

*For: **Monday, June 12, 2023**, City Council Meeting*

Advance Packet Information

Dated: June 12, 2023

Included in this packet is documentation to support the following Agenda items:

PUBLIC HEARINGS/ORDINANCES

1. Adopt Ziply Fiber Franchise Ordinance [Pg. 1]
 - a) Draft Ordinance 23-O-807, [Pg. 2]
2. Adopt LS Networks Inc Franchise Ordinance [Pg. 9]
 - a) Draft Ordinance 23-O-808, [Pg. 10]

*Public Comment forms and the agenda packet are available on-line at www.brookings.or.us, at Brookings City Hall and at Chetco Community Public Library. Return completed Public Comment forms to the City Recorder before the start of the meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

If you would like to view the City Council Meeting live, you can via:

- Television – Charter Channel 181
- Internet – Go to the City of Brookings website at <http://www.brookings.or.us>

Watch Meeting Live instructions: 1. Visit the City of Brookings website home page. 2. Click on Government (top page). 3. Click on City Council (right side). 4. Under Agenda & Meetings click Watch Meeting Live. 5. You will need to download the VLC Media Player. Follow directions and links for your device.

On computers, it is possible to stream the meetings LIVE by copying and pasting the following link inside your web browser: <mms://68.185.2.46:8080>

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 12, 2023

Originating Dept: Finance & Admin

Signature (submitted by)


City Manager Approval

Subject:

Adopt Ziply Fiber Franchise Ordinance

Recommended Motion:

Adopt Ordinance 23-O-807, an Ordinance granting a 10-year franchise to Ziply Fiber, for all telecommunication service purposes within the City of Brookings; prescribing the terms, conditions, and manner of the acceptance of such franchise; repealing Ordinance No. 13-O-715.

Background/Discussion:

The City Council discussed the renewal of this ordinance at the April 3, 2023 Council Workshop. The consensus was to bring the Ordinance back at a rate of 7% for 10 years.

This Ordinance includes the LOC model franchise language. It also included more specifics regarding facilities, repairs, maintenance, and requirements related to using Right-of-Ways and Public Works permits.

Attachment(s):

- a. Draft 23-O-807, Ordinance Ziply Fiber Franchise

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 23-0-807

IN THE MATTER OF ORDINANCE 23-0-807, AN ORDINANCE OF THE CITY OF BROOKINGS GRANTING ZIPLY FIBER, ITS SUCCESSORS AND/OR ASSIGNS, (“GRANTEE”), A FRANCHISE, AS DESCRIBED HEREIN, FOR ALL TELECOMMUNICATION SERVICE PURPOSES WITHIN THE CITY OF BROOKINGS, REPEALING ORDINANCE NO. 13-O-715.

- | | |
|--------------------|---|
| Section 1. | Grant of Franchise |
| Section 2. | Emergency Repair |
| Section 3. | Installation of Facilities |
| Section 4. | Restoration of Facilities |
| Section 5. | Construction Conflicts to be Avoided |
| Section 6. | Adjustments to Facilities |
| Section 7. | Indemnification |
| Section 8. | Franchise Fee |
| Section 9. | Grantee Use of Poles |
| Section 10. | Term |
| Section 11. | Acceptance |

The City of Brookings Ordains as Follows:

Section 1. Grant of Franchise. There is hereby granted by the City of Brookings (“City”) to Ziplly Fiber (“Grantee”), the non-exclusive right and privilege within the City to place, erect, lay, maintain and operate in, upon, over and under the streets, alley, avenues, thoroughfares and public highways (hereinafter, “Public Right of Way”) within the City, poles, wires, whether copper, fiber optic or other technology and other appliances and conductors for telecommunications service (as defined in the Telecommunications Act of 1996) purposes. This franchise does not authorize the provision of cable service as defined by federal law. Should Grantee desire to provide cable services, Grantee will obtain a separate franchise in accordance with applicable law.

