

Staff Report
CITY OF AMES WIFI SERVICES

Tabled from July 14, 2009

During the Council comments portion of the June 9, 2009 meeting, City staff was directed to provide a report on the status of WiFi services now being offered by the City of Ames and requirements for participation.

Background

The FY 2006/07 program budget included a City Council goal to “Facilitate One Community Through Both Physical And Relationship Connections”. An objective for that goal included City staff conducting a city-wide WiFi feasibility study. The study was completed in 2007 and, based on the results of the study, Council chose to implement a pilot project that included implementation of a series of WiFi hotspots, funded by the City, with WiFi access provided free-of-charge. Locations chosen for the pilot project included the following:

Outdoor Locations

Tom Evans Plaza
 Brookside Park
 Campustown Court
 Hunziker Youth Sports Complex
 Furman Aquatic Center

Indoor Locations

City Hall
 Ice Arena
 Community Center
 Municipal Pool

Additionally, it was determined that locations with existing or planned network infrastructure would be installed and managed by the City and that for other locations, the City would issue a request for proposal (RFP) to install, maintain, and operate WiFi hotspots. The RFP locations included Tom Evans Plaza, Brookside Park, Campustown Court, and Hunziker Youth Sports Complex.

Based on input from the consultant and City Council, the RFP stated that “The City is requesting both a technical and business model solution to provide free public WiFi service.....The City has no preferred technology or business model solution, and encourages potential vendors to develop creative and technically sound proposals.” After reviewing the two responses to the proposals, City staff recommended, and the Council approved, entering into a contract with an Ames based company, ICS Technologies. This proposal required an initial purchase and equipment installation cost of \$15,000 as well as an annual cost to the City of \$3,000.

Conditions for Participation

As reported to City Council in the August 12, 2008 Council meeting, the proposal provided by ICS included advertising on the sign-in page. In addition, the agreement with ICS indemnifies the City for activity related to use of the WiFi

hotspots. In order to accept this liability, ICS established procedures to protect against the misuse of the system. These procedures require that users accept a “terms of service agreement” and provide certain identifying information. When users first access the system, they are connected at a slower speed; after users set up a login, agree to terms of service, and provide a valid e-mail address, they receive an e-mail with a link that allows them to connect at full speed. The login setup is required only once, and the contract prohibits ICS from selling the e-mail addresses or using them in any way unless approved by the City of Ames. A copy of the terms of use agreement is attached.

Current Status

The outdoor sites installed by ICS were all up and running this past winter. The first advertising of the availability of WiFi was done with distribution of the 2009 Spring/Summer Parks and Recreation Guide in early spring. A standard logo to identify City WiFi was developed, included in the Parks and Recreation Guide, and posted at each hotspot site. The City also held a “Wire-Cutting Celebration” on May 28, 2009 to provide additional public notice of WiFi availability and there were several media reports on the new service. One problem with the service was identified as the trees became fully leafed out at Brookside Park causing interference problems with the WiFi node. Our Information Technology Division worked with ICS and identified a solution that resolved the issue, but use of the Brookside Park location was impacted due to this problem.

The chart below provides information on system usage.

<u>Location</u>	<u>First Sign-on</u>	<u>No. of Sign-ons</u>	<u>No. of Of Users</u>	<u>Total Minutes</u>	<u>Total Hours</u>	<u>Upload MB</u>	<u>Download MB</u>
Tom Evans	12/9/2008	844	193	108,452	1,808	14,712	43,843
Brookside	10/31/2008	117	46	2,935	49	1,059	7,172
Hunziker	10/22/2008	74	33	1,045	17	49	378
Campustown	9/5/2008	<u>8,107</u>	<u>448</u>	<u>1,041,091</u>	<u>17,352</u>	<u>38,563</u>	<u>341,676</u>
		9,142	720	1,153,523	19,225	54,383	393,069
As of 06/19/2009							

The initial bids for the locations managed by City staff (City Hall, Ames/ISU Ice Arena, Community Center, Furman Aquatics Center, and Municipal Pool) came in over budget. The project was re-bid, separating out equipment and installation, and the City is now on track to have these locations up and running by early fall 2009 and within budget. The wiring is completed and access points have been installed at City Hall, the Community Center, and the Ice Arena. Additional work is still needed at the Furman Aquatic Center and the Municipal Pool.

