

**TELECOMMUNICATIONS REVOCABLE LICENSE AGREEMENT ISSUED TO
ZAYO GROUP, LLC
BY THE CITY OF PEORIA, ARIZONA**

THIS TELECOMMUNICATIONS LICENSE AGREEMENT ("Agreement" or "License") is issued by the CITY OF PEORIA, ARIZONA an Arizona municipal corporation (hereinafter called "City") to Zayo Group, LLC (hereinafter called "Licensee"), a Delaware limited liability company.

WHEREAS, the City owns certain public streets and rights-of-ways and public utility easements within the boundaries of the City; and

WHEREAS, Licensee has applied to the City for permission to construct, install, operate, maintain, and use the public highways, public streets, public rights-of-way, and public utility easements in the City in order to provide telecommunications services (i.e., to construct, operate and maintain its facilities in the right-of-way to provide telephone service.); and

WHEREAS, Licensee has represented to and provided documents to the City, which establish that the Arizona Corporation Commission determined in an Opinion and Order, Decision No. 72561, dated August 24, 2011, that Zayo Group, LLC is a fit and proper entity to receive a Certificate of Convenience and Necessity authorizing it to construct, operate and maintain facilities to furnish telecommunications service to the public in a geographic area which encompasses the City of Peoria; and

WHEREAS, by such authority as may be conferred by the Arizona Revised Statutes, as amended, the Peoria City Charter, City Code, State and Federal law (as amended), the City is issuing this License; and

WHEREAS, Licensee has previously received permission from the City for the use of the City's rights-of-way for certain routes ("Use Areas"), identified on the map, attached and incorporated as Exhibit A, via the nonexclusive revocable Telecommunication Licenses pursuant to LCON01112 and LCON 01112A; and

WHEREAS, the City issued a nonexclusive, revocable Telecommunication License pursuant to LCON01112 dated March 7, 2012, (the "Original Agreement"); and

WHEREAS, the City granted the Licensee another nonexclusive, revocable Telecommunication License, LCON01112A, dated July 9, 2013, (the "Amended Agreement), to install, maintain, operate, and repair future telecommunication lines and equipment ("Facilities") within rights-of-way in different areas ("New User Areas"), which Licensee allowed to expire, and

WHEREAS, Licensee desires the ability to install, maintain, operate, and repair future telecommunication lines and equipment ("Facilities") for the purpose of providing telecommunications service, as authorized by Arizona Corporation Commission Decision No. 72561 and in subsequent Decisions, within the right-of-way and authorized areas ("Use Areas"), identified on the map, attached and incorporated as Exhibit A, subject to the requirements of this License Agreement; and

WHEREAS, the City desires to grant Licensee a License to continue to install, maintain, operate, and repair Facilities in Use Areas identified herein for the purpose of providing telephone service as authorized by Arizona Corporation Commission; and

WHEREAS, the City is authorized to regulate its streets and public utility easements, and to grant, renew, deny, amend, and terminate licenses for and otherwise regulate the installation, operation, and maintenance of such facilities within the City's boundaries pursuant to the Peoria Charter, Peoria City Municipal Code, and by virtue of other applicable law, including but not limited to, (47 U.S.C. § 253) and A.R.S. §§ 9-581, 9-582, and 9-583), by the City's police power, its authority over the City's public rights-of-way, and its other governmental powers and authority; and

WHEREAS, the City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the rights-of-way.

WHEREAS, pursuant to the Peoria Municipal Code, after City Council approval the City Council has authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, maintain and use Facilities in, along, under, over and across public highways, public streets, public rights-of-way, and public utility easements within the City to provide telecommunications services (i.e., to construct, operate and maintain its facilities in the right-of-way to provide telephone service); and

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants a Telecommunications License

("License") to Licensee and permission to use the public rights-of-way pursuant to the terms and conditions set forth herein.

