

First Reading: May 2, 2023

Second Reading: May 16, 2023

ORDINANCE NO. 1055

**AN ORDINANCE OF THE CITY OF BENTON CITY,
WASHINGTON, APPROVING THE LIGHT SPEED
NETWORKS, INC., D/B/A LS NETWORK, FRANCHISE;
AND AUTHORIZING THE MAYOR TO SIGN THE
FRANCHISE AGREEMENT**

WHEREAS, the City of Benton City, Washington (the "City") and LS Network ("Franchisee"), are parties to the Franchise Agreement attached hereto as **Exhibit A**; and

WHEREAS, the City has authority to regulate telecommunication franchises pursuant to RCW 35A.47.040 and Benton City Municipal Code Chapter 11.14; and

WHEREAS, the City has reviewed Franchisee's application for a franchise and determined that the Franchisee possesses the legal, technical and financial capability to operate within the City's rights-of-way; and that the grant of a franchise will meet the standards set forth in the Benton City Municipal Code Section 11.14.100(B); and

WHEREAS, the City and Franchisee have mutually negotiated a Franchise Agreement containing the Franchisee's obligations and responsibilities while operating within the City's rights-of-way; and

WHEREAS, the City has provided opportunities to the public for participation in the application process by publishing this Ordinance and by conducting a public hearing on April 4, 2023.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That Franchisee is hereby granted a franchise subject to the terms and conditions of the Franchise Agreement attached hereto as **Exhibit A**; and furthermore, the Mayor of the City of Benton City, Washington, is hereby authorized to execute said Franchise Agreement and to take all necessary steps required to complete this transaction.

Section 2. **Severability.** If any section, subsection, sentence, clause, phrase or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

Section 3. Corrections. Upon approval by the City Attorney, the City Clerk is authorized to make necessary corrections to this Ordinance, including scrivener's errors or clerical mistakes; reference to other local, state, or federal laws, rules, or regulations; or numbering or referencing of Ordinances or their sections and subsections.


Section 4. This Ordinance shall take full force and effect five (5) days after approval, passage and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 1st day of May, 2023.



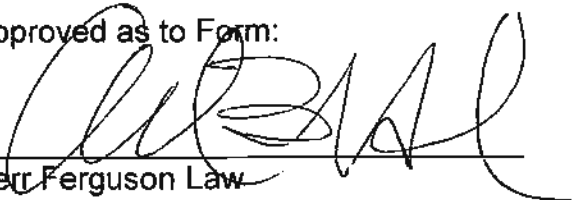
Linda Lehman, Mayor

Attest:



Carla Meyer,
City Clerk/Treasurer

Approved as to Form:



Kerr Ferguson Law
City Attorneys

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT entered into this _____ day of _____, 2023, by and between the City of City of Benton City, Washington, a Washington Municipal Corporation (hereinafter referred to as "City"), and LightSpeed Networks Inc., dba LS Networks, an Oregon Corporation (hereinafter referred to as "Franchisee").

WHEREAS, Section 35A.47.040 and Chapter 35.99 of the Revised Code of Washington authorize the City to grant, permit, and regulate non-exclusive franchises for the use of public ways; and

WHEREAS, Franchisee has applied to the City for a non-exclusive franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair fiber optic facilities to offer and provide telecommunications service for hire, sale, or resale in the City of Benton City; and

WHEREAS, a franchise is a legislatively approved master permit granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities subject to requirements that a franchisee must also obtain separate use permits from the City for use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans; and

WHEREAS, the City has conducted a public hearing and reviewed the application based upon the standards set forth in Benton City Municipal Code 11.14.100(B); and

WHEREAS, the City approved this Franchise Agreement pursuant to RCW 35A.47.040 at the next regularly scheduled Council meeting following the public hearing pursuant to Ordinance No. 901; and

WHEREAS, the City finds that the franchise terms and conditions contained in this Agreement are in the public interest.

