

CITY OF SEATTLE
ORDINANCE 127237
COUNCIL BILL 120986

AN ORDINANCE relating to the City Light Department; authorizing the execution of an indefeasible right of use fiber sharing agreement with Ziplly Fiber Pacific, LLC for an effective period of up to two 15-year terms.

WHEREAS, the City Light Department (“Department”) transmits critical electrical system operating information along a fiber network it owns extending from its Skagit generating facility to its Bothell substation (“Skagit Line”); and

WHEREAS, the Department seeks to improve the reliability of its Skagit Line by accessing a redundant pathway available to the Department at all times, but most importantly, in the event the Skagit Line is damaged or otherwise fails; and

WHEREAS, Ziplly Fiber Pacific, LLC (“Ziplly”) owns a fiber network extending from Marblemount, Washington to the Department’s Bothell switchyard (“Ziplly Line”) which the Department has determined could be used as a redundant network to the Skagit Line; and

WHEREAS, accessing the Ziplly Line as a redundant network to the Skagit Line is best achieved by an agreement between the Department and Ziplly that requires granting access of the lines they each own and maintain to the other party for up to two 15-year terms; and

WHEREAS, Ziplly and the Department will each be required to undertake certain modifications to their networks to enable them to be accessed by the other party and both parties are willing to undertake this work as part of the agreement. The cost to the Department to undertake these modifications is not expected to require additional budget authority; and

1 WHEREAS, the sharing of fiber pathways, as contemplated under this agreement, will not
2 compromise the Department's security as there will be no interconnection between the
3 two systems. Fiber strands carrying information will be exclusively dedicated to Ziplly or
4 the Department and will terminate in devices owned and independently maintained by
5 each party; NOW, THEREFORE,

6 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

7 Section 1. The Seattle City Light Department ("Department") is authorized to execute an
8 indefeasible right of use fiber sharing agreement with Ziplly Fiber Pacific, LLC ("Ziplly")
9 substantially conforming to Attachment A to this ordinance where the Department and Ziplly
10 each provide the other with access to their fiber networks located between the Department's
11 Bothell switchyard and the intersection of Ziplly's and the Department's fiber pathways located
12 in Marblemount, Washington for a period of up to two 15-year terms.

Section 2. This ordinance shall take effect as provided by Seattle Municipal Code
Sections 1.04.020 and 1.04.070.

Passed by the City Council the 17th day of June, 2025,
and signed by me in open session in authentication of its passage this 17th day of
June, 2025.



President _____ of the City Council

☒ Approved / ☐ returned unsigned / ☐ vetoed this 23rd day of June, 2025.



Bruce A. Harrell, Mayor

Filed by me this 23rd day of June, 2025.



Scheereen Dedman, City Clerk

(Seal)

Attachments:

Attachment A – Indefeasible Right of Use Agreement Between Ziply Fiber Pacific, LLC and
Seattle City Light

IRU AGREEMENT

BY AND BETWEEN

**ZIPLY FIBER PACIFIC, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

AND

DATE: _____, 2025

INDEFEASIBLE RIGHT OF USE AGREEMENT (“IRU”)

THIS IRU AGREEMENT (this “Agreement”) is made and entered into as of _____, 2025 between Ziplly Fiber Pacific, LLC, a Delaware limited liability company (“Ziplly”), and The City of Seattle, a municipal corporation of the State of Washington, by and through Seattle City Light (“SCL”). Ziplly and SCL are sometimes individually referred to herein as a “Party” or collectively as the “Parties”

RECITALS

1. Each party owns, operates, and maintains fiber optic communication networks within the State of Washington.
2. Each party has fiber optic communications facilities available for lease in certain areas in the region of Northwest Washington identified in Exhibit A.
3. Each party desires to acquire an indefeasible right of use of a specific number of fibers in the other party’s network as defined in Exhibit B for the mutual purpose of obtaining fiber route diversity and improving connectivity.
4. In exchange for the consideration described in Exhibit B, each party will grant the other party the IRU as defined in Exhibit A, and will otherwise support and cooperate with the other party in the functional use of the IRU fiber in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1.0 TABLE OF EXHIBITS MADE PART OF THIS AGREEMENT

Exhibit A: Network Map

Description of the IRU

Construction Plan

Exhibit B: Fees and Charges

Exhibit C: Test Result Template

2.0 DEFINITIONS

- 2.1 “Agreement” means this Indefeasible Right of Use Agreement, and any and all Exhibits, Addenda, and Attachments to which the Parties may agree from time to time and which reference this Indefeasible Right of Use Agreement.

