

ORDINANCE 2023 - 09

AN ORDINANCE GRANTING TO ZIPLY FIBER PACIFIC, LLC AND ZIPLY WIRELESS, LLC A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF SUNNYSIDE, WASHINGTON), AND STATING AN EFFECTIVE DATE

WHEREAS, Ziplly Fiber Pacific, LLC and Ziplly Wireless, LLC, hereinafter referred to as "Grantee", seeks to provide competitive telecommunications services within the city of **Sunnyside, Washington**; and

WHEREAS, Grantee has applied for a telecommunications franchise pursuant to Ordinance 2023-09, an ordinance relating to telecommunications infrastructure located in the public rights of way, and the City of **Sunnyside, Washington** has reviewed said application and has determined that it meets all the requirements of the City's Ordinance subject to the terms and conditions stated herein;

NOW, THEREFORE, THE CITY OF SUNNYSIDE ORDAINS AS FOLLOWS:

The City hereby ordains that it is in the public interest to grant Ziplly Fiber Pacific, LLC and Ziplly Wireless, LLC a Franchise to operate a competitive 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 **Sunnyside, Washington**. This Ordinance will be known as the Ziplly Fiber Pacific and Ziplly Wireless 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, a nonexclusive franchise to use the public rights of way within the city to provide competitive telecommunications services, subject to the provisions of **Sunnyside Municipal Ordinance 2023-09** or as hereafter enacted or amended. Ordinance 2023-09 (ordinance number), an ordinance relating to telecommunications infrastructure located in the public rights of way, will be incorporated into this Franchise as though it were a part of it, specifically including but not limited to the requirements for compensation, insurance, performance surety, and indemnification.

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

Section 4. Franchise Area. The Grantee is authorized by this Franchise to make reasonable and lawful use of the public rights of way within the boundaries of the city of **Sunnyside** or as these boundaries may be extended in the future.

Section 5. 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, including Grantee's gross revenues earned in the delivery of services within the corporate limits of the City to parties (including lessees of the Facilities) who are not the ultimate consumers of those services, but who redistribute services to third parties, earned within the city less the cost of leasing telecommunications facilities from the owner of such facilities. Grantee will pay a quarterly minimum franchise fee of Five Hundred Twenty-Five Dollars (\$525.00) for the administration of this Franchise. 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).

Section 5. 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 **Washington**. 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 6. 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 Fifteen Thousand Dollars (\$15,000), 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 \$15,000, 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 \$15,000, 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 8. 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 9. Revocation or Termination. The City may terminate or revoke the franchise granted pursuant to this Ordinance for any of the following reasons:

- a. Violation of any of the material provisions of this Franchise;
- b. Violation of any material provisions of Ordinance 18-24;
- c. Misrepresentation in the Franchise application or a rights of way construction application;
- d. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
- e. 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;
- f. Failure to restore the ROW as required by this Ordinance or other applicable State and local laws, ordinances, rules and regulations;
- g. Failure to comply with technical, safety and engineering standards related to Work in the ROW; or
- h. 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.

Section 10. 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 11. 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 this 22nd day of May 2023.


DEAN BROERSMA, MAYOR

ATTEST:


JACQUELINE RENTERIA, CITY CLERK

APPROVED AS TO FORM:


SAXTON RILEY & RILEY, PLLC
Attorneys for the City of Sunnyside

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