



**AGENDA ITEM EXECUTIVE SUMMARY**

**Agenda Item number: 4.O**

Title:

Recommendation to Approve a Resolution Authorizing a Limited License Agreement with Zayo Group LLC for Fiber Installation within St. Charles Rights-of-Way

Presenter:

Paul Hopkins

Meeting: Government Services Committee

Date: February 28, 2022

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Zayo Group LLC is a registered telecommunication utility with the Illinois Commerce Commission. As such, they have the right to install facilities in public rights-of-way. Zayo does not sell any programming “content” that would make them subject to a franchise, they sell simply “point-to-point” communication services via leasing fiber.

Zayo has permitted placing their fiber optic system through Northern Illinois from West of St. Charles along IL Route 38 with IDOT and KDOT permits, and need to pass through St. Charles on the way to Geneva and beyond. Creating a Limited License Agreement between Zayo Group LLC and the City would be the best way to process their request to place their private facilities in the public right-of-way and ensure that Zayo is responsible for locating the fiber if the City has a project digging near it. It also covers relocation of the fiber should the City have a roadway project that requires such.

**Attachments** *(please list):*

\* Zayo Group LLC Limited License Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve a Resolution Authorizing a Limited License Agreement with Zayo Group LLC for Installation of Fiber in the City’s Rights-of-Way.

## LIMITED LICENSE AGREEMENT

This Agreement made this 26th day of January, 2022 (hereinafter the "Effective Date") by and between THE CITY OF ST. CHARLES, a municipal corporation of the State of Illinois, hereinafter referred to as "City", and Zayo Group, hereinafter referred to as "Licensee".

### WITNESS:

WHEREAS, the City of St. Charles and Licensee desire to establish a framework for Right-Of-Way use by the City of St. Charles under the terms and conditions set forth below;

WHEREAS, the conditions determining such Right-of-Way use shall depend upon the service requirements to be met by each party, including considerations of safety and economy;

WHEREAS, the City of St. Charles and the Licensee agree that it is in the interest of both parties to have orderly and coordinated use of Right-of-Way space;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

### Section 1. Scope of Agreement.

This Limited License Agreement covers Rights-of-Way under the City of St. Charles jurisdictions for underground and / or aerial installations. Any hand-holes or access boxes shall be flush mount with existing grade.

Licensee shall be responsible to obtain any and all other permits, easements or agreements required by other jurisdictions or private property owners.

This Limited License Agreement expressly does not grant Licensee the rights to use public utility easements unless the Licensee is specifically named in such easement dedication or permit.

### Section 2. Specifications & Requirements.

- A. Each installation shall be required to submit for a Right-of-Way permit.
  - I. This permit submittal shall include scaled drawings showing the proposed installation, method of installation, existing utilities, Right-of-Way limits, and restoration methods. The submittal must also include the engineer estimated cost of the installation.
  - 2 Where road crossings are needed, open cutting of existing pavement areas should be avoided to the extent possible.

3. The City of St. Charles retains the right to "approve" or require modifications to the installation methods, installation location, and all details of the work prior to issuance of the permit to the Licensee. Licensee shall not begin work prior to receipt of an approved permit.
  4. Traffic control and protection shall be provided in accordance with the Illinois Department of Transportation "Standard Specifications for Road and Bridge Construction", latest edition; the Illinois Department of Transportation "Standard Specifications for Traffic Control Items", latest edition; and the Manual on Uniform Traffic Control Devices, latest edition. Any road or lane closures must be identified specifically on the permit submittal drawings.
  5. If greater than 1 acre of land is being disturbed, a Notice of Intent will need to be submitted through the Illinois Department of Natural Resources, which may also require a Stormwater Pollution and Prevention Plan (SWPPP) to be prepared.
  6. Soil erosion and sedimentation control shall be provided in accordance with City standards.
  7. In accordance with the engineer estimate, at the judgement of the City of St. Charles, the Licensee will be required to post a letter of credit prior to starting work. The purpose of this letter of credit is to ensure that the public Right-of-Way is restored satisfactorily or not otherwise damaged. Should the Licensee default on restoration or repair of the Right-of-Way, the City may use the Licensee funds to effect proper restoration or repair as necessary.
  8. Licensee is required to provide "as-built" drawings showing actual location of facilities with respect to Right-of-Way limits and other utilities. Drawings shall also include the depth of the installed facilities.
- B. For as long as the Licensee has facilities in the Right-of-Way, the Licensee shall be active members of the Joint Utility Locating Information for Excavators (JULIE, Inc) such that the City or other Contractors digging in the Right-of-Way will only need to contact JULIE to have the Licensee facilities located. Documentation shall be provided to the City indicating Licensee is an active member.
- C. The Licensee shall be responsible for the relocation of their facilities if such facilities interfere with future City needs. In the event that such relocation is deemed necessary by the City, the Licensee shall be responsible for all costs associated with the physical relocation of Licensee facilities. Said relocation shall require submittal of a Right-of-Way permit to ensure that the relocation is coordinated with the City needs.
- D. Licensee shall provide a 24 hour emergency number for the City to use in emergencies related to Licensee facilities.

