

ORDINANCE NO. O2023-011

AN ORDINANCE granting to Ziplly Fiber Pacific, LLC a non-exclusive Master Permit to use the public right of way to provide noncable telecommunications service to the public, subject to certain conditions and duties as further provided.

WHEREAS, Ziplly Fiber Pacific, LLC has requested that the City grant it the right to install, operate, and maintain a noncable telecommunications system within the public ways of the City;

WHEREAS, the City Council has found it desirable for the welfare of the city and its residents that such a non-exclusive Master Permit be granted to the Grantee;

WHEREAS, the City Council has the authority under RCW Chapter 35.99 and RCW 35A.47.040 to grant master permits for the use of its streets and other public properties; and

WHEREAS, on January 16, 2024, City Council held a public hearing to consider Ordinance No. O2023-011, granting a Master Permit for Ziplly Fiber Pacific, LLC, to operate in the City of Tumwater; and

WHEREAS, the City is willing to grant the rights requested subject to terms and conditions as specified herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

- Section 1. Parties, grant.**
- Section 2. Limits on permission.**
- Section 3. Effective date, term.**
- Section 4. Grantee's general promises.**
- Section 5. Plans to be submitted.**
- Section 6. Location or relocation.**
- Section 7. Grantee to restore affected areas.**
- Section 8. Information, good engineering, inspections.**
- Section 9. Limited access, no obstruction, accommodation.**
- Section 10. Undergrounding.**
- Section 11. Facilities for City use.**
- Section 12. Waiver, Indemnity, no estoppel, no duty.**
- Section 13. Insurance.**
- Section 14. Surety, surety fund.**

Section 15. Taxes, fees.

Section 16. Master Permit administration.

Section 17. Acts discretionary, reservation of authority.

Section 18. No transfer, no stock to be issued.

Section 19. Amendment of Master Permit; Renewal.

Section 20. Additional provisions.

Section 1. Parties, grant.

A. This is a Master Permit Agreement (Master Permit), pursuant to Chapter 11.06 TMC, between the City of Tumwater as Grantor, herein “City,” and Ziply Fiber Pacific, LLC, as Grantee, herein “Grantee.”

B. In return for the promises made and subject to the stipulations and conditions stated, the City grants to Grantee nonexclusive general permission to enter, use, and occupy the right of way, as shown on Exhibit “A” attached, to locate facilities to provide telecommunications service to the public in the City of Tumwater. In accepting this Master Permit, Grantee stipulates and agrees to the City’s authority to issue and require the Master Permit and stipulates and agrees to the other terms and conditions hereof.

Section 2. Limits on permission.

A. As used in Section 1, “telecommunications service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. “Telecommunications service” excludes the over-the-air transmission of broadcast television or broadcast radio signals and “cable television service” as defined in 11.02.020 TMC, or other distribution of multichannel video programming, including distribution of multichannel video programming through the Internet. Grantee stipulates that this instrument extends no rights or privileges relative to the use of the right of way or other areas for such excluded purposes or any other purpose beyond the provision of telecommunications service. Should the Transportation and Engineering Director or his/her designee, with the advice of the City Attorney, determine Grantee is using the rights of way to provide cable service or to provide services beyond the scope of permission extended herein to use the public right of way, the City reserves the right to cancel this Master Permit and require Grantee to follow any applicable requirements to obtain a cable master permit or other master permit from the City, and further reserves all other rights and remedies available to the City by law.

B. The permission granted herein does not extend to areas outside those

listed in Section 1. B. or activities outside those stated in Section 2. A., or otherwise to any area outside the authority of the City to extend permission under the Master Permit, such as buildings or private areas not reserved for general utility access. Grantee is solely responsible to make its own arrangements for any access needed to such places. Permission granted is nonexclusive. Grantee stipulates that the City may grant similar permission to others. The City reserves the right itself to engage in Grantee's business at any time, as may permitted by law.

