

ORDINANCE NUMBER \_\_\_\_\_ VISIONARY FRANCHISE AGREEMENT

AN ORDINANCE GRANTING A FRANCHISE TO VISIONARY COMMUNICATIONS, INC. ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE TOWN OF RANCHESTER, WYOMING.

The Town of Rancheater, Wyoming hereby ordains that it is in the public interest to grant Visionary Communications, Inc. a Franchise to operate and maintain a Telecommunications System pursuant to the terms, conditions, and obligations contained herein.

**FINDINGS**

In review of Visionary Communications, Inc., the Town of Rancheater, Wyoming makes the following findings:

Visionary's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

Visionary's plans for operating and maintaining the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard; and

The Franchise granted to Visionary by the Town complies with existing laws, ordinances, and regulations of the Town of Rancheater, Wyoming.

**ORDINANCE**

Section 1) Grant of Franchise. The Town of Rancheater, Wyoming (herein the "Town") hereby grants to Visionary Communications, Inc., its operating affiliates, and permitted assigns (herein collectively "Visionary") the non-exclusive right, privilege, and authority to construct, maintain, operate, upgrade, adjust, protect, support, raise, lower, disconnect, remove, and relocate its cables, poles, wires, conduits, conductors, pipes, and related appurtenances ("Facilities") for its Telecommunications System (herein the "System") in, under, along, over, and across the present and future streets, roadways, avenues, courts, lanes, alleys, sidewalks, rights of way, and similar public areas of the Town (herein the "Rights-of-Way"), for the purpose of providing telecommunications services to the Town's citizens and their properties (herein the "Franchise." Visionary shall operate, maintain, and upgrade the System in accordance with industry standards and technological advancements. The Franchise area is defined as the area now within the legal boundaries of the Town and those areas hereinafter annexed into the legal boundaries.

Section 2) Acceptance by Visionary. Within sixty (60) days after the passage of this Ordinance by the Town, Visionary shall file a signed copy thereof with the Town Clerk, otherwise the Ordinance and the rights granted herein shall be null and void.

Section 3) Term. The term of this Franchise commences upon the passage of this Ordinance and continues in full force and effect for ten (10) years (herein the “Initial Term”). At least one hundred twenty (120) days prior to the expiration of the Term or, if applicable, this Ordinance, Visionary and the Town shall either agree to extend the Term for an additional ten (10) year period (“Renewal Term”) or use best faith efforts to renegotiate a replacement Franchise Agreement otherwise this Franchise shall terminate at the end of the Term. The Initial Term and any Renewal Term are referred to herein as the “Term.” The Town will not unreasonably refuse to extend the Franchise for an additional ten (10) year period if Visionary is in full compliance with the terms, conditions, and obligations of this Ordinance and applicable law, and the compensation terms are acceptable to both parties. This Franchise may be terminated prior to the expiration of the Term as provided in Section 15.

Section 4) Franchise Fee. From and after the date of Visionary’s acceptance of this Ordinance and until its expiration, Visionary shall pay to the Town three percent (3%) of Visionary’s Gross Revenue (as defined in **Appendix A** attached hereto and incorporated herein by reference). Payment shall be made quarterly within sixty (60) days after the last day of the quarter for which the payment applies during the Term of this Franchise.

Section 5) Franchise Fee Disputes. Either party may deliver to the other party a written notification of error. The written notice shall contain a summary of the facts and reasons for the party’s notice. Either party may challenge any written notification of error as provided for in this Franchise by filing a written notice to the other party within thirty (30) days of delivery of the written notification of error. The parties shall make good faith efforts to resolve any such notice.

Section 6) Records Inspection. Visionary shall make available to the Town, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent to enforcing the terms of this Ordinance and as otherwise may be necessary for the Town to perform its lawful duties and obligations as a governmental entity, in such form and at such times as Visionary can reasonably make available, including, but not limited to, records sufficient to calculate Visionary’s Gross Revenue as defined above. Subject to applicable laws, rules, and regulations, any information that is provided to the Town and/or that the Town reviews *in camera* may be confidential and proprietary if designated by Visionary as such and, if so designated, shall not be disclosed or used, except to or by the Town’s accountants, attorneys, and other advisors, who shall also keep such information confidential, for any purpose other than verifying compliance with the terms of this Ordinance, unless otherwise required by law. Any such information provided to the Town shall be promptly returned to Visionary following review and the Town will not retain copies of such information, but may re-request any such information at any time, which re-requested information shall be subject to the terms, conditions, and obligations of this Section.

