

A BILL FOR AN ORDINANCE GRANTING A)	ORDINANCE BILL NO. 2023-15
NON-EXCLUSIVE TELECOMMUNICATIONS)	
FRANCHISE TO ZIPLY FIBER, LLC)	ORDINANCE NO. 3010
COMPANY AND FIXING TERMS,)	
CONDITIONS, AND COMPENSATION OF)	
SUCH FRANCHISE)	

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

WHEREAS, providing telecommunication systems requires the installation, operation and maintenance of telephone poles and other related facilities to be located within the public ways of the City; and

WHEREAS, the City desires to set forth the terms and conditions by which Grantee shall use the public ways of the City.

NOW, THEREFORE, The City of Lebanon ordains as follows:

The City hereby ordains that it is in the public interest to grant Ziplly Fiber Pacific, LLC a Franchise to operate a telecommunication system pursuant to the terms and conditions contained herein.

Section 1. The City intends, by the adoption of this franchise, to encourage the continued development and operation of telecommunications facilities within the city of **Lebanon**. This Ordinance will be known as the Ziplly Fiber Pacific and its affiliates Telecommunications Franchise Ordinance. Within this document, it will also be referred to as "this Franchise" or "the Franchise".

Section 2. Grant of Franchise. The City hereby grants to Grantee the right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other public ways in the City ("Public Ways," or in the singular "Public Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of Grantee located within the City's corporate limits.

Section 3. Term. The term of this Franchise will be for ten (10) years, commencing with the effective date of this Ordinance.

Section 4. Inspection, Audit and Quality Control. The City shall have the right to inspect at all reasonable times and with sufficient notice to Grantee, any portion of Grantee's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Grantee's records relevant to compliance with any terms of this Franchise at all reasonable times, but no more than once every three years. Grantee agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. The cost of such audit shall be paid by the City unless there is a discrepancy of at least 5% between the fees paid to the City and the fees that Grantee should have paid to the City, in which case the cost of the audit shall be paid by Grantee. Subject to applicable laws, any

information that Grantee provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to Grantee following review, without duplication, unless Grantee grants the City written permission to duplicate the information.

Section 5. City Regulatory Authority. The City reserves the right to adopt, and Grantee shall comply with, such additional ordinances and regulations as the City may deem necessary to adopt in the exercise of its police power for the protection of the health, safety and welfare of its citizens consistent with applicable federal and state law. The City agrees to promptly notify Grantee of any such changes potentially applicable to this Franchise.

Section 6. Franchise Fee. As consideration for the use of the City's rights of way, Grantee will remit to the City a franchise fee of seven percent (7%) of gross revenues from the delivery of services taxable under ORS 221.515 within the corporate limits of the City. Grantee's franchise fee payments to the City will be due quarterly within (30) days following the end of each quarter, defined as the last day of March, June, September and December. Each payment will be accompanied by a statement as to the manner in which the franchise fee is calculated. The Grantee will provide, and at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to verify the accuracy of the calculation of the franchise fee by the Grantee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculations, details on number customer within the City limits, or any other information needed for the City to easily verify compliance.

Within thirty (30) days after the termination of this Franchise, compensation will be paid for the period elapsing since the end of the last quarter for which compensation has been paid. In the event any payment due quarterly is not received within thirty (30) days from the end of the preceding quarter, or is underpaid, Grantee will pay in addition to the payment, or sum due, interest at a rate no higher than the current legal interest rate on judgments in the State, calculated from the date the payment was originally due until the date the City receives the payment. Additionally, if any payment becomes ninety (90) days in arrears, a ten (10) percent penalty will be applied. In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee will pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the rights of way for Grantee's use of the rights of way, provided that in no event will such payments be less than \$525.00 (subject to the other provisions contained in this Franchise).

This section may be reopened no sooner than January 1, 2027 and every third year thereafter. Grantee must be notified, in writing, at least sixty (60) days prior to the reopener date herein.

Section 7. Insurance.

