

6:00 pm Audit Committee (Committee Members Only Required) –Review Audit Findings

**AGENDA FOR COUNCIL MEETING
KLAMATH FALLS CITY COUNCIL
JANUARY 17, 2017
7:00 P.M.**

Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

1. CONSENT AGENDA

- a. Approval of January 17, 2017 agenda and January 3, 2017 regular meeting minutes

LAND USE PUBLIC HEARING - QUASI JUDICIAL

LAND USE PUBLIC HEARING – LEGISLATIVE

GENERAL PUBLIC HEARING

LEGISLATIVE ACTION

2. WATER RESALE AGREEMENT BETWEEN THE CITY OF KLAMATH FALLS AND DUKES MOBILE HOME COMMUNITY, LLC FOR CAMPUS GREEN MOBILE HOME PARK, PHASES 1 & 2

- a. Report by City Engineer
- b. Move to Approve the Water Resale Agreement

3. CONSTRUCTION OF THE KIT CARSON TRAIL PROJECT, A RECREATIONAL WALKING AND BICYCLE TRAIL LOCATED WITHIN KIT CARSON PARK

- a. Report by City Engineer
- b. Presentation by Lauren Jespersen
- c. Move to Approve Option 1, Authorizing Staff to Proceed with Management and Construction, Utilizing City Division Resources for the Kit Carson Trail Project

4. A SPECIAL ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO LIGHTSPEED NETWORKS, INC. – SECOND READING

- a. Move to Pass the Ordinance by Title for Second and Final Reading
- b. Move to Adopt Ordinance

OTHER MATTERS

ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):

- (a) - Employment of Public Officers, Employees
- (b) - Discipline of Public Officers and Employees and Agents
- (d) - Labor Negotiations
- (e) - Real Property Transactions
- (f) - Exempt Public Records
- (g) - Trade Negotiations
- (h) - Consultation with Legal Counsel
- (i) - Performance Evaluations of Public Officers and Employees
- (j) - Public Investments

*****AMERICANS WITH DISABILITIES ACT NOTICE*****

Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 2

Date: January 17, 2017

Department: Public Works

Staff Presenter: Scott Souders

City Manager Review: 

Contact/Title: Scott Souders / City Engineer

Telephone No.: 541-883-5290

Email: ssouders@klamathfalls.city

TOPIC: Water Resale Agreement between the City of Klamath Falls and Dukes Mobile Home Community, LLC for Campus Green Mobile Home Park, Phases 1 & 2

SUMMARY AND BACKGROUND:

The Campus Green Mobile Home Park is located at 3611 North Highway 97 and has been served by City water service since December of 1986 through a single 1.5" water meter. No City meter changes are being requested at this time.

In order for the park owner to equitably recapture the costs associated with supplying water to each of the homes spaces within the park, the owner wishes to separately meter each home and bill the occupants based on their actual usage. Oregon State regulations contained in Chapter 333, Division 61, govern the terms of water resale.

Staff has drafted the attached Water Resale Agreement for Council consideration.

FINANCIAL IMPACT:

There is no financial impact to the City. The existing 1.5" water meter will remain in place and the owner will continue to be billed on a monthly basis.

COUNCIL OPTIONS:

1. Approve the Water Resale Agreement.
2. Approve the Water Resale Agreement based on modifications proposed by Council.
3. Deny the Water Resale Agreement.

DOCUMENTS ATTACHED:

- Water Resale Agreement

RECOMMENDED MOTION/ACTION:

Move to Approve the Water Resale Agreement.

NOTICE SENT TO:

Sean Killebrew
372 South Eagle Road, Suite 389
Eagle, Idaho 83616

WATER RESALE AGREEMENT

THIS AGREEMENT is made and entered into the date last written below by and between the City of Klamath Falls (City) and Dukes Mobile Home Community, LLC (Owner).

WHEREAS, Owner owns and is responsible for all lots in the Campus Green Mobile Home Park, Phases 1 & 2, as shown on attached Exhibit A (the "Mobile Home Park");

WHEREAS, the Mobile Home Park receives water through a common meter under Owner's name and desires to distribute and resell the water to individual property owners within the Mobile Home Park; and

WHEREAS, the City is willing to permit Owner to resell City water by metering within the Mobile Home Park; NOW, THEREFORE

THE PARTIES HERETO AGREE AS FOLLOWS:

