

ORDINANCE NO. 785

AN ORDINANCE GRANTING A FRANCHISE TO VISIONARY COMMUNICATIONS, LLC "VISIONARY" TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF MILLS, WYOMING ("THE CITY").

The City hereby ordains that it is in the public interest to grant Visionary a Franchise to operate the system pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The City hereby grants to Visionary the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and public ways in the City ("Public Ways", or in the singular "Public Way"), including for the purpose of providing telecommunication services to the City's inhabitants.

SECTION 2. Acceptance by Visionary. Within sixty (60) days after the passage of this Ordinance by the City, Visionary shall file an unqualified written acceptance thereof with the City Recorder; otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is five (5) years commencing on the date of Acceptance by Visionary as set forth above in Section 2 and shall automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

SECTION 4. Records Inspection. Visionary shall make available to the City, upon reasonable advance written notice of no fewer than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as Visionary can reasonably make available. Subject to applicable laws, any information that is provided to the City, except as otherwise provided herein, and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to Visionary following review, without duplication, unless Visionary grants the City permission to duplicate the information.

SECTION 5. Non-Exclusive Franchise. The right to use and occupy the Public Ways shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with Visionary's Facilities or the rights granted Visionary herein.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in **the** exercise of its police power for the protection of the health, safety and welfare of its citizens **and their properties** consistent with applicable federal and state law. The City agrees to promptly notify Visionary of any such changes potentially applicable to this Franchise.

SECTION 7. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by Visionary of its Facilities.

Visionary shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Visionary's use of the Public Ways. The City shall: (a) give prompt written notice to Visionary of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Visionary to assume the defense of such claim, demand, or lien. Visionary shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, Visionary shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 8. Insurance Requirements. Visionary will maintain in full force and effect for the Term of the Franchise, at Visionary's expense a comprehensive liability insurance policy written by a company authorized to do business in the State of Wyoming, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System, including the Facilities, by Visionary. Such insurance will be in an amount not less than \$1,000,000.00. Visionary will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law. Evidence of such insurance will be made available upon request.

SECTION 9. Annexation. When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to Visionary: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.

SECTION 10. Plan, Design, Construction and Installation of Visionary Facilities.

10.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

10.2 Visionary shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. Visionary will provide plans of new facilities to be placed in the Public Ways pursuant to a permit issued by the City. Visionary will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as maybe reasonably necessary to assure compliance. Notwithstanding the foregoing, Visionary shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities.

10.3 To the extent practical all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

10.4 If, during the course of work on its Facilities, Visionary causes damage to or alters the Public Way or other public property, Visionary shall replace and restore such Public Way or public property at Visionary's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

10.5 Visionary shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, Visionary shall first notify the City of such work.

10.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect Visionary's Facilities, the City shall give written notice to Visionary, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of Visionary's wires, conduits, conductors, pipes, and appurtenances.

10.7 Visionary shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

10.8 Failure by Visionary or their contractors to obtain a street cut permit required by this section, or failure by Visionary to make any repair required by this section, shall result in liquidated damages in the amount of \$5,000.00, except in such instances in which it is reasonably apparent that actual damages will substantially exceed that amount, in which case Visionary shall be responsible for the amount of said repairs.

SECTION 11. Relocation of Facilities.

11.1 Relocation for the City. Visionary shall, upon receipt of advance written notice of not fewer than ninety (90) days, protect, support, temporarily disconnect, relocate, or remove any Visionary property located in a Public Way when required by the City consistent with its police powers. Visionary shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way.

11.2 Relocation for a Third Party. Visionary shall, at the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable, any Visionary property, provided that the cost of such action is borne by the person requesting it and Visionary is given reasonable advance written notice. In such situation, Visionary may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than fourteen (14) days for a temporary relocation, and no fewer than one hundred twenty (120) days for a permanent relocation.

