

ORDINANCE NO. 2054

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING TO LIGHTSPEED NETWORKS, INC., DBA "LS NETWORKS" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF MILWAUKIE OREGON.

WHEREAS, LightSpeed Networks, Inc. dba LS Networks, an Oregon Corporation provides Telecommunications services within the City of Milwaukie, Oregon; and

WHEREAS, Franchisee has applied for a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications located in the public rights of way, and the City of Milwaukie "City" has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Council approves the Telecommunications Franchise attached to this Ordinance as Exhibit A and incorporated herein by this reference.

Section 2. If any component of this Ordinance is held invalid by a reviewing court with jurisdiction over the matter, the remainder shall remain in effect.

Read the first time on 1/15/13 and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on 1/15/13

Signed by the Mayor on 1/15/13

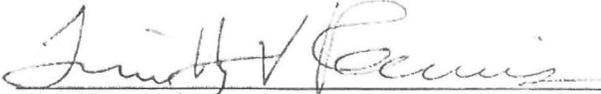


Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder



City Attorney

Ordinance No. 2054
Exhibit A

**TELECOMMUNICATIONS
FRANCHISE AGREEMENT**
between
MILWAUKIE, OREGON
and
LightSpeed Networks, Inc. dba: LS Networks

1. PURPOSE AND INTENT

1.1 Authorization

The City of Milwaukie, Oregon (hereafter City or Grantor) is authorized to grant a Franchise Agreement to LightSpeed Networks, Inc., dba: LS Networks (hereafter Grantee) for a non-exclusive seven (7)-year Franchise to construct, operate and maintain a Telecommunications system in the City. This Franchise Agreement is subject to the general lawful police power of Grantor affecting matters of local government concern and not merely existing contractual rights of Grantee. Nothing in this Franchise Agreement waives the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

This Franchise Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the Streets and Public Ways should Grantee provide service other than Telecommunications Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.

1.2 Purpose

The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.

2. DEFINITIONS

For the purposes of this Franchise Agreement and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

2.1 City

means the City of Milwaukie, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

2.2 FCC

means the Federal Communications Commission.

2.3 Franchise

means the non-exclusive and revocable Telecommunications authorization or renewal thereof for the construction or operation of a Telecommunications System such as is granted by this Franchise Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

2.4 Franchise Agreement

means this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.

2.5 Franchise Area

means all portions of the City of Milwaukie including any areas annexed to the City.

2.6 Grantee

means LightSpeed Networks Inc., dba: LS Networks, and the lawful successors, transferees, or assignees thereof.

2.7 Grantor

means City of Milwaukie, a municipal corporation in the State of Oregon.

2.8 Gross Revenues

Any and all revenue, of any kind, nature or form, without deduction for expense in the City of Milwaukie as is further defined in Section 5. All such revenue remains subject to applicable FCC rules and regulations which exclude revenue from cable modem service, however Grantor retains the right to require inclusion of revenue from cable modem service upon a change in the law that supplies such authority.

2.9 Streets and Public Ways

means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way, or other similar means of access to the extent Grantor has the right to allow Grantee to use them.

2.10 Telecommunications

means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

2.11 Telecommunications Network

means infrastructure owned by Grantee utilizing one or more facilities located within the City's Streets and Public Ways including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and Telecommunications Service.

2.12 Telecommunications Service

means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' uses.

2.13 Year

means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

3. GRANT OF FRANCHISE

3.1 Grant

Grantor hereby grants to the Grantee a non-exclusive, revocable Telecommunications Franchise for a seven (7)-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a Telecommunications system within the Franchise Area. This Franchise Agreement constitutes the authority, right, privilege and obligation to provide Telecommunications Services. This Franchise Agreement is subject to the laws of the United States and the State of Oregon, and to the general ordinances of the Grantor affecting any matter and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. The Grantor shall upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations.

3.2 Use of Streets and Public Ways

For the purpose of constructing, operating and maintaining a Telecommunications system in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Telecommunications system. Prior to construction or alteration, however, the Grantee shall in each case file plans and obtain required permits as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable Telecommunications fees, and receive approval as necessary before proceeding.