1. City shall continue to deliver potable domestic water to Owner's 1.5" (1.5-inch) meter at the Mobile Home Park subject to City's duly adopted rules and regulations governing water service within and outside of the City. City will attempt to maintain a continuous water service, subject to necessary construction and maintenance interruptions, natural disaster and other disruptive events outside City's control.
2. City further consents to Owner's metering of units within the Mobile Home Park and resale of City water to the occupants of such units. The City assumes no responsibility for Owner's facilities beyond the 1.5" meter or for individual service to residents of the Mobile Home Park by Owner.
3. Owner shall continue to pay for water delivered at the Mobile Home Park's 1.5" meter at the City's Inside Multi-Family rate, which rate may be subject to change from time to time pursuant to City's general rate setting authority, provided Owner's rate shall be the same as that charged other Inside Multi-Family accounts. Owner's service from City shall be subject to City's duly adopted rules and regulations governing water service.
4. Owner shall not extend or permit resale or delivery of water to property outside of the Mobile Home Park and shall comply with all applicable State regulations and Administrative Rules regarding the sale and delivery of domestic water, including, without limitation, the requirements for qualifying as a "Public Water System" under Oregon Administrative Rules ("OAR") Chapter 333, Division 61, and all applicable requirements of the Oregon Drinking Water Quality Act. Owner specifically agrees that City will not be obligated to provide water under this Agreement, and Owner will not resell any water provided by the City, until Owner provides written confirmation from the Oregon Department of Human Services, Drinking Water Division ("ODHS") that Owner is established as a "Public Water System" and may lawfully resell water pursuant to Oregon and ODHS rules and regulations. Owner shall also take all steps necessary to assure that Owner's system is in conformance with the State Plumbing code and that no cross-connections to other water supply services occur.

5. This Agreement shall not be personal to Owner, but shall run with the land and inure to the benefit and obligation of subsequent owners of the Mobile Home Park. This Agreement may not be assigned by Owner without the prior written consent of City.
6. Owner may terminate this Agreement at any time upon 30 days written notice to City and upon bringing Owner's account current as of the date of termination. City may terminate upon 90 days with written notice.
7. In the event Owner fails to make timely payment for water received, violates City's duly adopted service rules and regulations, or is otherwise in default of this Agreement, City reserves the right to terminate water service upon ten days written notice until the underlying non-compliance is corrected. City shall not be obligated to notify those served by Owner of pending termination of water service.
8. All notices or communications of any kind required or permitted hereunder shall be in writing and, subject to written notification of a change, addressed as follows:

To City:
 Nathan Cherpeski, City Manager
 500 Klamath Avenue
 Klamath Falls, OR 97601

To Owner:
 Sean Killebrew
 372 South Eagle Road, Suite 389
 Eagle, Idaho 83616

9. The terms and conditions of this Agreement are not intended to benefit, and shall not benefit, any third party.
10. The relationship between the parties is one of independent contract. Nothing in this Agreement may be construed to create a partnership, joint venture or other relationship between the partners.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, exclusive of choice of law rules. In the event legal action is necessary by either party regarding enforcement or interpretation of any terms or conditions herein, exclusive venue shall lie in Klamath County. If suit or action is taken to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs, including any appeal thereof.

WHEREFORE, in witness whereof, the parties have entered into this Agreement as of the dates below written.

CITY OF KLAMATH FALLS

OWNER

By: _____
 Nathan Cherpeski, City Manager

 Sean Killebrew
 Date: _____

ATTEST: City Recorder

 Date: _____

**KLAMATH FALLS CITY COUNCIL
AGENDA REPORT**



Agenda Item No. 3

Date: January 17, 2017

Department: Public Works	Contact/Title: Scott Souders / City Engineer
Staff Presenter: Scott Souders	Telephone No.: 541-883-5290
City Manager Review: 	Email: ssouders@klamathfalls.city

TOPIC: Construction of the Kit Carson Trail Project, a recreational walking and bicycle trail located within Kit Carson Park

SUMMARY AND BACKGROUND:

In 2015, Sky Lakes Medical Center and City staff began planning efforts to revitalize open space and existing facilities within Kit Carson Park. Due to drought conditions experienced in recent years, surface water allocations were sporadic and the park landscape suffered. Due to the lack of irrigation water, park maintenance became difficult, aesthetically the area became less attractive, and public use declined.

In partnership with Sky Lakes Medical Center and the Parks Advisory Board, City staff identified several projects to improve the park. Some of those ideas included:

- Upgrades to the surface water irrigation system
- Installation of a backup water source connection to the available City groundwater system
- Landscape revitalization and construction of new elevated tree planting areas
- Construction of an all-age group Nature Play playground system
- Construction of a recreational multi-use pedestrian and bicycle trail network

Irrigation system modifications began during the summer of 2016 with the installation of a backup water source and upgrades to the existing surface water system. Landscape revitalization also began as did plans for the creation of landscape berms throughout the vast open space where the retired baseball diamonds once resided. Sky Lakes also engaged in planning efforts and development of construction documents for a new Nature Play area anticipated for construction during the summer of 2017.

