

**RIGHT OF WAY
LICENSE AGREEMENT**

THIS AGREEMENT is entered into this August 18,2020 by and between the TOWN OF RANCHESTER, WYOMING, organized under the laws of the State of Wyoming, ("Town"), with offices at 145 Coffeen St, Ranchester, WY 82839 and VISIONARY COMMUNICATIONS, INC. ("Licensee"), whose address is 1001 S. Douglas Way, Suite 201, Gillette, Wyoming, 82716.

A. The Licensee, owns, operates and maintains a fiber optic-based telecommunications network which it desires to install, operate and maintain within portions of the Town of Ranchester public right-of-way.

B. The parties desire to enter into an agreement setting forth the nature, terms and conditions by which the Licensee may install, operate and maintain its telecommunications network within portions of the Town's right-of-way.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, THE TOWN AND THE LICENSEE AGREE AS FOLLOWS:

1. License. The Town grants to the Licensee a non-exclusive revocable license to locate, construct, operate and maintain a fiber optic telecommunications network within the portions of the Town's right-of-way related to the state CARES award to provide wireless and fiber services within the Town (See Map Attachment A).

2. Negotiation of Franchise Agreement. The parties shall in good faith attempt to negotiate a franchise agreement, which franchise agreement would replace this license agreement, and would as well establish other terms of Licensee's operations in the Town. The Franchise Agreement shall be in place no later than May 1, 2021.

3. Maintenance. The Licensee shall, at its expense, maintain the improvements in good condition including the landscape within the agreement areas as designated per attachment A.

4. General Obligations with Respect to Initial Construction and Maintenance Work:

a. All work performed by the Licensee pursuant to this Agreement shall be done:

- i. In a good workmanlike manner, and
- ii. In a timely and expeditious manner, and
- iii. In a manner which minimizes inconveniences to the public and individuals, and
- iv. In accordance with all applicable codes, rules and regulations of

the Town.

b. Inspection all work performed by the Licensee within the right-of-way shall be subject to inspection by the Town. The contractor performing the work shall apply for a concrete, excavation, street closure and any other required permits prior to commencement of any work. The Licensee shall promptly perform reasonable remedial action as required by the Town pursuant to any inspection. [EM1]

c. Construction Plans for the construction of the improvements, which include fiber optic cable, electronics equipment, transmission equipment, antennas, radios, shelters, coaxial cables, mounts, generators, containment structures, hangers, brackets, conduit, wireless attachments and other accessories and component equipment shall be submitted to and must be approved by the Town. The design, construction and maintenance of the improvements shall be the sole responsibility of the Licensee. If the Town requires the Licensee to move the telecommunication lines it will be at owners' expense. Any other third party requesting relocation to move services will be responsible for the expense of relocation.

d. Licensee shall construct the telecommunication lines in conformance with specifications acceptable to the Town Engineer. Licensee shall bear the cost of such installation and the cost of all such permitted construction, maintaining and removing, including the cost of all permits and inspections, and obtain all related permits and inspections, paying all customary charges. Licensee shall bear the cost of relocating all existing utilities as is necessary for the installing of the telecommunication lines.

e. Licensee shall submit to the Town Engineer a drawing demonstrating the size, and type of telecommunication lines, dimension and location of the telecommunication lines. The drawings should include plan and profile drawings and any potholing requirements as directed by the Town Engineer. Said lines shall be located in a manner so as not to interfere with any other use or maintenance of the surface of the streets or sidewalks. Licensee shall provide the Town Engineer with a constructed drawing of the installation within ten days after completing construction.

f. Town street(s) and sidewalks shall be restored to their original construction to the satisfaction of the Town Engineer.

g. Licensee is responsible for all subsurface testing, engineering, and

construction. The installation must be designed and constructed to be the least impediment to pedestrian and vehicular traffic consistent with sound engineering practices in the design.

h. Licensee shall maintain the below-grade telecommunication lines and adjoining surface so as not to interfere with vehicles or pedestrians or cause any unsafe condition for vehicle or pedestrian traffic. Licensee shall be responsible for the telecommunication lines being maintained in such a condition as to not limit the visibility or in any other manner constitute a danger, hazard or public nuisance to vehicle or pedestrian traffic. Licensee shall be responsible to provide the maintenance of the telecommunication lines and shall protect the telecommunication lines from exterior water damage. Licensee shall be further responsible for all damage done to the adjoining surfaces, whether from telecommunication line installation, use, maintenance and repair, and for all consequential damage resulting from damage to the telecommunication lines and its components. However, any damage caused to the telecommunication lines by the Town shall be the responsibility of the Town and the Town shall be further responsible for repairs and consequential damages. Whenever the telecommunication lines are removed from Town right-of-way, consent of the Town to remove such shall be obtained, except in the case where removal is ordered to be done by the Town. The lines must be removed in a reasonable timeframe of 90 days or less and requires the proper permitting from the Town. Town reserves the right to move the telecommunication lines at owners' expense if it impedes other projects.

i. When the telecommunication lines are removed by Licensee, the Licensee shall restore Town street(s) and sidewalk(s) to the satisfaction of the Town Engineer.

j. If licensee refuses or fails to remove the telecommunication lines and restore the street(s) and sidewalk(s) upon termination or revocation of the license, or fails, neglects, or refuses to maintain the lines in accordance with the requirements herein. The Town after providing Licensee at least (30) days of notice by postage prepaid certified mail of such failure, neglect or refusal, may remove any or all portions of the lines. Licensee shall pay any reasonable costs incurred by the Town for said removal.