- 2.2 "Applicable Standards" means all applicable rules and regulations and engineering and safety standards governing the installation, maintenance, and operation of Network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code ("NESC"); the National Electrical Code ("NEC"); the regulations of the Federal Communications Commission ("FCC"), the Occupational Safety and Health Administration ("OSHA"), and other pertinent federal agencies; provisions of a city's, a county's, or State of Washington's building, construction, zoning, and safety codes; and rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference into this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of a local, state, or federal authority having jurisdiction over such facilities.
- 2.3 "Associated Property" means real and personal property owned by each party that is attached to the Network and necessary for utilization of the Network (including IRU Fiber) to provide Communication Services.
- 2.4 "Authorizations" means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; easements to private property; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third person with respect to (i) the construction, installation, repair, maintenance, operation, or use of tangible or intangible public or private property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 2.5 "Authorization Fees" means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind applicable to the placement and maintenance of the Network and Associated Property, whether imposed by a governmental authority or a private entity.
- 2.6 "Communication Services" means the services provided by each party to a Customer using all or a portion of the IRU Fiber, and may include without limitation (except those identified in the agreement below), broadband Internet access service, data transmission service, IP transport, VoIP service, and telecommunications services, regardless of technology used, as set forth in service agreements between each party and their Customers.
- 2.7 "Construction Plan" means documentation describing the Construction Schedule and other relevant information provided by each party to enable the IRU (included as Exhibit A to this Agreement).
- 2.8 "Customer" means a residence, business, or other entity that lawfully receives Communication Services from either party via the IRU Fiber.
- 2.9 "Effective Date" means the date upon which this Agreement both (1) has been approved by a lawfully enacted ordinance of The City of Seattle and (2) has been fully executed by

authorized representatives of both parties

- 2.10 "Force Majeure Event" is defined in Section 15.0.
- 2.11 "IRU Fee" is defined in Section 5.1.1.
- 2.12 "IRU Fiber" means fiber optic strands within a party's Network in which an indefeasible right of use is granted to the other party pursuant to this Agreement. The number of fiber optic strands included in the IRU Fiber for each Section is set forth on Exhibit A hereto.
- 2.13 "Location" means a network property, residence, entity, or business connected to the IRU facility.
- 2.14 "Maintenance" or "Maintain" means work by either party that must be performed on the Network or IRU Fiber to ensure the continuity of acceptable signal transmission between access points on the IRU Fiber, for the purpose of delivering Communication Services in a manner consistent with industry standards, this Agreement, and any applicable service level agreements. Unless otherwise agreed, Maintenance shall not include any work associated with facilities or equipment owned by an entity other than the parties.
- 2.15 "Maintenance Event" is defined in Section 4.4.1.2.
- 2.16 "Network" means the specific fiber optic strands and related equipment to complete the path associated with the indefeasible right defined in this Agreement.
- 2.17 "Section" means an identified subpart of the Network within a party's fiber route as specified in Exhibit A.
- 2.18 "Traffic" means information or data transmitted through the use of activated or "lit" fiber optic cable.
- 2.19 "Underlying Rights" is defined in Section 3.4.

3.0 GRANT OF IRU

3.1 IRU Grant.

- 3.1.1 Subject to payment of the IRU Fee in accordance with Section 5.1 and Exhibit B, and the acceptance process described in Section 4.2, SCL grants to Ziply, and Ziply accepts and acquires from SCL an exclusive IRU with respect to certain un-activated/un-lit "dark" fibers as depicted in Exhibit A and Ziply grants to SCL, and SCL accepts and acquires from Ziply an exclusive IRU with respect to certain un-activated/un-lit "dark" fibers as depicted in Exhibit A.
- 3.1.2 Each party shall specifically identify IRU Fiber strands granted to the other party upon completion of construction and testing.

- 3.1.3 The IRU shall include the nonexclusive right to utilize Associated Property, and to indirectly benefit from Authorizations and Underlying Rights (as described in Section 3.4) to the extent necessary to use and enjoy the IRU Fiber.
- 3.2 **Effective Date of IRU.** This Agreement shall be effective on the Effective Date, as set forth in Section 7.0. Each party's rights in IRU Fiber shall be made effective upon acceptance of IRU Fiber owned by the other party pursuant to Paragraphs 4.1 and 4.2. The Parties anticipate that each party will present IRU Fiber for acceptance by the other party when testing of each Section is complete, with payment of the IRU Fee by either party to be made corresponding to each Section as set forth in Exhibit B.
- 3.3 **Rights Reserved by Each Party.** Each party shall have the right to grant and renew rights to any entity to use fiber(s) not included in this Agreement; provided, however, that during the term of this Agreement neither Party shall have the right to grant and renew any rights of use to a third party entity with respect to the IRU Fiber except for the rights reserved by the parties herein. The IRU does not include the right of either party to own, control, maintain, modify or revise the other party's Network or Associated Property, or the right of physical access to, the right to encumber in any manner, or the right of other use of the other party's Network except as expressly set forth herein. Neither this Agreement, nor the rights granted herein shall cause a transfer of legal ownership or title of either party's Network, Associated Property, or related assets, which will remain held by each party. Neither party shall cause or permit to cause any lien or encumbrance to be placed upon the IRU Fiber by any entity.
- 3.4 **Underlying Rights.** Each party has obtained certain rights of way and related or similar rights for construction and operation of the fiber Network (the "Underlying Rights"). Each party will use commercially reasonable efforts to maintain the Underlying Rights for the term of this Agreement. This Agreement is subject to the terms of the Underlying Rights, and subject to the terms under which the right of way is owned or held by the granting party of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The rights granted hereunder are further subject and subordinate to the prior right of the granting party of the Underlying Rights to use the right of way for other business activities, including energy or railroad operations, telecommunications uses, pipeline operations, or any other purposes. Nothing herein shall be construed as to be a representation, warranty, or covenant of granting party's right, title, or interest with respect to the Underlying Rights.
- 3.5 **No Right of Physical Access to the other Party's Network or IRU Fiber.** Unless otherwise expressly agreed by the granting party (such agreement not to be unreasonably withheld), the other party nor any of the other party's contractors or customers shall have the right to physically access the granting party's Network, including IRU Fiber. All physical activities relating to the granting party's Network, shall be undertaken solely by the granting party or its authorized agent unless otherwise agreed by the parties.

