

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING A NON-EXCLUSIVE MASTER PERMIT TO EZEE FIBER Washington Assets, LLC, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING TELECOMMUNICATIONS TRANSMISSION LINES IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Ezee Fiber Washington Assets, LLC, (“EZZE FIBER”) is a competitive telecommunications company providing communications and telecommunications services; and

WHEREAS, EZZE FIBER’s route through the City of Olympia (“City”) requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

WHEREAS, EZZE FIBER has applied to the City for a telecommunications master use permit pursuant to Olympia Municipal Code (“OMC”) chapter 11.06. EZZE FIBER, a Delaware limited liability company, holds a Competitive Telecommunications Company Registration Certificate issued by the Washington Utilities and Transportation Commission; and

WHEREAS, the City Council held a public hearing on June 23, 2026, where it was presented with information demonstrating that EZZE FIBER satisfies the requirements set forth in OMC 11.06.020. In particular, the City Council was presented with information confirming and demonstrating the following: That EZZE FIBER has submitted all required licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by EZZE FIBER. That the capacity of the public ways can accommodate EZZE FIBER’S Facilities if the Master Permit is granted. That the City’s rights-of-way will accommodate additional utility and facilities if the Master Permit is granted. That EZZE FIBER confirms that there are currently no additional Facilities planned and there is no anticipated damage or disruption to the City’s rights-of-way. That construction of additional Facilities will comply with the City’s Engineering Design and Development Standards (“EDDS”). That there will be minimal effect, if any, on public health, safety, and welfare if the Master Permit requested is granted. That the proposed route of EZZE FIBER’s Facilities is appropriate; an alternate route is not needed. And that EZZE FIBER has agreed to comply with all federal, state, and local telecommunications laws, regulations, and policies; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate nonexclusive Master Permits, for the use of public streets, rights-of-way, and other public property, for transmission of communications; and

WHEREAS, the insurance provisions of this Master Permit are updated and supersede the insurance provisions set forth in OMC 11.10.220; and

WHEREAS, this Master Permit contains the following:

- Section 1. Non-exclusive Master Permit Granted
- Section 2. Authority
- Section 3. Master Permit Term

Section 4. Acceptance of Terms and Conditions

Section 5. Construction Provisions and Standards

- A. Permit Required
- B. Coordination
- C. Construction Standards
- D. Underground Installation Required
- E. Relocation.
- F. Removal or Abandonment
- G. Bond
- H. "One-Call" Location & Liability
- I. As-Built Plans Required
- J. Recovery of Costs
- K. Vacation

Section 6. Master Permit Compliance.

- A. Master Permit Violations
- B. Emergency Actions.
- C. Other Remedies
- D. Removal of System

Section 7. Insurance

Section 8. Other Permits & Approvals

Section 9. Transfer of Ownership.

Section 10. Administrative Fees.

Section 11. Notices.

Section 12. Indemnification.

Section 13. Severability

Section 14. Reservation of Rights

Section 15. Police Powers

Section 16. Future Rules, Regulations, and Specifications

Section 17. Effective Date

Section 18. Law and Venue

Section 19. Ratification

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Non-exclusive Master Permit Granted.

A. The City hereby grants to EZEE FIBER, subject to the terms and conditions of this Ordinance ("Master Permit"), the rights to construct, replace, repair, monitor, maintain, use, and operate the Facilities (as defined in OMC 11.02.020 O) necessary for an underground telecommunications transmission system, within the City-owned rights-of-way generally described in Exhibit A, and referred to as the "Master Permit Area."

B. The rights granted by this Master Permit are not exclusive to EZEE FIBER and the granting of this Master Permit does not in any way prohibit or limit the City's ability or authority to grant other Master Permits or rights along, over, or under the Master Permit area, provided that such other uses do not unreasonably interfere with EZEE FIBER's exercise of the rights granted in this Master Permit, as determined by the City. This Master Permit does not allow for interference with existing utilities or in

any way limit, prohibit, or prevent the City from using the Master Permit Area, and does not in any way affect the City's jurisdiction over that area.