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|----|---------------------------------------|---------------------------------|
| 1. | <u>Exhibits</u>
Exhibit A -1, 2, 3 | <u>Description</u>
Use Areas |
| | | |
| 2. | <u>Permission Granted</u> | |

2.1 Subject to the provisions contained herein, the City Code, City Charter, Arizona State Statutes, the Constitution of the State of Arizona, and federal law the City hereby grants to Licensee the nonexclusive revocable license, permission, right and privilege to construct, install, operate, maintain and use Facilities in, under, along, over and across public highways, public streets, public rights-of- way, and public utility easements to provide Telecommunications Services identified as telephone services, as authorized by Arizona Corporation Commission within the current and future corporate limits of the City. The terms, phrases, words, and their derivatives shall have the meaning defined in Chapter 23 of the Peoria City Code as amended from time to time, unless otherwise defined. The permission granted herein to Licensee shall hereinafter be referred to as "License." By accepting this License, Licensee agrees that this License and the Licensee are subject to all provisions of this License, the City Charter and City Code, including, but not limited to, Chapter 23 of the City Code, and the Peoria Engineering Standards Manual.

2.2 If it is necessary for the Licensee to comply with any rule or regulation of the Federal Communications Commission ("FCC") or the Arizona Corporation Commission ("ACC") to engage in business activities associated with use of the public highways, public streets, public rights-of-way, and public utility easements to provide Telecommunications Services, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided, however, no such rule or regulation of the FCC or ACC shall enlarge, reduce, alter, undermine, or modify any of the rights, obligations or duties required by this License without a prior written modification to this License, except to the extent permitted by applicable law.

2.3 Licensee shall apply for and obtain any permits to construct, install, maintain, or perform any work in the public highways, public streets, public rights-of-way, and public utility easements, which require a permit and plan review approval from the City pursuant to applicable City Codes. Before constructing, operating, installing or using facilities in the public highways, public streets, public rights-of-way and public utility easements, Licensee shall notify the City in writing and shall be the party to apply and be responsible for any permits to construct, install, maintain or perform any work in the public highways, public streets, public rights-of-way and public utility easements which require a construction permit from the City pursuant to applicable City Codes or this License.

2.3.1 Revocable right-of-way permits require submittal of an application together with the required number of complete construction plans (i.e., drawing, details, maps, notes, etc.). Upon City receipt of the application and plans, the City will perform a technical plan review. Upon completion of the technical review, either a permit will be issued to the applicant or the application will be returned for completion, corrections, modifications, or submittal of all required information, in which as the applicant will be notified and must resubmit the application after the required changes have been made.

2.3.2 Plan review fees are due and will be collected at the time of the submittal of the application and submittal of the required number of plans.

2.3.3 Revocable right-of-way permits fees are due and will be collected at the time of the issuance of the permit. Revocable right-of-way permit fees shall not be charged where there is a valid Franchise and the franchise fees are in lieu of the payment of permit fees.

2.3.4. Applicant shall submit required construction assurances (permit bond in the amount of the cost of the improvements) and certificate of insurances for each permit prior to any and all construction work performed pursuant to the rights granted under this Agreement. The permit bonds for each permit are separate from the Performance Bond Requirement, Section 4.1. Licensee and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If Licensee desires to change the location of any portion of the Conduit System(s) and/or Fiber Optic Network(s), including any related Facilities or equipment, from that set forth in the initial Permit Application, Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

If Applicant has completed the construction and wants the construction assurance released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

2.3.5. Licensee shall strictly adhere to and perform in accordance with the City's Peoria Engineering Standards, Chapter 12 Public Utilities – Non-City Utilities, as amended from time to time by the City Engineer; failure to do so will result in a breach of this License.

2.3.6. Licensee understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of the Peoria City Code and standards will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, Parties agree that it will be considered a breach of this agreement and result in revocation of the License.

2.3.7. Each failure to properly restore the public ROW or to correct related violations of specifications, code ordinance or standards within 60 calendar days or such longer period of time as reasonably necessary to perform the required work in the City's discretion of having been notified by the City to correct such defects may result in revocation of the License.

2.4 Reserved Right and Competing Users Activity. Notwithstanding anything in this License to the contrary, the City specifically reserves to itself and excludes from this License an exclusive delegable right (the "Reserved Right") over any Use Areas for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities, and every other land use of every description.

2.4.1. Competing Users. Without limitation, Licensee acknowledges and accepts the risk that the City and/or others ("Competing Users") may now or in the future use the Use Areas in a manner inconsistent with Licensee's use. The Competing Users include without limitation the City, the State of Arizona, any political subdivision, the public, and all manner of public utility companies and other existing or future users of the Use Areas.

