

*Staff Report*

Department of Information Services

TO: Mayor / City Council
FROM: Joe Nanavich, Information Services Director
DATE: March 7, 2024
SUBJECT: Ziplly Fiber Franchise Agreement

Background: In September of 2023, Ziplly Fiber Pacific, LLC approached the City to engage in discussion regarding a non-exclusive franchise for the transmission of telecommunications in city right-of-way. The purpose of the franchise agreement is to install fiber optic cable, predominately aerial, for the provision of residential fiber broadband service within the city to residential and commercial customers.

Analysis: Municipalities have the right to regulate utility companies for the privileges to conduct business and occupy public property and rights of way. Franchises are customarily granted to place telephone, electric, gas, fiber optic and cable television lines in streets or on public property.

Ziplly Fiber proposes installing fiber optic cable primarily in areas where existing aerial telecommunication cable exists in the North, West and Southwest areas of Enumclaw. This agreement requires the undergrounding of fiber in areas where no aerial access exists, and utilities are provided through underground service.

This agreement provides for appropriate insurance and performance bonds associated with construction along with restoration requirements for property damaged during construction.

The granting of this franchise would provide benefit to the citizens of Enumclaw in the form of an additional choice in broadband service providers.

Recommendation: Staff recommends the passing of Ordinance 2776 granting Ziplly Fiber Pacific, LLC a non-exclusive franchise for the transmission of telecommunications in the city right-of-way.

ORDINANCE NO. 2776

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENUMCLAW WASHINGTON, GRANTING TO ZIPLY FIBER PACIFIC, LLC, A STATE OF WASHINGTON CORPORATION, A FRANCHISE FOR TELECOMMUNICATIONS

WHEREAS, Ziplly Fiber Pacific, LLC, a Delaware limited liability company (“Grantee”) has applied to the City of Enumclaw (“City”) for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee’s request for a Franchise, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Grantee,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENUMCLAW WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Grant of Right to Use Franchise Area

- A. Subject to the terms and conditions stated herein, the City grants to the Grantee general permission to enter, use, and occupy the right(s)-of-way and/or other public property, including the natural gas area, specified in Exhibit “A,” attached hereto and incorporated by reference (the “Franchise Area”).
- B. Subject to the City's written approval consistent with its permitting process and procedures, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a fiber optic telecommunication system within the Franchise Area.
- C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on public or private property elsewhere within the City.
- D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises, impacting the Franchise Area, unless the City determines that entering into such agreements interferes with Grantee’s right set forth herein.

- E. Except as explicitly set forth herein, this Franchise does not waive any rights that the City has or may hereafter acquire with respect to the Franchise Area or any other City roads, rights-of-way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges its use of the Franchise Area shall have no value.
- F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.
- G. The Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2. Notice

- A. Written notices to the parties shall be sent by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party.

City of Enumclaw
 Attn: City Clerk
 1339 Griffin Avenue
 Enumclaw, WA 98022

with a copy to: Reynolds Burton and Vinson
 Attn: Brett C. Vinson
 1219 Cole St
 Enumclaw, WA 98022

Grantee: Zply Fiber Pacific, LLC
 135 Lake Street South, Suite 155
 Kirkland, Washington 98033
 legal@zply.com

- B. Any changes to the above-stated Grantee information shall be sent to the City's Director of Community & Economic Development Department, with copies to the City Clerk, referencing the title of this agreement.
- C. The above-stated Grantee voice and fax telephone numbers shall be staffed at least during normal business hours, Pacific time zone.
- D. On an at least an annual basis, Grantee shall provide a point of contact for the City to contact for issues related to permits or this franchise which shall include a full name, email address, and direct line telephone number.

Section 3. Term of Agreement

- A. This Franchise shall run for a period of ten (10) years, from the date of execution specified in Section 5.
- B. Renewal Option of Term: The Grantee may renew this Franchise for an additional five (5) years upon the agreement of Grantee and the City; and provided further, however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of the Franchise, in a form acceptable to the City Attorney.
- C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any renewal thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

“City Code” means the Enumclaw Municipal Code.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Maintenance or Maintain” shall mean examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

“Relocation” means permanent movement of Grantee facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

“Rights-of-Way” means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-ways and similar public properties and areas but does not include:

- (a) State highways where the City does not have authority to grant permits related to Telecommunication Systems;
- (b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
- (c) Structures, including poles and conduits, located within the right-of-way;
- (d) Federally granted trust lands or forest board trust lands;
- (e) Lands owned or managed by the state parks and recreation commission; or
- (f) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