C. The permission granted herein does not extend to municipal buildings or other municipally owned or leased structures or premises held in a proprietary or ownership capacity. For such locations, Grantee must obtain specific written permission from the municipal department controlling such building or other structure or area.

D. This Master Permit is not exclusive. The City expressly reserves the right to grant rights to other entities or persons, as well as the right in its own name as a municipality, to use the rights of way for similar or different purposes allowed Grantee under this Master Permit, by lease, franchise, permit or otherwise.

Section 3. Effective date, term.

A. This Master Permit shall become effective thirty (30) days after passage, approval, and publication as provided by law and expires sixty (60) months subsequent, or, at midnight _____(date), subject to the requirements of Section 3 (B), Section 13 (I) and Section 14 herein. Should the requirements of Section 13(I) not be met prior to _____(date), the effective date of this Master Permit will be delayed accordingly; as will the termination date. This does not affect the City's right to revoke the Master Permit for cause, abandonment, or because of breach of any promise, condition or stipulation stated herein.

B. In order to claim the benefits of this Master Permit and acquire the rights, privileges, and authorities hereby granted, Grantee must, within sixty (60) days of the effective date, file in the office of the City Clerk its written acceptance of said Master Permit. The failure to file such an acceptance shall be deemed a rejection by Grantee and this Master Permit shall be null and void.

Section 4. Grantee's general promises.

As general promises in consideration of the grant of this Master Permit:

A. Grantee promises to remain in good standing a corporation registered to do business in the State of Washington, including a City business registration, and pay all taxes and fees applicable thereto.

B. Grantee further promises to maintain a reliable mailing address, with
Ordinance No. O2023-011 Page 3 of 22

a named responsible person as necessary for consumer contact and a local agent for service of process, toll free public telephone number, fax number, and accessible email address 24 hours a day, seven days a week for customer access. Currently, the pertinent information is:

Responsible official and mailing address:

Ziply Fiber Pacific, LLC
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, Washington 98033

Local agent, address for process:

Corporation Services Company
300 Deschutes Way SW, Suite 208 MC-CSC1
Tumwater, Washington 98501

The voice and fax telephone numbers shall be personally staffed at least during normal business hours, Pacific Time zone. Any changes to this information shall be stated in writing and sent to the City's Transportation and Engineering Director, with copies to the City Clerk, referencing the title of this Master Permit, ordinance number, and this Section 4.B.

C. Grantee promises to provide fair, safe and reliable service to the public at rates which are reasonable in accord with applicable federal and state laws, including, but not limited to, RCW 80.36.170 and RCW 80.36.080. Grantee promises to comply with any other applicable federal and state legal requirements, together with all lawful municipal ordinances, resolutions of the City Council or directives of the Transportation and Engineering Director, provided such requirements are not in conflict with state or federal laws.

D. In addition to its obligations specific to new construction, a right-of-way use permit is required for all maintenance, repair or other work performed in the right-of-way. Grantee stipulates that all construction, operation, maintenance and repair activity in permitted areas is subject to the City's street obstruction or use permit ordinances or other applicable city ordinances or regulations.

E. Grantee promises to coordinate its activities with other utilities and users of permitted areas scrupulously to avoid any unnecessary cutting, damage or disturbance to the public right of way and other permitted areas, and consistent with the requirements of TMC 11.10.290, to conduct its planning, installation, construction and repair operations at all times so to maximize the life and

usefulness of the paving and municipal infrastructure.

F. Grantee promises that its uses of the right of way or other permitted areas, and any rights granted herein, shall at all times be subordinated to and subject to municipal infrastructure needs and uses, the general public travel and access uses and the public convenience, except as may be otherwise required by law.

G. Grantee promises to conduct all operations in or near the right of way and other permitted areas so to minimize or entirely avoid any hazard, danger or inconvenience to municipal infrastructure needs and uses, public travel, and the public convenience.