11.3 Alternatives to Relocation. Visionary may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise Visionary in writing if one or more of the alternatives are suitable. If requested by the City, Visionary shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Visionary full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Visionary shall

relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, Visionary shall in all cases have the right to abandon the Facilities.

SECTION 12. Vegetation Management. Visionary shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 13. Payment by Visionary.

13.1 In consideration of the rights, privileges, and franchise hereby granted, said Visionary, its successors and assigns, shall pay the City from and after the date of the acceptance of this franchise an amount equal to 5% of the monthly recurring revenues received for basic local exchange service within the City for services listed in Appendix A, less net uncollectibles, including any extension of those City limits from time to time. Payment shall be made quarterly on or before sixty (60) days after the end of each calendar quarter. Such payment made by Visionary will be accepted by the City from Visionary, also in payment of any license, privilege or occupation or tax or fee for revenue or regulation, franchise fee, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter, or other forms of excise or revenue taxes based upon or measured by revenues, employees, payroll, property, facilities or equipment of Visionary to be imposed by the City upon Visionary during the term of this Franchise.

13.2 Payment shall be made on or before June 1 for the period of January 1 through March 31 of said year, on or before September 1 for the period of April 1 through June 30 of said year, on or before December 1 for the period of July 1 through September 30 of said year, and on or before March 1 for the period of October 1 through December 31 of the preceding year.

SECTION 14. Revocation of Franchise for Noncompliance.

14.1 In the event that the City believes that Visionary has not complied with the terms of the Franchise, the City shall informally discuss the matter with Visionary. If these discussions do not lead to resolution of the problem, the City shall notify Visionary in writing of the exact nature of the alleged noncompliance.

14.2 Visionary shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

14.3 In the event that Visionary does not comply with subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide Visionary at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

14.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3, determines that Visionary is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

14.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Visionary. Visionary shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon Visionary, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Visionary an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. Visionary may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

14.6 Notwithstanding the foregoing provisions in this Section 14, Visionary does not waive any of its rights under applicable law.

SECTION 15. No Waiver of Rights. Neither the City nor Visionary shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 16. Transfer of Franchise. Visionary's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and. Prior approval by the City, such approval not to be unreasonably withheld, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Visionary, or for any rights, title, or interest of Visionary in the Franchise or Facilities in order to secure indebtedness.

SECTION 17. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and Visionary.

SECTION 18. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City of Mills:
City of Mills, Wyoming
704 Fourth Street
P.O. Box 789
Mills, WY 82644
Attention: Christine Trumbull, City Clerk

Visionary:
Visionary Communications, LLC
Attn: Brian Worthen
1001 S Douglas Hwy, #201
Gillette, WY 82717

SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this _____ day of _____, 2023.

City of Mills, Wyoming

By: _____

Mayor, Leah Juarez

Attest: _____, Christine Trumbull, City Clerk

ACCEPTED BY VISIONARY:

Visionary Communications, LLC

By: _____

Title: _____

Date: _____

Appendix A

Service categories included in revenue for calculation of Franchise fee:

1. Business Local Access—including Flat Rate, Multiparty, and Extended Area Service
2. Business Measured Usage Local Access Service
3. Flat Usage Local Access Trunks
4. Low Income Telephone Assistance Program Local Access
5. Measured Rate Local Access Trunk Usage Message Rate Local Access Trunk Usage
6. Public Access Line (PAL) Service
7. Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service
8. Residential Measured Usage

A non-exclusive listing of categories of revenue not representing the retail sale of basic local exchange services, and therefore excluded from the calculation of any fee due to the City:

1. Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks;
2. Bad debt write-offs and customer credits
3. Revenue from directory advertising
4. Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support for the hearing impaired
5. Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments
6. Revenues from Internet access
7. Revenues from digital or other electronic content, such as computer software, music and video downloads
8. Revenues from equipment sales, rentals, installation and maintenance
9. Revenues from any carrier purchased for resale
10. Revenues from private- line services not for switched local access service