

## **FIBER LEASE AGREEMENT**

THIS FIBER LEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of February, 2020, by and between City of Gahanna, Ohio, (individually "City") and **Zayo Group, LLC**, a Delaware limited liability City, ("Zayo"). Each may be referred to herein as a "Party" and collectively as the "Parties."

### **RECITALS**

WHEREAS, City has installed the fiber optic communications system along the route(s) described in Schedule A ("System"); and

WHEREAS, Zayo desires to be leased the right to use twelve (12) fibers ("Fibers") in the System along the routes described in Schedule A, and City desires to lease Zayo ("Lease") the Fibers, all upon the terms and conditions described in this Agreement;

NOW, THEREFORE, IN CONSIDERATION of the grant of the Lease, the payment of fees and the mutual agreements set forth below, the parties agree as follows:

#### **1. GRANT OF LEASE**

**1.1 Grant and Term.** City grants to Zayo a Lease in the Fibers for a term of twelve (12) months ("Initial Term") commencing upon the Effective Date. Zayo shall have the right to extend the term of this Agreement month to month for \$10,000/month ("Renewal Term" and together with the Initial Term, the "Term"), provided, Zayo shall notify City of its intent to renew ("Renewal Notice") at least fourteen (14) days prior to the end of the Initial Term or any Renewal Term. For purposes of this Agreement, the "Effective Date" and the date the Fibers will be made available to Zayo for use under this agreement, shall be the last date of execution of this Agreement.

**1.2 Permit.** On or before the Effective Date, the City shall grant to Zayo permit(s) in order for Zayo to connect its existing network to the Fibers ("City of Gahanna Fiber Connection Permit(s)"), which Zayo will submit to the City for review and approval on or before January 12, 2020.

**1.3 Disaster Recovery.** For disaster recovery, City shall (a) make a good faith effort to restore as soon as possible those services described herein and (b) assign a high priority to all such recovery and/or restoration efforts.

#### **2. RIGHTS AND OBLIGATIONS**

**2.1 System Ownership: Use.** The System shall at all times remain the sole property of City, however, the Fibers shall be dedicated for Zayo's sole and exclusive use. Zayo shall not make any representations or take any actions inconsistent with City's

ownership of the System. Zayo owned equipment connected to the System shall at all times remain the sole property of Zayo. City shall not make any representations or take any actions inconsistent with Zayo's ownership of such equipment. Use of any facilities adjacent to the System by a party shall not (a) interfere with the use of or impair service over the System, (b) impair the privacy of any communications over the System, or (c) cause damage to the System or adjacent property or create hazards to the employees of any user of the System or to the public. Zayo shall coordinate with the City to make all necessary connections within the System and Zayo will cover the costs associated with such connections of its Fibers in the System (including any splicing costs to create a pathway). Upon the expiration of the Term, Zayo shall remove or disconnect all connections of its Fibers in the System and cover the costs to do so.

**2.2 Deliverables.** City shall deliver to Zayo, on the Effective Date, (a) copy of the final as-built drawings containing detailed information regarding the route description, type of construction manhole and/or pole location, splice locations and distance involved adequate for classification of facilities and (b) a list of the names and telephone numbers of City personnel responsible for maintenance coordination activities associated with the System.

**2.3 Access to System.** Each party shall provide to the other at no cost such easement, license, permit or other authorization for, and use of, all building entrance facilities through which the Fibers may pass into such party's locations, adequate for the other party's access and independent of other obligations herein, and all electricity, sanitary facilities and other utilities at its locations as are reasonably required to provide safe and convenient working conditions for personnel for the installation and maintenance of the Fibers. Zayo may access the System via shared and/or CFN manholes and handholes, provided, it requests such access from City in non-emergency situations at least 24 hours in advance. City reserves the right to be present during any such access and Zayo shall in non-emergency situations provide City with the time and date of its planned access to the Fibers.

**2.4 Insurance.** Each party shall carry such comprehensive insurance as necessary to fully protect its interests.

**2.5 Notification.** City shall notify Zayo of planned maintenance and rearrangement of the Fibers at least seventy-two (72) hours prior to such activity.

### **3. MAINTENANCE**

**3.1** City shall maintain the System and the Fibers in accordance with the requirements and procedures set forth in Schedule B, attached hereto and made a part hereof. Zayo shall cooperate with and assist, as may be reasonably required, City in performing said maintenance, at City's cost.