2.4.2. Disruption by Competing Users. The City and its agents, contractors or employees shall not be liable to Licensee its customers or third parties for any service disruption or for any other harm caused to them or to the Facilities due to the actions, omissions, or activities of Competing Users or Competing Activities (defined below).

2.4.2.1. Emergency Disruption by City. The City may remove, alter, tear out, relocate, or damage all or any portion of the Facilities in the case of fire, disaster, or other emergencies if the City Manager or designee deems such action reasonably necessary under the circumstances. In such event, the City and its agents, contractors or employees shall not be liable to Licensee or its customers or third parties for any delay or disruption of service or harm so caused to Zayo Group, its contractors, clients, or the Facilities due to the emergency. When practical, the City shall consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Facilities. In any event, the City shall inform Licensee after such actions. Licensee work to repair or restore the Facilities may be Relocation Work as set forth in Section 10 below.

Competing Activities. Licensee accepts the risk that there may now, or in the future, exist all manner of work and improvements upon the Use Areas ("Competing Activities"). The Competing Activities include without limitation any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or other dealing with any or all of the following, whether above, upon, or below the surface of the Use Areas and whether occasioned by the existing or proposed uses of the right-of-way or existing or proposed horizontal or vertical construction on adjoining or nearby land:

2.4.3.1. All manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description and all manner of other transportation facilities and their appurtenances.

2.4.3.2. All manners of pipes, wires, cables, conduits, sewers, storm drains, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, and all manner of other utility facilities and their appurtenances.

2.4.3.3. All manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances.

2.4.3.4. All other uses of the right-of-way that the City may permit from time to time.

2.5 Public Safety. If the Facilities or any other Licensee equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or without the Use Areas, or to the City's ability to safely and conveniently operate the ROW or perform the City's utility, public safety and other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the City's requests to secure the Use Areas, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment. Licensee's work crews shall report to the Use Areas within two hours of any request by the City under this subsection.

2.6 Reserved Right. The Reserved Right includes the nonexclusive right to use and allow other Competing Users to conduct Competing Activities upon any area of the Use Areas.

2.7 The authority granted by this License does not in any way provide for any express or implied consent to use or otherwise operate within City owned and or operated conduit. Any such use or operation must be approved through an amendment to this License or as otherwise prescribed by the City at the time of the request.

2.8. This License shall not be construed in any way to grant Licensee the right or ability to construct over-head and aboveground facilities of any kind in conjunction with the work permitted by this License.

2.9. All new telecommunication lines shall be placed underground unless otherwise pre-approved by the City or required by applicable law. Pre-approval can be obtained by submitting a waiver request as authorized by Section 23-50.c. of the City Code and pursuant to the Peoria Engineering Standards.

2.10. Neighbor Notification. Prior to the start of any construction work, Licensee shall provide written notice to the businesses and/or residences adjacent to the work being done. If an emergency requires activity without such written notice, Licensee shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, Licensee shall promptly furnish to City documentation of such permission from such other affected property owner.

2.11. Pedestrian Access. Pedestrian access shall be maintained along the length of the project at all times, per the requirements of the ADA and as approved by the City's Traffic Engineer.

3. General Conditions.

3.1. The Licensee and City agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority to issue a License to Licensee under A.R.S. § 9-581 to § 9-583, as amended or succeeded, then this License shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

3.2. There is hereby reserved to the City every right and power which is required to be herein reserved or provided by the City Code, any ordinance, and the City Charter, and Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established, except those actions or requirements which are unlawful under state or federal law. Neither the granting of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

3.3. The Licensee shall indemnify, defend and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses of any nature, including reasonable attorney's fees from any suit, judgment, execution, claim or demand whatsoever arising out of the act or omission by the Licensee and its agents, employees and contractors pursuant to this License or the construction, installation, operation, maintenance or use of the Facilities authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this License. Licensee acknowledges and agrees that these indemnification requirements survive the Term of the License or termination by operation of the terms and conditions of this Agreement.

3.4. The Licensee shall comply with the Insurance Requirements. Provided that the insurance also complies with all the requirements of this License, the Licensee may maintain endorsements or policies, in forms acceptable to the City Attorney, to the extent that Licensee shall construct, operate, install, or use its Facilities in the public highways, public streets, public rights-of-way, and public utility easements.

