

ORDINANCE 2024-02-007

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON GRANTING ZIPLY FIBER PACIFIC LLC A FRANCHISE TO OPERATE AND MAINTAIN FIBER OPTIC BROADBAND NETWORK COMPONENTS IN CITY RIGHTS-OF-WAY FOR THE PROVISION OF COMMERCIAL TELECOMMUNICATIONS SERVICES TO BUSINESSES AND RESIDENTS

WHEREAS, the City of Bellingham (the “City”) is authorized under state law, Chapter 35.99 Revised Code of Washington (“RCW”), to regulate and permit the operation and maintenance of facilities in City rights-of-way for the provision of telecommunications services; and

WHEREAS, Article XI of the Bellingham City Charter and Chapter 13.15 of the Bellingham Municipal Code (“BMC”) requires entities who are seeking to operate and maintain telecommunications facilities in City rights-of-way to obtain a franchise to do so, granted by City Council by ordinance; and

WHEREAS, Ziplly Fiber Pacific LLC (“Ziplly Fiber”) is a Washington limited liability company doing business under Washington Unified Business Identification No. 604852167; and

WHEREAS, Ziplly Fiber is a Washinton Utilities and Transportation Commission (“UTC”) certificated Competitive Local Exchange Carrier; and

WHEREAS, Ziplly Fiber has applied to the City for a city-wide franchise to operate and maintain fiber optic broadband network components in City rights-of-way for the provision of telecommunications services to Bellingham businesses and residents; and

WHEREAS, the City of Bellingham Public Works Director has reviewed Ziplly Fiber’s franchise application against the requirements of BMC 13.15, including the factors listed in BMC 13.15.050, and has recommended that City Council approve Ziplly Fiber’s franchise application; and

WHEREAS, City Council has reviewed Ziplly Fiber’s franchise application against the requirements of BMC 13.15, including the factors listed in BMC 13.15.050, and has determined that the application should be approved, and a franchise granted, in accordance with applicable law; and

WHEREAS, notice of this franchise ordinance has been published once per week for four consecutive weeks in the Bellingham Herald in accordance with the requirements of BMC 13.15.050.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN that a franchise is hereby granted to Ziplly Fiber Pacific LLC upon the following terms and conditions:

**CITY OF BELLINGHAM – ZIPLY FIBER PACIFIC LLC
TELECOMMUNICATIONS FRANCHISE AGREEMENT**

1. **Definitions.** The terms used in this Franchise shall have the meaning ascribed to them in BMC 13.15. In addition, the following definitions apply:

1.1 “BMC” means the Bellingham Municipal Code.

1.2 “City” means the City of Bellingham, Washington.

1.3 “City rights-of-way” means rights-of-way, as defined in BMC 13.15, that are located within City limits as presently constituted or hereafter expanded.

1.4 “Franchise” means this franchise ordinance and agreement.

1.5 “Grantee” means Ziplly Fiber Pacific LLC, a Washington limited liability company doing business under Washington Unified Business Identification No. 604852167.

2. **Grant of Franchise.** Pursuant to BMC 13.15 and the terms and conditions contained herein, the City hereby grants Grantee a nonexclusive, city-wide franchise to construct, install, operate, maintain, repair, and replace fiber optic broadband network components within, upon, over, under, along, and across City rights-of-way for the provision of commercial telecommunications services to businesses and residents, subject to the terms and conditions of this Franchise.

3. **Term.** The term of this Franchise is ten (10) years, commencing on the date of Grantee’s signature on the Franchise Acceptance form attached hereto. Subsequently, and in accordance with Article XI of the Bellingham City Charter and BMC 13.15, City Council will consider renewing this Franchise at the written request of Grantee.

4. **General Terms and Conditions.** The general terms and conditions of this Franchise are contained in BMC 13.15, the entirety of which is incorporated herein by reference. Any violation of BMC 13.15 shall be deemed a violation of this Franchise.

5. **Performance Bond.** The amount of the performance bond required under BMC 13.15.220 shall be Fifty Thousand Dollars (\$50,000.00).