**3.2** In the event of service outages, City agrees to use reasonable efforts to respond

promptly and restore Fibers within the parameters of the specifications in Schedule B; provided, however, that Zayo shall solely be responsible, at its own expense, for restoring an outage caused by a failure of light, signal or light communication transmission, which is caused by Zayo's equipment and not the Fibers. Zayo shall also be solely responsible, at its own expense, for the operation, maintenance and repair of all terminal equipment and third party facilities required in connection with the use of Fibers, unless due to City's negligent acts or omissions.

#### **4. CONSIDERATION**

**4.1** As consideration for the Lease, the Parties shall enter into the Construction Services Agreement whereby Zayo shall provide labor and materials and perform work necessary for the completion of the Scope of Work described therein, which includes furnishing and installing 19,660'-(2) 1.25" SDR 11 Conduits (conduit only) for the City. Other than the work described herein, there shall be no other fees due by Zayo to the City under this Agreement for use of the Fibers during the Initial Term.

#### **5. SYSTEM RELOCATION/CONDEMNATION**

**5.1** Relocation. If City shall be required by any regulatory, state, county, city or federal agency or authority to relocate any of the facilities used or required in providing the System, and/or the System itself, it shall give Zayo notice of such relocation not later than 90 days after City receives its relocation notice. In such case, and at its sole cost and expense (except as provided in Section 4.2), City shall relocate the facilities used or required in providing the System, and/or the System itself.

#### **6. COVENANTS**

**6.1** Compliance with Laws. At all times during the Term, Zayo and City shall comply with all local, state and federal laws and regulations applicable to (a) this Agreement, (b) the System and the Lease to Zayo (in the case of City), (c) the use of the Fibers (in the case of Zayo), and (d) their respective businesses/operations.

**6.2** Required Rights. City shall, at its sole cost and expense, obtain all rights, licenses, franchises, authorizations, permits, certifications, consents, rights of way and other agreements necessary or required by any other governmental body or agency having jurisdiction over its operations ("Required Rights") for the construction, installation and use of the System. City's obligations are conditioned upon and shall in all respects be subject to the continuation or acquisition of such Required Rights, and it shall make reasonable efforts to cause such Required Rights to remain effective during the Term. Zayo shall, at its sole cost and expense, obtain all Required Rights for the use of the Fibers. Each party shall give the other notice of any lawsuit or administrative filing which challenges such party's Required Rights.

**6.3** SYSTEM; FIBERS. CITY REPRESENTS AND WARRANTS THAT THE SYSTEM HAS BEEN CONSTRUCTED AND THE FIBERS ARE SUBSTANTIALLY AND IN ALL MATERIAL RESPECTS IN ACCORDANCE

**WITH THE SPECIFICATIONS SET FORTH IN SCHEDULE A. CITY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE QUALITY OF THE FIBERS PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT AS DESCRIBED ABOVE.**

## **7. TERMINATION**

**7.1 Termination.** Prior to the expiration of the Term, this Agreement may be terminated at any time (a) by mutual written agreement of the parties, or (b) by either party by written notice to the other party, which termination will be effective on such date as may be specified in such notice (which may be the date of such notice), if there is the breach by the other party of any material term of this Agreement or the Construction Service Agreement described in Section 4.1 that is not cured within 30 days of notice to the defaulting party which notice describes the breach in reasonable detail.

**7.2 Payments Following Termination Under Certain Sections.** If this Agreement is terminated before the Term expires, City shall, on demand pay Zayo, as Zayo's liquidated damages and not as a forfeiture or penalty, (1) any and all fees, costs, commissions and amounts expended (including reasonable attorneys' fees and costs) by or on behalf of Zayo to repair, alter, modify, replace or otherwise preserve Zayo's network integrity resulting from such termination (2) the product of the amount of revenues from bandwidth that was transported over the System for the month in which occurs the termination (except that if the termination date is not the last day of a calendar month the revenues of the calendar immediately before the termination date) times 12, which amount City agrees is not subject to the limitation of Section 7.1, provided, however, that City shall not be obligated to make the payment under Section 6.2 if such termination is by City as a result of any act or failure to act of Zayo described in Section 6.1(a). City agrees that Zayo may file suit to recover any sums falling due under this Section.

