

## **ENROLLED ORDINANCE NO. 20-010**

### **AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO NORTHERN ARAPAHOE TRIBAL INDUSTRIES, D/B/A WIND RIVER INTERNET (WRI) WITHIN THE RIGHTS-OF-WAY OF THE CITY OF RIVERTON, WYOMING.**

WHEREAS, Northern Arapahoe Tribal Industries D/B/A Wind River Internet (WRI), hereinafter “Company”, a corporation created and existing under the laws of the State of Wyoming, desires to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the City of Riverton (“City”) a system for the provision of telecommunication services; and,

WHEREAS, the City desires to grant to Company a non-exclusive Franchise to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City, a system for transmission of telecommunications services, and to provide for compensation to the City for management of its rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIVERTON, STATE OF WYOMING:

#### **Section 1. Non-exclusive Franchise.**

That Company is hereby granted a non-exclusive Franchise (“Franchise”) to construct, erect, renew, repair, maintain, upgrade and operate a system for transmission of telecommunications services in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the City.

#### **Section 2. Definitions.**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. All terms not otherwise defined herein are defined pursuant to 47 U.S.C. §153 (“Definitions”).

“City” means the City of Riverton.

“City Council” means the governing body of the City.

“Right-of-Way” means any highway, street, road, sidewalk, alley, or other public right-of-way or public utility easement under the jurisdiction and control of the City, which has been acquired, established, dedicated, or devoted to such purposes.

“Telecommunications System” or “System” means those Facilities necessary for Company to provide Telecommunications Service.

#### **Section 3. Grant of Authority.**

(a) This Ordinance grants permission and authority to Company, upon the terms and subject to the conditions of this non-exclusive Franchise, to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the City for a period of five (5) years from and after its acceptance by Company and thereafter until terminated by at least six (6) months prior written notice either by the City to the Company or by the Company to the City, a Telecommunications System, including but not limited to lines, poles, anchors, wires, cable, conduit, vaults, hand holds, laterals and other fixtures and equipment (the “Facilities”), and to use said System for the transmission of sound, signals, data, or other means of Telecommunications.

(b) Any rights, privileges, and authority granted to Company under this Franchise are subject to the rights of the police power of the City.

(c) Nothing in this Franchise excuses Company of its obligation to obtain use and development authorization and permits from the City before entering, occupying, or using rights-of-way to construct, install, operate, maintain, repair, or remove such Facilities.

(d) Nothing in this Franchise excuses Company of its obligation to comply with applicable codes, rules, regulations, and standards, subject to verification by the City of such compliance.

(e) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Company of any obligation to pay lawfully imposed charges or fees.

(f) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of Facilities or to modify rights-of-way to accommodate Company's Facilities.

(g) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third-party user of Company's Facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

#### **Section 4. Location of Facilities.**

(a) In the event the location of Company's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), shall necessitate the disturbance of any street, alley, or other public right-of-way, then such shall be subject to the approval of the City.

(b) The Company shall place on file with the City plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes, handholes, vaults, or other openings to gain access to said conduit; and no portion of the Telecommunications System or associated Facilities shall be erected, constructed, or laid upon, under or over any street, alley, or other public right-of-way, until a permit therefore has issued, subject to the approval of the City, which shall indicate the time, manner and place of laying, constructing or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the City requires construction in the public right-of-way for purposes of repair, widening, repaving, regrading or any other relevant purpose where Company's Telecommunications System and associated Facilities are installed, the Company shall, as soon as commercially reasonable, upon written notice from the City, remove or relocate its Facilities to conform with the City's written notice. Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities, shall be restored by Company to the condition existing prior to Company's construction. Company shall, upon receipt of written notice from the City, for a period of twelve (12) months following Company's removal, relocation, and restoration of public rights-of-way subject to this sub-section, repair any damaged, uneven, or settled sections of right-of-way caused by Company's removal or relocation of its Facilities.

(d) In any instance where the City requests Company to move Company's Telecommunications System and associated Facilities due to a request of a third party, Company shall request such third party reimburse Company for its full cost of such relocation and Company shall not be required to relocate its Telecommunications System and associated Facilities until Company receives an executed reimbursement agreement from such third party. City shall not be required to compel such agreement.

