

#3

MAY 12 2011

ORDINANCE NO. 4295

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING AN AMENDMENT TO THE AGREEMENT BETWEEN AGL NETWORKS, LLC AND THE CITY OF CHANDLER FOR THE USE OF CHANDLER RIGHT-OF-WAY TO AUTHORIZE ZAYO GROUP, LLC TO BE THE SUCCESSOR TO AGL NETWORKS, LLC IN THIS AGREEMENT, TO ESTABLISH A CLASS 5 COMMUNICATIONS SYSTEM AS APPLICABLE AND TO ESTABLISH FEES

WHEREAS, pursuant to the authority granted in Ordinance 3786 approved by the Chandler City Council on May 10, 2007, the City of Chandler (hereinafter "City") entered into an Agreement Between AGL Networks, LLC And The City Of Chandler For The Use Of Facilities In The City's Rights-Of-Way And Public Places To Establish A Class 5 Communication System (hereinafter "Agreement"); and

WHEREAS, this Agreement with AGL Networks LLC (hereinafter "AGL") executed on May 15, 2007 authorized AGL to place communication infrastructure in City of Chandler right-of-way for use by communications providers; and

WHEREAS, on February 23, 2010, AGL obtained a Certificate of Convenience and Necessity from the State of Arizona and is now a provider of communications, including without limitation local telephone, Telecommunications Services and high-speed data services; and

WHEREAS, on July 9, 2010, AGL changed its name from AGL Networks, LLC to Zayo Fiber Solutions, LLC and subsequently merged up and into Zayo Group, LLC, and

WHEREAS, Section 8.1 of the Agreement provides that no sale of the rights and privileges granted pursuant to the Agreement may take place without the express written consent of the City by resolution or by ordinance; and

WHEREAS, the PARTIES wish to amend the Agreement in order to modify certain terms in relation to Zayo Group, LLC as successor to AGL Networks, LLC for use of facilities in the CITY's Rights-of-Way and Public Places and to allow COMPANY to operate its existing and future communications system as a Class 4 License and as a Class 5 License as applicable.

WHEREAS, the Chandler City Council has determined that it is in the best interest of, and consistent with, the convenience and necessity of the City of Chandler to authorize the approval of the Zayo Group, LLC Membership Interest Purchase Agreement with AGL Investments Inc., a Georgia Corporation to acquire AGL Investment Inc.'s interest in AGL Networks, LLC, a Delaware Limited Liability Company; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

Section 1: The Mayor and the City of Chandler City Council hereby approves the Zayo Group, LLC Membership Interest Purchase Agreement with AGL Investments Inc., a Georgia Corporation to acquire AGL Investment Inc.'s interest in AGL Networks, LLC, a Delaware Limited Liability.

Section 2: That the Mayor is authorized to execute the Amendment to the Agreement between Zayo Group, LLC (as Successor to AGL Networks, LLC) and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to authorize Zayo Group, LLC to be the Successor to AGL Networks, LLC in this Agreement, to establish a Class 5 License Communications system as applicable and to establish Fees.

Section 3: That all officers and employees of the City of Chandler shall perform all administrative and ministerial acts to carry out the authorization set forth in this Ordinance.

Section 4: This Ordinance shall become effective thirty days from and after its final adoption: provided, however, that the agreement hereby granted shall not become effective unless and until AGL has accepted said agreement as provided herein and has carried out such other terms and conditions as may be required before said agreement shall become effective.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this \_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

MAYOR:

\_\_\_\_\_  
CITY CLERK

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this \_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4295 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the \_\_\_ day of \_\_\_\_\_, 2011 and that a quorum was present thereat.

