

ORDINANCE NO.1824

AN ORDINANCE GRANTING TO HUNTER CONSTRUCTION, INC.,
DBA CORE DIGITAL SERVICES, THE NON-EXCLUSIVE PRIVILEGE
TO USE THE PUBLIC WAY TO CONSTRUCT AND MAINTAIN
COMMUNICATION FACILITIES WITHIN THE CITY OF CENTRAL POINT

THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:

Section 1. As used in this Ordinance, the following words and phrases shall mean:

City: The City of Central Point, Oregon.

City Administrator: The City Administrator of the City or his or her designee.

Grantee: Hunter Construction, Inc., dba Core Digital Services, its successors and assigns.

Gross Revenues: 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 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 communications 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.

Telecommunication Facilities: All wires, cables, conduits, poles, equipment, appliances, and associated structures used by Grantee in providing its telecommunications services.

Telecommunications Services: Two-way switched access and transport of data, voice and/or video communications, but does not include services provided by radio common carrier or the transmission of television signals.

Public Way: Any highway, street, road, alley, right-of-way, pedestrian or bicycle easement, park area, utility easement for public use or other public property within the City.

Section 2. Subject to the provisions and restrictions of this ordinance and the Charter and the Code of Central Point, the City grants to Grantee the non-exclusive privilege to use the public way to construct and maintain telecommunication facilities within the corporate limits of the City.

Section 3. Grantee's telecommunication facilities shall be installed underground unless Grantee contracts with another City of Central Point franchisee to employ that franchisee's above-ground facilities in place at the time this franchise is granted. It shall be lawful for Grantee to make all necessary excavations in any public way for the purpose of constructing and maintaining its telecommunication facilities. Provided, however, that Grantee's use of the public way shall be

subject to the City Administrator's authority to prescribe which public way will be used and the location within the public way, which authority is hereby expressly reserved by the City and delegated to the City Administrator.

Grantee's use of the public way and all construction by Grantee shall be subject to and shall comply with the standard specifications and special provisions for the City, the Charter and ordinances of the City, and all other applicable federal, state, and local laws and regulations. No work affecting the public way shall be done by Grantee without first obtaining the permits required by the City, which may include plan submittal, approval and the payment of fees before work begins.

Section 4. Where Grantee installs its telecommunications facilities under or adjacent to any existing paved bicycle path, the path shall be overlaid with a new asphalt surface after construction. Where Grantee installs its telecommunication facilities along the route of a planned bicycle path, the City may require Grantee to construct the bicycle path as a condition of plan approval. All such bicycle path repair and construction shall be at Grantee's expense.

Section 5. Upon completion of construction of any new facilities, Grantee shall promptly furnish the City with two (2) sets of "as built" plans showing the exact location and construction details of all of Grantee's facilities. New plans will be furnished promptly for any additions or modifications.

Section 6. Nothing in this ordinance shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any public way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the free use by Grantee of its telecommunication facilities.

Section 7. The City shall have the right to require Grantee to change the location of any telecommunication facility within the public way when the public convenience requires such change; and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the City, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the public way. The City shall give Grantee written notice to relocate its facilities at least six (6) months prior to the date established by the City as the deadline for relocation.

Section 8. Should it ever become necessary to temporarily rearrange or temporarily remove Grantee's telecommunications facilities at the request of a private person or business, Grantee shall perform such rearrangement or removal as expeditiously as possible upon receipt or reasonable written notice from the business or person desiring the temporary change of the telecommunication facilities. The notice shall:

- (a) be approved by the City Administrator,
- (b) detail the route of movement,
- (c) provide that the costs incurred by Grantee in making the temporary change be borne by the person or business giving said notice.

- (d) provide that the person or business giving the notice shall indemnify and hold harmless Grantee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary change of Grantee's telecommunications facilities, and
- (e) if required by Grantee, be accompanied by a cash deposit or a good and sufficient bond to pay any and all of Grantee's estimated costs as estimated by Grantee.

Section 9. Grantee shall at all times maintain all of its telecommunication facilities in a good state of repair. Motorized vehicles shall not be allowed on any public bicycle paths and landscaped areas, except when necessary to install, remove or repair Grantee's facilities. Except in an emergency, permission shall be obtained from the City Public Works Department before using motorized vehicles on any public bicycle paths and landscaped areas. Any damage to any public way caused by Grantee shall be repaired by Grantee at no cost to the City. Grantee shall have a local representative available at all times through the Rogue Basin Utilities Coordinating Council to locate Grantee's facilities for persons who need to excavate in the public way.

Section 10. Grantee shall indemnify and hold the City harmless from any and all damages of any kind or character growing out of or arising by reason of the installation and maintenance of Grantee's telecommunication facilities in the City, except when resulting from negligence or willful misconduct of the City's officers, employees, or agents. Grantee also hereby agrees to indemnify and hold the City harmless from any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its facilities within a six (6) month period following written notice from the City to relocate, unless Grantee's failure arises directly from the negligence or willful misconduct of the City's officers, employees, or agents or from causes beyond Grantee's reasonable control.