- E. Any flush mounted hand-holes or access boxes shall be installed in such a way as to not interfere with Right-of-Way maintenance or mowing.

Section 3. Maintenance of Facilities.

Licensee shall, at its own expense, maintain its facilities in a safe and serviceable condition. Moreover, in the event that City determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate, replace, or repair said facilities within 30 days of written notification, to restore them in a safe condition. However, in the case of emergencies, City may temporarily relocate Licensee's facilities, and the cost of such relocation, shall be reimbursed by the Licensee to City.

Section 4. Defaults.

- A. Notice of Violation or Default. In the event the City believes that the Licensee has not complied with a material terms of the Limited License Agreement, it shall notify the Licensee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
- B. Licensee's Right to Cure or Respond. The Licensee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.
- C. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 4.B above, in the event the City determines that the Licensee remains in default of any material provision of the Limited License Agreement, the City may:
  - 1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or
  - 2. in the case of a substantial or frequent default of a material provision of the Limited License Agreement, declare the Limited License Agreement to be revoked in accordance with the following:

The City shall give written notice to the Licensee of its intent to revoke the Limited License Agreement on the basis of a pattern of noncompliance by the Licensee. The notice shall set forth with specificity the exact nature of the noncompliance. The Licensee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Licensee or upon receipt of the response does not agree with the Licensee's proposed remedy or in the event that the

Licensee has not taken any action to cure the **default**, it may then seek termination of the Limited License Agreement at a public hearing. The City shall cause to be served upon the Licensee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Limited License Agreement.

At the designated hearing, the City shall give the Licensee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Limited License Agreement shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Licensee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Licensee in a manner authorized by Section 6. Any final decision by the City shall constitute a final determination for purpose of judicial review and shall be subject to the Illinois Administrative Review Act (735 ILCS 5/3-101 et seq.)

Upon termination of the Limited License Agreement, Licensee may be required to submit a Right-of-Way permit to remove all facilities from the Right-of-Way, except in-ground conduit, with proper restoration, solely at Licensee expense.

#### Section 5. Indemnification.

The Licensee shall indemnify, defend and hold harmless the City from any and all third-party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use of the Right-of-Way pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the City which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the City and provided further that the City shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the City may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the City for expenses incurred by it in case of the election so to assist.

In no event shall either party be liable to the other party for any incidental, special, punitive, or consequential damages whatsoever, arising out of or in connection with this agreement.

Contractors performing work on behalf of the Licensee shall provide the City with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of St. Charles as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

The City requires the Licensee to provide and maintain insurance consistent with Exhibit A.

#### Section 6. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to City as follows:

Director of Public Works  
City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174

and to Licensee as follows:

Zayo Group, LLC  
Attn: Director, Underlying Rights – East Region  
1821 30th Street, Unit A  
Boulder, CO 80301  
legal@zayo.com

If notice is to Licensee:  
Zayo Group, LLC  
Attn: General Counsel, Legal  
1821 30th Street, Unit A  
Boulder, Colorado 80301  
legal@zayo.com

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

or to such address as the parties hereto may from time to time specify.

**Section 7. Term of Agreement.**

Subject to the provisions herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the "Initial Term"), and thereafter from year to year (each year a "Renewal Term") unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial Term or any Renewal Term.

**Section 8. Assignment of Rights.**

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the installations covered by this Agreement, to any firm corporation, or individual, without the written consent of City, which consent shall not be unreasonably withheld, except that Licensee may, without the prior consent of the City, assign all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate of Licensee; (ii) a purchaser of all or substantially all of Licensee's assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Licensee is participating. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. For the purposes of the Section, "Affiliate" means any entity that controls or is controlled by Licensee, or is controlled by Licensee. Nothing herein contained shall prevent or limit the right of Licensee to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another

corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger or consolidation and, in the case of the foreclosing of such mortgage or in the case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the installations covered by this Agreement used by Licensee, in the conduct of its said business. All such installations shall be considered as the installations of Licensee, and the rights, obligations, and liabilities of such assignee under this Agreement, with respect to such installations, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

Section 9. Scope of Right of Licensee.

No use by Licensee of City's Right-of-Way under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said Right-of-Way. but Licensee's rights herein shall be and remain a mere license.

Section 10. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 11. Existing Contracts or Agreements.

Any existing agreements between these parties, whether verbal or written, covering the use of City Rights-of-Way are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

**Witness:**

**THE CITY OF ST.CHARLES**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Witness:**

**ZAYOGROUP**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_