Section 2. Authority. The City Manager or the City Manager's designee is hereby granted the authority to administer and enforce the terms and conditions of this Master Permit, and may develop such rules, policies, and procedures as deemed necessary to carry out this Master Permit.

Section 3. Master Permit Term. This Master Permit is effective for a period of five years from the effective date of this Ordinance. The effectiveness of this Master Permit is contingent upon EZEE FIBER's delivery of a written acceptance to the City pursuant to Section 4 of this Master Permit. If EZEE FIBER requests a Master Permit renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this Master Permit beyond the expiration date to allow processing of the renewal. If the City elects to extend the term of this Master Permit, the City shall provide written notice of the extension to EZEE FIBER prior to the expiration date.

Section 4. Acceptance of Terms and Conditions. As required by OMC 11.10.020, EZEE FIBER shall, within 30 days of the effective date of this Ordinance or within such other time period as is mutually agreed by the parties, deliver to the City Manager for filing an unconditional acceptance of this Master Permit in the form attached as Exhibit B. EZEE FIBER's failure to deliver the acceptance within this time period voids and nullifies this Master Permit and terminates any and all rights granted under this Master Permit.

Section 5. Construction Provisions and Standards. EZEE FIBER shall abide by the following construction provisions and standards, and EZEE FIBER's failure to abide by any of the following construction provisions and standards constitutes non-compliance with the terms and conditions of this Master Permit and may result in imposition of some or all of the remedies specified in Section 6.

A. Permit Required. Neither EZEE FIBER, nor any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction, may perform any construction, installation, maintenance, repair, or restoration activities (except for emergency repairs) in the Master Permit Area without first obtaining appropriate permits from the Community, Planning, and Economic Development Department (CPED). In case of an emergency, EZEE FIBER shall within 24 hours of the emergency, obtain a permit from CPED.

B. Coordination. All construction, installation, maintenance, repair, or restoration activities are subject to City inspection and approval, as provided in the OMC. EZEE FIBER shall arrange and allow for such inspection. EZEE FIBER shall coordinate all construction, installation, maintenance, repair, or restoration activities and inspections with CPED to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances.

C. Construction Standards. EZEE FIBER, and any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction, shall perform all construction, installation, maintenance, repair, and/or restoration activities within the Master Permit Area so as to produce the least amount of interference with the free passage of pedestrian, bicycle, and vehicular traffic. EZEE FIBER, and any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction, shall perform all construction, installation, maintenance, repair, and/or restoration activities in conformance with the EDDS and with Title 11 of the OMC.

D. Underground Installation Required. EZEE FIBER, and any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction, shall install any new Facilities underground unless otherwise exempted from this requirement, in writing, by the City Manager, or the City Manager's designee.

E. Relocation.

1. EZEE FIBER shall, at its own expense, temporarily or permanently remove, relocate, place underground, change, or alter the position of any of its Facilities within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any City or other public improvement in or upon the rights-of-way. EZEE FIBER may seek reimbursement for relocation expenses from the City as provided for in the OMC.
2. EZEE FIBER may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must include the use and operation of temporary transmitting facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise EZEE FIBER in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, EZEE FIBER shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by EZEE FIBER full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, EZEE FIBER shall relocate its Facilities as otherwise provided in this Section.

F. Removal or Abandonment. Upon the removal from service of any of EZEE FIBER's Facilities, EZEE FIBER shall comply with all applicable standards and requirements prescribed by the OMC and the EDDS for the removal or abandonment of the Facilities. No Facilities constructed or owned by EZEE FIBER may be abandoned without the express written consent of the City.