(e) Company may place its Facilities underground or above ground subject to the approval of the City, and provided that Company must place its Facilities in a manner that is non-discriminatory to other Telecommunications Service providers. Subject to the terms and conditions of this Franchise and the City Code, Company may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead Facilities, if approved by the owner of the utility poles and if approved by the City.

(f) Company's Facilities shall not interfere with the use of rights-of-way or City property by the City, the general public, or other persons authorized to enter, occupy, or use rights-of-way or City property. Whenever new Facilities will exhaust the capacity of a right-of-way to reasonably accommodate future users or Facilities, the Company shall provide nondiscriminatory access to its conduit to future users and Facilities subject to the approval of the Company and third-party users. However, Company shall not permit installations by others in its conduit in the City without written approval of the City, which approval shall not be in lieu of a franchise or other requirements of the City and shall not abrogate Company's responsibility for compliance with this Franchise by third party users of the Telecommunications System.

(g) Upon receipt of reasonable notice by the City, Company shall relocate its Facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

#### **Section 5. Poles, Conduit, Structures, and Property Owned by Others.**

Company shall obtain written approval from the owners of utility poles, conduit, structures, and property not owned by Company, prior to attaching to or otherwise using such poles, conduit, structures or property, and shall provide proof of such approval to the City. The installation of Facilities by Company on the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use rights-of-way. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the rights-of-way either expires, terminates, or is cancelled, the authority of Company to construct, install, operate, maintain, and repair Company's Facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs of removal of Facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use rights-of-way for any reason whatsoever. However, the City shall seek alternative placement of said Facilities, while working with the Company, so that the Company can maintain its service to the citizens.

#### **Section 6. Construction and Installation Requirements.**

(a) The technical performance of the Facilities must meet or exceed all applicable industry standards.

(b) All Facilities shall be installed in accordance with the best engineering, quality, and construction practices and standards of the telecommunications industry.

(c) All Facilities shall be constructed and installed in such manner and at such points so as not to inconvenience the City or public use of the rights-of-way or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City.

(d) Company's installations and operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Company must cease work immediately, if the City reasonably determines that Company is not in compliance with such codes, rules, regulations, standards or laws and may not begin or resume work until the City determines that Company is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(e) Company shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof, including right-of-way use permits.

(f) Any tree trimming shall be in accordance with all of the provisions of the City Code.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Company of any duty, obligation, or responsibility for the design, construction, and installation of its Facilities. Company is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, subcontractors or agents.

(h) Except as to emergency repairs, Company shall, prior to excavating within any street, alley or other public place and installing any conduit, overhead cable or equipment therein, file with the City plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Company shall conform to all requirements of the City Code and regulations adopted pursuant thereto, as such requirements and regulations currently exist or may be amended. Upon completion of the work, Company shall provide the City with as-built maps compatible with City software showing the final location of the Facilities.

(i) All construction and maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued.

(j) In the event of an emergency requiring immediate action by Company for the protection of the Facilities, City property, or other persons or property, Company may proceed without first obtaining the normally required permits. In such event Company must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities or any part thereof, City property, or other persons or property and to protect the public health, safety, and welfare; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the permit.

(k) Whenever necessary, after construction or maintenance of any of Company's Facilities within the right-of-way, the Company shall, without delay and at Company's sole expense, remove all debris and restore the surface disturbed by Company as nearly as possible to as good or better condition as it was in before the work began. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications.

(l) Company shall provide the City with GIS level maps showing the size and location of the Facilities within the City in a format acceptable to the City, subject to the City's agreement to maintain the confidentiality of such information to the extent allowed by law. The City agrees that it will comply with applicable state law regarding public disclosure of Company's maps and information and will withhold such disclosure from any third party to the extent allowed by law. Any map or information furnished to the City pursuant to this Franchise shall remain the Company's proprietary information for all purposes to the extent allowed by law. Company shall provide locates to mark its Facilities at no cost to the City.

(m) Company shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City, including safety of all persons and property during the performance of any work.

(n) Company shall restore the right-of-way to pre-construction condition. Company agrees to pay all costs and expenditures required on rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Company. Favorable weather conditions permitting, Company agrees to commence repairing the rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Company within five (5) business days of its receipt of notice. If Company fails to undertake such repairs as herein provided, the City may perform the repairs at Company's expense.