Through the park improvement planning process, staff worked with the Sky Lakes landscape architect to master plan a trail network that would provide connection to the surrounding neighborhood, the adjacent Crater Lake Parkway multi-use path, and offer an off-street exercise opportunity for the community. The attached plan sheet illustrates the final layout of approximately 0.5 miles of an 8' wide granite surfaced trail.

The trail project has been identified as a candidate for construction utilizing in-house resources provided by the Street Division. Engineering has worked closely with the Streets Manager and Supervisor to identify the scope of work and prepare a comprehensive construction budget. A total estimated construction cost of \$104,000 has been established. This price includes all materials, labor, and equipment to complete the project.

Upon approval from City Council, staff intends to immediately begin scheduling and coordination efforts to begin construction near the first of May. It is anticipated that the project will be completed by mid to late summer.

FINANCIAL IMPACT:

Funding for this project will be provided from:

- \$54,000 – Parks Infrastructure Capital Fund for Kit Carson Park Trails
- \$50,000 – Donation received from Advantage Dental in memory of Dr. Tucker

COUNCIL OPTIONS:

1. Authorize staff to proceed with management and construction, utilizing City Division resources.
2. Deny the project based on estimated construction cost. Direct staff to revise scope and reissue construction project for City Division resource pricing.
3. Deny the use of City Division resources for construction. Direct staff to revise scope and reissue construction project for public solicitation.
4. Deny the use of City Division resources for construction, and cancel the project.

DOCUMENTS ATTACHED:

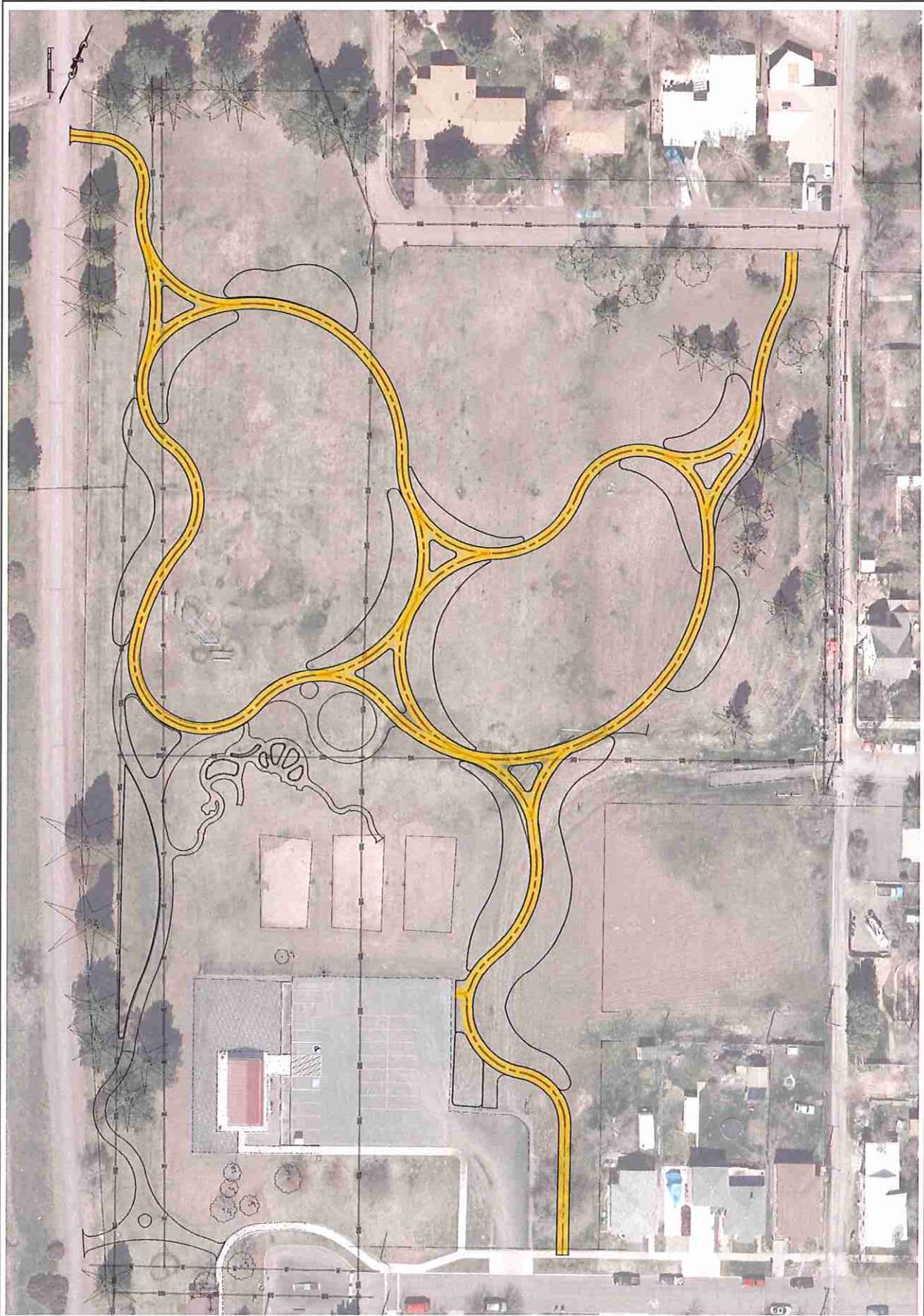
- Kit Carson Park Trail Layout Plan

RECOMMENDED MOTION/ACTION:

Move to approve Option 1, authorizing staff to proceed with management and construction, utilizing City Division resources for the Kit Carson Trail Project.

NOTICE SENT TO:

N/A



DESIGNED:	ENGINEERING DIVISION
DRAWN:	
CHECKED:	
PETE ROYER:	
PROJECT MANAGER:	Scott Souders, P.E.
DATE:	CITY ENGINEER

**KIT CARSON PARK
TRAIL LAYOUT**



REV	DESCRIPTION OF REVISION	DATE

ORDINANCE NO. 17-_____

**A SPECIAL ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
LIGHTSPEED NETWORKS, INC., AN OREGON CORPORATION DOING BUSINESS AS
LS NETWORKS, TO OPERATE A TELECOMMUNICATION
BUSINESS WITHIN THE CITY OF KLAMATH FALLS**

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1 Definitions

For the purpose of this Ordinance, the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future, and words in the singular number include words in the plural number.

(a) "City" shall mean the City of Klamath Falls, its Council, officials, boards, commissions, agents and employees, unless otherwise specifically designated, and the area within the present and future territorial City limits of the City of Klamath Falls.

(b) "Facilities" shall mean the Grantee's system of poles, wires, fixtures, underground lines and appurtenances thereto, for the purpose of supplying telecommunications service to the city, its residents, businesses and other organizations.

(c) "Franchise Right of Way Act" shall mean City Code Sections 7.370 to 7.499 that apply to this Franchise, unless otherwise specifically stated.

(d) "Grantee" shall mean Lightspeed Networks, Inc., an Oregon Corporation, doing business as LS Networks, its successors and assigns.

(e) "Gross Revenues" shall mean revenue of the Grantee or any affiliate of the Grantee in whatever form accrued from all sources in connection with operation of the communication facilities and delivery of Telecommunications Services throughout the entire franchise area, and includes any amount even if separately identified or accounted for by the Grantee as franchise or other license fees, including but not limited to: revenues from subscribers and customers; installation fees, equipment fees, and other fees related to the communication service; advertising revenue; access and attachment charges paid to the Grantee by other communications services or carriers; and revenue from the sale or lease of any wire, cable, facility, pole, duct, conduit or similar transmission equipment, all as subject to FCC rules and regulations with respect to local franchise charges. Provided, however, that "Gross Revenues" shall not include any revenues derived from "information services" that federal law and/or FCC rules and regulations, as amended from time to time and as interpreted by the FCC, specifically exempt from local regulation.

(f) "Telecommunication Facilities" shall mean all wires, cables, conduits, poles, equipment, appliances, and associated structures used by Grantee in providing its telecommunications services.

(g) "Telecommunications Services" shall have the meaning given that term provided in 47 U.S.C. Section 153(46) as amended from time to time and as interpreted by the FCC, but does not include services provided by radio common carrier or the transmission of television signals.

(h) "Streets" shall mean all present and future public rights-of-ways including, but not limited to, streets, alleys and bridges of the City.

Section 2 Franchise Grant

Pursuant to the City's City Code Sections 4.505 to 4.520 (Franchises) and the Franchise Right of Way Act, there is hereby granted by the City to Grantee, its successors and assigns, the right and privilege to provide Telecommunications Services within the City and to place, erect, lay, maintain and operate in, upon, over and under the Streets within the City, poles, wires and other appliances and conductors for the purpose of providing Telecommunications Services.

Grantee shall provide nondiscriminatory pricing on their Telecommunications Services.

