

ORDINANCE 2023 - 26

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC. DBA LS NETWORKS, A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CORVALLIS, AND STATING AN EFFECTIVE DATE.

WHEREAS, LS Networks., hereinafter referred to as "Grantee", provides telecommunications services within the City of Corvallis, Oregon; and

WHEREAS, Grantee has applied for a telecommunications franchise pursuant to Ordinance 18-24, an ordinance relating to telecommunications infrastructure located in the public rights of way, and the City of Corvallis (City) has reviewed the application and has determined that the application meets all the requirements of the City's Ordinance subject to the terms and conditions stated in this Ordinance;

NOW, THEREFORE, THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

Section 1. The City intends, by the adoption of this franchise, to encourage the continued development and operation of telecommunications facilities within the city of Corvallis. This Ordinance shall be known as the "LS Networks Telecommunications Franchise Ordinance." For purposes of reference within this document, this Ordinance may also be referred to as "this Franchise" or "the Franchise".

Section 2. Grant of Franchise. The City hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the city to provide telecommunications services, subject to the provisions of Corvallis Municipal Ordinance 18-24 and the Corvallis Municipal Code or as hereafter enacted or amended. Ordinance 18-24, an ordinance relating to telecommunications infrastructure located in the public rights of way, is incorporated into this Franchise as though Ordinance 18-24 were set out fully as a part of this Franchise, specifically including but not limited to the requirements for compensation, insurance, performance surety, and indemnification.

Section 3. Term. The term of this Franchise shall be for ten (10) years, commencing with the effective date of this Ordinance.

Section 4. Franchise Area. The Grantee is authorized by this Franchise to make reasonable and lawful use of the public rights of way within the corporate boundaries of the City of Corvallis or as these boundaries may be extended in the future.

Section 5. Franchise Fee. As consideration for the use of the City's rights of way, Grantee is required to remit to the City a franchise fee of seven (7) percent of gross revenues earned within the City, less the cost of leasing telecommunications facilities from the owner of such facilities. Grantee's franchise fee payments to the City shall be due quarterly within (30) days following the end of each quarter. Within thirty (30) days after the termination of this Franchise, Grantee must pay compensation for the period elapsing since the end of the last quarter for which Grantee paid compensation. In the event the City does not receive any payment due quarterly within thirty (30) days from the end of the preceding quarter, or if the City is underpaid, Grantee shall pay in addition to the payment, or sum due, interest at a rate no higher than the current legal interest rate on judgments in the State, calculated from the date the payment was originally due until the date the City receives the payment. Additionally, if

Grantee allows any payment to become ninety (90) days in arrears, Grantee will owe a ten (10) percent penalty. In the event the obligation of Grantee to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee has a duty to pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the rights of way for Grantee's use of the rights of way, provided that in no event shall such payments be less than the equivalent of seven (7) percent of Grantee's gross revenues (subject to the other provisions contained in this Franchise).

Section 6. Insurance.

1. All Utility Operators are required to maintain in full force and effect the following liability insurance policies that protect the Utility Operator and the City, as well as the City's officers, agents, and employees:

- a. Comprehensive general liability insurance with limits not less than:
 - i. Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - ii. Five million dollars (\$5,000,000) aggregate including collapse, explosions, underground hazards and products completed operations.
- b. Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of three million dollars (\$3,000,000) combined single limit.
- c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).
- d. Liability insurance must name as additional insured the City and its officers, agents, and employees. Additional insured coverage must be for both on-going operations and products and completed operations, on forms acceptable to the City. Coverage must be Primary and Non-Contributory. Waiver of Subrogation endorsement, in a form acceptable to the City, must be provided for general liability and worker's compensation.

2. The limits of the insurance must be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance must be without prejudice to coverage otherwise existing. The coverage must apply as to claims between insureds on the policy. The Grantee has a duty not to cancel or materially alter the required insurance without first providing thirty (30) days prior written notice to the City. If the insurance is canceled or materially altered, the Utility Operator must obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The Utility Operator has a duty to maintain continuous uninterrupted coverage, in the terms and amounts required. The Utility Operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The Utility Operator must maintain on file with the City a certificate of insurance or proof of self-insurance acceptable to the City, certifying the coverage required above.

Section 7. Performance Surety. The City reserves the right to require a performance surety at any time during the term of this Franchise, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Ordinance.

Section 8. Sale of subscriber lists prohibited. Except as otherwise expressly permitted by law, the Grantee will not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Grantee's services.

Section 9. Revocation or Termination. The City may terminate or revoke the franchise granted pursuant to this Ordinance for any of the following reasons:

- a. Violation of any of the material provisions of this Franchise;
- b. Violation of any material provisions of Ordinance 18-24;
- c. Misrepresentation in the Franchise application or a rights of way construction application.
- d. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;
- e. Failure to pay taxes, compensation, fees or costs due to the City after final determination by the City of the taxes, compensation, fees or costs;
- f. Failure to restore the ROW as required by this Ordinance or other applicable State and local laws, ordinances, rules and regulations;
- g. Failure to comply with technical, safety and engineering standards related to Work in the ROW; or
- h. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by State or federal law for the placement, maintenance or operation of the Utility Facilities.

Section 10. Notices. Whenever this permit calls for the providing of written notices to the parties, notice is sufficient if notice is sent by regular mail or delivered personally to the following locations:

For the Permittee:

Lightspeed Networks, Inc
Attention: Contracts Department
921 SW Washinton St, Suite 210
Portland, Oregon 97205

For the City:

City of Corvallis
Public Works Department
Attention: Franchise Utility Specialist
PO Box 1083
Corvallis, OR 97339-1083

Section 11. Franchise Acceptance. Within thirty (30) days of the passage of this Ordinance by City Council, Grantee is required to file with the City certificates of insurance and an unconditional written statement accepting the terms and conditions of this Franchise grant. Failure to fulfill this requirement nullifies and voids this Ordinance, and any and all rights of Grantee to own or operate a telecommunications facility within the Franchise Area under this Ordinance will be of no force or effect.

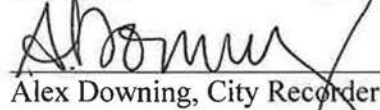
Section 12. Franchise Nonexclusive. The Franchise granted by this Ordinance is not exclusive, and must not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights of way.

Section 13. Effective Date. This Ordinance shall become effective on November 4, 2023.

PASSED by the Council this 16TH day of OCTOBER, 2023.

APPROVED by the Mayor this 16TH day of OCTOBER, 2023.

ATTEST:


Alex Downing, City Recorder


~~Charles Maughan, Mayor~~
TRACEY YEE, ACTING MAYOR

Approved by:


City Attorney