4.0 **MUTUAL RESPONSIBILITIES**

4.1 Extension of Network

- 4.1.1 Each party will make available the IRU Fiber, substantially in accordance with the Construction Plan included as Exhibit A (as amended from time to time as agreed). Prior to construction, each party will provide a system design for interconnection points where construction is required to create connectivity for the approval of the other party, which approval shall not be unreasonably denied, conditioned or delayed. Upon reasonable request, each party shall provide additional detailed information relating to the construction of a particular Section. Each party will be obligated to pay an IRU Fee corresponding to a particular Section only upon acceptance of such Section, as outlined in Exhibit B.
- 4.1.2 Each party shall design, engineer, and construct its Network in a manner consistent with all requirements set forth in this Agreement relating to the use and capability of IRU Fiber. Where required, all engineering and design work performed by or on behalf of either party requiring any certifications or licenses shall be so certified or licensed if required, and all design documents requiring stamping, or which are customarily stamped, shall be properly stamped by a professional engineer licensed in the State of Washington. Each party shall procure and install the fibers and equipment under their title, shall supervise and coordinate work by their contractors, and shall obtain all necessary Authorizations, and pay all Authorization Fees relating to its Network construction. Each party shall perform, or supervise and direct the construction work using industry standard skill and attention, and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the construction work on that party's Network, unless the parties agree in writing to other specific instructions concerning these matters.
- 4.1.3 Each party acknowledges that the other party intends to construct and extend its Network for the benefit of its own business purposes, and that extension of both Networks is not undertaken at the direction of, or for the primary benefit of the other party.

4.2 IRU Fiber Testing and Acceptance.

- 4.2.1 **Testing.** Upon readiness of a Section, the granting party shall test the IRU Fiber to identify end-to-end attenuation, end-to-end signature and splice testing results for each strand of the IRU Fiber, and shall provide the results of such testing to the other party in a form containing substantially the same information as set forth in the Test Result Template included as Exhibit C. Each party shall notify the other party in writing (email being sufficient) when IRU Fiber (or an identified Section thereof) is complete and when test results are available for verification. The written notification of readiness shall specifically identify which fiber strands within the granting party's Network constitute IRU Fiber.
- 4.2.2 **Notice of Completion to Grantee.** Following written provision of test results described in subparagraph 4.2.1 above, the other party shall have thirty (30)

calendar days to verify that IRU Fiber performance is consistent with applicable industry standards. On or before the expiration of the thirty (30)-day period each party will provide written notice to the other that it accepts the IRU Fiber or rejects it by specifying the defect or failure in the test report that is the basis for such rejection.

4.2.3 If either party fails to notify the other party of its acceptance or rejection of the IRU Fiber within thirty (30) days following receipt of notice of availability, the party shall be deemed to have accepted the IRU Fiber. In the event of any good faith rejection, both parties shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure in their network. Notwithstanding the foregoing, any tests performed on the IRU Fiber by either party during the thirty (30) day period above shall not constitute Traffic and shall not be deemed acceptance of the IRU Fiber.

4.3 **Agreement Expansion.** The Parties may cooperate on future projects or IRU Fiber in mutually agreed upon locations by written addendums to this Agreement, signed by authorized representatives of each party. Such future addendum may include, without limitation, the right of either party to build an extension at its cost and connect such extension to the other party's Network. Both parties upon reasonable request will share technical data necessary to build and connect such extension.

4.4 **Maintenance.**

4.4.1 **IRU Fiber.**

4.4.1.1 **Routine Maintenance.** In consideration of the IRU Fiber Maintenance Fee described in Exhibit B, each party shall during the term of this Agreement, at its sole cost and expense, care for and maintain the IRU Fiber in its Network in a safe and serviceable condition, ensuring that the IRU Fiber meets or exceeds applicable industry standards for performance. Each party shall schedule and perform periodic inspections (at a minimum annually), maintenance, and repairs to identify and correct any failure, interruption, or impairment in the operation of the IRU Fiber in its Network. Both parties shall not permit the IRU Fiber to be damaged or depreciated in value by any negligent act or omission of themselves, their agents, or employees. Each party shall respond promptly to any reasonable complaints from the other party, or its Customers.