3.5. Coordination Meetings. Licensee shall meet with the City and other right-of-way ("ROW") users as requested by the City to coordinate and plan construction on the ROW and all matters affected by this License.

4. Public Highway Preservation.

4.1. Performance Bond Requirements. Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, Licensee shall cause to be filed and maintain until either completion of the construction or termination of this License, a faithful performance bond in favor of City in the sum of the amount \$100,000 or the sum of the construction costs (whichever is greater) to guarantee that Licensee shall observe, fulfill and perform each and every term of this License. In case of any breach of any condition of this License, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate City for any damages it may suffer because of such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Licensee agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund.

5. Security Fund.

5.1. Deposit Required. Upon application for continued use of the ROW, but no later than five business days before this License is submitted to the City Council for approval, Licensee shall provide either a cash deposit, a domestic irrevocable Letter of Credit to the City, interest bearing account, or a bond, in a form acceptable to the City attorney, in the initial amount of \$100,000 as a security fund. Said cash deposit, domestic irrevocable Letter of Credit, interest bearing account, or bond, shall be maintained with the City for the term of this License as security for the faithful payment by Licensee and compliance with all lawful orders, permits and directions of any department or office of the City having jurisdiction over its acts or defaults under this License and any permit issued pursuant thereto, and the payments by Licensee of any fees, claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities.

The City will notify Zayo Group, LLC, in writing of any failure, noncompliance, or nonpayment pursuant to this section. Any noncompliance or nonpayment that remains unsecured for greater than 30 days (after receipt of written notice), the City shall have the full discretion and authority to withdraw funds from the security fund account, except that all interest accrued on any cash deposit shall be payable to Licensee.

5.2. Within thirty (30) days after notice to Licensee that an amount has been withdrawn by the City from the security fund, the Licensee shall deposit a sum of money sufficient to restore such security fund to the original amount. Such notice by the City shall include a full accounting of all sums withdrawn.

5.3. The Licensee shall be entitled to the return of such security fund, or remaining balance thereof, as remains on deposit at the expiration of the term of the License or upon termination of the License at an earlier date, provided that there is no outstanding failure, noncompliance, or nonpayment on the part of the Licensee. Any

funds that the City erroneously or wrongfully withdraws shall be returned to Licensee, within thirty (30) business days of such a determination.

5.4. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City whether reserved by this License or authorized by law; and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

5.5. The Licensee shall provide the City, in a form acceptable to the City Attorney, an endorsement or amendment to such security providing that such security can be withdrawn by City pursuant to the provisions of this License and that, if withdrawn, such security shall be restored to the original amount as provided in this License.

6. Coordination. The City may issue reasonable, nondiscriminatory policy guidelines to all utility services licensees and permittees to establish procedures for determining how to control issuance of engineering permits to multiple licensees for the same one-mile segments of their facilities. The Licensee agrees to cooperate with the City in establishing such policies and comply with the procedures established by the City Manager or his designee to coordinate with the City in the event of the issuance of multiple engineering permits in the same one-mile segments.

7. Records and Locator Service of Facilities; Mapping.

7.1. AZ811 e Stake. Licensee and its Contractor(s) shall comply with Title 40, Chapter 2, Article 6.3 of the Arizona Revised Statutes by participating as a member of AZ811 with the necessary records and persons to provide location service of Licensee's Facilities. A copy of the agreement or proof of membership shall be filed with the City Engineer.

7.2. As-Built Drawings. Licensee shall maintain As-Built Drawings of its Facilities located within the ROW and shall furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form on an annual basis or upon reasonable request by the City. Licensee shall create and maintain maps of any of its Conduit System and/or Fiber Optic Network routes, new routes, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City. Licensee will also provide surface-location marking of any of Licensee Facilities that are located underground within any public ROW within 10 business days of installation. The information provided by Licensee under this section will be accurate to the best of Licensee's knowledge. Licensee shall make every reasonable effort to provide accurate and useful information, and the City acknowledges that the information will be provided on an "as-is" and "as-available" basis. Licensee shall be permitted to remove any information from the drawings provided hereunder that is not required for the City's purposes or that is confidential to Licensee.

7.3. Failure to Provide Updates. If complete updates are not provided in a compatible format, Licensee shall pay, or the City may deduct from the Security Fund the actual, reasonable costs, the City incurs to update the City's electronic mapping format due to the location or relocation of Licensee Facilities.

