

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: September 15, 2016
RE: Proposal for Voice & Fiber Based Services

For the Agenda of September 19, 2016

Background. Our Waste Water Treatment Plant and the Clare Municipal Airport on Eberhart Road are both presently serviced by a wireless provider with whom the City has a symbiotic relationship. The servicing antenna array for this service is located on the City's water tower. Both locations (but particularly the Treat Plant) have been experiencing outages and connectivity issues for many months. Our wireless provider used his drone in attempt to discover the source of the problem and discovered that in order to improve the service, we would need to install a new antenna at our two serviced locations; we determined that the cost of installing new antenna systems of the height required would be cost-prohibitive and potentially be a hazard to local aviation at our airport. Concurrently our dedicated phone line service provided by AT&T has become increasingly costly. Consequently, we reached out to Charter Communications (see copy of att'd Charter Business Quotation) and found the costs of their service to be far more reasonable than those of AT&T's while concurrently providing us internet service. We were prepared to change our service provider for these two sites to Charter but then were informed they had erred in their initial quotation to us and informed us that there would be an additional cost of \$5,676.56 (*see copy of att'd Charter Services Agreement*).

Based on this new information from Charter, we solicited a quotation from Winn Telecom for these services. We received a proposal (*copy att'd*) for phone service and for fiber-based internet services. We have determined that the Winn Telecom proposal is a better package proposal than that offered by Charter and recommend approval of the proposed services agreement (*copy att'd*).

Issues & Questions Specified. Should the City Commission approve the proposed Winn Telecomm agreement for voice and fiber-based services?

Alternatives.

1. Approve the Winn Telecomm Agreement.
2. Approve the Charter proposal and Agreement..
3. Defer/delay/postpone decision regarding the date/time to a future scheduled Commission meeting.

Financial Impact. As outlined in the two proposals.

Recommendations. I recommend that the City Commission accept and approve the Winn Telecomm Agreement by adoption of Resolution 2016-109.

Attachments.

1. Initial Charter Proposal.
2. Charter Agreement.
3. Winn Telecomm Proposal.
4. Winn Telecomm Agreement.
5. Resolution 2016-109.

From: [Dale Clark](#)
To: [Steven Kingsbury](#)
Cc: [Ken Hibi](#)
Subject: FW: Spectrum BusinessQuote For Clare Wastewater Treatment Plant
Date: Friday, June 10, 2016 1:17:14 PM
Attachments: [image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)

Good afternoon Steve,

Here is a quote for 4 land lines and internet connection that quite a bit cheaper than AT&T. looks like I will be saving about 250.00 a month by switching. Is there some reason why we would stay with AT&T ?

Dale Clark
 Director of Water Treatment
 City of Clare
 Phone 989 386-2321
 Fax 989 386 2387
 Email dclark@cityofclare.org

From: Witt, Andrew [<mailto:Andrew.Witt@charter.com>]
Sent: Friday, June 10, 2016 12:17 PM
To: Dale Clark
Subject: RE: Spectrum BusinessQuote For Clare Wastewater Treatment Plant

Hello Dale,

Quote updated below. All of these quotes are including all is all of the fees and taxes.

BUNDLED SALE	Service	SELECT	Year 1	Year 2
	# of Phone Lines	4	▼ \$119.96	\$159.96
	Internet Speed	Plus	\$39.99	\$59.99
	Wireless	Yes	\$4.99	\$4.99
	Static Ips	-	\$0.00	\$0.00
	TV Package	-	\$0.00	\$0.00
	Business Variety TV	-	\$0.00	\$0.00
	# of Receivers	-	\$0.00	\$0.00
	# of DVR Service	-	\$0.00	\$0.00
	TOTAL			\$164.94
Standard Install Fee of \$99 for all installations				



Andy Witt | Inbound Sales | 855-232-3097 ext 71074
 3605 Hwy 52 N Bldg 2 | Rochester, MN 55901

From: Dale Clark [<mailto:DClark@cityofclare.org>]
Sent: Friday, June 10, 2016 7:26 AM
To: Witt, Andrew
Subject: RE: Spectrum BusinessQuote For Clare Wastewater Treatment Plant

Morning Andrew,

Could you please price a total of 4 lines and include all additional fees and service charges. Thank you

Dale Clark
 Director of Water Treatment
 City of Clare
 Phone 989 386-2321
 Fax 989 386 2387
 Email dclark@cityofclare.org

From: Witt, Andrew [<mailto:Andrew.Witt@charter.com>]
Sent: Thursday, June 09, 2016 3:27 PM
To: Dale Clark
Subject: RE: Spectrum BusinessQuote For Clare Wastewater Treatment Plant

Sure Thing,

Let me know if you have any other questions or want to move forward.

BUNDLED SALE	Service	SELECT	Year 1	Year 2
	# of Phone Lines	3	\$89.97	\$119.97
	Internet Speed	Plus	\$39.99	\$59.99
	Wireless	Yes	\$4.99	\$4.99
	Static Ips	No Static	\$0.00	\$0.00
	TV Package	No TV	\$0.00	\$0.00
	Business Variety TV	-	\$0.00	\$0.00
	# of Receivers	0	\$0.00	\$0.00
	# of DVR Service	-	\$0.00	\$0.00
	TOTAL			\$134.95

Standard Install Fee of \$99 for all installations



Andy Witt | Inbound Sales | 855-232-3097 ext 71074
3605 Hwy 52 N Bldg 2 | Rochester, MN 55901

From: Dale Clark [<mailto:DClark@cityofclare.org>]
Sent: Thursday, June 09, 2016 2:03 PM
To: Witt, Andrew
Subject: RE: Spectrum BusinessQuote For Clare Wastewater Treatment Plant

Andrew,

Could you revise this quote to also add a fax line ?