Section 5. Acceptance of Franchise

- A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, attached hereto as Exhibit "B," and incorporated by reference, (2) all verifications of insurance coverage specified under Section 15, and (3) the financial guarantees specified in Section 16 (collectively, "Franchise Acceptance"). The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.
- B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within 30 days after the effective date of the ordinance approving the Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

- A. Grantee's Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with the Enumclaw Municipal Code 12.18.060 ("EMC") and so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the Rights-of-Way, Grantee shall obtain prior approval from the City of Enumclaw Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work pursuant to EMC Chapter 12.18.060. Upon completion of such excavation, Grantee shall restore the surface of the Rights-of-Way to the specifications established within the EMC and City of Enumclaw Public Works Policies and Standards. If Grantee should fail to leave any portion of the excavation in a condition that meets the City's specifications per the EMC and Public Works Policies and Standards, the City may, on five (5) days' notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work, and any engineering, planning, consulting, and/or legal fees incurred (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).
- B. Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by Grantee shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to Grantee, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Grantee shall pay the reasonable costs of such work to the City, including City overhead (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).
- C. Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director

- D. Grantee agrees to coordinate its activities with the City and all other utilities located within the public right-of-way within which Grantee is under taking its activity.
- E. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public right-of-way and may from time to time, pursuant to the applicable sections of this Franchise, require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.
- F. Before commencing any work within the public right-of-way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.
- G. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.

Section 7. Repair and Emergency Work

In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City Public Works Director in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

Section 8. Damages to City and Third-Party Property

Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 9. Location Preference

Any structure, equipment, appurtenance, or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct or repair Grantee Facilities under this Franchise shall have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to another utility's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any City road or right-of-way. A relocating utility shall not necessitate

the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Such relocations shall be governed by Section 11. Grantee must follow City's established non-discriminatory requirements for placement of Telecommunication System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Telecommunication System facilities in a manner that minimizes interference with the use of the Rights-of-Way by the City or others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety, and welfare, the City may require that Telecommunication System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal and repair.

Section 10. Grantee Information

- A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, as maintained in Grantee's data base system, as now or hereinafter existing. Grantee shall keep the City informed of its long-range plans for coordination with the City's long-range plans.
- B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Accordingly, the City agrees to notify the Grantee of requests for public records related to the Grantee, and to give the Grantee a reasonable amount of time to obtain an injunction to prohibit the City's release of records.

Grantee shall indemnify and hold harmless the City for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's Public Records Act, provided the City has notified Grantee of the pending request.

Section 11. Relocation of Grantee Facilities

- A. In areas of the City in which there are no aerial facilities, Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.
- B. Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the

City and other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, Grantee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

- C. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions set forth herein, Grantee agrees to protect and save harmless the City from any third-party claims for service interruption or other losses in connection with any such change or relocation other than City's negligence or willful misconduct.
- D. If the City determines that a project necessitates the relocation of the Grantee's existing Facilities, then:
 - 1. Within a reasonable time, which shall be no less than one hundred eighty (180) days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that in the event of an Emergency Situation beyond the control of the City and which will result in severe financial consequences to the City or its citizens or businesses, the City shall give the Grantee written notice as soon as practicable;
 - 2. The City shall provide the Grantee with copies of information for such improvement project and a proposed location for the Grantee's Facilities so that Grantee may relocate its Facilities in other Rights-of-Way in order to accommodate the project; and
 - 3. The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project at least ten (10) days prior to commencement of the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.
- E. The Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.

- F. The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any Person or entity other than the City, where the Facilities to be constructed by said Person or entity are not or will not become City owned, operated or maintained Facilities; provided, that such arrangements shall not unduly delay a City construction project.
- G. The Grantee shall indemnify, hold harmless and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to delays caused by the City, and contractor employed by the City, or circumstances beyond the reasonable control of the Grantee.
- H. In the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.
- I. In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

Section 12. Abandonment and or Removal of Grantee Facilities

- A. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within one hundred eighty (180) days of receiving notice from the City's Public Works Director; provided however, that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within one hundred eighty (180) days of receipt of said notice shall automatically become the property of the City; provided however, that nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place.