Subject to the terms and conditions of this franchise, such wires and other appliances and conductors may be strung upon poles or other fixtures above ground or laid underground in pipes or conduits or otherwise protected, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. In locations, where aerial utility facilities exist as of the Effective Date, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to existing aerial facilities and supporting structures. Where all facilities in such area are underground or have been mandated to be placed underground per a plan as outlined by the City, Grantee shall install all new wires and other appliances and conductors underground, except that Grantee shall be allowed to place above ground, in locations approved by the City, its cabinet-type and pedestal facilities that are normally placed above ground.

Section 2. Emergency Repair and Maintenance of Existing Facilities. In case of an emergency, it shall be lawful for Grantee to make all needful excavations and erections in any Public Right of Way in the City for the purpose of repairing and maintaining Grantee’s telecommunications or cable services facilities, including existing poles or other supports or conduits for wires, whether copper, fiber optic or other technology, and appliances and auxiliary equipment without a Public Works permit.

All emergency maintenance and repair work, erections of poles and appliances and laying of wires shall be done in compliance with such applicable rules, regulations, ordinances, or orders in effect at the time of the work.

Grantee shall notify the City Public Works and Development Services Department (“Public Works Department”) of any emergency repair and maintenance work as soon as reasonably practicable, and in any event within 48 hours. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in material and workmanship and depending on the extent of the work, may require additional sureties as defined in Section 3 herein.

Section 3. Installation of New Facilities and Expansion of Services. Except as expressly set forth in this Section, prior to commencing ordinary construction, extension, or installation of new telecommunications or cable services facilities, maintenance of existing telecommunications or cable services facilities, or relocation of any of the Grantee’s telecommunications or cable services facilities in the Public Rights of Way within the City, the Grantee shall obtain a Public Works Permit by submitting to the City’s Public Works Department representatives a plan showing the location of the proposed construction, extension or relocation for purposes of utility location. Construction shall be in accordance with the City ordinances, rules, and requirements and Call Before You Dig requirements of the Oregon Revised Statutes. Grantee shall obtain approval from the City Engineer via a Public Works Permit, and meet with the Public Works Department representative, if requested prior to commencement of such construction. Permit applications shall be signed by an authorized representative of Grantee and include a map or blueprint showing the location of all proposed excavations, pipes, conduits, or other apparatus. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in materials and workmanship.

When the City reasonably determines that the nature and performance of Grantee’s work in the City requires separate assurance that the work will be complete or that the work shall be maintained against defects in material or workmanship, the City may require Grantee to furnish to the City a performance or maintenance bond for the estimated value of all the work for the stated interval to insure compliance by Grantee with rules, regulations, ordinances, and orders of the Council relating to its operations within the City as provided for under this section, after the receipt of notice and an opportunity for Grantee to cure any defect.

Grantee must comply with applicable City ordinances, resolutions, rules, and orders that generally apply to the reasonable management of the safety and use of Public Rights of Way within the City as such requirements exist at the time of Grantee’s work. However, by entering this agreement, Grantee is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules, or orders enacted after the Effective Date. In addition, to the extent permitted by law, this Franchise does not require Grantee to comply with existing or future ordinances, resolutions, rules, or orders that conflict with any specific provision of this Franchise.

The word “applicable”, as used in this paragraph shall mean such rules, regulations, ordinances or orders as the City Council may deem necessary to manage the safety of the Public Right of Way and to protect

the public and any member of the public residing within the City, who might be affected by any excavation work or installation of the Grantee.

Grantee shall furnish to the City, and maintain a current copy on file, a certificate of insurance insuring against the risks of personal injury, bodily injury and property damage in the minimum amounts and coverage provided for by City ordinances as of the Effective Date, naming the City as additional insured against those risks for any act or omission that is not a negligent or intentional wrongful act of the City and including the following statement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."

Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/ blueprints for 1) Customer service connections/drops, repairs or maintenance that do not require installation of facilities in the Public Right of Way, altering, cutting or breaking of the roadway, curb or sidewalk, or 2) Routine maintenance or repair of above ground Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours.

During primary construction continuing for one (1) year from the commencement of Franchise, City will forgo Public Works Permit requirements in favor of regular coordination meetings with the City's Public Works Department representatives. Grantee will reimburse City for City staff time as City invoices Grantee.

If requested by the City, Grantee shall furnish the City with record drawings as maintained in the ordinary course of business showing Grantee's facilities within the Public Right of Way in a format (electronic or hard copy) acceptable to City and Grantee within 60 days after such work is complete. Drawings shall be certified by an authorized representative of Grantee and Grantee shall not be required to have the drawings signed or stamped by a registered or professional engineer. While it is not anticipated that the furnishing of record drawings would require disclosure of sensitive proprietary information of Grantee, in the event that such sensitive proprietary information is nevertheless included and Grantee requests confidentiality of such information the City will maintain confidentiality of such sensitive proprietary information to the extent permitted under Oregon Public Records Law including, without limitation, ORS 192.355(4)

Section 4. Restoration of Facilities. Whenever Grantee shall disturb any Public Right of Way, it shall restore the same to a condition as specified in the current version of the City of Brookings Engineering Requirements and Standard Specification for Public Works Infrastructure equal to the condition which existed prior to construction, unless the City allows Grantee to restore such area to a lesser standard, as soon as practical without unnecessary delay, and failing to do so in a timely manner, the City shall have the right to set a reasonable time within which such repairs and restoration of streets and other public places shall be completed, and to notify Grantee in writing of its time requirement for repair and restoration, and upon failure of such repairs being made by Grantee, within the time so reasonably prescribed, the City may cause such repairs to be made at the expense of Grantee, after having provided Grantee with written notice and a reasonable opportunity to cure.

The City may cause the Grantee to remove or relocate any pole, underground conduit or equipment belonging to the Grantee, including relocating aerial facilities to an underground location, whenever the relocation is for public necessity, and the cost shall be borne proportionately by the Grantee and other utilities being concurrently relocated as coordinated and adjudicated by the City unless such cost is chargeable by law or tariff to another party, or necessitated for the benefit of a third party other than the City.

Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee shall, upon 60 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City may remove it at Grantee's expense.

"Relocation for public necessity" shall mean removal or relocation to accommodate the construction or reconstruction of transportation roadways and the construction or reconstruction of public improvements and infrastructure, including but not limited to water and sewer facilities; it shall not include projects that are purely for beautification purposes unless said project is located within the City's Urban Renewal Area (Map attached), or relocation to accommodate private or third party construction of public infrastructure that is required as a condition of approval of private property development or redevelopment. When facilities are relocated for the benefit of a third party as described in the previous sentence, the cost shall be borne by the party requesting relocation. Nothing herein shall be deemed to preclude the City from agreeing in writing, in its sole discretion, to contribute to utility operators' costs for such relocation.

Section 5. Construction Conflicts to be Avoided. Nothing in this Franchise shall be construed in any way to prevent the proper authorities of the City from putting in a sewer system, grading, rocking, paving, repairing, altering or improving any of the Public Right of Way within the City in or upon which the poles, wires, or other conductors of Grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the Grantee's use of said poles, wires, conductors, conduits, pipes or other apparatus.

Section 6. Adjustments to Facilities. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require; provided, however, that the City shall not require any such action of Grantee until the person or persons desiring to move any such buildings, machinery or other objects, agrees to pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and agrees to deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and agrees to pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible

and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. Neither the City nor any of its employees shall be held liable for the consequences of any act done in connection with the moving of a non-City owned building or non-City owned other object or rearrangement of wires or for the cost of rearranging the wires.