Dale Clark
Director of Water Treatment
City of Clare
Phone 989 386-2321
Fax 989 386 2387
Email dclark@cityofclare.org

From: Witt, Andrew [<mailto:Andrew.Witt@charter.com>]
Sent: Monday, June 06, 2016 11:09 AM
To: Dale Clark
Subject: Spectrum BusinessQuote For Clare Wastewater Treatment Plant

Hello,

Below is a screen shot of the quotes we created for your business located at 11175 S EBERHART AVE CLARE, MI 48617. If this is something you want to move forward with or if you have any questions let me know and we can get the ball rolling on a preinstall site survey to determine what will be needed to get these services installed at your location.

Internet and phone

BUNDLED SALE	Service	SELECT	Year 1	Year 2
	# of Phone Lines	2	\$59.98	\$79.98
	Internet Speed	Plus	\$39.99	\$59.99
	Wireless	Yes	\$4.99	\$4.99
	Static Ips	-	\$0.00	\$0.00
	TV Package	No TV	\$0.00	\$0.00
	Business Variety TV	No	\$0.00	\$0.00
	# of Receivers	0	\$0.00	\$0.00
	# of DVR Service	No DVR	\$0.00	\$0.00
TOTAL			\$104.96	\$144.96

Standard Install Fee of \$99 for all installations

Internet only

UNBUNDLED SALE	Service	SELECT	Year 1	Year 2
	# of Phone Lines	-	\$0.00	\$0.00
	Internet Speed	Plus	\$59.99	\$79.99
	Wireless	Yes	\$4.99	\$4.99
	Static Ips	-	\$0.00	\$0.00
	TV Package	-	\$0.00	\$0.00
	Variety TV	-	\$0.00	\$0.00
	# of Receivers	-	\$0.00	\$0.00
	# of DVRs	-	\$0.00	\$0.00
TOTAL			\$64.98	\$84.98

Standard Install Fee of \$99 for all installations



Andy Witt | Inbound Sales | 855-232-3097 ext 71074

3605 Hwy 52 N Bldg 2 | Rochester, MN 55901

NON-STANDARD INSTALLATION PAYMENT AGREEMENT

Date: 08/11/2016
 Customer Name: **CLARE WATER TREATMENT**
 Customer Address: 11175 S EBERHART AVE
 City, State, Zip Code: CLARE, MI, 48617
 Location Number: 48617961110090

Dear Dale,

Thank you for your interest in becoming a Spectrum Business customer. We have completed a site survey of your address and have determined that your location is accessible only by performing a non-standard installation. Our company’s policy regarding non-standard installation is to offer you the opportunity to pay for a portion of the non-standard installation costs so that we may service your business. Spectrum Business will absorb the first \$5,000 in costs for the non-standard installation.

The estimated cost for the non-standard installation of Spectrum Business Services to your location is \$5384.83

Summary of Spectrum Business Non-Standard Installation Costs

Total Non-Standard Installation Costs:	\$Enter Total Cost of Construction
Spectrum Business pays for the first \$5,000	-\$5,000.00
Total Customer Pays:	\$5676.56

If you wish to proceed with the installation of Spectrum Business Services, please acknowledge your agreement by signing below, as directed. Once Spectrum Business receives this Agreement signed by you, the non-standard installation will be scheduled. In addition, you will see a “Construction Fee” line item on your first bill from Spectrum Business as shown in the above table “Total Customer Pays.”

You understand and agree that Spectrum Business shall own the plant installed and it shall constitute the personal property of Spectrum Business of which Spectrum Business shall exclusive and sole right to control and use such plant.

Please return a signed copy of this letter by selecting one (1) of the following methods:

- U.S. Postal Service**
 Spectrum Business
 Attention: Sales Support Team
 3605 Hwy 52 North, Building 002
 Rochester, MN 55901

2. **Fax:**
Spectrum Business
Attention: Sales Support Team
(877) 813-2307

3. **Email:**
Spectrum Business Sales Support Team
dlspectrumbusinesssalessupport@charter.com

If Spectrum Business does not receive this letter of acceptance within 10 business days, Spectrum Business, will consider this a rejection of this offer for Spectrum Business installation.

If you have any questions or concerns, please call Sales Support at 1-855-558-6793

Sincerely,

Spectrum Business

Customer Acknowledgement: _____ Date: _____

Spectrum Business™ is the brand name for the commercial services of Charter Communications



City of Clare

9/12/2016

Prepared For

Steve Kingsbury

skingsbury@cityofclare.org

Clare, MI 48617

Created By

Andrew Kreger

Sales Executive

Winn Telecom

Office: (989) 953-9838

Cell: (517) 745-3140

Fax: (989) 317-9838

Email: aKreger@winncommunications.net

<http://www.winncommunications.net>

SERVICE ORDER

The services specified herein are pursuant to the terms and conditions of the Master Service Agreement ("Agreement") between Winn Telephone dba Winn Telecom, a Michigan corporation with its principal office located at 402 N Mission St, Mount Pleasant, MI 48858 ("Provider") and **[City of Clare]** on behalf of itself and its affiliates ("Customer"). If this is marked as a "Change" order then this Service Order supercedes and replaces any and all other Service Orders, either oral or written, regarding the specified Service Locations.

