

ORDINANCE NO. 1270

AN ORDINANCE GRANTING A FRANCHISE TO LIGHTSPEED NETWORKS, INC., ("LS NETWORKS") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF PRINEVILLE, OREGON ("THE CITY").

The City hereby ordains that it is in the public interest to grant LS Networks a Franchise to operate the System pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The City hereby grants to LS Networks the right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other public ways in the City ("Public Ways", or in the singular "Public Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of LS Networks located within the City's corporate limits.

SECTION 2. Acceptance by LS Networks. Within sixty (60) days after the passage of this Ordinance by the City, LS Networks shall file an unqualified written acceptance thereof with the City; otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is ten (10) years commencing on the date of Acceptance by LS Networks as set forth above in Section 2 and shall thereafter automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

SECTION 4. Records Inspection. LS Networks shall make available to the City, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than once every two (2) years, such relevant information pertinent only to enforcing the terms of this Ordinance in such form and at such times as LS Networks can reasonably make available. Subject to applicable laws, any information that LS Networks provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to LS Networks following review, without duplication, unless LS Networks grants the City written permission to duplicate the information.

SECTION 5. Non-Exclusive Franchise. The right to use and occupy the Public Ways shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's and other entities' use, however, shall not unreasonably interfere with LS Networks's Facilities or the rights granted LS Networks herein.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens consistent with applicable federal and state law. The City agrees to promptly notify LS Networks of any such changes potentially applicable to this Franchise.

SECTION 7. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs as the result of the construction, operation or maintenance by LS Networks of its Facilities. LS Networks shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of LS Networks's use of the Public Ways. The City shall: (a) give prompt written notice to LS Networks of any such claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit LS Networks to assume the defense of such claim, demand, or lien with legal counsel of LS Networks's selection. LS Networks shall not be subject to liability for any settlement or compromise made without its prior written consent. Notwithstanding the other provisions contained herein, LS Networks shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 8. Insurance Requirements. LS Networks, at its cost and expense, will obtain and keep in full force and effect during the term of this Ordinance, the following insurance coverage and their respective minimum limits: (a) workers' compensation insurance within statutory limits; (b) employer's liability insurance with limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (c) comprehensive general liability insurance within limits of not less than \$3,000,000.00 for bodily injury or death to each person, \$3,000,000.00 for property damage resulting from any one accident, and \$3,000,000.00 for other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by LS Networks and its employees with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident. Each liability insurance policy LS Networks is required to obtain and maintain under this Section 8 will name City and its officers, representatives, agents, and employees as additional insureds. LS Networks will not cancel, modify, and/or reduce in amount or scope the insurance coverage required to be maintained under this Ordinance without first providing City thirty (30) days' prior written notice. All insurance LS Networks is required to obtain and maintain under this Section 8 will be issued only by insurance companies licensed in Oregon. Prior to City's execution and acceptance of this Ordinance, upon renewal of each insurance policy and at any other time thereafter within thirty (30) days after City's written request, LS Networks will provide City with certificates evidencing LS Networks's compliance with this Section 8.

SECTION 9. Annexation. When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail, return receipt requested, postage prepaid, to LS Networks at the addresses provided in Section 18 hereof: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City 's ordinance approving the proposed annexation.

SECTION 10. Plan, Design, Construction and Installation of LS Networks's Facilities.

10.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

10.2 LS Networks shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. LS Networks will provide plans of new facilities to be placed in the Public Ways pursuant to a permit issued by the City. LS Networks will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, LS Networks shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities.

10.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation,

renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

10.4 If, during the course of work on its Facilities, LS Networks causes damage to or alters the Public Way or other public property, LS Networks shall replace and restore such Public Way or public property at LS Networks's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration, normal wear and tear excepted.

10.5 LS Networks shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, LS Networks shall first obtain a permit from the City in accordance with subsection 10.2 hereof.

10.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect LS Networks's Facilities, the City shall give written notice to LS Networks, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of LS Networks's poles, wires, conduits, conductors, pipes, and appurtenances.

10.7 LS Networks shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

SECTION 11. Relocation of Facilities.

11.1 Relocation for the City. Except in case of an Emergency, within thirty (30) days after City's request, LS Networks will, at LS Networks's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way whenever City has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) the construction, repair, installation, and/or maintenance of any City or other public work or improvement; and/or (c) the operations of City in or upon the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities. If an Emergency occurs, LS Networks will, at LS Networks's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way within seventy-two (72) hours after City's request. City acknowledges that an emergency relocation may result in temporary installation.