Section 7) Non-Exclusive Franchise. The right to use and occupy the Rights-of-Way of the Town shall be non-exclusive, and the Town, for itself and for its assigns, designees, and other franchisees, reserves the right to use the Rights-of-Way for itself or any other entity. The Town and its other franchisees and designees, however, shall not unreasonably interfere with Visionary’s Facilities or the rights granted Visionary herein.

Section 8) Town Regulatory Authority. The Town 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.

Section 9) Indemnification. The Town shall not be liable for any property damage or loss or injury to or death of any person that occurs due to any action or inaction of Visionary, Visionary's use of the Rights-of-Way, or by, through, from, or due to its Facilities. Visionary shall indemnify, defend (with legal counsel chosen by the Town), and hold the Town harmless from and against all claims, demands, liens, liability, and damage of whatsoever kind on account of Visionary's action or inaction, use of the Rights-of-Way, and its Facilities. The Town shall: (1) give prompt written notice to Visionary of any claim, demand, lien, liability, and damage reasonably known to the Town with respect to which the Town seeks indemnification hereunder; and (b) permit Visionary to assume the defense (in coordination with legal counsel chosen by the Town) of such claim, demand, lien, liability, and damage. 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 Town for any claim, demand, lien, liability, or damage arising from the negligence or wrongful actions or inactions of the Town, its officials, boards, commissions, agents, contractors, and employees.

Section 10) 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, naming the Town as an additional named insured, or will provide self-insurance reasonably satisfactory to the Town, protecting it against liability for loss, personal injury, and property damage occasioned by the operation of the Facilities by Visionary. Such insurance will be in an amount not less than \$1,000,000. Visionary will also maintain Workers' Compensation coverage throughout the Term of this Franchise as required by state law. Visionary shall issue a certificate of insurance to the Town annually upon its renewal.

Section 11) Annexation. When any territory is approved for annexation to the Town, the Town shall within ten (10) business days provide by certified mail to Visionary: (a) each site address to be annexed as recorded on Town assessment; (b) a legal description of the proposed boundary change; and (c) a copy of the Town's ordinance approving the proposed annexation.

Section 12) Plan, Design, Construction and Installation of Visionary's Facilities.

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

12.2 Maps. Visionary shall upon request from the Town provide as-built maps and/or drawings to the Town, in a form reasonably prescribed by the Town, including electronic formats that can be imported into the Town's or Sheridan County's Geographical Information System ("GIS"). Visionary shall also provide as-built maps and/or drawings to Town staff, when specifically requested, that are accurate to within three (3) feet. Initial Facilities plans shall be filed within thirty (30) days of the effective date of this Ordinance and shall be updated yearly or upon completion of any significant modifications and additions to Visionary's Facilities in the Town.

Information, if confidential, shall be marked as such by Visionary and maintained as confidential as permitted under applicable law.

12.3 Visionary shall, prior to commencing any new construction or major reconstruction work in Rights-of-Way or other public places, apply for a permit from the Town, which permit shall not be unreasonably withheld, conditioned, or delayed, and for which no permit fees shall be imposed. Visionary will abide by all applicable ordinances, rules, regulations, and reasonable requirements of the Town consistent with applicable law, and the Town may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Visionary shall not be obligated to obtain a permit to perform emergency repairs to its Facilities, but shall be required to contact the Town prior to or immediately following making any such repairs.

12.4 To the extent practical and consistent with any permit issued by the Town, all Facilities shall be located and agreed upon so as to cause minimum interference with the Rights-of-Way and shall be constructed, installed, maintained, renovated, or replaced in accordance with applicable ordinances, rules, regulations, and reasonable requirements of the Town.

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

12.6 Before installation of new underground facilities or replacing existing underground facilities, Visionary shall first give the Town ten (10) business days notice and allow the Town its assigns, designees, and other franchisees, at their own expense, to either share the trench for laying of other facilities therein or provide a price for adding empty conduit, provided that such action will not unreasonably delay project completion.

12.7 Nothing in this Ordinance shall be construed to prevent the Town from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property.

12.8 In areas where all other utility lines are placed underground, Visionary shall construct and install its Facilities underground. In areas where one or more public utilities are aerial, Visionary shall contact the Town to determine if the Company will be allowed to install its Facilities aerially, or above ground. The Town reserves the right to have all new utilities installed underground even if one or more public utilities are aerial in the area.

### Section 13) Relocation of Facilities.

13.1 Relocation for the Town. Visionary shall, upon delivery of advance written notice of not less than sixty (60) days, protect, support, adjust, raise, lower, temporarily disconnect, relocate, or remove any Visionary property located in Rights-of-Way when required by the Town consistent with its police powers. Visionary shall be responsible for any costs associated with these obligations to the extent required under applicable federal, state, or Town law, ordinance, rule, or

regulation.

