

AGREEMENT FOR THE LEASE OF CITY CONDUIT
and
LEASE OF THE PUBLIC RIGHT-OF-WAY FOR INSTALLATION
OF CONDUIT AND FIBER OPTIC CABLE
between
THE CITY OF BOULDER AND ZAYO GROUP, LLC

This AGREEMENT FOR THE LEASE OF CITY CONDUIT AND LEASE ON THE PUBLIC RIGHT-OF-WAY FOR INSTALLATION OF CONDUIT AND FIBER OPTIC CABLE (this “Agreement”) is made and entered into by and between the City of Boulder, Colorado (the “City”) and Zayo Group, LLC, a Delaware limited liability corporation (“Zayo”). The City and Zayo may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. Zayo is a provider of telecommunications service, as defined in C.R.S. § 40-15-102, and, as such, holds a statewide franchise for the use of public rights-of-way pursuant to C.R.S. § 38-5.5-103 *et seq.*

B. Zayo owns, operates and maintains metro fiber networks in multiple Colorado cities and desires to build a fiber optic network within Boulder to (i) serve large industrial, commercial and governmental clients within Boulder and (ii) connect to other municipalities along the Colorado Front Range and beyond. In order to accomplish this, Zayo wishes to lease unused conduit from the City.

C. The City owns certain underground conduit facilities, along with necessary handholes and manholes for access, located within the boundaries of the city of Boulder and depicted in red on **Exhibit A**, attached hereto and incorporated herein by this reference (the “City Duct System”). The City Duct System, which is 131,322 feet long, consists of as few as one and as many as four separate, but co-located, conduits that are typically used for routing wiring or fiber optic cable (“City Conduit”).

D. Zayo also wishes to install approximately 35,000 feet of new conduit along with the necessary handholes and manholes in public rights-of-way (the “New Conduit”). The New Conduit shall consist of two 1.25” conduits, one of which will be used by Zayo (the “Zayo Conduit”) and the second of which shall be unused and conveyed to the City after installation (the “City Unused Conduit”).

E. The City desires to lease one unused conduit including access rights to the handholes and manholes throughout the City Duct System (the “Leased Conduit”) to Zayo for the building of Zayo’s metro fiber network within the city of Boulder.

F. The City also desires to permit Zayo to install the New Conduit within the Public Rights-of-Way by granting a long-term lease thereon, generally in the locations depicted in

yellow on Exhibit A, in exchange for the City Unused Conduit, the conveyance of certain fiber optic cable in the Leased Conduit and the Zayo Conduit, and other consideration provided for in this Agreement.

AGREEMENT

In consideration of the mutual covenants, terms, conditions and obligations contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as a part of this Agreement.

2. **Definitions.** As used in this Agreement, the following words and phrases shall have the meaning given in this Section. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Section shall be defined as provided for in the Boulder Revised Code 1981 or, if undefined there, given their common and ordinary meaning.

- A. “City Fiber” means the 72 strands of fiber optic cable installed by Zayo for use by the City pursuant to the terms of this Agreement.
- B. “Lease Area” means the 5 feet located on either side of the center line of the “as-built” location of the New Conduit. (See Section 7.E. of this Agreement for the requirement that Zayo provide the City with “as-built” drawings for the New Conduit.)
- C. “Public Rights-of-Way” means streets, alleys, viaducts, bridges, roads, lanes sidewalks, public easements, public rights of way, and dedicated easements within the City.
- D. “Telecommunications Services” means the electronic or optical transmission of information between separate points by prearranged means. *See* C.R.S. § 40-15-102 (29).
- E. “Zayo Fiber” means the fiber optic cable installed by Zayo in the Leased Conduit and the Zayo Conduit, pursuant to the terms of this Agreement, for Zayo’s delivery of Telecommunications Services.

3. **Lease of Conduit; Lease on Public Rights-of-Way.**

- A. **Lease of City Conduit.** The City hereby leases, demises and sets off to Zayo one (1) City Conduit in the segments described in **Exhibit B**, attached hereto and incorporated herein by this reference.
- B. **Lease on Public Rights-of-Way.** Pursuant to Section 8-6-6, Requirements for Revocable Permits, Short-Term Leases and Long-Term Leases, B.R.C. 1981, the City grants to Zayo a non-exclusive lease to install the New Conduit, along with Zayo Fiber and City Fiber, and to make reasonable and lawful use of the Public Rights-of-

Way within the Lease Area in the segments shown in **Exhibit C**, attached hereto and incorporated herein by this reference, to construct, operate, maintain, reconstruct and rebuild a fiber optic network within the city of Boulder for the purposes of delivering Telecommunications Services to residents, business or other premises within the city of Boulder and elsewhere, subject to the conditions, terms and provisions contained in this Agreement. The City reserves the right to grant similar uses, franchises, permits or any other rights with regard to the Public Rights-of-Way or any other City interest to any other person. The rights granted under this lease are also expressly subject to any rights granted previously by the City to any person.

- C. **Assignment and Subletting.** Zayo shall not assign the leases granted in this Section nor sublease, pledge or mortgage its interest in the Leased Conduit or the Lease Area or any part thereof without the express, written consent of the City; provided, however, that the consent of the City shall not be required for an assignment of Zayo's interest herein to an entity that directly or indirectly controls, is controlled by or is undercommon control with Zayo. Zayo shall do no act that would in any way encumber the City's title to the Leased Conduit or the Lease Area nor permit them to become subject to a lien of any kind.