G. Bond. Before undertaking any of the construction, installation, maintenance, repair, or restoration activities authorized by this Master Permit, EZEE FIBER shall upon the request of the City, furnish a bond executed by EZEE FIBER and a corporate surety authorized to operate a surety business in the State of Washington, in an amount determined by the City as sufficient to ensure performance of EZEE FIBER's obligations under this Master Permit. At EZEE FIBER's sole option, EZEE FIBER may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of bond or alternate security must be in the form reasonably acceptable to the City. The bond must be conditioned so that EZEE FIBER shall observe all the terms and conditions and shall faithfully perform all of the obligations of this Master Permit, and to repair or replace any defective work or materials discovered in the City's roads, streets, or property. EZEE FIBER may not encumber a bond required by this Section for any other purpose.

H. "One-Call" Location & Liability. EZEE FIBER shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate any of its Facilities upon request. The City is not liable for any damages to EZEE FIBER's Facilities or for interruptions in service to EZEE FIBER's customers which are a direct result of work performed for any City project for which EZEE FIBER has failed to properly locate its Facilities within the prescribed time limits and guidelines established by One-Call. The City is also not liable for any damages to EZEE FIBER's Facilities or for interruptions in service to EZEE FIBER's customers resulting from work performed under a permit issued by the City.

I. As-Built Plans Required. EZEE FIBER shall maintain accurate engineering plans and details of all Facilities installed within the City limits and shall, at the City's request, provide such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any construction, installation, maintenance, repair, or restoration activities performed by EZEE FIBER, or any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction, pursuant to this Master Permit. The City shall determine the acceptability of any as-built submittals provided under this Section.

J. Recovery of Costs. EZEE FIBER is subject to all permit fees associated with activities undertaken through the authority granted in this Master Permit or under other ordinances of the City. Where the City incurs costs and expenses for review or inspection of activities undertaken through the authority granted in this Master Permit or any ordinances relating to the subject for which permit fees have not been established, EZEE FIBER shall pay such reasonable costs and expenses directly to the City.

K. Vacation. If, at any time, the City vacates any City road, right-of-way, or other City property which is subject to rights granted by this Master Permit and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 30 days written notice to EZEE FIBER, terminate this Master Permit with reference to such City road, right-of-way, or other City property vacated, and the City is not liable for any damages or loss to EZEE FIBER by reason of such termination other than those provided for in RCW chapter 35.99.

Section 6. Master Permit Compliance.

A. Master Permit Violations. If EZEE FIBER fails to fully comply with any of the provisions of this Master Permit, the City may provide written notice to EZEE FIBER, which describes the violation(s) of the Master Permit and requests remedial action within 30 days of receipt of the violation notice. If EZEE FIBER has not remedied the violation(s) identified in the violation notice at the end of the 30-day period following receipt of the violation notice, the City may declare an immediate termination of this Master Permit, provided that remedying the violation(s) was reasonably possible within that 30-day period. If the violation(s) identified in the violation notice could not possibly be remedied within the 30-day period, the City may declare an immediate termination of this Master Permit at the end of the period in which the violation could possibly have been remedied.

B. Emergency Actions.

1. If the City determines that any of EZEE FIBER's actions, or any failure by EZEE FIBER to act to correct a situation caused by EZEE FIBER, creates a threat to life or property, the City may order EZEE FIBER to immediately correct the threat or, at the City's discretion, the City may act to correct the threat; provided that, when possible, the City shall notify EZEE FIBER and give EZEE FIBER an opportunity to correct the threat before the City acts to correct the threat. EZEE FIBER is liable to the City for all costs, expenses, and damages resulting to the City from the threat or incurred by the City in acting to correct the threat to the extent that the threat was caused by EZEE FIBER. EZEE FIBER shall reimburse the City for any such costs within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by EZEE FIBER to take appropriate action to correct a threat caused by EZEE FIBER and identified by the City is a violation of this Master Permit.

2. If during construction, installation, maintenance, repair, or restoration of any of EZEE FIBER's Facilities any damage occurs to an underground facility, and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, EZEE FIBER or any person or entity working on EZEE FIBER's behalf or at EZEE FIBER's direction shall immediately call 911 or other local emergency response number.

C. Other Remedies. Nothing contained in this Master Permit limits the City's available remedies in the event of EZEE FIBER's failure to comply with this Master Permit, including the City's right to a lawsuit for specific performance, or damages, or both.