This franchise does not grant the right to conduct any other business, including but not limited to the business of providing a "cable system" as defined by applicable law. Should Grantee desire to provide a "cable system" or an within the City using the City's Streets, it must comply with applicable City, State and Federal law relating to such service in effect at that time.

Section 3 Franchise Nonexclusive

(a) Any franchise granted hereunder by the City of Klamath Falls shall not be exclusive, and the City reserves the right to grant a similar franchise to any other persons, firm, company, corporation or association at any time, as well as the right, in its own name as a municipality, to use the streets for the same or similar purposes in the event the City shall hereafter decide to engage in the business of supplying telecommunications for municipal or other uses. In addition, Grantee acknowledges that the terms and conditions of this ordinance, and the franchise hereunder granted, reasonably represent the authority and the obligation of City to regulate the use of the streets and shall, in no manner whatsoever, be construed as having the intent or the effect of restraining Grantee's competitive ability to provide Telecommunication Services to consumers in the City; and further, that the privileges granted hereunder shall in no manner whatsoever be construed to give Grantee a superior position in the market. To this end, City shall, to the extent possible, uniformly apply the terms and conditions of this Ordinance to all franchises granted hereunder.

(b) If Grantee decides to install or place facilities in the rights of way adjoining City buildings, Grantee shall make connections to its fiber optic available to all City buildings as construction is completed in the rights of way adjoining of those buildings. Grantee shall not be required to extend fiber optic solely to service City sites. Such connections shall be completed to

those buildings at rates that are negotiated in advance and mutually agreed upon by City and Grantee.

Section 4 Public Use

Any rights granted hereunder shall always be subject to the right of the public to free use of public property and nothing herein shall be construed as granting any right that may unreasonably interrupt or infringe upon the free use by the people. In the event there is conflict, City shall notify Grantee of such conflict and provide Grantee a reasonable opportunity to cure the conflict. If Grantee is unable to cure, Grantee agrees to remove said offending installation at no expense to the City.

Section 5 Location and Method of Installation

(a) Regulation. The location of all facilities in the Streets shall be subject at all times to reasonable regulation by the City, comply with the Franchise Right of Way Act, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street and other traffic. All of such facilities shall be installed and at all times maintained by Grantee. In accordance with good industry practice, in safe order and condition, and in conformance with any and all applicable local, state and federal laws, rules and regulations now in force or which may be enacted in the future.

(b) Location Information. Grantee shall provide the City Public Works Department with Geographic Information System (GIS) showing the location of facilities in the Streets. City agrees that such information would constitute confidential, proprietary and trade secret information that would be exempt from disclosure under Oregon's Public Records Act.

(d) Due Care. In the construction, maintenance, repair and operation of its facilities, Grantee shall use all necessary care to avoid doing or permitting to be done any damage to the water lines, sewers, conduits or any property of City, or others using the Streets, and shall use all reasonable care to avoid injury to the property of City, or others using the Streets, and if it shall in such work do or permit to be done any such damage, Grantee shall promptly restore the property so damaged to the condition in which it was before being damaged, or pay therefore, and shall also be liable for any other damages which may accrue because of said damage to said City or any other person, firm or corporation.

(e) Restoration. Any Street or landscape excavated or disturbed by Grantee pursuant to the rights granted hereunder shall be restored as nearly as may be practical to the condition existing prior to performance of the work, as soon as practical and without unnecessary delay, at no expense to the City. Maintenance of an excavation or other disturbance for more than 24 hours shall only be permitted with notice to the City Public Works Department.

(f) Street Cuts. Whenever it becomes necessary to cut or bore any street surface laid or overlaid within five years prior to the date of the cut or bore, Grantee shall overlay the cut portion of the street to the standards of the City Public Works Department. Whenever it becomes necessary to cross a street laid or overlaid within five years prior to the cross, Grantee shall bore

under rather than cut the street surface, unless prior approval to cut and overlay the street surface is obtained by the Grantee from the City Public Works Department. City shall provide Grantee with six (6) months advance written notice that City intends to lay or overlay a street, including the specific portion or portions (by address or other identifying characteristic) of the street to be overlaid.

(g) City Conduits. Whenever it becomes necessary for the Grantee to lay new facilities or to relocate existing facilities within or along a Street containing a City conduit with sufficient capacity to accommodate Grantee's facilities within the City conduit, the Grantee may, with the prior approval of the City Public Works Department, install such facilities within the City conduit. The installation shall be at no expense to the City.

(h) Raising Lines. When necessary, in order to permit any duly authorized person to move any building or other structure across or along any of said Streets, Grantee shall temporarily raise or remove its facilities upon such Streets, upon reasonable notice in advance, and at such time and in such manner as may be reasonably necessary to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, that the cost to Grantee of such temporary raising or removal, and of any interruption of Grantee's service to its customer caused thereby, shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure.

