

MEMORANDUM

TO: Mayor and City Council
FROM: Eric Mongan, City Planner
SUBJECT: GROUND LEASE AGREEMENT WITH ZIPLY FIBER FOR TELCOM SHELTER
DATE: June 19, 2024

Background:

At the May 28, 2024 City Council Meeting the Council adopted Ordinance No. 3183 granting a non-exclusive telecommunications franchise to Ziplly Fiber Pacific, LLC. It is now appropriate for the Council to consider a request for a ground lease of a portion of right-of-way to Ziplly Fiber for the purposes of placing a telecommunications shelter and back-up generator. The location of the proposed ground lease is a portion of East Madison Avenue right-of-way east of HWY 99 abutting the railroad right-of-way (as shown in the attached map).

The attached Letter of Intent provides information on the proposed terms of the ground lease agreement.

Recommendation:

It is recommended that following any questions from the Council that the Council consider the request for ground lease from Ziplly Fiber for approximately 1,600 sf of right-of-way for the purposes of installing a telecommunications shelter with back-up generator. If the Council is amenable to the request from Ziplly staff requests that the Council approve by motion authorizing the City Manager to sign the necessary documents executing the lease agreement.

Cost:

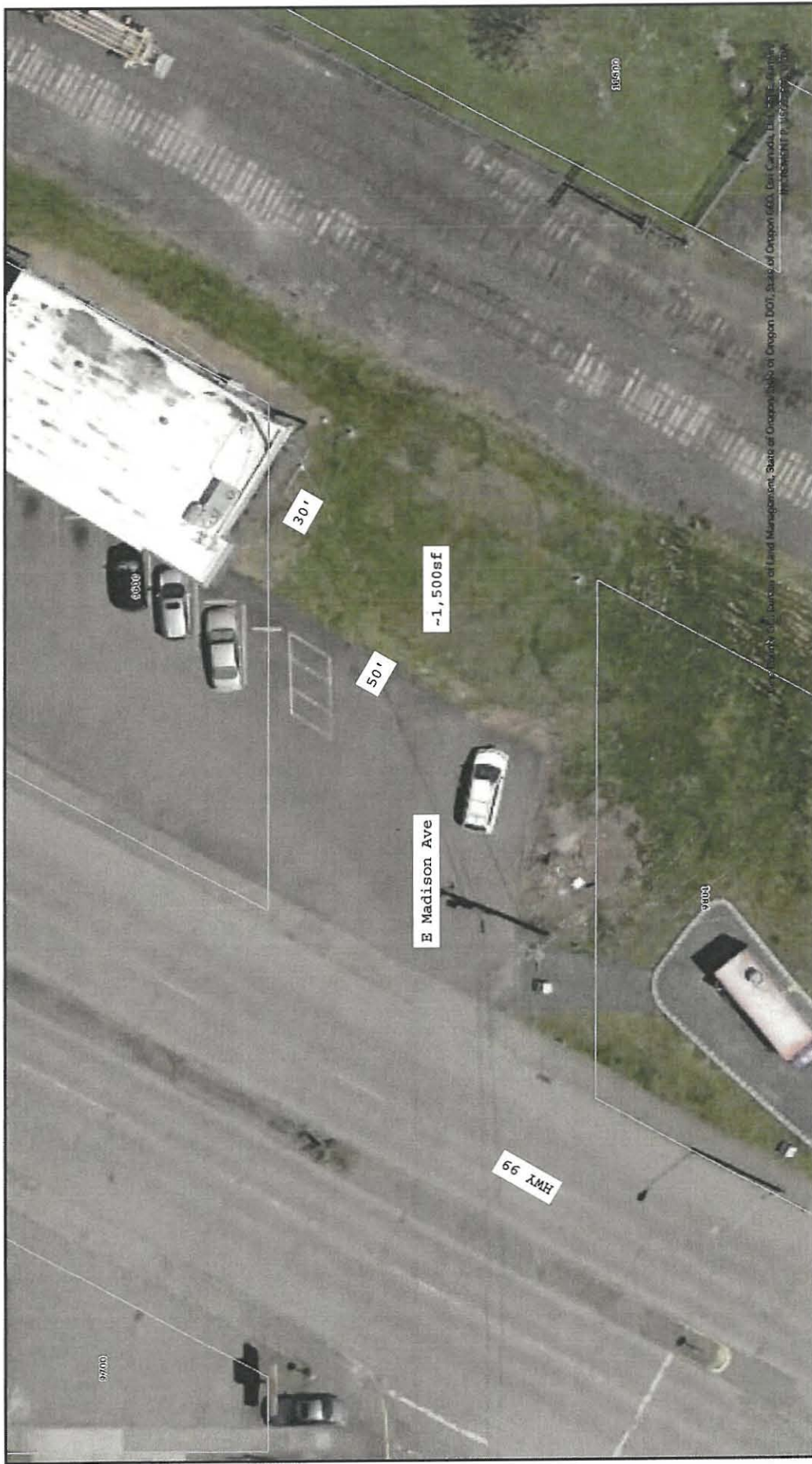
Staff time.