7.4. Incorrect Format Records. In the event Licensee fails to supply records in the City specified format and there is a cost to the City in converting Licensee provided files, Licensee will be responsible for the conversion costs and will pay such costs within 30 days of the date of the bill from the City invoicing the amount due, or the City may deduct the amount from the Security Fund.

7.5. Confidentiality. The files and drawings provided by Licensee to the City shall be considered confidential only to the extent required by A.R.S. § 39-126.01.

8. Installation and Operation of the Facilities.

8.1. All installations shall meet the applicable standard specifications and requirements of the City.

8.2. Pavement Cuts. The City has found that pavement cuts cause early deterioration of the streets and as such have imposed a surcharge fee to cover damages and early deterioration. Therefore, pursuant to § 23-54 of the Peoria City Code Licensee shall be responsible for the cost of all pavement cuts during the installation and maintenance of their Facilities and throughout the term of this License.

8.3. Trees. Any trimming of trees by the Licensee in the public highways, public streets, public rights-of-way, and public utility easements shall be subject to such regulation as the City Manager or other authorized official may establish to protect the public health, safety, and convenience.

8.4. Clean Up. Licensee and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and shall maintain the work and public ROW in a safe, neat and clean condition.

8.5. Empty Conduit and Dark Fiber.

8.5.1. Licensee may seek as part of the agreement to occupy the rights-of-way with empty conduits and use the rights-of-way for non-telecommunication services such as dark fiber leasing.

8.5.2. Empty Conduit - To the extent that Licensee occupies the ROW with empty conduit, and/or unlit, unused, or unleased Dark Fiber and/or uses the City's ROW to provide services other than the telecommunication services as defined by A.R.S. § 9-581, such use and/or occupation of the ROW is subject to the terms and conditions of this License and any applicable fees, permits and laws.

8.5.3. Dark Fiber - Dark Fiber means fiber optic strands that are not connected to transmission equipment or that are not otherwise part of an operating Fiber Optic Network.

8.5.4. Compensation For Use of ROW - Licensee agrees to pay an annual fee for the portion of the ROW used by Licensee for Dark Fiber or Conduit leasing to Users, empty conduit occupation of the ROW, and any other uses other than those conforming to the definition of Telecommunication Services as defined in A.R.S. § 9-581.

If at any time Licensee cannot make warrant for any portion of the Licensee's Communications network, then that portion shall be subject to the annual per foot fee ("Per Foot Fee") set forth herein. The current Per Foot Fee is \$1.89. Licensee agrees that on each annual anniversary of this License that the Per Foot Fee will be adjusted by the change to the annual average CPI set forth in the A.R.S. § 9-583, which is also identified in the City of Peoria Fee Schedule.

8.5.5. Annual Payments Licensee agrees to pay an annual fee for the portion of the ROW used by Licensee for Dark Fiber or Conduit leasing to Users, empty conduit occupation of the ROW, and any other uses other than those conforming to the definition of Telecommunication Services as defined in A.R.S. § 9-581.

Upon each anniversary of this Agreement, any monetary fee will be adjusted, and payment made for any annual payment(s) owed, Licensee shall make such payment(s) to the City within 30 business days of the Effective Date and thereafter each year by the anniversary of such Effective Date thereof for the duration of the Term.

Licensee warrants and represents that at the time of the execution of this Agreement, it is not leasing Dark Fiber or Conduit to third party Users within the ROW. In the future, should Licensee lease any of its Dark Fiber or Conduits to a third-party User, Licensee shall immediately notify the City of the location and footage of such leased Dark Fiber or Conduit route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s), unless a different calculation for fair and reasonable compensation is agreed to by the City.

8.6. The authority granted by this License to use the public highways, public streets, public rights-of-way, and public utility easements does not authorize Licensee's use of the facilities for operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the public highways, public streets, public rights-of-way, and public utility easements for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the highways to provide service other than telecommunications service.

8.6.1. The Licensee shall comply with rules and regulations of the FCC and ACC that apply to the telecommunications services Licensee provides over the facilities in the public highways, public streets, public rights-of-way, and public utility easements that Licensee is authorized to use by this License. The Licensee shall,

within a reasonable time after request by the City, provide the City copies of all correspondence from the FCC or ACC to the Licensee or from the Licensee to the FCC or ACC that is directly relevant to use of the public highways, public streets, public right-of-way, and public utility easements to provide telephone service, as authorized by this License.

