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A BILL
FOR

ORDINANCE NO.
2024- 874

AN ORDINANCE

ESTABLISHING A FRANCHISE AGREEMENT WITH ZIPLY
FIBER PACIFIC, LLC FOR THE PROVISION OF
TELECOMMUNICATIONS SERVICES WITHIN THE CITY
OF KEIZER

WHEREAS, Ziplly Fiber Pacific, LLC desires to enter into a telecommunications
nonexclusive franchise to operate a telecommunication system within the City;

WHEREAS, the City has the authority to regulate the use of the public right-of-
way within the City and to receive compensation for the use of such right-of-way;

WHEREAS, the City and Ziplly Fiber Pacific, LLC both desire Ziplly Fiber
Pacific, LLC to be able to provide telecommunications service within the City and to
establish the terms by which Ziplly Fiber Pacific, LLC shall use and occupy the public
right-of-way;

Now, Therefore, the City of Keizer ordains as follows:

Section 1. The City of Keizer hereby grants to Ziplly Fiber Pacific, LLC
("Grantee"), a Franchise Agreement ("Agreement") to use the public rights of way within
the City to provide telecommunications services within the City for an initial term not to
exceed five (5) years. The terms, conditions, and effective date of the franchise are set
forth in the Agreement, attached hereto and by this reference incorporated herein.

1 Section 2. Should any section or portion of this Ordinance be held unlawful or
2 unenforceable by any court of competent jurisdiction, such decision shall apply only to
3 the specific section or portion thereof directly specified in the decision. All other
4 sections or portions of this Ordinance shall remain in full force and effect.

5 Section 3. The City Manager is hereby authorized to enter into that certain
6 Franchise Agreement with Ziplly Fiber Pacific, LLC, a copy of which is attached hereto
7 and by this reference incorporated herein.

8 Section 4. This Ordinance shall take effect thirty (30) days after its passage.

9 PASSED this 1st day of April, 2024.

10 SIGNED this 1st day of April, 2024.

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Cathy Clark
Mayor

Melina Bisset

City Recorder

FRANCHISE AGREEMENT WITH ZIPLY FIBER PACIFIC, LLC
FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES
WITHIN THE CITY OF KEIZER

WHEREAS, Ziplly Fiber Pacific, LLC, hereinafter referred to as "Grantee", seeks to provide telecommunications services within the City of Keizer, Oregon, hereinafter referred to as "City";

WHEREAS, Grantee desires to enter into a telecommunications nonexclusive franchise, and the City has reviewed the matter and has determined that it meets all the necessary requirements of the City;

WHEREAS, the City hereby determines that it is in the public interest to enter into a franchise agreement with Ziplly Fiber Pacific, LLC to operate a telecommunication system pursuant to the terms and conditions contained herein;

NOW, THEREFORE, the parties agree as follows:

AGREEMENT:

Section 1. The City intends, by entering into this franchise agreement, to encourage the continued development and operation of telecommunications facilities within the City of Keizer. This Agreement will be known as the Ziplly Fiber Pacific Franchise Agreement. Within this document, it will also be referred to as "this Franchise" or "the Franchise".

Section 2. Grant of Franchise. The City hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the city to provide telecommunications services, subject to these provisions and incorporating any related ordinance or resolution hereafter enacted or amended. Any future ordinance or resolution relating to telecommunications infrastructure located in the public rights of way, will be incorporated into this Franchise as though it were a part of it, specifically including but not limited to the requirements for compensation, insurance, performance surety, and indemnification.

Section 3. Term. Unless sooner terminated, this Franchise will be in full force and effect for a period of five (5) years commencing on April 2, 2024 and ending April 1, 2029. This Franchise may be extended for one additional term of five (5) years upon the parties' mutual written agreement.

Section 4. Franchise Area. The Grantee is authorized by this Franchise to make reasonable and lawful use of the public rights of way within the boundaries of the city of Keizer or as these boundaries may be extended in the future.