D. Removal of System. In the event that this Master Permit is terminated as a result of violations of this Master Permit, EZEE FIBER shall at its sole expense, promptly remove all Facilities, provided that the City, at its sole option, may allow EZEE FIBER to abandon some or all of its Facilities in place.

Section 7. Insurance.

A. EZEE FIBER shall maintain liability insurance written on an occurrence form during the full term of this Master Permit for bodily injuries and property damages. The policy must contain coverage in the amounts and conditions set forth in subsection D of this Section.

B. Such insurance must specifically name, as additional insured, the City, its officers (including its elected and appointed officials), employees, and agents (including its representatives, consultants, engineers, and volunteers); must apply as primary insurance; must stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder; and must further provide that the policy may not be modified or canceled during the term of this Master Permit without giving advanced written notice to the City. Notice must be by certified mail to the City Manager, return receipt requested.

C. If the City determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be acquired. The City shall provide written notice should the City exercise its right to require additional insurance.

D. EZEE FIBER shall grant, secure, and maintain the following liability insurance policies insuring both EZEE FIBER and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured parties against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights granted to EZEE FIBER:

1. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
 - a. \$3,000,000.00 for bodily injury or death to each person;
 - b. \$3,000,000.00 for property damage resulting from any one accident; and
 - c. \$5,000,000.00 per occurrence.

2. Automobile liability for owned, non-owned, and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident;
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
4. Comprehensive form premises, operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00;
5. The liability insurance policies required by this Section must be maintained by EZEE FIBER throughout the term of the Master Permit and such other period of time during which EZEE FIBER is operating without an authorization or is engaged in the removal of its Facilities. EZEE FIBER shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Facilities pursuant to this Master Permit. Any deductibles or self-insured retentions must be declared to and approved by the City. EZEE FIBER shall pay and is solely responsible for any deductibles and self-insured retentions. The liability insurance policies required by this Section must contain a clause stating that coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. EZEE FIBER's insurance must be primary insurance as respects the City, its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers is in excess of EZEE FIBER's insurance and does not contribute with it; and
6. In addition to the coverage requirements set forth in this Section, the insurance certificate must state that should any of the required insurance be cancelled or not renewed, advanced written notice must be provided to the City Manager of such intent to cancel or not to renew. Within 30 days after receipt by the City of said notice, and in no event later than five days prior to said cancellation or intent not to renew, EZEE FIBER shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 8. Other Permits & Approvals. Nothing in this Agreement relieves EZEE FIBER from any obligation to obtain approvals or permits from applicable federal, state, and City authorities for all activities in the Master Permit Area.

Section 9. Transfer of Ownership.

A. EZEE FIBER may not sell, transfer, assign, or otherwise encumber its rights provided by this Master Permit without the prior written consent of the City, which the City may not unreasonably withhold or delay. The City's consent is not required where EZEE FIBER's transfers or assigns its rights under this Master Permit for the purpose of securing a debt, or where the transfer or assignment is to another person or entity controlling, controlled by, or under common control with EZEE FIBER. EZEE FIBER may license the use of its Facilities to other users without the consent of the City, but EZEE FIBER remains solely responsible for complying with the terms and conditions of this Master Permit.

B. In any sale, transfer, or assignment of this Master Permit which requires the City's consent, EZEE FIBER shall demonstrate to the City's satisfaction that the recipient of such sale, transfer, or assignment has the technical ability, financial capability, and any other legal or general qualifications reasonably determined by the City to be necessary to ensure that the recipient can meet the terms and conditions of this Master Permit. The City Council's consideration of the qualifications of any proposed recipient will occur in a public hearing and the City Council will approve or deny the sale, transfer, or assignment by resolution. EZEE FIBER shall, within 30 days of any sale, transfer, or assignment, of this Master Permit reimburse the City for any actual and reasonable administrative costs incurred by the City in approving the sale, transfer, or assignment.

Section 10. Administrative Fees.