## **8. INDEMNITY**

**8.1 LIMITATION OF LIABILITY, EXCEPT AS PROVIDED IN SECTION 6.2, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES, INDIRECT OR SPECIAL LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES AND LOSS OF BUSINESS) OF ANY OTHER PARTY, WHETHER FORESEEABLE OR NOT, WHETHER OCCASIONED BY ANY FAILURE TO PERFORM OR THE BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER OR OTHERWISE, INCLUDING THOSE WHICH MAY BE CAUSED BY THE ACTS OR OMISSIONS OF OTHER COMMUNICATIONS CARRIERS BEYOND THE CONTROL OF A PARTY OR REGULATORY OR JUDICIAL AUTHORITIES.**

**8.2 Indemnity.** (a) *In General.* To the extent not prohibited by law, each party (Indemnitor) shall indemnify and hold the other party, its shareholders,

directors, officers, members, management committee, employees, patrons, customers agents (together "Indemnitee") in its performance pursuant to this Agreement harmless from and against any losses, liability, claims, suits, actions, losses or payments,(including reasonable attorneys' fees and costs), judgment for damages to any property or bodily injury or death, payment under any workers' compensation law or under any plan for employee disability and death benefits, incurred by Indemnitee (a) from any failure on Indemnitor's part to perform or comply with any covenants, terms or conditions of this Agreement, or (b) from any negligent act or omission of Indemnitor. Indemnitor's obligation to indemnify shall continue in full force and effect for the applicable statute of limitations notwithstanding termination or expiration of this Agreement.

## **9. RESERVED**

## **10. FORCE MAJEURE**

If a party's performance (or causing to be performed) of this Agreement or any obligation hereunder is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, war, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then such party will be excused from such performance on a day-to-day basis to the extent of such restriction or interference. Such party will use commercially reasonable efforts under the circumstances to avoid or remove such causes or nonperformance and will proceed to perform with reasonable dispatch whenever such causes or nonperformance and will proceed to perform with reasonable dispatch whenever such causes are removed or cease. If Zayo's use of the Fibers is suspended under this Section for a period of 60 days or more, it shall have the right to terminate this Agreement and the Construction Services Agreement, without penalty, described in Section 4.1 upon notice to City.

## **10. CONFIDENTIALITY**

10.1 Confidential Information. "Confidential Information" means data and information (including traffic volume/distribution and customer identities) relating to the business of a party ("Disclosing Party") which is or has been disclosed to the other party ("Recipient") or of which Recipient became aware as a consequence of or through its relationship to Disclosing Party and which has value to Disclosing Party and is not generally known to its competitors, but shall not include any data or information that has been voluntarily disclosed to the public by Disclosing Party (except where such public disclosure has been made by Recipient without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.



default.

11.3 Partial Invalidity. If any part or provision of this Agreement is determined to be invalid or unenforceable under applicable law, rule or regulation, that part will be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of that provision or the remaining provisions of this Agreement.

11.4 Relationship of the Parties. This Agreement will not create a partnership or joint venture between the parties, or result in a joint communications service offering to any third parties. No agents or employees of a party will be deemed to be agents of employees of the other party or its affiliates.

11.5 Applicable Law: Disputes. (a) *Law.* This Agreement shall be governed in all respects by the laws of the State of Ohio, without regard to principles of conflicts of law, and all applicable federal, and local laws, and regulations rulings and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, as amended, the Rules and Regulations of the FCC and PSCs.

11.6 Time of the Essence. The parties recognize and agree that time is of the essence with respect to the performance by each of its respective obligations under this Agreement, and that such performance shall be done in a timely manner. Accordingly, if there is any Dispute with respect to the performance of any such obligations which might or would delay its performance under the schedule set forth in this Agreement, each party shall proceed with the performance of such obligations according to the existing schedule as if such Dispute were non-existent while mediation or litigation is pending. No Dispute may be made more than one year after the date of the event that gave rise to it.

11.7 Successors and Assigns; Assignment. This Agreement is binding upon and inures to the benefit of the parties and their respective successors or assigns.

11.8 No Third Party Beneficiaries. This Agreement is for the benefit of the parties and will not be deemed to provide third parties with any benefit, remedy, claim, right of action or other right.