\_\_\_\_\_  
City Clerk

Published:

APPROVED AS TO FORM:

\_\_\_\_\_  


**AMENDMENT TO THE AGREEMENT BETWEEN ZAYO GROUP, LLC AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES TO AUTHORIZE ZAYO GROUP, LLC TO BE THE SUCCESSOR TO AGL NETWORKS, LLC IN THIS AGREEMENT, TO ESTABLISH A CLASS 5 COMMUNICATIONS SYSTEM AS APPLICABLE AND TO ESTABLISH NEW FEES**

This Amendment (hereinafter "Amendment") to the Agreement for the Use of Facilities in the City's Rights-of-Way and Public Places executed May 15, 2007 (hereinafter "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 ("Amendment Effective Date"), by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY"), and Zayo Group, LLC and its affiliates (hereinafter "COMPANY") (as successor to AGL Networks, LLC),

WHEREAS, the CITY and AGL Networks, LLC entered into the Agreement on May 15, 2007; and

WHEREAS, on February 23, 2010, AGL Networks, LLC obtained a Certificate of Convenience and Necessity from the State of Arizona and is now a provider of communications, including without limitation local telephone, Telecommunications Services and high-speed data services; and

WHEREAS, on July 9, 2010, AGL Networks, LLC changed its name from AGL Networks, LLC to Zayo Fiber Solutions, LLC and subsequently merged up and into Zayo Group, LLC, and

WHEREAS, the PARTIES wish to amend the Agreement in order to modify certain terms in relation to Zayo Group, LLC as successor to AGL Networks, LLC for use of facilities in the CITY's Rights-of-Way and Public Places and to allow COMPANY to operate its existing and future communications system as a Class 4 License and as a Class 5 License as applicable.

NOW THEREFORE, the Agreement shall be amended as follows:

**I. GENERAL**

- A. All references to "AGL Networks, LLC" shall be deleted and replaced with the following:

"Zayo Group, LLC and its affiliates"

- B. The City by this Amendment hereby amends the Agreement from a Class 5 Telecommunications License and Encroachment Permit to a Class 4 Telecommunications License Permit and Encroachment Permit and a Class 5 Telecommunications License and Encroachment Permit as applicable.

Accordingly, all references to “Class 5 License” shall be deleted and replaced with the following:

“Class 4 License and Class 5 License as applicable”

II. SECTION 2 (PERMISSION GRANTED)

A. Section 2 of the Agreement is amended by adding a new Section 2.1.5 to read as follows:

“2.1.5. COMPANY holds a Certificate of Convenience and Necessity for authority to provide competitive private line and other telecommunications services within the State of Arizona. If COMPANY stops providing telecommunications services in the State of Arizona and relinquishes all such Certificates, Section 2 of the AGREEMENT will be re-negotiated between COMPANY and City.”

III. SECTION 4 (FEES, CHARGES, PERFORMANCE BOND, SECURITY FUND, DAMAGE TO PUBLIC PROPERTY AND LIQUIDATED DAMAGES)

A. Section 4.2.1 of the Agreement shall be deleted in its entirety and replaced with the following:

“4.2.1.1 Network Used Exclusively for Intrastate Telecommunication Services. No linear foot fee will be imposed on COMPANY for the facilities used by the local network and the portion of any interstate network that carries intrastate calls.

4.2.1.2 Network Used Exclusively for Interstate Telecommunications Services and/or Dark Fiber Leasing. COMPANY agrees to pay an Annual Footage Fee as set forth in Section 4.2.1.3 of the Agreement multiplied by the number of such linear feet in the Right-of-Way used solely for interstate Telecommunications Services and/or solely for dark fiber leasing.

4.2.1.3 Annual Footage Fee. The Annual Footage Fee is One Dollar and Eighty Five Cents (\$1.85) per linear foot to begin upon execution of this Amendment. The Annual Footage Fee shall be escalated automatically every year on the anniversary date of the Amendment by the Consumer Price Index (CPI), All Urban Consumers–West.

4.2.1.4 Current Linear Foot of COMPANY Network. COMPANY currently uses 1) One Hundred Twenty One Thousand Two Hundred Seventy One (121,271) linear feet for intrastate Telecommunications Services and 2) Twenty Thousand Five Hundred Eighty Five (20,585) linear feet solely for interstate Telecommunications Services and /or for dark fiber leasing.

