



City of Union

Agenda

Council Work Session Meeting

Monday, May 23, 2022 @ 6:00 PM

**Leonard Almquist Council Chambers, 342 S. Main St,
Union, OR 97883**

	Page
1. CALL TO ORDER AND ROLL CALL:	
Mayor:	Flint
Councilors:	Denton, Farmer, Hawkins, Cox, Richter and McMillan
2. PRESENTATIONS:	
3. UPCOMING BUSINESS DISCUSSIONS:	
3.1. LB 1 Budget Advertisement 22-23 LB1 Budget Hearing	2 - 3
3.2. LB 50 Property Tax Budget Document 22-23 LB 50 Property Tax Form	4
4. COMMITTEE DISCUSSIONS:	
5. ORDINANCE/CHARTER REVIEW:	
5.1. Ordinance/Code review Code Chapter 30-35	5 - 8
5.2. Ordinance 566 Ordinance 566 - Amend 565	9
5.3. Ordinance 567 Zipty Franchise Agreement (Approved Final Draft)	10 - 18
6. OTHER:	
7. ADJOURNMENT:	

**CITY OF UNION
NOTICE OF BUDGET HEARING
22/23 Budget Year**

A public meeting of the Union City Council will be held on June 13th, 2022 at 7:15 pm at the Leonard Almquist City Council Chambers, Union, Oregon. The purpose of this meeting is to discuss the budget for the fiscal year beginning July 1, 2022 as approved by the City of Union Budget Committee. A summary of the budget is presented below. A copy of the budget may be inspected or obtained at Union City Hall, between the hours of 10 am and 5pm (Monday-Thursday) or online at www.cityofunion.com. This budget is for an annual budget period from July 1, 2022 - June 30, 2023. This budget was prepared on a basis of accounting that is the same as the preceding year.

Contact: Doug Wiggins

Telephone: 541-562-5197

Email: admin@cityofunion.com

FINANCIAL SUMMARY - RESOURCES			
TOTAL OF ALL FUNDS	Actual Amount 2020-2021	Adopted Budget This Year 2021-2022	Proposed Budget Next Year 2022-2023
Beginning Fund Balance/Net Working Capital	2,955,857	3,294,060	3,869,488
Fees, Licenses, Permits, Fines, Assessments & Other Service Charges	2,590,832	1,696,210	1,652,160
Federal, State and all Other Grants, Gifts, Allocations and Donations	96,156	1,326,500	2,167,892
Revenue from Bonds and Other Debt			
Interfund Transfers / Internal Service Reimbursements	111,000	114,000	355,658
All Other Resources Except Current Year Property Taxes	7,796		
Current Year Property Taxes Estimated to be Received	287,501	155,000	290,000
Total Resources	6,049,142	6,585,770	8,335,198

FINANCIAL SUMMARY - REQUIREMENTS BY OBJECT CLASSIFICATION			
Personnel Services	658,416	797,048	884,459
Materials and Services	531,902	781,395	753,300
Capital Outlay	1,108,322	3,637,823	4,971,829
Debt Service	202,585	376,232	377,065
Interfund Transfers	111,000	114,000	355,658
Contingencies	2,818	273,000	269,500
Special Payments			
Unappropriated Ending Balance and Reserved for Future Expenditure	3,434,099	606,272	723,387
Total Requirements	6,049,142	6,585,770	8,335,198

FINANCIAL SUMMARY - REQUIREMENTS AND FULL-TIME EQUIVALENT EMPLOYEES (FTE) BY ORGANIZATIONAL UNIT OR PROGRAM *			
Name of Organizational Unit or Program FTE for that unit or program			
Administration	391,178	1,052,059	1,261,832
FTE	1.3	1.2	2.5
Public Safety	57,185	588,315	650,653
FTE	0.5	0.1	0.6
Parks	26,910	64,545	60,536
FTE	0.4	0.4	0.7
Court	1,230	3,650	2,950
FTE	0.0	0.0	0.0
Recycling	612	850	800
FTE	0.0	0.0	0.0
Planning	15,649	23,711	33,566
FTE	0.2	0.3	0.5
Water	553,435	1,854,450	2,758,532
FTE	2.6	2.7	3.0
Sewer	945,453	1,479,000	1,654,415
FTE	3.2	2.6	3.0
Systems Development	27,938.0	126,750.0	98,827.0
FTE	0.0	0.0	0.0
Street	216,389	634,150	994,854
FTE	1.3	1.5	1.7
Library	121,279	171,500	192,000
FTE	1.8	1.8	1.8
Ranger Station	16,192	39,650	38,350
FTE	0.1	0.1	0.2
Downtown Development	6,000	17,040	36,790
FTE	0.0	0.0	0.0
Fire	128,823	261,475	278,208
FTE (Volunteers)	0.8	0.8	0.7
Ambulance	106,769	268,625	272,885