11.9 Survival of Terms. The terms and provisions contained in this Agreement that expressly survive for a period or by their sense and context are intended to survive the performance thereof by the parties will so survive the completion of performance and termination of this Agreement for the period indicated or, if no period is indicated, for the applicable statute of limitations.

11.10 Amendment. This Agreement may only be amended in a writing signed by both parties. The parties agree and acknowledge that they operate in a regulatory environment and to the extent there are changes in law or regulations applicable to the transactions contemplated by this Agreement, the parties shall enter into good faith negotiations to amend the Agreement so that it complies with the changes in applicable law or regulations, provided,

however, that if a party ("Determining Party") determines, in good faith after consultation with the other party, that such amendment will materially and adversely affect the actual, prospective operational, financial and economic benefits to the Determining Party of the transactions contemplated by this Agreement, Determining Party may elect to terminate this Agreement without liability.

CITY OF GAHANNA

ZAYO GROUP, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule A

### Fibers:

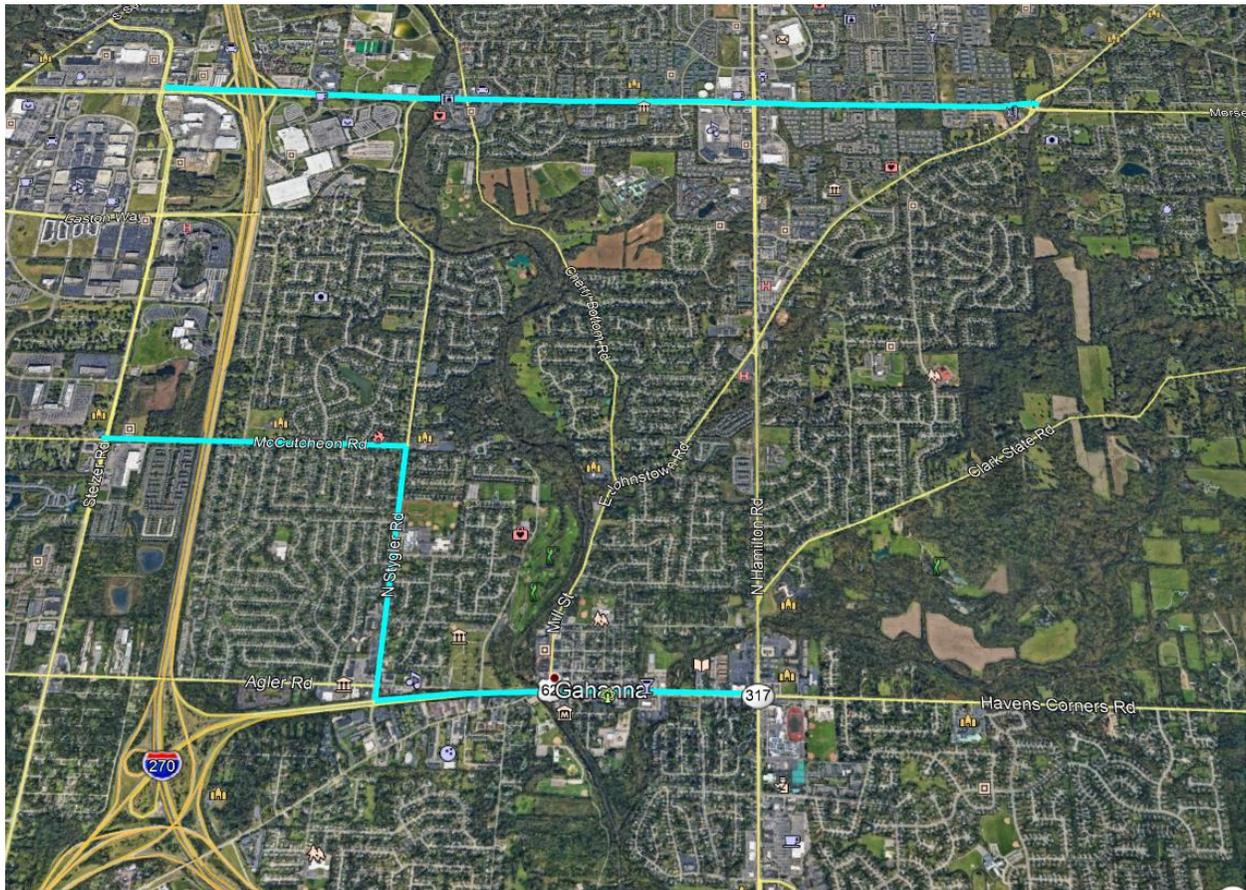
#### **Blue Route 1 (Morse Rd) 12 fibers –**