Section 7. Conditions on Sale, Transfer or Assignment. The franchise granted shall be binding upon the successors, legal representatives and assigns of the Grantee. Grantee may sell, transfer or otherwise assign this Franchise without City's consent upon approval from appropriate regulatory authority (Public Utility Commission of Oregon or Federal Communications Commission), if applicable, provided that no such transfer, sale or assignment of this franchise shall be binding on City unless and until City has notice of same in writing, until the transferee in writing has accepted the terms and conditions of this Franchise and until the transferee has submitted satisfactory proof to City of the liability insurance coverage required by this Franchise and has submitted bonds or other guarantees that any work begun by Company and then in progress under the terms of a City permit shall be performed by the transferee to City's standards.

Section 8. Indemnification. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from any and all claims, damages, cost and expenses to which it or they may be subjected by reason of any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted by this Franchise. If both the Grantee and the City are found to be partially liable for damages, the Grantee's liability under this section shall not exceed its proportion of negligence or fault. The City shall give Grantee prompt notice of any claim (or advance notice of claim) received by the City as to which the City seeks indemnity from Grantee and shall tender the defense of any such claim to Grantee. The aforementioned indemnity is not applicable to that which is attributable to or arises from the negligence or willful misconduct of the City and its officers, agents and employees. Neither party may bind the other to a settlement of any such claim or to payment of any of the costs of such claim without the written consent of the party to be bound.

Section 9. Franchise Fee. In consideration of the rights, privileges and franchise hereby granted, Grantee shall pay to the City from and after the date of the acceptance of this franchise, and until its expiration, 7.00% per annum of its gross revenue, less uncollectible amounts, derived from telecommunications and cable services rendered to customers within the City limits. Gross revenues will mean all local access revenue derived under ORS 221.515 and ORS 759.005. The City acknowledges that the franchise fee in this Section is subject to the limitation in ORS 221.515 for such time as that statute remains in effect. Payment of said fee shall be made monthly by the fifteenth (15th) of the following month. The City reserves the right to audit the payments made by Grantee to assure they comply with the requirements of this franchise. All costs and charges associated with a review or audit of the franchise fee payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Written notice for any audit review or other claim shall be provided within three years after the payment has been remitted by Grantee to the City.

The Parties acknowledge that, at present, existing laws and regulations limit the City to collection of a maximum permissible Franchise Fee of seven percent (7%) of Gross Revenues. In the event that a

change in the existing laws and regulations would allow the City to increase the Franchise Fee above seven percent (7%), and the City actually proposes to increase the Franchise Fee in exercise of such authority, the City may amend the Franchise Fee percentage. Following the determination to increase the Franchise Fee and enactment of an ordinance enabling the same, the City shall notify the Grantee of its intent to collect the increased Franchise Fee, and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the maximum permissible franchise fee percentage allowed by law.

Section 10. Grantee Use of Poles. In further consideration of the rights and privileges herein granted, the Grantee hereby grants to the City the right and privilege free of charge to suspend and maintain on poles placed by the Grantee in the Public Rights of Way, such wires as are necessary for the exclusive use of the City for non-commercial fire alarm and police purposes in accordance with the terms and conditions of Grantee's pole attachment or conduit joint use agreement and applicable law. Any such wiring installations made and to be made by the City shall be made in conformity to the requirements of all applicable Federal, State and City electrical codes and in conformity with standard practices. City agrees to transfer their facilities, at the City's cost, to new poles placed by the Grantee within 30 days of notification.

Section 11. Term. The rights, privileges and franchise herein granted shall continue and be in force the period of ten (10) years from and after the date this Franchise takes effect, provided that Grantee accepts the franchise as required in Section 12 ("Effective Date").

Section 12. Acceptance. The Grantee shall file with the City Recorder its written acceptance of the rights and franchise hereby granted and the regulations hereby imposed, within sixty (60) days from and after the date when this Franchise shall become effective; and this Franchise shall become null and void unless such acceptance is so filed. The Grantee shall at all times, fully and faithfully, perform all of the terms, provisions and conditions of this Franchise and all other ordinances and orders of the City Council as specified herein.

