

ORDINANCE M - _____

AN ORDINANCE relating to management of the public rights-of-way, granting to Ziply Fiber Pacific LLC and its affiliates (hereinafter referred to as the “Franchisee”), a Delaware Limited Liability Company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across public rights-of-way of the City of Vancouver, Washington (hereinafter referred to as the “City”), prescribing certain rights, duties, terms and conditions with respect to such franchise; and setting an effective date and conditions.

WHEREAS, Franchisee is a telecommunications company that provides voice and data services to its customers; and

WHEREAS, Franchisee has requested that the City grant it the right to install, operate, and maintain a telecommunications system within the Public Ways of the City; and

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

WHEREAS, pursuant to RCW 35.22.280 and chapter 35.99 RCW, the City Council has the authority to grant franchises for the use of its Public Ways; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions authorized by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF VANCOUVER:

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Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

"Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

"City" means the City of Vancouver, Washington, and either or both, as applicable, the person designated by the City.

"Communication System" or "Facilities" shall mean the Franchisee's system of cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or facilities within the City owned and operated by Franchisee to provide Telecommunications Service, including without limitation those Facilities that are existing or currently planned by Franchisee.

"FCC" means the Federal Communications Commission or any successor governmental entity.

"Franchise" shall mean initial authorization or renewal issued by the City, which authorizes construction and operation of the Franchisee's Communication System.

"Franchisee" means Ziply Fiber Pacific LLC and its affiliates, a limited liability company licensed to do business in Washington, or its lawful successor, transferee, or assignee.

"Indefeasible Right of User Interest" or "IRU" means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the

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telecommunications system, but not the right to control, maintain, construct, or revise the telecommunications system.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

"Public Way" shall mean the surface of, and any space on, above or below, any street, public right-of-way or utility easement for which the City now or hereafter holds any interest and which, consistent with the purpose for which it was acquired or dedicated, may be used for the installation or maintenance of the Communication System. Public Way shall not mean utility easements dedicated for a specific utility system or systems and not specifically identifying telecommunications as a permitted use within the easement.

"Service Area" means the present municipal boundaries of the City and shall include any additions by annexation or other legal means.

"Subscriber" or "Customer" means a Person who lawfully receives Telecommunication Services from the Communications System with the Franchisee's express permission.

"Telecommunications Service" shall mean any "telecommunications service" as defined by RCW 35.99.010(7), excluding "cable television service" as defined by RWC 35.99.010(1) and further excluding "personal wireless services" as defined by RCW 35.99.010(4), provided by the Franchisee over its Communication System, either directly or as a carrier for its subsidiaries, Affiliates, or customers.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions herein, a

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nonexclusive Franchise within the Service Area which authorizes the Franchisee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Public Ways, now in existence and as may be created or established during the term of this Franchise, any Facilities necessary for the maintenance and operation of a Communication System. This authority is a limited authorization to occupy and use the Public Ways of the City for the purpose of providing telecommunications services.

Section 3. Grant Limited to Occupation and Service. Nothing contained herein shall be construed to grant or convey to the Franchisee or warrant any right, title, or interest in the Public Ways.

Section 4. Term of Franchise. The first term of this Franchise shall be for an initial period of 10 years from the date of acceptance, unless sooner terminated. This Franchise may be renewed for an additional five-year term pursuant to the following process: If the Franchisee desires to renew, the Franchisee shall notify the City not later than 180 days prior to the expiration of this Franchise of its desire to renew and its desire, if any, to renegotiate any of the terms of this Franchise. The City shall respond to the request for the renewal not later than 120 days prior to the expiration date, and may request renegotiation of any term, or the addition or deletion of any term at that time. If the Franchisee does not request renewal, this Franchise shall be deemed terminated. If the Franchisee requests renewal, and either party requests renegotiation, this Franchise shall not renew unless and until the City and Franchisee reach agreement and said agreement is approved by ordinance of the City Council. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated.

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Section 5. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said Public Ways of the City. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain all authority to make all necessary reasonable changes, relocations, repairs, maintenance, establishment, improvement, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, and in compliance with Section 8, below.

Section 6. Relocation of Communications System. The Franchisee agrees to relocate its Facilities as provided by the Vancouver Municipal Code as it currently exists (VMC 11.50.120) or may hereinafter be amended or replaced, except as may be required by chapter 35.99 RCW. Upon the request of the City, in order to facilitate the design and construction of City projects, the Franchisee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and expose portions of its communication Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee provides as-built plans and maps of its Facilities that are reasonably determined by the City to be adequate for purposes of this paragraph. The decision to require the relocation of Facilities in order to accommodate the City's projects shall be made by the City upon review of the location and construction of the Franchisee's Facilities.