4.4.1.2 **Maintenance Events.** Each party shall respond to and address unforeseen events requiring maintenance or restoration of that party's Network involving IRU Fiber ("Maintenance Event") as soon as practicable after the party is made aware of the need for such action. Notwithstanding anything in this Agreement to the contrary, each party shall use its best efforts to remedy any interruption of connectivity within twenty-four (24) hours of report from the other party.

4.4.1.3 **Catastrophic Loss (Trunk Lines).**

4.4.1.3.1 Each party will use commercially reasonable efforts to insure fiber optic trunk lines (including IRU Fiber contained therein) against catastrophic loss, including, for example, loss due to an extreme weather event. Each party shall inform the other in writing within ten (10) days after either: i) obtains casualty insurance covering the Network fiber optic trunk lines (including the IRU Fiber contained therein) or ii) determines that commercially reasonable insurance coverage cannot be obtained.

4.4.1.3.2 Each party shall provide written notice to the other party of any such catastrophic loss as soon as practicable. Both parties shall negotiate in good faith to identify an equitable arrangement for the repair or replacement of the affected Network, taking into account insurance proceeds (if any) and the respective investments to create the IRU connectivity. Upon full restoration of the affected Section by either party, or joint action of the Parties, the affected Section of the Network shall be deemed subject to the terms of this Agreement to the same extent as if the catastrophic loss had not occurred.

4.4.1.3.3 If the parties fail to agree to repair or replace the affected portion of the Network, either party may in its sole discretion choose to abandon it without regard to any effect such abandonment may have upon IRU Fiber generally or the Communication Services delivered thereby. In the event of such abandonment, neither party shall have any claim against the other party arising from any such catastrophic loss, or subsequent abandonment. The parties will negotiate fair market pricing for any remaining IRU fibers if the mutual benefit of fiber path diversity can no longer be sustained.

4.4.1.4 **Maintenance Reporting.** Upon reasonable request, both parties will provide maintenance reports, including periodic/routine maintenance reports and reports in response to a Maintenance Event.

4.4.2 **Relocation.** If, after the Effective Date, either party is required (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any Underlying Rights, (iii) by any other person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event as set forth in Paragraph 15.0, to relocate the granting party's Network or any Section thereof, the granting party shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation; or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. If, and to the extent that, a relocation is not the result of a failure by either party to observe and perform its obligations under this

Agreement, the costs of relocations of the affected Network are the responsibility of the granting party (except in the case of catastrophic loss, which shall be treated as described in Paragraph 4.4.1.3).

5.0 IRU NETWORK RESPONSIBILITIES

5.1 Compensation.

5.1.1 **IRU Fee.** In consideration of the grant of the IRU hereunder by Ziply and SCL, both parties agree to pay an IRU Fee in the amount of and according to the schedule set forth in Exhibit B ("IRU Fee"). The IRU Fee shall be due and payable as set forth in Exhibit B and paid within thirty (30) days of invoice receipt, with the first such invoice accompanied with a corresponding W-9.

5.1.2 **IRU Fiber Maintenance Fee.** In consideration of both parties' obligations to maintain IRU Fiber that is in use during the term of this Agreement, neither party shall pay an IRU Fiber Maintenance Fee.

5.2 **Reporting.** Each party shall promptly respond and cooperate with reasonable requests by the other party for information relating to matters germane to this Agreement, including but not limited to the IRU Fiber. Each party shall promptly respond and cooperate with reasonable requests by the other party for information relating to matters germane to this Agreement.

6.0 COMMUNICATION SERVICES

6.1 Nothing in this Agreement shall limit the ability of either party to provide Communication Services to any customer within the Network service area, or to households or businesses utilizing all or a portion of the IRU Fiber.

7.0 TERM

7.1 **Term.** This Agreement shall begin on the Effective Date and shall extend for a period of fifteen (15) years thereafter. Any interest in IRU Fiber held by either party shall expire upon the termination date of this Agreement. This Agreement shall automatically renew for successive fifteen (15) year terms unless either Party provides written notice of its intent not to renew at least one (1) year prior to the end of the then-current term.

8.0 DEFAULT

8.1 **Default Defined.** A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement, a party fails to cure such material breach within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to

cure within said time period and thereafter diligently pursues such cure to completion.

- 8.2 **Remedies Upon Default.** Upon the occurrence of a default, the non-defaulting party shall have all remedies available at law or at equity including but not limited to, termination pursuant to Section 8.3, damages, specific performance, non-defaulting party's performance of services pursuant to Section 8.4, and/or relief from further performance. Each such remedy shall be cumulative and not exclusive. Without limiting the foregoing, in the case of uncured default by granting party, the other party may be granted permission to operate, maintain, or repair the granting party's Network to the extent necessary to maintain IRU Fiber reserving the cost thereof as damages against the granting party.
- 8.3 **Termination for Default.** In the event of a default as defined in Section 8.1, the non-defaulting party may terminate this Agreement upon thirty (30) days prior written notice to the defaulting party.
- 8.4 **Cure of Service Default.** Notwithstanding any other provision of this Agreement, in the event, regardless of reason or the granting party's ("Grantor Party") good faith attempts, Grantor Party does not or is unable to perform the services described in this Agreement, or does not or is unable to perform services in compliance with the standards and specifications set forth in this Agreement, the other party ("Grantee Party") may (but is not obligated), upon written notice to Grantor Party, , to perform such services or work and/or take such action that it deems necessary without subjecting itself to any liability to Grantor Party. In such instances, Grantee Party may request Grantor Party to pay Grantee Party an amount equal to the actual costs of services performed by Grantee Party less Grantee Party's proportionate share of the Grantor Party's Network (based on fiber count). If Grantee Party requests payment, Grantor Party will remit payment to Grantee Party within thirty (30) days from the date of Grantee Party's invoice.
- 8.5 **Injunctive Relief.** The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and agree that, due to the unique subject matter covered by this Agreement, each party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, this being in addition to any other right or legal remedy available to such Party.