3.3 Duration and Effective Date of Franchise

Except as otherwise provided herein for revocation, the term of this Franchise Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be seven (7) years from the effective date of this Franchise Agreement. Grantee may file an application to renew this Franchise no fewer than 180 days before expiration of this Franchise Agreement, in accordance with Milwaukie Municipal Code Section 3.13.060.

3.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and is subject to all rights, interests, agreements, permits, easements or licenses granted by Grantor to any person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Streets and Public Ways for any purpose not incompatible with Grantee's authority under this Franchise Agreement, and for additional franchises for Telecommunications systems.

3.5 Franchise Non-Transferable

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the City Council, which may be expressed by resolution or other appropriate

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instrument. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee. City shall invoice Grantee for the time and materials costs incurred by the City in considering the request to transfer this Franchise Agreement.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications system of the Grantee or any affiliate of the Grantee. However, the Telecommunications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise Agreement.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Telecommunications system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is Telecommunications system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.6 Franchise Agreement Acceptance

After City Council approves this Franchise Agreement, the City Manager shall seasonably tender it to Grantee. Within sixty (60) days after Council approval, Grantee must file a written acceptance with the City Manager. An adequate form of acceptance is annexed to this Franchise Agreement. The Council-approved Franchise Agreement will lapse if Grantee fails to accept the Franchise Agreement in accordance with this section.

4. CONSTRUCTION, MAINTENANCE, AND REPAIR OF INFRASTRUCTURE

4.1 Grantee may make all needful excavations in any Street or Public Way for the purpose of placing, erecting, laying, maintaining, or repairing Grantee's infrastructure, and shall repair, renew, or replace the same as reasonably possible to the condition that existed prior to such excavation. Grantee shall obtain all necessary City of Milwaukie permits for such excavation and construction and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction within the Public Ways in the City, and (2) maintained by the City as confidential and exempt from public disclosure to the maximum extent allowed by law, this provision constituting an official request for such confidentiality under Oregon's public records laws.

4.2 Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, bonding requirements, and ordinances that may, during the term of this Franchise, be adopted or imposed from time to time by the City, or any other authority having jurisdiction over Streets and Public Ways.

4.3 Prior to commencing excavation or construction Grantee shall give appropriate notice to other franchisees, licensees, or permittees of the City owning or maintaining facilities that may be affected by Grantee's proposed excavation or construction.

4.4 If emergency repairs are necessary for Grantee's facilities, Grantee may immediately initiate such emergency repairs. Grantee shall notify the City's Engineering Department by telephone, e-mail, or other means reasonably calculated to provide prompt and effective notification as soon as practicable after commencement of work performed under emergency conditions. Grantee shall make such repairs in compliance with applicable ordinances and regulations. Grantee shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

4.5 Grantee shall construct and maintain its Telecommunications system in such a manner as to not interfere with City sewer or water systems, or other City facilities.

5. GENERAL FINANCIAL AND INSURANCE PROVISIONS

5.1 Compensation

5.1.A Franchise Fee

As compensation for the Franchise Agreement to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Telecommunications system within the Franchise Area, the Grantee shall pay to Grantor an amount equal to seven percent (7%) of the Gross Revenues derived from 1) the operation of Grantee's Telecommunications system to provide Telecommunications Services within the Franchise Area; and 2) the sale of any other good or service within the Franchise Area. In the event any law or valid rule or regulation applicable to this Franchise Agreement limits franchise fees below the seven percent (7%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible franchise fee, then Grantee shall pay the higher franchise fee up to the maximum allowable by law, not to exceed seven percent (7%).

Any bad debts or other accrued amounts deducted under Oregon law in the calculation of Gross Revenues shall be included in Gross Revenues at such time as they are actually collected.

5.1.B Payment of Franchise Fees

- 1) 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 shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts of franchise fee payments.
- 2) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise Agreement. All amounts paid shall be subject to audit and recomputation by Grantor.