CITY OF UNION
NOTICE OF BUDGET HEARING
22/23 Budget Year

FTE (Volunteers)	1.0	1.0	0.7
Total Requirements	2,615,042	6,585,770	8,335,198
Total FTE	13.2	12.4	15.4

STATEMENT OF CHANGES IN ACTIVITIES and SOURCES OF FINANCING *

There remains only two outstanding loans City. One for the new fire pumper and the second is the remaining loan on the wastewater treatment plant.

PROPERTY TAX LEVIES

	Rate or Amount Imposed 2020-2021	Rate or Amount Imposed This Year 2021-2022	Rate or Amount Approved Next Year 2022-2023
Permanent Rate Levy (rate limit <u>1.57</u> per \$1,000)	1.57	1.57	1.57
Library Special Tax Levy (rate limit <u>1.21</u> per \$1,000)	1.21	1.21	1.21

STATEMENT OF INDEBTEDNESS

LONG TERM DEBT	Estimated Debt Outstanding on July 1.	Estimated Debt Authorized, But Not Incurred on July 1
General Obligation Bonds	\$0	
Other Borrowings	\$1,271,015	
Total	\$1,271,015	

Notice of Property Tax and Certification of Intent to Impose a Tax, Fee, Assessment or Charge on Property

FORM LB-50 2022-2023

To assessor of UNION County

Check here if this is an amended form.

Be sure to read instructions in the Notice of Property Tax Levy Forms and Instruction booklet

The City of Union District Name has the responsibility and authority to place the following property tax, fee, charge or assessment on the tax roll of Union County Name County. The property tax, fee, charge or assessment is categorized as stated by this form.

PO Box 529 Mailing Address of District Union City OR State 97883 ZIP code 06/14/2021 Date

Doug Wiggins Contact Person City Administrator Title 541-562-5197 Daytime Telephone dougwiggins@cityofunion.cc Contact Person E-Mail

CERTIFICATION - You must check one box if your district is subject to Local Budget Law.

- The tax rate or levy amounts certified in Part I are within the tax rate or levy amounts approved by the budget committee.
- The tax rate or levy amounts certified in Part I were changed by the governing body and republished as required in ORS 294.456.

PART I: TAXES TO BE IMPOSED

		Subject to General Government Limits		
		Rate -or- Dollar Amount		
1.	Rate per \$1,000 or Total dollar amount levied (within permanent rate limit)	1	1.5752	
2.	Local option operating tax	2		Excluded from Measure 5 Limits Dollar Amount of Bond Levy
3.	Local option capital project tax	3		
4.	City of Portland Levy for pension and disability obligations	4		
5a.	Levy for bonded indebtedness from bonds approved by voters prior to October 6, 2001	5a.		
5b.	Levy for bonded indebtedness from bonds approved by voters on or after October 6, 2001	5b.		
5c.	Total levy for bonded indebtedness not subject to Measure 5 or Measure 50 (total of 5a + 5b)	5c.	0	

PART II: RATE LIMIT CERTIFICATION

6.	Permanent rate limit in dollars and cents per \$1,000	6	1.5752
7.	Election date when your new district received voter approval for your permanent rate limit	7	
8.	Estimated permanent rate limit for newly merged/consolidated district	8	

PART III: SCHEDULE OF LOCAL OPTION TAXES - Enter all local option taxes on this schedule. If there are more than two taxes, attach a sheet showing the information for each.