Section 13. Undergrounding

- A. The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.
- B. Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner approved by the City. Where the City requests relocation of underground facilities for aesthetic purposes, the cost of relocation shall be paid by the City. In other cases, where other utilities are present and involved in the undergrounding project,

Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Indemnification and Hold Harmless

- A. Grantee shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and reasonable attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, or in connection with, the willful, tortuous or negligent acts, failures and/or omissions of Grantee or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted Grantee in the Franchise; provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.
- B. In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Grantee thereof (and in any event prior to the date that Grantee's rights to defend such claim or demand would be prejudiced), and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the it shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.
- C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14, the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.
- D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.
- E. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 15. Insurance

- A. The Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its agents, representatives, or employees in the amounts and types set forth below:
1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident.
 2. Commercial General Liability insurance with limits no less than \$5,000,000.00 each occurrence, \$5,000,000.00 general aggregate and a \$5,000,000.00 products-completed operations aggregate limit. Coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise.
 3. Professional Liability insurance with limits no less than \$5,000,000.00 per claim for all professional employed or retained Grantee to perform services under this Franchise.
 4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.
 2. The Grantee's insurance shall not be cancelled by either party except after thirty (30) days' prior written notice has been given to the City.
- C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- D. Verification of Coverage. Grantee shall furnish the City with certificates and required endorsements, evidencing the insurance requirements of this Section 15 before commencement of the work.
- E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

- F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 16. Performance Security

The Grantee shall provide the City with a performance bond in the amount of Ten Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 19 shall constitute damage to the City in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit the Grantee's liability to the guaranteed amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 17. Successors and Assignees

- A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Grantee is mentioned.
- B. This Franchise shall not be assigned or otherwise alienated without the express prior consent of the City by ordinance. In the event such a transfer, assignment, or disposal of franchisee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.
- C. In the case of an assignment or transfer not subject to WUTC approval, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (a) complete information setting forth the nature, term and conditions of the proposed assignment or transfer; and (b) all information required by the City of an applicant for a franchise with respect to the proposed assignee or transferee.
- D. IN the case of an assignment or transfer not subject to WUTC approval, prior to the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

Section 18. Dispute Resolution

- A. In the event of a dispute between the City and the Grantee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by City and Grantee to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.
- B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington or the appropriate U.S. District Court. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

Section 19. Enforcement and Remedies

- A. If the Grantee shall violate or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the breach cannot be cured within thirty days, the Grantee will be provided a longer period provided that Grantee commences work on the cure within the original thirty-day cure period, and makes reasonable efforts to complete the work.. If Grantee does not comply with the specified conditions within the thirty day cure period, the City may claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the performance bond in Section 16 for every day after the expiration of the cure period that the breach is not cured, up to a maximum claim of \$10,000. Should the specified conditions not be cured with thirty (30) days, unless extended in the sole discretion of the City, Grantee agrees that any and all permits may be suspended or not issued until the specified conditions are completed to the satisfaction of the City.
- B. Should the City determine that Grantee is acting beyond the scope of this Franchise, the City reserves the right require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease such actions.

Section 20. Compliance with Laws and Regulations

- A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to

protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

- B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations and the proposed amendment is required by law, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

Section 21. License, Tax and Other Charges

This Franchise shall not exempt the Grantee from any future license, tax, or charge which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 22. Consequential Damages Limitation

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Miscellaneous

- A. If any term, provision, condition or portion of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance which shall continue in full force and effect. The headings of sections and paragraphs of this Ordinance are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- B. Grantee shall pay for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$2,000. Grantee shall further be subject to all published permit fees associated with activities and the provisions of any such permit, approval, license, agreement or other document, the provisions of the Franchise shall control.
- C. Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

Section 24. Titles

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 25. Implementation.

The City Administrator or designee is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 26. Effective date.

This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

PASSED IN REGULAR AND OPEN SESSION this ____ day of _____, 2024

Mayor Jan Molinaro
INTRODUCED _____
PASSED _____
APPROVED _____
PUBLISHED _____

Attested:

Approved as to Form:

Jessica Rose
City Clerk

Brett C. Vinson
City Attorney

D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

Section 24. Titles

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

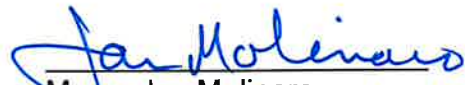
Section 25. Implementation.

The City Administrator or designee is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 26. Effective date.