8.7. Proprietary Information. In order for the City to determine the Licensee's compliance with the terms of this License, within ten (10) days of written notice by City of a request for disclosure, the Licensee shall provide relevant documentation as requested by City. Upon reasonable notice by City, Licensee shall make its facilities available for joint inspection as requested by the City. If the Licensee determines that in order to respond to City's request for documentation and inspection that it must reasonably provide proprietary information, the Licensee shall so designate such claim to proprietary treatment on documents provided to City.

8.7.1. Upon request by the City under A.R.S. § 9-583(D), Licensee shall disclose to the City all persons with whom it contracts to use its Facilities in the public highways, public streets, public right-of-way, and public utility easements within the City to provide telecommunications services.

8.7.2. Proprietary information shall mean any document or material clearly marked and identified as confidential (hereinafter "Proprietary Information"). Such Proprietary Information may include, but not be limited to, any customer lists, financial information, technical information, or other information clearly identified as confidential pertaining to services provided to its customers.

8.7.3. Proprietary Information disclosed by Licensee to the City or its constituent departments, clearly marked and identified as required in this Agreement, shall be regarded as proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Licensee of such request and allow the Licensee a reasonable opportunity to defend its information from disclosure. The foregoing shall not apply to any information that is already in the public domain; however, if public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain. It shall be the Licensee's sole responsibility to defend against disclosure of Proprietary Information. In the event the information is deemed not proprietary, or in compliance with a court order, the City shall disclose the information requested.

8.7.4. Notwithstanding any provision in this License, the Licensee acknowledges and understands that City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et seq.*) and Licensee agrees that the City has no liability to Licensee for any disclosure thereunder.

9. Licensee Relocation of Facilities. Upon the City's request, Licensee shall temporarily or permanently relocate or otherwise modify existing and future Facilities ("Relocation Work") as necessary to accommodate a government purpose as follows:

9.1. Licensee shall perform the Relocation Work at no expense to the City when required by the City's Manager or designee.

9.2. The Relocation Work includes all of the work determined by the City to be necessary to accommodate competing activities, including without limitation to temporarily or permanently, removing, protecting, supporting, disconnecting, or relocating any portion of the existing or future Facilities.

9.3. The City shall perform any part of the Relocation Work that has not been performed within Sixty (60) days after notice from the City. Licensee shall reimburse the City for its actual and reasonable costs associated with any Relocation Work or the City may draw from the Security Fund provided the City shall include a full accounting of all sums withdrawn.

9.4. City has no obligation to relocate Licensee's Facilities, equipment, materials, or fiber (lit or dark), nor is there an obligation for the City to relocate the City's or any other entity's facilities, equipment, materials, or fiber (lit or dark).

9.5. Any of Licensee's Facilities that are not relocated as required by this Agreement shall be considered abandoned, and the City shall be entitled to use, relocate, or remove such abandoned Facilities at its sole discretion.

9.6. All Relocation Work shall be subject to the provisions of this License, the Peoria City Code, other City requirements including the Peoria Engineering Standards Manual.

10. Licensee Abandonment of Facilities. If the Licensee abandons use of its Facilities, cable, ducts, or other fiber (lit or dark), equipment or materials which are used to provide telecommunications services for telephone service, or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify the City and may – subject to the City's approval – permanently abandon the improvements in place.

10.1. In the event of cancellation, revocation, termination, or permanent abandonment, the City shall require Licensee to comply with all necessary requirements identified in the City of Peoria Engineering Standards Manual as well as any other applicable regulations to remove its Facilities.

11. Term of License.

11.1. The right, privilege and obligations in this License shall continue and exist for a period of five (5) years from the effective date hereof unless sooner revoked as provided in this License. No provision of this License may be construed to grant any automatic extension, renewal, or replacement thereof, and shall be subject to the renewal requirements in A.R.S. § 9-583(G).

11.2. At any time prior to the expiration of this License, the Licensee may apply to the City for a renewal or extension of the License in accordance with the then existing state and City laws.