4. **Term.** The term of this Agreement and the term of the leases granted herein (the "Term") shall commence upon the Boulder City Council's final approval of this Agreement (the "Effective Date") and shall terminate at 11:59 p.m. on the day before the twentieth anniversary of the Effective Date, unless earlier terminated by either Party in accordance with the provisions herein. Zayo may renew the leases granted herein for an additional ten-year term upon sixty-day's written notice to the City of its intent to renew. Renewal shall be done in writing and signed by both Parties. The extended term shall be governed by the same terms and conditions as the initial ten year term, unless revisions are mutually agreed to by the Parties in writing.

5. **Lease Payment.** Immediately upon the execution of this Agreement, Zayo shall pay to the City a one-time payment based on a formula of \$5.50 per linear foot, which for the lease of the Leased Conduit equals SEVEN HUNDRED TWENTY-TWO THOUSAND TWO HUNDRED SEVENTY-ONE DOLLARS (\$722,271).

6. **Installation and Conveyance of City Unused Conduit; Installation and Use of City Fiber and Additional Fiber Strands; Limitations on Use.**

- A. **City Unused Conduit.** In each segment of the Lease Area in which Zayo installs Zayo Conduit, Zayo shall also install, at its sole cost and expense, City Unused Conduit. Upon completing the installation of each segment of City Unused Conduit, Zayo shall transfer ownership of that City Unused Conduit to the City by a bill of sale in substantially the form attached hereto as **Exhibit D**. There shall be no restrictions on the City's use of the City Unused Conduit.
- B. **City Fiber; Use.** In each segment of the Leased Conduit, and in each segment of the Zayo Conduit in which Zayo installs Zayo Fiber, Zayo shall install City Fiber at Zayo's sole cost and expense, with 50 feet of slack at access locations. Zayo hereby

grants the City the right to use the City Fiber during the Term. There shall be no restrictions on the City's use of the City Fiber.

- C. Additional Fiber Strands. Zayo shall install, and connect at their terminus, allowing for 50 feet of slack at the access points, two strands of unused fiber optic cable ("2 Strands of Dark Fiber") from the intersection of 47th St. and Valmont Road in Boulder, Colorado, to the following locations: (i) City of Longmont Data Center, 350 Kimbark Street, Longmont, Colorado; and (ii) Co-Location/Peering Facility, 910 15th Street, Denver, Colorado. The 2 Strands of Dark Fiber shall be located as generally depicted on **Exhibit E**, attached hereto and incorporated herein by this reference. Zayo hereby grants the City the right to use the 2 Strands of Dark Fiber during the Term; however, the 2 Strands of Dark Fiber shall be used by the City solely for governmental, nonprofit, research and educational purposes.

7. Construction Standards, Inspection, Fiber Installation, Schedule; Testing and Maintenance; Relocation; Repairs.

- A. Design and Construction Standards. Zayo shall comply with all of the construction, restoration, inspection, and maintenance procedures and requirements set forth in the City's Design and Construction Standards and other City laws pertaining to the use of and work in the public right-of-way. Prior to installing any infrastructure in the public right-of-way, Zayo shall obtain a permit to work in the public right-of-way that meets the requirements of Chapter 8-5 "Work in the Public Right-of-Way and Public Easements," B.R.C. 1981.
- B. Inspection of City Duct System. Prior to installing Zayo Fiber and City Fiber in the Leased Conduit, Zayo shall inspect that segment of the City Duct System, document the condition of the segment in a format agreeable to both Parties, and provide such documentation to the City. Such documentation shall include, for each segment in the Leased Conduit:
- (1) the number and diameter of empty conduits between the endpoints;
 - (2) confirmation that all empty conduits contain pull ropes;
 - (3) identification of any empty conduits that are not continuous, are obstructed, or are otherwise not usable;
 - (4) physical labeling of the identified bad conduits at the endpoints;
 - (5) identification of the cables installed in non-empty conduits by cable type and owner, based on available labels and markings;
 - (6) confirmation that the segment includes locate wire;
 - (7) GIS coordinates of all access points;
 - (8) identification of any abandoned fiber cables; and
 - (9) updates of Exhibits B and C.

If Zayo discovers damage to that segment of the City Duct System or that there is no empty conduit in that segment, it shall immediately notify the City of such damage or non-existence. In the case of damage, Zayo shall install the Zayo Fiber in undamaged conduit, where possible. If no individual conduit is undamaged in a particular segment, the City shall be responsible for repairing or replacing at least one conduit, which shall then be the Leased Conduit for that segment. Upon the City's request, Zayo shall repair or replace damaged conduit at the City's sole cost and expense. If no empty conduit is found in the segment, the lease shall be amended to delete that segment and the City shall return to Zayo, within 30 days of the City's verifying that there is no empty conduit in that segment, \$5.50 for each linear foot of missing empty conduit.

