

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (“Agreement”) dated this ___ day of _____, 2015 (the “Effective Date”), is made by and between the **Denton Independent School District** (“Partner No. 1”), an independent school district formed and existing pursuant to the laws of the State of Texas, **County of Denton** (“Partner No. 2”), organized and existing pursuant to the laws of the State of Texas (collectively, “Partners”) and **Zayo Group, LLC**, a Delaware limited liability company (“Zayo”). Hereinafter sometimes collectively referred to as Parties.

WHEREAS, Partner No. 1 and Partner No. 2 each own or will own certain facilities within the boundaries of the Partners’ respective service areas, and desire to provide certain unused capacity in their respective facilities to Zayo (“Partner-Provided Facilities”);

WHEREAS, Zayo owns or will own certain facilities within the boundaries of Partner No. 1’s and Partner No. 2’s service areas, and desires to provide certain unused capacity in its facilities to the Partners (“Zayo-Provided Facilities”);

WHEREAS, Partner No. 1, Partner No. 2, and Zayo desire to exchange use and ownership of certain facilities as further described in Exhibit A; and

WHEREAS, each Party recognizes the efficiencies realized in exchanging certain facilities in support of their own business purposes to effectuate the operations desired by all Parties, and each is willing to exchange such facilities simultaneously in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, 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. **Definitions.** For the purposes of this Agreement, the following additional terms are defined:
 - (A) “Accepting Party” shall mean the party (either Partner No. 1, Partner No. 2, or Zayo, as the case may be) who accepts and uses the other party’s facilities pursuant to this Agreement.
 - (B) “Affiliate” shall mean, with respect to any party, any other person, who directly or indirectly controls, is controlled by, or is under common control with that party. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a party, whether by way of equity ownership, contract or otherwise.
 - (C) “Delivered Facilities” shall mean the facilities as described in Exhibit A received by the Accepting Party from the Delivering Party. It includes all associated equipment and hardware.
 - (D) “Delivering Party” shall mean the Party (either Partner No. 1, or Partner No. 2, or Zayo, as the case may be) who delivers and transfers its facilities to the Accepting Party pursuant to this Agreement.
 - (E) “Governmental Authority” shall mean any Federal, state, regional, county, city, municipal, independent school district, local, territorial, or tribal government, or any public or quasi-public authority, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.
 - (F) “Underlying Rights” shall mean all deeds, leases, easements, rights-of-way agreements, licenses, franchises, grants, contracts and other rights, titles and interests to use real property of any third party, which are necessary for the construction, placement, location, installation, operation, use, lease, rental, maintenance, repair or replacement of the Delivered Facilities.

(G) "Work" shall mean all necessary installation, management, engineering, placement, make-ready, preparatory and construction work required to be completed by each Party, as further described in Exhibit A, which is required in order to effectuate the Exchange.

2. **Exchange of Right to Use Delivered Facilities.** The Parties shall provide each other the Delivered Facilities described in Exhibit A hereto, including all right, title and interest thereto; as evidenced by executed Bills of Sale in a form substantially similar to the Bill of Sales set forth in Exhibit B hereto. All of the foregoing actions set forth in this Section are collectively referred to herein as the "Exchange." Each Party shall notify the other Parties in writing ("Completion Notice") when the Work described in Exhibit A for which is it responsible is complete, and the date of such Completion Notice shall be the "Completion Date", and shall deliver an applicable Bill of Sale. For the avoidance of doubt, Partner No. 1 and Partner No. 2 shall provide access to and use of the Partner-Provided Facilities to Zayo upon full execution hereof; subject to execution of the Bill of Sale upon completion by Zayo of the Zayo-Provided Facilities.

3. **Conditions of Use.**

(A) Neither Partner may resell any of the Delivered Facilities to any third party without the prior written consent of Zayo, and the use of the Zayo-Provided Facilities is expressly limited to Partner No. 1's or Partner No. 2's lawful exclusive governmental, public, non-commercial use; however, it is provided that either Partner No. 1 or Partner No. 2 may allow use of the Zayo-Provided Facilities by a third-party governmental agency (e.g. City of Denton, Denton Municipal Electric, other independent school districts) for such agency's governmental, public, non-commercial use through an agreement independent of this Agreement; and provided further that such agencies shall only access the Zayo-Provided Facilities through the Partners' specified access points over which the Partner has ownership; and shall have no right to access Zayo's network. Neither Partner No. 1, Partner No. 2, nor Zayo will install, or allow the installation, of any equipment to be used with the Delivered Facilities that damages or interferes with the any other Party's network.