H. Grantee represents that it is familiar with Chapter 19.122 RCW, Washington State's "Underground Utilities" statute. Grantee certifies it understands local procedures, custom and practice relating to the one-call locator service program, and will see to it that its contractors or others working in the right of way on Grantee's behalf are similarly well informed.

Section 5. Plans to be submitted.

A. Grantee's initial construction and installation plan shall be submitted to the City's Transportation and Engineering Director as requested under such advance notification as the same may reasonably require.

B. Grantee shall submit all new or remodel construction plans and any other information requested by the City relative to such plans to the City's Transportation and Engineering Director for review and approval, with a copy of such plans and information to the City Engineer. Grantee promises that all its installations shall be placed in the standard location for telephone conduit or overhead lines, as determined by local regulation, custom and practice, or as designated by the City's Transportation and Engineering Director or his/her designee.

C. Concurrent with Grantee's acceptance of this Master Permit as provided herein, and annually thereafter, Grantee shall provide the City with as-built drawings showing any new facilities constructed within the rights of way pursuant to this Master Permit. The City may request such as-built drawings more frequently as reasonably needed to perform its duties of management of the affected rights of way, and Grantee agrees to promptly comply with such additional requests.

Section 6. Location or relocation.

A. The City reserves the right to change, regrade, relocate, abandon, or

vacate the right of way, and/or any skywalk or other permitted area, at no expense or liability to the City except as may be required by RCW 35.99.060, and as further provided in TMC 11.10.150. Except as otherwise required by law, Grantee promises to relocate, remove, or reroute its facilities, as ordered by the City's Transportation and Engineering Director, at its sole expense and liability subject to RCW 35.99.060. Grantee promises to protect and hold harmless the City, its officers, agents and employees from any customer or other third party claims for service interruption or other losses in connection with any such change, regrade, relocation, abandonment, or vacation of the right of way or other permitted areas. The parties agree that "relocation" refers to a permanent movement of facilities required of Grantee by the City, and not a temporary or incidental movement of facilities, including, but not limited to a raising of lines to accommodate housemoving and the like, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

B. Where the City determines to abandon or vacate any right of way or other permitted area, it is the Grantee's responsibility to resolve any question of Grantee's continued occupancy or use of such areas directly with the owner of such areas, and the City has no obligation whatsoever with respect thereto.

Section 7. Grantee to restore affected areas.

Subject always to the cost apportionment requirements of Section 6 above, as they may apply:

A. Whenever Grantee damages or disturbs any location in or near the right of way or other permitted area, Grantee agrees promptly to restore such area to its original or better condition at its sole expense and liability, to the satisfaction of the City Engineer and consistent with TMC 11.10.200. Grantee promises likewise to restore and patch all surfaces cut and to repave entirely any such portions of the right of way or other permitted areas as determined by the City Engineer to maintain and preserve the useful life thereof. Grantee promises that any damage or disturbance to facilities, fixtures or equipment of the City or others shall be promptly repaired to standards approved by the City Engineer. For pavement restorations, any resulting patch or restoration shall be thereafter properly maintained in good condition and repair by Grantee until such time as the area is resurfaced or reconstructed.

B. Whenever Grantee damages or disturbs any area in or near the public right of way or permitted areas, or plans to do so, Grantee stipulates the City may:

1. require Grantee to repave the entire lane within any cut or disturbed location, or greater area, to the extent it may be affected by Grantee's activities;

2. require Grantee to common trench with any other underground installation in the right of way, with cost sharing to be negotiated between the parties involved, or in the absence of agreement, as directed by the Transportation and Engineering Director or his/her designee; and/or

C. Should Grantee fail or delay in performing any obligation here or elsewhere stated, or where the Transportation and Engineering Director or his/her designee deems necessary to protect the public right of way or to avoid liability, risk or injury to the public or the City, the Transportation and Engineering Director or his/her designee may proceed to perform such obligation, including any remedial or preventive action deemed necessary, at Grantee's sole expense and liability, except where otherwise required by law, but no action or inaction by the Transportation and Engineering Director or his/her designee shall relieve Grantee of its obligation to indemnify and hold the City harmless as set forth hereafter. Prior to undertaking corrective effort, the Transportation and Engineering Director or his/her designee shall make a reasonable attempt to notify Grantee, except consistent with TMC 11.10.180 no notice is needed if the Transportation and Engineering Director or his/her designee declares an emergency or determines a need for expedient action. This remedy is supplemental and not in the alternative to any other municipal right.