- C. Installation and Acceptance of Fiber in City Conduit. Zayo shall install the Zayo Fiber and the City Fiber in the Leased Conduit and the Zayo Conduit in accordance with **Exhibit F**, Fiber and Splicing Specifications, attached hereto and incorporated herein by reference. Additionally, Zayo agrees to provide the City with complete test results, including OTDR tests, on all City Fiber. If the test results indicate the fiber strands provided to the City are not acceptable, Zayo agrees to take required actions to cause all fiber strands to conform to the specifications as set forth in Exhibit F. Zayo's failure to bring the fiber into conformance with the specifications set forth in Exhibit F within 30 days of notice from the City shall be deemed a material breach of this Agreement.
- D. Schedule. Zayo agrees to make the City Fiber operational and available for City use and complete all work required to be performed under this Agreement by December 31, 2013.
- E. As-built Drawings. Zayo shall provide the City with "as-built" drawings for the New Conduit in accordance with the provisions of the Design and Construction Standards. The "as-built" location of the New Conduit shall be the centerline for determining the Lease Area.
- F. Maintenance and Repair Responsibilities. The City shall be responsible for the operation, maintenance and repair of the non-leased City Duct System and the City Unused Conduit. Zayo shall be responsible for the operation, maintenance and repair of the Leased Conduit, the Zayo Conduit, the Zayo Fiber, the City Fiber and the 2 Strands of Dark Fiber.
- G. Relocation. In the event the City decides to relocate any segment of the Leased Conduit or the Zayo Conduit, then pursuant to Section 8-5-14 of the Boulder Revised Code 1981, Zayo shall be responsible for any expenses associated with such relocation, including the relocation of the Zayo Fiber and the City Fiber located therein. In the event of any relocation the City agrees to provide Zayo with sixty days notice in writing, unless failure to relocate poses a threat to health, safety or welfare of the public or individuals, as determined by the City, in which case the City shall have the right to move the conduit and fiber without such notice or with a lesser notice, at Zayo's

expense, and Zayo shall reimburse the City within thirty days of its receipt of an invoice for the relocation.

H. **Repair of Damages.** Zayo agrees to promptly repair all damage caused by Zayo or its contractors to the City Duct System or to any existing fiber optic cable owned by the City, Level 3, BRAN, Qwest, Comcast, or any other fiber optic cable owner located within the City Duct System or the City Unused Conduit. If such damage poses a threat to the health, safety or welfare of the public or individuals, the City may cause repairs to be made at Zayo's expense and Zayo shall reimburse the City within thirty days of its receipt of an invoice for the repairs.

8. **Notice.** All notices, other than those provided for in Paragraph A, above, shall be in writing and shall be delivered by certified mail return receipt requested or by overnight delivery that is capable of providing proof of delivery. Any such notice shall be deemed effective on the date of mailing. All notices shall be addressed to the Parties as specified below:

If to City: IT Director
 City of Boulder
 1101 Arapahoe Avenue
 Boulder, CO 80302
 Attention: Don Ingle

With a copy to: Office of the City Attorney
 1777 Broadway, Second Floor
 P.O. Box 791
 Boulder, CO 80306

If to Zayo: Zayo Group, LLC
 1805 29th Street
 Boulder, CO 80306
 Attention: General Counsel

9. **Utility Notification Center and Line Location.** The Parties each agree to maintain membership in, and coordinate its activities with, the Utility Notification Center of Colorado and any successor organization coordinating location of utility lines. The Parties agree to respond promptly and appropriately to all line location requests from the public or from other utilities, whether or not such requests are made through the Utility Notification Center.

10. **Removal/Ownership of Facilities.** Upon the termination or non-renewal of this Agreement, and at the City's sole discretion, Zayo shall either remove all facilities owned by Zayo within the City Duct System and the Lease Area, at Zayo's sole cost and expense, or abandon the facilities in place. All facilities abandoned in place, which are not otherwise owned by the City, shall become the property of the City.

11. **Termination.**

- A. Material Breach. If either Party defaults in the performance of any material term of this Agreement and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten- (10-) days prior written notice of termination to the defaulting Party.
- B. Bankruptcy or Insolvency. Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency Laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency Laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed.

12. Confidential Information.

A. Obligations.

- (1) Records maintained by the City are subject to public disclosure pursuant to the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.* (“**CORA**”). Certain confidential business and other records are exempt under CORA or do not meet the definition of public records. If Zayo provides to the City documents that include trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including a social security numbers, or if the City provides documents to Zayo that it considers confidential or otherwise not subject to disclosure under CORA (“**Confidential Information**”), the Party disclosing Confidential Information (the “**Discloser**”) shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the “**Recipient**”) and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.
- (2) Subject to the provisions and exceptions set forth in CORA, the Recipient (i) shall use such Confidential Information only in order to fulfill its obligations under this Agreement (the “**Purpose**”); (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its and its affiliates' employees and agents who need to know such Confidential Information to carry out the Purpose and who are not direct competitors of the Discloser (and shall require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein); (iv) shall not disclose such Confidential Information to any other party without prior written approval of the Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any subsequent disclosure or use of such Confidential

Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use.

- (3) The restrictions on use and disclosure of Confidential Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked and provided to Recipient within thirty (30) days following the oral disclosure; except that (i) any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser and all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.
 - (4) Each Party shall ensure that its employees, agents, representatives, and independent contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each Party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other Party. A Party shall undertake to immediately notify the other Party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.
 - (5) Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party but which (1) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that Party; (3) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing Party will exercise reasonable efforts to notify the other Party prior to disclosure.
 - (6) Zayo shall notify the City if Zayo: (i) permits any person to review or gives to any person any document, photograph, tangible thing, or work product referred to in this Agreement if such person has not been authorized by the City in writing to review or receive such document, photograph, tangible thing, or work product; or (ii) receives a request for inspection, a request for production, a subpoena, a court summons, or a court order relating to any document, photograph, tangible thing, or work product referred to in this Agreement.
- B. Know-How. For the avoidance of doubt neither the City nor Zayo shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

C. Remedies. Each of the Parties agrees that if either of them, their officers, employees or anyone obtaining access to the Confidential Information of the other Party by, through or under them, breaches any provision of this Section 11, the non-breaching Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching Party, its officers or employees directly or indirectly realize or may realize as a result of or arising out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the Parties agree that the non-breaching Party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching Party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the Parties agree that the non-breaching Party shall be entitled to temporary and permanent injunctive relief against the breaching Party, its officers or employees and such other rights and remedies to which the non-breaching Party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.