Passed by the City Council on June 12, 2023, effective July 12, 2023.

Signed by me in the authentication of its passage on the _____ day of June, 2023.

ATTEST:

Mayor Ron Hedenskog

City Recorder Janell K Howard

Accepted by the Franchisee:

The amendment to the Franchise granted to Ziply Fiber as set forth in this Ordinance is hereby accepted by the Franchisee on the _____ day of _____, 2023.

Signature: _____

Printed Name: _____

Title: _____

DRAFT

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 12, 2023

Originating Dept: Finance & Admin

Signature (submitted by)


City Manager Approval

Subject:

Adopt LS Networks Franchise Ordinance

Recommended Motion:

Adopt Ordinance 23-O-808, an Ordinance granting a 10-year franchise to LS Networks, for all telecommunication service purposes within the City of Brookings; prescribing the terms, conditions, and manner of the acceptance of such franchise; repealing Ordinance No. 13-O-706.

Background/Discussion:

The City Council discussed the renewal of this ordinance at the April 3, 2023 Council Workshop. The consensus was to bring the Ordinance back at a rate of 7% for 10 years.

This Ordinance includes the LOC model franchise language. It also included more specifics regarding facilities, repairs, maintenance, and requirements related to using Right-of-Ways and Public Works permits.

Attachment(s):

- a. Draft 23-O-808, Ordinance LS Networks Franchise

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 23-0-808

IN THE MATTER OF ORDINANCE 23-0-808, AN ORDINANCE OF THE CITY OF BROOKINGS GRANTING LS NETWORKS INC. DBA LSN, ITS SUCCESSORS AND/OR ASSIGNS, (“GRANTEE”), A FRANCHISE, AS DESCRIBED HEREIN, FOR ALL TELECOMMUNICATION SERVICE PURPOSES WITHIN THE CITY OF BROOKINGS, REPEALING ORDINANCE NO. 13-O-706.

- Section 1. Grant of Franchise**
- Section 2. Emergency Repair**
- Section 3. Installation of Facilities**
- Section 4. Restoration of Facilities**
- Section 5. Construction Conflicts to be Avoided**
- Section 6. Adjustments to Facilities**
- Section 7. Indemnification**
- Section 8. Franchise Fee**
- Section 9. Grantee Use of Poles**
- Section 10. Term**
- Section 11. Acceptance**

The City of Brookings Ordains as Follows:

Section 1. Grant of Franchise. There is hereby granted by the City of Brookings (“City”) to LS Networks Inc. (“Grantee”), the non-exclusive right and privilege within the City to place, erect, lay, maintain and operate in, upon, over and under the streets, alley, avenues, thoroughfares and public highways (hereinafter, “Public Right of Way”) within the City, poles, wires, whether copper, fiber optic or other technology and other appliances and conductors for telecommunications service (as defined in the Telecommunications Act of 1996) purposes. This franchise does not authorize the provision of cable service as defined by federal law. Should Grantee desire to provide cable services, Grantee will obtain a separate franchise in accordance with applicable law.

Subject to the terms and conditions of this franchise, such wires and other appliances and conductors may be strung upon poles or other fixtures above ground or laid underground in pipes or conduits or otherwise protected, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. In locations, where aerial utility facilities exist as of the Effective Date, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to existing aerial facilities and supporting structures. Where all facilities in such area are underground or have been mandated to be placed underground per a plan as outlined by the City, Grantee shall install all new wires and other appliances and conductors underground, except that Grantee shall be allowed to place above ground, in locations approved by the City, its cabinet-type and pedestal facilities that are normally placed above ground.

