

FRANCHISE AGREEMENT
HERMISTON, OREGON

This Franchise Agreement is between the City of Hermiston, hereinafter referred to as “Grantor” and Zply Fiber Pacific, LLC DBA Zply Fiber, hereinafter referred to as “Grantee.”

WHEREAS, the Grantee has applied to the Grantor for a franchise as needed to own, operate, and maintain certain Equipment within the Streets and Public Ways of Grantor; and

WHEREAS, the Grantor finds that the Grantee has substantially complied with the requirements of Hermiston Municipal Code Chapter 115 to be awarded a Franchise; and

WHEREAS, Grantor and Grantee now wish to enter into this Franchise Agreement.

NOW, THEREFORE, Grantor and Grantee agree as follows:

1. Definitions

1.1. Definitions. For the purpose of this Franchise Agreement, the following terms, phrases, and words shall have the meaning set forth below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined herein shall be given their common and ordinary meaning.

- A. “Applicable Law” shall mean any provision of federal, state or local law, including without limitation statutes, regulations, ordinances and judicial or administrative orders, that is directly applicable to Grantee’s Equipment in the Streets, Grantee’s provision of Telecommunications Services in the Service Area, or any other action authorized or required to be undertaken by Grantee pursuant to the terms of this Franchise.
- B. “Carrier” shall mean any Person that has located, or that wishes to locate, facilities within the Streets for the purpose providing Telecommunications Service.
- C. “Effective Date” shall mean the date of Grantee’s acceptance of this Franchise as recorded on the signature page.
- D. “Equipment” shall mean any poles, wires, antennae, underground conduits, manholes, wireless transmitters and other conductors, fixtures, and facilities used by Grantee to provide Telecommunications Services in the Service Area.
- E. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.

- F. “Franchise” shall mean the non-exclusive rights granted by Grantor to Grantee to construct, operate, and maintain Equipment in and along the Streets for the purpose of providing Telecommunications Services.
- G. “Gross Revenue” shall mean, to the maximum extent allowed by Applicable Law, gross revenue received by Grantee for the provision of Telecommunications Services to Subscribers located in the Service Area regardless of the type of Equipment used to provide such services. “Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. “Gross Revenues” shall not include: (1) any taxes, fees or assessments collected by Grantee from Subscribers for pass-through to a government agency, including the Franchise fee set forth herein; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any other exclusions available under Applicable Law.
- H. “OPUC” shall mean the Oregon Public Utilities Commission.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. “Service Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- L. “Street” shall include each of the following: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, rights of way and similar public ways and extensions and additions thereto, including but not limited to rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area.
- M. “Subscriber” shall mean any Person lawfully receiving Telecommunication Service from Grantee within the Service Area.
- N. “Telecommunications” shall have the same meaning as ORS 759.005(7), or any successor thereto.
- O. “Telecommunications Service” shall mean the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2. Right to Use Streets

- 2.1. **Grant of Franchise.** Grantor hereby authorizes Grantee to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established, any Equipment.
- 2.2. **No Right of Attachment.** The Franchise conferred pursuant to Section 2.1 shall not give Grantee the right to attachment any Equipment to, or place any Equipment on, any

structures owned by Grantor, including without limitation any utility poles owned and operated by Hermiston Energy Services. Should Grantee wish to attach any Equipment to, or place any Equipment on, any structures owned by Grantor, then Grantee shall enter into an appropriate attachment or rental agreement with Grantor. Grantee expressly understands and agrees that it may be required to pay compensation to Grantor under such attachment or rental agreement in addition to the Franchise Fee required hereunder.

- 2.3. **Term.** This Franchise Agreement, and the Franchise granted hereunder, shall be for a term of five (5) years commencing on the Effective Date and shall thereafter automatically renew from year-to-year until either Party gives the other Party a written notice of termination at least one hundred and twenty (120) days prior to expiration of the initial term or subsequent annual term.
- 2.4. **Police Powers and Conflicts with Franchise.** In exercising its rights under this Franchise, Grantee agrees to comply with the terms of Hermiston Municipal Code Chapter 115 and all other provisions of Applicable Law. If any generally applicable ordinance provision adopted by Grantor, whether before or after the Effective Date, is in conflict with the express terms of this Franchise Agreement, this Franchise Agreement shall be controlling. This Franchise Agreement is a contract and, except as to those changes that are the result of Grantor's lawful exercise of its general police power, Grantor may not take any unilateral action that materially changes the explicit mutual promises in this Franchise Agreement. Except as expressly provided herein, any changes to this Franchise Agreement must be made in writing signed by both Parties.
- 2.5. **Franchise Required.** Grantor shall require all other Carriers to obtain and maintain a Franchise from Grantor on a non-discriminatory basis.