5.2 Faithful Performance Bond

5.2.A Posting of Bond

Upon the effective date of this Franchise Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor in a form and with good and sufficient surety approved by the Grantor, in the penal sum of Fifty Thousand Dollars (\$50,000.00), conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise Agreement. Such bond shall be maintained by the Grantee throughout the term of this Franchise Agreement, but may be reduced in amount to Twenty-Five Thousand Dollars (\$25,000.00) upon the completion of upgrade construction according to the terms of this Franchise Agreement.

5.2.B Duration of Bond

Grantee shall pay all premiums charged for any bond required under Section 5.2.A, and unless Grantor specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

- 1) The remaining term of this Franchise Agreement; or
- 2) If required by the Grantor, the removal of all of Grantee's system installed in the Grantor's Streets and Public Ways.

5.2.C Conditions

The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of Grantor as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the Grantor.

5.3 Damages and Defense

5.3.A Indemnification

Grantee shall defend, indemnify, and hold the City and its officers, employees, agents, and representatives harmless from and against any and all damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors, or subcontractors, including claims arising out of copyright infringement, defamation, or antitrust actions, in the construction, operation, maintenance, repair, or removal of its Telecommunications facilities, and in providing or offering Telecommunications Services over Telecommunications facilities or networks, whether such acts or omissions are authorized, allowed, or prohibited by this code or by this Franchise Agreement.

Provided however such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fee cause by the negligence of the City, its agent, employees, officers, contractors or subcontractors.

5.3.B Failure of Grantee to Defend

If the Grantee fails to defend as required in Section 5.4.A, above, then the Grantee agrees to and shall pay all expenses incurred by the Grantor and its officers, duly authorized or actual agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section 5.4.A above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

5.4 Liability Insurance and Indemnification

5.4.A Insurance Required

Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, duly authorized or actual agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise Agreement or in connection therewith, as follows:

5.4.B Coverage

The insurance shall provide coverage at all times for not less than \$3,000,000 for personal injury to each person, \$3,000,000 aggregate for each occurrence, and \$3,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$3,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise Agreement. The insurance shall be equal to or better than commercial general liability insurance. The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$2,000,000.

Any insurance carrier shall have an A.M. Best rating of A VII or better, and be admitted to do business in the State of Oregon.

LSN shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. On or before the date this Franchise is fully executed by the parties, LSN shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Five Million Dollars (\$5,000,000). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and authorized to conduct business in the State of Oregon.

The insurance policy limits required in sections 5.4.B may be satisfied by Provider through a combination of the underlying insurance policy and umbrella (excess) liability policy(ies) so long as said umbrella policies are, at a minimum, "follow form" and provide insurance equal to or greater than coverage afforded by the underlying liability policy(ies).

5.4.C Additional Insureds

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Grantor and its officers, duly authorized or actual agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

5.4.D Cancellation

The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the Grantor. If the insurance is canceled or materially altered so as to

be out of compliance with the requirements of this Section within the term of this Franchise Agreement, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise Agreement.

5.4.E Certificate

Grantee shall maintain on file with the Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to Grantor's approvals to the adequacy of the certificate and of the insurance certified under the requirements of this section.

The certificate shall show that the general liability portion of the insurance includes:

- 1) Broad form property damage;
- 2) Products and completed operations;
- 3) Explosion, collapse, and underground exposures;
- 4) Contractual liability; and
- 5) Owners and contractors protective coverage.

5.4.F Failure to Maintain Insurance

Failure to maintain adequate insurance as required under this Section shall be cause for immediate termination of this Franchise Agreement by the Grantor.

5.4.G Additional Indemnification

The Grantee shall also indemnify, defend and hold harmless the Grantor and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

6. RIGHTS RESERVED TO GRANTOR

6.1 Plans, Records and Maps

6.1.A Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Telecommunications system equipment installed or in use in the Franchise Area. These maps shall be maintained in a standard format and medium agreed upon by the Grantor and the Grantee. Grantor's review of the plans, records, and as-built maps, provided for herein, shall occur at Milwaukie City Hall.