13. Indemnification.

A. Indemnification. Zayo shall indemnify, defend and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the “City Indemnitees”) from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature, suffered or incurred by a City Indemnatee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Zayo or its representatives in the performance of Zayo’s obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Zayo contained in this Agreement.

14. Insurance Requirements.

A. Limits. Zayo agrees to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

(1) Workers’ Compensation and Employers’ Liability:

(a) Any State in Which
Services Performed: Statutory

(b) Employer’s Liability:

\$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee

(2) Commercial General Liability:

(i) Bodily injury & Property Damage General Aggregate Limit: \$1,000,000

(ii) Products/Completed Operations	Aggregate Limit:	\$1,000,000
(iii) Personal & Advertising Injury	Limit:	\$1,000,000
(iv) Each Occurrence	Limit:	\$1,000,000

The policy shall be on an Occurrence Form and include the following coverages:

Premises Operations; Personal and Advertising Injury; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

The policy shall include Additional Insured-Owners, Lessees or Contractors Endorsement for completed operations, ISCO CG 2037 form or equivalent.

This coverage shall remain in place for one (1) year after the project is complete.

(3) Commercial Automobile Liability Limits

(i) Bodily Injury & Property Damage	Combined Single Limits:	\$1,000,000
(ii) Uninsured/Underinsured Motorist:		\$ 100,000

Policies shall cover owned, non-owned, & hired autos.

- B. Coverage. Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the City or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. The City reserves the right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that Zayo substitute another insurer that is reasonably satisfactory to the City. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect Zayo, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of Zayo, its agents, employees, and representatives in the performance of the Services covered herein.
- C. Additional Insureds. All insurance policies (except Workers Compensation and Professional Liability) shall include the City and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.
- D. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days

prior notice may be given. Such notice shall be sent directly to the City. If any insurance company refuses to provide the required notices, Zayo or its insurance broker shall notify the City of any cancellation, suspension, or non-renewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

- E. Certificates. Certificates showing that the Zayo is carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the City prior to the execution of this Agreement by the City. Zayo, or Zayo's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. The Zayo shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

15. Representations and Warranties. Each Party represents and warrants that:

- A. It has full right and authority, including any requisite corporate authority, to perform its respective obligations under this Agreement;
- B. The execution of this Agreement is not violative of its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject;
- C. No litigation or governmental proceeding is pending or threatened in writing which might have a material adverse effect on this Agreement, the transaction contemplated by this Agreement or the rights of the Parties hereunder.

16. Miscellaneous Provisions.

- A. Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.
- B. Joint Work Product. This Agreement is the joint work product of both Parties hereto, accordingly, in the event of ambiguity no presumption shall be imposed against any Party by reason of document preparation.
- C. Scope of Agreement. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to

and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

- D. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.
- E. Force Majeure. Neither Party shall be in default by reason of any failure or delay in performance of this Agreement of its terms and conditions, or one or more of its obligations hereunder, and such excused Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay if such failure arises out of causes beyond the control of the non-performing Party including, but not restricted to, acts of God or nature, including an earthquake, flood or tornado; acts of governmental authority, government codes, ordinances, actions, laws, rules, regulations or restrictions; insurrections, war or civil disorder; fires, floods, accidents; epidemics, quarantines; restrictions; strikes or other labor disputes (other than such excused Party's employees); lack of or delay in transportation, freight embargoes, inability to secure raw materials or transportation facilities; acts of omissions of other entities or any and all other causes beyond such Party's reasonable control. Such Party shall notify the other Party in writing of the existence of the event relied on and the cessation or termination of said event of Force Majeure and such Party shall exercise commercially reasonable efforts to minimize the time of any such delay. If an event of Force Majeure continues for more than ninety (90) days, and if the non-affected Party cannot (i) resolve the matter within such time period or (ii) provide the affected Party with an alternative solution to such matter within the same time period, such alternative solution to be substantially similar in effect to the matter affected by the Force Majeure, the affected Party has the right to terminate this Agreement.
- F. Amendment. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. Neither Party shall assign any of its rights hereunder without the prior written consent of the other Party.
- F. Assignment. This Agreement may not be assigned by Zayo without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
- G. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
- H. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
- I. Applicable Law; Venue. Zayo shall comply with all applicable Laws. This Agreement shall be construed in accordance with the Laws of the State of Colorado.

Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Boulder County, Colorado and each Party consents to jurisdiction and venue before such courts.

- J. **Limitation on Liability.** It is specifically understood and agreed that nothing in this Lease shall be construed as an express or implied waiver by the City of its governmental immunity or of the implied acceptance by the City of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101, et seq., or as the assumption by the City of a debt, contract or liability of Lessee in violation of Article XI, Section 1 of the Constitution of Colorado.

- K. Survival. Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement, including the removal of equipment obligations set forth in Section 8 hereof, shall survive and be enforceable after the expiration or termination of this Agreement.