Service Type

Voice Services & Fiber based Carrier Ethernet

Pricing

Voice Services:

Enterprise Level Voice services at 7 locations to match existing service (DPW, Waste Water Treatment Plant, Public Satey Building, Railroad Depot, Airport, Water Plant, City Hall)

*Does not include taxes and fees

**Any additional phone lines at any of the listed locations will be priced at \$49.95 per line

\$1,878.00

Additional Services:

60x6 Internet at Airport \$59.95

20M X20m VLAN from City Hall to Airport- \$160

20M X20m VLAN from City Hall to Waste Water Treatment Plant- \$160

One Time Construction Cost- \$6,400

Conclusion

This proposal is valid for 30 days. Once signed this proposal becomes the contract for service(s). Fax a signed copy to (989) 317-9814 or send a scanned copy to sales@winncommunications.net

Signed By:

Authorized Signature

(Print Name)

Title

City of Clare

Company Name

Date

Signed By:

Authorized Signature

Andrew Kreger

(Print Name)

Sales Executive

Title

Winn Telecom

Company Name

9/12/2016

Date

REMARKS

State and Federal Tax are not included in the contract.

MRC -

Monthly

Recurring

Charges

NRC - Non-recurring Charges

Terms of Service

Pursuant to the MASTER SERVICE AGREEMENT between the Parties dated September 12th, 2015.

Service Commitment Period

All standard business services have a 5-year (60 Month) agreement.



MASTER SERVICES AGREEMENT

This Master Services Agreement, along with any attached addenda, (the "Agreement") is made effective this ___ day of _____, 201_ (the "Effective Date"), by and between **Winn Telephone dba Winn Telecom**, a Michigan corporation with its principal office located at 402 N. Mission St, Mount Pleasant, MI 48858 ("**Provider**"), and **The City of Clare**, a Michigan company with its principal office located at 202 W. Fifth St. Clare, MI 48617 on behalf of itself and its affiliates, or DBA's ("**Customer**"). Customer desires to purchase, and Provider desires to supply communications services ("**Services**") under the following terms and conditions.

1. **TERM.** The term of this Agreement shall be for three (3) years commencing on the Effective Date (the "Term"), and shall automatically extend thereafter for monthly term(s) (each a "Renewal Term") until this Agreement is terminated by either party by written notice given to the other party at least thirty (30) days prior to the expiration of the Term or Renewal Term. Notwithstanding the foregoing, the terms and conditions of this Agreement shall continue to apply with respect to any Service or Service Order (as defined below) which, by its terms, continues in effect after the date of termination of this Agreement; provided, Provider shall not accept any new Service Orders from Customer after a notice of termination of this Agreement has been given by either party, or while any uncured event of default by Customer exists. Upon the expiration of the term stated on any Service Order ("Service Term"), such Service Order shall automatically renew upon the same terms and conditions applicable during the Service Term for successive additional terms of one (1) month (each a "Renewal Term"), until the Service Order is terminated by either party by written notice given to the other party not less than thirty (30) days prior to the expiration of the Service Term or Renewal Term of the Service Order.

2. **SERVICE ORDER PROCEDURES.** From time to time during the Term or any Renewal Term of this Agreement, Customer may submit to Provider Service Orders requesting the provision of Services described in this Agreement (including any addendum or attachment), identifying the Service and a requested service start date (a "Service Order"). Within three (3) business days of Provider's receipt of an accurate Service Order, Provider shall (i) accept the Service Order as submitted; (ii) reject the Service Order; or (iii) notify Customer of the earliest date following Customer's requested service start date that the Service Order can be accepted and fulfilled by Provider. Provider will comply with the performance specifications and service level commitments outlined within Service Schedule A, incorporated herein by this reference. Customer may submit revised Service Orders for any Service Order not accepted by Provider. Customer may cancel a Service Order prior to the receipt of a firm order commitment ("FOC") date from Provider without liability or charges by providing written notice of such cancellation to Provider. If Customer cancels a Service Order between the FOC date and the Service Commencement Date (as defined below), Customer will be required to pay a charge equal to (a) any reasonable third party cancellation/termination charges for an Off-Net Service, and (b) Provider's actual reasonable out of pocket costs (if any) incurred for constructing facilities. Customer's obligation for payment of Services and the term of each Service Order shall commence (the "Service Commencement Date") three (3) business days after Provider has notified Customer, via e-mail, facsimile or other means, that the ordered Services are available for testing (or retesting, if applicable), unless within that three-business-day period, Customer notifies Provider that the Service provided does not meet the performance specifications agreed upon by the parties within the three business days of the Service Commencement Date. In the event the Service fails to meet the performance specifications Provider will use reasonable efforts to remedy as quickly as possible and when remedied will again notify Customer that the Services are available for testing and the process shall repeat. Service pricing may be provided on an individual case basis ("ICB") or also provided in accordance with applicable tariffs, rate schedules or price lists (collectively, "Price Lists") for the applicable jurisdictions in which Services are provided, and those Price Lists are incorporated into this Agreement by reference. In the event of any conflict between the provisions of this Agreement, any schedule or addendum associated with the selected Services, any Service Order, any Price Lists, online agreement or ordering



system, the order of precedence shall be the same as the order of presentation in this sentence. The Service Order will apply with respect only to Service specific requirements, including but not limited to the Service Term, pricing, service locations, and special instructions or specifications directly related to the Service. In the event the Service Order contains general terms and conditions not directly related to a specific Service, then those terms and conditions will only apply to the extent they are expressly identified as either: a supplement to, amendment of, or replacement of, a corresponding provision of the Master Services Agreement.