ICS Hotspot Subscriber Agreement

THIS SUBSCRIBER AGREEMENT (THE "AGREEMENT") STATES THE TERMS AND CONDITIONS UNDER WHICH YOU ("YOU" OR "SUBSCRIBER") MAY USE THE ICS, LLC SERVICE (THE "SERVICE"). BY CLICKING THE "I ACCEPT" BUTTON BELOW OR SIGNING THE AGREEMENT, YOU ARE INDICATING YOUR AGREEMENT TO BE BOUND BY ALL OF THE TERMS, CONDITIONS, NOTICES, AND ACKNOWLEDGMENTS CONTAINED IN THIS AGREEMENT. READ THIS AGREEMENT CAREFULLY AND COMPLETELY AS IT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR USE OF SERVICE.

Acceptance of Agreement. Internet Consulting Services, LLC. ("ICS, LLC") in association with the City of Ames ("City of Ames") provides its wireless Hotspot Service ("Service") to subscribers on the condition of Subscriber's acceptance of this agree, in its entirety, of the terms and conditions contained in this Agreement. ICS, LLC may, in its sole discretion, change, modify, add, or remove portions of this Agreement, and the Service provided hereunder, at any time. ICS, LLC will notify Subscriber of any such changes by posting the modified Agreement on the ICS, LLC site, or by sending notice via email, postal mail, or other means to Subscriber.

Scope of this Agreement. The Service may be upgraded from time to time and Subscriber acknowledges that ICS, LLC may install such upgrades at any time. Unless explicitly stated otherwise, any new features that augment or enhance the Service shall be subject to the terms, conditions, and notices contained in this Agreement.

Service. Subject to the terms and conditions of this Agreement, ICS, agrees to provide the Service in accordance with the selected service plan as set forth, as defined below.

Equipment and Service:

- a) Subscriber's Hardware and Software. ICS, LLC shall have no liability whatsoever for any damage, loss, or destruction to Subscriber Equipment. ICS, LLC shall not be responsible for damage done to hardware or software while using the Service.

Information Use:

- a) Monitoring the Service. ICS, LLC has no obligation to monitor the Service, but may do so and, may disclose information regarding your use of the Service if ICS, LLC, in its sole discretion, believes that it is reasonable to

do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its Subscribers. ICS, LLC may immediately remove your material or information from ICS, LLC's servers, in whole or in part, which ICS, LLC, in its sole and absolute discretion, determines to infringe another's property rights or to violate this Agreement or the Privacy Policy. If Subscriber is found to be using service to host a server, or engaging in any other bandwidth intensive activities beyond normal Internet browsing, ICS, LLC has the right block the I.P. and/or service.
BANDWIDTH WILL BE MONITORED AT ALL TIMES BY ICS, LLC

Prohibited Uses of the Service:

Subscribers shall not use the ICS Equipment or the Service to, directly or indirectly:

- a) Restrict, inhibit, or otherwise interfere with the ability of any other person to use or enjoy the ICS Equipment or the Service, including, without limitation, posting or transmitting any information or software which contains a virus or other harmful feature; or generating levels of traffic sufficient to impede others' ability to send or retrieve information;
- b) Re-sell the Service or otherwise charge others to use the Service. The Service is for personal use only and users agree not to use the Service for operation as an Internet Service Provider or for any other business enterprise in competition with ICS Service.
- c) Attempt to login, access, or attack any of ICS's Equipment or network, including radio and network Equipment;

ICS, LLC reserves the right to immediately terminate this Agreement and the Service if Subscriber engages in any of the activities listed above or if Subscriber uses the ICS, LLC Equipment or Services in a way which is contrary to any other ICS, LLC policy. This Section shall not in any way limit ICS, LLC's right of termination pursuant to this Agreement. Subscriber assumes the risk and agrees to indemnify and hold harmless ICS, LLC and the City of Ames against all claims and expenses (including reasonable attorney fees) resulting from Subscriber engaging in any of the activities listed above. This provision will survive termination of this Agreement.

Termination and Expiration:

a) Termination by Subscriber. Subscriber may terminate this Agreement for any reason at any time by notifying ICS, LLC of such termination by calling Member Services, by email, or by postal mail (if sending via email, termination will not take effect until Subscriber receives a reply via email from ICS, LLC to confirm the termination).

b) Termination by ICS, LLC. ICS, LLC may terminate this Agreement immediately should Subscriber violate any of the terms of this Agreement. ICS, LLC may also terminate the Service for any other reason at any time by providing Subscriber with written notice of such termination no later than 30 days prior to the date of termination. If Subscriber's/End-Users computer causes problems and disrupts ICS, LLC's service to other subscribers, ICS, LLC may temporarily block, without notice, Subscriber's access to ICS, LLC's network until the problem is fixed on Subscriber's computer.