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If the City or a contractor for the City is delayed at any time in the progress of the work by an act or neglect of the Franchisee or those acting for or on behalf of Franchisee, then Franchisee shall indemnify, defend and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys' fees to the extent arising out of or in connection with such delays, except for delays and damages caused by the City or a third party not under Franchisee's control. This provision may not be waived by the parties except in writing.

Section 7. Undergrounding of Facilities. In any area of the City in which there are no aerial facilities other than antennas or other equipment required to remain above ground in order to be functional, or in any Public Ways in which all telephone, electric power wires and cables have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other Facilities thereon, unless required to do so by the City, but shall lay such wires, cables or other Facilities underground in the manner required by the City.

Whenever the City or other governmental entity requires or initiates undergrounding of aerial utilities in any area of the City, the Franchisee shall underground its Facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground Facilities shall be approved by the City. The Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are shared fairly and proportionately by all the utilities

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involved in the underground project. The costs of the undergrounding of Facilities shall be as provided in RCW 35.99.060 as existing or hereinafter amended.

Section 8. Work Within Public Ways. The Franchisee agrees to undertake all work related to the installation, construction, or maintenance of its Facilities within the Public Ways in compliance with state and local law as now existing or hereinafter enacted. The laws include, without limitation:

Chapter 11.50 VMC Utilities in the Right-of-Way

Chapter 11.60 VMC Street Use Permits

Chapter 11.80 VMC Street and Development Standards

Chapter 11.90 VMC Construction in the Right-of-Way

RCW 58.09.130 Monuments Disturbed by Construction Activities

Section 9. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any Public Way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a Construction Permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and

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shall apply for all required permits not later than the second succeeding day during which the City's Public Works Department Offices are open for business.

The City retains the right and privilege to cut or move any Facilities located within the Public Ways of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 10. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and Public Ways. Such action may include compliance within a time prescribed by the City.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the costs thereof.

Section 11. The Franchisee's Maps and Records. Upon acceptance and thereafter as construction is completed, the Franchisee shall provide the City with accurate copies of all as-built

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plans and maps in a form and content prescribed by the City, as well as surveys of monuments of record pursuant to RCW 58.09.130. These plans, maps, and monument surveys shall be provided at no cost to the City.

The Franchisee shall supply and maintain updated, at no cost and at a location within the State, any information reasonably requested by the City to coordinate municipal functions with the Franchisee's activities and fulfill any municipal obligations under state law. Said information may include any installation inventory, location of existing or planned facilities, maps, plans, operational data, and as-built drawings of Franchisee's installations in the City. Said information may be requested either in hard copy and/or electronic format compatible with the City's database system, as now or hereafter existing. Franchisee shall keep the City reasonably informed of its long-range plans for coordination with the City's long-range plans.

PUBLIC RECORD ACT: Any public record relating in any way to this Franchise may be subject to inspection and copying pursuant to Washington's Public Record Act, chapter 42.56 RCW. The City will provide Franchisee with a copy of a public record request that seeks to inspect or copy a "writing" as defined in RCW 42.56.010 relating to this Franchise prior to allowing any inspection and/or copying of the documentation/information. Additionally, City will request production of any responsive records Franchisee may have in its possession. City will inform Franchisee of the records it plans to disclose to the requestor. If Franchisee disagrees with City's determination of disclosure/nondisclosure and timely notifies City of the same, City agrees to withhold release of the requested records in dispute for a reasonable amount of time (approximately 10 days) to allow Franchisee an opportunity to seek judicial protection pursuant to

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RCW 42.56.540 as adopted or amended. If Franchisee seeks judicial protection, Franchisee will be solely responsible for its related attorney fees and costs. City shall not be liable for any loss or damage resulting from a release of records so long as the City acted in good faith in releasing the records.

Section 12. Restoration after Construction or Damage. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its communication Facilities within the Public Ways, restore the surface of said Public Ways, land surveyor monuments, and any other City-owned property which may be disturbed by the work, to at least the same condition the Public Way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair, reasonable wear and tear excepted. Said restorations shall be done in conformance with the most recent edition of City ordinances and standards at the time of construction or damage. The City shall have final approval of the condition of such Public Ways and City-owned property after restoration. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected areas and City-owned property at its sole cost and expense and shall be responsible for said restoration work and repair of damage done by Franchisee to City facilities for the life of the Franchise. Franchisee also agrees to restore all other existing facilities and/or property damaged by Franchisee's work, at its sole cost and expense.

Section 13. Recovery of Costs. The Franchisee shall be subject to all permit fees reflecting actual reasonable administrative costs associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses

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for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, for which a fee is not established, the Franchisee shall reimburse the City directly for all actual reasonable costs, after receipt of an itemized bill.