13.2. Relocation for a Third Party. Visionary shall, at the request of any person holding a lawful permit issued by the Town, protect, support, adjust, raise, lower, temporarily disconnect, relocate, or remove any Visionary property located in the Rights-of-Way, provided that the cost of such action is borne by the third party requesting it, and Visionary is given advance written notice of not less than one hundred and twenty (120) days. In said situation, Visionary will require advance payment of the costs.

13.3 Alternatives to Relocation. Visionary may, after delivery of written notice requesting a relocation of Facilities, submit to the Town written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Rights-of-Way. The Town shall promptly evaluate such alternatives and advise Visionary in writing if one or more of the alternatives are suitable. If requested by the Town, Visionary shall promptly submit additional information to assist the Town in such evaluation. The Town shall give each alternative proposed by Visionary full and fair consideration. In the event the Town determines there is no reasonable alternative, Visionary shall relocate the Facilities as requested by the Town. Notwithstanding the foregoing, upon any relocation, Visionary shall in all cases have the right to abandon the Facilities currently in the Rights-of-Way for which relocation is requested.

Section 14) Vegetation Management. Visionary shall have the authority, but not the obligation, to trim trees, bushes, hedges, and other natural growth in the Rights-of-Way in order to access and maintain its Facilities in compliance with applicable laws, rules, and regulations and industry standards. This right shall in no way impose a duty on Visionary; instead, this right gives permission to Visionary should Visionary elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

Section 15) Revocation of Franchise for Non-Compliance.

15.1 In the event the Town believes that Visionary has not complied with the terms of this Ordinance and Franchise, the Town shall informally discuss the matter with Visionary. If these discussions do not lead to resolution, the Town shall notify Visionary in writing of the exact nature of the alleged non-compliance.

15.2 Visionary shall have thirty (30) days from delivery of the written notice described in Subsection 15.1 to either respond to the Town, contesting the assertion of non-compliance, or otherwise initiate reasonable steps to remedy the asserted non-compliance issue, notifying the Town of the steps being taken and the projected date that the steps will be completed.

15.3 In the event that Visionary does not comply with Subsection 15.2, above, the Town shall schedule a public hearing to address the asserted non-compliance issue. The Town shall provide Visionary at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

15.4 Subject to applicable federal, state, and Town law, ordinance, rule, or regulation, in the event the Town, after the hearing set forth in Subsection 15.3, determines that Visionary is non-

compliant with this Ordinance, the Town may:

A) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages;

B) Commence an action at law for monetary damages or equitable relief, including, but not limited to, injunctive relief and specific performance, without the necessity to prove actual damages.; and

C) In the case of substantial non-compliance with a material provision of this Ordinance and Franchise, seek to revoke and terminate the Franchise in accordance with Subsection 15.5, below.

No remedy or election hereunder shall be deemed exclusive, but shall wherever possible, be cumulative with all other remedies at law or in equity. If the Town seeks to enforce its rights or remedies hereunder by litigation or otherwise, the Town shall be entitled to reasonable attorneys' fees, expenses, and costs incurred in connection herewith.

15.5 Should the Town seek to revoke and terminate the Franchise after following the procedures set forth above the Town shall give written notice to Visionary. Visionary shall have ninety (90) days from delivery of such notice to object in writing and state its reason(s) for such objection. Thereafter, the Town may seek revocation of the Franchise at a public hearing. The Town shall cause to be delivered to 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 Town shall give Visionary an opportunity to state its position on the matter, after which the Town shall determine whether or not the Franchise shall be revoked. Visionary may appeal the Town's determination to an appropriate court of competent jurisdiction within Sheridan County, Wyoming, which shall have the power to review the decision of the Town *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the Town's determination. The Town may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

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

Section 16) No Waiver of Rights. Neither the Town or Visionary shall be excused from complying with any of the term, condition, and obligation 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 term, condition, and obligation and such failure does not cure any prior instance of non-compliance nor preclude any legal remedy pertaining thereto. 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 take any position as to the legality or appropriateness of any provision in this Ordinance that is or may be inconsistent with federal or state law, now or as may be amended.

Section 17) Transfer of Franchise. Visionary's right, title, or interest in the Franchise shall not be

sold, transferred, or assigned, voluntarily or involuntarily, or otherwise encumbered without permission from the Town, which may be withheld for any or no reason, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Visionary, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any right, title, or interest of Visionary in the Franchise or Facilities to secure indebtedness.

