give to LESSOR written notice of non-renewal at least sixty (60) days prior to the expiration of the original term.

2. LESSEE shall pay to LESSOR an annual rental of (See Addendum) Dollars, payable yearly in advance in equal installments of two (See Addendum) each, with the first installment due on the first day of the month following commencement. Rent shall be considered tendered upon due mailing or attempted hand delivery during reasonable business hours at the address designated by LESSOR, whether or not actually received by LESSOR. Should LESSEE fail to pay rent or perform any other obligation under this lease within thirty (30) days after such performance is due, LESSEE will be in default under the lease. In the event of such default, LESSOR must give LESSEE written notice by certified mail and allow LESSEE thirty (30) days thereafter to cure any default.

3. LESSOR agrees not to erect or allow any other off-premise advertising structure(s), other than LESSEE's, on property owned or controlled by LESSOR within two thousand (2000) feet of LESSEE's sign. LESSOR further agrees not to erect or allow any other obstruction of highway view or any vegetation that may obstruct the highway view of its sign. LESSEE is hereby authorized to remove any such other advertising structure, obstruction or vegetation at its option.

4. LESSEE may terminate this lease upon giving thirty (30) days written notice in the event that the sign becomes entirely or partially obstructed in any way or in LESSEE's opinion the location becomes economically or otherwise undesirable. If LESSEE is prevented from constructing or maintaining a sign at the premises by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, LESSEE may elect to terminate this lease. In the event of termination of this Lease prior to expiration, LESSOR will return to LESSEE any unearned rentals on a pro rata basis.

5. All structures, equipment and materials placed upon the premises by the LESSEE or its predecessor shall remain the property of LESSEE and may be removed by LESSEE at any time prior to or within a reasonable time after expiration of the term hereof or any renewal. At the termination of this lease, LESSEE agrees to restore the surface of the premises to its original condition. The LESSEE shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of LESSEE's sign, at the sole discretion of LESSEE. All such permits and any nonconforming rights pertaining to the premises shall be the property of LESSEE.

6. LESSOR represents that he is the owner or lessee under written lease of the premises and has the right to make this agreement and to grant LESSEE free access to the premises to perform all acts necessary to carry on LESSEE's business activities related to the sign. LESSOR is not aware of any unrecorded rights, servitudes, easements, subdivision or building restrictions, or agreements affecting the premises that prohibit the erection, posting, painting, illumination or maintenance of

the sign. **LESSOR** acknowledges that the terms and conditions of this agreement are confidential and proprietary and shall not be disclosed to any third-party without the written consent of **LESSEE**.

7. In the event of any change of ownership of the property herein leased, **LESSOR** agrees to notify **LESSEE** promptly of the name, address, and phone number of the new owner, and **LESSOR** further agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner at or before closing. In the event that **LESSEE** assigns this lease, assignee will be fully obligated under this Lease and **LESSEE** will no longer be bound by the lease. This lease is binding upon the personal representatives, heirs, executors, successors, and assigns of both **LESSEE** and **LESSOR**.

8. In the event of condemnation of the subject premises or any part thereof by proper authorities, or relocation of the highway, the **LESSOR** grants to the **LESSEE** the right to relocate its sign on **LESSOR**'s remaining property adjoining the condemned property or the relocated highway. Any condemnation award for **LESSEE**'s property shall accrue to **LESSEE**.

9. **LESSEE** agrees to indemnify **LESSOR** from all claims of injury and damages to **LESSOR** or third parties caused by the installation, operation, maintenance, or dismantling of **LESSEE**'s sign during the term of this lease. **LESSEE** further agrees to repair any damage to the premises or property at the premises resulting from the installation, operation, maintenance, or dismantling of the sign, less ordinary wear and tear.

10. **LESSOR** agrees to indemnify **LESSEE** from any and all damages, liability, costs and expenses, including attorney's fees, resulting from any inaccuracy in or nonfulfillment of any representation, warranty or obligation of **LESSOR** herein.