- ALoc - Morse Rd & Steltzer Rd - CFN Manhole location
- ZLoc - Morse Rd & Johnstown Rd - CFN Manhole Location
- 19,343'
- **Date Available: Upon execution of the Agreement by all parties.**

#### **Blue Route 2 (McCutcheon) 12 fibers -**

- ALoc - Agler Rd & McCutcheon Rd - CFN Manhole location
- ZLoc - Havens Corners Rd & S Hamilton Rd - Gahanna tie point
- 17,735'
- **Dated Available: Upon execution of the Agreement by all parties.**

### Route Map:



Schedule B  
**MAINTENANCE SPECIFICATIONS AND PROCEDURES**

All other capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the IRU Agreement of which this Schedule forms a part.

1. **Maintenance.**

(a) **Scheduled Maintenance.** Routine maintenance and repair of the System described in this section ("Scheduled Maintenance") shall be performed by or under the direction of City, at City's reasonable discretion or at Zayo's request, for the duration of the Term. Scheduled Maintenance shall include the following activities:

- (i) Patrol of System route on a quarterly basis;
- (ii) Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- (iii) Maintenance of sign posts along the System right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for City's "Call-Before-You-Dig" program;

(b) **Unscheduled Maintenance.** Non-routine maintenance and repair of the System which is not included as Scheduled Maintenance ("Unscheduled Maintenance"), shall be performed by or under the direction of City for the duration of the Term. Unscheduled Maintenance shall consist of:

- (i) "Emergency Unscheduled Maintenance" in response to an alarm identification by City's Operations Center, notification by Zayo or notification by any third party of any failure, interruption or impairment in the operation of the System.
- (ii) "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the System.

Zayo shall immediately report the need for Unscheduled Maintenance to City in accordance with procedures promulgated by City from time to time. City will log the time of Zayo's report, verify the problem and dispatch personnel immediately to take corrective action.

2. **Operations Center.** City shall operate and maintain an Operations Center ("OC") staffed by trained and qualified personnel. City's maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. City shall have its first maintenance employee at the site requiring Emergency Unscheduled Maintenance activity within two (2) hours after the time City becomes aware of an event requiring Emergency Unscheduled

Maintenance, unless delayed by circumstances beyond the reasonable control of City. City shall maintain a toll-free telephone number to contact personnel at the OC. City's OC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected in the System, (i) through the Zayo's remote surveillance equipment and upon notification by Zayo to City, or (ii) upon notification by a third party.

3. Cooperation and Coordination.

(a) Zayo shall utilize an Operations Escalation List, which can be found at <https://www.zayo.com/contact/customer-support/>, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of City in meeting maintenance service objectives.

(b) The City will, as necessary, arrange for unescorted access for Zayo to all sites of the System, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In performing its services hereunder, City shall take professional care to prevent impairment to the signal continuity and performance of the System. The precautions to be taken by City shall include notifications to Zayo. In addition, City shall reasonably cooperate with Zayo in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Zayo, then Zayo shall, at City's reasonable request, make such personnel of Zayo available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with City in performing such maintenance as required of City hereunder.

(d) City shall notify Zayo at least ten (10) business days prior to the date in connection with any Planned Service Work Period ("PSWP") of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Zayo shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with City's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, City shall notify Zayo at City's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

4. Facilities.

(a) City shall maintain the System in a manner which will permit Zayo's use, in accordance with the terms and conditions of the IRU Agreement, of the Zayo's Fibers.

(b) Except to the extent otherwise expressly provided in the IRU Agreement, Zayo will be solely responsible for providing and paying for any and all maintenance of all

electronic, optronic and other equipment, materials and facilities used by Zayo in connection with the operation of the Zayo's Fibers, none of which is included in the maintenance services to be provided hereunder.

5. Cable/Fibers.

(a) City shall perform appropriate Scheduled Maintenance on the Cable contained in the System in accordance with City's then current preventative maintenance procedures as agreed to by Zayo, which shall not substantially deviate from standard industry practice.