Section 8. Information, good engineering, inspections.

A. Consistent with TMC 11.10.220, Grantee promises to supply and maintain and keep updated, at no cost and available within the State of Washington, any information requested by the Transportation and Engineering Director or his/her designee to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. Said information may include an installation inventory, location of existing facilities, maps, plans, operational data, and as-built drawings of Grantee's installations, in the City of Tumwater or County of Thurston. Said information may be requested either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing, including the City's geographic information system (GIS) data base. Grantee shall keep the Transportation and Engineering Director or his/her designee 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 parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Grantee because of anticipated mandatory disclosure requirements to third persons. Grantee agrees to indemnify and hold harmless the City for any loss or liability for costs or attorney's fees because of nondisclosures requested by Grantee under Washington's open public records law.

City promises to use best efforts to provide reasonable notice and opportunity to Grantee to defend and/or seek a protective order preventing disclosure under the open public records law.

C. Consistent with TMC 11.10.140, Grantee promises all of its property and facilities shall be operated and maintained in good order and condition and in accordance with good engineering practice. In connection with the civil works of Grantee's system, including, trenching, paving, compaction and locations, Grantee promises to comply with the Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, edition currently in use by the City, together with the City's Supplemental Specifications thereto, and all other relevant City ordinances and regulations, all as now or hereafter amended.

D. Grantee promises its system shall comply with the applicable federal, state and local laws, including the National Electric Safety Code, Washington's Safety Standards for Telecommunications, and Washington's Safety Standards for Electrical Workers, where applicable.

E. The City reserves the right to inspect and approve Grantee's installations during construction, repair or installation, and after completion. Where the Transportation and Engineering Director or his/her designee determines Grantee has created a problem within the area of municipal regulatory authority and requiring a municipal response and remedial action, an order may be issued with a compliance schedule. All reasonable costs of municipal inspections and enforcement, including staff time, are to be paid by Grantee.

Section 9. Limited access, no obstruction, accommodation.

A. The City reserves the right to limit or exclude Grantee's access to a specific route, or to any public right of way as shown on Exhibit "A", attached, when, in the judgment of the Transportation and Engineering Director or his/her designee, there is inadequate space, a pavement cutting moratorium (subject to the requirements of applicable law) unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reasonable cause determined by the Transportation and Engineering Director or his/her designee, provided, it shall do so consistent with state and federal law.

B. Grantee will not obstruct, hinder, damage, or otherwise interfere with municipal infrastructure uses of the right of way or other permitted areas. Except where otherwise authorized in writing, Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from above-ground City water facilities; PROVIDED, that for development in new areas, the City, together with Grantee and other utility purveyors or authorized users of the right of way, will develop and follow the City Engineer's determination for guidelines and procedures for determining specific utility

locations, subject additionally to this Master Permit.

C. In addition, subject however to RCW Ch. 35.99, the Transportation and Engineering Director or his/her designee may determine with respect to uses permitted under this Master Permit, in the exercise of reasonable discretion, when and where reasonable accommodation shall be made by Grantee to the City for public needs or, where requested, other third party needs, how such accommodation should be made, and a reasonable apportionment of any expenses of the same, PROVIDED, that this Master Permit creates no third party beneficial interest in any other entity, or any enforceable contractual right to require the City to order such accommodation. Notwithstanding the foregoing, it remains the responsibility of the Grantee to anticipate and avoid conflicts with other right of way occupants or users, other utilities, grantees, or permittees. The City assumes no responsibility for such conflicts.