11. If **LESSOR** desires to sell or otherwise transfer any interest in the property upon which the sign is situated, **LESSOR** grants **LESSEE** an option to purchase a perpetual easement (servitude) encompassing the sign and the access, utility service and visibility rights set forth herein. **LESSEE** must elect to exercise this option within thirty (30) days after written notification of **LESSOR**'s desire to sell. **LESSEE**'s failure to exercise this option within said period shall be a waiver of this option. The price for such easement (servitude) shall be six (6) times the previous Lease year's annual rental paid by **LESSEE** pursuant to the terms hereof. Closing shall be within thirty (30) days of **LESSEE**'s exercise of this option.

12. Prior to **LESSEE** removing its sign, and for five (5) years after such removal, **LESSOR** grants **LESSEE** a first right of refusal to match any bona fide agreement of **LESSOR** with a third party for the purpose of permitting off-premise outdoor advertising on any portion of the leased premises. **LESSEE** has seven (7) days after **LESSOR** provides to **LESSEE** a copy of such agreement executed by such third party to match the terms of such agreement.

13. If required by **LESSEE**, **LESSOR** will execute and acknowledge a memorandum of Lease suitable for recordation.

14. This Lease is **NOT BINDING UNTIL ACCEPTED** by the General Manager of a Lamar Advertising Company. **LESSEE** and **LESSOR** are not bound by any stipulations or agreements not written in this lease

Lamar OCI North Corporation, LESSEE:

LESSOR:

BY: _____
Doug Elchuk
VICE-PRESIDENT/GENERAL MANAGER

BY: _____
For the City of Clare

DATE: / /

DATE: / /

Need
LESSOR'S TELEPHONE NUMBER

On File
LESSOR'S SOCIAL SECURITY NUMBER/
EMPLOYER IDENTIFICATION NUMBER

On File
Tax ID Parcel # (for land on which sign is located)

Address of LESSEE:

Address of LESSOR:

Lamar Advertising Company-155
10100 Thor Drive
Freeland, MI 48623

202 West Fifth Street
Clare, MI 48617

Witnesses (**LESSEE**)

Witnesses (**LESSOR**)



Addendum Lease 205

Yearly land rental payment shall be \$1600.00 per year or 20% of the advertising sales dollars whichever is greater on this sign structure.

The percent payment will be calculated after the last month of each lease year and the difference (if any) will be paid to the lessor retroactively.

LESSOR:

BY: _____
For the City of Clare

DATE: _____

DATE: _____

LESSEE:

BY: _____
Doug Elchuk
Vice-President/General Manager

DATE: _____

RESOLUTION 2016-047

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AGREEMENT WITH LAMAR OCI NORTH CORPORATION.

WHEREAS, the City of Clare has enjoyed a lease arrangement with Lamar OCI North Corporation since 2009 wherein said corporation has leased City-owned property upon which to construct and display billboard advertisements for an annual lease payment of \$1,600 annually or 20% of sign revenue generated by Lamar annually, whichever of said amounts is greater; and

WHEREAS, said lease agreement has expired; and

WHEREAS, said corporation has proposed a new five-year lease agreement with an annual lease payment of \$1,600 or 20% of sign revenue generated by Lamar; and

WHEREAS, the City Staff recommends continuance of the lease arrangement with said corporation; and

WHEREAS, the City Commission has reviewed the proposed lease agreement and the recommendation of the City Staff and concurs with said recommendation.

NOW THEREFORE BE IT RESOLVED THAT the Clare City Commission hereby approves a lease agreement with Lamar OCI North Corporation to lease City-owned property for the purposes of billboard advertisements for a period of five years, said agreement to be effective June 1, 2015 and terminate on May 31, 2020 unless mutually modified or amended.

BE IF FURTHER RESOLVED THAT the revenues paid to the City of Clare on annual basis shall be \$1,600 or 20% sign revenue generated by Lamar annually, whichever of said amounts is greater.

BE IF FURTHER RESOLVED THAT all other terms and conditions of said lease agreement shall be as stated within said agreement executed by both parties.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INSOFAR AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

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

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 2nd day of May 2016.

Diane Lyon, City Clerk