

AN ORDINANCE APPROVING THE FRANCHISE AGREEMENT TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM (“SYSTEM” OR “THE SYSTEM”) BETWEEN THE CITY OF LARAMIE, ALBANY COUNTY, WYOMING AND TO VISIONARY COMMUNICATIONS, LLC. ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES (“VISIONARY”)

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.

FINDINGS

In review of Visionary Communications, LLC., the City of Laramie, 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 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 City complies with the existing laws and regulations of the City of Laramie, Wyoming.

Section 1) Grant of Franchise. The City hereby grants to 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 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 City (“Rights-of-Way”), for the purpose of providing telecommunications services to the City’s inhabitants, hereinafter “the Franchise” or “Franchise.” The Franchise area is defined as the area within the legal boundaries of the City.

Section 2) Acceptance by Visionary. Within sixty (60) days after the passage of this Ordinance by the City, Visionary shall file a signed copy thereof with the City 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 (“Initial Term”). At least one hundred and eight (180) days prior to the expiration of the Initial Term, Visionary shall notify the City of its intent to terminate the Franchise, or it may elect to extend this Franchise for one (1) additional ten (10) year period (“Renewal Term”). The Initial Term and Renewal Term may be collectively referred to as “Term.” The City will not unreasonably refuse to extend the Franchise for additional ten (10) year period if Visionary is in compliance with the terms of this Ordinance and applicable law, and the compensation terms are acceptable to both parties. The Term shall be specifically subject to the Provisions of Term (Section 20) set forth below. It is the intent of the City to have a successful relation with Visionary. Visionary agrees that the City may, on an annual basis after the two-year annual anniversary of the Effective Date, request a meeting with the Visionary at a location designated by the City with the City of Laramie to discuss performance of Visionary and, as appropriate, resolution of any service issues of concern. The City will provide no less than 60 days advance notice of the meeting to the appropriate local representative of Visionary and the representative listed in the Franchise agreement. Discussion topics will be identified prior to the meeting and discussion limited to the items listed in the notice. The City and Visionary agree to seek reasonable, efficient and amicable resolution of identified service issues. This annual review may occur upon notice given consistent with this section, for the ten (10) year term of this Franchise agreement.

Section 4) Franchise Fee. From and after the date of Visionary's acceptance of this Ordinance and until its expiration, Visionary will pay to the City five percent (5%) of Visionary's Gross Revenue (as defined in Appendix A hereto). 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 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 receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice

Section 6) Records Inspection. Visionary shall make available to the City, upon reasonable advance written notice of no less 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 reasonable make available. Subject to applicable laws, any information that is provided to the City and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used or any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the City shall be immediately returned to Visionary following review. The City will not make copies of such information.

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

Section 8) 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.

Section 9) 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 Rights-of-Way. The City shall: (1) 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 10) Insurance Requirements.

10.1 Visionary shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

10.2 The City shall be added as an additional insured, arising out of work performed by Visionary, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

10.3 Visionary shall furnish the City with current certificates of insurance evidencing such coverage yearly and upon request.

Section 11) Annexation. When any territory is approved for annexation to the City, the City shall within thirty (30) business days provide notification to Visionary: (a) each site address to be annexed as recorded on City assessment; (b) a legal description of the proposed boundary change; and (c) a copy of the City'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 provide a GIS shapefile of its system to the City of Laramie upon execution of this Franchise, as well as an updated shapefile in January of every year that shows changes to Visionary's system from the previous year. The shapefile shall be in the NAD83 (2011) datum and shall be accurate to 1.0 feet. In addition, Visionary shall upon request from the City provide as-built maps and/or drawings to the City, in a form reasonably prescribed by the City, including electronic formats that can be imported into the City's Geographical Information System ("GIS"). Visionary shall also provide as-built maps and/or drawings to City staff, when specifically requested, that are accurate to within one (1) foot. 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 additions to Visionary's Facilities in the City. Information, if confidential, shall be marked as such and maintained as confidential as permitted under applicable law.

12.3 Visionary shall, prior to commencing new construction or major reconstruction work in Rights-of-Way or other public places, apply for a permit from the City, for which no permit fees shall be imposed. Visionary shall submit construction plans with the permit. The City shall have 30 days to review such plans. Comments shall be addressed by Visionary and shall resubmit plans. Each submittal resets the 30-day review period. 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 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 City prior to or immediately following making any such repairs.

12.4 To the extent practical and consistent with any permit issued by the City, 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 rules, ordinances and regulations of the City.

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 reasonable 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 notify the City and allow the City, at its own expense, to either share the trench for laying of its own 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 City 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 unless the City approves Visionary to install utility lines aerially. In areas where one or more public utilities are aerial, Visionary shall contact the City to determine if the Company will be allowed to install its Facilities aerially, or above ground. The City reserves the right to have all new utilities installed underground even if one or more public utilities are aerial in the area.