D. In administering this provision, the City understands that private property may not be taken or damaged without just compensation as required by Article I, Section 16 of the Washington State Constitution with respect to any specific loss or damage occasioned to Grantee's lawfully permitted facilities and equipment to be located in the public right of way. Grantee likewise understands that it does not hold any leasehold or ownership interest in the public right of way and occupies it at the sufferance of the City, subject to the primary purposes and principles as outlined in Chapter 11.10 TMC.

Section 10. Undergrounding.

A. The purpose of this section is to recognize and preserve the City's control over uses of the public right of way, consistent with the municipal policy favoring undergrounding of overhead lines for aesthetic reasons.

B. The City finds that overhead lines and aboveground wire facilities and installations in the right of way and other permitted areas adversely impact upon the public use and enjoyment of such areas. Consistent with TMC 11.10.050, as a condition of Grantee's new installation or major maintenance or restoration construction activities of overhead facilities under this Master Permit, Grantee agrees to coordinate its underground installation and planning activities with the City's underground plan and policies; provided, in no event shall any third party beneficiary rights be implied or created.

C. Nothing in this section shall be permitted to conflict with RCW 35.99.060, and the provisions of this section shall be applied in conformity thereto.

Section 11. Facilities for City use.

Consistent with RCW 35.99.070 and TMC 11.10.060 and .070, at such time when Grantee is constructing, relocating, or placing ducts or conduits in public rights of way, the Transportation and Engineering Director or his/her designee may require Grantee to provide the City with additional duct or conduit, or conduit and related structures necessary to access the conduit at mutually convenient locations. In such event, the parties further agree that the City's access points to City fiber in Grantee's system shall be at least sufficient to permit reasonable municipal access for municipal needs, provided that:

A. The City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of Grantee. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of Grantee. Grantee shall state both contract rates in the contract. The Transportation and Engineering Director or his/her designee shall inform the Grantee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.

B. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the Grantee.

C. The City shall require that any other entity that is granted permission to use additional duct or conduit and related access structures, obtains written approval from Grantee prior to attaching to or otherwise using a facility or structure in the right of way that is owned by Grantee.

D. Grantee shall notify the City Engineer at least 14 days prior to opening a trench at any location to allow the City to exercise its options as provided herein.

Section 12. Waiver, indemnity, no estoppel, no duty.

The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the Grantee, its agents, servants, officers, or employees in performing under this Master Permit are the

proximate cause. The Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Grantee's exercise of the rights granted herein, or by virtue of the City's permitting the Grantee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Grantee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Master Permit, or pursuant to any other permit or approval issued in connection with this Master Permit. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the Grantee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this authorization, Master Permit, or lease.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under 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 Master Permit.

Notwithstanding any other provisions of this Section, the Grantee assumes the risk of damage to its facilities located in the City's rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. The Grantee releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of the Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the rights-of-way, easements, or property subject to this authorization, Master Permit, or lease, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors. The Grantee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Grantee's Facilities as the result of any interruption of service due to damage or destruction of the user's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

Section 13. Insurance.

A. Insurance Term

The Grantee shall procure and maintain for the duration of the Agreement and as long as Grantee has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way.

B. No Limitation

The Grantee's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Grantee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed

operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion 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 this Master Permit using ISO endorsement CG 20 12 05 09 if the agreement is considered a master permit, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Master Permit covering losses caused by pollution conditions that arise from the operations of the Grantee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Grantee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Grantee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance

The Grantee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

4. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any

combination thereof that achieves the overall required limits.

5. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$5,000,000.00.

E. Other Insurance Provisions

1. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

2. Verification of Coverage. The Grantee shall furnish the City with original certificates and a copy of the amendatory endorsements annually, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Master Permit. Upon request by the City, the Grantee shall furnish certified copies of all required insurance policies, including endorsements, required in this Master Permit and evidence of all subcontractors' coverage.

