

CITY OF EL MIRAGE RIGHT-OF-WAY LICENSE
(Zayo Group, LLC)

THIS RIGHT-OF-WAY LICENSE AGREEMENT (hereinafter referred to as this “Agreement”), made and entered into this _____ day of _____, 2020, pursuant to authority of the Arizona Constitution, State Statutes, and the City of El Mirage Municipal Code, between the CITY OF EL MIRAGE, an Arizona municipal corporation, with its principal office located at 1000 N. El Mirage Road, El Mirage, AZ 85335, (hereinafter referred to as the "CITY" or “LICENSOR”) and ZAYO GROUP, LLC, a Delaware limited liability company, with an address of 1805 29th Street, Suite 2050, Boulder, CO 80301 (hereinafter referred to as the "LICENSEE"). The CITY and the LICENSEE may be hereinafter referenced individually as “Party” or cumulatively as “Parties”.

1. In consideration of Licensee’s payment of a franchise fee, as set forth in Section 7 below, the receipt of which is acknowledged by the Licensor, and Licensee ’s performance of its obligations under this License, Licensor hereby authorizes Licensee to use, in conformance with this License and all applicable local, state, and federal laws and regulations, Licensor’s public right-of-way referred to in this License as the “License Area,” which consists of that public right-of-way described in Exhibit A attached to and incorporated by this reference in this License. The License Area as described in Exhibit A may be amended by written instrument signed by the El Mirage City Manager (or designee) and a duly authorized officer of Licensee.
2. “Licensee” includes any person or entity employed by, contracted by, or acting on behalf of Licensee.
3. Licensee may use the License Area for the installation and operation of telecommunications fiber optic lines and related support equipment (“Facilities”) in a manner consistent with this License and conforming to plans approved and permits issued by the City of El Mirage (City).
4. This License is evidence of Licensee’s right to use the public right-of-way, a pre-condition and prerequisite to obtaining one or more City right-of-way use permits in accordance with City Code Chapter 151: Public Rights-of-way; Encroachments. All Licensee work in the License Area shall be accomplished pursuant to a right-of-way use permit in accordance with the requirements of City Code as follows:
 - a. Licensee shall submit to Licensor all of the following with any right of way permit application:
 - i. Engineered construction plans with specifications for the facilities Licensee proposes to install in the License Area.
 - ii. A construction cost estimate for the installation of Licensee’s facilities proposed to be installed in the License Area.

- iii. If Licensee is using or occupying facilities owned or operated by another entity, or is installing new facilities for another entity, a true and correct copy of a lease or other agreement evidencing Licensee's legal right or authority to use, occupy, or install the facilities.
 - b. During Licensor's review of Licensee's right-of-way application and associated documents, Licensor will:
 - i. Identify any potential pending El Mirage Capital Improvement Program (CIP) project conflict and route plan review through the City for designer review.
 - ii. Determine if the permit can be issued, and if so, notify Licensee of any applicable standard or special permit conditions.
 - iii. Require the posting of a cash bond or some form of security when and to the extent the Licensor reasonably determines that it is prudent to do so to protect against any direct financial impacts on Licensor that may be caused by Licensee's:
 - (1) failure to perform,
 - (2) facilities conflict,
 - (3) failure to relocate its facilities, and/or
 - (4) any other similar reasons.
 - iv. Decline to issue a right-of-way permit for areas that will or may conflict with public works projects in circumstances where the Licensor reasonably determines that Licensee's posting of a cash bond or other security is not sufficient to address Licensor's concerns or interests.
- 5. This License does not authorize Licensee to provide "cable service" as defined in City Code section 151.001.
- 6. Licensee's use of the License Area, and Licensor's grant of access, shall comply with all applicable local, state, and federal requirements.
- 7. Fees. Licensor is of the position that the streets and other public rights-of-way that are used by Licensee in the operation of its business within the boundaries of the License Area are valuable public properties acquired and maintained by Licensor at great expense to its taxpayers, and that the use of said streets is a valuable property right without which Licensee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the Licensor will incur costs in related to Licensee's operations in the License Area, Licensee shall pay to the Licensor an amount in accordance with

state and federal law:

7.1 Fee Payment Items. Licensee shall pay to City each of the following separate and cumulative amounts (collectively the "Fee Payment"):

7.1.1 An amount (the "Annual Fee Payment") based on Licensee's use of the Facilities to provide interstate telecommunications services as such services are defined by A.R.S § 9-583 (C)(2).