9.0 **BANKRUPTCY**

- 9.1 This Agreement is not intended as an executory contract or unexpired lease subject to assumption, rejection, or assignment by a trustee in bankruptcy of any party to this Agreement, including, without limitation, assumption, rejection, or assignment under Section 365 of the Bankruptcy Code.
- 9.2 Upon the occurrence of a bankruptcy or insolvency condition described below, either party may terminate this Agreement, or may proceed under the default and remedy procedures described in Section 8:

- 9.2.1 If either party commences a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws; or
- 9.2.2 any person commences an involuntary case against either party under title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case; or
- 9.2.3 a court of competent jurisdiction appoints, or either party makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for either party or all or substantially all of its assets.

10.0 NO LIENS, RIGHTS OR CLAIMS

- 10.1 Neither party shall attempt to subject any portion of either party's Network to any liens, rights or claims of any third party. If such a lien, right, or claim is asserted the Grantee party will promptly and diligently undertake its removal at its sole cost.

11.0 TAXES

- 11.1 Each Party shall be responsible for collecting and paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges, assessed on or levied against any transaction or event arising from the performance of this Agreement (to include franchise fees and payments to state and federal universal service programs), imposed by any authority having the power to assess such taxes or charges, including any city, county, state, or federal government or quasi-governmental agency or taxing authority.

12.0 ASSIGNMENT

- 12.1 Except as specifically provided herein, neither Party may assign any rights or duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

13.0 LIMITATION OF LIABILITY AND INDEMNIFICATION

- 13.1 **Only Actual Damages.** Notwithstanding any provision of this Agreement to the contrary, neither Party shall be liable to the other Party or any third party for any special, incidental, indirect, punitive, or consequential costs, liabilities, or damages, whether foreseeable or not, arising out of, or in connection with, such party's performance of its obligations under this Agreement.
- 13.2 **Casualty Loss.** The parties hereto agree that neither party, their respective managers, members, officers, commissioners, employees, insurance carriers, and casualty policies shall be responsible to the other party for any property loss or damage done to the other party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty. It shall be each party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature. In this regard each party hereby releases and discharges the other party and their respective managers, members, officers, commissioners, and employees from any claims for loss or damage to property.
- 13.3 **Mutual Indemnification.** To the extent permitted by applicable law, each party hereby agrees to defend and indemnify the other party, and its respective managers, members, officers, commissioners, and employees from and against, and assume liability for any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims") to the extent and in proportion that Claims arise from the negligent, grossly negligent, or

willful act of the indemnifying party, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees, or vendors. Neither party shall be required to indemnify, defend, or hold harmless the other party, or its respective managers, members, officers, commissioners, or employees, from Claims caused solely by the negligence, gross negligence, or willful acts of the other party. Where such Claims result from concurrent negligence of the other party, the indemnity provided herein shall be valid and enforceable only to the extent of each party's own negligence.

14.0 INSURANCE

- 14.1 Each party, at its expense, shall, throughout the term of this Agreement, maintain insurance coverages of the types and in the minimum amounts set forth below, as applicable:

Type of Insurance Limit

General Liability (including General

Aggregate \$2,000,000 contractual

liability) written Prod./Comp. Op. Agg.

\$2,000,000 on an occurrence basis

Personal & Adv. Injury \$2,000,000 Each

Occurrence \$2,000,000

Automobile Liability, including Combined

Single Limit \$1,000,000 any auto, hired auto,

and non owned autos

Excess Liability, Umbrella Form Each

Occurrence \$2,000,000 Aggregate

\$2,000,000

Self-Insurance The City of Seattle meets the above insurance requirements through its primary self-insured retention program administered in-house and approved by the State of Washington.

15.0 FORCE MAJEURE

- 15.1 Neither party shall be in default under this Agreement if, and to the extent that, any failure or delay in such party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or

obligations shall be excused and extended for and during the period of any such delay: act of God; fire; wind; flood; fiber cut, cable cut, or other material failures which cannot be remedied and then, only during such periods as may be required to reasonably repair the fiber cut, cable cut, or other material failures, shortages or unavailability or other delay in delivery not resulting from the responsible party's failure; third party power or system failures;; war or civil disorder; strikes or other labor disputes; inability of the responsible party to obtain access to the responsible party's Network not resulting from the such party's failure; or any other cause beyond the reasonable control of t h e r e s p o n s i b l e party ("Force Majeure Event").

