

**AGREEMENT BETWEEN SNOHOMISH COUNTY AND ZIPLY FIBER
FOR THE RELOCATION OF FACILITIES TO ACCOMMODATE THE ELLIOT ROAD
FLOOD REDUCTION PROJECT**

THIS AGREEMENT is made and entered into by and between ZIPLY FIBER NORTHWEST LLC, hereinafter referred to as “ZIPLY,” a Washington State Corporation, and SNOHOMISH COUNTY, a political subdivision of the State of Washington, hereinafter referred to as the “COUNTY,” both of which are located in and existing under the laws of the State of Washington.

WHEREAS, the COUNTY has a current active road project on Elliott Road, which will construct a 40-foot clear span bridge near 12512 Elliott Road, hereinafter referred to as the “PROJECT”; and

WHEREAS, the COUNTY is responsible for the planning, review, design, permitting, and construction of the PROJECT, as included in the 2024-2029 Transportation Improvement Program, TIP# G.02.20, Elliott Road Flood Reduction at Anderson Creek MP 0.48, also known as County SWM Project RR48671, WC8671; and

WHEREAS, the COUNTY and ZIPLY agree that ZIPLY’s direct buried copper cables, hereinafter referred to as “FACILITIES” running in and along Elliott Road between MP 0.42 and MP 0.57 will be impacted by the PROJECT; and

WHEREAS, the COUNTY and ZIPLY agree it is in their best interest to work together to resolve the interference issues with their respective infrastructure to the satisfaction of both parties in accordance with applicable standard practices and commercially reasonable effort; and

WHEREAS, it is deemed to be in the best interest of the public and ZIPLY to incorporate the removal of ZIPLY’s FACILITIES, hereinafter referred to as the “WORK,” as requested by ZIPLY, into the COUNTY’s construction plans and contract for the PROJECT.

NOW THEREFORE, it is mutually agreed as follows:

I. PURPOSE

The purpose of this AGREEMENT is to set forth the mutual obligations, responsibilities and rights of the COUNTY and ZIPLY for the accomplishment of the WORK described in Exhibit A, which is attached hereto and incorporated herein by this reference.

II. DURATION

This AGREEMENT shall become effective as of the date of mutual execution. This AGREEMENT shall remain in effect until the WORK has been completed and ZIPLY has paid the COUNTY in full, unless terminated sooner, as provided herein. The parties anticipate, but the COUNTY does not guarantee, the WORK to be completed no later than December 31, 2026.

III. COUNTY RESPONSIBILITIES

A. The COUNTY shall act as the lead agency for the PROJECT and shall be responsible for compliance with the Local Agency Guidelines, published by the Washington State Department of Transportation, during the design and construction phases of the PROJECT. The COUNTY's project manager shall act as the administrator of this cooperative undertaking.

B. The COUNTY shall (i) print and distribute to Ziplly the Contract Specifications and Plans for the PROJECT, which shall include the WORK; (ii) administer the advertisement for construction; (iii) award the contract for construction of the PROJECT to the Contractor; and (iv) administer the contract, including accounting, payment of the Contractor, and keeping the PROJECT records. After awarding the contract, the COUNTY will arrange a preconstruction conference with the Contractor(s) and will provide reasonable advance notice to ZIPLY of same so ZIPLY may attend if it chooses.

C. The COUNTY shall contact ZIPLY two weeks prior to anticipated work on ZIPLY FACILITIES and two days prior to actual work on ZIPLY FACILITIES in and along Elliott Road between MP 0.42 and MP 0.57.

D. The COUNTY shall bill ZIPLY for costs related to the WORK in accordance with the payment provisions of Section V of this AGREEMENT.

E. Any obligations of the COUNTY beyond the current fiscal year are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the COUNTY Charter and applicable law.

IV. ZIPLY RESPONSIBILITIES

A. ZIPLY shall be solely responsible for costs associated with the WORK and shall reimburse the COUNTY for costs related to the WORK in accordance with the terms of Section V of this AGREEMENT.