12.9 This Ordinance allows Visionary to attach to, or otherwise use or commit to use, any pole owned by the City.

12.10 Compliance with Codes: All construction practices and installation of equipment shall be done in accordance with all applicable standards and codes adopted by the governing body of the City.

12.11 Construction Standards and Requirements: All of Visionary's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

12.12 Safety. Visionary shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

12.13 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

12.14 Performance Monitoring. Grantee shall test the Cable System consistent with the FCC regulations.

Section 13) Relocation of Facilities.

13.1 Relocation for the City. Visionary shall, upon receipt of advance written notice of not less than ten (10) days or an agreed upon timeframe, protect, support, adjust, raise, lower, temporarily disconnect, relocate, or remove any Visionary property located in Rights-of-Way when required by the City consistent with its police powers.

Visionary shall be responsible for any costs associated with these obligations to the extent required under applicable federal, state law or City ordinance.

13.2. Relocation for a Third Party. Visionary shall, at the request of any person holding a lawful permit issued by the City, 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 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 Rights-of-Way. 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 such evaluation. The City shall give each alternative proposed by Visionary full and fair consideration. In the event the City determines there is no reasonable alternative, Visionary shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, Visionary shall in all cases have

the right to abandon the Facilities.

Section 14) Vegetation Management. Visionary shall have the authority, but not the obligation, to trim trees and other natural growth in the Rights-of-Way in order to access and maintain its Facilities in compliance with applicable law 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) Renewal. At least one hundred eighty (180) days prior to the expiration of this Ordinance, Visionary and the City shall either agree to extend the Term or use best faith efforts to renegotiate a replacement Franchise agreement.

Section 16) Revocation of Franchise for Non-Compliance.

16.1 In the event the City believes that Visionary has not complied with the terms of this Ordinance, 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 non-compliance.

16.2 Visionary shall have thirty (30) days from receipt of the written notice described in subsection 16.1 to either respond to the City, contesting the assertion of non-compliance, or otherwise initiate reasonable steps to remedy the asserted non-compliance issue, notifying the City of the steps being taken and the projected date that the steps will be completed.

16.3 In the event that Visionary does not comply with subsection 16.2, above, the City shall schedule a public hearing to address the asserted non-compliance issue. The City shall provide Visionary at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

16.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 16.3, determines that Visionary is non-compliant 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 equitable relief; or
- C) In the case of substantial non-compliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 16.5, below.

16.5 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.

16.6 Notwithstanding the foregoing provisions in this Section 16, Visionary does not waive any of its rights under applicable law.

Section 17) No Waiver of Rights. Neither the City or 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 and such failure does not cure any prior instances of non-compliance nor preclude any legal remedies 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/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with federal or state law, as may be amended.

Section 18) Transfer of Franchise. Visionary's right, title or interest in the Franchise shall not be sold, transferred or assigned, or otherwise encumbered without permission from the City, 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 rights, title or interest of Visionary in the Franchise or Facilities to secure indebtedness.

Section 19) Amendment. At any time during the Term of the Franchise, the City, 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 20) 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 or judicial order or regulation or fiber cut or other damage or event that is reasonably beyond Visionary's ability to anticipate or control. This provision also covers work delays caused by waiting for 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 21) Provisions of Term. If, after the effective date of this Ordinance, should there be any enactment or promulgation of any federal or state law, regulation or order, or a decision of a court of competent jurisdiction that significantly changes Visionary's or the City'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 City, 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 City or Visionary may file an action with any court or agency with competent jurisdiction to conform the Franchise to the new law, regulation or order.

Section 22) 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 (2) business days after such notice is deposited with the United States Postal Service, postage prepaid, certified and addressed to the parties as set forth below:

City of Laramie
P.O. Box C
Laramie, WY 82073

Visionary Communications, Inc.

Stacie McDonald
PO Box 2799
Gillette WY 82717-2799

Section 23) Retention of Governmental Immunity. By entering into this Franchise, the City of Laramie does not waive its Governmental Immunity, as provided by any applicable law including W.S. Section 1-39-101 et seq. Further, the City fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law based on this contract. This contract is entered into by the parties for their sole benefit and is not intended to be for the benefit of any other third party or entity.

Section 24) 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 federal or state 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.

Section 25) All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 26) This ordinance shall take effect from its adoption and publication as required by law and the ordinances of the City of Laramie.

[Grantor] Signature: _____
Name: Paul Weaver
Title: Mayor and President of the City Council

Attest: Signature: _____
Name: Nancy Bartholomew, CMC
Title: City Clerk

First Reading: June 21st, 2022
Public Hearing: July 5th, 2022
Second Reading: July 5th, 2022
Third Reading: July 19th, 2022

Publication: Duly published in the Laramie Boomerang this ____ day of _____, 2022.

Accepted this ____ day of _____, 2022, and subject to Federal, State, and Local law.

VISIONARY COMMUNICATIONS, INC.:

Signature: _____
Name: Brian Worthen
Title: CEO

APPENDIX A

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.