Section 11. In any situation in which the City is found legally liable to Grantee for damage to Grantee's facilities, the City's liability shall be limited to the cost of repair or replacement of damaged facilities, whichever is less. The City shall not be liable to Grantee for lost revenue, lost profits, incidental or consequential damages or claims of third parties arising from damage to Grantee's facilities. Grantee covenants that it will not assert any claim against the City for any liability, loss, or damage excluded under this section.

Section 12. 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, five percent (5%) 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 annual payments to the City on or before January 15 for the calendar year immediately preceding. Grantee shall pay a pro rata fee for the last annual payment to the date of termination 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. However, Grantee shall not deduct charges and penalties imposed by the City for noncompliance with Charter provisions, ordinances, resolutions or permit conditions 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.

Section 13. The payment of the franchise fee shall be in addition to, not in lieu of, any local business license tax, or other taxes and permit fees not within the scope of this franchise agreement.

Section 14. The privileges and franchise herein granted shall commence when authorized by the City, and be in force for a period of five (5) years from and after that date. This franchise may be terminated by the City at any time upon thirty (30) days written notice for failure to comply with the other provisions of this agreement or the Code of Central Point, unless such failure is remedied within the thirty (30) day period. Otherwise, this agreement shall remain in effect.

Section 15. The City shall have the right to annually audit the books and records of Grantee to verify compliance with the terms and conditions of this franchise agreement. At the City's request, Grantee shall provide the City's auditors access to Grantee's book and records, as necessary, to conduct a thorough audit.

Section 16. With each franchise fee payment, Grantee shall furnish a sworn statement setting forth the amount and calculation of the payment. The statement shall detail the revenues received by Grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenues claimed by Grantee in calculating the franchise fee.

Section 17. City's consent shall be required for assignment, transfer, merger, lease or mortgage.

- (a) Neither this franchise nor any property owned and operated by Grantee by authority hereof shall be sold, leased, mortgaged, assigned or otherwise transferred without the prior consent of the City as expressed by ordinance, except to entities that control, are controlled by, or are under the common control with Grantee. Grantee shall notify the City of any transfers to such entities within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of fiber optic cable system tangible assets for the purpose of financing the acquisition of equipment for or the construction and operation of the system without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this franchise agreement.

- (b) Grantee shall not lease or sublease any of its pipes, wires, conduits, or other facilities, or the public right-of-way in which such are contained, without the City's consent as expressed by ordinance. However, Grantee may dedicate or lease its fiber optic cable system or any portion thereof, or otherwise make its fiber optic cable system available in the ordinary conduct of its business as a telecommunications company, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its fiber optic cable system, and so long as the City's bandwidth or access speed are not diminished.

Section 18. Grantee shall provide City with a performance bond, in the amount of \$10,000, acceptable in form and substance to City, as security for the full and complete performance of the franchise agreement, including costs, expenses, damages or loss City pays or incurs because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations or permits of City.

Section 19. 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 coinsured during the term of the franchise agreement:

Bodily Injury/Death	\$3,000,000
Property Damage	\$3,000,000
Automobile Liability	\$1,000,000
Workers Compensation	\$1,000,000
Explosion, Collapse, Product Hazard	\$3,000,000

In lieu of the above, Grantee may provide evidence of self-insurance subject to review and acceptance by City.

Section 20. Grantee shall adopt customer service standards, acceptable in form and substance to City, that are at least as comprehensive as those standards required by City of other franchise utility service providers.

Section 21. Following the initial construction of its telecommunications system, Grantee shall extend its telecommunications services upon request, provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition or market development of its telecommunications system

Section 22. The City Administrator is authorized to act for the City in all matters pertaining to this franchise agreement. Grantee may appeal any action of the City Administrator to the City Council by giving written notice thereof within twenty-one (21) days after Grantee was notified of such action. The City Council will hear the appeal and render a final decision within thirty (30) days after the notice of appeal is given.

Section 23. Whenever any notice is given pursuant to this ordinance, it shall be effective on the date it is sent in writing by registered or certified mail, addressed as follows:

To the City: City Administrator
City of Central Point
155 S. 2nd St.
Central Point, OR 97502

To Grantee: Richard W. Ryan, Principal
Hunter Construction, Inc.
dba Core Digital Services
801 Enterprise Drive, Ste. 101
Central Point, OR 97502

Notice of change of address may be given in the same manner as any other notice.

Section 24. Grantee shall, within thirty (30) days of the passage of this ordinance, file with the City Administrator its written acceptance of all the terms and conditions of this ordinance.

Section 25. An emergency is hereby declared for the purpose of ensuring that competition within the telecommunications field for the citizenry of Central Point is accomplished in a timely manner and, accordingly, this ordinance shall take effect immediately upon its passage.

Passed by the Council and signed by me in authentication of its passage this ____ day of _____, 2001.

Mayor Bill Walton

ATTEST:

City Representative

Approved by me this ____ day of _____, 2001.

Mayor Bill Walton