11.2 Relocation for a Third Party. LS Networks shall, at the request of any person holding a lawful permit issued by the City and/or in support of a Non-Essential Project by City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any LS Networks property, provided that the cost of such action is borne by the person requesting it and LS Networks is given reasonable advance written notice and sufficient time to take the appropriate action. In such situation, LS Networks may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than forty-five (45) days for a temporary relocation, and no fewer than one hundred twenty (120) days for a permanent relocation.

11.3 Alternatives to Relocation. LS Networks may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise LS Networks in writing if one or more of the alternatives are suitable. If requested by the City, LS Networks shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by LS Networks full and fair consideration. In the event the City ultimately determines that there is no other

reasonable alternative, LS Networks shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, LS Networks shall in all cases have the right to abandon the Facilities.

SECTION 12. Vegetation Management. LS Networks shall have the authority to trim trees and other growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 13. Franchise Fee

13.1 In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise areas LS Networks shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of LS Networks's Gross Revenues derived from the provision of telecommunications services to businesses or individuals within the City limits, less any FCC limitations ("Franchise Fee"). Any net un-collectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts as such time as they are actually collected. Revenue from point to point or multi-point services not entirely within the City limits shall be based on the pro-rata share of the revenue from those services.

13.2 Upon thirty days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, the Parties agree to amend this Franchise to ensure compliance with all laws.

13.3 Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, LS Networks shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of LS Networks, identifying in detail the amount of gross revenue received by LS Networks, the computation basis and method, for the quarter for which payment is made.

13.4 The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. LS Networks may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with LS Networks's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of LS Networks.

SECTION 14. Revocation of Franchise for Noncompliance.

14.1 In the event that the City believes that LS Networks has not materially complied with the terms of the Franchise, the City shall informally discuss the matter with LS Networks. If these discussions do not lead to resolution of the problem, the City shall notify LS Networks in writing of the exact nature of the alleged noncompliance.

14.2 LS Networks shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

14.3 In the event that LS Networks does not comply with subsection 14.2, above, unless the parties agree to an extension of the time provided in subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide LS Networks at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

14.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3, determines that LS Networks is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

14.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to LS Networks including a statement of all reasons for such revocation. LS Networks shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon LS Networks, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give LS Networks an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. LS Networks may appeal the City 's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City 's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

14.6 Notwithstanding the foregoing provisions in this Section 14, LS Networks does not waive any of its rights under applicable law.

SECTION 15. No Waiver of Rights. Neither the City nor LS Networks shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 16. Transfer of Franchise. LS Networks's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and prior approval by the City, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with LS Networks, or for any rights, title, or interest of LS Networks in the Franchise or Facilities in order to secure indebtedness, or to an entity that acquires substantially all the assets or equity of LS Networks by sale, merger, consolidation or reorganization, approval by the City shall not be required.

SECTION 17. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and LS Networks.

SECTION 18. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received upon actual receipt or refusal of delivery if sent by (a) personal delivery, (b) United States Mail, postage prepaid, certified, return receipt requested, or (c) nationally recognized overnight courier, and addressed to the Parties as set forth below:

To City:

City of Prineville
ATTN: City Recorder
387 NE Third Street
Prineville, OR 97754

with a copy to:

Jered Reid
Law Office of Jered Reid, LLC
545 NE 7th Street
Prineville, OR 97754

To LS Networks:

LS Networks, Inc.
921 SW Washington Street, Suite 370
Portland, OR 97205

with a copy to:

LS Networks, Inc.
ATTN: Legal Department
921 SW Washington Street, Suite 370
Portland, OR 97205

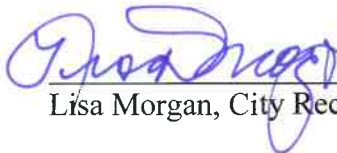
SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having appropriate jurisdiction thereof, or unconstitutional, illegal or invalid by any court having appropriate jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AND APPROVE THE AFOREMENTIONED AGREEMENT presented for the first time at a regular meeting of the City Council held on August 24, 2021 and the City Council finally enacted the following Ordinance on this 14th day of September, 2021.



Rodney J. Beebe
Mayor

ATTEST:



Lisa Morgan, City Recorder

ACCEPTED BY LS NETWORKS:

Lightspeed Networks, Inc.

BY: _____

TITLE: _____

DATE: _____