3. **CHARGES AND PAYMENT.** Customer agrees to make all undisputed payments for Services within twenty-one (21) days after Customer's receipt of the Provider's invoice (the "Due Date"). All applicable federal, state or local taxes, and all sales, commercial, privilege, surcharges or other similar taxes, (except for taxes for Provider's real estate, property, payroll, net profits or income, gross receipts, franchise, or "cost recovery" fees), whether charged to or against Provider or Customer shall be payable by Customer. Customer agrees to pay all government mandated charges, provided such taxes, fees, charges, or surcharges are of general applicability to the communications industry and Provider is required to pay such taxes, fees, charges, or surcharges directly to government or quasi-governmental agencies. All such taxes, fees, charges and surcharges shall be stated separately on Customer's invoices unless otherwise prohibited by such agencies. Notwithstanding, when applicable, Customer shall supply Provider a valid and properly executed tax exemption or resale certificate(s) and/or statement of indemnification for any taxes or charges. Provider shall not bill Customer for exempted taxes or charges. Monthly recurring and all one-time charges shall be invoiced thirty (30) days in advance of service and all usage charges shall be invoiced in arrears. Monthly bill cycle being on the 15th of each month. If any Customer payment is not received by the Due Date, Provider may impose a late payment charge of the lesser of one percent (1%) per month or the highest legally permissible.

4. **BILLING DISPUTES.** In the event Customer disputes any charges, Customer shall pay all undisputed charges and submit written notice of the dispute (with supporting documentation of the reason for the dispute). Provider shall respond to Customer, in writing, within thirty (30) days of receiving a dispute notice from Customer. Any dispute resolved in favor of Customer shall be credited to Customer's account on the next available billing period. Any disputed amounts which are deemed to be correct as billed and in compliance with this Agreement shall be due and payable by Customer, upon notification by Provider with the next regularly due Customer payment. Pertaining to Services provided under this Agreement, the Customer will not be obligated to consider any invoice or notice of billing discrepancies from the Provider that are received after one hundred and twenty (120) days following the end of the billing cycle that such Services were provided. Also in the same respect, Provider may at their discretion but is not required to consider disputes that are received after one hundred and twenty (120) days following the end of the billing cycle that such Services were provided.

5. **DISPUTE RESOLUTION.** Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement shall first be resolved through good faith negotiation to arrive at a mutually agreeable resolution.

The aggrieved party shall first provide written notice of the dispute to the other party and seek resolution prior to taking any action before any court or regulator, or before issuing or authorizing any public statement about the nature of the dispute to any third party. If necessary, such discussions shall be escalated to appointed counsel or senior executives who have authority to settle such disputes for each party. If after negotiating in good faith for a period of sixty (60) calendar days, or any agreed further period, the parties are unable to resolve the dispute, then the parties may seek resolution by exercising any rights or remedies available to either party at law or in equity.

6. **REPRESENTATIONS AND WARRANTIES OF THE PARTIES.** Provider represents and warrants to Customer that it has the right to provide the Services specified herein, is duly organized, and validly exists and in



good standing under the laws of its origin with the ability to enter into and perform its obligations under this Agreement in accordance with its terms.

The Customer represents and warrants to the Provider that it is duly organized, and validly exists and in good standing under the laws of its origin with the ability to enter into and perform its obligations under this Agreement in accordance with its terms.

Each party agrees that it will perform its obligations hereunder as an independent contractor and not as the agent, employee, or servant of the other party and that no joint venture or partnership is implied.

The warranties expressly set forth in this Agreement constitute the only warranties with respect to this Agreement and the Services provided hereunder. Such warranties are in lieu of all other warranties, written or oral, statutory or contractual, express or implied, including without limitation, the warranty of merchantability and fitness for a particular use.

7. **DEFAULT.** A "Default" shall occur if: (a) Customer fails to make any payment by its Due Date and such failure remains uncorrected fifteen (15) days after written notice from Provider, (b) either party fails to perform or observe any material term or obligation, other than making payment, contained in this Agreement, and any such failure remains uncorrected for thirty (30) calendar days after receipt of a written notice from the non-defaulting party informing the defaulting party of such failure; or (c) Upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; (d) Upon the insolvency, or the making of an assignment for the benefit of creditors, or the institution of any reorganization arrangement or other readjustment of debt plan of or by either party not involving the United States Bankruptcy Code; or (e) Upon the appointment of a receiver for all or substantially all of a party's assets. The parties expressly agree that the failure of any particular circuit or any number of circuits shall not constitute a material breach of this Agreement.