6. **Insurance.** Grantee shall maintain on file with the City certificates of insurance on an ACORD form or its equivalent, together with copies of all endorsements and/or blanket policy language relied upon by Grantee, necessary to establish ongoing compliance with the insurance requirements of BMC 13.15.200. Any material deviations from the insurance requirements contained in BMC 13.15.200 must be approved by the Office of the City Attorney.

7. **Title 51 Waiver.** GRANTEE WAIVES IMMUNITY UNDER THE WASHINGTON INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, TO THE LIMITED EXTENT NECESSARY TO EFFECTUATE ITS DEFENSE AND INDEMNIFICATION OBLIGATIONS TO THE CITY UNDER BMC 13.15.210.

8. **License and Tax.** This Franchise does not exempt Grantee from any City tax, license or registration requirement. Failure to timely report and pay applicable taxes, fees or charges to the City, or to obtain any applicable registrations or licenses required by the City, shall constitute a material breach of this Franchise and shall be grounds for revocation.

9. **BMC References.** All references to the Bellingham Municipal Code shall be construed to mean the code as presently constituted and as hereafter amended or recodified.

10. **Jurisdiction and Venue.** In the event any suit, action or litigation arises concerning this Franchise, the venue of such suit, action or litigation shall be in the Superior Court for the State of Washington in and for the County of Whatcom. Grantee stipulates to personal jurisdiction in said court and waives any right to have such suit, action or litigation heard in federal court on the basis of diversity jurisdiction. If such suit, action, or litigation involves a federal question, then the venue of such suit, action, or litigation shall be the United States District Court for the Western District of Washington, located in Seattle, Washington.

11. **Notice.** All notices required or permitted hereunder shall be in writing and delivered in person or by U.S. Mail or nationally recognized overnight carrier, addressed as follows:

To the City: City of Bellingham
 Attention: Public Works Director
 104 West Magnolia Street - Suite 109
 Bellingham, Washington 98225

With copy to:

Office of the City Attorney
210 Lottie Street
Bellingham, Washington 98225

To Grantee: Ziplly Fiber Pacific LLC
 135 Lake Street South, Suite 155
 Kirkland, WA 98033

The notice addresses provided above may be updated by written notice delivered in accordance with the requirements of this section.

12. **Acceptance.** This Franchise shall be void if Grantee fails to execute and deliver its acceptance of the same to the Office of the City Attorney within forty-five (45) days of the effective date of this ordinance. By executing the "Franchise Acceptance" at the bottom of

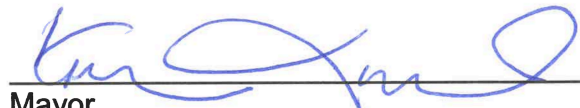
this Franchise, Grantee accepts and agrees to be bound contractually to all of its terms and conditions.

PASSED by City Council this 26th day of February, 2024.



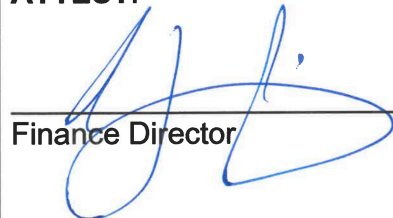
Council President

APPROVED by me this 6th day of March, 2024.



Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

March 1, 2024

FRANCHISE ACCEPTANCE

I, the undersigned official of ZIPLY FIBER PACIFIC LLC ("Grantee"), am authorized to bind Grantee and to accept the terms and conditions of the foregoing franchise (Ordinance No. 2024-02-007), which is hereby accepted by Grantee this 21st day of FEBRUARY, 2024.

ZIPLY FIBER PACIFIC LLC,
a Washington limited liability company,
UBI No. 604852167

(Handwritten Signature)

Signature
GEORGE BAKER THOMSON, JR
ASSOCIATE GENERAL COUNSEL

Print Name and Title

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that GEORGE BAKER THOMSON, JR is the person who appeared before me, and said person acknowledged that he or she signed this instrument, on oath stated that he or she was authorized to execute the instrument and acknowledged it as the VP/ASSOC GC of ZIPLY FIBER PACIFIC LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED this 21st day of February, 2024.

ANDREW HALL
Notary Public
State of Washington
Commission # 20103472
My Comm. Expires Nov 8, 2027

(Handwritten Signature)
NOTARY PUBLIC in and for the State of WASHINGTON
My appointment expires: 11-8-2027