Section 6 Trimming Trees

Grantee shall have the right and privilege of trimming all trees which overhang said streets, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its facilities; providing, no such trees are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said facilities. Grantee shall utilize the services of a licensed arborist or a tree service approved by the City Director of Public Works in all tree trimming activities hereunder, assuming the licensed arborist or tree service approved by the City satisfies the requirements of and is acceptable to Grantee.

Section 7 Construction Permits and Requirements

(a) Permit Required for New Facilities. As required by the City's Franchise Right of Way Act, Grantee shall be required to obtain a construction permit prior to commencing construction or installation of new facilities within the rights of way of the City. However, Grantee shall not be required to obtain a construction permit to transfer working service, rearrange existing facilities, add a cable to a pole lead, or install a customer specific wire (a "drop"), provided these activities do not require a cut on a City street, or otherwise alter or modify public facilities.

(b) Permit Information. Grantee shall submit an application for a permit to the City on a form to be provided by the City Public Works Department. The application shall contain: drawings, plans, or specifications showing the general location of the facilities to be installed; the certification of an engineer of Grantee that the drawings, plans or specifications comply with applicable technical codes, rules, and regulations; and a statement that all construction will be

performed consistent with the Uniform Manual of Traffic Control Devices.

(c) Permit Approval or Denial. The Public Works Director shall, within 45 calendar days after submission of the permit application referenced herein, approve or deny the application. If the Director denies an application, the Director shall give Grantee written notice of the reason[s] for the denial. If the permit is approved, all construction or installation shall be done by Grantee in accordance with the permit and with Section 7 of this agreement.

(d) Coordination of Construction Activities. By February 1 of each year, and at the invitation of the City, Grantee shall provide the City Public Works Director with a schedule of their proposed construction activities for the calendar year in, around or that may affect the public ways. If the City requests, and at the City's initiation, Grantee shall meet with the City and other grantees annually or as determined by the City Public Works Director to schedule and coordinate construction in the City. Grantee shall be required to make a reasonable effort to coordinate construction with the City and other grantees. In recognition of the tempo of business activity, the mention of a proposed construction activity at a Coordination meeting does not create an obligation on the part of the Grantee to proceed, nor does the omission of a construction activity otherwise preclude that activity's commencement consistent with the guidelines published within the City's Franchise Right of Way Act.

(e) Removal of Noncomplying Construction. Grantee shall only be required to remove noncomplying construction under section 7.492 of the City's Telecommunications Act after the City has notified Grantee that such construction is noncomplying and provided Grantee with a reasonable opportunity of not less than sixty (60) days to cure the noncompliance. Notification and removal shall be accomplished in accordance with Section 9 of this agreement.

(f) Request for Information. If City receives a request for information under the Oregon Public Records Law that requests information contained in a map, drawing, plan, or specification submitted by Grantee that is marked as confidential, proprietary, trade secret, or exempt from disclosure, City shall immediately send a copy of the request to Grantee. If it is not immediately apparent to City upon receipt of a request that the request calls for confidential, proprietary, or trade secret information of Grantee, but City later learns that such information is requested, City shall notify Grantee of the request immediately upon discovery that the request calls for such information.

(g) Excavation; Permit Not Required. Grantee must obtain a construction permit to excavate in the Streets to repair or maintain existing facilities. Grantee shall follow City Code Section 7.483. Grantee shall provide 5 working days advance notice to the City Public Works Director prior to commencing such excavation, and such excavation and the consequent restoration shall be made according to the prior approval of the plans and specifications by the City's Public Works Department. In the case of emergency due to interruption or failure of the service caused by an act of God or other circumstances beyond the control of Grantee, however, Grantee shall make a reasonable effort to obtain advance approval and shall notify the City's Public Works Department of the excavation as soon as possible. Grantee shall also notify the 911 Emergency Services department of the excavation either by telephone at 884-4876 or by facsimile transmission at 884-1417. "Excavation," as used in this subsection, shall also include

the opening of any City conduit for maintenance of facilities placed pursuant to subsection (g) of Section 5 of this Agreement.

Section 8 [Reserved]

Section 9 Relocation and Removal of Facilities

Public Housing or Renewal Projects. The City shall not require Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Grantee's right therein or without requiring Grantee to be compensated for the costs thereof.