8. **REMEDIES.** Upon Default, the non-defaulting party may, in addition to any other rights it has according to law; (a) suspend its performance under this Agreement so long as such default remains uncured; or (b) terminate this Agreement without liability or further obligation immediately upon written notice of termination to the defaulting party. If Customer is the defaulting party, or in the event Customer terminates a Service prior to the end of the initial Service Term, Provider may collect from Customer (a) charges for all such terminated Services provided by Provider to Customer up to the date of termination, and (b) all charges specified herein (or as specified in the applicable Service Order) through the remainder of each of the Services for the remainder of the initial Service Term or any Renewal Term which shall be calculated based upon the following method (the "Termination Charges"). Customer shall pay Provider fifty percent (50%) of the monthly recurring charges for each month left for the balance of the months remaining in the Service Term as specified on the applicable Service Order(s). Customer agrees that the damages for early termination would be difficult to determine and that the Termination Charges set forth herein constitute liquidated damages and are not intended as a penalty. In the event Provider is the defaulting party, Customer shall not be obligated to pay any Termination Charges if it exercises its right to terminate a Service(s) or the Agreement as a result of a Default by Provider. In such an event, Customer will only be responsible for charges for Services received up to the date of termination.

9. **MAINTENANCE.** Provider may from time to time suspend Service for routine maintenance or rearrangement. Provider will give Customer a minimum of ten (10) business days advance notification (via phone and/or email) of such maintenance and Provider shall use commercially reasonable efforts to ensure that such maintenance does not interrupt service to Customer or Customer's customers (normally between the hours of 12:00 AM to 6:00 AM local time). Provider should provide email notifications for any suspension or maintenance of a Service to Customer at _____ Provider may amend or modify Services provided such modifications do not have a material adverse affect, interrupt, or increase the cost of such Services with thirty (30) days written notice to



Customer. In the event of a need for emergency repairs as much notice as practicable will be given. Each party shall provide the other party (and revise as necessary) a list of contacts for maintenance and escalation purposes.

Provider will maintain a point-of-contact for Customer to report a degradation or interruption in Service ("Service Outage") to Provider twenty-four (24) hours a day, seven (7) days a week. When Customer believes that a Service Outage has occurred, Customer must contact Provider's Network Operations Center ("NOC") at 1-866-820-3266 to identify the Service degradation and initiate an investigation of the cause of the Service Outage ("Trouble Ticket"). If Provider becomes aware of a Service degradation, Provider will contact Customer to determine whether a Trouble Ticket should be initiated. Once the Trouble Ticket has been opened, the appropriate Provider's personnel will initiate diagnostic testing and isolation activities to determine the source and severity of the degradation in Service. If there is a Service Outage, Provider and Customer will cooperate to restore Service. A Service Outage ends when the affected Service is fully operative. In the event of a Service failure or outage, Provider agrees to have repair personnel working to restore the affected Services within four (4) hours after receiving notification of the outage or failure by the Customer, or when first noticed by the Provider.

10. INDEMNIFICATION AND LIMITATION OF LIABILITY. Each party ("Indemnitor") shall indemnify, defend and hold the other party harmless from and against any and all loss, liability, damage, and expense (including reasonable attorneys' fees) for damages to any property, or injury to or death of any person to the extent arising out of or caused by any negligent act or omission, or willful misconduct, of Indemnitor.

Provider shall defend, indemnify and hold Customer harmless from and against any and all claims, actions, damages, liabilities, payments made in settlement, costs and expenses, including reasonable attorneys' fees and expenses, arising out of or in connection with any claim of infringement of any patent, trade secret, copyright, trade name, trademark, service mark or similar proprietary right of a third party related to the Services provided by Provider ("Infringement Claim"). Notwithstanding the foregoing, Provider shall have no liability for any Infringement Claim based on (x) the use of the Services in a manner not contemplated or otherwise not in accordance with this Agreement and any documentation related to the Services; (y) any combination of the Service or essential component thereof with other elements or the modification of a Service by anyone other than Provider where, but for such combination or modification, no Infringement Claim would exist. In the event of an Infringement Claim, Customer shall promptly notify Provider in writing of such claim, and the Provider shall control the response thereto and the defense thereof, including, without limitation, any agreement relating to the settlement thereof. However, Customer, at its own expense, shall have the right to participate in the defense of any such suit or proceeding through counsel of its choosing. If an injunction or order is obtained against Customer's continued use of the Services due to the Infringement Claim, Provider shall, at its expense, either (i) procure for Customer the right to continue using the infringing Services or equipment, or (ii) replace or modify the infringing Services so that they become non-infringing provided that any such modification or replacement does not adversely affect the functional performance or Customer's use of the Services. If satisfaction of items (i) and/or (ii) are not commercially feasible or impractical for Provider, Provider shall have the right to terminate the affected Service and refund to Customer all amounts prepaid by Customer for the affected Service that Customer did not receive. This provision shall survive the termination or expiration of this Agreement.