3. Notice of Cancellation. Grantee shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

4. Failure to Maintain Insurance. Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of Master Permit, upon which the City may, after giving five business days' notice to the Grantee to correct the breach, terminate the Master Permit or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

5. City Full Availability of Grantee Limits. If the Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this Master Permit or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

6. Grantee – Self-Insurance. If the Grantee is self-insured or becomes self-insured during the term of the Master Permit, Grantee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Grantee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Grantee or its parent company is responsible for all payments within the self-insured retention;

and (iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Master Permit.

7. Subcontractors. The Grantee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Grantee-provided insurance as set forth herein, except the Grantee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Grantee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

The requirements of this Section must be met prior to the effective date of this Master Permit.

Section 14. Surety, surety fund.

A. The grant of this Master Permit by the City to Grantee is conditioned upon Grantee's presentment of a performance and construction bond, irrevocable letter of credit or deposit of monies representing the full amount of the work to be performed under this Master Permit, in order to ensure its performance hereunder. Said bond, or letter of credit, must meet with approval of the City Attorney. Said bond or letter of credit shall be required to remain in full force and effect until twelve (12) months following the term of this Master Permit.

B. Consistent with TMC 11.10.270, the rights granted under this Master Permit are further conditioned upon Grantee's establishing a permanent security fund with the City by depositing \$20,000.00 with the City, in cash, or by presentment of an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the Grantee so long as any of Grantee's facilities are located within the City's right of way or upon City property. Interest derived from a cash deposit shall accrue to the benefit of the Grantee. The City will comply with the requirements of TMC 11.10.270 for the use of these funds.

Section 15. Taxes, fees.

A. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for telephone business purposes, as that activity is legally defined in that context. Grantee agrees if this prohibition is removed, that the City may assess a reasonable franchise fee, consistent with any applicable requirements of the 1996 Federal Telecommunications Act. In addition, Grantee acknowledges and accepts the authority of the City to impose certain fees pursuant to RCW 35.21.860. Fees that may be imposed on Grantee by the City include, but are not limited to, those set

forth in TMC 11.06.160, and 11.06.170. Any such fees imposed after the effective date of this Master Permit will be due and payable upon demand by the City.

B. The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activity to six percent (6%) of gross receipts, unless a higher rate is approved by vote of the people. The parties agree however that nothing in this Master Permit shall limit the City's power of taxation, as may now or hereafter exist. Grantee stipulates that all of its business activities now or hereafter conducted in the City of Tumwater are taxable activities subject to the six percent (6%) rate to be included in gross receipts received, as imposed under the City's telephone business tax, adopted in Chapter 3.28 TMC. This provision does not limit the City's power to amend Chapter 3.28 TMC as may be permitted by law.

C. Consistent with Chapter 5.10 TMC, Grantee shall make all required payments in the form, intervals and manner requested by the City Finance Director, and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, the Finance Director may require Grantee to furnish a verified statement of compliance with Grantee's obligations or in response to any questions. Said certificate may be required from an independent, certified public accountant, at Grantee's expense. All audits will take place on Grantee's premises or offices furnished by Grantee, which shall be a location in the City of Tumwater. Grantee agrees, upon request of the City Finance Director, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Finance Director on the same day as filed, postage prepaid, affecting any of Grantee's facilities or business operations in the State of Washington.

Section 16. Master Permit administration.

A. General administration of this Master Permit for the City is through the Administrative Services Department. All questions of application, interpretation, conflict or ambiguity arising out of or in connection with this Master Permit are determined by the TRANSPORTATION AND ENGINEERING DIRECTOR or his/her designee, in consultation with the City Attorney and City Engineer, except as otherwise specifically stated.