Purpose (operating, capital project, or mixed)	Date voters approved local option ballot measure	First tax year levied	Final tax year to be levied	Tax amount -or- rate authorized per year by voters
Library Levy (Mixed)	November 2017	2018-2019 FY	2022-2023 FY	1.21

Part IV. SPECIAL ASSESSMENTS, FEES AND CHARGES

Description	Subject to General Government Limitation	Excluded from Measure 5 Limitation
1		
2		

If fees, charges, or assessments will be imposed on specific property within your district, you must attach a complete listing of properties, by assessor's account number, to which fees, charges, or assessments will be imposed. Show the fees, charges, or assessments uniformly imposed on the properties. If these amounts are not uniform, show the amount imposed on each property.

The authority for putting these assessments on the roll is ORS _____ (Must be completed if you have an entry in Part IV)

Administrative Ordinance Committee Report

Chapter 30-35

Committee Members: Susan Hawkins, Leslie McMillan, Anita Davis

Chapter 30

30.25 Rework to include Work Session

Suggested:

Title: Regular Meeting and Work Session Dates, Rules and Regulations of Proceedings

30.25 A. Regular Business Meeting (City Council) No change in wording

B. Work Session-Include date of meeting and holiday exemptions and whether to include public comment, plus wording similar to as follows:

Council assembly held for the purposes of engaging in deliberations, discussions, considerations, reviews and evaluations of issues of interest to the entire council. A final action meaning the collective decision of the council or an actual vote by the council on a motion, proposal, order or ordinance shall not take place in a work session.

30.26 Special Council Meetings-question what is the definition of written notice? Does this need to be changed?

30.28 Agenda (change as follows)(Thinking is to keep all items in the agenda but not dictate where each falls within the meeting agenda)(This would eliminate 30.30 and 30.32)

A. The City Administrator (Only add the A. No Change in wording)

Add

B. Business for each regular meeting of the Council shall include the following:

Roll call and taking of attendance

Hearings and appointment

Public comment and communication

Old Business

New Business

Consent Agenda

Reports of officers and committees

Suggestions for future agenda

Adjournment

30.31 Business: Special Meetings

(Possible change; eliminate and put as B. under 30.26 no wording change)

30.32 Altering Order of Agenda

(Remove)

30.33 Order of Deliberations

(Possibly change the order so the public is able to have an idea of the discussion. Put public comment following the council discussion)

30.34 Rules of Conduct and Decorum

(D) Clear up removal of person and who is responsible

(E) Police Law Enforcement Agency make it clear and current

Chapter 31

31.05 Checking System

We felt the final sentence needs to be clarified, makes it sound as if the City Administrator and the Mayor have to sign checks. There are four authorized signers. Clarify who has to sign.

31.40 Chief of Police

Suggested to rewrite this section to reflect current law enforcement status.

31.42 Street Commissioner

Suggested rewrite as Ordinance Officer

Title: City Administrator

31.60 Office Created

Section C (Recheck wording on police department and make current)

Chapter 32

Library Board

32.02 Term of Office

Does this need reworking throughout?

D. (Suggestion: remove no more than two full consecutive terms We are small and have limited resources)

Volunteer Fire Department

32.22 Compension

Has this been reworked with our recent actions and not yet codified?

Planning Commission

32.42 Terms of Office; Vacancies

Is this still relevant or does it need reworking to current?

There seems to be an omission here. No mention of regular meeting times. Could be added to 32.46 as follows;

32.46 Rules and Regulations: Regular and Special Meetings

A. Regular Meetings # and when, description.

B. Special Meetings (include current A and B)

Chapter 33

33.02 Succession of Emergency Authority and Declaring an Emergency

Suggested changes below:

- 1. Mayor
- 2. President of Council
- 3. other elected?
- 4. City Administrator

May be others you want to add here

(Remove current 3-7 as they do not exist)

Chapter 34

34.01 Right to Jury Trail

Do we keep this or eliminate?

34.02-34.13 Eliminate all

34.31 Candidates' Declaration of Intention

A. Suggestion make compliant with current law

B. Last sentence is not consistent with Charter. Charter trumps an ordinance so needs to be changed.

34.32 Special Elections

Check if this is consistent with current law.