7.1.2 The total amount of all applicable ordinary fees payable to Licensor for Licensor's review of plans, issuance of permits, and inspection of Licensee's work in the rights-of-way.

7.2 Annual Fee Payment Amount. The amount of the Annual Fee Payment shall be 89 cents (\$.89) per linear foot of trench in the rights-of-way.

7.3 Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index") for the month of January. The amount of each adjusted amount (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number on the last adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the current amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = C \times \$ M$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, City shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by City in City's reasonable discretion. Any delayed adjustment shall be effective retroactively. Insurance coverages shall be rounded to the nearest million dollars.

7.4 Appropriate Taxes. Licensee shall be responsible for any applicable taxes associated with this Agreement.

7.5 Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.

7.6 This Agreement does not currently provide for any future in-kind payments by Licensee, however, should fees be owed under this License, Licensee and City may amend this License whereby Licensee may provide in-kind services or facilities in lieu of any payment of such fee.

8. Licensee shall bring into compliance with City-approved plans and all applicable local, state, and federal requirements any use of the License Area installed by or on behalf of Licensee. If Licensee is unable to bring any such use of the License Area into compliance, Licensee shall remove such use at Licensee's cost.
9. Licensee shall maintain any use of the License Area installed by or on behalf of Licensee.
10. Licensor shall have the right to terminate this License if Licensee shall fail to or neglects to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of sixty (60) calendar days after Licensor has notified Licensee in writing of such failure or neglect. Where a default other than for payment cannot reasonably be cured within a sixty (60) day period, if the defaulting Party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such cure. Upon the failure to cure any such default within sixty (60) days after notice thereof or within sixty (60) days plus the extension for curing with due diligence as set forth above, the Party giving notice of the default may thereupon terminate by providing written notice to the defaulting Party. Upon default by either Party, the non- defaulting Party shall have the right to pursue any and all remedies available at law or equity.
11. This License shall remain in effect from the Effective Date until 11:59 p.m. on the date that is the tenth (10th) annual anniversary of this Agreement, unless sooner terminated as set forth in this Agreement ("Term"). The term of this Agreement shall be automatically extended for three (3) consecutive five (5) year periods (each five (5) year period an "Extension Term"); provided however, that Licensee may terminate this Agreement by providing written notice to Licensor at least ninety (90) days' prior to the end of the Term or any Extension Term.
12. Upon receipt by Licensee of ninety (90) days' prior written demand by Licensor for reasons, including without limitation, Licensor's construction of a road widening or other capital project that conflicts with or otherwise affects Licensee's facilities,

Licensee shall at its sole cost relocate Licensee's facilities to a portion of the remaining License Area not in conflict with the capital project. Licensor shall not be responsible for damages resulting from Licensee's failure to timely remove or relocate its facilities pursuant to this paragraph.

13. This License shall not be assigned by Licensee, but Licensee's obligations under this License shall be binding upon Licensee's heirs, contractors, assignees, designees, agents, and representatives. Notwithstanding anything to the contrary herein, so long as Licensee is in full compliance with this Agreement, this Agreement, without any approval or consent of Licensor, may be sold, assigned or transferred by the Licensee to the Licensee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Facilities Assets are located by reason of a merger, acquisition or other business reorganization.
14. Licensor issues this License to Licensee as an accommodation for the provision of telecommunication services to businesses and residents of the City of El Mirage and the surrounding area and for all and any lawful purposes.
15. To the extent permitted by law and except for any claims, losses, or causes of action arising out of the negligence or willful misconduct of Licensor, Licensee shall defend, indemnify and hold harmless Licensor, its officers, agents, and employees from and against any and all claims, demands, causes of action, complaints, suits, losses, damages, injuries, and liabilities whatsoever (including those for costs, expenses, and attorneys' fees) to any person, persons, or property arising out of either (i) Licensee's use or maintenance of the License Area or (ii) Licensee's negligent acts or omissions in connection with anything installed by or on behalf of Licensee in the License Area.
16. In no event shall the City or Licensee be liable to each other for lost profits, or indirect, incidental, consequential, special, or punitive damages.
17. Licensee shall obtain liability insurance for the term of this License in minimum amounts of \$1,000,000.00 per occurrence and \$2,000,000.00 per occurrence for general aggregate. Licensee may satisfy the minimum insurance requirement with excess or umbrella liability coverage. This insurance shall be updated annually and shall be kept in force while this License is in force. Licensor may, if it deems necessary, require additional coverage. Licensor shall be named as an "additional insured" endorsee for the coverage, evidenced by endorsement number on the face of the insurance certificate and submittal of a copy of the additional insured endorsement or any other required endorsement. If available through Licensee's insurance carrier, Licensee shall obtain a "cancellation notice recipient" endorsement, evidenced by endorsement number on the face of the insurance certificate and submittal of a copy of the cancellation notice recipient endorsement, in all its insurance policies, requiring Licensee's insurance carrier to provide notice to Licensor of cancellation or reduction of insurance coverage. CERTIFICATES OF INSURANCE FOR COVERAGE AS DESCRIBED IN THIS LICENSE SHALL BE FILED WITH LICENSOR PRIOR TO