NOW, THEREFORE, the Parties do agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, all terms shall have the meaning as defined in BCMC 11.14.020. Terms not specifically defined therein shall be given their ordinary meaning. The following additional definition shall apply:
 - A. "Optical Cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.
2. **FRANCHISE.**
 - A. The City grants to Franchisee, subject to the terms and conditions of this Agreement and BCMC Title 11, a non-exclusive franchise to enter, occupy, and

use public ways for constructing, installing, operating, maintaining, repairing, and removing wireline facilities necessary to provide telecommunications services. Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

- B. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.
 - C. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.
 - D. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.
 - E. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Franchisee's facilities.
 - F. Nothing in this Franchise grants authority to Franchisee to provide or offer cable television service.
 - G. Nothing in this Franchise shall be construed to create, expand, or extend any liability to the City or to any third-party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.
 - H. All new optical cables, lines and facilities constructed and/or installed by the Franchisee after the date hereof shall be placed underground, unless the City Council grants a variance to the undergrounding requirement based on the criteria set forth in BCMC sub-section 2.70.300(D).
3. **TERM.** Authorization granted under this Franchise shall be for a period of ten (10) years from the effective date of this Franchise. The Franchise may be renewed as provided in BCMC 11.14.100(B)8. This Agreement shall be effective five (5) days following the passage of an authorizing Ordinance and publication of this Franchise, or a summary thereof, occurs in a newspaper of general circulation in the City pursuant to RCW 35A.47.040, or upon execution by all parties hereto whichever occurs later.
4. **LOCATION OF FACILITIES.** Franchisee will locate its facilities consistent with the requirements of BCMC 11.14.120(1) and as directed by the City Engineer. Prior to installation of any facilities, Franchisee shall obtain all required City permits.

5. COORDINATION OF CONSTRUCTION AND INSTALLATION ACTIVITIES AND OTHER WORK.

- A. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City and as directed by the City Engineer, to minimize public inconvenience, disruption or damages.

6. HOLD HARMLESS, INDEMNIFICATION AND ASSUMPTION OF RISK.

- A. The Franchisee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Franchisee's own employees to which the Franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, of which the negligent acts or omissions of the Franchisee, its agents, servants, officers or employees in performing under this license, master permit, or lease are the proximate cause.

The Franchisee further releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person including claims by the Franchisee's own employees, including those claims to which the Franchisee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Franchisee's exercise of the rights granted herein, or by virtue of the City's permitting the Franchisee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Franchisee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this license, master permit, or lease or pursuant to any other permit or approval issued in connection with this license, master permit, or lease.

This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of the Franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems, or providing other adequate warnings of any excavation, construction or work in any public right-of-way or other public place in performance of work or services permitted under this license, master permit, or lease".

Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination or the institution of any litigation.

In the event the Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction

(or such other dispute resolution entity that the parties shall agree to decide the matter}, to have been a wrongful refusal on the part of the Franchisee, then the Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City of recovering under this indemnification clause.

The provisions of this Subsection shall survive the expiration or termination of this license, master permit, or lease agreement. Notwithstanding any other provisions of this Subsection, the Franchisee shall assume the risk of damage to its facilities located in the City's rights-of-way, rights-of-way and easements from activities conducted by the City, its officers, agents, employees and contractors. The Franchisee shall release and waive any and all claims against the City, its officers, agents, employees or contractors for damage to or destruction of the Franchisee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees and contractors, in the rights-of-way, rights-of-way and easements subject to this license, master permit or lease, except to the extent any such damage or destruction is caused by or arises from the negligence or willful conduct on the part of the City, its officers, agents, employees or contractors.

The Franchisee shall further agree to indemnify, hold harmless, and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Franchisee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction caused by or arising from the negligence or willful conduct on the part of the City, its officers, agents, employees or contractors, to the extent allowed by law.

B. Assumption of Risk.

(1) Franchisee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, servants, agents, or representatives. Franchisee releases and waives any and all claims against the City, its elected officials, officers, employees, servants, agents, and representatives for damage to or destruction of the Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence or willful misconduct of the City.

(2) Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, servants, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all subrogation claims if it fails to do so.

7. INSURANCE. Franchisee shall obtain and maintain, at its cost, worker's compensation insurance and the following liability insurance policies insuring both Franchisee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries

to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee.

A. The Franchisee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

B. The City shall be added as an additional insured, arising out of work performed by Franchisee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Franchisee shall furnish the City with current certificates of insurance evidencing such coverage within thirty (30) days of the date of execution of this Agreement.

8. SECURITY FUND. The fund described herein shall be considered an additional security and protection above, beyond and in addition to those rights and remedies already provided by other law including, but not limited to, the Benton City Municipal Code. Franchisee shall establish and maintain a security fund in the amount of ten thousand dollars (\$10,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a public way.

A. The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:

(1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;

(2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;

- (3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
 - (4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.
- C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.
- D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility.