B. The Transportation and Engineering Director or his/her designee may interpret provisions, resolve conflicts and develop procedures needed to implement and enforce the Master Permit provisions. Considering Sections 1, 2, 4, 17, and the other portions of this Master Permit and Chapter 11.10 TMC, the Transportation and Engineering Director or his/her designee may grant exceptions or impose additional requirements relating to the public interest in particular circumstances in the exercise of reasonable discretion, but the same shall not be a defense to any

Master Permit obligation unless set forth in writing by the Transportation and Engineering Director or his/her designee. Exceptions are revocable. The Transportation and Engineering Director or his/her designee may cause to be issued inspection or compliance orders with or without notice, together with a compliance schedule as deemed necessary. For the performance of all Master Permit obligations, Grantee understands that time is of the essence.

C. Should Grantee wish to challenge any obligation or requirement arising under this Master Permit, Grantee must submit its complete file, with verification, showing the basis of Grantee's position. The Transportation and Engineering Director or his/her designee may also request any additional information deemed necessary. Within twenty (20) days after receiving Grantee's submittal and any requested information, the Transportation and Engineering Director or his/her designee shall issue a decision, and in the case of any challenged cost, a finding determining the true and allowed amount of said cost. The Transportation and Engineering Director or his/her designee may set off any allowed cost against any other cost owing the City, whether under this Master Permit or otherwise arising between Grantee and the City.

D. Grantee may appeal any decision of the Transportation and Engineering Director or his/her designee to the City Hearing Examiner, c/o City Clerk, by filing a written notice of appeal within ten (10) days of the date of issuance by the Transportation and Engineering Director or his/her designee, with copies also sent to the City Attorney. The notice must include a copy of the decision and record submitted to the Transportation and Engineering Director or his/her designee by Grantee. The Hearing Examiner procedure is governed by Chapter 2.58 TMC, as written or hereafter amended. Further appeals will be available according to TMC 2.58.150 et. seq. as written or hereafter amended.

Section 17. Acts discretionary, reservation of authority.

A. All City acts undertaken pursuant to this Master Permit shall be deemed discretionary, guided by considerations of the public health, safety, esthetics and convenience, sections 1, 2, 4, and other provisions of this Master Permit and Chapters 11.06 and 11.10 TMC. Grantee agrees that the City reserves all municipal powers now or hereafter granted by law, including without limitation the power to tax and license, regulate activities (except those under exclusive WUTC or FCC authority or as otherwise preempted) and land use, protect the public health and safety, and regulate and control the use of public right of way.

B. Should Grantee have any question as to a conflict or ambiguity with respect to its rights under this Master Permit or applicable federal or state law, it agrees to first submit the same to the Transportation and Engineering Director, with any supporting materials or authorities. The Transportation and Engineering

Director will proceed under Section 16 herein. The intent of this provision is to provide a quick and efficient means of understanding and resolving problems arising under this instrument, consistent with the objectives of any general municipal regulatory program, as now or hereafter arising and other applicable laws.

Section 18. No transfer, no stock to be issued.

A. This Master Permit shall not be sold, leased, assigned, or otherwise alienated without the express consent of the City, expressed by ordinance of the City Council passed for that purpose, and no rule of estoppel shall be invoked against the City in case the City shall assert the invalidity of any attempted transfer in violation of this section. The City agrees not to withhold consent where Grantee demonstrates that the requested assignment is in the nature of a change of name or a change in the nature of a reorganization or merger of or with any entity controlled by, controlling, or under the common control of the Grantee, there being no other change in the resulting entity's ability to meet its financial obligations. In the event a transfer, assignment, or disposal of franchisee's ownership is approved by the Washington Utilities and Transportation Commission, the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

B. The City reserves the right to invoke any or all provisions of this Master Permit upon the Grantee's successors or assigns, judgment creditors, or distributees of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new master permit.