Section 2. Emergency Repair and Maintenance of Existing Facilities. In case of an emergency, it shall be lawful for Grantee to make all needful excavations and erections in any Public Right of Way in the City for the purpose of repairing and maintaining Grantee’s telecommunications or cable services facilities, including existing poles or other supports or conduits for wires, whether copper, fiber optic or other technology, and appliances and auxiliary equipment without a Public Works permit.

All emergency maintenance and repair work, erections of poles and appliances and laying of wires shall be done in compliance with such applicable rules, regulations, ordinances, or orders in effect at the time of the work.

Grantee shall notify the City Public Works and Development Services Department (“Public Works Department”) of any emergency repair and maintenance work as soon as reasonably practicable, and in any event within 48 hours. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in material and workmanship and depending on the extent of the work, may require additional sureties as defined in Section 3 herein.

Section 3. Installation of New Facilities and Expansion of Services. Except as expressly set forth in this Section, prior to commencing ordinary construction, extension, or installation of new telecommunications or cable services facilities, maintenance of existing telecommunications or cable services facilities, or relocation of any of the Grantee’s telecommunications or cable services facilities in the Public Rights of Way within the City, the Grantee shall obtain a Public Works Permit by submitting to the City’s Public Works Department representatives a plan showing the location of the proposed construction, extension or relocation for purposes of utility location. Construction shall be in accordance with the City ordinances, rules, and requirements and Call Before You Dig requirements of the Oregon Revised Statutes. Grantee shall obtain approval from the City Engineer via a Public Works Permit, and meet with the Public Works Department representative, if requested prior to commencement of such construction. Permit applications shall be signed by an authorized representative of Grantee and include a map or blueprint showing the location of all proposed excavations, pipes, conduits, or other apparatus. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in materials and workmanship.

When the City reasonably determines that the nature and performance of Grantee’s work in the City requires separate assurance that the work will be complete or that the work shall be maintained against defects in material or workmanship, the City may require Grantee to furnish to the City a performance or maintenance bond for the estimated value of all the work for the stated interval to insure compliance by Grantee with rules, regulations, ordinances, and orders of the Council relating to its operations within the City as provided for under this section, after the receipt of notice and an opportunity for Grantee to cure any defect.

Grantee must comply with applicable City ordinances, resolutions, rules, and orders that generally apply to the reasonable management of the safety and use of Public Rights of Way within the City as such requirements exist at the time of Grantee’s work. However, by entering this agreement, Grantee is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules, or orders enacted after the Effective Date. In addition, to the extent permitted by law, this Franchise does not require Grantee to comply with existing or future ordinances, resolutions, rules, or orders that conflict with any specific provision of this Franchise.

The word “applicable”, as used in this paragraph shall mean such rules, regulations, ordinances or orders as the City Council may deem necessary to manage the safety of the Public Right of Way and to protect

the public and any member of the public residing within the City, who might be affected by any excavation work or installation of the Grantee.

Grantee shall furnish to the City, and maintain a current copy on file, a certificate of insurance insuring against the risks of personal injury, bodily injury and property damage in the minimum amounts and coverage provided for by City ordinances as of the Effective Date, naming the City as additional insured against those risks for any act or omission that is not a negligent or intentional wrongful act of the City and including the following statement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."

Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/ blueprints for 1) Customer service connections/drops, repairs or maintenance that do not require installation of facilities in the Public Right of Way, altering, cutting or breaking of the roadway, curb or sidewalk, or 2) Routine maintenance or repair of above ground Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours.

During primary construction continuing for one (1) year from the commencement of Franchise, City will forgo Public Works Permit requirements in favor of regular coordination meetings with the City's Public Works Department representatives. Grantee will reimburse City for City staff time as City invoices Grantee.