A. The City is precluded from imposing Master Permit fees for "telephone businesses," as defined in RCW 82.16.010, except that fees may be collected for administrative expenses related to a Master Permit. EZEE FIBER hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010.

B. EZEE FIBER is subject to a reasonable administrative fee for reimbursement of costs associated with the preparation, processing, and approval of this Master Permit and for reimbursement of administrative costs for issuing any permits and for inspecting, monitoring, or supervising any actions required under Section 5 above. These costs include wages, benefits, overhead expenses, equipment, and supplies associated with such tasks as plan review, site visits, meetings, negotiations, and other functions critical to proper management and oversight of City's right-of-way. Administrative fees exclude normal permit fees as provided in Title 11 of the OMC.

C. In the event EZEE FIBER submits a request for work beyond the scope of this Master Permit, or submits a complex project that requires significant plan review or inspection, EZEE FIBER shall reimburse the City for costs incurred by the City associated with the request or project. EZEE FIBER shall pay such costs within 30 days of receipt of an invoice from the City.

D. Failure by EZEE FIBER to make full payment of invoices within the time specified is grounds for the termination of this Master Permit.

E. EZEE FIBER shall establish a permanent security fund with the City by depositing the amount of Twenty Thousand Dollars and No Cents (\$20,000.00), or such lesser amount as deemed necessary by the Community Planning and Economic Development Director, with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund will be maintained at the sole expense of EZEE FIBER so long as any of EZEE FIBER's Facilities are located within the right-of-way of the City or upon City property.

F. The fund serves as security for the full and complete performance of this Chapter, including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to EZEE FIBER to comply with the codes, ordinances, rules, regulations, or permits of the City.

G. Before any sums are withdrawn from the security fund, the City shall give written notice to the EZEE FIBER:

1. Describing the act, default, or failure to be remedied, or the damages, costs, or expenses which the City has incurred by reason of EZEE FIBER's act or default;

2. Providing a reasonable opportunity for EZEE FIBER to first remedy the existing or ongoing default or failure, if applicable;
3. Providing a reasonable opportunity for EZEE FIBER to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
4. That EZEE FIBER will be given an opportunity to review the act, default, or failure described in the notice with the City or the City's designee.

H. EZEE FIBER shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

Section 11. Notices. Each party shall deliver any notice to be served on the other party to the following addresses:

CITY:

City of Olympia
ATTN: City Manager
PO Box 1967
Olympia WA 98507

With a copy to:

City of Olympia
ATTN: City Attorney
PO Box 1967
Olympia WA 98507

EZEE FIBER:

Ezee Fiber Washington Assets, LLC
ATTN: SVP, Government Affairs
5959 Corporate Dr., Ste. 2000
Houston, TX 77036

With a copy to:

Ezee Fiber Washington Assets, LLC
ATTN: Legal Department
5959 Corporate Dr., Ste. 2000
Houston, TX 77036

Section 12. Indemnification.

EZEE FIBER hereby releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by EZEE FIBER's own employees to which EZEE FIBER might otherwise be immune under Title [51](#) RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of EZEE FIBER, its agents, servants, officers, or employees in performing under this master permit are the proximate cause. EZEE FIBER further releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by EZEE FIBER's own employees, including those claims to which EZEE FIBER might otherwise have immunity under Title [51](#) RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of EZEE FIBER's exercise of the rights granted in this master permit, or by virtue of the City's permitting EZEE FIBER's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by EZEE FIBER, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this master permit, or pursuant to any other permit or approval issued in connection with this master permit, or lease. This covenant of indemnification includes claims against the City arising as a result of the negligent acts or omissions of EZEE FIBER, its agents, servants, officers, or employees in barricading, instituting trench safety systems, or providing other adequate warnings of

any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this authorization, master permit, or lease.

Inspection or acceptance by the City of any work performed by EZEE FIBER at the time of completion of construction is not grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations extends to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that EZEE FIBER refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained in this master permit, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of EZEE FIBER, then EZEE FIBER shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees, and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of EZEE FIBER, and the City, its officers, employees, and agents, EZEE FIBER's liability hereunder is only to the extent of EZEE FIBER's negligence. It is further specifically and expressly understood that the indemnification provided in this section constitutes EZEE FIBER's waiver of immunity under Title [51](#) RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section survive the expiration or termination of this master permit.

