

**AMENDMENT NUMBER TWO  
TO EBS LONG TERM *DE FACTO* TRANSFER LEASE AGREEMENT  
BETWEEN BOARD OF COOPERATIVE EDUCATIONAL SERVICES, A  
WYOMING BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND  
THE CITY OF GILLETTE, CAMPBELL COUNTY, WYOMING**

1. **Parties.** This Amendment is made and entered into by and between the City of Gillette, Campbell County, Wyoming, ("City") whose address is 201 East 5th Street, Gillette, WY 82716; and Board of Cooperative Educational Services, a Wyoming Board of Cooperative Educational Services ("BOCHES")
2. **Purpose of Amendment.** This Amendment shall constitute the second amendment to the EBS Long Term *De Facto* Transfer Lease Agreement ("Original Agreement") between the City and BOCHES which was duly executed on December 21, 2009, and which became effective on December 21, 2009. The purpose of this Amendment is to:
  - A. Transfer ownership of the fiber optic lines described in Attachment A, which is attached and made a part of this Amendment, from the City to BOCHES.
  - B. Authorize the City to retain ownership of the fiber optic lines described in Attachment B, which is attached and made a part of this Amendment.
  - C. Require BOCHES to Execute a Right of Way Use Agreement with the City for any fiber optic lines, described in Exhibit A, that are located in the City Right of Way.
  - D. Require BOCHES to enter into a Spectrum Leasing Arrangement with the Federal Communications Commission ("FCC"), if necessary.
  - E. Authorize the City to terminate its Spectrum Leasing Arrangement with the FCC.
  - F. Terminate the Original Agreement and all associated Amendments upon completion of the above listed items.

The Original Agreement, dated December 21, 2009 authorized the City to use certain BOCHES channels, capacity, and spectrum in exchange for installation of fiber optic cables to connect the Campbell County School District ("CCSD") facilities to the Fiber Network in accordance with the WiMax Construction Plan.

Amendment No. One, dated January 3, 2014, revised the WiMax Construction Plan to allow fiber optic connections to the Buffalo Ridge Elementary School and the CCSD Maintenance Building in lieu of Lakeview Elementary School and the Aquatic Center.

3. **Term of the Amendment.** This Amendment shall commence on the date the last required signature is affixed hereto, and shall remain in full force and effect through December 31, 2019, unless terminated at an earlier date pursuant to the provisions of this Amendment.
4. **Payment.** The City agrees to transfer the fiber optic lines described in Attachment A to BOCHES in exchange for: continued ownership in the fiber optic lines described in Attachment B; BOCHES execution of a Right of Way Use Agreement with the City; and, if necessary, BOCHES execution of a Spectrum Leasing Arrangement with the FCC.
5. **Additional Responsibilities of BOCHES.**
  - A. BOCHES specifically authorizes the City to retain ownership of the fiber optic lines described in Attachment B.
  - B. BOCHES shall Execute a Right of Way Use Agreement with the City for any fiber optic lines described in Attachment A that are located in the City Right of Way prior to transfer of the fiber optic lines described in Exhibit A.
  - C. BOCHES shall enter into a Spectrum Leasing Arrangement with the Federal Communications Commission ("FCC"), or any other agreement required by applicable federal, state, and local laws and regulations.
  - D. BOCHES understands and agrees that the Original Agreement and all associated Amendments shall terminate upon completion of all the Additional Responsibilities of BOCHES and the City delineated in Section 5 and 6 of this Amendment, or on December 31, 2019, whichever occurs first.
6. **Additional Responsibilities of City.**
  - A. The City shall transfer ownership of the fiber optic lines described in Attachment A, by Warranty Deed, upon execution of a Right of Way Use Agreement with the City for any fiber optic lines described in Exhibit A.
  - B. The City understands and agrees that the Original Agreement and all associated Amendments shall terminate upon completion of all the Additional Responsibilities of BOCHES and the City delineated in Section 5 and 6 of this Amendment, or on December 31, 2019, whichever occurs first.

7. **Special Provisions**

- A. **Modification.** The parties agree Section 11(a) of the Original Agreement is excluded and of no force and effect.
- B. **Termination of Original Agreement and Amendments.** The parties understand and agree that the Original Agreement and all associated Amendments shall terminate upon completion of all the Additional Responsibilities of BOCHES and the City delineated in Section 5 and 6 of this Amendment, or on December 31, 2019, whichever occurs first.
- C. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the Original Agreement between the City and BOCHES, including but not limited to governmental immunity, and including all prior amendments to the Original Agreement shall remain unchanged and in full force and effect.

8. **General Provisions**

- A. **Entirety of Contract.** This Amendment, consisting of four (4) pages and Attachment A and Attachment B, Amendment One consisting of two pages and Exhibit B, and the Original Contract consisting of fourteen (14) pages and Exhibits A and B, represent the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- B. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Amendment and specifically retain all immunities and defenses available to them pursuant to WYO. STAT. §§ 1-39-101-120 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Amendment shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

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9. **Signatures.** The parties to this Amendment through their duly authorized representatives have executed this Amendment, known as Amendment Two to the Original Agreement between the City and the BOCHES, on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment as set forth herein.

The effective date of this Amendment is the date of the signature last affixed to this page.

**CITY OF GILLETTE**

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Louise Carter-King, Mayor

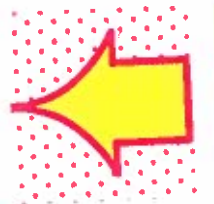
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Date

**BOARD OF COOPERATIVE EDUCATIONAL SERVICES**

\_\_\_\_\_  
*David W. Forney*

\_\_\_\_\_  
*10/29/19*  
Date

(S E A L)  
ATTEST:



\_\_\_\_\_  
Cindy Staskiewicz, City Clerk

**CITY ATTORNEY APPROVAL AS TO FORM**

\_\_\_\_\_  
Anthony M. Reyes

\_\_\_\_\_  
Date