

## CONDUIT USE AGREEMENT

This Conduit Use Agreement ("Agreement") is made and entered into this 24th day of April, 2012 (the "Effective Date"), between the City of Ramsey, Minnesota ("City") and Zayo Group, LLC ("Zayo").

### RECITALS

WHEREAS, City owns a four-inch (4") PVC conduit system located between Ramsey Boulevard west along Sunwood Drive to Armstrong Boulevard, as more completely described in Exhibit A attached hereto (the "Conduit System"); and,

WHEREAS, Zayo desires to obtain from City and City desires to provide to Zayo, a license to use the Conduit System;

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other just and adequate consideration, the Parties hereby agree as follows:

1. **LICENSE.** As of the Acceptance Date for the Innerducts, City agrees to issue a license to Zayo, and Zayo agrees to accept a license from City, the Conduit System as described in Exhibit A and under the terms and conditions as further described below (the "License").

2. **INSTALLATION AND ACCEPTANCE.**

2.1 **Installation.** The Conduit System consists of a vacant four-inch (4") PVC conduit. In consideration of this License, Zayo agrees to provide all labor, materials and equipment required to engineer and install within the Conduit System three (3) inch-and-a-quarter (1.25") SDR 11 innerducts (collectively, the "Innerducts"). Zayo shall also install two (2) handholes, one (1) for Zayo's use and one (1) for City's use. Zayo shall install the Innerducts and handholes according to the Zayo construction drawings ("Zayo Construction Drawings"), attached hereto as Exhibit B.

2.2 **Installation Date.** The Innerducts are estimated to be installed within sixty (60) days of the full execution of this Agreement (the "Estimated Completion Date"). City acknowledges that the Estimated Completion Date may change due to unforeseen construction conditions. In the event Zayo encounters any changes to the Estimated Completion Date, Zayo shall promptly notify City and provide a revised estimated completion date (the "Revised Estimated Completion Date").

2.3 **Innerduct Acceptance Procedures.** Prior to commencement of the Term of this Agreement as defined in Section 3 below, Zayo shall perform necessary tests to verify that the Innerducts have been installed according to the Zayo Construction Drawings and shall promptly provide City with a report of such test results ("Notice of Completion"). City shall promptly review the Notice of Completion and shall provide Zayo with a written notice accepting (or rejecting by specifying the defect or failure in the Notice of Completion that is the basis for such rejection) the Innerducts. If the City fails to notify Zayo of its acceptance or rejection of the final test results with respect to the Innerduct within twenty (20) business days after City's receipt of such Notice of Completion, City shall be deemed to have accepted the Innerducts. The date of such notice of acceptance (or deemed acceptance) of the Innerducts shall be the "Acceptance Date." In the event of any rejection by City, Zayo shall take such action reasonably necessary and as expeditiously as practicable to correct or cure such defect or failure and the process acceptance shall be repeated. The foregoing notwithstanding, if City uses any portion of the Innerducts prior to acceptance, such use shall constitute acceptance with an Acceptance Date effective as of the earliest documented use by City.

2.4 **Configuration and Access to the Innerducts.** Of the three (3) inch-and-a-quarter (1.25") SDR 11 innerducts installed, one (1) will be routed into a Zayo handhole (the "Zayo Innerduct") to be used exclusively by Zayo to make available telecommunications services in and through the City of Ramsey, Minnesota. The other two (2) innerducts will be routed to a City handhole (the "City Innerducts") to be utilized by the City in accordance with this Agreement.

2.5 Use of Innerducts. Subject to the limitations set forth in this Agreement, Zayo shall use the Zayo Innerduct solely for lawful purposes and shall have the right to install fiber optic cable within the Zayo Innerduct, and to access the Zayo Innerduct on an as-needed basis.