Section 5. Franchise Fee. As consideration for the use of the City's rights of way, Grantee will remit to the City a franchise fee of seven percent (7%) of gross revenues from delivery of services in the city, including Grantee's gross revenues earned in the delivery of services within the corporate limits of the city to parties (including lessees of facilities) who are not the ultimate consumers of those services, but who redistribute services to third parties. Grantee's franchise fee payments to the City will be due quarterly within (30) days following the end of each quarter, defined as the last day of March, June, September and December. Each payment will be

accompanied by a statement as to the manner in which the franchise fee is calculated. The Grantee will provide, and at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to verify the accuracy of the calculation of the franchise fee by the Grantee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculations, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

Within thirty (30) days after the termination of this Franchise, compensation will be paid for the period elapsing since the end of the last quarter for which compensation has been paid. In the event any payment due quarterly is not received within thirty (30) days from the end of the preceding quarter, or is underpaid, Grantee will pay in addition to the payment, or sum due, interest at a rate no higher than the current legal interest rate on judgments in the State, calculated from the date the payment was originally due until the date the City receives the payment. Additionally, if any payment becomes ninety (90) days in arrears, a ten (10) percent penalty will be applied. In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee will pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the rights of way for Grantee's use of the rights of way (subject to the other provisions contained in this Franchise).

Section 6. Insurance.

A. Grantee will maintain in full force and effect the following liability insurance policies that protect the Utility Operator and the City, as well as the City's officers, agents, and employees:

- a. Comprehensive general liability insurance with limits not less than:
 - i. Five million dollars (\$5,000,000.) for bodily injury or death to each person;
 - ii. Five million dollars (\$5,000,000) aggregate including collapse, explosions, underground hazards and products completed operations.
- b. Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of three million dollars (\$3,000,000) combined single limit.
- c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).
- d. Liability insurance will name as additional insured the City and its officers, agents, and employees. Additional insured coverage will be for both on-going operations and products and completed operations, on forms acceptable to the City. Coverage will be Primary and Non-Contributory. Waiver of Subrogation endorsement, in a form acceptable to the City, will be provided for general liability and worker's compensation. Grantee shall furnish acceptable insurance certificates to City with original endorsements for each insurance policy signed by a person authorized by that insurer to bind coverage on its behalf.
- e. Grantee agrees to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether the acts or omissions are authorized, allowed or prohibited by this code or by a franchise agreement made or entered into pursuant to this agreement.

B. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance will be without prejudice to coverage otherwise existing. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the Grantee will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The Grantee will maintain continuous uninterrupted coverage, in the terms and amounts required.

C. The Grantee will maintain on file with the City a certificate of insurance and endorsement certifying the coverage required above.

Section 7. Performance Surety.

Upon the effective date of this Agreement, the Licensee will furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the sum of Thirty Thousand Dollars (\$30,000), conditioned that the Licensee will well and truly observe, fulfill, and being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Grantee, their representative or contractor. Licensee will pay all premiums charged for the bond, and will keep the bond in full force and effect at all times throughout the term of the Agreement, including, if necessary, the time required for removal of all of Licensee's Facilities installed in the Public Rights of Way. The Bond may be released on the 5 year anniversary of this agreement at the sole discretion of the City, provided the Grantee has demonstrated the ability to comply with utility construction requirements. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty days prior written notice first being given to the City. The bond will be reviewed and approved as to form by the City Attorney.

City may, in the event of any construction which is likely to be substantially greater than \$30,000, or in the event the City's cost to complete or repair such construction upon Grantee's failure to perform the same would be greater than \$30,000, as reasonably determined by the City, require the amount of the performance bond to be increased. The performance bond is subject to increase each time Grantee applies for permits to perform work within the City. Grantee will provide to City all necessary documentation demonstrating Grantee's cost estimation in a format reasonable acceptable to the City.

Section 8. Sale of subscriber lists prohibited. Except as otherwise expressly permitted by law, the Grantee will not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Grantee's services.

Section 9. Construction.

Grantee shall install its Telecommunications Network in accordance with the City's generally applicable aboveground and underground utility facility placement policies in effect at installation. At such time as the City adopts policies and requirements permitting or requiring the underground installation of telecommunications facilities Grantee shall fully comply with such policies and requirements provided they are imposed on all carriers in a competitively neutral and nondiscriminatory manner.

