

**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: April 21, 2009**

**AGENDA TITLE: Consideration of a motion to approve an amendment to the ten-year lease agreement with Boulder Valley School District for use of spare city-owned conduit in return for dedicated fiber optic cable throughout their regional network.**

**PRESENTER/S:**

Francis Duffy, Assistant Director of IT, Network Services  
Don Ingle, Director of Information Technology

**EXECUTIVE SUMMARY:**

At the March 4, 2008 council meeting, an agreement to lease available city telecommunications conduit to Boulder Valley School District (BVSD) was approved, facilitating the build out of BVSD's regional fiber optic network. This original agreement allowed the city to gain access to valuable communication infrastructure that the city could not otherwise afford to construct. This asset will provide high-speed data connectivity to numerous city facilities, including Fire Stations, Police annexes, city offices and Parks and Recreation facilities.

This amendment to the original agreement proposes three (3) modifications:

- The city will lease four (4) additional strands of fiber to BVSD along Baseline Road. In return, the city will receive four (4) additional strands of fiber along Jay Road.
- As an agent and the managing partner of the Boulder Research and Administrative Network (BRAN), the city will lease from BVSD twenty (20) additional strands of fiber at a onetime cost of \$200,000 and an on-going annual cost of \$15,000. Contractually, the city acts only as a facilitator. No city funds will be expended to purchase or provide on-going maintenance for this fiber.
- Authorizes the City Manager to approval all future amendments to this agreement.

This amendment allows the city to expand its valuable fiber optic cabling infrastructure while expanding partnerships with BVSD, CU, NOAA/NIST and NCAR.

**STAFF RECOMMENDATION:**

Staff recommends council approval of this amendment to the BVSD lease agreement.

**Suggested Motion Language:**

Motion to authorize the city manager to approve an amendment to the ten-year lease agreement with Boulder Valley School District for use of spare city-owned conduit in return for dedicated fiber optic cable throughout BVSD's regional network.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- **Economic:** This represents a "no cost" improvement to the city's communication infrastructure by providing additional fiber optic cable resources along a key corridor within the city.
- **Environmental:** If the City did not lease this conduit, BVSD would need to undertake trenching and/or boring to install conduit that could be disruptive to local landscapes, residents, traffic and businesses.
- **Social:** The amendment improves communication and enhances the educational experiences of Boulder Valley students. It also builds and strengthens relationships between the City, BVSD, CU, NOAA/NIST and NCAR

**OTHER IMPACTS:**

- Fiscal: No budgetary impacts.
- Staff time: Less than 10 hours.

**BOARD AND COMMISSION FEEDBACK:** No public feedback has been received on this matter.

**PUBLIC FEEDBACK:** No public feedback has been received on this matter.

**BACKGROUND:**

At the March 4, 2008 council meeting, an agreement with BVSD to lease city owned conduit to facilitate the build out of BVSD's regional fiber optic network was approved. This agreement allowed the city to gain access to valuable communication resources that are being used to provide high-speed data connectivity to currently underserved city facilities.

**ANALYSIS:**

This amendment will provide four (4) additional fiber optic cable strands along Jay Road to support potential future communication needs for city facilities located on the northeast side of the city. In turn, utilizing excess conduit resources, the city is providing needed infrastructure along Baseline Road to BVSD at a much lower cost than the district could otherwise receive.

Under the terms of the amendment, the city -- in its role as the managing partner for BRAN -- is facilitating the lease of twenty (20) strands of fiber from BVSD to the BRAN

partners. No city funds will be expended on the lease of this fiber. This agreement reinforces the city's position as a valuable partner in expanding and growing technology-related services in the broader community.

This lease amendment is coming to the city council for approval because Section 2-2-8, B.R.C. 1981, requires that any lease beyond three years be approved by city council. The original lease agreement was approved by city council on March 4, 2008. The original term of the lease runs for ten years, through March 5, 2018. The parties have the option to renew the lease for an additional ten years.

The city manager and IT staff are also asking city council to delegate authority to the city manager to approve future amendments to this lease agreement. As council has already approved the underlying agreement, staff requests the authority to reduce unnecessary administrative matters related to management of the fiber topic network from future council agendas.

In recommending approval of this amendment, staff believes this change allows the city to expand and leverage its valuable fiber optic infrastructure, while developing and expanding partnerships with BVSD, CU, NOAA/NIST and NCAR.