4.2.1.5 Current Annual Fee. Based on the current use of the Right-of-Way, the current Annual Footage Fee owed by COMPANY is Thirty Eight Thousand Eighty Two Dollars and Twenty Five Cents (\$38,082.25). Said fees will be offset against outstanding balance of the Network Costs until the balance of the Network

Costs are recovered by COMPANY pursuant to Section 4.2.5 of the Agreement. As of May 15, 2011, the Credit has been exhausted and the Annual License Fee as set forth herein applies.

4.2.1.6 Additional Linear Feet. COMPANY shall comply with the terms of this Amendment for any linear feet added to its Network in Chandler. COMPANY shall remit any applicable Annual Footage Fee within forty-five (45) days after the issuance of the Encroachment Permit for the installation of the new portion of its System. This amount is refundable if COMPANY does not construct or install any additional facilities in the City of Chandler Right-of-Way.”

- B. The fourth sentence of Section 4.2.3 of the Agreement shall be deleted and replaced with the following:

“As of May 14, 2012, COMPANY has fully satisfied its payment for the aforescribed four-inch conduit owned by the CITY and shall be granted the right to occupy and use the aforescribed four-inch conduit owned by the CITY without any additional fee or charge whatsoever.”

- C. Section 4.2.6 shall be deleted in its entirety and replaced with the following:

“4.2.6 Invoices will be sent to:

Zayo Group, LLC  
ATTN: Tim Gentry  
400 Centennial Parkway, Suite 200  
Louisville, CO 80027  
Phone: (303) 381-4662  
Fax: (303) 226-5922”

- D. Performance Bond: Security Fund. All Documents required from COMPANY pursuant to Section 4.5.1 and Section 4.5.2 shall be provided upon execution of this Amendment Number One.

IV. SECTION 7 (INSURANCE AND INDEMNITY)

All Documents required from COMPANY pursuant to Section 7 shall be provided upon execution of this Amendment Number One.

V. SECTION 10. (TERMINATION OF AGREEMENT FOR CAUSE AND BY MUTUAL AGREEMENT)

Section 10 is hereby amended as follows by adding:

“10.5. Bankruptcy.

The Agreement is terminated if COMPANY becomes the subject of dissolution due to a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding.”

VI. SECTION 12 (NOTICE)

The Notice address for the CITY and COMPANY shall be updated to reflect the following:

City of Chandler  
ATTN: Regulatory Affairs Manager  
P.O. Box 4008, MS 403  
Chandler, AZ 85244-4008  
Phone: (480) 782-3410  
Fax: (480) 782-3415  
Email: margaret.coulter@chandleraz.gov

Zayo Fiber Solutions, LLC  
ATTN: General Counsel  
400 Centennial Parkway, Suite 200  
Louisville, CO 80027  
Phone: (303) 381-4666  
Fax: (303) 604-6869  
Email: GStrumberger@Zayo.com

VII. REMAINING TERMS UNCHANGED

Except as expressly stated herein, the terms of the Agreement remain unchanged and in full force and effect. To the extent that the terms of this Amendment conflict with any term or condition of the Agreement, the terms of this Amendment shall prevail.

CITY OF CHANDLER,  
an Arizona municipal corporation

ZAYO GROUP, LLC  
(as successor to AGL, LLC)

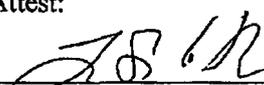
\_\_\_\_\_  
Mayor

By:   
Title: General Counsel

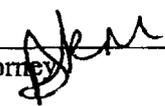
Attest:

Attest:

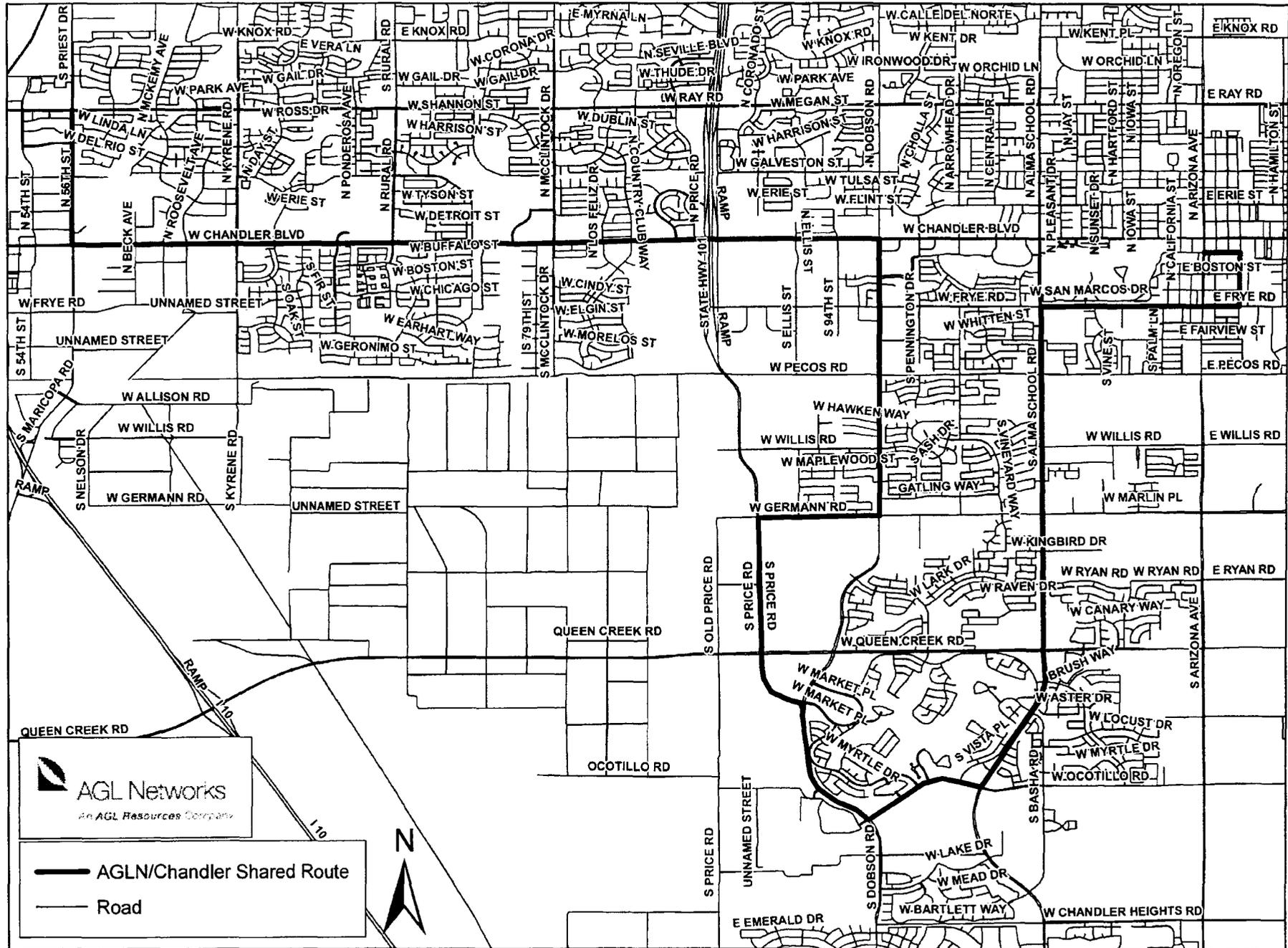
\_\_\_\_\_  
City Clerk

  
Title: CEO - ZFS

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney 

# AGL Networks - Chandler Build



- AGLN/Chandler Shared Route
- Road