In addition to the above, the Franchisee shall promptly reimburse the City for all reasonable costs the City incurs in response to any emergency involving the Franchisee's communication Facilities, after receipt of an itemized bill. All billings will be itemized to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis at the City's election, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. City's Reservation of Rights. Pursuant to RCW 35.21.860, the City may recover from Franchisee its actual administrative expenses as well as any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's agreement that either Franchisee is a "service provider" as used in RCW 35.21.860 and defined in RCW 35.99.010(6), or Franchisee's Telecommunications Services fall within the definition of "telephone business" set forth in RCW 82.16.010. As such, the rights granted under this Franchise are not conditioned upon payment of a franchise fee or other compensation for use of the Public Ways. The City hereby reserves its right to impose a fee on the Franchisee, to the extent authorized by law, for purposes other than to recover its administrative expenses, in the event that (1) statutory prohibitions on the imposition of such fees are removed, or that (2) Franchisee no longer falls within the definition of "service provider" in RCW 35.99.010(6) and Franchisee's

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Telecommunications Services fall outside the definition of “telephone business” in RCW 82.16.010. Under those circumstances, the City also reserves its right to require that Franchisee obtain a separate franchise agreement for its change in use, which may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law. Nothing in this Franchise shall limit the City’s right of taxation as authorized by law.

Section 15. Administrative Fee. Franchisee agrees to pay, at the time of acceptance of this Franchise, a one-time administrative fee to defray City’s actual administrative costs and expenses associated with negotiating and enacting this Franchise, provided that such expenses shall not be included in the reimbursement provisions set forth in Section 13 of this Franchise not to exceed \$2,500.

Section 16. Utility Owned Poles. The parties acknowledge that the poles which the Franchisee desires to use for the location of its Facilities are owned by a third party or parties, and that Franchisee has entered or shall enter into an agreement with the third party or parties, setting forth the terms and conditions for use of those poles.

Section 17. Vacation of Right of Way. The process for the vacation of rights-of-way is provided for in City code, currently chapter 11.05 VMC. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The Franchisee shall remove its Facilities from any vacated right-of-way unless such vacation provides for the continuing right of the Facilities to exist within the vacated area.

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Section 18. Indemnification and Waiver.

A. Franchisee hereby releases and covenants not to bring suit and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from all claims, costs, judgments, awards, or liability to any person for injury, sickness, or death of any person or damage to any property or interests:

1. Arising out of the acts or omissions of Franchisee, its agents, servants, officers or employees or the construction, placement, operation, or maintenance of Facilities in the Public Ways; or

2. Based on the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the Public Ways or property over which the City has control pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;

B. The provisions of Subsection A of this Section shall apply to claims by Franchisee's own employees and the employees of the Franchisee's agents, representatives, contractors, and subcontractors to which Franchisee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof.

C. Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided, that Franchisee has been given prior written notice by the City of

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any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised with Franchisee's consent prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Franchisee shall not be liable for such settlement or other compromise unless it has consented thereto.

D. The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arises out of bodily injury to persons or damages to property, except to the extent that such claims, actions, damages, costs, expenses, and attorney fees were caused by the sole negligence or willful misconduct of the City. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

E. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its Facilities located in the Public Ways and upon City-owned property from such activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligent, willful, or malicious action on the part of the City, its officers, agents, employees, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees or contractors. Franchisee 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

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profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee'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 negligent, willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

Section 19. Abandonment and Removal of Franchisee's Communication Facilities. Upon the expiration, termination, or revocation of the rights granted under this Franchise, the Franchisee shall remove its Facility or Facilities from the Public Ways of the City within 90 days.

A. Underground facilities: Franchisee shall remove any facilities which have not been used to provide telecommunications services for a period of at least 90 days when: (a) a City project involves digging that will encounter the abandoned facility; (b) the abandoned facility poses a hazard to the health, safety, or welfare of the public; (c) the abandoned facility is 30 inches or less below the surface of the rights-of-way and the City is reconstructing or resurfacing a street over the rights-of-way; or (d) the abandoned facility has collapsed, broke, or otherwise failed.

Franchisee may, upon written approval by the City, delay removal of the abandoned facility until such time as the City commences a construction project in the rights-of-way unless (b) or (d) above applies. When (b) or (d) applies, Franchisee shall remove the abandoned facility from the rights-of-way as soon as weather conditions allow, unless the City expressly allows otherwise in writing.

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B. Aboveground facilities: Franchisee shall remove any facilities which have not been used to provide telecommunications services for a period of at least 90 days.

C. The expense of the removal, and restoration of improvements in the rights-of-way that were damaged by the facility or by the removal process, shall be the sole responsibility of the Franchisee. If, Franchisee fails to remove the abandoned facilities in accordance with the above, then the City may incur costs to remove the abandoned facilities and restore the rights-of-way, and is entitled to reimbursement from Franchisee for such costs, including reasonable attorney's fees and costs.