This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

PASSED IN REGULAR AND OPEN SESSION this 25 day of March, 2024



Mayor Jan Molinaro
INTRODUCED 3-11-24
PASSED 3-25-24
APPROVED 3-26-24
PUBLISHED 4-5-24

Attested:



Jessica Rose
City Clerk

Approved as to Form:



Brett C. Vinson
City Attorney

EXHIBIT A
FRANCHISE AREA

EXHIBIT "B"

STATEMENT OF ACCEPTANCE

Ziply Fiber Pacific, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

Ziply Fiber Pacific, LLC

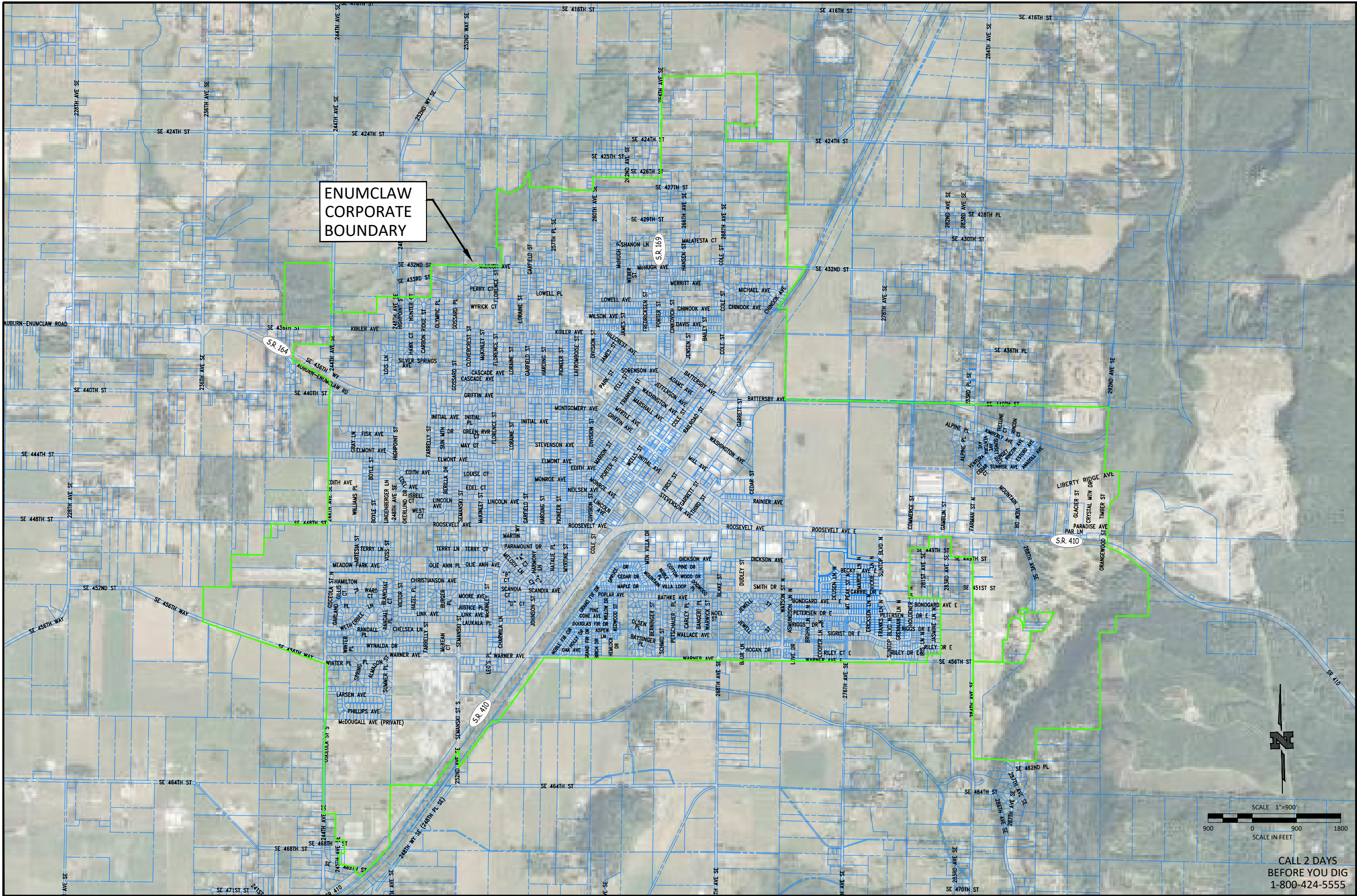
By: _____

Date: _____

Name:

Title:

Exhibit A - Franchise Area



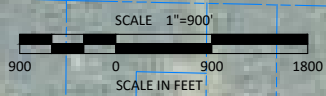
ENUMCLAW
CORPORATE
BOUNDARY

REVISIONS		
NO.	DESCRIPTION	BY / DATE
1		
2		
3		
4		
5		
6		



CITY OF ENUMCLAW
CORPORATE BOUNDARY

PROJECT NO:	
SURVEYED BY:	
DESIGNED BY:	
DRAWN BY:	KW
CHECKED BY:	DW
DATE:	03/06/2024



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