CITY OF UNION
STATE OF OREGON

In the Matter of an Ordinance
Amending the City of Union
Lodging Tax (Ordinance 565)

ORDINANCE NO. 566

WHEREAS, the City of Union passed Ordinance 565 on March 14, 2022, with the intent that it would be administered by the Oregon State Department of Revenue (ODOR); and,

WHEREAS, upon submission of the Ordinance 565 to the ODOR, it was discovered that some required language was missing for ODOR to administer the City of Union Lodging Tax; and,

WHEREAS, it will not be possible to begin enforcement of this Ordinance 565 by July 1, 2022.

NOW THEREFORE BE IT RESOLVED, the governing body for the City of Union amends Ordinance 565 as follows:

1. Section 2. Definitions, subsection K shall read as follows:

K. Tax Administrator means the City Administrator/Recorder, or their designee, which may include the Oregon Department of Revenue. If the city utilizes the Oregon Department of Revenue as its tax administrator, it will comply with ORS 305.620 in that it will follow the rules adopted by the Department of Revenue regarding the administration, collection, enforcement, and distribution of transient lodging taxes.

2. Section 9. Penalties and Interest, add subsection D to read as follows:

D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the City of Union's General Fund, earmarked for Economic Development and Tourism.

3. Enforcement of this Ordinance shall take effect upon the acceptance and administration by the ODOR.

First Reading: _____

Second Reading: _____

Dated the ____ day of _____, 2022

CITY OF UNION, CITY COUNCIL

Attest:

Mayor, Leonard Flint

Administrator, Doug Wiggins

NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT BETWEEN
THE CITY OF UNION AND ZIPLY FIBER NORTHWEST LCC

This Agreement is between the **City of Union**, an Oregon municipal corporation ("City") and **ZiPLY Fiber Northwest LLC**, a Delaware limited liability company ("Franchisee"), and is dated _____, 2022, ("Effective Date").

Section 1. Definitions.

Any terms defined in the Union Code and not in this Agreement have the meaning provided by the Union Code.

"Facilities" means the conduits, cables, optic fibers, poles, wires, vaults, fixtures, aboveground and underground lines, antennae, support mast and mounts, amplifiers, receivers, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, battery back-up units, and other physical components and related equipment of Franchisee's Telecommunication System that are in compliance with applicable laws, rules and regulations as required by Section 3.

"Gross revenue" shall have the same meaning as ORS 221.515.

"Telecommunications System" means all facilities owned, operated or used by Franchisee to provide telecommunication services, including voice, data and audio and video transmission services, and located in rights-of-way administered by the City.

Section 2. Grant of Authority.

City grants to Franchisee the right to construct, install, maintain and operate Facilities over, in, on, and under present and future City rights-of-way for the purpose of providing telecommunication services on the terms stated in this Agreement.

This Franchise is not exclusive. The City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Agreement. This Agreement is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City, and to the City's right to use and administer rights-of-way for any purpose.

Section 3. Compliance with Laws, Rules and Regulations.

Franchisee shall comply with all applicable federal, state and City laws, rules and regulations, including but not limited to Union Development Code, other provisions or revisions of the Union Code, and City ordinances. The locations and methods of installation and maintenance of all Franchisee's Facilities shall be subject at all times to regulation by the City (including City's ordinances, standards and specifications, and regulations on street cuts and use of rights-of-way or public easements). Franchisee must obtain right-of-way permits prior to installation or construction of Facilities. Franchisee must develop, site, construct, install, and at all times

maintain and operate all Facilities in accordance with telecommunications industry standards and City standards and specifications, including but not limited to Union Development Code and as directed by the City Engineer in accordance with the Union Code.

Section 4. Franchisee Liability, Indemnification of City, and Insurance.

A. Liability and Indemnification. Franchisee will defend, indemnify, and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury, including death, to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification does not apply to claims caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers.

Franchisee agrees that it is not an agent of the City and is not entitled to Indemnification and defense under ORS 30.285 and ORS 30.287.

B. Insurance. Franchisee must maintain, at Franchisee's expense during the term of this Agreement, commercial general liability and commercial automobile insurance covering bodily injury and property damage in an amount of \$1 million per occurrence and \$5 million in aggregate, which limits may be met by any combination of primary and excess or umbrella insurance. The insurance policies obtained by Franchisee shall be primary and non-contributory. Franchisee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Franchisee or its subcontractors and their officials, agents and employees in performance of this Agreement, even if not covered by, or in excess of insurance limits.