Notwithstanding any other provisions of this Section, EZEE FIBER assumes the risk of damage to its facilities located in the City's rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. EZEE FIBER releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of EZEE FIBER's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the rights-of-way, easements, or property subject to this authorization, master permit, or lease, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors. EZEE FIBER further agrees to indemnify, hold harmless and defend the City against any claims for damages, including business interruption damages and lost profits, brought by or under users of EZEE FIBER's Facilities as the result of any interruption of service due to damage or destruction of the user's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

Section 13. Severability. If a court with proper jurisdiction holds that any section, sentence, clause, or phrase of this Master Permit is legally invalid, the City may, at its sole option, deem the entire Master Permit to be affected and thereby nullified, or the City may elect to treat the portion declared invalid as severable and enforce the remaining provisions of this Master Permit. If the City elects to enforce the remaining provisions of this Master Permit, EZEE FIBER may elect to terminate this Master Permit.

Section 14. Reservation of Rights. This Master Permit is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Master Permit or any local ordinance which may conflict with or violate the law is invalid and unenforceable, whether enacted before or after the effective date of this Master Permit, it being the intention of the parties to preserve their respective rights and remedies under the law, and that this Master Permit does not constitute a waiver of any rights or obligations by either party under the law.

Section 15. Police Powers. Nothing contained in this Master Permit affects the City's authority to exercise its police powers. EZEE FIBER does not by this Master Permit obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Master Permit. This Master Permit and the permits issued for work related to this Master Permit are governed by applicable City ordinances in effect at the time of application for such permits.

Section 16. Future Rules, Regulations, and Specifications. EZEE FIBER acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to EZEE FIBER, thereafter govern EZEE FIBER's activities under this Master Permit; provided, however, that in no event may regulations:

A. Materially interfere with or adversely affect EZEE FIBER's rights pursuant to and in accordance with this Master Permit; or

B. Be applied in a discriminatory manner as it pertains to EZEE FIBER and other similar user of such facilities.

Section 17. OMC Title 18 Chapters Incorporated. Pursuant to OMC 11.10.340, The chapters of Title 18 of the Olympia Municipal Code are incorporated into this master permit. However, in the event of any conflict between the chapters of Title 18 OMC and this master permit, this master permit prevails.

Section 18. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 19. Effective Date. The City shall cause this Master Permit, or a summary, to be published in the official newspaper of the City, and this Master Permit takes effect five days after passage and publication as provided by law. Effectiveness of this Master Permit is subject to EZEE FIBER's acceptance of this Master Permit, as required by Section 4, above.

Section 20. Law and Venue. This Master Permit is issued under the laws of the State of Washington, and the exclusive forum for any dispute arising out of or relating to this Master Permit is in Thurston County state Superior Court.

Section 21. Ratification. Any act consistent with the authority and prior to the effective date of this Master Permit is hereby ratified and affirmed.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

ATTACHMENTS: ***EXHIBIT A**, EZEE FIBER Washington Assets, LLC system map (combination EZEE FIBER/ facilities)*
 ***EXHIBIT B**, Master Permit Acceptance Form,*
 EZEE FIBER Washington Assets, LLC