If requested by the City, Grantee shall furnish the City with record drawings as maintained in the ordinary course of business showing Grantee's facilities within the Public Right of Way in a format (electronic or hard copy) acceptable to City and Grantee within 60 days after such work is complete. Drawings shall be certified by an authorized representative of Grantee and Grantee shall not be required to have the drawings signed or stamped by a registered or professional engineer. While it is not anticipated that the furnishing of record drawings would require disclosure of sensitive proprietary information of Grantee, in the event that such sensitive proprietary information is nevertheless included and Grantee requests confidentiality of such information the City will maintain confidentiality of such sensitive proprietary information to the extent permitted under Oregon Public Records Law including, without limitation, ORS 192.355(4)

Section 4. Restoration of Facilities. Whenever Grantee shall disturb any Public Right of Way, it shall restore the same to a condition as specified in the current version of the City of Brookings Engineering Requirements and Standard Specification for Public Works Infrastructure equal to the condition which existed prior to construction, unless the City allows Grantee to restore such area to a lesser standard, as soon as practical without unnecessary delay, and failing to do so in a timely manner, the City shall have the right to set a reasonable time within which such repairs and restoration of streets and other public places shall be completed, and to notify Grantee in writing of its time requirement for repair and restoration, and upon failure of such repairs being made by Grantee, within the time so reasonably prescribed, the City may cause such repairs to be made at the expense of Grantee, after having provided Grantee with written notice and a reasonable opportunity to cure.

The City may cause the Grantee to remove or relocate any pole, underground conduit or equipment belonging to the Grantee, including relocating aerial facilities to an underground location, whenever the relocation is for public necessity, and the cost shall be borne proportionately by the Grantee and other utilities being concurrently relocated as coordinated and adjudicated by the City unless such cost is chargeable by law or tariff to another party, or necessitated for the benefit of a third party other than the City.

Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee shall, upon 60 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City may remove it at Grantee's expense.

"Relocation for public necessity" shall mean removal or relocation to accommodate the construction or reconstruction of transportation roadways and the construction or reconstruction of public improvements and infrastructure, including but not limited to water and sewer facilities; it shall not include projects that are purely for beautification purposes unless said project is located within the City's Urban Renewal Area (Map attached), or relocation to accommodate private or third party construction of public infrastructure that is required as a condition of approval of private property development or redevelopment. When facilities are relocated for the benefit of a third party as described in the previous sentence, the cost shall be borne by the party requesting relocation. Nothing herein shall be deemed to preclude the City from agreeing in writing, in its sole discretion, to contribute to utility operators' costs for such relocation.

Section 5. Construction Conflicts to be Avoided. Nothing in this Franchise shall be construed in any way to prevent the proper authorities of the City from putting in a sewer system, grading, rocking, paving, repairing, altering or improving any of the Public Right of Way within the City in or upon which the poles, wires, or other conductors of Grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the Grantee's use of said poles, wires, conductors, conduits, pipes or other apparatus.

Section 6. Adjustments to Facilities. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require; provided, however, that the City shall not require any such action of Grantee until the person or persons desiring to move any such buildings, machinery or other objects, agrees to pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and agrees to deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and agrees to pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible

and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. Neither the City nor any of its employees shall be held liable for the consequences of any act done in connection with the moving of a non-City owned building or non-City owned other object or rearrangement of wires or for the cost of rearranging the wires.

Section 7. Conditions on Sale, Transfer or Assignment. The franchise granted shall be binding upon the successors, legal representatives and assigns of the Grantee. Grantee may sell, transfer or otherwise assign this Franchise without City's consent upon approval from appropriate regulatory authority (Public Utility Commission of Oregon or Federal Communications Commission), if applicable, provided that no such transfer, sale or assignment of this franchise shall be binding on City unless and until City has notice of same in writing, until the transferee in writing has accepted the terms and conditions of this Franchise and until the transferee has submitted satisfactory proof to City of the liability insurance coverage required by this Franchise and has submitted bonds or other guarantees that any work begun by Company and then in progress under the terms of a City permit shall be performed by the transferee to City's standards.