A. Location of Facilities. All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

C. Relocation or Removal of Facilities. Except in the case of an emergency, within 90 days following written notice from the city a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the city shall have determined that the removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

2. The operations of the city or other governmental entity in or upon the public rights-of-way; and/or

3. The public interest.

D. Removal of Unauthorized Facilities. Within 30 days following written notice from the city, any grantee, telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove the facilities or appurtenances from the public rights-of-way of the city. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

1. One year after the expiration or termination of the grantee's telecommunications franchise;

2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced;

3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation; or

4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

E. Coordination of Construction Activities. All grantees are required to make a good-faith effort to cooperate with the city.

1. By January 1 of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.

2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state and/or federal construction projects.

3. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

Section 10. Revocation or Termination. The City may, upon sixty (60) days' prior written notice, terminate or revoke the franchise granted pursuant to this Ordinance for any of the following reasons ("Default"):

- a. Violation of any of the material provisions of this Franchise and/or any future controlling ordinance or resolution;
- b. Misrepresentation in the Franchise application or a rights of way construction application;
- c. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
- d. Failure to pay taxes, compensation, fees or costs due to the City after final determination by the City of the taxes, compensation, fees or costs;
- e. Failure to restore the ROW as required by this Agreement or other applicable State and local laws, ordinances, rules and regulations;
- f. Failure to comply with technical, safety and engineering standards related to Work in the ROW; or
- g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by State or federal law for the placement, maintenance or operation of the Utility Facilities.

If, within the sixty-day notice period, Grantee cures the Default or commences to cure a Default that cannot reasonably be cured within sixty days of the notice, the notice of Default shall be deemed withdrawn and the Franchise shall not terminate.

Section 11. Abandonment; Removal of Facilities Upon Expiration.

If the Grantee goes out of business or withdraws service from the area and as a consequence refuses to renew the agreement, all rights to the use of the connection media revert to the City who may sell, lease, or otherwise use the connection media at its sole discretion. The connection media shall be left in working order and not be intentionally cut or destroyed. The City may require the media be removed from all poles and underground conduits by the former Franchisee at the franchisee's expense.

Upon expiration of this Agreement, Grantee shall either remove its Facilities in accordance with ORS 221.470(2020) or seek City's written consent to leave its Facilities in place.

Section 12. Franchise Acceptance. Within thirty (30) days of the signing by all parties of this Agreement, Grantee will file with the City certificates of insurance and endorsement, and the bond outlined herein. Failure to fulfill this requirement will nullify and void this Agreement, and any and all rights of Grantee to own or operate a telecommunications facility within the Franchise Area under this Agreement will be of no force or effect.

Section 13. Franchise Nonexclusive. The Franchise hereby granted is not exclusive, and will not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights of way.

Section 14. Change of Law; Amendment to Franchise.

This Franchise may be amended from time to time to conform to any changes in the controlling federal or state law, or other changes material to this Franchise. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Franchise also may be amended by mutual consent of the parties or their successors-in-interest. Any amendments hereto shall be by written instrument executed with the same formalities as this Franchise.

To the extent any lawful City rule, ordinance, or regulation is adopted or amended and is generally imposed on all similarly situated persons or entities, the rule, ordinance, or regulation shall apply without need for amendment of this Franchise. The City shall provide Grantee with notice of any such change in law prior to its adoption.

Section 15. Choice of Law/Venue.

Choice of Law/Venue. The laws of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in the Circuit Courts in and for Marion County, Oregon or for federal matters, the United States District Court for the District of Oregon.

Section 16. Assignments or Transfers of System or Franchise

Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on reasonable conditions as may be prescribed in the consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this code.

3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.

4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

Zipty Fiber Pacific, LLC

City of Keizer

By: 

GEORGE BAKER THOMPSON, JR.
As Its: VP, ASSOCIATE GENERAL COUNSEL

By:

Adam J. Brown,
As Its: City Manager