## **Section 7. Coordination of Construction and Installation Activities and Other Work.**

(a) Company shall coordinate its construction and installation activities and other work with the City and other users of the rights-of-way as determined by the City.

(b) Company shall conduct its construction and installation activities at all times so as to avoid conflicts with the facilities of other users, occupants, utilities, franchisees, or permittees of the rights-of-way.

## **Section 8. Safety and Maintenance Requirements.**

(a) All work authorized and required under this Franchise shall be performed in a safe, thorough, and workmanlike manner.

(b) Company, in accordance with applicable federal, state, and local safety requirements, shall at all times employ necessary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to occur. All Facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If the City finds that Company is responsible for a violation of a safety code or other applicable regulation, upon Company's receipt of written notice, the City may, after discussion with Company, establish in writing a commercially reasonable time for Company to make necessary repairs. If the repairs are not made within the established written time frame, the City may make the repairs itself at the cost of the Company or have them made at the cost of Company.

(c) If Company fails to timely commence, pursue, or complete any work as required by law, permit, or this Franchise, the City may at its discretion cause the work to be done. Company shall pay to the City the reasonable and documented actual costs of the work in an itemized invoice provided by the City to Company within 30 days after receipt of such invoice.

(d) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a right-of-way or other public place occupied by Company. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Company for any damage except to the extent of the City's negligence, but nothing herein shall relieve any other person or entity from the responsibility for damages to Company's Facilities. The City will use its best efforts to provide Company with reasonable advance notice of plans by other persons to open the rights-of-way.

(e) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Company shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing the work or post it on the work site. A copy of the order shall be sent to Company, and the order shall indicate the nature of the alleged violation or unsafe condition and the conditions under which Company may resume work.

## **Section 9. Removal of Unauthorized Facilities.**

Within thirty (30) days following written notice from the City, Company shall, at its expense, remove unauthorized Facilities and restore the rights-of-way and other property to as good a condition as existed prior to construction or installation of its Facilities. Any plan for removal of said Facilities must be approved by the City prior to such work.

## **Section 10. Abandonment of Facilities.**

The City may in its sole discretion allow Company to abandon its Facilities in place, provided that no Facilities may be abandoned in place without the express written consent of the City. Upon abandonment in place of Facilities, the Facilities shall become property of the City, and Company shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such Facilities. The failure of Company to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

## **Section 11. Restoration of Rights-of-Way and Other Property.**

(a) When Company, or any person acting on its behalf, does any work in or affecting any right-of-way or other property, it shall, at its own expense, promptly remove any

obstructions therefrom and restore, at Company's cost, such right-of-way and property to as good a condition as existed before the work was undertaken.

(b) If weather or other conditions do not permit the complete restoration required by this section, the Company shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the Company's cost, and Company shall promptly undertake and complete the required permanent restoration, when the weather or other conditions no longer prevent such permanent restoration.

(c) All restoration work is subject to inspection and final approval by the City. The affected rights-of-way and property shall be restored to a comparable condition by the Company. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Company or have it made at the cost of Company.

## **Section 12. Compensation.**

(a) Federal law confirms the authority of a State or local government to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government (see 47 U.S.C. §253(c)). Therefore, as consideration for costs incurred by the City for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for the provision of Telecommunications Services, Company shall pay to the City the sum of two thousand five hundred dollars (\$2,500) upon Company's acceptance of this Franchise, and five percent (5%) of its local exchange access service's annual Gross Revenues (as defined in Appendix A hereto) commencing on the effective date of this Franchise (or a higher percentage of annual gross revenues if agreed to in writing between the City and telecommunications provider after the effective date of this Franchise) derived from the operation of its Telecommunications System and Facilities in the City. Company's initial payment shall be due within thirty (30) days after final approval of this Franchise by the City Council. Subsequent payments shall be due within thirty (30) days after the anniversary date of final approval and acceptance hereof. Company and the City mutually acknowledge the foregoing sums to be fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

(b) If Company, with the consent of the City Council, should allow others to utilize its Facilities located within the City, Company shall pay to the City five percent (5%) of the revenue generated by allowing others use of the Facilities where said use is not for the purposes of service delivery within the City. Company also agrees that the use of Facilities by others to provide services within the City shall only be allowed when those others have executed a franchise agreement with the City.