6.1.B The ability for Grantor to obtain records and information from Grantee is critical to the administration of this Franchise Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section constitutes a material breach of this Franchise Agreement.

6.2 Right to Perform Franchise Fee Audit or Review

The Grantor shall have the right to perform, or cause to have performed, a formal audit or a professional review of the Grantee's books and records and, for the specific purposes determining the Gross Revenues derived from the operation of the Telecommunications system to provide Telecommunications Services within the Franchise Area, to determine the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit or review must be commenced not later than five (5) years after the date on which franchise fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the Grantor, except that if it is established that the Grantee has made underpayment of 3% or more in franchise fees than required by this Franchise Agreement, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit or review.

6.3 Right of Inspection of Construction

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and other pertinent provisions of law.

6.4 Intervention

Grantee agrees to waive objection to City's motion to intervene in any civil or criminal action to which Grantee is a party, provided City moves to intervene under applicable court rules.

6.5 Right to Require Removal of Property

At the expiration of the term for which the Franchise Agreement is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for in this Franchise Agreement, the Grantor may require the Grantee to remove, at Grantee's own expense, all or any part of the Telecommunications system from all Streets And Public Ways within the Franchise Area. If the Grantee fails to remove such equipment, the Grantor may perform the work and collect the cost thereof from the Grantee. Notwithstanding the other provisions of this section, the Grantee, by written notice to the Grantor, may

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elect to abandon underground Telecommunications equipment in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned equipment; except that the Grantor may nevertheless, with 60-days' notice, require the Grantee to remove or otherwise properly abandon such equipment.

7. TERMINATION AND EXPIRATION

7.1 Revocation

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this Franchise Agreement, and all rights and privileges pertaining thereto, in the event that: (a) the Grantee is in violation of any material provision of the Franchise Agreement and fails to correct the violation after written notice of the violation and proposed forfeiture, and a reasonable opportunity thereafter to correct the violation; (b) the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; (c) the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers; (d) the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; (e) the Grantee fails to maintain the full amount of its insurance or to post a performance bond, and letter of credit, as required under the terms of this Franchise Agreement; or (f) any other grounds exist for revocation as set forth in Milwaukie Municipal Code Section 3.13.060 (N).

Upon the occurrence of one of the events set out above, following ten 10 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard before City Council, the City may by resolution declare a forfeiture.

7.2 Receivership

In addition to its other rights and remedies as set forth in this Franchise Agreement, the Grantor shall have the right, subject to federal law, to declare a forfeiture of this Franchise Agreement one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless: (a) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise Agreement and remedied any and all violations or defaults, as approved by a City Council resolution; and (b) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the Grantor, duly approved by the Grantor and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement.

7.3 Expiration

Upon expiration of the Franchise Agreement, in the event there is no forfeiture or revocation of the Franchise Agreement, and if the Grantee desires to renew the Franchise Agreement, both the Grantee and the Grantor shall discuss renewal in good faith under the requirements of Milwaukie Municipal Code Section 3.13.060.

7.4 Survival of Terms

Upon the termination without renewal, or forfeiture of the Franchise, Grantee's obligations to restore Streets and Public Ways under Section 6 and maintain insurance coverage under Section 5 shall survive. These obligations shall continue notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a Grantor-approved Transfer of the Telecommunications system is completed, and another entity has assumed full and complete responsibility for the Telecommunications system and for any relevant acts or omissions.

8. MISCELLANEOUS PROVISIONS

8.1 No Limitation of City Authority

8.1.A Nothing in this Franchise Agreement shall in any way be construed or interpreted to prevent, or in any way limit, Grantor from modifying or performing any work in the Streets and Public Ways, or granting other franchises for use of Streets and Public Ways, or of adopting general ordinances regulating use of or activities in the Streets and Public Ways, or of otherwise abrogating or limiting any rights, privileges, or property interest Grantor now has in the Streets and Public Ways, whether under an interest or obligation existing now or acquired later.

