

RESOLUTION NO. 2572

A RESOLUTION GRANTING A NON-EXCLUSIVE FRANCHISE TO ZIPLY FIBER NORTHWEST, LLC.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. That the City has jurisdiction and exercises regulatory management authority over all City public rights of way pursuant to its Charter and the Oregon Constitution and statutes to manage its rights of way and to receive compensation for use of the rights of way consistent with applicable state and federal law.
2. That the City's purpose for exerting its management authority over the public right of way is to protect and efficiently manage the public's resources, to ensure fair and nondiscriminatory access to the public right of way, and to protect the public health, safety and welfare.
3. That Ziplly Fiber Northwest, LLC a Washington corporation, which owns, maintains, and operates, in accordance with regulations promulgated by the Federal Communications Commission, Public Utility Commission, or other appropriate agency, an electric light and power system and desires to utilize equipment in a public right of way in the City as part of the support for their technology network infrastructure.
4. That the City desires to support the ready availability of communications services for all its residential and commercial citizens by providing infrastructure and amenities that make Troutdale a better place to live and do business.
5. That the City desires to foster the City's desired technological and business growth, but also to ensure that all similarly situated communications services providers are treated similarly and fairly to foster technological growth and innovation.
6. That the City is authorized to grant non-exclusive franchises to companies desiring to occupy a public right of way within the City boundaries, and that no entity may occupy or encroach on a public right of way without the permission of the City.
7. That Chapter 12.12.120 of the Troutdale Municipal Code requires any user desiring to install equipment within a City right of way for commercial service purposes to enter into a franchise agreement and construction permits with the City authorizing use of the right of way.

8. That the City is committed to authorizing the private access and use of the public right of ways for such services so long as such use is consistent with and does not unduly burden or interfere with the principal purpose of the public ways, which is to facilitate the free transit of persons and goods in commerce for the public's health, safety and welfare.

9. That the City has generally granted individually negotiated franchises to each utility using the City's rights of way to provide utility service, which franchise generally set forth the terms of use of the rights of way and the compensation to be paid to the City for this use.

10. That the City holds the health, safety, welfare, quality of life and opportunities to prosper, as well as such physical assets such as the public right of way, in trust for all of its citizens and has a fiduciary responsibility to assure that any use of City resources, especially its public right of ways, benefits all of the citizens and, where it is deemed appropriate, allows for the recovery of a fair and reasonable compensation from private entities using public resources, which is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The City of Troutdale agrees to grant a non-exclusive franchise to occupy a public right of way within the City boundaries, to Zply Fiber Northwest, LLC. and hereby approves the non-exclusive Franchise Agreement ("Agreement") on terms and conditions substantially consistent in the form of Exhibit A of the Staff Report, with any such changes as may be approved by the Authorized Officer.

Section 2. That the City Council authorizes and directs the City Manager, Ray Young, and Finance Director, Erich Mueller (each an "Authorized Officer") and their designee or successor, to execute on behalf of the City of Troutdale the Agreement, and without further action by the City Council each Authorized Officer is hereby authorized, empowered and directed to execute any ancillary agreements, amendments, permits, or other instruments, and any and all other required and necessary documents to implement the intent of the Agreement and this Resolution.

Section 3. That further, consistent with intent of the Agreement, and in the best interest of the City, the Authorized Officer is authorized to determine, execute, acknowledge and deliver any subsequent changes, addendums, extensions, revisions, modification, or successor documents of the Agreement, and without further action by the City Council, and the execution thereof by any such Authorized Officer shall be conclusive as to such determination.

Section 4. That the Finance Director is authorized and directed to disburse funds, subject to annual appropriations, as necessary to fulfill the intent of this Resolution and the Agreement and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 5. All franchise grant ordinances and agreements of previous date granted to predecessor companies which insofar as the same are in conflict herewith, are hereby sunsetted and superseded.

Section 6. This Resolution shall take effect immediately upon adoption.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Randy Lauer, Mayor
Date: August 25, 2022



Sarah Skroch, City Recorder
Adopted: August 23, 2022