(B) Zayo's use of Partner-Provided Facilities is limited to lawful communications purposes. Zayo acknowledges that Partner No. 1 and Partner No. 2 are subject to Texas Government Code, Chapter 552, and therefore, to the extent expressly authorized by Texas Government Code, Chapter 552, either Partner may request information concerning the use of the Facilities, and such information shall be available to either or both Partners upon a Partner's written reasonable request. Partner No. 1 and Partner No. 2 do agree that any information which Zayo does provides is subject to any and all exceptions of Texas Government Code, Chapter 552, Public Information Act, and Zayo shall have the right to claim such exception upon a third-party's request of Partner No. 1 or Partner No. 2 to provide such information pursuant to Texas Government Code, Chapter 522. Partner No. 1 and Partner No. 2 may also claim an exception to the Public Information Act if they so choose.

4. **Consideration/Exchange.** The consideration to each Partner for the use of the Partner-Provided Facilities by Zayo shall be the Zayo-Provided Facilities provided by Zayo to each Partner. The consideration to Zayo for the use of the Zayo-Provided Facilities by each Partner shall be the Partner-Provided Facilities provided by each Partner to Zayo.

5. **Term.** This Agreement shall become effective as of the date last executed below and, if not earlier terminated in accordance with the provisions herein, shall continue in effect so long as the Parties have fully satisfied their respective obligations hereunder for the transfer of ownership of assets described in Exhibit A.

6. **Removal of Equipment.** Upon termination, each Party shall, within ninety (90) days of such termination, remove all equipment, cable and related facilities used in connection with this Agreement. Each Party shall accomplish such removal at their sole expense, under the other Party's reasonable supervision and in a manner that does not materially affect the other party's Facilities. Each Party, to the extent allowed by law, shall be responsible for and shall indemnify the other Party from and against any damage, loss, cost or expense relating

to personal injury or damage to tangible property caused by such removal caused by the removing Party's negligence or willful misconduct. If a Party fails to remove its property within such period, the property shall be deemed abandoned and the other Party may dispose of the same in any manner it deems reasonably appropriate, at the removing Party's expense.

7. **Maintenance and Access.** Zayo shall perform the scheduled and unscheduled maintenance required on the Delivered Facilities, at its own expense; provided that each Partner shall be responsible for its own scheduled and unscheduled maintenance of the Zayo-Provided Facilities starting at the Partner demarcation/breakout points outside of the Zayo Access Points. Zayo shall perform any relocation of the Delivered Facilities; provided that each Partner shall pay its pro rata share of any relocation costs plus a management fee of ten percent (10%). Neither Partner No. 1 nor Partner No. 2 may enter into any Zayo-owned manhole, handhole or other access point ("Access Points"), or otherwise access the Zayo network in any way. Any access and/or work to the shared sheath and duct structure will only be performed by Zayo. A Partner may only access the Zayo-Provided Facilities at designated handholes provided by Zayo for demarcation handoffs.

7.1 **Operating Procedures.** To provide for mutual security and to assure reliable operations, Partner No. 1 and Partner No. 2 agree to provide for coordination of operating procedures by executing a separate operating protocol. Said operating protocol shall be developed and agreed upon by the Parties within 180 days from the Effective Date of this Agreement.

8. **Taxes.** The Delivering Party shall be responsible for obtaining all Underlying Rights, licenses, permits, and other necessary governmental approvals and shall timely pay any and all taxes and franchise license and permit fees (collectively "Taxes") based on the physical location and occupation of its system and/or the Delivered Facilities and/or construction thereof in, on, across, along or through public or private roads, highways or rights-of-way. The Accepting Party shall be responsible for paying any Taxes assessed against it for its use of the Delivered Facilities, other than that described above, during the Term of this Agreement or any Renewal Term thereof (including taxes or fees based upon revenue derived from the Delivered Facilities).

9. **Waiver of Compliance.** Failure of a Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions.

10. **Force Majeure.** Neither Party shall be in default by reason of any failure or delay in performance of this Agreement if such failure arises out of causes beyond the reasonable control of the non-performing Party. Such Party shall exercise commercially reasonable efforts to minimize any delay.