8.1.B When it is reasonably necessary for the public interest or any other reason specified in Milwaukie Municipal Code Section 3.13.050, Grantee shall, upon request and 90-days' notice, and at its sole expense, promptly relocate its equipment or facilities and restore the area where relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

8.1.C This Franchise Agreement does not give the Grantee any credit or exemption from any nondiscriminatory, generally-applicable business tax, or other tax now or hereafter levied upon Grantee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Grantee's real property and imposed under a generally-applicable ordinance or resolution.

8.2 Compliance with Laws

The Grantee shall comply with applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise Agreement, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder. Upon request, the Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise Agreement.

8.3 Extension of City Limits

Upon annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Telecommunications facilities owned, maintained, or operated by Grantee located within any Streets and Public Ways of the annexed territory shall be subject to all terms of this Franchise Agreement.

8.4 Limitation of Liability

Grantor and Grantee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise Agreement, or any part hereof, is determined or declared to be invalid.

8.5 Waiver

The City is vested with the power and authority to reasonably regulate and manage its Streets and Public Ways in a competitively-neutral and non-discriminatory manner, and in the public interest. Grantee shall not be relieved of its obligations to comply with any provision of this Franchise Agreement by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise Agreement by reason of such failure or neglect.

8.6 Severability

If any section, subsection, sentence, clause, phrase or word of the Franchise Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

8.7 Captions

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

8.8 Nonenforcement by Grantor

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

8.9 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

8.10 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties and approved by City Council resolution.

8.11 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this Franchise Agreement, such consent or approval shall not be unreasonably withheld.

8.12 Notices and Time Limit for Grantee Communications

All communications with the Grantor by the Grantee referred to in this Franchise Agreement shall be made through the Office of the City Manager of City of Milwaukie, unless otherwise specified in this Franchise Agreement. Grantee shall provide any written communication required by this Franchise Agreement within sixty (60) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise Agreement.

8.13 Franchise Review

Either the Grantor or the Grantee may request the other party to participate in good faith negotiations, no more often than once per year beginning six months after the effective date of this Franchise Agreement, for a period not to exceed six (6) months, to consider adoption of amendments to the Franchise Agreement. There shall be no obligation for either party to enter negotiations.

Following negotiations, amendments to the Franchise Agreement may be presented to the City Council for adoption. Nothing in this section requires either the Grantor or the Grantee to agree to any amendment to the Franchise Agreement, and any amendment to the Franchise Agreement must be formally accepted by both parties.

8.14 Grantee Responsibility for Documentation

It shall be the responsibility of the Grantee to maintain all management information and record-keeping systems which will permit the clear, complete, and rapid documentation of compliance with the requirements of this Franchise Agreement. Such documentation shall be provided to the Grantor by the Grantee upon request, no later than ten (10) days following such request.

8.15 Grantee Responsible for Costs of Complying with Franchise Agreement

Unless otherwise specifically stated in this Franchise Agreement, it shall be the responsibility of the Grantee to bear the cost of complying with all of the terms of the Franchise Agreement.

8.16 Notice

Any notice provided for under this Franchise Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the Grantor: City Manager

City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

If to the Grantee: LightSpeed Networks, Inc.

Contracts Administration
921 SW Washington St., Suite 370
Portland, OR 97205

End of document

ACCEPTANCE AND GUARANTEE

City Manager
City of Milwaukie, City Hall
10722 SE Main Street
Milwaukie, OR 97222

This is to advise the City of Milwaukie, Oregon (the "City") that LightSpeed Networks, Inc., dba: LS Networks (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 2054, passed by the City Council on January 15, 2013 (the Franchise Agreement) granting a Franchise. The Grantee agrees to abide by all provisions, terms and conditions of the Franchise Agreement subject to applicable federal, state and local law.

LightSpeed Networks, Inc., dba: LS Networks

BY: _____



TITLE: Michael Weidman, CEO and President

DATE: _____

1/21/2013