B. ZIPLY shall make all reasonable efforts to cooperate with the COUNTY's Contractor in facilitating the PROJECT and the WORK and make necessary personnel available so as to not delay the Contractor's construction schedule. ZIPLY shall be

responsible for any costs to the COUNTY for delays to the PROJECT resulting from delays in the WORK that are caused by ZIPLY.

C. ZIPLY will install temporary cable to resolve conflicts with the COUNTY contractor's work. The two de-energized copper cables will be abandoned by ZIPLY and subject to demolition within the work area by the County's contractor.

D. ZIPLY shall, within fourteen (14) calendar days after notification of completion of the WORK, issue written notification to the COUNTY of any deficiencies or of acceptance of the WORK. The COUNTY's Contractor shall correct any deficiencies. If, after the fourteen (14) day period, notification has not been received by the COUNTY, the WORK shall be considered complete and accepted by ZIPLY.

E. ZIPLY may, if it desires, furnish an inspector for the WORK. Any costs for such inspection will be borne solely by ZIPLY. All contact between said inspector and the COUNTY's Contractor shall be through the COUNTY's on-site representative who shall be identified at the preconstruction conference.

V. PAYMENT

A. ZIPLY agrees to reimburse the COUNTY for all actual costs associated with the WORK as described in Section V.C. below. The COUNTY's estimate of costs is shown in Exhibit A; the COUNTY's recovery of costs is not limited to the estimate.

B. The COUNTY shall provide ZIPLY with properly executed invoices after the WORK has been completed showing actual expenditures. Invoices shall be based on the Contractor's payments, consisting of: equipment, materials, labor, and coordination related to the WORK. Invoices shall be paid by ZIPLY within thirty (30) days of receipt by ZIPLY without offset or deduction for any reason. Notice of any potential dispute regarding such payment request shall be made in writing within the same time period. Payment by ZIPLY shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. At the time of final audit, all required adjustments related to any potential dispute for which notice has been timely given shall be made and reflected in a final payment.

Invoices shall be delivered to:

Primary

Email: david.collins@ZIPLY.com

Reference Project Number:

Secondary

Ziply Fiber
Attn: David Collins
426 E Casino Rd
Everett, WA 98208

Reference Project Number:

C. ZIPLY shall pay the COUNTY for the following costs:

- (1) One hundred percent (100%) of the actual cost of the contract items related to the WORK as described in Exhibit A; and
- (2) The cost of any extra work associated with the WORK that has been approved in accordance with Section VIII.

D. Upon completion of the PROJECT, a final audit shall be conducted of the PROJECT in accordance with standards of the Washington State Department of Transportation. At the time of the final audit, all required adjustments related to the WORK shall be made and shall be reflected in a final billing to ZIPLY. Within thirty (30) days of receipt of the final audit and final billing, ZIPLY shall notify the COUNTY in writing of any objections to the final audit and final billing. If no objections are timely filed, ZIPLY shall make final payment to the COUNTY and such final payment shall constitute an acceptance by ZIPLY of the COUNTY's costs and accounting.

VI. HOLD HARMLESS AND INDEMNIFICATION

A. ZIPLY shall hold harmless, indemnify and defend the COUNTY, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of ZIPLY's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of ZIPLY's participation in this PROJECT; PROVIDED,

HOWEVER, that ZIPLY's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, ZIPLY's obligations hereunder shall apply only to the percentage of fault attributable to ZIPLY, its officers, officials, employees or agents; PROVIDED FURTHER, by mutual negotiation,

ZIPLY expressly waives, as respects the COUNTY only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

ZIPLY's obligations to hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents shall apply to any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, to the extent caused by or arising out of ZIPLY's negligence or willful misconduct in the design, construction, reconstruction, repair, maintenance, or operation of its facilities.