- L. Entire Agreement. This Agreement, including any Exhibits, contains the entire agreement between the Parties and supersedes all prior and contemporaneous communications, understandings and agreements with respect to the subject matter hereof, whether written or oral, expressed or implied. No other agreement, statement, promise, or practice between the Parties relating to the Agreement shall be binding upon the Parties.

- M. Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Facsimile signatures and scanned and emailed signatures shall be treated as originals.

[Signature page follows]

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

ZAYO GROUP, LLC

By: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me, a notary public, this _____ day of _____, 2013, by _____, as _____ of Zayo Group, LLC.

Witness my hand and official seal.
My commission expires:

(SEAL)

Notary Public

CITY OF BOULDER

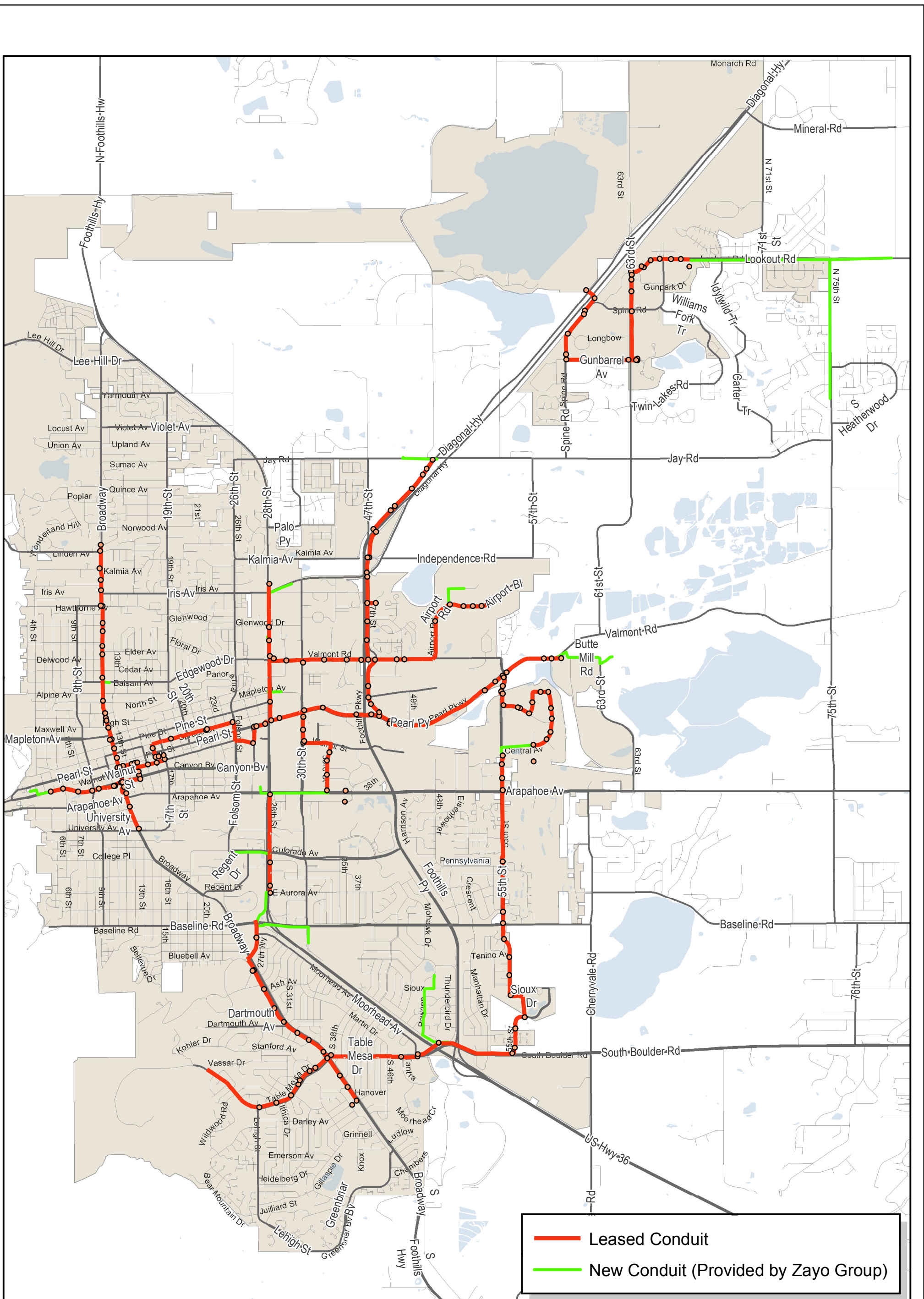
By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



— Leased Conduit
— New Conduit (Provided by Zayo Group)