Commercial general liability coverage must name, by certificate and endorsement, the City, its officers, agents, employees and volunteers as additional insureds with respect to Franchisee's work or services conducted under this Agreement. Franchisee will require that its insurance carrier give the City 30 days' written notice of any cancellation of or reduction in insurance coverage. Any failure to comply with this provision will not affect the insurance coverage provided to City.

Franchisee must obtain and maintain workers' compensation insurance as required by ORS Chapter 656 and meeting the minimum requirements therein. Franchisee must ensure that each contractor and subcontractor obtains and maintains workers' compensation Insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the State of Oregon Workers' Compensation Division before performing work.

Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

As evidence of the insurance coverage required by this Agreement, Franchisee must provide a certificate of insurance and signed endorsement from the carrier(s). The certificate and

endorsement must provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to City. The certificate and endorsement must also state the deductible or self-Insured retention level. This Agreement will not be in effect until the required certificate and signed endorsement have been received and approved by City, which reasonable approval may not be withheld or delayed. Renewal endorsements will be provided to City upon receipt by Franchisee. The City may terminate this Agreement for failure to maintain the required insurance.

C. Waiver of Subrogation. Franchisee grants a waiver of subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery will be solely with its insurance carrier, and also grants to City, on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee, a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

Section 5. Performance Bond.

Before commencing any new construction or substantial improvement work in any right-of-way administered by the City, Franchisee must provide a performance bond in the amount of \$100,000, or a lesser amount as agreed to in writing by the City as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Franchisee. Franchisee must keep the bond in full force and effect during any activities that disturb the surface of any rights-of-way and for a period of at least one year after restoration of rights-of-way. The bond may be withdrawn one year after restoration of rights-of-way, but must be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond must be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

City may, in the event of any construction which is likely to be substantially greater than \$100,000, or in the event the City's cost to complete or repair the construction upon Franchisee's failure to perform the same would be greater than \$100,000, 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 Franchisee applies for permits to perform work within the city of Union. Franchisee must provide to City all necessary documentation demonstrating Franchisee's cost estimation in a format reasonably acceptable to City.

General maintenance or minor improvement work in the right of way shall be exempt from the requirement to post a performance bond.

Section 6. Construction and Conditions on Right-of-Way Occupancy.

A. Use. Franchisee must conduct its operations under this Franchise, including installation, construction, operations, and maintenance of Its Facilities, in compliance with all lawful

governmental regulations and in a safe, competent, and skillful manner so as not to present a danger to the public or City. Franchisee must construct, install, maintain and operate Its facilities in designated City rights- of-way to industry standards and City's commercially reasonable satisfaction, in compliance with all City ordinances, rules, standards and specifications, policies and regulations, in a manner so as to interfere as little as practicable with traffic and other use of rights of way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the rights of way, Including existing and future City services. All work in City right-of-way requires a permit and a traffic plan that is fully compliant with the City of Union codes regarding street standards prior to the start of any work.

B. Construction. Prior to beginning construction, Franchisee must obtain all necessary land use approvals and permits. When construction is complete, Franchisee must provide the City Engineer as-built drawings with a map showing the location of installed Facilities in City rights-of-way as required by City codes, standards and specifications, and building requirements. The City Engineer may require additional information on the as-built drawings.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing by Franchisee, Franchisee must, at its own cost and expense and in compliance with the City's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed. Franchisee warrants all restoration work for a period of one year from completion of the work. If Franchisee fails to make restoration as required by this section within a reasonable timeframe following written notice from City to Franchisee or If the restoration fails within the one year warranty period, City may cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee must comply with the requirements of Oregon Utility Notification Law and Implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities. If the removal or relocation of Facilities is caused directly by an identifiable development of property or other third-party project and the removal or relocation of Facilities occurs within the area to be developed, or is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer. Franchisee will be solely responsible for enforcing collection from the developer or customer. If the removal or relocation of Facilities results from City's need to provide public facilities, a City project, or is otherwise requested by City or is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Franchisee will remove or relocate Its Facilities at Franchisee's expense within a reasonable time frame after notification by City. City will make a reasonable effort to provide Franchisee with an alternate location for its Facilities within City rights-of-way.