EXCEPT AS SET FORTH BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT OR ANY OTHER BUSINESS LOSS INCLUDING GOODWILL, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE PERFORMANCE, EQUIPMENT OR SERVICES, DOWNTIME COSTS AND CLAIMS OF CUSTOMER FOR SUCH DAMAGES, ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY SERVICE ORDER AND REGARDLESS OF WHETHER THE OTHER PARTY WAS ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION AND CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICE ORDER



INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OR ANY OTHER TORT. CUSTOMER ACKNOWLEDGES AND ACCEPTS THE REASONABLENESS OF THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY. FOR PURPOSES OF THIS AGREEMENT, ALL REFERENCES TO EACH PARTY SHALL INCLUDE ITS AFFILIATES, AGENTS, CONTRACTORS, SUPPLIERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIMITATIONS SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY IN THE EVENT OF (I) BREACHES OF CONFIDENTIALITY, (II) INTELLECTUAL PROPERTY INFRINGEMENT, (III) PERSONAL INJURY OR PROPERTY DAMAGE OR (IV) ANY LOSS OR DAMAGE TO THE EXTENT ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The provisions of this Section shall survive the termination of Services and the term of this Agreement.

11. **FORCE MAJEURE.** In the event that either party's performance under this Agreement is delayed, prevented, obstructed, or inhibited because of any act of God, governmental action or any other cause beyond such party's reasonable control ("Force Majeure Event"), such party will not be in default of this Agreement; provided, however, such party shall exercise commercially reasonable efforts to perform in spite of the Force Majeure Event. In the event of a Force Majeure Event, which materially impacts performance for thirty (30) days or more ("Extended Delay"), either party may terminate the affected Services without penalty or further obligation upon written notice to the other party. During a Force Majeure Event, all payment obligations shall abate with respect to the impacted Services.

12. **COMPLIANCE WITH LAW AND GOVERNING AUTHORITY.** This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders, and other actions of governmental agencies. It is agreed that each party shall obtain, file, and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by any governmental body or agency having jurisdiction over its business.

It is agreed that this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

13. **TARIFF APPLICATION.** Both Parties acknowledge that the Services provided may be subject, in whole or in part, to one or more provisions of state or federal tariffs. The provisions of such tariffs are incorporated herein by reference to the extent not inconsistent with the terms of this Agreement. In the event of any conflict between any provision in this Agreement and any such tariff, it is understood that the provision of this Agreement will control; provided however the Services and this Agreement, in its entirety, are subject to such modifications as may be required by any regulatory agency in the exercise of its lawful jurisdiction.

14. **CHANGE IN LAW.** If any government statute or regulation or order by a court of law or regulatory authority directly (a) prohibits performance under this Agreement, (b) makes such performance illegal, impossible or impractical, or (c) effects a change which has a material adverse impact upon either party's performance of its obligations under this Agreement, then the parties will use all commercially reasonable efforts, to either (1) attempt to have such conflicting statute or regulation or order by a court of law or regulatory authority revised or amended or (2) revise the Agreement so that (a) performance under the Agreement is no longer prohibited, illegal, impossible or is no longer impacted in a material adverse fashion, and (b) the Agreement is revised in a manner that preserves, to the maximum extent possible, the respective original intent of the parties. Each party will endeavor to provide reasonable notice to the other party as to any proposed law, regulations or any regulatory proceedings or actions that could affect the rights and obligations of the parties under this Agreement. If the parties are unable to revise the Agreement in accordance with the above, then the party whose performance is rendered prohibited, illegal, impossible, impractical or is impacted in a material adverse manner shall have the right to, at its sole discretion, to



cease performance of any such obligations or Services that are so prohibited, impossible, impractical or material and adversely affected without further obligation or liability upon thirty (30) days' prior written notice to the other party (or less if required by law). The parties will continue to perform all such obligations and Services under this Agreement that are not so prohibited, impossible, impractical or material and adversely affected; provided if a material part of the rights and obligations under this Agreement are suspended in accordance with the above and the performance of the remaining obligations would not reasonably maintain the respective original intent of the parties or would not serve the essential purpose of this Agreement, then either party shall have the right to, at its sole discretion, to terminate this Agreement without further obligation or liability upon thirty (30) days' written notice to the other party.

15. **SEVERABILITY OF PROVISIONS.** In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties. If the provision eliminated is a material provision and the parties are unable to negotiate a replacement provision, which reflects the original intent of the parties, either party may terminate the Agreement without liability or further obligation by providing thirty (30) days written notice to the other party.

16. **CONFIDENTIALITY.** As used in this Agreement, ("Confidential Information") means information not generally known to the public, whether of a technical, business or other nature that is disclosed by one party to the other as a result of the parties' communications and discussions, and that should reasonably have been understood by the receiving party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the disclosing party. The parties agree that a disclosing party's proprietary or Confidential Information in either written, verbal, electronic or other form will not be disclosed by the other party either directly or indirectly, by any means, to any third person(s) without the express written permission of the disclosing party except as required to fulfill its obligations hereunder or unless otherwise required by governing authority or law. Notwithstanding the foregoing, this Agreement and Confidential Information related hereto may be disclosed by each party to its affiliates, the party's or its affiliates' respective employees, current and prospective lenders and investors, counsel, accountants, ratings agencies or advisors who have a need to know such information and who are bound to obligations of confidentiality that are at least as restrictive as those contained herein or has a lawful obligation to keep such information confidential.