EXHIBIT A

Ezee Fiber's Proposed Service Area

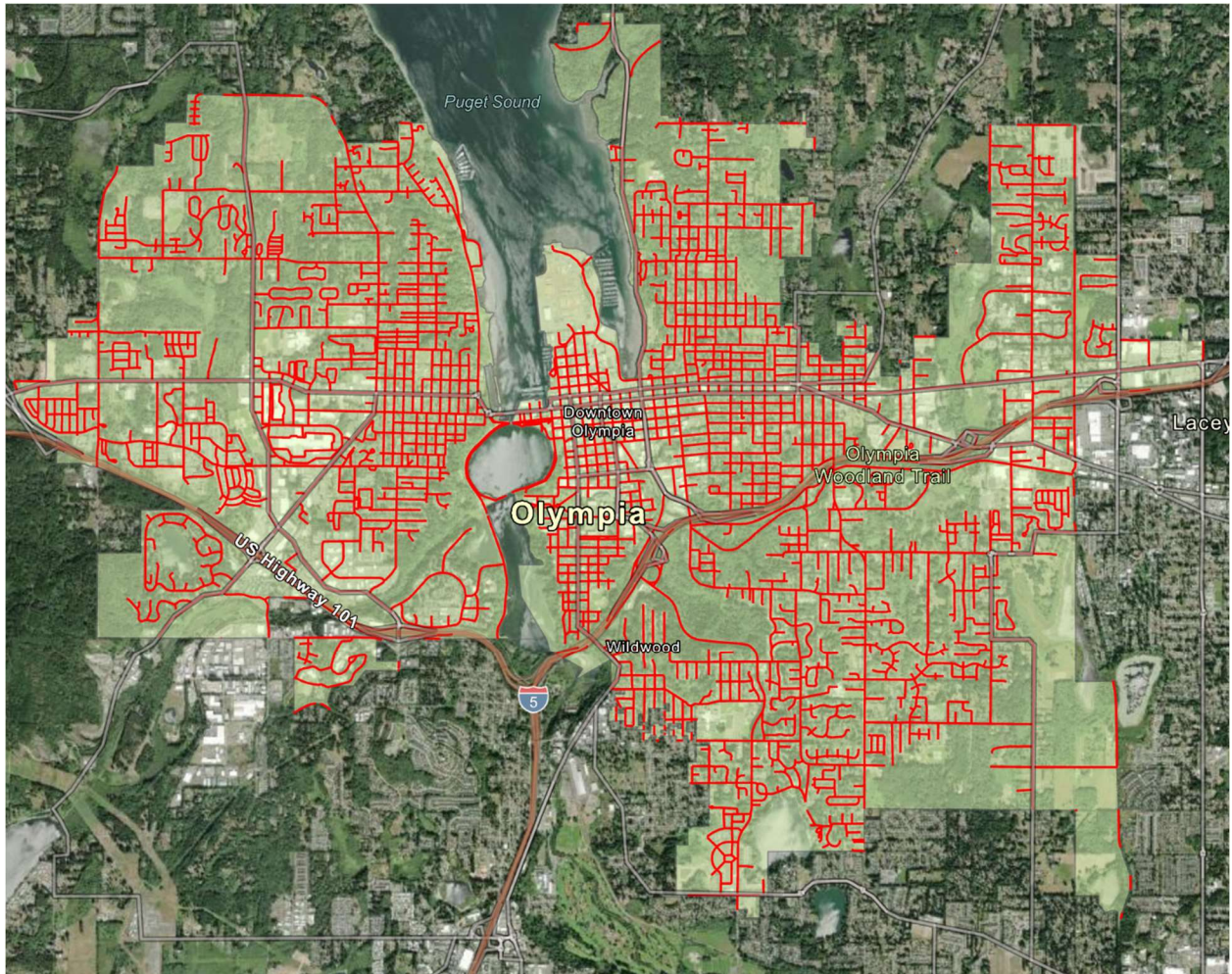


EXHIBIT B
MASTER PERMIT ACCEPTANCE FORM
EZEE FIBER Washington Assets, LLC

Date: _____

City of Olympia
City Clerk's Office
PO Box 1967
Olympia, WA 98507

Re: Ordinance No. _____
Adopted _____

In accordance with and as required by Section 4 of the City of Olympia Ordinance referenced above, EZEE FIBER Washington Assets, LLC hereby unconditionally accepts the terms, conditions, and obligations to be complied with or performed by it under the Master Permit.

I certify that I am duly authorized to execute this acceptance on behalf of EZEE FIBER Washington Assets, LLC.

Signature

Printed Name and Title