Section 10 Insurance

Grantee shall secure and maintain the following liability insurance policies insuring both Grantee and City, its elected and appointed officers, officials, agents and employees as additional insureds and in compliance with City Code Section 7.467 during the term of the franchise agreement:

Bodily Injury/Death	\$2,000,000
Property Damage	\$2,000,000
Automobile Liability	\$1,000,000
Workers Compensation	\$1,000,000

Section 11 Franchise Fee

(a) Fee. In consideration of the rights, privileges and franchise hereby granted, Grantee shall pay to the City from and after the effective date of the acceptance of this franchise, annually seven percent (7%) of its gross revenues derived from its telecommunication facilities within the corporate limits of the City, less net uncollectibles. The reasonable value of any of Grantee's facilities used or reserved for use by the City without Grantee's prescribed charges may be credited toward any payment due the City under this provision, in lieu of a direct payment to Grantee by City for such use or reservation of use, upon the mutual consent of Grantee and City. Grantee shall make quarterly payments as provided for below. Grantee shall pay a pro rata fee for the last quarterly payment to the date of determination in addition to any other sums due the City and shall make such payment within thirty (30) days of termination. As used in this section, "use" includes, but is not limited to, street openings, construction and maintenance of fixtures or facilities by Grantee. To the extent that any separate fees are imposed by the City on Grantee for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the franchise fee payments required by this section. In the event that Grantee wishes to add cable television services to the list of services, as regulated by the Federal Communications Act of 1934, as amended, Grantee agrees that it must negotiate an additional agreement with the City setting forth the terms and conditions governing such service. Other than as prescribed in Section 13 below, Grantee shall not be required to pay any additional fee, compensation or consideration to the City for its use of the public way. However, Grantee shall pay any charges and penalties imposed by the City for noncompliance with Charter

provisions, ordinances, resolutions or permit conditions.

(b) Acceptance of Payment. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of the terms of this ordinance or a franchise granted pursuant hereto occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due thereon.

(c) Annexed Areas. The City Recorder shall notify Grantee in writing of all areas annexed to the City of Klamath Falls, which areas shall be incorporated within the Franchise granted herein and the computation of Grantee's gross revenues for the next following quarter.

(d) Payment. Said franchise fee shall be paid quarterly, not less than 30 days after the end of each calendar quarter during the term of the franchise, and shall be computed upon the gross revenue, as defined herein, accruing during the previous calendar quarter or portion thereof, and Grantee shall furnish to the City at the end of each calendar year, a verified statement of its said gross revenue, and it shall permit the inspection of its books upon the demand of the City Manager.

Section 12 City Use of Poles

As additional consideration for the franchise and privileges hereunder granted, the City shall have the free right and privilege to string and maintain wires and affix to above-ground ("aerial") facilities of the Grantee. The City shall string, maintain and operate the wires and equipment at its own expense, risk and responsibility, and in accordance with all legal requirements and good engineering practice, and in such manner as not to impose an undue additional expense upon the Grantee or interfere with the safe and convenient use by the Grantee of its structures and installations. Such wires or equipment of the city shall be subject to interference by the Grantee only when necessary in the maintenance, operation or repair of the Grantee's own facilities, and only upon 24 hours notice to the City, except in the case of emergency due to an act of God or circumstances beyond the control of the Grantee, provided Grantee makes a reasonable effort to notify City, in advance whenever possible, and does notify the City, as soon as possible, after such interference.

When entering into franchise agreements with other telecommunications entities, City agrees to request the free right and privilege to string and maintain wires and affix facilities to the aerial facilities of other franchise grantees that may also provide telecommunications services in the City.

City shall not be entitled to free access to Grantee's aerial facilities as described in this provision if such access is for the purpose of providing telecommunications services to others.

Section 13 Enforcement

(a) Inspection. The City specifically reserves the right, acting through its lawfully constituted agents, to inspect any installation of whatsoever nature installed under the rights

granted herein, and upon the finding of any violation, the City shall provide Grantee an opportunity to cure said violation within a reasonable period of time. If Grantee is unable to cure said violation, the City may require the offending installations to be removed, replaced or altered in such manner as to conform to the required specification.

(b) Correction by City. The City may, at its discretion and when the public's safety is jeopardized, following notice to Grantee, promptly cure or correct any violation of Grantee's, with or without notice. Actual cost of work performed by the City, plus a 5% administrative service charge, shall be charged back to the Grantee. Failure to pay for same within 30 days may result in a forfeiture of a franchise granted herein at the option of the City, subject to the restrictions on forfeiture contained in this franchise. Payment by Grantee of the charge shall not be considered an admission by Grantee that Grantee violated any term of this franchise or any provision of the City's code. Payment of the charge by Grantee shall not be considered acknowledgment that Grantee is responsible for payment of all or any portion of the charge, shall not stop Grantee from contesting liability for all or any portion of the charge, and shall not constitute a waiver of Grantee's rights to contest such charge. For purposes of this Section only, City may notify Grantee by calling (530) 397-2211 and providing the date, time, location and nature of the incident requiring immediate correction or repair.