17. **ASSIGNMENT.** Neither party may assign its obligations under this Agreement without the prior written consent of the other party; such consent not to be unreasonably conditioned, delayed or withheld. Either party may, however, assign its rights hereunder to an affiliate or a company which purchases all or substantially all of its assets ("Assignee") without the consent of the other party, but with no less than thirty (30) days' prior notice to the non-assigning party; provided that the Assignee agrees to be bound by all the terms and conditions of this Agreement, including the Assignee's agreement to cure all prior defaults of the assigning party under this Agreement.

18. **PUBLICITY.** Neither party may place content on a public website or release a media notice, press release, or any other sales, promotion, or collateral material ("Press Release") for external use that uses the other party's name, service mark, or trademark without specific, per issuance prior written approval from the other party.

19. **AFFILIATES.** An affiliate of Provider may provide Services to Customer pursuant to this Agreement. Notwithstanding, any provision of Service to Customer pursuant to this Agreement by an affiliate of the Provider, the Provider shall remain responsible to Customer for the delivery and performance of the Service in accordance with the terms and conditions of this Agreement. The parties acknowledge and agree that Customer's affiliates may purchase Services and be invoiced directly by Provider under this Agreement; provided, however, any such Customer affiliate purchasing Services hereunder agrees that such Services are provided pursuant to and governed by the terms



and conditions of this Agreement. Any reference to Customer in this Agreement with respect to a Service ordered by a Customer affiliate shall also be deemed a reference to the applicable Customer affiliate.

20. **SERVICE PORTABILITY.** Following the commencement date of a Service, if Customer terminates a Service prior to the end of the Service term without cause, and submits a new order for Services within thirty (30) days, early termination of such Service will not be considered a default under this Agreement or the applicable Service Order and no early Termination Charges will apply; provided, however, the following conditions are met: (i) Customer will pay any unpaid amounts for the terminated Service through the date of termination; (ii) the term for such new Services must be of equal or greater duration as the remainder of the original Service term so terminated; and (iii) the new Service monthly recurring charge ("MRC") must be equal to or greater than the MRC of the terminated Service ("Service Portability"). Service Portability will not apply to any Services clearly identified in the Service Order as a build or special construction by Provider.

21. **CHRONIC TROUBLE SERVICE.** Excluding a Force Majeure Event, a "Chronic Trouble Service" is a particular Service for which, (i) three or more Trouble Tickets have been opened for a Service Outage or for the same trouble within a sixty (60) day period, or (ii) one Service Outage has occurred for a duration of more than twenty four (24) hours, or (iii) Service Outages accumulating one hundred twenty (120) hours or more over any period of one hundred eighty (180) consecutive calendar days and the cause of each such trouble is not caused by a Customer controlled third party or the Customer.

Whenever Customer reports to Provider and Provider confirms that a Service is a Chronic Trouble Service, Customer may disconnect a specific Chronic Trouble Service without incurring termination liability or further obligation, except for payment due and owing for Service received prior to termination, by providing Provider written notice, unless such Service has remained trouble free for a period of thirty (30) days prior to such termination notice.

22. **INSURANCE.** Provider shall procure and maintain during the term of this Agreement, at its sole cost and expense, policies of insurance naming Customer as an additional insured, in such amounts and upon such terms as follows: (i) Commercial General Liability covering claims for product liability, bodily injury, death, personal injury or property damage with limits of at least \$1,000,000 for each occurrence with a general aggregate limit of at least \$2,000,000; (ii) Comprehensive Automobile Liability covering ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this Agreement, with limits of at least \$1,000,000 for each occurrence; (iii) Workers' Compensation with statutory limits as required in the state(s) where the Services are being provided, and Employers' Liability or "Stop Gap" coverage with limits of at least \$500,000 for each occurrence; (iv) Excess Liability with limits of at least \$1,000,000; and (vi) other forms of insurance that may be required by law.

All such policies identified under this section shall be issued by reputable and financially sound insurance companies authorized to do business in the state(s) where the Services are to be provided and with an A.M. Bests Rating of A IX or better. Such policies shall provide that no amendment or cancellation shall be effective unless Customer receives thirty (30) days prior written notice. Provider shall furnish to Customer prior to commencing providing Services, a current certificate of insurance and, upon policy renewal thereafter, certificates evidencing that such policies are in full force and effect. Each certificate so furnished shall acknowledge that Customer is named as an additional insured under the applicable policies and shall set forth on its face the applicable limits of liability. The failure of Provider to furnish any such certificate shall not diminish or otherwise affect its obligation to procure and maintain any policies of insurance contemplated by this Section. Provider further agrees to take such actions as are necessary to ensure that all of its affiliates, contractors, agents and any applicable underlying carriers procure and maintain policies of insurance and furnish proof as if they were subject to the terms and provisions of this Agreement. The obligation to insure imposed by this Section shall not relieve Provider of any obligations imposed upon it by other sections of this Agreement.



All insurance coverage required of Provider shall be primary over any insurance or self-insurance program carried by Customer.

Neither the insurance required nor the amount or type of insurance maintained by Provider shall limit or affect the extent of Provider's liability hereunder for injury, death or loss or damage.

23. **ADDITIONAL PROVISIONS.** This Agreement, together with the Schedules, Addendums, Price Lists and Service Orders which are incorporated herein by reference, and which together with this Agreement constitutes the entire understanding between the parties with respect to Services provided herein and supercedes any prior verbal or written agreements or understandings.

This Agreement is not exclusive. Nothing in this Agreement will prevent Customer or Provider from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.