16.0 NOTICES

16.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested; or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to

SCL at:

Seattle City Light
ATTN: Legal Affairs Advisor
700 Fifth Avenue, Suite 3200
Seattle, Washington, 98104
jeff.wolf@seattle.gov

All notices and other communications shall be given to

Ziplly at:

Ziplly Fiber Northwest, LLC
135 Lake Street So., Suite 155 (ATTN: Legal
Department)
Kirkland, WA 98033
legal@ziply.com

A copy of any notice shall also be provided via email to the email addresses above.

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may, by similar notice given, change the address to which future notices or other communications shall be sent.

17.0 CONFIDENTIAL INFORMATION

- 17.1 **In General.** Subject to the exceptions set forth below, each of the parties shall hold in confidence any information obtained by it pursuant to the performance of the obligations required or the transactions contemplated by this Agreement, unless the information is subject to disclosure pursuant to legal requirement. Proprietary Information includes proprietary or confidential information disclosed by either Party to the other for the purposes hereunder that is clearly identified in writing as being such ("Proprietary Information"). Proprietary Information shall be safeguarded and protected in the same manner as the recipient's procedures require to ensure protection and nondisclosure of recipient's proprietary and confidential information. The recipient's obligation to safeguard and not disclose such Proprietary Information shall not apply to information in the public domain, lawfully in the recipient's possession prior to receipt hereunder, lawfully obtained from third parties, or that is required to be disclosed under applicable laws. The Parties acknowledge that Proprietary Information may be disclosed as part of any normal reporting and review procedure with auditors and attorneys, or with any outside lender, or any proposed or actual successor in interest.
- 17.2 **Washington Public Records Act.** As a public agency, SCL is subject to the Washington Public Records Act, Chapter 42.56 (the "PRA") and under the PRA, all materials prepared, owned, used, or retained by SCL or a functional equivalent of a SCL employee are considered public records. The PRA requires that public records be promptly disclosed by SCL unless the PRA or another Washington State statute specifically exempts records from disclosure. Ziply recognizes SCL's PRA obligations and understands that, unless exempt under applicable law, Proprietary Information may be subject to public inspection or copying under the PRA.
- 17.3 If required by law including, but not limited to, the PRA, recipient may release the Proprietary Information; provided, however, recipient agrees that prior to such release it shall provide ten-days notice to the other Party of the impending disclosure to allow the other Party to obtain court ordered injunctive relieve preventing disclosure. If Ziply fails to obtain and serve SCL with such a court order within ten (10) days, SCL may release the records at issue. Whether to seek an injunction is Ziply's discretionary decision and SCL's obligation to protect Ziply's Proprietary Information under this Agreement does not include an obligation to assert an exemption from disclosure under the PRA. Ziply acknowledges that SCL will have no liability to Ziply if any

records associated with this Agreement are lawfully disclosed under the PRA.

- 17.4 **Survival.** The confidentiality provisions in this Paragraph shall survive expiration or termination of this Agreement.

18.0 INTELLECTUAL PROPERTY

- 18.1 Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions or patents now, or later owned or controlled by either party, and nothing in this Agreement shall be construed as granting any right, title or interest in the other party's trademarks, trade names, service marks or other intellectual property rights. The parties agree not to use the trademarks, trade names, or service marks of the other party without prior written permission.

19.0 RELATIONSHIP OF THE PARTIES

- 19.1 The relationship between Ziply and SCL shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose, including, but not limited to federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

20.0 REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

- 20.1 By execution of this Agreement, each party represents and warrants to the other that: (a) the party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof, provided, however, that Ziply acknowledges that this Agreement will not be fully executed or binding until it has been approved by a lawfully enacted ordinance of The City of Seattle; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a Party, or (iv) any instrument to which such Party is or may be bound onto which any of its material properties or assets is subject; (d) the Party's execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action, if required; (e) that the signatories for

such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; and (g) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

21.0 DISPUTES: GOVERNING LAW AND VENUE

21.1 The parties shall negotiate in good faith and use their best efforts to resolve any disputes that may develop under this Agreement. If party representatives are unable to resolve a dispute regarding this Agreement within ten (10) business days, the dispute shall be referred to the Zply Fiber Chief, Fiber Design and Construction and Seattle City Light Chief Operating Officer. If the parties are unable to resolve the dispute through such negotiations, either party may pursue legal action.

21.2 This Agreement will be governed and construed in accordance with the laws of the State of Washington without regard to any conflicts of law provisions. Venue for all actions arising from this Agreement shall held exclusively in a Washington state or federal court of competent jurisdiction situated in Seattle, King County, Washington.

22.0 CHANGE IN LAW

22.1 If changes in applicable laws, regulations, rules or orders materially affect either party's ability to lawfully fulfill any of its obligations under this Agreement, the parties agree to negotiate and execute appropriate changes to this Agreement. If changes in applicable laws, regulations, rules or orders make either party's continued fulfillment of its obligations under this Agreement commercially impracticable, either Party may propose an appropriate amendment to this Agreement.