**MATRIX OF OPTIONS:** Not applicable

Approved By:

  
Jane S. Brautigam,  
City Manager

**ATTACHMENTS:** NA

**FIRST AMENDMENT TO LEASE AGREEMENT FOR CONDUIT SPACE  
AND FIBER OPTIC CABLE  
DATED MARCH 5, 2008**

This Amendment is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the BOULDER VALLEY SCHOOL DISTRICT No. RE-2, a Colorado school district (the "District"); and the CITY OF BOULDER, a Colorado home rule city ("City"),

A. On March 5, 2008, the District and the City entered into a Lease Agreement ("Lease Agreement") for conduit space and fiber optic cable dated March 5, 2008. The Lease Agreement allows BVSD to construct its fiber optic network ("District Network") within City right-of-way, while providing the City with use of the Dedicated Fibers (those fibers leased to the City under the Agreement).

B. In May 1999, the City, the University Corporation for Atmospheric Research and the University of Colorado entered into a Memorandum of Understanding (MOU) concerning the administration of the Boulder Research and Administrative Network (the "BRAN network"). The BRAN Network is a high-speed fiber optic network installed throughout City right-of-way. The MOU governs the responsibilities and obligations of the parties for the management of the BRAN network.

C. The BRAN members have determined it would be beneficial to the BRAN network to be able to lease fiber from the District.

D. The Lease Agreement provides that the City will retain the right to use or assign the Dedicated City Fiber to parties of its choosing. The District has agreed to lease additional strands to the City for use by all members of BRAN.

E. This First Amendment to the Lease Agreement was considered by the Boulder City Council at a regularly scheduled meeting. At that meeting the Boulder City Council approved the First Amendment and authorized the City Manager to approve and sign any future amendments to the Lease Agreement for the remaining term of the Lease Agreement.

F. The parties here wish to amend the terms of the Lease Agreement between the City and the District to clarify the promises and obligations of the parties.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree to amend the Agreement as follows:

1. The parties agree to abide by the terms of the Lease Agreement, except as modified by this Amendment.
2. Section I, "Definitions" Paragraph B is amended as follows:

B. "Dedicated City Fiber" means the 16 strands to be provided to the City from the 168 strand fiber optic cable throughout the District's west ring, the four strands throughout the District's east ring, and strands along the following spur routes that are not part of the west wing as follows:

1. Eight strands from Jay Road to Boulder Preparatory High School via 63<sup>rd</sup> Street and Spine Road;
2. Four strands from Mapleton Avenue to Casey Middle School via 13<sup>th</sup> Street;
3. Four strands from Iris Avenue to Crestview Elementary School via 19th Street and Sumac Avenue;
4. Four strands from Darley Avenue to Fairview High School via Gillaspie Drive;
5. Four strands from 20th Street to New Vista High School;
6. Four strands from 19th Street to Foothill Elementary School via Grape Avenue and Hawthorne Avenue; and
7. Four strands from Table Mesa Drive to Summit Middle School via South 46th Street.

3. Section I, "Definitions" is amended by adding the following language:

G. "Supplemental Fiber" means the additional twenty strands of Fiber provided to the City throughout the District's west ring. The Supplemental Fiber is included as part of the Dedicated City Fiber.

4. Section II, "Description of Leased Premises" Paragraph A.3 is amended as follows:

3. Twelve fiber strands in an existing City 24-strand aerial fiber optic cable from the existing City splice enclosure located in the City manhole near the southeast corner of Baseline Road and 55th Street to the City manhole located on the northeast corner of Laguna Place and Mohawk Drive as shown in Exhibit F, attached hereto and incorporated herein by reference (the "Existing City Fiber").

5. Section II, "Description of Leased Premises" Paragraph B is amended by the adding the following language:

2. The Supplemental Fiber.

6. Section III, "Rent" is amended by adding the following language:

For the use of the Supplemental Fiber, the City will pay a one time fee of \$200,000 to the District on December 31, 2009. Thereafter, the City will pay \$15,000 annually for the use of the Supplemental Fiber. This annual payment will commence on January 1, 2010, or upon the completion of the west ring.

The District acknowledges here that the City will collect the money from the BRAN members to pay for the use of the Supplemental Fibers. The District agrees that the City will only be obligated to pay the District those fees which it collects from the BRAN members and will not be responsible to the District for any funds owed to the City by any BRAN member.

7. The callout on Exhibit F "Fiber Strands Leased to District" is amended as follows:

"Twelve fiber strands leased by the District from the City"

8. Except as amended herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the day and year above first written.

**THIS AMENDMENT** is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk on behalf of the  
Director of Finance and Record

Approved as to form:

\_\_\_\_\_  
City Attorney

BOULDER VALLEY SCHOOL DISTRICT NO.  
RE-2

By: *Nelwyn B. Jones*  
President, Board of Education

Attest:

*Sandra M Eicher*  
Secretary

Approved as to form:

*Melissa M...*  
School District Attorney