11. **Assignment.** No Party may assign or otherwise transfer this Agreement or its duties and obligations contained in this Agreement without the prior written notice to and written consent of the other two (2) Parties, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

12. **Representations and Warranties.** Each Party represents and warrants that: (a) it has all necessary right, title and interest to provide the Delivered Facilities to the other party for the Term; (b) it has full right and authority, including any requisite corporate or municipal (as applicable) authority and/or rights under any interlocal agreement, operating protocol, or other arrangement with Denton County, Texas and/or Denton County Transportation Authority, to perform its respective obligations under this Agreement (c) the execution of this Agreement is not violative of its charter, by-laws or any law, regulation or agreements by which it is bound or to which it is subject; and (d) no litigation or governmental proceeding is pending or threatened in writing which might have a material adverse effect on this Agreement, the Exchange or the rights of the parties hereunder.

13. Limitations of Liability. No Party shall be liable to the other for special, indirect, consequential or punitive damages arising out of this Agreement or the performance of the Work, including economic loss, loss business or profits, or business interruptions, however such may be caused.

14. Default and Termination.

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

(B) **Remedies.** In the event of a Default, the non-defaulting Party shall have the right to exercise any or all of the following remedies to the extent applicable: (a) terminate this Agreement; (b) proceed to enforce the remedies of a secured Party under applicable law; (c) proceed by court action to enforce performance of this Agreement and any remedy provided for herein and/or recover all damages of any default or exercise any other right or remedy available at law or in equity; and (d) disconnect and/or remove the applicable Delivered Facilities and equipment. Upon termination pursuant to this Section by the non-defaulting Party, this Agreement shall terminate in its entirety automatically.

15. Insurance. Each Party shall obtain and maintain, and shall require any of its permitted subcontractors to obtain and maintain, not less than the insurance set forth below:

(A) **Workers' Compensation:** Statutory; and employer’s liability insurance covering death or injury to any person or persons, or damage to property arising from the operations of vehicles or equipment, with limits of not less than \$1,000,000 per occurrence.

(B) **Commercial General Liability:** Written on a per occurrence basis to include coverage for: Broad Form Property Damage; Bodily Injury; Personal Injury; Blanket Contractual Liability; and Products/Completed Operations, with a combined single limit per Occurrence not less than \$2,000,000.

(C) **Automotive Liability:** Covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, for all vehicles owned, hired, non-hired, non-owned and borrowed by contractor in the performance of the obligations covered under this Agreement, with limits of not less than \$1,000,000 per occurrence.

16. Notices. All notices 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, or such other address as a party may update in writing to the other party from time to time:

If to Partner No. 1:
Denton Independent School District
Executive Director of Technology
1307 North Locust Street
Denton, Texas 76201

If to Partner No. 2:

Denton County
701 Kimberly Drive, Suite 285
Denton, Texas 76208
Attention: Chief Information Officer

If to Zayo:

Zayo Group, LLC
1805 29th Street
Boulder, CO 80301
Attention: General Counsel, ZPI

17. **Severability**. In the event that any term or provision of this Agreement is declared to be illegal, invalid or unconstitutional, then that provision shall be deemed to be deleted from this Agreement and have no force or effect and this Agreement shall thereafter continue in full force and effect, as modified.
18. **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.
19. **Dispute Resolution**. Except for an action seeking a temporary restraining order or injunction, or suit to compel compliance with this dispute resolution process, the Parties agree that for a period of thirty (30) days after written notice from either party, the Parties shall attempt in good faith to resolve the dispute by direct negotiation of representatives of the parties.
20. **Governing Law and Venue**. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Texas, without reference to its conflicts of law principles. The venue for resolution of any disputes between the parties shall be Denton County, Texas.
21. **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 shall survive and be enforceable after the expiration or termination of this Agreement.
22. **Relationship of the Parties**. The relationship of the parties is that of independent contractor and not as agent, employee or legal representative of the other. Each Party hereby retains the right to exercise full control of and supervision over the performance of its obligations hereunder and full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations.
23. **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. No Party shall assign any of its rights hereunder without the prior written consent of the other Parties.
24. **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.

25. **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. Electronic signatures shall be treated as originals.

The foregoing Exchange Agreement with Zayo Group, LLC was offered for approval on motion made by _____, seconded by _____, and after discussion was adopted by the Board of Trustees of the Denton Independent School District at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on June ____, 2015, at which _____ Trustees were present, by the following vote: ____ For, ____ Against, and ____ Abstaining.