c) Retention of Rights. Nothing contained in this Agreement shall be construed to limit ICS, LLC's rights and remedies available at law or in equity. Subject to applicable law, ICS, LLC reserves the right to delete all data, files, electronic messages, or other information that is stored on ICS, LLC's servers or systems when Subscriber's account with ICS, LLC is terminated for any reason.

d) Agreement to Indemnify. Subscriber shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement. Subscriber further acknowledges and agrees that Subscriber is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the Service and/or ICS, LLC Equipment by Subscriber or by another user of End User's computer. Subscriber agrees to indemnify and hold harmless ICS, LLC and the City of Ames against all claims and expenses (including reasonable attorney fees arising out of the use of the Service and/or Equipment by any other user of Subscriber's computer).

Permission Grant:

ICS, LLC grants you-Subscriber/End-user the right to use the Service but does not grant permission to:

a) Modify, translate, reverse engineer, decompile disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the ICS, LLC Equipment;

Subscriber Obligations:

In consideration of Subscriber's use of the Service, Subscriber agrees to:

- a) Provide true, accurate, current, and complete information as prompted by the Service's registration or member sign-up form (such information being the "Registration Information");
- b) Maintain and promptly update the Registration Information to keep it true, accurate, and complete; and
- c) Refrain from using the Service for any purpose that is unlawful or prohibited by this Agreement. If Subscriber provides any information that is untrue, inaccurate, not current, or incomplete, or if ICS, LLC has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, ICS, LLC has the right to suspend or terminate Subscriber's account and refuse any and all current or future use of the Service (or any portion thereof).

Conduct:

- a) Subscriber acknowledges and agrees that ICS, LLC may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; or (iv) protect the rights, property, or personal safety of ICS, LLC, its users, and the public.
- b) Subscriber understands that the technical processing and transmission of the Service, including Subscriber's Content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

Privacy and Security:

- a) Please report any violations of this Agreement through email to info@ics-llc.net.

If ICS, LLC identifies a certain IP address/block is the source of illegal network activity, such as hacking, DDOS-Distributed

- b) Denial of Service attacks, and SYN flood, ICS, LLC may block Internet access to/from that IP address/block without any advance notice. ICS, LLC will monitor bandwidth to ensure that services are not being used to support a file server. If we find that services are being used as such, ICS, LLC reserves the right to block the I.P. or charge appropriately for bandwidth usage.

If ICS, LLC identifies a certain email domain is doing "spamming" or "email relay," ICS, LLC will block any email coming from that email domain without any advance notice.

Limited Warranty:

EXCEPT AS OTHERWISE SET FORTH, THE ICS, LLC EQUIPMENT, SERVICE, AND SOFTWARE ARE PROVIDED BY ICS, LLC "AS IS" WITHOUT WARRANTY OF ANY KIND. ICS, LLC DOES NOT WARRANT UNINTERRUPTED USE OR OPERATION OF THE ICS, LLC EQUIPMENT OR SERVICE. ICS, LLC DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO SUBSCRIBER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY ARE HEREBY EXCLUDED.

DISCLAIMER OF WARRANTIES. SUBSCRIBER EXPRESSLY UNDERSTANDS AND AGREES THAT:

- a) ICS, LLC MAKES NO WARRANTY THAT (i) THE SERVICE OR THE ICS, LLC EQUIPMENT WILL MEET SUBSCRIBER'S REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) DELETION, MIS-DELIVERY, OR FAILURE TO STORE OR EFFECTUATE ANY USER COMMUNICATIONS, ORDERS, LISTINGS, OR CUSTOMIZATION SETTINGS WILL NOT OCCUR AS A RESULT OF SUBSCRIBER'S USE OF THE SERVICE, (iv) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (v) ANY ERRORS IN THE ICS, LLC EQUIPMENT SOFTWARE WILL BE CORRECTED.
- b) THE SERVICE MAY CONTAIN DEFECTS AND, ACCORDINGLY, SUBSCRIBER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION, AND TO NOT RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE SERVICE.
- c) ANY MATERIAL, PRODUCTS, OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT SUBSCRIBER'S OWN DISCRETION AND RISK AND THAT SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY SUBSCRIBER FROM ICS, LLC OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

LIMITATION OF LIABILITY:

ICS, LLC OR ANY OTHER PERSON INVOLVED IN CREATING, INSTALLING, DELIVERING, TESTING, OR USING THE SERVICE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE, OR FOR COST PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE OR RESULTING FROM UNAUTHORIZED ACCESS TO, OR ALTERATION OF A USER'S TRANSMISSIONS OR DATA, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLE INFORMATION, EVEN IF ICS, LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY FOR ICS, LLC TO SUBSCRIBER FOR ALL CLAIMS ARISING FROM THE USE OF THE SERVICE IS LIMITED TO \$100.

a) EXCLUSIONS AND LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

b) General Acknowledgments. Subscriber acknowledges that ICS, LLC may establish general practices and limits concerning use of the Service, including without limitation the maximum number of days that email messages, message board postings, or other uploaded Content will be retained by the Service, the maximum number of email messages that may be sent from or received by an account on the Service, the maximum size of any email message that may be sent from or received by an account on the Service, the maximum disk space that will be allotted on ICS, LLC's servers on Subscriber's behalf, and the maximum number of times (and the maximum duration for which) Subscriber may access the Service in a given period of time. Subscriber agrees that ICS, LLC has no responsibility or liability for the failure of the Service and the deletion of other Content maintained or transmitted by the Service. ICS, LLC reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. Subscriber agrees that ICS, LLC shall not be liable to Subscriber or to any third party for any modification, suspension, or discontinuance of the Service. Subscriber further acknowledges that ICS, LLC reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

c) Indemnification. Subscriber agrees to indemnify and hold ICS, LLC or the City of Ames- its directors, officers, employees, agents, attorneys, co-branders or other partners harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the Content Subscriber submits, posts to or otherwise transmits through the Service,

Subscriber's use of the Service, the ICS, LLC Equipment and the Software, Subscriber's connection to the Service, Subscriber's violation of this Agreement, or Subscriber's infringement of any intellectual property or other right of any other person or entity.

d) Enforcement. Because user authentication on the Internet is difficult, ICS, LLC cannot and does not confirm that each user is who they claim to be. Because ICS, LLC does not and cannot be involved in user-to-user dealings or control the behavior of participants on ICS, LLC, in the event that Subscriber has a dispute with one or more users, ICS, LLC has no ability to prevent or restrict conduct, communications, or Content which might violate this Agreement prior to its transmission on or through the Service, nor can ICS, LLC ensure prompt removal of any such communications or Content after transmission or posting. Accordingly, ICS, LLC does not assume responsibility to Subscriber or others for any failure by ICS, LLC to enforce the provisions contained in this Agreement.

a. Assignment. Subscriber shall have no right to assign this Agreement.

e) Governing Law. This Agreement and the relationship between Subscriber and ICS, LLC shall be governed by and construed in accordance with the laws of the State of Iowa without regard to its conflicts of law provisions.

f) International Use. Recognizing the global nature of the Internet, Subscriber agrees to comply with all local rules regarding online conduct and acceptable Content. Specifically, Subscriber agrees to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which Subscriber resides.

g) Time Limitation. Subscriber agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement or use of the Service must be filed within one year after such claim or cause of action arose or be forever barred.

h) Headings. The section headings and sub-headings contained in this Agreement are for convenience only and have no legal or contractual effect.

Miscellaneous:

Notices: For any inquiries or notices required in connection with this Agreement, Subscriber should contact ICS, LLC in writing at 235 Alexander Ave, Ames IA 50010. ICS, LLC will use Subscriber's email address or mailing address to contact Subscriber regarding the Service, billing, this Agreement, the Privacy Policy, and all other notices and information ICS, LLC deems necessary to provide Subscriber. Accordingly, Subscriber is required to monitor his or her email on a regular basis and provide ICS, LLC with prompt notice of any change to

Subscriber's email address. Subscriber's use of the Service following delivery of any notice to Subscriber from ICS, LLC will be deemed to be Subscriber's acknowledgment and acceptance of such notice. It is Subscriber's sole responsibility to notify ICS, LLC of email address to use for all notices regarding this Agreement, the Privacy Policy, the Price List, the Service, and all other notifications. If Subscriber does not provide a current email address to ICS, LLC, ICS, LLC is not responsible.

No Relationship: Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchiser, employer-employee, or principal-agent relationship with ICS, LLC, nor impose upon either company any obligations for any losses, debts, or other obligations incurred by the other except as expressly set forth herein.

General: This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes and replaces any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. ICS, LLC's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provisions of this Agreement.

If Subscriber has any questions regarding the Service, the ICS, LLC Equipment, the Service, or this Agreement, Subscriber is advised to contact ICS, LLC by emailing to info@ics-llc.net or by calling 515.232.4453.