In cases of capital improvement projects undertaken by City, Franchisee must convert existing overhead distribution Facilities to underground at Franchisee's expense if requested to do so by City. City agrees to comply with provisions of applicable law when requiring such conversion and to do so in a non-discriminatory manner. In the event that City receives third party funding for a City project or improvement to a City street that covers Franchisee's expenses, City will remit payment to Franchisee from the third party funding for reimbursement for Franchisee's relocation expenses.

F. Placement of Facilities. Franchisee will not knowingly place its Facilities where they will interfere with any existing or future City utility, gas, electric, or telephone fixture or power, sanitary sewer, storm sewer, or water facility. Franchisee must consult with City Engineer prior to placement of Facilities, and will comply with all City ordinances, policies, rules, and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right-of-way in the city of Union, Franchisee must also locate or relocate its facilities underground.

G. Temporary Rearrangement of Facilities. Franchisee must, consistent with City policies, ordinances, rules, and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the person or entity wishing to move the building or other object makes a reasonable arrangement to reimburse Franchisee for its expenses in rearranging its Facilities. Nothing In this section precludes City from requiring Franchisee to move its Facilities at Franchisee's expense when public convenience requires the move.

Section 7. Transfer of Franchise.

Franchisee may not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this Franchise or in the Facilities authorized by this Agreement, or any part of the Facilities, without prior written approval of City, which approval will not be unreasonably withheld. The City may impose reasonable conditions on any such approval, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Agreement. Any transfer of Franchisee's assets to another carrier which is approved by the Oregon Public Utilities Commission will receive automatic approval by the City. City has the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Use of Franchisee's Facilities by third parties shall not constitute an assignment or transfer of privileges for purposes of this Agreement.

Section 8. City Rights in Franchise.

A. City Supervision and Inspection. City has the right to supervise all construction or Installation of Franchisee's Facilities subject to the provisions of this Agreement and make such inspections as it finds necessary to ensure compliance with governing laws, ordinances, rules, and regulations.

B. Termination or Abandonment of Agreement. Upon any termination of this Agreement, all Facilities installed or used by Franchisee must be removed by Franchisee at Franchisee's expense and the property upon which the Facilities were used restored by Franchisee to the condition it was in before installation.

C. Co-location. Franchisee must offer the City the opportunity to co-locate City conduit and lines in trenches dug by Franchisee in City rights-of-way and may charge City only any incremental additional costs incurred in making the trenches available for City use.

Section 9. Franchise Fee.

A. Except to the extent prohibited or limited by federal or state law or regulation, Franchisee must pay quarterly to City the sum of 7.0% of Franchisee's Gross Revenues.

1. The fee required by this section is due and payable within 60 days after the end of each calendar quarter. Any payment not made when due will bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid.

2. With each payment, Franchisee must furnish City with a written statement executed under oath by an officer of Franchisee, verifying the amount of Gross Revenues of Franchisee within the City of Union for the quarterly period covered by payment.

3. City's acceptance of any payments due under this section will not be considered a waiver by City of any breach of this Agreement.

4. Franchisee agrees and covenants that it will not challenge the validity of the franchise fees under this Agreement as long as they do not exceed the maximum amounts established by applicable statutes.

B. Except to the extent prohibited by Federal or State law, the Franchise Fee is in addition to any permit fee required to comply with Section 3.

Section 10. Franchisee Records and Reports

Franchisee must keep accurate books of financial accounts at an office within the state of Oregon throughout the term of this Agreement and for three years after the expiration or termination of this Agreement. Franchisee must produce all books and records directly concerning its Gross Revenues and other financial information reasonably necessary by City for purposes of calculation of the franchise fee for inspection by City, upon no less than 10 days prior written notice, during normal working hours. City may require periodic reports from Franchisee relating to its operation within the boundaries of the City of Union. City has the right during the term of this Agreement or within 180 days thereafter to conduct audits of Franchisee's records for the three years prior to the audit. If the audit reveals intentional non-payment of the fee, the City may expand the audit to cover up to 25 years. Such audits will be undertaken by a qualified person or entity selected by City. The cost of any such audit will be borne by City, unless the results of any such audit reveal an underpayment of more than 8% of

the franchise fee for the period audited. In the case of such underpayment, Franchisee must pay the full cost of such audit. Franchisee must immediately pay the amount of the underpayment as determined by such audit to City together with 12% per annum interest from the date such payment should have been made to the date the payment is actually made.