DENTON INDEPENDENT SCHOOL DISTRICT

Barbara Burns, President
Board of Trustees

ATTEST:

Dorothy Martinez, Secretary


DENTON COUNTY

By: *Mary Horn*
The Honorable Mary Horn,
Constitutional County Judge of
Denton County, Texas

Date: 7.21.15

ATTEST:

By: *Ashley D. [Signature]* [Printed Name]
Denton County Deputy Clerk



Approved as to Legal Form:

By: *John Zeldt*
Assistant District Attorney

ZAYO GROUP, LLC

By: Dylan DeVito

Printed Name: Dylan DeVito

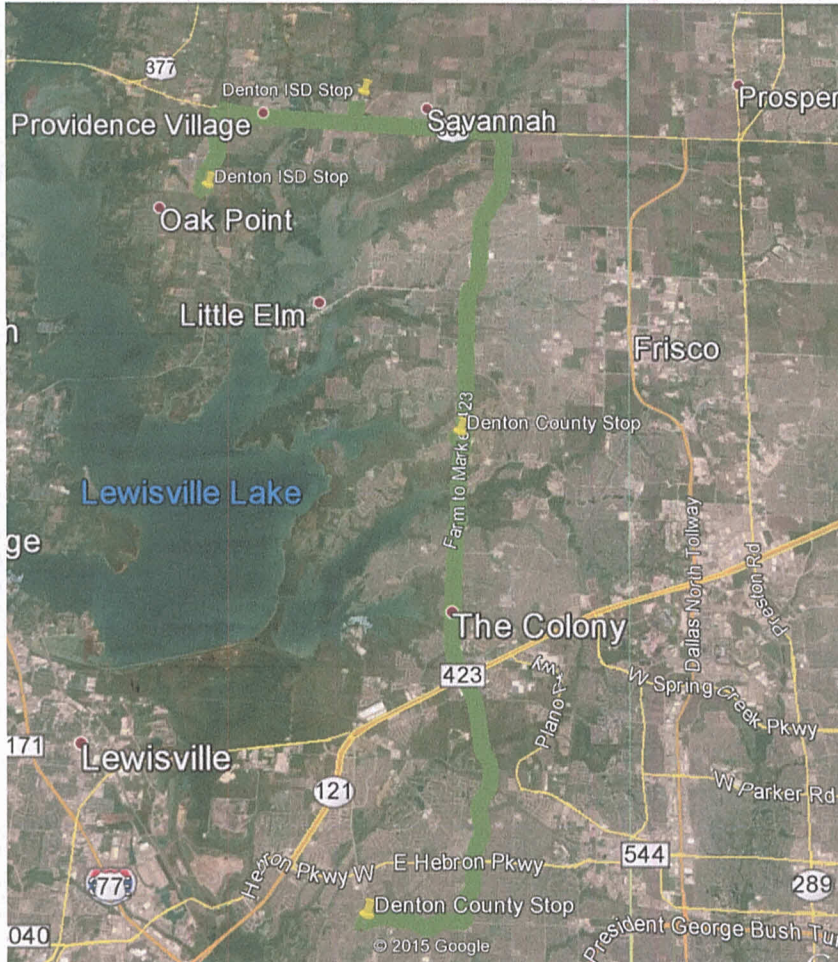
Title: Associate General Counsel

Dated: 6/29/15

EXHIBIT A
Facilities to be Exchanged by the Parties (“Delivered Facilities”)

1. Zayo-Provided Facilities. Zayo will provide Partner the following facilities:

- 144 fibers along the Zayo route from Oak Point hand-off to Denton County hand-off at Rosemeade Pkwy east of Old Denton Rd (Denton County Government Center, 1029 W Rosemeade Pkwy, Carrollton, TX 75007); approximately 140,306 feet, as depicted below.



- Hand-off points at the following locations, including Denton ISD handholes plus sixty feet (60') slack coil in each:
 - (1) Lebanon Rd & Deerwood Ln, Frisco, TX - 72 fibers in and 72 fibers out of new Partner handhole (“HH”);
 - (2) Navo Middle School - One (1) - 1.25' inner duct, only, connecting to new Partner HH;
 - (3) New High School, 380 & Navo Rd - 72 fibers in and 72 fibers out of new Partner HH also connecting to new inner duct going to Navo Middle School;
 - (4) Martop Rd and 720 - 144 fibers into new Partner HH;
 - (5) 1029 W Rosemeade Pkwy, Carrollton, TX 75007 - 144 fibers into new Partner HH; and
 - (6) FM 2931 & Hwy 380 - 72 fibers in and 72 fibers out of new Partner HH.
 - (7) Hwy 720 and Cross Oak Ranch Blvd – 144 fibers in and 144 fibers out of new Partner HH

2. Partner-Provided Facilities. Partner will provide Zayo with the following facilities:

- Interlocal Conduit: exclusive use of 101,795 feet within one (1) 1.5” inner duct, in the route depicted below; provided that Partner warrants that it has all right, title and interest to provide the Interlocal Conduit to Zayo;
- DISD Conduit (Mayhill to Loop 288): exclusive use of 67887 feet of one (1) 1.25" inner duct, as depicted below; and
- Break out permission along both routes to access duct.