Mike Sauerwein, City Manager



Eric Mongan, City Planner



The information on this map was derived from digital databases on the date of this map. It is provided "as is". Lane County cannot accept any responsibility for errors, omissions, or portions of accuracy in the digital data. The user is advised to confirm with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.



ZIPLY FIBER LICENSE AGREEMENT AREA

Lane County, Oregon, Department of Land Management, State of Oregon, 1000 Oregon Street, NE, Salem, Oregon 97301

Brian Biege
Senior Vice President
Jacob Hamlin
Senior Associate
Grant Sutherland
Associate

CBRE, Inc.
Advisory & Transaction Services



929 108th Avenue NE
Suite 700
Bellevue, WA, 98004

+1 425 455-8500 Tel

www.cbre.com

April 19, 2024

BY ELECTRONIC MAIL

Attn: Eric Mongan
400 E Main Street
Cottage Grove, OR 97424

RE: Ziplly Fiber Pacific, LLC – 354 Hwy 99, Cottage Grove OR 97424

On behalf of our client, Ziplly Fiber Pacific, LLC, (“Tenant”), we have been authorized to submit the following Letter of Intent (“LOI”) concerning the leasing of property at the above referenced address. The following outlines Tenant’s requirements and requests terms upon which Landlord is prepared to enter into a transaction. **We kindly ask that you respond to the LOI on this document in REDLINE.**

1. **Property:** 354 Hwy 99, Cottage Grove OR 97424
2. **Landlord:** City of Cottage Grove
3. **Tenant:** Ziplly Fiber Pacific, LLC
4. **Premises:** Approximately 1,600 rentable square feet (“RSF”) as described in Exhibit A. Exact dimensions to be determined in a Lease document.
5. **Lease Term:** Ten (10) Years.
6. **Lease Commencement:** The Lease Commencement Date shall be upon a legally binding Lease agreement between Tenant and Landlord and not to be prior to obtaining necessary permits and approvals from the City of Cottage Grove.
7. **Full-Service Rent:** The Full-Service Rent shall be \$750.00 per Month for the duration of the Lease Term. The rent shall increase 3% annually.
8. **Rent Abatement:** The initial three (3) months shall be free of any base rent.
9. **Landlord’s Work / Delivery of Conditions:** Landlord shall deliver the Premises in it’s current “as-is” condition.