- A. Grantee will maintain in full force and effect the following liability insurance policies that protect the Utility Operator and the City, as well as the City's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:

- i. Five million dollars (\$5,000,000.) for bodily injury or death to each person;
 - ii. Five million dollars (\$5,000,000) aggregate including collapse, explosions, underground hazards and products completed operations.
 - b. Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of three million dollars (\$3,000,000) combined single limit.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).
 - d. Liability insurance will name as additional insured the City and its officers, agents, and employees. Additional insured coverage will be for both on-going operations and products and completed operations, on forms acceptable to the City. Coverage will be Primary and Non-Contributory. Waiver of Subrogation endorsement, in a form acceptable to the City, will be provided for general liability and worker's compensation. Grantee shall furnish acceptable insurance certificates to City with original endorsements for each insurance policy signed by a person authorized by that insurer to bind coverage on its behalf.
- B. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance will be without prejudice to coverage otherwise existing. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) Days prior written notice first being given to the City. If the insurance is canceled or materially altered, the Utility Operator will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The Utility Operator will maintain continuous uninterrupted coverage, in the terms and amounts required.
- C. The Grantee will maintain on file with the City a certificate of insurance certifying the coverage required above.

Section 8. Performance Surety. Upon the effective date of this Agreement, the Licensee will furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the sum of Thirty Thousand Dollars (\$30,000), conditioned that the Licensee will well and truly observe, fulfill, and being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Grantee, their representative or contractor. Licensee will pay all premiums charged for the bond, and will keep the bond in full force and effect at all times throughout the term of the Agreement, including, if necessary, the time required for removal of all of Licensee's Facilities installed in the Public Rights of Way. The Bond may be released on the 5 year anniversary of this agreement at the sole discretion of the City, provided the Grantee has demonstrated the ability to comply with utility construction requirements. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty days prior written notice first being given to the City. The bond will be reviewed and approved as to form by the City Attorney.

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

Section 9. Relocation of facilities. If at any time the City requests Grantee to relocate any distribution line service connection, or other facility installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, or water mains, such relocation shall be made by Grantee at its expense. City will give Grantee sufficient time, no less than ninety (90) days' notice of such project that may require Grantee to relocate. Following relocation, all property shall be restored to substantially its former condition by Grantee at its expense.

Grantee shall also, at the request of any person holding a lawful permit issued by the City and/or in support of a Non-Essential Project by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any Grantee property, provided that the cost of such action is borne by the person requesting it and Grantee is given reasonable advance written notice and sufficient time to take the appropriate action. In such situation, Grantee may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than ninety (90) days for a temporary relocation, and no fewer than one hundred twenty (120) days for a permanent relocation.

Section 10. Sale of subscriber lists prohibited. Except as otherwise expressly permitted by law, the Grantee will not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Grantee's services.

Section 11. Revocation or Termination. The City may, upon sixty (60) days' prior written notice, terminate or revoke the franchise granted pursuant to this Ordinance for any of the following reasons ("Default"):

- a. Violation of any of the material provisions of this Franchise;
- b. Misrepresentation in the Franchise application or a rights of way construction application;
- c. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;
- d. Failure to pay taxes, compensation, fees or costs due to the City after final determination by the City of the taxes, compensation, fees or costs;
- e. Failure to restore the ROW as required by this Ordinance or other applicable State and local laws, ordinances, rules and regulations;
- f. Failure to comply with technical, safety and engineering standards related to Work in the ROW; or

- g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by State or federal law for the placement, maintenance or operation of the Utility Facilities.

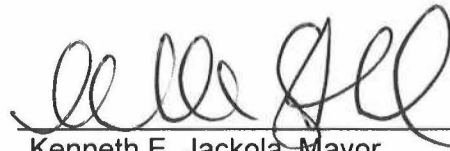
If, within the sixty-day notice period, Grantee cures the Default or commences to cure a Default that cannot reasonably be cured within sixty days of the notice, the notice of Default shall be deemed withdrawn and the Franchise shall not terminate.

Section 12. Franchise Acceptance. Within thirty (30) days of the passage of this Ordinance by City Council, Grantee will file with the City certificates of insurance and an unconditional written statement accepting the terms and conditions of this Franchise grant. Failure to fulfill this requirement will nullify and void this Ordinance, and any and all rights of Grantee to own or operate a telecommunications facility within the Franchise Area under this Ordinance will be of no force or effect.

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

Passed by the Lebanon City Council by a vote of 6 for and 0 against and approved by the Mayor this 9th day of August, 2023.

CITY OF LEBANON, OREGON



Kenneth E. Jackola, Mayor
Michelle Steinhebel, Council President



Attested:



Julie Fisher, City Recorder