COMMENCEMENT OF ANY ACTIVITY UNDER THIS LICENSE. LICENSEE SHALL ALSO FILE ALL CERTIFICATES OF INSURANCE AND REQUIRED ENDORSEMENTS EACH TIME THE POLICY IS UPDATED OR RENEWED. Certificates of insurance and endorsements shall be sent to the City of El Mirage Engineering Division, 10000 N. El Mirage Road, El Mirage, AZ 85335, annually commencing on the date of execution of this License.

18. Licensee shall give Licensor written notice within two working days after Licensee receives notice of any cancellation or reduction of its insurance coverage.
19. If Licensee causes any damage to the License Area, Licensee shall promptly make and pay for the repairs necessary to restore the License Area to its pre-damaged condition. At the discretion of Licensor, if repairs are not initiated and completed within a reasonable length of time, but in any event within 14 calendar days after Licensor gives written notice of damage to Licensee, Licensor may make the repairs and bill Licensee for all reasonable costs plus a 25% administrative fee. Licensee shall pay the bill within thirty (30) calendar days of receipt.
20. This License is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.
21. Notices: All notices and other communication or writings which any party is required, permitted or may wish to serve in connection with or under this Agreement shall be in writing, and shall be deemed delivered to the addressee thereof when sent by certified mail, return receipt requested, or personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given on the date of mailing.

LICENSOR:

CITY OF EL MIRAGE
Attn: City Manager
10000 N. El Mirage Road
El Mirage, AZ 85335

LICENSEE:

ZAYO GROUP, LLC
Attn: Director, Underlying Rights – West Region
1805 29th Street, Suite 2050
Boulder, Colorado 80301

With a Copy to:

Zayo Group, LLC

Attn: General Counsel – West Region
1805 29th Street, Suite 2050
Boulder, CO 80301

For Emergencies:

Network Operations Center & Repair
Phone: (888) 404 9296
E-mail: zayoncc@zayo.com

IN WITNESS WHEREOF, the parties have executed this License effective as of the Licensor’s signature date below (“Effective Date”).

“LICENSOR”:

City of El Mirage, an Arizona municipal corporation

By: _____

Its: _____

Date: _____

“LICENSEE”:

ZAYO GROUP, LLC, a Delaware limited liability company

By: _____

Its: _____

Date: _____

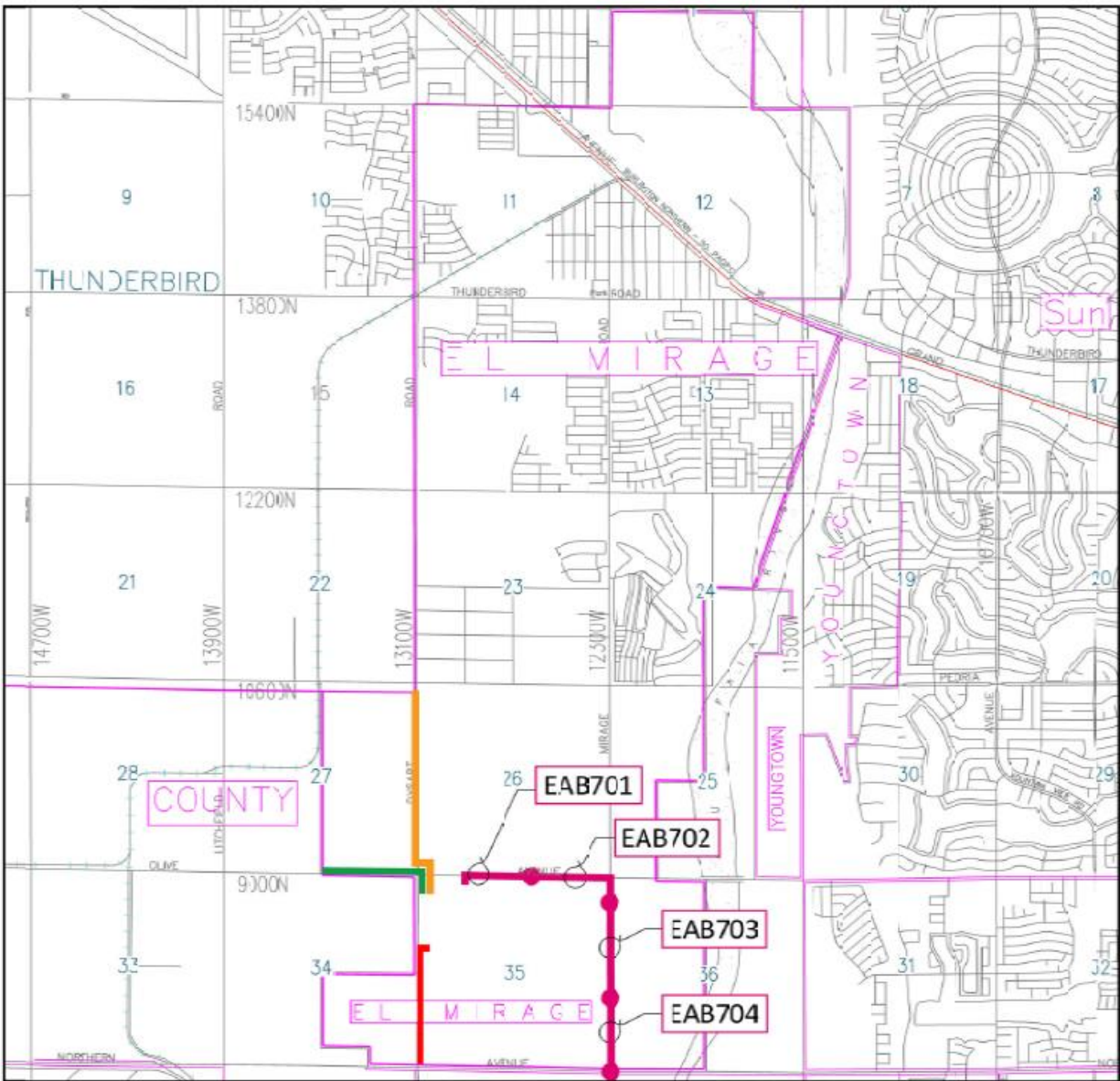
EXHIBIT A: THE "LICENSE AREA"

To the **RIGHT-OF-WAY LICENSE AGREEMENT** (hereinafter referred to as this "Agreement"), made and entered into this _____ day of _____, 2020, pursuant to authority of the Arizona Constitution, State Statutes, and the City of El Mirage Municipal Code, between the **CITY OF EL MIRAGE**, an Arizona municipal corporation, with its principal office located at 1000 N. El Mirage Road, El Mirage, AZ 85335, (hereinafter referred to as the "CITY" or "LICENSOR") and **ZAYO GROUP, LLC**, a Delaware limited liability company, with an address of 1805 29th Street, Suite 2050, Boulder, CO 80301 (hereinafter referred to as the "LICENSEE").

The following public road rights-of-way owned by the Licensor:

[SEE DEPICTION ON THE FOLLOWING PAGE]

Proposed Zayo Network in El Mirage



- █ SPAN 4 (SEGMENT 5)
- █ SPAN 3 (SEGMENT 6)
- █ SPAN 9 (SEGMENT 7)
- █ SPAN 7 (SEGMENT 8)

CITY OF EL MIRAGE FOOTAGE (EST.)

SPAN 4 (SEGMENT 5)	2,700'
SPAN 3 (SEGMENT 6)	2,700'
SPAN 9 (SEGMENT 7)	9,150'
SPAN 7 (SEGMENT 8)	5,280'