23.0 MISCELLANEOUS

23.1 **Headings.** Headings and captions of this Agreement's paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

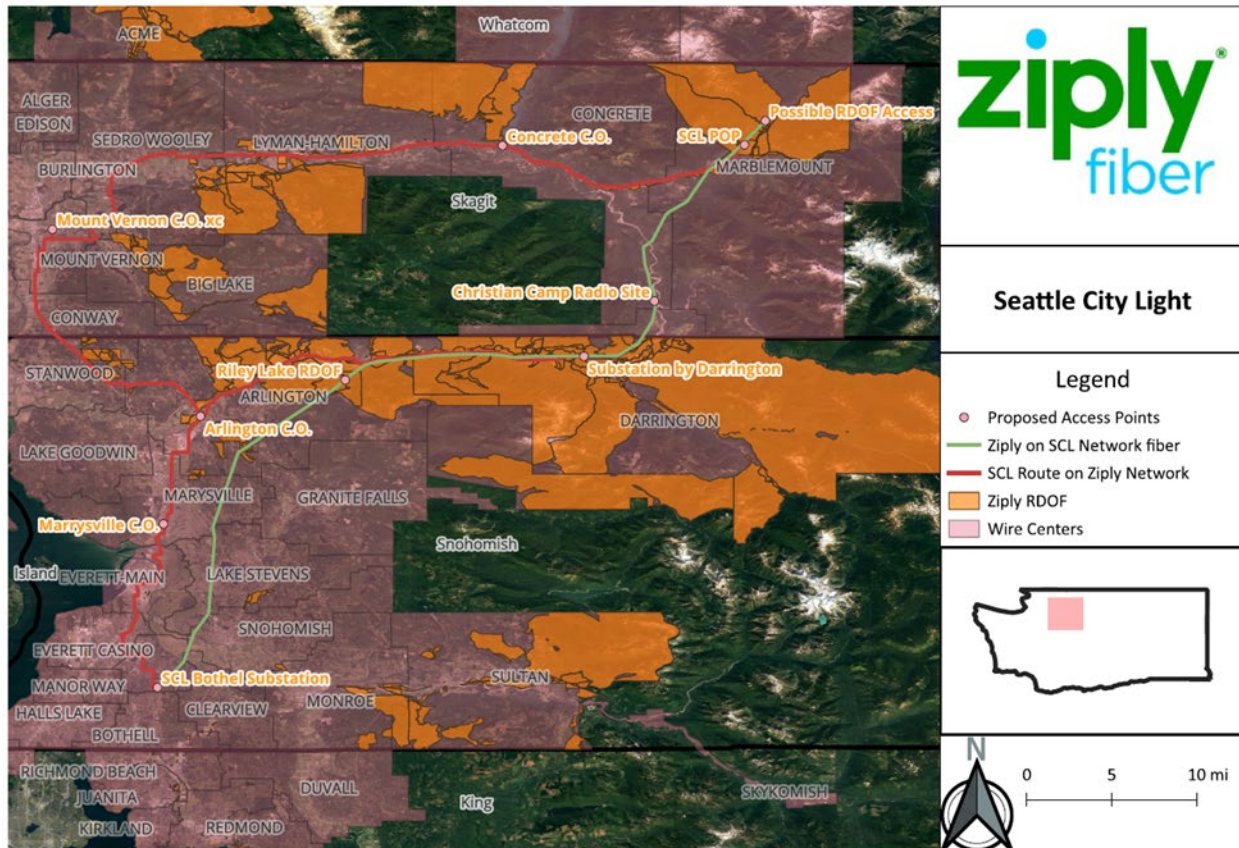
- 23.2 **Severability.** If any provision of this Agreement is deemed illegal or unenforceable, the Agreement's unaffected provisions will remain in effect.
- 23.3 **Grammar.** As used throughout this Agreement, language in the singular shall be understood to include the plural, and vice versa. Similarly, language in the masculine shall be understood to include the feminine, and vice versa.
- 23.4 **Waiver.** Any right or remedy provided for in this Agreement shall not preclude either party's exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.
- 23.5 **Entire Agreement; Amendments.** This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of the Exhibit shall prevail. This Agreement may only be modified or supplemented by an instrument in writing executed by authorized representatives of each Party.
- 23.6 **Counterparts.** This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax or emailed .pdf signatures constitute original signatures and that a faxed or emailed agreement containing the signatures (original, .pdf, or faxed) of both parties is binding on the parties.

By: _____
Name: _____
Title: _____

Ziply Fiber Pacific, LLC
By: _____
Name: _____
Title: _____

EXHIBIT A

Existing Network Fiber



Segment	Length (ft)
Ziplly on SCL Fiber	720,938.857
Possible RDOF extension	27,169.160
Total	748,108.017

Segment	Distance (ft)
SCL on Ziplly Fiber	572,201.638
SCL to Darrington on Ziplly Fiber	138,477.433
Total	710,679.071

Expanded section description:

In areas where there are adjoining easements, ownership will be assigned to the respective easement authority.

MARBLEMOUNT- Existing fiber in place with 1-4"PVC and HH's. SCL to place path from tower to Ziplly HH identified as HH5 (leave coil large enough to get to HH3 – coordinate together).