## **Section 13. Compliance with Existing Law.**

This Franchise is contingent for its existence and continuance upon Company's continued compliance with all relevant state and federal statutes and regulations, including rules and regulations promulgated by the Wyoming Public Service Commission.

## **Section 14. Indemnification.**

(a) The Company shall, at its own expense, defend, indemnify, save and hold harmless the City from any and all claims, actions, causes of action, suits, liabilities, damages, judgments, settlements, costs and expenses of every kind, including attorneys' fees and expenses, which may arise or result by reason of or in consequence of the acts, omissions or negligence of the Company, its employees or agents.

(b) The Company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the City arising from or growing out of any damages to the property of the Company resulting from any act or omission of the City, its agents and employees, occurring prior to, on and after the date of the passage and acceptance of this Franchise.

## **Section 15. Insurance.**

(a) Company shall obtain and maintain, at its cost, worker's compensation insurance in accordance with State law requirements and the following liability insurance policies insuring Company and, including as additional insureds as their interest may appear under this Franchise, the City, the City's elected officials, employees and agents, against claims for injuries to persons or damages to property, which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Company:

1. Commercial General Liability Insurance, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence for bodily injury (including death) and for damage to property.

2. Commercial Automobile Liability Insurance for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 for each accident for bodily injury and property damage.

3. Umbrella Insurance in the amount of \$1,000,000.

(b) The liability insurance policies required by this section shall be maintained by Company throughout the term of this Franchise, such other periods of time during which Company's Facilities occupy rights-of-way, and while Company is engaged in the removal of its Facilities. Company shall provide an insurance certificate, together with a blanket additional insured endorsement evidencing the City, and its elected officials, employees and agents as additional insureds as their interest may appear under this Franchise, to the City prior to the commencement of any construction or installation of any Facilities pursuant to this Franchise or other work in the right-of-way. Payment of deductibles and self-insured retentions shall be the sole responsibility of Company. Company's insurance shall be primary insurance with respect to the City, its elected officials, employees and agents. Any insurance maintained by the City shall be in excess of the Company's insurance and shall not contribute to it.

(c) Within thirty (30) days of the renewal of any insurance required hereunder, Company shall provide the City with a certificate of insurance evidencing renewal.

## **Section 17. Additional Ducts and Conduits.**

Whenever Company is constructing, relocating, or placing conduits in the right-of-way and whenever the City has made a request for ducts or conduits in advance of such installation, Company shall construct and install ducts and conduits when and where requested by the City and related structures necessary to access the ducts and conduits, subject to the separate mutual written agreement of the parties to include charges paid by the City for Company's incremental costs. The conduits and ducts shall remain the property of the Company unless the City requests the installation of separate conduit to be paid for and owned by the City. Such Company ducts and conduits shall be readily accessible and available for use as delineated in that certain separate mutual written agreement of the parties.

## **Section 18. Records.**

(a) The City will have access to, and the limited right to inspect only those documents and records of Company reasonably related to the City's management of its rights-of-way related to this Franchise and the payment of compensation by the Company to the City.

(b) If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Company may request, in writing within ten (10) days of the City's request, that the City inspect them at Company's local office. If any documents or records of Company are not kept in a local office or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary to its management of the rights-of-way subject to this Franchise, then reasonable travel and related costs and expenses incurred in making such examination shall be paid by Company.

## **Section 19. Default.**

In the event that the Company shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this Franchise, and if any such default or defaults shall continue for a period of thirty (30) days (exclusive of all times during which the Company may be delayed or interfered with by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suit or proceeding) after written notice thereof to the Company from the City is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company in and by this Ordinance and Franchise, and all rights and privileges of the Company under this Franchise shall thereupon be at an end.

## **Section 20. Notices.**

Any notice required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: City of Riverton  
816 N. Federal Boulevard  
Riverton, WY 82501  
Attn: City Administrator

Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: ROW Manager

## **Section 21. Miscellaneous.**

(a) Non-Waiver. The failure of either party to this Franchise to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

(b) Governing Law. This Franchise will be governed by federal law, the laws of the State of Wyoming, and local law.

(c) Descriptive Headings. The headings of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(d) Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its costs and attorneys' fees, as well as costs and attorneys' fees on appeal, in addition to such other relief as the court may deem proper.