B. The COUNTY shall hold harmless, indemnify and defend ZIPLY, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the COUNTY's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of the COUNTY's participation in this PROJECT; PROVIDED HOWEVER, that the COUNTY's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of ZIPLY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the COUNTY's obligations hereunder shall apply only to the percentage of fault attributable to the COUNTY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, by mutual negotiation, the COUNTY expressly waives, as respects ZIPLY only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

C. Participation in this AGREEMENT shall in no way be construed to affect ZIPLY's authority and responsibility for its communication facilities. ZIPLY retains sole authority and responsibility for the design, construction, repair, maintenance, and operation of its communication facilities before, during and after the PROJECT. This AGREEMENT shall not be construed as an assumption by the COUNTY of any authority, responsibility or liability with regard to the design, construction, reconstruction, repair, maintenance, or operation of ZIPLY's communication facilities nor shall the design, construction, reconstruction, repair, maintenance, or operation of the communication facilities be considered a joint undertaking by ZIPLY and the COUNTY.

VII. TERMINATION

The COUNTY may terminate this AGREEMENT at any time for any reason by providing written notice to ZIPLY, in which case ZIPLY shall only be responsible for costs incurred by the COUNTY for the WORK prior to the COUNTY's notice of termination.

VIII. EXTRA WORK

A. There may be unforeseen conditions requiring immediate resolution during the construction phase of the WORK such as construction disputes and claims, changed conditions, and changes in the construction work. Reimbursement for increased construction engineering and/or construction contract amounts for the WORK shall be limited to costs covered by a modification, change order, or extra work order approved as described below.

B. Should it be determined that any change from the contract plans and specifications for the WORK is required, the COUNTY, through the Director of Surface Water Management, shall have authority to make such changes up to the amount of the \$5,935.00 as set forth in Exhibit A.

C. Any change in the WORK that would result in a total increased cost to ZIPLY that is greater than the amount in Section VIII.B will require a Letter of Agreement, signed by both the COUNTY Public Works Director or his/her designee and ZIPLY's Manager or his/her designee, describing the changed scope of work and the estimated change in the WORK cost. Any Letter of Agreement must be approved by the COUNTY and ZIPLY through contract amendment executed as provided in Section XV, PROVIDED that the

COUNTY may proceed with the changes set forth in the Letter of Agreement pending approval of the contract amendment.

D. In the event of a claim by the Contractor, each party shall be responsible for its proportionate share based on its proportionate responsibility for the claim.

IX INSURANCE

A. The COUNTY will require ZIPLY to procure and maintain, for the duration of the PROJECT's construction contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work associated with this AGREEMENT.

B. ZIPLY shall provide or purchase Workers' Compensation Insurance coverage to meet the Washington State Industrial Insurance regulations and cause any subcontractors working on behalf of ZIPLY to also carry such insurance prior to performing work on the PROJECT. Neither ZIPLY nor the COUNTY will be responsible for payment of Workers' Compensation premiums or for any other claim or benefit for the Contractor, its employees, consultants, or subcontractors, which might arise under the Washington State Industrial Insurance laws.

C. ZIPLY shall provide the COUNTY with a certificate of insurance outlining the required coverages, limits, and additional insured endorsement. The COUNTY reserves the right to receive a certified copy of all insurance policies.

D. In lieu of the insurance requirements set forth in Section IX, ZIPLY may self-insure against such risks in such amounts as are consistent with good utility practice. ZIPLY shall provide the County with written evidence of the amount of self-insurance prior to commencement of the project. ZIPLY is responsible for any deductible or self-insurance limit. The County Risk Manager reserves the right to approve the self-insurance limits, prior to commencement of the project.

X. PROJECT RECORDS

During the progress of the PROJECT and for a period not less than six (6) years from the final payment to the COUNTY, the COUNTY shall keep all records and accounting pertaining to the PROJECT available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the PROJECT shall be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the COUNTY until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the six-year retention period.

XI. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of ZIPLY are needed for the County to respond to a request under the Act, as determined by the County, ZIPLY agrees to make them promptly available to the County. If ZIPLY considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, ZIPLY shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by ZIPLY and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify ZIPLY (a) of the request and (b) of the date that such information will be released to the requester unless ZIPLY obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If ZIPLY fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of ZIPLY to claim any exemption from disclosure under the Act. The County shall not be liable to ZIPLY for releasing records not clearly identified by ZIPLY as confidential or proprietary. The County shall not be liable to ZIPLY for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

XII. DISPUTE RESOLUTION

A. In the event the COUNTY and ZIPLY disagree over whether the Contractor has fulfilled its obligations under the construction contract, the COUNTY reserves the right to make the final decision as to the acceptability of the work. As to other areas of potential dispute, if a dispute arises between ZIPLY and the COUNTY, the parties agree that they will attempt to resolve the issue through mutual negotiation. In the event that the parties are not able to reach an agreement through such negotiation, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to initiating any lawsuit arising under this AGREEMENT. Mediation shall be conducted under the then-current Commercial Mediation Rules of the American Arbitration Association or some other mutually acceptable procedure. The COUNTY and ZIPLY shall jointly select a neutral third-party mediator. The parties agree to share the costs of mediation equally.