Any audit information obtained by City under these provisions will be kept confidential to the maximum extent allowed by Oregon law, except that this obligation does not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Agreement is at issue.

Section 11. Permit and Inspection Fees,

Nothing in this Agreement may be construed to limit the right of City to require Franchisee to pay reasonable costs incurred by City in connection with the issuance of a license or permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities, whether pursuant to this Agreement or any ordinance or regulation, subject to any limitation Imposed by Federal or state law.

Section 12. Enforcement and Termination of Agreement for Violation.

A. Default. Time of payment and performance are of the essence in the Agreement The following are events of default:

- 1. Default In Payments.** The failure of Franchisee to pay City when due any amounts required by the Agreement pursuant to Section 9 and such failure continues for a period of 10 days after the due date.
- 2. Default in Other Covenants.** The failure of Franchisee to perform any of the covenants and conditions required by this Agreement to be kept and performed by Franchisee, and such failure continues for a period of 30 days after notice from City of such failure. Upon the occurrence of an event of default, Franchisee must pay to City the sum of \$200 per day for each day the default continues along with any additional damages suffered by City as a result of Franchisee's default.

B. The City may terminate this Agreement for defaults that are not cured within the time allowed by providing 30 days' notice to Franchisee of its intent to terminate. Franchisee may avoid termination by completely curing the default(s), including payment of the penalty required by Subsection A.2 of this section, unless the notice of termination is the third notice of termination within a 12 month period. Franchisee may challenge a notice of termination by providing a written protest to the City Manager within 10 business days of the date of the notice of termination. The City Manager, on receipt of the protest shall either grant the protest, in which case the Agreement will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after the decision by the City Manager or City Council.

Section 13. Remedies not Exclusive; Waiver.

All remedies granted to the City under this Agreement are cumulative, and recovery or enforcement of one remedy is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this Agreement are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this Agreement may not be construed as a waiver of a breach of any other term, condition or obligation of this Agreement.

Section 14. Franchise Term.

This Franchise is granted for a term of ten years beginning the Effective Date ("Initial Term") and will automatically renew for two successive terms of ten years (each a "Renewal Term") unless notice of termination is provided. Franchisee and City may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least 60 days prior to the end of the Initial Term or relevant Renewal Term. If notice of termination is provided, the parties may negotiate a new franchise agreement. In the event the City adopts code provisions, regulations or standards and specifications applicable to this Franchise or if state or federal legislation or regulation affects any provision of this Franchise, the Parties, at the request of either Party, may request renegotiation of the Franchise to reflect the changes in law or regulation.

Section 15. Severability.

If any section, subsection, sentence, clause or portion of this Agreement becomes for any reason invalid or if any such portion of this Agreement is rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this Agreement.

Section 16. Notices.

Any notice required or permitted under this Agreement shall be deemed given when received or when deposited with the United States Postal Service, postage prepaid and sent as registered or certified mail addressed as follows:

TO CITY: City Administrator, City of Union
 PO Box 529
 Union, OR 97883

TO FRANCHISEE: Zipty Fiber
 Attn: Legal Department
 135 Lake Street South, Suite 155
 Kirkland, WA 98033

legal@ziply.com

or to such other address as may be specified from time to time by either party in writing. The primary contacts may be changed at any time by a written communication, including email, without the need for formal notice.

Section 17. Interpretation / Jurisdiction.

Interpretation of the Agreement shall be governed by laws of the State of Oregon and any legal action relating to this Agreement must be brought in the state or federal courts located in Union County.

Section 18. Attorney Fees.

If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

Section 19. Entire Agreement / Amendment.

This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

This Agreement may be amended only by an instrument in writing executed by all the parties.

City of Union:

Zipty Fiber Northwest, LLC, Franchisee:

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____