9. TAXES, CHARGES, AND FEES.

- A. Franchisee shall pay and be responsible for all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspect plans and construction, or to the preparation of a detailed statement pursuant to RCW Ch. 43.21C. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.
 - (1) Following the execution of this Franchise Agreement, Franchisee shall pay to the City, within thirty (30) days of the date of its billing, reimbursement for actual expenses for meeting notice and ordinance publications required in connection with the franchise approval.
- B. Franchisee shall pay and be responsible for taxes permitted by law.

10. COMPENSATION.

- A. Warranties. Franchisee warrants that it is not engaged in any of the activities of a "Telephone Business" as used in RCW 35.21.860 and defined in RCW 82.16.010. Franchisee warrants that it is not engaged in any of the activities of a "Service Provider" as used in RCW 35.21.860 and defined in RCW 35.99.010.
- B. Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area, and to compensate the City for actual costs incurred in administration of the Franchise and as a result of Franchisee's occupancy of City Rights-of-Way, the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectables, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point-to-point services is based on the pro-rata share of the revenue from those services.

- C. **Modification Resulting from Action by Law.** Upon thirty days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee 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 amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.
- D. **Payment of Franchise Fees.** Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.
- E. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.
- F. The regulatory fees and costs provided for in this Franchise, and any compensation charged and paid for the use of City property, are separate from, and additional to, any and all federal, state, local and City taxes as may be levied, imposed or due. Fees are intended to compensate the City as a reasonable estimate of actual costs that will be incurred in administering the Franchise and as a result of Franchisee's occupancy of City Rights-of-Way.

11. VACATION OF PUBLIC WAYS. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Franchisee has facilities in such public way, the City shall reserve an easement for Franchisee. Franchisee acknowledges its responsibility to provide the City with information on its system/facilities, pursuant to BCMC sub-sections 11.14.120(S) and (T).

12. RECORDS.

- A. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party. Franchisee will take all steps necessary to assist the City in complying with the Public Records Act, RCW Chapter 42.56, including providing the City with a written statement identifying how long it will take to produce records not immediately available, and for any records that are not disclosed in whole or in part, a written statement from Franchisee's legal counsel stating the authority upon which the documents are withheld.

- B. All documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

13. NOTICES.

- A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City: City of Benton City
Attn: Mayor
PO Box 70
Benton City, WA 99320
Phone: (509) 588-3322

Franchisee: Contracts Administration
LS Networks
921 SW Washington St., Ste. 210
Portland, OR 97205 99362
Phone: (503) 294-5300
Fax: (503) 227-8585

- B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order.
14. **NON-WAIVER.** The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.
15. **EMINENT DOMAIN.** This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.
16. **DAMAGE TO FACILITIES.** Unless directly and proximately caused by the active sole negligence or willful misconduct of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.
17. **GOVERNING LAW AND VENUE.** This Franchise and use of the applicable public ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted

by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Benton County, or in the case of a Federal action, the United States District Court for the Eastern District of Washington at Richland, Washington, unless an administrative agency has primary jurisdiction. Prior to initiating any litigation under this Agreement, the parties shall meet in a good faith effort to mutually resolve disputes.

18. **SEVERABILITY.** If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise nor its application to any other person or entity.
19. **CHANGES IN LAW.** If, during the term of this Franchise, there becomes effective any change in Federal or State law, and such change specifically requires the City to enact a code or ordinance which conflicts or is inconsistent with any provision of this Franchise, or creates additional rights or responsibilities which would materially alter the terms of this Franchise, then in such event either party may within one hundred and twenty (120) days of the effective date of such change, notify the other party in writing of such party's desire to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by such change in Federal or State law, and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise, although the parties may voluntarily choose to do so.

If no agreement is reached within ninety (90) days of reopening the negotiations, either party may declare its intent to terminate the Franchise, which termination shall become effective one hundred and eighty (180) days thereafter.

Notwithstanding any other provision in this Franchise to the contrary, the right of either party to terminate the Agreement pursuant to material changes in Federal and State law and unsuccessful renegotiation of the Franchise shall be an independent right not subject to the administrative requirements for termination of the Franchise contained in BCMC Title 11, or this Franchise Agreement.