C. Grantee will not permit installations by others in areas authorized under this Master Permit, without written approval from the Transportation and Engineering Director or his/her designee and subject to any requirements of law, ordinance or regulation. Such approval shall not be in lieu of a master permit or other requirements of the City. Whether or not permitted, Grantee remains responsible for all third party users permitted or allowed by Grantee for compliance with this Master Permit. The intent of this provision is so third parties who might otherwise desire to use Grantee's facilities are also required to comply with City requirements regarding master permits, leases, or other uses of City right of way, as may apply.

D. Grantee agrees that, upon a condemnation proceeding or other negotiation by the City to acquire the properties of the Grantee, it will not have any right to receive payment or award on account of this Master Permit or permissions granted hereunder. Grantee waives all such claims against the City. The City shall

have no obligation to make any payment to Grantee or award in condemnation for any other asset or interest of Grantee, except as required under the State of Washington and United States Constitutions or as state or federal laws may preemptively require.

Section 19. Amendment of Master Permit; Renewal.

Consistent with TMC 11.06.110, a new Master Permit application shall be required if Grantee desires to extend its Master Permit territory or to locate its Facilities in City rights of way which are not included in this Master Permit.

Consistent with TMC 11.06.120, if Grantee desires to renew its Master Permit for an additional term, it must, not more than 180 days nor less than 120 days before expiration of this Master Permit, file an application with the City for renewal of its Master Permit, to include the requirements of TMC 11.06.120.

Section 20. Additional provisions.

A. In the event of significant change in law regulating Grantee's activities under this Master Permit or change in municipal authority to act under the terms of the Master Permit, or significant change or advancement in technology governing Grantee's functions, the parties, upon mutual agreement, may renegotiate any or all provisions of this Master Permit, but no obligation to do so is created by this section.

B. This Master Permit may be revoked by the City Council by resolution in the event the Grantee or any of Grantee's lessees or other users shall fail, after notice or demand, to comply with any of the terms, conditions, or obligations imposed upon the Grantee hereunder, but the City shall have no obligation to do so. No forbearance by the City of any term or condition of this Master Permit in any instance or at any time shall ever comprise a waiver or estoppel of the City's right to enforce said term or condition.

C. Grantee may abandon and surrender its facilities to the City upon six (6) months written notice to the Transportation and Engineering Director, with copies thereof served upon the City Administrator and City Attorney. Abandonment shall be subject to acceptance by the City, by a resolution of acceptance adopted by the City Council.

D. Upon abandonment, non renewal, revocation, or expiration of this Master Permit and if no extension is granted, Grantee may, at the discretion of the Transportation and Engineering Director, be required in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Master Permit. Alternatively, the Transportation and

Engineering Director may direct, limit or condition Grantee's removal, sale or continued use or abandonment of Grantee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. The City may continue to invoke any provision of this Master Permit against Grantee or any successor entity enjoying de facto master permit privileges after revocation or expiration. The City may take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interests of the City and its residents.

An abandonment shall occur if the Grantee ceases providing service for a period of six (6) months or longer or the Grantee expresses in some other manner an intent to abandon.

E. This Master Permit is governed by the laws of the State of Washington, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Thurston County Superior Court.

Signatures on Following Page

F. If any paragraph, provision or clause of this Master Permit is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of the permit shall not be affected.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective date:_____

Acceptance of City Master Permit

Ordinance No. O2023-011, effective _____, 2023.

I, _____(name printed), am the _____(title)
of _____(company), and am an authorized
representative to accept the above referenced City Master Permit Ordinance on
behalf of Ziplly Fiber Pacific, LLC.

I certify that this Master Permit and all terms and conditions thereof are accepted
without qualification or reservation.

Dated this _____ day of _____, 2023.

Signature

Address: _____

State of Washington)
) ss
County of _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that (he/she)
signed this instrument, on oath stated that (he/she) was authorized to execute the
instrument and acknowledged it as the _____ of _____
_____ to be the free and voluntary act of such party for the uses and
purposes mentioned in the instrument.

Dated: _____

(Signature)
Notary Public in and for the State of
Washington
My appointment expires _____

Ziply Fiber Pacific Installation Locations