Section 18) Amendment. At any time during the Term of the Franchise, the Town, through its governing body, or Visionary, may propose an amendment or addendum to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment or addendum desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment. No amendment may be adopted without mutual written agreement of the Parties.

Section 19) Force Majeure. Visionary shall not be held in default under, or in non-compliance with, the provisions of this Ordinance, nor suffer any enforcement or penalty relating to non-compliance or default (including revocation of the Franchise), where such non-compliance or alleged faults occurred or were caused by riot, war, earthquake, flood, unusually severe rain or snow storm, tornado or other catastrophic act of nature that cuts or damages the Facilities or judicial order or regulation that is reasonably beyond Visionary's ability to anticipate or control, provided Visionary shall have the obligation to maintain, repair, or replace the Facilities as soon as practicable. This provision also covers work delays caused by waiting for other utility providers to service or monitor its utility poles on which Visionary's Facilities and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary and delays caused by limited access to easements, poles or streets.

Section 20) Provisions of Term. If, after the effective date of this Ordinance, should there be any enactment or promulgation of any federal or state law, rule, regulation, or order, or a decision of a court of competent jurisdiction that significantly changes Visionary's or the Town's rights or obligations under this Ordinance, or that pertains to any of the terms or provisions herein, including, but not limited to, the imposition, payment, collection, or treatment of the franchise fees payable hereunder, then Visionary and the Town, by providing written notice to the other party, each shall have the right to request that affected portions of this Ordinance be amended or that there be an addendum hereto. The parties shall commence good-faith negotiations within sixty (60) days of such notice and endeavor to conclude such negotiations within ninety (90) days. Any amendment or addendum agreed to by the parties shall become effective upon the passage and acceptance of such amendment or addendum. In the event that an amendment or addendum cannot be agreed upon pursuant to the terms of this Section, either the Town or Visionary may file an action with any court or agency with competent jurisdiction within Sheridan County, Wyoming to conform the Franchise to the new law, rule, regulation, or order.

Section 21) Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given in writing and shall be deemed to have been delivered upon the earlier of (a) personal delivery or actual receipt thereof or (b) two (2) business days after such notice is deposited with the United States Postal Service, postage prepaid, sent by certified mail or other delivery method with tracking, and addressed to the parties as set forth below or other address provided by

either party to the other in accordance with this provision:

The Town of Ranchester  
Attn: Mayor and Town Clerk  
PO Box 695  
Ranchester, WY 82839 WY

Visionary Communications, Inc. Fiber Administrator  
PO Box 2799  
Gillette WY 82717-2799

Section 22) No Wavier of Governmental Immunity and the Wyoming Governmental Claims Act. Visionary acknowledges that the Town is a political subdivision of the State of Wyoming, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Wyoming. The Town fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract, or any other theory of law and does not waive any of its immunities from suit and liability, except as specifically authorized by law.

Section 23) Severability. If any Section, Subsection, sentence, paragraph, term, phrase, or provision hereof, that is not material and integral, is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any federal, state, or other applicable regulatory body or authority having jurisdiction thereof, or unconstitutional, illegal, or invalid by any court of competent jurisdiction, such non-material and non-integral portion shall be deemed a separate, distinct, and independent portion , and such determination shall have no effect on the validity of any other Section, Subsection sentence, paragraph, term, phrase, 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.

Section 24) All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 25) This ordinance shall take effect from its adoption and publication as required by law and the ordinances of the Town of Ranchester.

**APPROVED** on 1<sup>st</sup> Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**APPROVED** on 2<sup>nd</sup> Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**APPROVED** on 3<sup>rd</sup> Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.



**TOWN OF RANCHESTER, WYOMING:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**VISIONARY COMMUNICATIONS, INC.:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A**  
**GROSS REVENUE FOR CALCULATION OF FRANCHISE FEE**

The following telecommunications products would be subject to the Franchise fee:

Business Local Access, Flat Rate

Residential Local Access, Flat Rate Local Access Trunks

Session Initiated Protocol Trunking Hosted Voice Services

The following is a non-exclusive listing of revenue categories not representing the retail sale of local access services and therefore excluded from the definition of Gross Revenues and, therefore, are not included in the calculation of Franchise fees:

- Bad debt write-offs and customer credits;
- Installation, upgrade, disconnection or late fees, including non-sufficient funds charges;
- Fees for the leasing or sale of equipment;
- Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments;
- 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;
- Any franchise fees that are not chargeable per federal or state law;
- Revenues from Internet access;
- Revenues from any carrier purchased for resale; and
- Revenues from private-line services not for local access service.