12. Transferability of License.

12.1. No Assignment. The rights, privileges and license granted hereunder shall not be sublet, assigned or otherwise transferred nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Licensee, without the express written consent of the City by an ordinance or resolution passed by the City Council, which consent shall not be unreasonably withheld, conditioned, or delayed. Before any proposed assignment or other transfer becomes final, the Licensee shall request the consent of the City to such proposed assignment. Any such assignment or transfer shall be in conformance with the applicable sections of the City Code. Any transfer or assignment that is to occur shall adhere to the provisions outlined in the City Code. The new Licensee (if consented to by the City) shall be equally subject to all the obligations and privileges of the original License – including any amendments –, which will remain in full effect as if the new Licensee was the original Licensee.

12.2. Instruments. After the approved transfer, the Licensee shall provide City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such transfer, certified and sworn to as correct by the Licensee. A request for consent to transfer shall include an assignment agreement executed by Licensee and transferee and for execution by the City after its consent, that:

The transferee has read, accepts, and agrees to be bound by the License.

12.3. The transferee assumes all obligations, liabilities, and responsibility under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which Licensee could not have exercised.

12.4. The assignment of the License (including all amendments) shall be binding on the transferee as upon the transferor of the License as if the transferee had originally executed the License for the full term of the License; and

12.5. The transfer will not substantially diminish the financial resources available to the Licensee.

13. Contact. The Licensee shall notify the City within thirty (30) days of any change in mailing address or emergency phone numbers.

Licensee Address:

Zayo Group, LLC

Attn: Director, Underlying Rights – West Region

1805 29th Street, Suite 2050

Boulder, CO 80301

With a Copy to:

Zayo Group, LLC

Attn: General Counsel – West Region

1805 29th Street, Suite 2050

Boulder, CO 80301

Emergencies:

Network Operations Center & Repair

Phone: (888) 404 9296

E-mail: zayoncc@zayo.com

14. Lenders. Nothing in this Section shall be deemed to prohibit a pledge, hypothecation, mortgage, or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee through a default of the Licensee, the lender may assume the rights and obligations of the Licensee. The lender or creditor may not transfer or change control of the License without submitting the change to the City for consent under this Section. If the lender does continue operation on any basis at any time, it shall be subject to all provisions of the License. No later than three years after assumption of control by the lender or creditor, the lender or creditor shall apply to the City for the right to continue assumption of control or to transfer the License. Application by the lender or creditor for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and approval shall not be unreasonably denied or delayed. A "lender" or "creditor" as discussed herein does not include a company, person or corporation or other entity that operates cable television systems or telecommunications systems as a principal or important business. This section is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without City Council review and approval.

15. Permitted Transfer. Notwithstanding the foregoing, prior consent shall not be required for a transfer to a company that meets the following conditions:

15.1. After the transfer, the company will be owned or controlled or under common control with the same direct parent, and are intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent.

15.2. Within thirty (30) days after completing a permitted transfer, Licensee and the proposed transferee shall submit to the City a notice of transfer, including documents meeting the conditions, and a description of the nature of the transfer, including complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

15.3. After the transfer, the Licensee shall provide City a copy of the deed, agreement, mortgage, or lease or of other written instrument evidencing such transfer, certified and sworn to as correct by the Licensee.

15.4. After the transfer, the new licensee must comply with the provisions of this of this License with respect to further transfers as if the new licensee were the original Licensee.

16. Nonexclusive License. This grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm, or corporation, or to deny to or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona.

17. Revocation of License.

17.1. The City may revoke the License granted hereunder prior to its date of expiration if the Licensee fails to comply with the material terms and conditions of the License or applicable law.

17.2. Before revoking the License, the City Manager or a designee shall give written notice to Licensee of the defect in performance and give Licensee sixty (60) days within which to cure the defect in performance. The City and Licensee may mutually agree upon a longer period to cure the defect prior to revocation.

17.3. The City need not provide a sixty (60) day cure period prior to revocation if the City finds that the defect in performance is due to an intentional misconduct, is a violation of criminal law, is an immediate danger to public health and welfare, or is a part of a pattern of violations where the Licensee has already had notice and opportunity to cure.

17.4. The City need not provide notice of revocation and may revoke the License if Licensee voluntarily files any petition, or have an involuntary petition filed on its behalf under any chapter or section of the federal bankruptcy code; or shall file an

answer admitting insolvency or inability to pay its debts; if a trustee or receiver is appointed to Licensee.