3. **Indemnification and Insurance**

- 3.1. **Indemnification.** Grantee shall indemnify and hold harmless Grantor, including its elected officials, managers, agents, and employees, from any and all third-party claims, demands, or judgments arising out of Grantee's construction, repair, extension, maintenance, operation or removal of its Equipment ("Claims"). Grantor shall give Grantee written notice of its obligation to indemnify Grantor within thirty (30) days of receipt of a Claim. In the event any such Claim arises, Grantor shall tender the defense thereof to Grantee and Grantee shall have the right to defend and settle or compromise such Claims. If a settlement or compromise imposes any obligations on the Grantor, Grantor must give prior written approval for such settlement or compromise. Grantor shall cooperate fully herein. If Grantor determines in good faith that its interests cannot be represented by Grantee, Grantee shall be excused from any obligation to represent Grantor. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor.

3.2. Insurance.

A. Grantee shall maintain throughout the term of this Franchise Agreement insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

B. Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

4. Service Availability

4.1. New Development. In cases of new construction or property development within the Service Area where electric facilities or the facilities of any other Carriers will be placed underground, Grantor agrees to notify Grantee of the development application.

4.2. Annexation. Grantor shall provide written notice to Grantee of its annexation of any territory that is being provided Telecommunications Services by Grantee. Such annexed area will be subject to the provisions of this Franchise. Grantee shall pay Grantor the Franchise fee on Gross Revenue received within the annexed territory commencing not later than ninety (90) days after Grantee's receipt of Grantor's written notice of annexation. Such notice shall include detailed and sufficient information for Grantee, at its discretion, to make any and all changes that may be necessary to comply with this Franchise Agreement.

5. Construction and Technical Standards

5.1. Construction Standards and Requirements. All of Grantee's Equipment in the Streets shall be designed, installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated by experienced and qualified personnel in accordance with the then current version of the National Electric Safety Code and good engineering practices.

- 5.2. **Safety.** With respect to any activity undertaken in or around the Streets, Grantee shall at all times employ reasonable care and shall use commonly accepted methods and devices to prevent failures or accidents that may cause injury or property damage.
- 5.3. **Construction Codes and Permits.** Grantee shall comply with all generally applicable permitting requirements before commencing any work, including the opening or disturbance of any Street within the Service Area. To the extent allowed by law, Grantor shall cooperate with Grantee in granting any permits required, providing such grant and subsequent construction by Grantee shall not unduly interfere with the use of such Streets. Grantee shall adhere to all building and zoning codes currently or hereafter applicable to the construction, operation or maintenance of Grantee's Equipment in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by Grantor to other Carriers.
- 5.4. **Restoration of Streets.** Grantee shall, at its own expense, restore any damage or disturbance caused to the Streets as a result of its operation, construction, or maintenance of its Equipment to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

6. **Conditions on Street Occupancy**

- 6.1. **Underground Construction.** To the maximum extent feasible based on the type and purpose of the Equipment, Grantee shall install its Equipment underground where, at the time of Grantee's installation, any existing cable, Telecommunications or electric facilities are already located underground. In areas where cable, Telecommunications, and electric utility facilities are all installed aerially at the time Grantee installs its Equipment, Grantee also may install its Equipment aerially with the understanding that, at such time as Grantor places its own the existing aerial facilities underground, then Grantee shall likewise place its Equipment underground.
- 6.2. **Interference with Use of Streets.** Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any Equipment placed in any Street by Grantee shall be placed in such a manner as not to interfere with the usual travel on such Street.
- 6.3. **Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of Grantor to remove any of Grantee's Equipment from the Streets, no charge shall be made by Grantee against Grantor for restoration and repair, unless such acts amount to negligence by Grantor.
- 6.4. **Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary for the installation, maintenance, protection and/or removal of its Equipment.
- 6.5. **Relocation for Grantor.** Grantee shall, upon receipt of reasonable advance written notice, to be not less than ninety (90) days, protect, support, temporarily disconnect, relocate, or remove any of its Equipment located in the Streets when lawfully requested by Grantor pursuant to its police powers. Grantee shall be responsible for any costs

associated with these obligations to the same extent all other users of the Streets are responsible for the costs related to the relocation of their Equipment.