Section 14 Indemnification

The Grantee, by its acceptance of these franchise rights, privileges and authority granted hereunder covenants and agrees to and with the City at all times to protect and save harmless the said City from all claims, actions, suits, liability, loss, cost, expense or damage of every kind and description which may occur and/or be suffered by any person or persons arising out of the negligent acts of the Grantee in the erection, construction, reconstruction, relocation, replacement, adjustment, maintenance, operation, extension, repair or the use of the facilities operated by said Grantee, including those arising out of work performed by the City, pursuant to Section 9 of this ordinance. Grantee shall not be required to indemnify City for any negligent or intentional act of the City or its employees, agents, or representatives. Further, Grantee shall at all times maintain the streets and to take any and all measures reasonably necessary and prudent to protect the public or any members thereof from harm and danger, where the same have been disturbed in any manner by reason of any construction work or repairs by Grantee herein.

Section 15 Term

The rights, privileges and franchise herein granted shall continue and be in force for a period of five (5) years from and after the date this Ordinance becomes effective, except that it is understood and agreed that either party may terminate this agreement after one hundred eighty (180) days notice in writing. This Ordinance shall be subject to any and all relevant state or federal legislative enactments.

Section 16 Notice Prior to Transfer of Franchise

Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the Grantee. Said franchise cannot, in any event, be sold, transferred, or leased, in

whole or in part, either by forced or voluntary sale, receivership or any other means, without prior written notice to the City.

Section 17 Termination or Revocation

Notwithstanding Section 7.475 of the City's Franchise Right of Way Act, this franchise may be terminated or revoked for the following reasons:

- (a) Construction or operation at an unauthorized location;
- (b) Judgment by a court of competent jurisdiction that Grantee has made a material misrepresentation in any application to the City;
- (c) Failure to remove or relocate facilities as required by this franchise;
- (d) Willful or continued failure to pay taxes, compensation, fees, or costs when and as due the City unless subject to a bona fide dispute;
- (e) Violation of a material term of this franchise agreement.

Prior to terminating or revoking this franchise for the above-referenced reasons, the City shall provide written notice to Grantee and allow Grantee an opportunity to provide written evidence as provided in Section 7.476 of the City's Franchise Right of Way Act. Grantee shall have sixty (60) days to provide such evidence. Nothing in this franchise alters the rights and obligations contained in Sections 7.477 and 7.478 of the City's Franchise Right of Way Act.

Section 18 Severability

If any section, subsection, sentence, clause, phrase or word of this ordinance, franchise ordinance or the franchise documents, including the Grantee's application, is for any reason held invalid or unconstitutional by any court of competent jurisdiction and not deemed material by the City, such section, subsection, sentence, clause, phrase or word shall be deemed severable as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 19 Acceptance

If Grantee accepts the terms and conditions of the Ordinance, Grantee shall, within thirty (30) days from the date and approval of such Ordinance, file with the Recorder of the City of Klamath Falls, its written acceptance of the terms and conditions of this Ordinance.

Section 20 Relationship to Franchise Right of Way Act

This franchise constitutes the entire agreement between the City and Grantee with respect to the topics covered by this franchise. Therefore, Grantee shall not be subject to any requirement, condition, term, or provision contained in the City's Franchise Right of Way Act

that is addressed by this franchise.

Section 21 Notice

Unless specifically provided otherwise herein, all notices shall be mailed, postage prepaid, to the following addresses or to such other addresses as Grantee or the City may designate in writing:

If to Grantee: Michael Weidman
President & CEO
LS Networks
921 SW Washington Street, Suite 370
Portland, OR 97205

If to City: City of Klamath Falls
Attention: City Manager
500 Klamath Avenue
Klamath Falls OR 97601

Section 22 Relationship to Federal and State Laws

The parties acknowledge that this franchise is subject to federal and state law regarding Telecommunications Services and agree that the franchise may be subject to any new legislation or rules enacted regarding telecommunications services and any changes or amendments made to current statutes or rules regarding Telecommunications Services. City and Grantee shall each have all rights set forth under such legislation and/or rules.

Passed by the Council of the City of Klamath Falls, Oregon, the ____ day of January, 2017.

Presented to the Mayor, approved and signed this ____ day of January, 2017.

Mayor

ATTEST:

City Recorder

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STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of the Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the _____ day of January, 2017, and thereafter approved and signed by the Mayor and attested by the City Recorder.

City Recorder