17.5. If the Licensee requests a hearing before revocation, the City shall provide a procedure for such a hearing prior to final action on the notice of defect in performance.

18. Notice of Other Users.

18.1. Third Party Contracts. Licensee may enter into contracts with unrelated third parties ("Users") in the ordinary course of Zayo Group, LLC's business for use of the Conduit Systems and/or Fiber Optic Networks within the portions of the ROW subject to this License provided that Licensee at all times retains exclusive control over its Facilities and remain responsible for locating, servicing, repairing, maintaining, replacing, relocating, or removing the Facilities pursuant to the provisions of this Agreement. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this License and the following:

18.2. User Contract Required. No person shall transmit voice, video or data over the Fiber Optic Networks or otherwise use the Conduit System(s) except under a User Contract with Zayo Group, LLC; the identity of such Users must be disclosed to the City upon request, but such information will be considered Confidential and Proprietary. All such Users are prohibited from performing any construction, maintenance, repair, or other work of any description in the ROW related to the Fiber Optic Networks or Conduit System(s), unless such Users have an agreement with the City.

18.3. User Work in ROW. Such Users shall not perform any construction, maintenance, repair, or other work of any kind in the ROW related to the Fiber Optic Networks or Conduit System(s) unless: (A) the User Contract provides for the User to construct, install, operate, or maintain any portion of the Fiber Optic Networks or Conduit System(s) within the route in the ROW; and (B) the User has entered into a License with the City for use of the City's ROW.

18.4. Responsible for Third Party Users. Licensee shall cause to comply with this License all persons using the ROW through or under Zayo Group, LLC or this License. Licensee is responsible for any violations of this License by persons using the ROW through or under Licensee or this License.

19. Acceptance of License Terms and Conditions.

19.1. This License shall not become effective until Licensee with the City Clerk shall have filed written acceptance thereof. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the License and by the Charter, Code, laws, rules, and requirements of the City.

19.2. The Licensee acknowledges and accepts the right of the City to issue a License under currently applicable law and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or in any forum.

19.3. The Licensee has reviewed the City's ability to grant a License and accepts such a License as the City may now be legally able to require.

19.4. In the event of conflict between the terms and conditions of the License and the terms and conditions on which the City can grant a license or permission to use the public highways, public streets, public rights-of-way, and public utility easements as set forth in applicable law, the applicable law shall, without exception, control.

19.5. Nothing in this License shall be deemed to waive the requirement of the various codes, ordinances, and regulations of the City regarding permits, fees to be paid or manner of construction.

19.6. The Licensee agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the City because of the enforcement of the License or because of defects in ordinance or License issuance, or because of any required dedication or failure to require the dedication of any right or interest in real or personal property in conjunction with any site plan approval, zoning, rezoning, or any other application of City authority to an interest in land.

20. Severability. If any one or more of the provisions of this Agreement become void, voidable, or unenforceable for any reason, such provisions shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement.

21. Exhibits. All Exhibits referred to in this License and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendments to this License are by such reference incorporated in this License and shall be deemed a part of this License.

22. Survival of Liability. All obligation of Licensee hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this License.

23. No Warranty. Licensee acknowledges and agrees that the City does not warrant the condition or safety of its public highways, public streets, public right-of-way and public utility easements or the premises surrounding the same, and Licensee hereby assumes all risk of any damages, injury or loss of any nature whatsoever caused by or in connection with the use of any City public highways, public streets, public right of way and public utility easements.

24. On-Call Assistance. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee activities 24 hours per day, 7 days per week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network.

24.1. The City may contact by telephone the network operations center operator at the following phone number 1-866-364-6033 regarding such problems or complaints, and may use that number in order to reach Licensee at any time for any emergency matter. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Licensee shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

[Signatures Appear on Following Pages]

This License is executed on this _____ day of _____, 2021.

CITY OF PEORIA, ARIZONA, a municipal
corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ACCEPTED BY:

Zayo Group, LLC

[Signature]

[Printed Name]

Its: _____

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally
appeared _____, whose identity was proven to me
on the basis of satisfactory evidence to be the person who he or she claims to be, and
acknowledged that he or she signed the above/attached document.

Notary Public