20. **MISCELLANEOUS.**

- A. **Equal Employment and Nondiscrimination.** Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.
- B. **Local Employment Efforts and Contractor Qualifications.** Franchisee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Franchisee employs contractors to perform work under this Franchise. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

- C. **Descriptive Headings.** The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.
- D. **Costs and Attorneys' Fees.** If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, as well as costs and reasonable attorneys' fees on appeal, in addition to such other relief as the court may deem proper.
- E. **No Joint Venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.
- F. **Mutual Negotiation.** This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.
- G. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Franchise. Franchisee is prohibited from subleasing any of its facilities operated by this Franchise. This shall include a prohibition against any sharing of facilities on a voluntary or compensated basis by Franchisee with third parties.
- H. **Actions of the City or Franchisee.** In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.
- I. **Entire Agreement.** This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.
- J. **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.
- K. **Non-exclusivity.** This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.
- L. **Rights Granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this

Franchise shall not be construed as any warranty of title nor shall it grant any right to enter, occupy or use public property.

- M. **Limitation on Liability.** Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third-party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.
- N. **Sale, Transfer or Assignment.** Franchisee shall not assign or transfer its rights, benefits, or privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. The City may withhold consent to any transaction if the proposed Franchisee will not possess the requisite financial, technical or legal qualifications to operate and maintain the facilities subject to this Franchise Agreement or for those reason state in BCMC 11.14.120(U). Prior to any assignment or transfer, the Franchisee must provide the City with thirty (30) days' notice and an opportunity to review the transaction. Prior to any transaction occurring, the proposed Franchisee must address any outstanding obligations of the current franchise holder, and enter into an agreement specifically incorporating all rights and responsibilities of this Franchise. Franchisee shall not sublease its facilities.

- 21. **INCORPORATION BY REFERENCE.** This Agreement, specifically by this reference, incorporates BCMC Title 11.
- 22. **PUBLICATION.** The City Clerk is authorized and directed to publish a summary hereof in accordance with Revised Code of Washington §§ 35A.13.200 and 35A.12.160.
- 23. **EFFECTIVE DATE.** This agreement shall take effect five (5) days following the passage of an authorizing ordinance and publication of this Franchise, or a summary thereof, occurs in a newspaper of general circulation in the City pursuant to RCW 35A.47.040, or upon execution by all parties hereto, whichever occurs later.

EXECUTED in agreement and acceptance on the date and year first above set forth.

CITY OF BENTON CITY

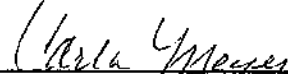


Linda Lehman, Mayor

LIGHTSPEED NETWORK, INC.

[Title]

Attested to



Carla Meyer, City Clerk/Treasurer

Approved as to Form,



Kerr Ferguson Law, PLLC
City Attorneys

Franchise shall not be construed as any warranty of title nor shall it grant any right to enter, occupy or use public property.

M. **Limitation on Liability.** Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third-party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

N. **Sale, Transfer or Assignment.** Franchisee shall not assign or transfer its rights, benefits, or privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. The City may withhold consent to any transaction if the proposed Franchisee will not possess the requisite financial, technical or legal qualifications to operate and maintain the facilities subject to this Franchise Agreement or for those reason state in BCMC 11.14.120(U). Prior to any assignment or transfer, the Franchisee must provide the City with thirty (30) days' notice and an opportunity to review the transaction. Prior to any transaction occurring, the proposed Franchisee must address any outstanding obligations of the current franchise holder, and enter into an agreement specifically incorporating all rights and responsibilities of this Franchise. Franchisee shall not sublease its facilities.

21. **INCORPORATION BY REFERENCE.** This Agreement, specifically by this reference, incorporates BCMC Title 11.

22. **PUBLICATION.** The City Clerk is authorized and directed to publish a summary hereof in accordance with Revised Code of Washington §§ 35A.13.200 and 35A.12.160.

23. **EFFECTIVE DATE.** This agreement shall take effect five (5) days following the passage of an authorizing ordinance and publication of this Franchise, or a summary thereof, occurs in a newspaper of general circulation in the City pursuant to RCW 35A.47.040, or upon execution by all parties hereto, whichever occurs later.

EXECUTED in agreement and acceptance on the date and year first above set forth.

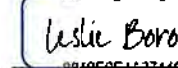
CITY OF BENTON CITY



Linda Lehman, Mayor


LIGHTSPEED NETWORK, INC.

DocuSigned by:



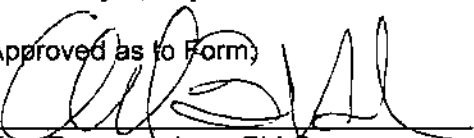
[Title] Corporate Counsel

Attested to



Carla Meyer, City Clerk/Treasurer

Approved as to Form:



Kerr Ferguson Law, PLLC
City Attorneys