- 6.6. Relocation for Benefit of Third Party.** Grantee shall, on the request of any person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Streets, as applicable and if possible, any Grantee property, provided that the expense of such is paid by any the person requesting the relocation and Grantee is given reasonable advance written notice to prepare for such changes. Grantee may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than forty-five (45) days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.
- 6.8 Reimbursement of Costs.** If funds are made available by Grantor to any Carrier for the purpose of defraying the cost of removing or relocating its facilities as required by Grantor or by the terms of its franchise, Grantor shall also offer funds to Grantee for such purposes on the same basis.

7. Franchise Fee

- 7.1. Amount of Fee.** Grantee shall pay to the Grantor an annual fee in an amount equal to five percent (5%) of the annual Gross Revenue (“Franchise Fee”). Notwithstanding the forgoing, Grantor may, in its sole discretion and any time during the term of this Franchise Agreement, increase the Franchise Fee payable by Grantee hereunder provided that: (1) any such increased Franchise Fee shall be consistent with Applicable Law; and (2) any such increased Franchise Fee shall become effective not less than ninety (90) days after Grantor provides Grantee with written notice of the increase. The Franchise Fee paid pursuant to this Franchise Agreement shall be in addition to taxes of general applicability owed to Grantor by Grantee. Franchise Fees may be passed through by Grantee to its Subscribers as a line item on Subscriber bills to the extent allowed by Applicable Law.
- 7.2. Payment of Franchise Fee.** Grantee shall pay the Franchise Fee on or before each April 30, July 31, October 31, and January 31 of the term of this Franchise Agreement. Each such quarterly payment shall be for the calendar quarter immediately preceding the payment date. Payments shall be transmitted by electronic funds transfer to a bank account designated by Grantor. Along with each quarterly payment, Grantee shall provide Grantor a written report setting forth in reasonable detail the basis for Grantee’s calculation of the payment.
- 7.3. Accord and Satisfaction.** Grantor’s acceptance of any payment or partial payment from Grantee shall not be construed as a release of, or an accord and satisfaction with respect to, any claim Grantor may have for additional sums payable by Grantee under this Franchise Agreement.

7.4. **Limitation on Recovery.** If any Franchise Fee payment is not made on or before the dates specified herein, Grantee shall pay an interest charge computed from such due date at the annual rate equal to the lesser of one percent (1%) or the maximum rate allowed by law.

8. **Transfer of Franchise**

Grantee may not assign or transfer the Franchise granted hereunder without the prior written consent of the Grantor, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent shall be required by Grantor in connection with an assignment or transfer by Grantee to an entity controlling, controlled by, or under common control with Grantee, or for any rights, title, or interest of Grantee in the Franchise or Equipment in order to secure indebtedness. Grantee shall reimburse Grantor for all costs reasonably incurred by Grantor to review and analyze any request made by Grantee for Grantor's consent to an assignment or transfer this Franchise. If such assignment or transfer is approved by the Oregon Public Utility Commission (OPUC), approval by the City will be automatic.

9. **Records**

9.1 **Inspection of Records.** Grantee shall permit duly authorized representatives of Grantor, upon advance notice, to examine during normal business hours and on a non-disruptive basis at Grantee's local office any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the Sections of the Franchise Agreement under review so that the Grantee may organize the necessary records for easy access by the Grantor. The Grantee shall not be required by this Franchise Agreement to maintain any records longer than three (3) years; *provided however*, that Grantee's obligation to maintain records for not less than three (3) years shall survive the expiration, termination or revocation of this Franchise Agreement.

9.2 **Confidential Information.** To the extent allowed by Applicable Law, Grantor agrees to treat as confidential any information provided to it by Grantee that has been designated by Grantee as "Confidential Information." If Grantor determines that it is required by law to release any designated Confidential Information, it shall first advise Grantee in advance so that Grantee may take appropriate steps, at its own expense, to protect the confidentiality of its Confidential Information.