Section 20. Modification. The City and the Franchisee hereby reserve the right to modify the terms and conditions of this Franchise Agreement upon the written agreement of both parties to such modification. Said modifications shall be by ordinance of the City Council passed for that purpose and accepted by the Franchisee consistent with Section 31 of this Franchise.

Section 21. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner, or construction and maintenance of any Facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other legal requirements.

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Section 22. Survival. All of the provisions, conditions, and requirements of this Franchise shall be in addition to all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract. The provisions, conditions, and requirements of Sections 6, Relocation of Telecommunications Facilities; 7, Undergrounding of Facilities; 8, Work in the Public Ways; 10, Dangerous Conditions; 12, Restoration after Construction; 18, Indemnification; 19, Abandonment and Removal of the Franchisee's Facilities, shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its communication Facilities from the Public Ways, or transfers ownership of said Facilities to a third party, all as provided herein. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 23. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 24. Assignment. This Franchise may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld or delayed, except that the Franchisee may freely assign this Franchise in whole or part to a parent, subsidiary, or

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affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the event such a transfer or assignment 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. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the City of any such assignment.

In addition, Franchisee may, without the prior written consent of the City: (i) lease the Facilities, or any portion thereof, to another Person, provided, that such other Person shall obtain a City Franchise, if required; (ii) grant an Indefeasible Right of User Interest in the Facilities, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Facilities to another Person; PROVIDED THAT: (i) Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its facilities pursuant to the terms and conditions of this Franchise.

Section 25. Liability Insurance. Franchisee shall, at its own expense, upon adoption, obtain and maintain throughout the term this Franchise, a commercial general liability insurance policy with limits of at least five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate, with the City named as an additional insured, protecting and saving the City harmless against liability for loss or damage for personal injury, death, or property damage occasioned by the operation of the Franchisee under this Franchise. Franchisee may utilize

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primary and umbrella liability policies to satisfy the preceding per occurrence and aggregate insurance policy limit requirements. The Franchisee shall, within 30 days from the effective date of this Franchise, file with the City Clerk proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance including the additional insured endorsement indicating City coverage required herein and a provision that said coverage may not be canceled without at least thirty days' notice to the City, filed as above provided. Such additional evidence thereof shall be furnished to the City from time to time as it shall require. In those situations where, through the Franchisee's negligent or intentional acts or omissions, damage has occurred, Franchisee's insurance shall be primary to any City insurance coverage or, in the event the City is self-insured, any Franchisee policy shall afford first dollar protection coverage for risks included in Franchisee's operations. The insurance required under this section may be through a utility self-insurance fund under which the Franchisee is insured.

Section 26. Legal Action to Enforce Franchise Terms. This Franchise is entered into in Clark County, Washington. In the event legal action is brought with respect to this Franchise, the State of Washington shall have personal jurisdiction over each of the parties and venue of any such action shall lie in the Superior Court of Clark County, or in the United States District Court for the Western District of Washington. In the event that legal action is brought with respect to this Franchise, the prevailing party shall be awarded its costs and reasonable attorney's fees in an amount to be determined by the Court.

Section 27. Revocation. This Franchise may be revoked by the City Council by resolution in the event the Franchisee shall fail, after notice or demand, to comply with any of the terms,

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conditions, or obligations imposed upon the Franchisee hereunder, but the City shall have no obligation to do so. No forbearance by the City of any term of condition of this Franchise in any instance or at any time shall ever comprise a waiver or estoppel of the City's right to enforce said term condition.

Section 28. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

Franchisee:

Ziply Fiber Pacific, LLC.
Legal and Regulatory Department
135 Lake St. So., Ste. 155
Kirkland, WA 98033

with an additional copy to:

Legal@ziply.com

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 29. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise.

Section 30. Acceptance. Within 60 days after the passage and approval of this Ordinance, this Franchise may be accepted by Franchisee by its filing with the City Clerk its written and sworn unconditional written acceptance and promise to comply with all terms of this Franchise. Failure

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of the Franchisee to so accept this Franchise within said timeframe shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60-day period, absolutely cease and determine, unless the time period is extended by ordinance passed for that purpose.

Section 31. Effective Date. Subject to compliance with Section 30 of this Ordinance, this Ordinance shall become effective five days from and after its final passage by the Vancouver City Council and publication of a summary of the Ordinance pursuant to City Charter.

SIGNED this _____ day of _____, 2023.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

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SUMMARY

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AN ORDINANCE relating to management of the public rights-of-way, granting to Ziply Fiber Pacific LLC, a Delaware limited liability company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon along, and across public rights-of-way of the City of Vancouver, Washington, prescribing certain rights, duties, terms and conditions with respect to such franchise; providing for setting an effective date and conditions.

The full text of this Ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8799, or via www.cityofvancouver.us (Go to City Government and Public Records).

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