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City of Conway

0-05-69

ORDINANCE NO. 0-05-

AN ORDINANCE GRANTING A FRANCHISE TO LIGHTCORE TO UTILIZE STREET RIGHTS-OF-WAY FOR PLACEMENT OF FIBER OPTIC TELECOMMUNICATIONS EQUIPMENT; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES:

Whereas, LightCore desires to utilize street rights-of-way, easements and public grounds and places for the purpose of placing communications plant and appurtenances within those rights-of-way, easements and public grounds and places and

Whereas, the City of Conway has control of such rights-of-way, easements and public grounds and places and finds it advantageous to grant a franchise for the use of such rights-of-way, easements and public grounds and places for the placement of such communications plant and appurtenances:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

Section 1: That a franchise is hereby granted from the City of Conway, Arkansas (hereinafter referred to as "City") to LightCore (hereinafter referred to as "LightCore") and to its successors and assigns for the purpose of installing, operating and maintaining its telecommunications system and all business incidental to or connected with the conducting of a telecommunications system in the City of Conway, State of Arkansas. LightCore, in the conduct of its business shall be authorized to exercise its right to place, remove, construct and reconstruct, and extend and maintain its said plant and appurtenances as the business and purpose for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public rights-of-way and the public grounds and places within the limits of said City as the same from time to time may be established.

Section 2: Fees - That LightCore shall pay to the City for the period July 1, 2005 through June 30, 2006 inclusive and thereafter for like periods an amount equal to 4.25% of local exchange access line charges collected in the corporate limits of the City for the previous calendar year. Said sum to be paid in equal quarterly installments on or before the last day of March, June, September, and December of each year.

Section 3: That the annual payment herein required shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which may be imposed by the City under authority conferred by law. LightCore shall have the privilege of crediting such sums with any unpaid balance due said Company for telephone services rendered or facilities furnished to said City.

Section 4: LightCore, on the request of any person, shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties

requesting the same and LightCore may require such payment in advance. LightCore shall be given not less than forty-eight (48) hours advance notice to arrange such temporary wire changes.

Section 5: Permission is hereby granted to LightCore to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of LightCore, all the said trimming to be done under supervision and direction of any City officials to whom said duties have been or may be delegated.

Section 6: Nothing in this ordinance contained shall be construed to require or permit any electric light or power wire attachment by the City or for the City. If light or power attachments are desired by the City, then a separate non-contingent agreement shall be a prerequisite to such attachments.

Section 7: Nothing herein contained shall be construed as giving to LightCore any exclusive privileges, nor shall it affect any prior or existing rights of LightCore to maintain a telephone system within the City. However, LightCore will be required to be a member of Arkansas One Call.

Section 8: That all underground installations of fiber optic cable shall be no less than (4) feet below grade and no less than (2) two feet below the elevation of drainage pipes or drainage ditches and that any damage to streets, sidewalks, driveways, curbs, gutters or other infrastructure taking place due to placement of fiber optic cable shall be repaired by LightCore at their expense. The facilities shall be adjusted by the owner at no cost to the City to accommodate any future streets or drainage improvements.

Section 9: That the City assumes no maintenance responsibility for the LightCore plant and appurtenances. The City shall not be responsible for damage to the LightCore plant and appurtenances by the City or by utility (public or franchised private) crews while performing normal maintenance work in the public right-of-way, easements or public grounds or places. The City assumes no liability for personal injury or property damage as a result of the placement of any plant and appurtenances and LightCore shall indemnify and hold the City harmless from actions, claims, costs, damages and expenses to which the City may be subjected arising out of the placement of any plant and appurtenance in the public right-of-way or easement or in any public ground or place.

Section 10: That upon notice from the appropriate city department (as established by the Mayor), LightCore shall remove plant and appurtenances from public right-of-ways, easements or public ground or place at their own expenses for any public improvement project of if the situation becomes a public nuisance.

Section 11: LightCore shall have ninety (90) days from and after its passage and approval to file its written acceptance of this ordinance with the City Clerk, and upon such acceptance being filed; this ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the Mayor. The ordinance

shall continue in effect and be in force until terminated by the City or LightCore as of the end of any year giving one (1) year's written notice of intention to terminate.

Section 12: That all ordinances or parts of ordinances of a permanent and general nature in effect at the time of adoption of this ordinance and not included herein, are hereby repealed where they are in conflict with this ordinance.

Section 13: That it is ascertained and declared that is necessary for the public peace and welfare of the citizens of the City of Conway, Arkansas, an emergency is hereby declared to exist and this ordinance shall take effect and be in force from and after its passage and publication and shall benefit and run in favor of all future owners of the property and their successors and assigns.

PASSED this 14th day of June 2005.

APPROVED:


Mayor Tab Townsell

ATTEST:


City Clerk/Treasurer Michael O. Garrett