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RHONDA WHARTON

FAULKNER COUNTY CIRCUIT CLERK

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City of Conway, Arkansas
Ordinance No. O-09-42

AN ORDINANCE GRANTING A FRANCHISE TO ARKANSAS RESEARCH AND EDUCATION OPTICAL NETWORK (ARE-ON) TO UTILIZE STREET RIGHTS-OF-WAY FOR PLACEMENT OF FIBER OPTIC TELECOMMUNICATIONS EQUIPMENT; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES:

Whereas, the Arkansas Research and Education Optical Network (ARE-ON) is creating a statewide high speed fiber optic network designed to connect to regional and national fiber optic networks and enhance the research, education, and public service capacity of the state's public four-year institutions of higher education, including the University of Central Arkansas (UCA), a portion of which fiber is intended to run through the City of Conway; and

Whereas, ARE-ON desires to utilize street rights-of-way, easements and public grounds and places for the purpose of placing conduit, fiber and other fiber optic facilities that will facilitate the connection of UCA campus components located within the City of Conway to the statewide network; 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 and maintenance of such conduit, fiber and other fiber optic facilities;

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 Board of Trustees of the University of Arkansas, acting for and on behalf of the University of Arkansas, Fayetteville, specifically the Arkansas Research and Education Optical Network, a consortium of Arkansas's public four-year universities and to its successors and assigns for the purpose of installing, operating and maintaining its conduit, fiber and other fiber optic facilities and all activity incidental to or connected with the operation of the statewide fiber optic network in the City of Conway, State of Arkansas. ARE-ON, shall be authorized to exercise its right to place, remove, construct and reconstruct and maintain its said conduit, fiber and other fiber optic facilities 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 along the route specified in Exhibit "A" hereto. Any extensions of this Franchise to other locations within the City shall require mutual agreement of the City and ARE-ON.

Section 2: Fees - In consideration of the public purposes of ARE-ON, the benefits to UCA and the City of the project, and ARE-ON's recognition of its obligations to the City under this Agreement, no fees shall be charged for this Franchise.

Section 3: No licenses, charges, fees or impositions shall be imposed by the City.

Section 4: ARE-ON, on the request of any person, shall remove or raise or lower any of its aerial cable 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 ARE-ON may require such payment in advance. ARE-ON 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 ARE-ON 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 ARE-ON, 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 ARE-ON any exclusive privileges except with respect to the sole and exclusive right to control the use of the fiber and facilities for ARE-ON's public purposes.. ARE-ON shall 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 ARE-ON or ARE-ON's contractor 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 ARE-ON conduit, fiber and other fiber optic facilities. The City shall not be responsible for damage to the ARE-ON 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; however, the City shall reasonably attempt to avoid any damage to the Franchisee's network and shall, except in any emergency situation, provide reasonable notice, typically through Arkansas One-Call, to the Franchisee so as to allow the Franchisee to protect its network. The City assumes no liability for personal injury or property damage as a result of the placement of any conduit, fiber and other fiber optic facilities. Franchisee (or Franchisee's contractor) shall be responsible for all actions, claims, costs, damages and expenses arising from the placement, maintenance, and operation any conduit, fiber and other fiber optic facilities in the public right-of-way or easement or in any public ground or place pursuant to this Agreement, provided, however, ARE-ON reserves its right to assert in good faith all claims and defenses available to it in any appropriate forum , including, but not limited to, all available immunities to suit available to ARE-ON and/or its officials, representatives and employees.

Section 10: Specific location of ARE-ON conduit, fiber or other fiber optic facilities shall be approved in advance by the City Engineer. That upon notice from the appropriate city department (as established by the Mayor), ARE-ON shall remove or relocate plant and appurtenances from public right-of-ways, easements or public ground or place at ARE-ON own

expense for any public improvement project (including future projects) or if the situation becomes a public nuisance.

Section 11: ARE-ON 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. This franchise shall have a limited term commencing on April 15, 2009, and shall expire on April 15, 2029, unless this Ordinance is renewed by written agreement of the parties prior to the end of the primary term, or unless the Franchise is earlier terminated by abandonment or due to breach by the Franchisee.


Section 12: In light of the public purposes of ARE-ON, the City does not seek to exercise regulatory authority over the services provided by Franchisee or the fees charged for such services, and nothing in this Agreement authorizes City to exercise such authority. Furthermore, the parties agree that nothing in this Agreement shall be deemed or construed to indicate that ARE-ON constitutes a public utility pursuant to A.C.A. §§ 14-200-101 et seq. or 23-1-101 et seq.

Section 13: 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 14: 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 April 2009.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett
City Clerk/Treasurer