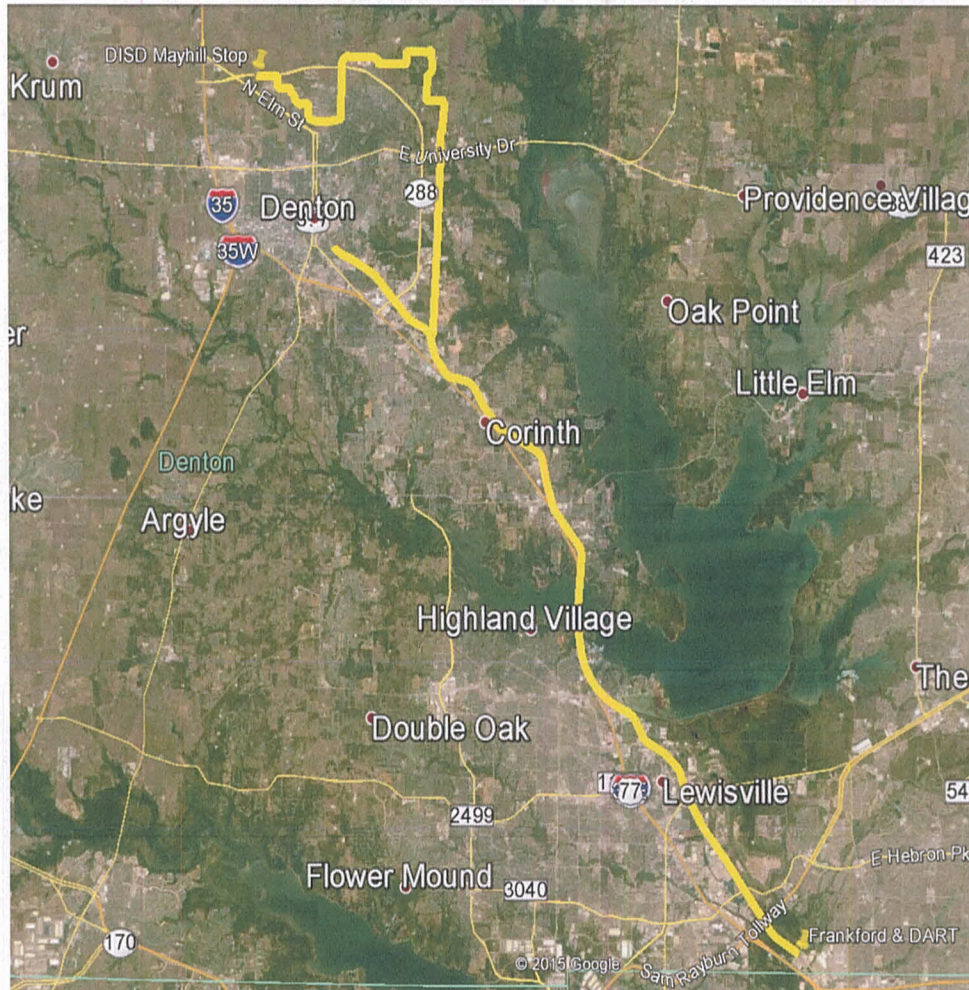


EXHIBIT B

FORM OF BILL OF SALE

FOR AND INCONSIDERATION OF the mutual covenants set forth in that certain Exchange Agreement dated July __, 2015 (the “Agreement”) between the parties, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, **Zayo Group, LLC** (“Zayo”), **Denton Independent School District, Texas** (“DISD” and “Partner No. 1”), and the **County of Denton** (“County” and “Partner No. 2”) (collectively, “Partners”), and each of their respective successors and assigns, hereby sells, transfers and conveys to the other party the assets described herein. Hereinafter sometimes collectively referred to as Parties.