B. This AGREEMENT has been made pursuant to, and shall be construed according to, the laws of the State of Washington. In the event that mediation is unsuccessful and either party finds it necessary to initiate legal proceedings to enforce any provision of this AGREEMENT, such proceedings may only be brought in the Superior Court of Snohomish County, Washington.

XIII. COUNTY NON-DISCRIMINATION

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance,

Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

ZIPLY shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a

certification by ZIPLY of ZIPLY's compliance with the requirements of Chapter 2.460 SCC. If ZIPLY is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect ZIPLY's obligations under other federal, state, or local laws against discrimination.

XIV. PROPERTY

Any real or personal property acquired or used by either party in connection with this AGREEMENT will be acquired, held, and disposed of by that party in its discretion, and other parties will have no joint or other interest therein. Upon termination of this AGREEMENT, real and personal property acquired through this AGREEMENT shall be retained or disposed of in the manner provided by law.

XV. CHANGES AND MODIFICATIONS

Either Party may request changes, amendments, or additions to any portion of this AGREEMENT; however, except as otherwise provided in this AGREEMENT, no such change, amendment, or addition to any portion of this AGREEMENT shall be valid or binding upon either party unless it is in writing and executed by both parties. All such changes shall be made part of this AGREEMENT.

XVI. NOTICES

Unless otherwise directed in writing, notices, reports and payments shall be delivered to each party as follows:

Snohomish County
Department of Surface Water Management
Attn: Toni Wilde
3000 Rockefeller Avenue MS 303
Everett, WA 98201

Ziply Fiber
Attn: David Collins
426 E Casino Rd
Everett, WA 98208

Notices mailed by either party shall be deemed effective on the date mailed. Either party may change its address for receipt of reports, notices, or payments by giving the other written notice of not less than five days prior to the effective date.

EXHIBIT A
ZIPLY FIBER
WORK ASSOCIATED WITH THE
ELLIOT ROAD FLOOD REDUCTION PROJECT NEAR 12512 ELLIOT ROAD
PROJECT
WORK Description

Ziply owns two direct buried cables in the PROJECT area. Ziply will install new temporary cable and handholes to relocate their cable to avoid conflicts with the County's contractor's work. Ziply will be responsible for disconnecting and reconnecting services. The two existing de-energized copper cables will be abandoned by ZIPLY and subject to demolition within the work area by the County's contractor. For the permanent condition, ZIPLY will provide the PVC conduit pipes and fittings, pull ropes, junction boxes, and handholes. The County's contractor will excavate, place sand bedding, install PVC conduits, install handholes, backfill with gravel borrow, and restore the road surfacing. The County will provide ZIPLY the opportunity to inspect the conduit and handhole work during construction. The County's contractor will also supply the steel conduit and fittings and install the steel conduit on utility hangers on the bridge. Ziply will be responsible for pulling wires, and reconnecting services.

Costs shown below are estimates. ZIPLY agrees to pay the actual cost to complete the work as determined by bid proposals and applicable change orders.

PROJECT Preliminary Cost Summary

Install 625 L.F of 4-in. diameter PVC conduit (625 feet @ \$35/foot)	\$ 21,875.00
Install 120 L.F of 4-in. diameter Steel conduit (120 feet @ \$65/ft)	\$ 7,800.00
Subtotal	\$ 29,675.00
Contingency (20% of Subtotal)	\$ 5,935.00
Total Estimated PROJECT Related Costs	\$ 35,610.00

This total is pre-tax. Sales Tax will apply to this project.