Zayo Group Conduit Agreement - Exhibit A

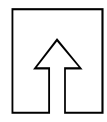


Exhibit B
Segments of City Duct System

Segment ID	Description	Endpoint 1	Endpoint 2	LENGTH	Number of Conduit	Conduit Diameter
1	55th (Pearl - Flatiron Loop)	N04E01-1444	N04301-1179	839	8	1.25
2	55th & Flatiron Pkwy & Central (Flatiron Loop)	N04E01-1179	N04E01-1012	2772	8	1.25
3	Central Ave & Flatiron & 57th (Flatiron Loop)	N04E01-1012	N03E01-1006	2858	4	1.25
4	55th (S.Boulder - Western Ave)	S02W01-1318	N03E01-1302	12524	8	1.25
5	55th (Western Ave - Central Ave)	N03E01-1302	N03E01-1300	390	4	1.25
6	Table Mesa (Vassar - Broadway)	S03W05-1216	S03W03-1231	6186	4	1.25
7	Table Mesa (Broadway - Moorhead)	S03W03-1231	S03W02-1406	3853	4	1.25
8	Table Mesa/S Boulder Rd (Moorhead - 55th)	S03W02-1406	S02W01-1318	4081	3	1.25
9	Valmont (Butte Mill - east of 55th)	N04E01-1451	N04E01-1447	1809	4	2
10	Valmont east of 55th	N04E01-1447	N04E01-1446	271	1	2
11	Valmont (east of 55th - 55th)	N04E01-1446	N04E01-1444	487	4	2
12	Valmont (Airport- Valmont Park)	N04W02-1349	N04W02-1348	407	4	1.25
13	Valmont (Valmont Park to west of Kings Ridge)	N04W02-1348	N04W02-1346	721	5	1.25
14	Valmont(west of Kings Ridge - 47th)	N04W02-1346	N04W02-1161	1163	3	1.25
15	Valmont (47th St - west of Foothills)	N04W02-1161	N04W03-1160	556	4	1.25
16	Valmont (west of Foothills-RR)	N04W03-1160	N04W03-1157	894	8	1.25
17	Valmont (RR - 30th)	N04W03-1157	N04W03-1377	1422	4	1.25
18	Valmont (30th-28th)	N04W03-1372	N04W04-1370	1254	4	1.25
19	Airport (Valmont - END OF Airport)	N05W01-1358	N04W02-1349	4244	4	1.25
20	47th (Valmont - Pearl)	N04W02-1161	N04W02-1167	2534	8	1.25
21	Broadway (Darley - Table Mesa)	S03W03-1375	S03W03-1231	2078	4	1.25
22	Broadway (Table Mesa - Dartmouth)	S03W03-1231	S02W04-1235	2309	8	1.25
23	Broadway (Dartmouth- 27th St)	S02W04-1235	S01W05-1391	2418	8	1.25
24	Broadway (27th St)	S01W05-1391	S01W05-1393	58	4	1.25
25	Broadway (27th St-27th Wy)	S01W05-1393	S01W05-1394	524	8	1.25
26	27th (Broadway - Baseline)	S01W05-1394	N01W04-1396	1689	8	1.25
27	Folsom (Spruce to Walnut)	N04W05-1138	N03W05-1139	792	4	1.25
28	Walnut (Folsom to 26th)	N03W05-1139	N03W04-1284	750	4	1.25
29	26th (Walnut to Pearl)	N03W04-1284	N03W04-1288	652	4	1.25
30	Pearl (26th St)	N03W04-1288	N03W04-1286	100	8	1.25
31	Pearl (26th - approx 32nd)	N03W04-1286	N04W03-1264	2882	4	1.25
32	Pearl (approx 32nd - 55th)	N04W03-1264	N04E01-1444	8029	8	1.25
33	30th (Pearl to Walnut)	N04W03-1150	N03W03-1550	1294	4	2
34	Walnut (30th to 33rd)	N03W03-1550	N03W03-1261	1254	4	1.25
35	33rd (Walnut to Public Safety Bldg)	N03W03-1261	N03W03-1070	724	8	1.25
36	33rd (Public Safety Bldg)	N03W03-1070	N03W03-1071	573	7	1.25
37	33rd (Public Safety Bldg - Arapahoe)	N03W03-1071	N03W03-1072	615	8	1.25
38	Foothills Pkwy (Valmont - Mitchell)	N04W03-1269	N05W03-1271	2255	4	1.25
39	Foothills/Diagonal (Mitchell - Jay)	N05W03-1271	N07W02-1473	6788	1	3
40	Mitchell In (47th - to west)	N05W03-1271	N05W02-1272	338	4	1.25
41	28th (north of Iris/Diagonal - Valmont)	N05W04-1343	N05W04-1482	2919	8	1.25
42	28th (Valmont)	N05W04-1482	N05W04-1481	272	4	2
43	28th (Valmont - Pearl)	N05W04-1481	N04W04-1290	2694	8	1.25
44	28th Street (Arapahoe to Aurora)	N02W04-1459	N01W04-1427	4263	4	2
45	Broadway (Meadow - Kalmia)	N06W07-1480	N06W07-1477	1020	4	2
46	Broadway (Kalmia - 3517 Broadway)	N06W07-1477	N06W07-1476	537	3	2
47	Broadway (3517 Broadway - Lawry Ln (alley btwn Pearl & Walnut))	N06W07-1476	N03W06-1417	7979	4	2
48	Broadway (Lawry Ln - alley btwn Walnut & Canyon)	N03W06-1417	N03W06-1413	417	1	4
49	Broadway (alley btwn Walnut & Canyon - University)	N03W06-1413	N02W06-1437	2515	4	2
50	Canyon (4th - Library)	N03W07-1193	N03W07-1425	1976	2	1.25
51	Canyon (Library - 13th)	N03W07-1425	N03W06-1205	1385	4	4
52	Canyon (13th -14th)	N03W06-1205	N03W06-1092	357	4	1.25
53	14th (Canyon - Walnut)	N03W06-1092	N03W06-1095	545	8	1.25
54	14th (Walnut - Lawry)	N03W06-1095	N03W06-1101	198	4	1.25
55	Lawry Ln (14th - Broadway)	N03W06-1101	N03W06-1417	728	4	1.25
56	Walnut (14th - 17th)	N03W06-1095	N03W06-1098	1097	8	1.25
57	17th (Canyon to north)	N03W06-1098	N03W06-1099	166	8	1.25
58	Alley between Pearl & Walnut (17th - 16th)	N03W06-1099	N03W06-1128	341	8	1.25
59	16th (alley south of Pearl - Spruce)	N03W06-1128	N03W06-1129	567	4	1.25
60	Spruce (16th - Folsom)	N03W06-1129	N04W05-1138	3354	4	1.25
61	Lookout (63rd - east of 63rd)	N10E03-1038	N10E03-1386	532	1	1.25
62	Lookout (east of 63rd - Gunpark)	N10E03-1386	N10E03-1111	2075	4	1.25
63	63rd (Lookout - south of Lookout)	N10E03-1038	N10E03-1036	316	1	1.25
64	63rd (South of Lookout to Gunbarrel)	N10E02-1036	N09E02-1027	3811	4	1.25
65	Gunbarrel (63rd to Diag Hwy)	N09E02-1027	N09E02-1025	2484	4	1.25
66	Spine (63rd - Longbow)	N09E02-1025	N09E02-1022	1051	4	1.25
67	Spine (Longbow - northeast)	N09E02-1022	N10E02-1021	1023	4	4
68	Spine (NE of Longbow - Diagonal)	N10E02-1021	N10E02-1553	792	2	2
69	Across Diagonal at Spine	N10E02-1553	N10E02-1552	521	2	2
	TOTAL LENGTH			131,322		

