

Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: David Fine, Economic Development Specialist
Scott McMahan, Information Technology Manager

SUBJECT: Authorize the City Manager to sign First Addendum to Dark Fiber Lease Agreement with Bozeman Fiber

MEETING DATE: June 27, 2016

AGENDA ITEM TYPE: Consent

RECOMMENDATION:

Authorize the City Manager to sign the First Addendum to the Dark Fiber Lease Agreement.

BACKGROUND:

On February 8, 2016, the City entered into a dark fiber lease agreement with Bozeman Fiber that was scheduled to begin on June 27, 2016. Bozeman Fiber planned to license City conduit to reach a number of locations prescribed in this agreement. Due to delays in the construction of City conduit caused by issues obtaining Montana Department of Transportation (MDT) encroachment permits and other issues, City conduit was not available on schedule to meet the initially proposed deadline. In addition, not all of the aerial fiber was complete to reach school locations in south Bozeman.

The proposed addendum to the contract provides a one month extension to the deadline. The City and the Bozeman Public Schools can continue to receive service from their current provider on a month-to-month basis.

FISCAL EFFECTS:

The City will continue to purchase fiber connectivity at several locations from Charter Communications on a month-to-month basis at the previous rate of \$625 per month. Bozeman Fiber will not be charging for any City locations for the month of July. Since the City planned to retain redundant service through July to ensure a smooth transition, this addendum may allow the City to save the cost of redundant service at five locations with existing fiber service for a potential savings of \$2,780.

ATTACHMENTS:

First Addendum to Dark Fiber Lease Agreement with Bozeman Fiber
Letter from Bozeman Fiber, Re: Bozeman Fiber Dark Fiber for City and Schools

LINKS:

[Dark Fiber Lease Agreement between the City of Bozeman and Bozeman Fiber](#)

**FIRST ADDENDUM TO
DARK FIBER LEASE AGREEMENT**

THIS FIRST ADDENDUM TO THE DARK FIBER LEASE AGREEMENT (“Agreement”) is made on _____2016 (the “Effective Date”), by and between the City of Bozeman, a self governing municipal corporation organized and existing under its Charter and laws of the State of Montana with its principal offices located at 121 North Rouse, Bozeman, MT (“City” or “Lessee”) and Bozeman Fiber, a Montana non-profit corporation with its principal offices located at 2000 Commerce Way, Bozeman, MT (“BFI” or “Lessor”). City and BFI are at times collectively referred to hereinafter as the “Parties” or individually as “Party.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the Parties hereto agree as follows:

1. **Extension of time to provide access to dark fiber.** Section 7.1 of the Agreement is replaced in its entirety with the following:

BFI will provide access to dark fiber at initial City and School Locations (as set forth in Exhibit A) no later than July 31, 2016. For purposes of this Section, “provide access” means the Acceptance Date pursuant to 4.5. City shall have the right to terminate the Fiber Lease as to a particular location without penalty if this contingency is not met. Notwithstanding the foregoing, a failure to meet this contingency shall not be deemed a material breach of this Agreement, and City shall have no right in such case to pursue remedies for default described in Section 8.2.

2. **Agreement still valid.** All remaining terms and provisions of the Agreement remain valid.

****** END OF AGREEMENT EXCEPT FOR SIGNATURES ******

CITY OF BOZEMAN:

By: _____
Chris Kukulski

Title: City Manager

Date: _____

BOZEMAN FIBER:

By: _____

Print Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

By: _____
Greg Sullivan, City Attorney

EXHIBIT A

City of Bozeman

1. City Hall 121 N. Rouse Ave
2. Professional Building 20 East Olive St
3. Bozeman Public Library 626 East Main St
4. Law and Justice Center (City) 615 S. 16th Ave (Collapsed Ring)
5. Bridger Park Garage, 26 East Mendenhall Street
6. Fire 3 and 911 1705 Vaquero Pkwy (Collapsed Ring)

Bozeman Public Schools

1. Bozeman High School 205 North 11th Ave
2. Chief Joseph Middle School 4255 Kimberwicke (Collapsed Ring)
3. Sacajawea Middle School 3525 South 3rd Ave. (Collapsed Ring)
4. Emily Dickinson Elementary School 2435 Annie Street
5. Hawthorne Elementary School 114 North Rouse
6. Hyalite Elementary School 3600 West Babcock
7. Irving Elementary School 611 South 8th
8. Longfellow Elementary School 516 South Tracy
9. Meadowlark Elementary School 4415 Durston Road
10. Morning Star Elementary School 830 Arnold Street (Collapsed Ring)
11. Whittier Elementary School 511 North 5th
12. Willson Building 404 West Main Street



June 16, 2016

Chris Kukulski
City Manager
City of Bozeman
121 N Rouse Ave
Bozeman, MT 59715

VIA ELECTRONIC MAIL to ckukulski@bozeman.net

Re: Bozeman Fiber Dark Fiber for City and Schools

Dear Chris,

Bozeman Fiber will miss the deadline of providing a dark fiber ring to the City of Bozeman and to the Bozeman Public Schools due to project and 3rd party delays. Our agreement with the City was to have the dark fiber rings completed by June 27th of this year. While we always considered this date to be aggressive, we believed we could meet these dates. However, it has become apparent that while we are close, these dates will not be achievable due to both internal project delays due to the nature of the construction in the Bozeman Area as well as due to 3rd party delays in the form of State (MDT) permitting for both the Bozeman Fiber and the City of Bozeman Downtown and Midtown TIF Project conduit construction.

We are making every attempt to complete the dark fiber ring as soon as possible and believe we will have the dark fiber network completed in July, 2016. I have asked our Project Manager, Sid Boswell, to communicate the status of the individual connections with the anchor tenant IT staff. He has been in contact with Scott McMahan from the City of Bozeman and Brad Sommers of the Bozeman Public Schools. He will continue to keep them up to date on when individual connections will become available and when the ring will be completed. As the dark fiber ring will not be completed, Bozeman Fiber will not invoice the City for the network until the rings are substantially complete.

We apologize for any inconvenience this may cause. Please do not hesitate to reach out to me or our Project Manager, Sid Boswell (sboswell@designnine.com) to discuss the information or for an updated project status.

Best Regards,

A handwritten signature in blue ink, appearing to read "A. Cochenour", is written over a light blue circular background.

Anthony Cochenour
President, Bozeman Fiber
acochenour@BozemanFiber.com

cc: David Fine, dfine@bozeman.net
Scott McMahan, smcmahan@bozeman.net
Bozeman Fiber Board