Provider accepts full responsibility for the acts and omissions of subcontractors and of persons or entities either directly or indirectly employed by, engaged by or acting under the direction and/or control of Provider, to the same extent as Provider is responsible for its own acts and omissions and those of persons directly employed by Provider.

Except for Service maintenance notices identified above, all notices hereunder shall be made in writing and shall be delivered to the addresses set forth below by either overnight courier or certified mail, return receipt requested. Any such notice shall be deemed effective on the day of actual delivery to recipient unless otherwise stated in the notice. The parties agree that a digitized (electronic) or facsimile copy of the executed Agreement shall be the same as an original copy. The failure of either party to give notice of Default or to enforce compliance with any of the terms or conditions of this Agreement will not be considered the waiver of any other term or condition of this Agreement. No subsequent amendment to this Agreement will be effective or binding unless it is made in writing and executed by authorized representatives of both parties. The respective obligations of Provider and Customer under this Agreement, which, by their nature would continue beyond the termination, cancellation or expiration of the Agreement (including, but not limited to, (i) obligations under any unexpired Service Order that is not expressly terminated or cancelled in connection with the event that gave rise to the termination of the Agreement; (ii) confidentiality obligations; (iii) limitations of liability; and (iv) indemnification obligations), shall survive termination, cancellation or expiration of the Agreement.



Notices:

Provider:
Winn Telecom
402 N. Mission St
Mount Pleasant, MI 48858

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

With a copy to:
Legal@winntel.com

With a copy to:

The individuals executing this Agreement on behalf of each party hereby represent and warrant to the other party that such individual is authorized to so execute this Agreement.

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME

TITLE

TITLE

DATE

DATE



ADDENDUM A

This Addendum will be attached to and incorporated into the Master Services Agreement between the Provider and the Customer.

1. Service Level Commitments

Service Order Response Intervals - All intervals are measured from Provider’s receipt of a complete and accurate Service Order.

Acknowledgment	Three (3) business days following receipt of a Service Order
Firm Order Commitment (“FOC”)	within five (5) business days
LOA/CFA	within seven (7) business days, or ICB with special construction
Design Layout Report (“DLR”)	within seven (7) business days, or ICB with special construction

<i>Installation Intervals</i>	<i>(providing facilities are available)</i>
10/100 Mbps	Installation within 30 calendar days
GigE, 10 Gbps	ICB, not to exceed 60 calendar days
Special construction	ICB
Cross-Connects	Installation within 5 business days
Disconnects	completed within 30 days of disconnect notice

If Provider fails to provide a circuit on the established FOC date, Customer will be entitled to a credit in an amount equal to 5% of the monthly recurring charge (“MRC”) for each business day of delay, not to exceed one hundred percent (100%) of the MRC, provided the Customer or a Customer controlled third party does not cause such delay.

Furthermore, except for delays caused by Customer or a Customer controlled third party, if Provider fails to provide a circuit within thirty (30) days of the established FOC date then Customer may cancel the applicable Service Order without liability or further obligation.

2. Performance Standards

Each Service will meet the minimum performance standards identified in the following tables. In the event a Service fails to meet the applicable performance standard, Provider will credit Customer’s account as outlined in the Remedy section of the applicable table. In no event will Service Outage credits exceed one hundred percent (100%) of the MRC for a Service in any month.

Unprotected Services - Table 1

Performance Standard	Objective	Duration of failure	Remedy
Availability	≥99.95% measured monthly	Less than or equal to 15 min.	No credit
		Greater than 15 min. and less than 60 min.	Credit equal to 2% of the MRC for the impacted Service



		60 min. or more	Credit equal to 5% of the MRC of the impacted Service for each full hour of interruption
		24 hours or more	Immediate termination upon notice, without liability
Bit Error Rate (BER)	$\leq 1 \times 10^{-9}$	5 times or more in any 30 day period	20% of the MRC for the impacted Service
Latency	<u><30 ms per 1,000 V&H miles</u>	72 hours or more	Immediate termination upon notice, without liability.

Protected Services - Table 2

Performance Standard	Objective	Duration of Service Outage	Remedy
Availability	$\geq 99.999\%$ measured monthly	Less than or equal to 1 second	No credit
		Greater than 1 second and less than 30 seconds	Credit equal to 20% of the MRC for the impacted Service
		30 seconds or more and less than 90 seconds	Credit equal to 50% of the MRC of the impacted Service
		90 seconds or more and less than 120 seconds	Credit equal to 75% of the MRC of the impacted Service
		120 seconds or more	Credit equal to 100% of the MRC of the impacted Service
Bit Error Rate (BER)	$\leq 1 \times 10^{-9}$	5 times or more in any 30 day period	20% of the MRC for the impacted Service
Latency	<u><30 ms per 1,000 V&H miles</u>	72 hours or more	Immediate termination upon notice, without liability.

Ethernet Services – Table 3

In addition to the applicable performance standards in the previous Tables 1 and 2, for Ethernet Services the performance standards in the table below shall also apply. For each minute that an Ethernet Service fails to meet the objective for any performance standard in the following table Customer shall be entitled to a credit equal to one (1) minute of the MRC for the impacted Ethernet Service.

Performance Standard	Objective
Jitter	Less than 5 ms
Packet loss rate	Less than .1%