(e) No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

(f) Actions of the City or Company. In performing their respective obligations under this Franchise, the City and Company will act in a reasonable, expeditious, and timely manner.

(g) Time Is of the Essence. Whenever this Franchise sets forth a time for any act to be performed by Company, such time shall be deemed to be of the essence, and any failure of Company to perform within the allotted time may be considered a breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy.



(h) Counterparts. This Franchise may be executed in one or more counterparts, all of which together shall constitute one original.

(i) Severability. If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void by a court of competent jurisdiction, all other provisions hereof shall be and remain in full force and effect.

(j) Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

(k) Modification. The parties may alter, amend or modify the terms and provisions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(l) No Third Party Beneficiaries. This Franchise is entered into by the parties for their sole benefit, and is not intended to be for the benefit of any third party.

## **Section 22. Effective Date.**

This Ordinance shall take effect from and after its adoption and publication as required by law and the ordinances of the City of Riverton.

## **Section 23. Prohibition on Assignment.**

This Franchise and the rights and privileges granted hereunder cannot be assigned by the Company without the prior written consent of the City. That consent can be withheld, in the sole discretion of the City, for any reason. Any purported assignment in violation of this Franchise is void and ineffective.

## **Section 24. Retention of Governmental Immunity.**

By entering into this Franchise, the City 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 Franchise.

## **Section 25. Repeal.**

All ordinances or parts of ordinances in conflict with this Franchise are hereby repealed to the extent of such conflict.

## **Section 26. Waiver of Sovereign Immunity.**

Northern Arapaho Tribal Industries (NATI) is a for-profit corporate charter corporation of the Northern Arapaho Tribe and is wholly owned by said tribe. Northern Arapaho Tribal Industries, its officer and directors, and the Northern Arapaho Tribe, hereby specifically and unequivocally waives its sovereign immunity from suit, either in tort or in contract and hereby consent to being named as a party to any litigation between itself and the City of Riverton pertaining to the obligations of NATI under this contract, and further waives its sovereign immunity from suit between itself and any customer it may serve within the Riverton City limits. NATI, its officers and directors and the Northern Arapaho Tribe hereby waive any defenses to suit that they may have based upon the theory of sovereign immunity. This waiver is given pursuant to the authority granted in Section 5.3 (l) of the charter issued to NATI by the Northern Arapaho Tribe and NATI hereby agrees to pass a resolution waiving sovereign immunity as provided herein and as required by such section of the charter.

PASSED ON FIRST READING

December 1, 2020

PASSED ON SECOND READING

December 15, 2020

PASSED ON THIRD READING

January 5, 2021

PASSED, APPROVED and ADOPTED this 5<sup>th</sup> day of January 2021.

CITY OF RIVERTON, WYOMING:

\_\_\_\_\_  
Richard P. Gard, Mayor

Attest:

\_\_\_\_\_  
Kristin S. Watson  
City Clerk/Human Resource Director

ACCEPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2021.

NORTHERN ARAPAHOE TRIBAL INDUSTRIES d/b/a WIND RIVER INTERNET (WRI)

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

**ATTESTATION**

I, Kristin S. Watson, Clerk of the City of Riverton, attest that Ordinance No. 20-010 was passed, approved, and adopted by the Governing Body of the City of Riverton on the 5<sup>th</sup> day of January 2021. I further certify that the above proclamation ran at least once in the Riverton Ranger, a newspaper of general circulation within Riverton, Wyoming, the effective date of publication, and therefore the effective date of enactment being *January 18, 2021*.

\_\_\_\_\_  
Kristin S. Watson  
City Clerk/Human Resource Director

## **APPENDIX A**

### **LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE" FOR CALCULATION OF FRANCHISE FEES**

Business Local Access—including Flat Rate, Multiparty, and Extended Area Service

Business Measured Usage Local Access Service

Flat Usage Local Access Trunks

Low Income Telephone Assistance Program Local Access

Measured Rate Local Access Trunk Usage

Message Rate Local Access Trunk Usage

Public Access Line (PAL) Service

Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service

Residential Measured Usage

Session Initiated Protocol Trunking

Hosted Voice Services

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE 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 ANY FEE DUE TO THE CITY:

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks

Bad debt write-offs and customer credits

Revenue from directory advertising

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

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads

Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service