Exhibit C
Segments of New Conduit

NAME	LENGTH (feet)	Type	Description	Endpoint 1	Endpoint 2
BB Segment 1	2,341	Backbone	28th street and Arapahoe proceeding east to 33rd and Arapahoe	N02W04-1459	N03W03-1072
BB Segment 2	1,405	Backbone	East Aurora Ave/Hwy 36 south to Baseline/27th Way.	N01W04-1427	N01W04-1396
BB Segment 3	1,618	Backbone	55th/RR (north of Western Ave) north Central Ave and continues east to 57th Ct.	N03E01-1300	N03E01-1006
Lateral 1	211	Lateral	Existing City access point on 28th Street approximately 450' south of Glenwood Drive, proceeding west across 28th Street.	N/A	N/A
Lateral 2	513	Lateral	Existing City network near 28th/Mapleton proceeding east along Mapleton	N/A	N/A
Lateral 3	1,021	Lateral	Existing City access location near 28th/Iris proceeding east on diagonal Hwy	N05W04-1342	N/A
Lateral 4	297	Lateral	Existing City network near Broadway/Balsam proceeding east on Balsam Ave.	POSSIBLY N04W06-1529	N/A
Lateral 5	568	Lateral	Existing City access location near 4th/Canyon proceeding west on Canyon to 3rd, north on 3rd to alley south of Pearl	N03W07-1193	N/A
Lateral 6	3,986	Lateral	Existing City access point near south Boulder/Table Mesa proceeding west on Apache Rd to Pawnee and then north on Pawnee to Sioux Dr, then east to Ponca, and north on Ponca	S02W02-1491	N/A
Lateral 7	2,691	Lateral	Existing city access location on Valmont near Butte Mill Rd, proceeding east on Butte Mill to 63rd Street.	N04E01-1451	N/A
Lateral 8	476	Lateral	Existing City access location on 28th and Arapahoe proceeding west on Arapahoe for 500'	N02W04-1459	N/A
Lateral 9	1,322	Lateral	Existing City access location near Airport Rd and Airport Blvd, proceeding north on Airport Rd	N05W01-1354	N/A
Lateral 10	1,400	Lateral	Existing City access location on Hwy 119/Jay Rd, proceeding west on Jay road for approximately 1400'	N07W02-1473	N/A
Lateral 11	7,987	Lateral	Existing City access location on Gunpark and Lookout rd, proceeding east on Lookout rd near 79th St.	N10E03-1111	N/A
Lateral 12	5,525	Lateral	75th and Lookout rd, proceeding south to 75th and old Mill Trail	N/A	N/A
Lateral 13	1,533	Lateral	Existing City access location near 28th/Colorado Ave, proceeding west on Colorado Ave to Folsom and Colorado	N02W04-1433	N02W05-1250
Lateral 14	2,700	Lateral	Existing City access location near 27th Way and baseline proceeding east on baseline to 30th, south on 30th.	N01W04-1396	N/A
			35,593		

EXHIBIT D

Form of Bill of Sale

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that Zayo Group, LLC, a Delaware limited liability corporation (“Seller”) for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, assign, convey, transfer and deliver to the City of Boulder, a Colorado home rule city (“Buyer”) the good and services shown on Attachment 1, attached hereto and incorporated herein by this reference, for the prices shown on thereon.