2.6 Maintenance of Conduit System. City and Zayo are each responsible for the routine and preventative maintenance of their respective conduit systems and all costs associated with any such work. Each party is responsible for locating their own facilities as part of the local "Gopher State One Call" program. Any damage created as a result of either party not properly locating their respective facilities will be the responsibility of that party to correct. Each party must provide a minimum of ten (10) business days notice, except in the case of emergencies, for any maintenance or construction activities that may affect the service of the other party. Any required maintenance on the Zayo system that will affect services shall take place outside normal working hours, anytime between 12:00 AM to 6:00 AM (local time), and Zayo, upon proper application and City review process, is required to obtain a right-of-way permit from the City, which shall not be unreasonable withheld or delayed. All non-routine maintenance (defined as repairs required due to cable cuts, fires, remodeling work or other acts of third parties or Force Majeure events), shall be provided by Zayo, and the costs for such corrective work divided on a pro rata basis with the City responsible for two-thirds (2/3) and Zayo responsible for one-third (1/3). Any damage that occurs to either party's facilities, as a result of work being performed by the other party, will be the responsibility of the damaging party to correct at their sole cost.

3. TERM. The initial term of this Agreement shall commence on the Effective Date and shall remain in effect for the period of twenty-five (25) years. Thereafter, the Term will automatically renew for five-year increments (the "Extension Terms"), unless either party provides the other party with at least sixty (60) days written notice prior to the end of the Term (as may be extended by the Extension Terms) of their desire to terminate this Agreement.

4. PAYMENT. In consideration for the License of the Conduit System, Zayo agrees to make a one-time payment equal to one dollar and sixty-seven cents (\$1.67) per linear foot of the Conduit System. The Conduit System is approximately five thousand seven hundred linear feet (5,700'). Actual distance is to be determined during installation described in paragraph 2.1.

5. INDEMNIFICATION. Each Party shall indemnify and hold harmless the other Party and its respective officers, agents and employees from and against all claims, damages, losses, liabilities, and costs arising from its acts or omissions pursuant to this Agreement including without limitation attorney fees and cost.

6. FORCE MAJEURE. In the event either Party is prevented from performing its obligations under this Agreement due to circumstances beyond its control including, without limitation, labor disputes, power outages or shortages, fire, explosion, flood, drought, acts of God, war or other hostilities, civil commotion, domestic or foreign governmental acts, orders, or regulations, inability to obtain facilities or supplies, or if either Party is notified by a state or federal regulatory body that any aspect of this Agreement does not comply with any applicable law, regulation, rule, or policy, then the obligation of either Party shall be suspended during the period of such disability.

7. LIMITATION OF LIABILITY AND DISCLAIMER.

7.1 CITY MAKES NO REPRESENTATION OR WARRANTY EITHER EXPRESSED OR IMPLIED REGARDING THE CONDUIT SYSTEM AND SPECIFICALLY DISCLAIMS ANY WARRANTY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE ENFORCEMENT OF ANY MANUFACTURER'S WARRANTIES AND GUARANTEES.

7.2 Limitation of Liability. Each Party's sole and exclusive remedies for breach or non-performance of this Agreement by the other Party shall be, at non-defaulting Party's election, re-performance and/or repair or replacement by the defaulting Party of any defective services, or of any defective equipment provided in connection with the services, or the refund of any compensation actually paid to the defaulting Party during the period of such breach or non-performance. Either party will in no event be liable for special, exemplary, punitive, indirect, consequential or incidental damages, including but not limited to, damages for loss of use, lost profit, loss of business or goodwill, or other financial injury arising out of or in connection with the maintenance, use,

performance or failure of the Innerduct or equipment or this Agreement. In no event shall either Party be liable for any loss or damage relating to a claim for personal injury arising out of or in connection with maintenance, use, performance or failure of the Innerduct or equipment.

## 8. DEFAULT AND REMEDIES.

8.1 Event of Default. Any of the following shall constitute an event of default: (a) either Party fails to perform or observe any other representation, warranty, covenant, condition or agreement and fails to cure such breach within thirty (30) days after written notice; (b) any representation or warranty made by either Party hereunder or in any other instrument provided to the other Party proves to be incorrect in any material respect when made; (c) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors is made by or against Zayo; (d) Zayo becomes insolvent or fails generally to pay its debts as they become due; and, (e) Zayo voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated.