9.3 **Notice and Maps of Equipment.** Grantee shall notify Grantor in writing, consistent Section 11.2 below, within ten (10) days after Grantee installs new or moves existing Equipment in the Streets. Grantor shall notify Grantee in writing, consistent with Section 11.2 below, of any Grantor construction project that may interfere with Grantee's Equipment in the Streets. Not less than thirty (30) days following the Effective Date, Grantee shall provide Grantor a map showing in reasonable detail the location of Grantee's Equipment in the Streets. Grantee update such equipment location map on or before each January 31 during the term of this Franchise Agreement.

10. Enforcement or Revocation

- 10.1. Notice of Violation.** If Grantor believes that Grantee has not complied with the terms of this Franchise Agreement, Grantor shall notify Grantee in writing of the exact nature of the alleged noncompliance (the “Violation Notice”).
- 10.2. Grantee’s Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the Violation Notice to cure such default. If such default cannot be cured within the thirty (30) day period, Grantee shall initiate reasonable steps within the thirty (30) day period to remedy such default and notify Grantor of the steps being taken and the projected date that they will be completed.
- 10.3. Enforcement.** Subject to Applicable Law, if Grantor determines that Grantee is in default of any provision of the Franchise Agreement, Grantor may:
- A. Seek specific performance of any provision that reasonably lends itself to such remedy.
 - B. Commence an action at law for monetary damages or seek other equitable relief.
 - C. Commence proceedings to terminate this Franchise Agreement and revoke the Franchise in accordance with subsection 10.4 below.
- 10.4. Revocation.** Prior to termination of this Franchise Agreement and revocation of the Franchise, Grantor shall give written notice to Grantee of its intent to terminate and revoke. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantor has not received a satisfactory response from Grantee, it may then seek to terminate this Franchise Agreement and revoke the Franchise at a public hearing. Grantee shall be given at least ten (10) days prior written notice of such public hearing. At the hearing, Grantor shall give Grantee an opportunity to state its position on the matter, after which it shall determine whether or not to terminate this Franchise Agreement and revoke the Franchise. Upon termination of this Franchise Agreement and revocation of the Franchise, Grantee shall remove all of its Equipment from the Street within ninety (90) days.
- 10.5. Minor Violations.** The Parties hereby agree that it is not Grantor’s intention to subject Grantee to forfeitures or revocation of the Franchise Agreement for violations of the Franchise Agreement where the violation was a good faith error that resulted in no adverse impact on Grantor or Subscribers in the Service Area.

11. Miscellaneous Provisions

- 11.1. Force Majeure.** Grantee shall not be in default of this Franchise Agreement where noncompliance was caused by circumstances beyond its reasonable control. This provision shall not apply to any obligation to pay money when due.

11.2. Notices. Unless otherwise provided by Applicable Law, all notices pursuant to this Franchise Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or Channel positions using any reasonable written means.

As set forth above, notice served upon the Grantor shall be delivered or sent to:

City of Hermiston
180 NE 2nd Street
Hermiston, OR 97838

Every notice served upon Grantee shall be delivered or sent by certified mail, return receipt requested to:

Jessica Epley
VP – Regulatory and External Affairs
135 Lake St. S, Ste. 155, Kirkland, WA 98033 (503) 431-0458
legal@ziply.com

11.3. Severability. If any provision of this Franchise Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Franchise Agreement.

11.4. Entire Agreement. This Franchise Agreement, together with Hermiston Municipal Code Chapter 115, sets forth the final agreement between the Parties with respect to the subject matter hereof. This Franchise Agreement supersedes all prior correspondence, representations and agreements between the Parties with regard to the subject matter hereof.

11.5. Compliance with Applicable Law and Reservation of Rights. Grantor and Grantee agree that they are subject to, and will comply with, all Applicable Laws in connection with this Franchise. In entering into this Franchise, neither Grantor's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. Grantor and Grantee expressly reserve any and all arguments it may have at law or equity to the legality or appropriateness of any provision in this Franchise.

Considered and approved this ____ day of _____, 2023.

City of Hermiston, Oregon

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, 2023, subject to Applicable Law.

By: Ziplly Fiber Pacific, LLC

Signature:



Name/Title: Associate General Counsel