Section 8. Indemnification. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from any and all claims, damages, cost and expenses to which it or they may be subjected by reason of any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted by this Franchise. If both the Grantee and the City are found to be partially liable for damages, the Grantee's liability under this section shall not exceed its proportion of negligence or fault. The City shall give Grantee prompt notice of any claim (or advance notice of claim) received by the City as to which the City seeks indemnity from Grantee and shall tender the defense of any such claim to Grantee. The aforementioned indemnity is not applicable to that which is attributable to or arises from the negligence or willful misconduct of the City and its officers, agents and employees. Neither party may bind the other to a settlement of any such claim or to payment of any of the costs of such claim without the written consent of the party to be bound.

Section 9. Franchise Fee. In consideration of the rights, privileges and franchise hereby granted, Grantee shall pay to the City from and after the date of the acceptance of this franchise, and until its expiration, 7.00% per annum of its gross revenue, less uncollectible amounts, derived from telecommunications and cable services rendered to customers within the City limits. Gross revenues will mean all local access revenue derived under ORS 221.515 and ORS 759.005. The City acknowledges that the franchise fee in this Section is subject to the limitation in ORS 221.515 for such time as that statute remains in effect. Payment of said fee shall be made monthly by the fifteenth of the following month. The City reserves the right to audit the payments made by Grantee to assure they comply with the requirements of this franchise. All costs and charges associated with a review or audit of the franchise fee payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Written notice for any audit review or other claim shall be provided within three years after the payment has been remitted by Grantee to the City.

The Parties acknowledge that, at present, existing laws and regulations limit the City to collection of a maximum permissible Franchise Fee of seven percent (7%) of Gross Revenues. In the

event that a change in the existing laws and regulations would allow the City to increase the Franchise Fee above seven percent (7%), and the City actually proposes to increase the Franchise Fee in exercise of such authority, the City may amend the Franchise Fee percentage. Following the determination to increase the Franchise Fee and enactment of an ordinance enabling the same, the City shall notify the Grantee of its intent to collect the increased Franchise Fee, and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the maximum permissible franchise fee percentage allowed by law.

Section 10. Grantee Use of Poles. In further consideration of the rights and privileges herein granted, the Grantee hereby grants to the City the right and privilege free of charge to suspend and maintain on poles placed by the Grantee in the Public Rights of Way, such wires as are necessary for the exclusive use of the City for non-commercial fire alarm and police purposes in accordance with the terms and conditions of Grantee's pole attachment or conduit joint use agreement and applicable law. Any such wiring installations made and to be made by the City shall be made in conformity to the requirements of all applicable Federal, State and City electrical codes and in conformity with standard practices. City agrees to transfer their facilities, at the City's cost, to new poles placed by the Grantee within 30 days of notification.

Section 11. Term. The rights, privileges and franchise herein granted shall continue and be in force the period of ten (10) years from and after the date this Franchise takes effect, provided that Grantee accepts the franchise as required in Section 12 ("Effective Date").

Section 12. Acceptance. The Grantee shall file with the City Recorder its written acceptance of the rights and franchise hereby granted and the regulations hereby imposed, within sixty (60) days from and after the date when this Franchise shall become effective; and this Franchise shall become null and void unless such acceptance is so filed. The Grantee shall at all times, fully and faithfully, perform all of the terms, provisions and conditions of this Franchise and all other ordinances and orders of the City Council as specified herein.

Passed by the City Council on June 12, 2023, effective July 12, 2023.

Signed by me in the authentication of its passage on the _____ day of June, 2023.

ATTEST:

Mayor Ron Hedenskog

City Recorder Janell K Howard

Accepted by the Franchisee:

The amendment to the Franchise granted to LS Networks Inc. DBA LSN as set forth in this Ordinance is hereby accepted by the Franchisee on the _____ day of _____, 2023.

Signature: _____

Printed Name: _____

Title: _____

DRAFT