<https://maps.app.goo.gl/fk7ALWuBSPoS1uGm9>

CHRISTIAN CAMP ROAD - SCL will run a riser/conduit straight down from their splice box/enclosure. Ziplly will intercept this SCL riser/conduit with a HH. Excavation to stay clear of the tower footings. Ziplly placing a HH directly west of the tower on Project 6004393.

RILEY LAKE –SCL will run a riser/conduit straight down from their splice box/enclosure. Ziplly will intercept this SCL riser/conduit with a HH. Excavation should stay clear of the tower footings. The fresh pile of gravel is the approximate HH location.

(for illustration only – construction to be coordinated)



<https://maps.app.goo.gl/gEPWDAHUuUQgvNF1Q9>

Up to APC AR3355 Cabinet in Mt Vernon (amplification) – 30amp -48V and 20amp 120v

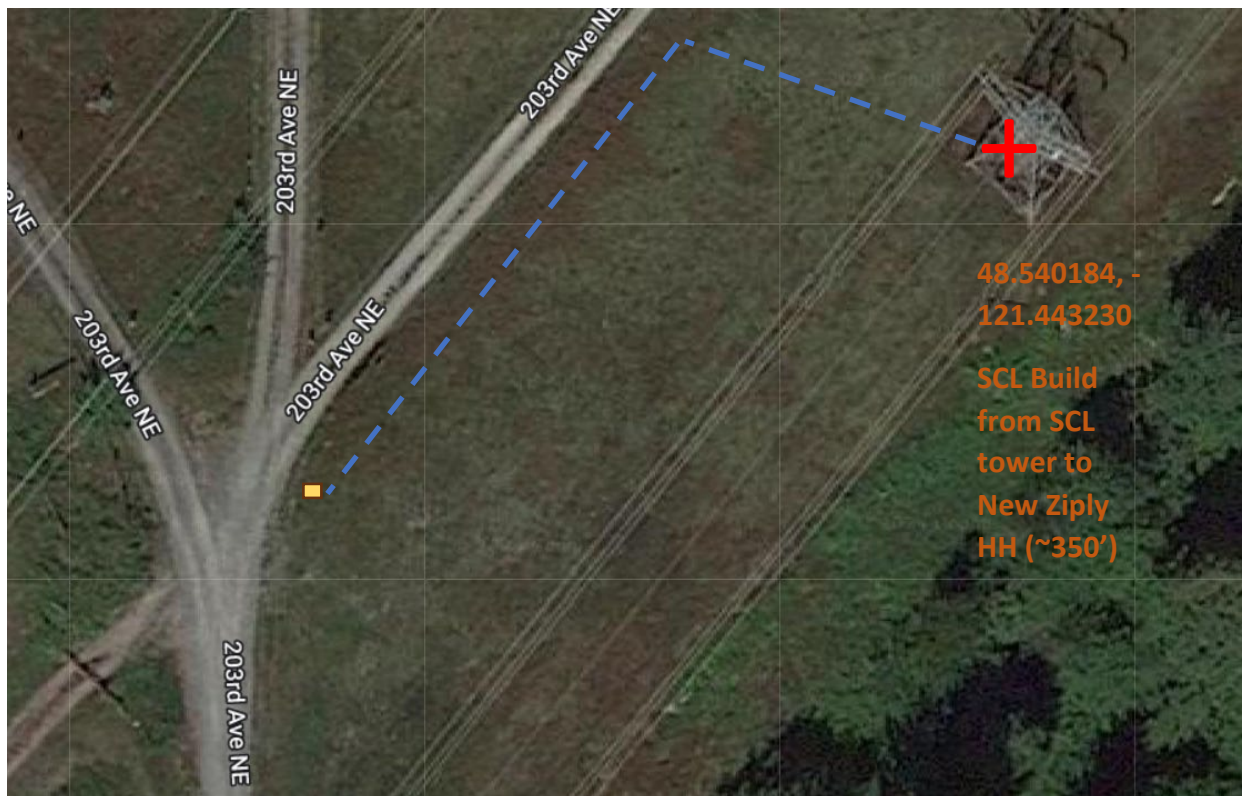
SCL equipment only. Cannot sub-lease without Ziplly authorization.

SCL shall provide patch through fiber capacity at the Bothell location for fiber cross connects.

48.233881, -121.954892



Detail:



Marblemount SCL Build (for illustration only – construction to be coordinated)

48.540184, -121.44323



Christian Camp Handoff (for illustration only – construction to be coordinated)

48.3404257, -121.5528689



EXHIBIT B

Fee Schedule

Exchange for mutual benefit in lieu of monetary fees for the network fiber inclusive of the defined rack space in Exhibit A:

Segment	Length (ft)
Ziply on SCL Fiber	720,938.857
Possible RDOF extension	27,169.160
Total	748,108.017

Segment	Distance (ft)
SCL on Ziply Fiber	572,201.638
SCL to Darrington on Ziply Fiber	138,477.433
Total	710,679.071

EXHIBIT C

Test Result Template