(b) City shall use reasonable efforts to have qualified representatives on site any time City has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable.

(c) City shall maintain sufficient capability to teleconference with Zayo during Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing Cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, City shall use reasonable efforts to repair traffic-affecting discontinuity within four (4) hours after the City maintenance employee's arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, City shall commence its planning for permanent repair, and thereafter promptly shall notify Zayo of such plans, and shall implement such permanent repair within a reasonable and appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available PSWP.

(d) In performing repairs, City shall comply with the splicing specifications as set forth in Schedule C.

(e) City's representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. City shall maintain and supply an inventory of spare Cable in storage facilities supplied and maintained by City at strategic locations to facilitate timely restoration.

6. Planned Service Work Period. Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after 11:00 p.m. and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends.

7. Restoration.

(a) City shall respond to any interruption of service or a failure of the Zayo's Fibers

to operate in accordance with the specifications set forth in Schedule C (in any event, an "Outage") as quickly as possible, but in any event within two (2) hours (allowing for delays caused by circumstances beyond the reasonable control of City) in accordance with paragraph 2 of this Exhibit B.

(b) When restoring a cut cable in the System, the parties agree to work together to restore all traffic as quickly as possible. City, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the Cable and shall begin restoration efforts. City shall splice fibers tube by tube or ribbon by ribbon, rotating between tubes or ribbons operated by any fiber lessees or holders of IRUs (collectively, "Interest Holders"), including US Carrier, in accordance with the following described priority and rotation mechanics; provided that, lit fibers in all buffer tubes or ribbons shall have priority over any dark fibers in order to allow transmission systems to come back on line; and provided further that City will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced

and all traffic restored. In general, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration and Segment-by-Segment basis, to provide fair restoration to all Interest Holders.

(c) The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Permanent restorations will take place as soon as possible after the temporary splice is complete.

8. Subcontracting. City may subcontract any of the maintenance services hereunder; provided, however, that City shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve City of any of its obligations hereunder.

9. Fees and Costs.

(a) Scheduled Maintenance Fees. There shall be no fees payable by Zayo for any Scheduled Maintenance hereunder.

(b) Unscheduled Maintenance Fees. For any Unscheduled Maintenance, the Costs thereof shall be allocated among the various Interest Holders in the conduit, cable an/or fibers affected thereby as follows: (i) Costs of Unscheduled Maintenance solely to or affecting a conduit or cable which houses fibers of a single Interest Holder shall be borne 100% by such Interest Holder; (ii) Costs of Unscheduled Maintenance to or affecting a conduit which houses multiple innerduct conduits, not including such Costs attributable to the repair or replacement of fiber therein, shall be borne proportionately by the Interest Holders in each of the affected innerduct conduits based on the ratio that such affected conduit bears to the total number of affected innerduct conduits, and (iii) Costs of Unscheduled Maintenance attributable to the repair or replacement of fiber, including the acquisition, installation, inspection, testing and splicing thereof, shall be borne

proportionately by the Interest Holders in the affected cable , based on the ratio that the number of affected fibers subject to the interest of each such Interest Holder bears to the total number of affected fibers in the cable. All such undisputed Costs which are allocated to Zayo pursuant to the foregoing provisions shall be the responsibility of and paid by Zayo within forty-five (45) days after Zayo has accepted all work performed as Unscheduled Maintenance and Zayo's receipt of an invoice from the City for the same. For purposes hereof, an "Interest Holder" means a person or entity who has an active IRU or similar interest in the fibers or strands within a particular Cable within the System.

(c) Costs. "Costs" means the actual, direct costs paid or payable in accordance with the established accounting procedures generally used by each party, as the case may be, and which it utilizes in billing third parties for reimbursable projects, which costs shall include, without limitation, the following: (i) labor costs, including wages, salaries, and benefits, and (ii) other direct costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies, contract services, etc). During the term of this Agreement, and thereafter, Zayo or any officers or management committee members shall have reasonable access during normal business hours to the books, records and financial and accounting records of the City, including but not limited to, records of collections, expenses and disbursements as kept by City in performing the City's obligations under this Agreement. Any such review performed by Zayo shall be at Zayo's expense.