5. Indemnification and Release. The Licensee shall indemnify, defend and save harmless the Town against all liabilities, damages and claims which result or arise from any act or omission of Licensee, including its employees, agents or sub-contractors, regarding, pertaining to or arising from the design, construction, operation, use or maintenance of the improvements located within or upon the Town's right-of-way.

6. Compliance with Laws. This Agreement relates only to permission to encroach onto a public right-of-way under the terms and conditions set forth. The execution of this Agreement shall not relieve the Licensee from complying with provision of the Ranchester Municipal Code, including compliance with zoning ordinances and subdivision regulations nor shall this Agreement be construed as approval by the Town to construct the improvements contemplated by the Licensee to the extent that Town approvals or permits are otherwise required by the Ranchester Municipal Code or state statute. The execution of this Agreement, and the improvements constructed pursuant to this Agreement, shall not relieve the Licensee, or otherwise be construed as a release or waiver, with respect to any obligation of the Licensee to not interfere with the subjacent lateral support of the Town's right-of-way.

7. Police Power Reserved. The rights granted herein shall not limit or otherwise restrict the right of the Town to exercise its police power with respect to its control of its right-of-way.

8. Force Majeure. Neither party shall be liable for failure to perform under this License if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes reasonable steps to minimize delays. This provision shall not be effective until the failure to perform is beyond the control and without fault or negligence of the non-performing party.

9. Termination. Either party may terminate this License for any reason with one year's written notice to the other. The Town may terminate this License upon 30 days' written notice to Licensee, in the event of a material breach by Licensee, which material breach Licensee does not promptly cure after notice. In either case, upon termination Licensee shall be required to remove at its expense its improvements in the right-of-way, if the Town Engineer determines those improvements interfere with use of the public right-of-way, and after such removal shall restore the rights-of-way to their former condition.

10. Assignment. With the prior written permission of the Town, such permission not to be unreasonably withheld, the Licensee may assign any or all its duties and responsibilities set forth in this Agreement.

11. Sovereign Immunity. Town does not waive sovereign immunity by entering this License, and specifically retains immunity and all defenses available pursuant to Wyo. Stat. § 1-39-104(a) and all other state laws.

12. Insurance. Licensee shall obtain and maintain, and shall require any of its permitted subcontractors to obtain and maintain, not less than the insurance set forth below:

a. Workers' Compensation: Statutory; and employer's liability insurance covering death or injury to any person or persons, or damage to property arising from the operations of vehicles or equipment, with limits of not less than \$1,000,000 per occurrence.

b. Commercial General Liability: Written on a per occurrence basis to include coverage for: Broad Form Property Damage; Bodily Injury; Personal Injury; Blanket Contractual Liability; and Products/Completed Operations, with a combined single limit per Occurrence not less than \$2,000,000.

c. Automotive Liability: Covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, for all vehicles owned, hired, non-hired, non-owned and borrowed by contractor in the performance of the obligations covered under this Agreement, with limits of not less than \$1,000,000 per occurrence.

13. Notices. All notices shall be in writing and shall be delivered by personal service, certified mail return receipt requested or by overnight delivery, with proof of delivery. Any such notice shall be deemed effective on the date of personal service or mailing. All notices shall be addressed to the parties as specified below, or such other address as a party may update in writing to the other party from time to time:

Town: TOWN OF RANCHESTER
145 Coffeen St, Box 695
Ranchester, WY, 82839
Attention: Barbara Brackeen-Kepley
Town Clerk

Licensee: Visionary Communication, Inc.
1001 S. Douglas, Suite 201
Gillette, WY 82716
Attention: Brian
Worthen, President

14. Miscellaneous.

a. Wyoming Law: This Agreement is to be governed by the laws of the State of Wyoming. Venue for any litigation shall be in Sheridan County.

b. Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

c. Severability: If any term, covenant, or condition of this Agreement is deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be binding upon the parties.

d. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in any instrument delivered pursuant to this Agreement.

e. Default/Attorney's Fees: In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

f. No Waiver: Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

TOWN OF RANCHESTER

PETER B. CLARK, MAYOR

ATTEST:

BARBARA BRACKEEN-KEPLEY, TOWN CLERK

LICENSEE:

VISIONARY COMMUNICATIONS, INC:

By: _____
Brian Worthen
President

_____ Date