WHEREAS, the Parties entered into the Agreement; and

WHEREAS, the Parties execute this Bill of Sale to effectuate the transfer of assets contemplated by the Agreement (the “Transaction”), a complete list of which are set forth in Exhibit A hereto, respectively.

WHEREAS, Partner No. 1 and Partner No. 2 have determined that the assets it is by this Bill of Sale conveying to Zayo are not necessary for any current educational purpose, and the exchange of these assets for the consideration received from Zayo vastly out-weighs the educational benefits the vacant conduits provide.

NOW THEREFORE, the parties agree as follows:

1. Transfer of Assets.

a. Zayo and DISD:

- i. Zayo does hereby sell, assign, transfer, convey and deliver to DISD, and DISD do hereby purchase and accept from Zayo, all of the right, title and interest, legal or equitable, of Zayo in and to the assets set forth in Exhibit A attached hereto (the “Zayo-Provided Facilities”); provided that for this portion of the Transaction, Zayo is Seller and DISD is Buyer.
- ii. DISD does hereby sell, assign, transfer, convey and deliver to Zayo, and Zayo does hereby purchase and accept from DISD, all of the right, title and interest, legal or equitable, of DISD in and to the assets set forth in Exhibit A attached hereto (the “Partner-Provided Facilities”); provided that for this portion of the Transaction, DISD is Seller and Zayo is Buyer.

b. Zayo and COUNTY:

- i. Zayo does hereby sell, assign, transfer, convey and deliver to COUNTY, and COUNTY do hereby purchase and accept from Zayo, all of the right, title and interest, legal or equitable, of Zayo in and to the assets set forth in Exhibit A attached hereto (the “Zayo-Provided Facilities”); provided that for this portion of the Transaction, Zayo is Seller and COUNTY is Buyer.

ii. COUNTY does hereby sell, assign, transfer, convey and deliver to Zayo, and Zayo does hereby purchase and accept from COUNTY, all of the right, title and interest, legal or equitable, of COUNTY in and to the assets set forth in Exhibit A attached hereto (such to be included in the definition of “Partner-Provided Facilities”); provided that for this portion of the Transaction, COUNTY is Seller and Zayo is Buyer.

c. The Parties each acknowledge and agree that Zayo shall have no responsibility or liability related to DISD’s and County’s shared ownership or use of the Zayo-Provided Facilities, and no dispute between DISD and County shall impair, harm, revoke, void or otherwise affect whatsoever Zayo’s ownership of the Partner-Provided Facilities.

2. Warranties. Each Seller hereby warrants to each Buyer that: (a) Seller has all necessary rights and authority to convey all right, title and interest in the assets to Buyer; (b) Seller is duly authorized to enter into this Bill of Sale; and (c) as of the Effective Date of this Bill of Sale, Seller does relinquish all right, title and interest in the assets.

3. Successors and Assigns. This Bill of Sale shall be binding upon and shall inure to the benefit of the parties and their respective personal representatives, heirs, successors and assigns.

4. Governing Law and Venue. This Bill of Sale shall be governed by the laws of the State of Texas and dispute shall be resolved in Denton County, Texas.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on this _____ day of _____, 2015.

ZAYO GROUP, LLC

DENTON INDEPENDENT SCHOOL DISTRICT

Printed Name: _____
Title: _____

Barbara Burns, President
Denton I.S.D. Board of Trustees

COUNTY OF DENTON

The Honorable Mary Horn,
Constitutional County Judge
Denton County, Texas

(Notary Acknowledgment(s) attached)

Zayo Notary

STATE:

COUNTY OF:

On this _____ day of _____ 2015, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature

FOR
NOTARY
SEAL
OR
STAMP

Denton ISD Notary

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF DENTON

§

On this _____ day of _____ 2015, before me, the undersigned Notary Public, personally appeared Barbara Burns, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity as President of the Board of Trustees of the Denton I.S.D., and that by her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

SWORN AND SUBSCRIBED before me on this the _____ day of _____, 2015, to certify witness my hand and seal of office.

Notary Public, State of Texas

Notary's Printed Name

County of Denton Notary

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF DENTON

§

On this ____ day of _____ 2015, before me, the undersigned Notary Public, personally appeared Mary Horn, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity as Constitutional County Judge of Denton County, Texas, and that by her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

SWORN AND SUBSCRIBED before me on this the ____ day of _____, 2015, to certify witness my hand and seal of office.

Notary Public, State of Texas

Notary's Printed Name