SELLER:
ZAYO GROUP, LLC

By: _
Its: _
Date: _

EXHIBIT E
Map Depicting General Location of 2 Strands of Dark Fiber

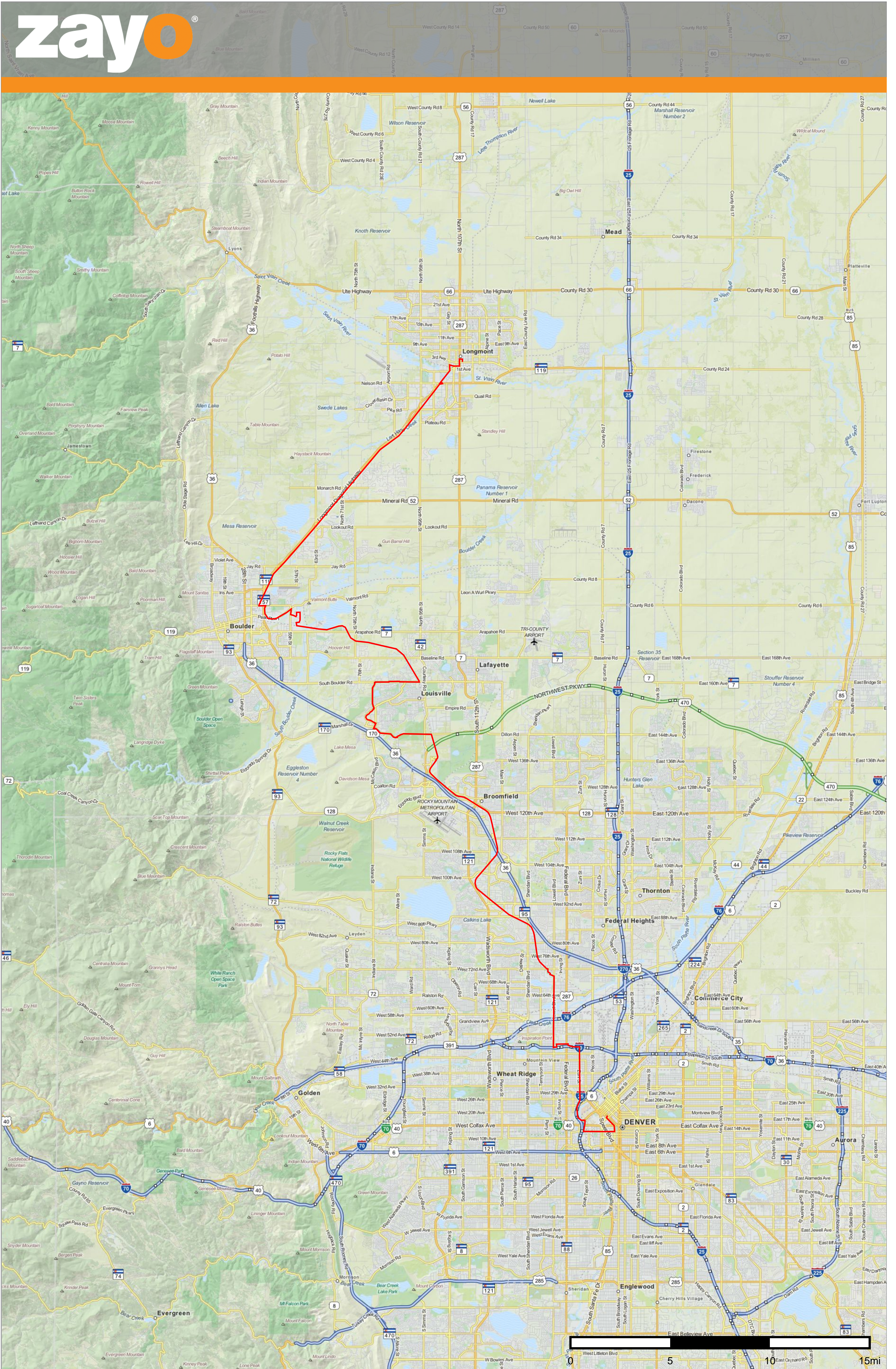


EXHIBIT F

Fiber and Splicing Specifications

All fiber optic cable will be Corning single Mode Fiber (SMF-28) or equivalent.

All splicing and testing shall be performed with industry accepted equipment. Zayo shall perform two stages of testing during construction of a new fiber cable route. Industry accepted Optical Time Domain Reflectometer (OTDR) and Optical Power Loss tests shall be performed.

Splicing Standards are as follows for standard single mode fiber:

Splices shall be qualified during the initial construction with an OTDR from only one direction. Connector (pigtail) splices shall be qualified with a 1-km launch reel minimum. Unidirectional acceptance parameters are .2 dB loss at 1550nm.

After end-to-end (site-to-site) connectivity on the fibers, bi-directional span testing shall be done at both 1550nm and 1310nm. Spans in excess of 60km shall be tested at 1550nm only, 1310nm Testing will be omitted unless specifically requested by the customer. Test results from spans in excess of 60km will have no bearing on route or system acceptance and shall be provided as information only. These measurements must be made after the splice manholes or handholes are closed in order to check for macro-bending problems. Connectors shall be cleaned as necessary to ensure accurate measurements are taken.

Installed loss measurement at 1310nm and 1550nm shall be recorded using an industry-accepted laser source and power meter. Continuity testing shall be done on all fibers concurrently. Bi-directional acceptance parameters are as follows: 0.20 dB at 1550nm and/or 0.25dB at 1310nm.

The objective loss value of the connector and its associated splice shall be 0.50dB or less. This value does not include the insertion loss from its connection to the FDP. Connectors shall be Ultra SC-UPC with conventional single mode glass.

The end-to-end loss value as measured with an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following:

- (1) At 1310nm: $(0.40 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.20 \text{ dB} \times \text{number of splices})$.
- (2) At 1550nm: $(0.30 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.20 \text{ dB} \times \text{number of splices})$.

All splices shall be protected with heat shrinks. An industry-accepted non-encapsulated splice enclosure shall be used on all splices (like Alcatel WTC2, PLP Coyote, Lucent 2600, 3M 2178, Tyco 450-D or Windsor.)