8.2 Remedies. In the event of a default by either party, the non-defaulting party shall have the right to exercise any or all of the following remedies to the extent applicable: (a) terminate this Agreement; (b) declare all any amounts due under this Agreement immediately due and payable; (c) proceed to enforce the remedies of a secured party under Minnesota law; and, (d) proceed by court action to enforce performance of this Agreement and any remedy provided for herein and/or recover all damages of any default or exercise any other right or remedy available at law or in equity.

9. TERMINATION. Upon the expiration of the Term, as may be extended, the License with respect to the Conduit System shall immediately terminate, all rights of Zayo to use the Conduit System shall cease, all rights to the use of the Conduit System shall revert to City and City shall owe Zayo no further duties, obligations or consideration.

## 10. MISCELLANEOUS.

10.1 Choice of Law. This Agreement shall be governed and interpreted under the laws of the State of Minnesota.

10.2 Attorney's Fees. If any suit or action is filed by either Party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as fixed by the reviewing court, incurred in investigation of related matters and in preparation for the prosecution of such suit or action as fixed by the trial court and if any appeal or other form of review is taken from the decision of the trial court or any subsequent court.

10.3 Relationship of the Parties. Nothing contained in this Agreement shall be construed to create any partnership or agency relationship between the Parties for any purpose, action, or transaction, including those related to the performance of this Agreement.

10.4 Entire Agreement. This Agreement represents the entire agreement between the Parties relating to this matter. No prior or contemporaneous discussions, representations, understandings, or statements, oral or written, relating to this Agreement or its subject matter shall have any force or effect. The Parties agree that no individual party shall be deemed to be the drafter of this Agreement and that, in the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision against any individual party as the drafter of the Agreement. Exhibit A and Exhibit B, all attached hereto, are incorporated herein by reference and made a part of this Agreement.

10.5 Assignment. Either party may, without the other's consent, assign or otherwise transfer this Agreement or its rights or obligations hereunder to any other party, in whole or in part.

10.6 Severability. If any provision or provisions of this Agreement are deemed in a court of law to be illegal or otherwise unenforceable, such provision or provisions shall be modified, wherever possible, to provide binding force and effect. If modification is not possible, the elimination of such provision or provisions shall not serve to invalidate the Agreement and all remaining provisions of this Agreement shall remain valid and enforceable.

10.7 Waiver. The failure of either Party to enforce at any time, or for a period of time, any of the provisions of this Agreement, shall not be construed as a waiver of such provision or of the right of such Party thereafter to enforce such provision.

10.8 Notices. All notices or demands of any kind that any party is required or desires to give or to make upon others in connection with this Agreement shall be in writing and be deemed to be delivered only after such notice or demand has been sent by depositing the notice or demand in the United States mail, postage prepaid, and addressed to the other party as follows:

If to City:  
City of Ramsey  
7550 Sunwood Drive NW  
Ramsey, MN 55303  
Attn: City Attorney

If to Zayo:  
Zayo Group, LLC  
400 Centennial Pkwy, Suite 200  
Louisville, CO 80027  
Attn: General Counsel

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of each Party as of the day and year first above written.

CITY OF RAMSEY, MINNESOTA

ZAYO GROUP, LLC



(Authorized Signature)

BRIAN OLSON

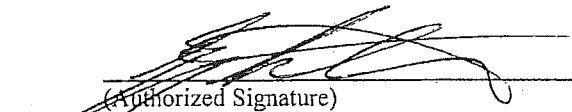
(Printed Name)

DIRECTOR OF PUBLIC WORKS / PRINCIPAL CITY ENGINEER

(Title)

5/3/12

(Date)



(Authorized Signature)

GREGG STRUMBERGER

(Printed Name)

COUNSEL

(Title)

4-24-12

(Date)

**Exhibit A**  
**Description of Conduit System**

The Conduit System consists of an existing four-inch (4") PVC conduit located between Ramsey Boulevard west along Sunwood Drive to Armstrong Boulevard for a distance of approximately five thousand seven hundred feet (5,700'), better described in the Ramsey Town Center, Ramsey, Minnesota Interim Streetscape Document Package (Sunwood Drive) Street No. 6-9.

**Route Map:** See attached Exhibit A-1.

**Exhibit B**  
**Zayo Construction Drawings**  
(for installation of Innerducts and handholes)

Confidential