- 10. Tenant Improvements:** Tenant shall be able to perform any Tenant Improvements which support the intended use and operations of Tenant, subject to the prior written consent from Landlord which shall not be unreasonably delayed or withheld. Tenant shall submit final plans to Landlord prior to lease execution. Tenant's initial improvements would include:
- Construct a security fence enclosing Tenant's Premises
 - Install 'Hut/Container' structure, including generator and two parking spaces within the fenced Premises
 - Pour concrete pad, if necessary, on the Premises
 - Install conduit to/from the right of way for Tenant's use of utilities on the Premises
- 11. Restoration:** Tenant shall have no obligation to restore the initial or subsequent improvements or alterations so long as they reasonably approved by Landlord and are made in compliance with applicable codes.
- 12. Option to Extend:** As long as Tenant is not, or has not been in default of their Lease beyond any applicable cure periods, Tenant shall have three (3), five (5) year Options to Extend their Lease. The rental rate shall be at the fair market value of comparable buildings in the surrounding area, however in any event the rental rate shall not exceed 5% of the rental rate at the time of the lease expiration.
- 13. Assignment:** Tenant may assign the Lease with Landlord's consent, which shall not be unreasonably withheld or delayed, provided that Tenant is not released from liability under the Lease. A reorganization, merger, consolidation, sale or transfer of membership interests, the transfer of equity interests in Tenant in connection with a recapitalization of Tenant through a private equity transaction, admission or withdrawal of members and a transfer of membership assets or interests to any affiliated partnership or entity shall each be deemed a "Permitted Transfer" and shall not require the approval or consent of Landlord. Furthermore, Landlord shall not have the ability to recapture the Premises and in event of said Assignment, the Lease shall remain in full force and effect.
- 14. Sale/Lease Disclosure:** Landlord shall provide any and all information regarding: the existence or nonexistence of asbestos, PCB transformers, any other toxic, hazardous or contaminated substances, and underground storage tanks; structural, mechanical and soil conditions; flood zoning; and compliance with the Americans with Disabilities Act (ADA) and the Residential Lead Paint Hazard Reduction Act.
- 15. Agency Disclosure:** The parties hereto acknowledge that **Brian Biege, Jacob Hamlin and Grant Sutherland of CBRE, Inc., and Suzanne Kintzley of Campbell Commercial Real Estate** represent Tenant ("Tenant's Broker") in this transaction.

- 16. Confidentiality:** This LOI and all discussions related thereto shall be held in confidence by Landlord and Tenant and will not be discussed with third parties except on an as needed basis (e.g. attorneys).
- 17. Qualifying Conditions:** It is understood and agreed that no offer is made hereby and no legal rights are created by this LOI or any letter or other communication until a mutually satisfactory lease agreement has been fully executed delivered by both parties. Additionally, this Lease shall be null and void, without recourse from either Tenant or Landlord in the event the City of Cottage Grove does not approve Tenant's intended use on the Property.

CBRE © 2022 All Rights Reserved. All information included in this letter/proposal pertaining to CBRE—including but not limited to its operations, employees, technology and clients—are proprietary and confidential, and are supplied with the understanding that they will be held in confidence and not disclosed to third parties without the prior written consent of CBRE. This letter/proposal is intended solely as a preliminary expression of general intentions and is to be used for discussion purposes only. The parties intend that neither shall have any contractual obligations to the other with respect to the matters referred herein unless and until a definitive agreement has been fully executed and delivered by the parties. The parties agree that this letter/proposal is not intended to create any agreement or obligation by either party to negotiate a definitive lease/purchase and sale agreement and imposes no duty whatsoever on either party to continue negotiations, including without limitation any obligation to negotiate in good faith or in any way other than at arm's length. Prior to delivery of a definitive executed agreement, and without any liability to the other party, either party may (1) propose different terms from those summarized herein, (2) enter into negotiations with other parties and/or (3) unilaterally terminate all negotiations with the other party hereto.

Sincerely,

CBRE, Inc.

Brian Biege
Senior Vice President
+1 (425) 462-6914
Brian.biege@cbre.com

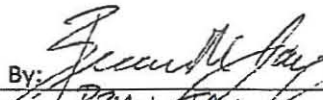
Jacob Hamlin
Senior Associate
+1 (425) 462-6930
Jacob.hamlin@cbre.com

Grant Sutherland
Associate
+1 (425) 455 8500
Grant.sutherland@cbre.com

Accepted and Agreed

Tenant: Ziply Fiber Pacific, LLC

Landlord:

By: 
 Title: VP, TREASURY + RISK
 Date: 5/13/2024

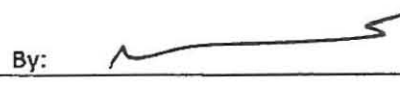
By: 
 Title: City Manager
 Date: 5-14-2024

Exhibit A

