

**LEASE AGREEMENT FOR USE OF CITY RACEWAY BETWEEN
VISIONARY, INC., AND THE CITY OF GILLETTE, CAMPBELL COUNTY,
WYOMING**

1. **Parties.** The parties to this Agreement are Visionary Communications, Inc. ("Company"), whose address is 1001 S. Douglas Suite 201 ; and the City of Gillette, Campbell County, Wyoming, ("City") whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose of Agreement.** The City owns a system of communication conduits consisting of multiple individual raceways ("Raceway(s)"), within and under various public streets, sidewalks and alley rights-of-ways located in the City of Gillette. The City intends to lease Raceway(s) to internet service providers to enable fiber optic based broadband connectivity to the provider's customers in and around the City of Gillette. The City intends to install and maintain the Raceway(s) in order to limit the amount and placement of communications infrastructure in the City owned rights-of-way, create a lower cost of fiber broadband expansion for internet service providers, and increase the availability of broadband to broadband users located in and around the City of Gillette.

The Company requests that the City provide a conduit system and Raceway(s) for the Company to lease. The Company intends to install, use and maintain, at the Company's sole expense, fiber optic communication cables ("Fiber Optics") in the Raceway(s). The specific area where the Fiber Optics will be installed is described in the Facility Location Map, Exhibit A, which is attached and made a part of this Agreement.

City Electrical Engineering, may be contacted in the Utilities Division of City West, located at 611 N. Exchange Ave., Gillette WY 82717 Phone (307) 686-5277, Fax (307) 686-6564.

3. **Term of Contract and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is five (5) years from the date of execution. At the expiration of the initial term, this Agreement will automatically renew for successive five (5) year terms unless either party provides written notice of its intent to terminate this Agreement at least ninety (90) days prior to the expiration of the current term.
4. **Payment.** The monthly rent to be paid by Company to the City shall be forty-seven cents (\$0.47) per raceway per foot per year. Rent shall be paid in advance, on or before the first day of each year, for that period's rental, during the term of this Agreement. The Company understands and agrees that the rent shall automatically increase by three percent (3%) per year on the first day of each calendar year. All rental payments shall be made to the City.

The Company shall pay all construction costs associated with the requested conduit system and the Raceway(s) ("Construction Fee"). Payment for the Construction Fee shall be made within thirty (30) days after receipt of an invoice from the City.

The Company agrees to pay an additional lease fee of forty-seven cents (\$0.47) per foot per year for every subsequent raceway associated with any additional Facility Location Map added to Exhibit A, after the initial execution of the Agreement.

The initial payment shall be made within thirty (30) days after receipt of an invoice following acceptance of the Agreement. This initial payment and any future initial payments for additional raceway segments will be prorated for the remainder of the year in which the Agreement is accepted.

5. Responsibilities of Company.

- A. Company shall maintain its Fiber Optics in a functional and safe condition. All installation and maintenance of the Company's Fiber Optics shall be the responsibility of the Company and performed by City approved contractors. For any installation or maintenance, the Company understands and agrees that it shall strictly adhere to any instruction from City, and that the instruction need not be the lowest cost or most cost effective method for installation or maintenance. Any installation and/or maintenance of the Fiber Optics shall be performed in a manner that avoids any interruption or disruption of the City right of way, utilities, communications or streets (including traffic control devices and systems). If interruption occurs the Company shall immediately notify the City and shall immediately restore the right of way, utilities, communications or streets (including traffic control devices and systems).
- B. The Company shall immediately notify the City of any degradation in service, failures or defects in the Raceway(s).
- C. The City may lease Raceway(s) to other companies. The Company shall cooperate fully with other companies and the City in all such cases.
- D. The Company shall reimburse the City and/or any other company(s) for all fees and costs in any way associated with the repair or replacement of any Raceway(s) that is damaged by the Company.
- E. The Company shall be bound by all existing easements, contracts, and encumbrances of record relating to the Raceway(s).
- F. The Company shall not at any time during the Agreement term, make alterations, additions, or improvements in and to the Raceway(s), except with prior written consent of the City.
- G. All alterations, additions, and improvements on or in the Raceway(s) at the commencement of the term, and that may be erected or installed during the term, shall become part of the Raceway(s) and the sole property of City.

- H. The Company shall permit the City or its agents to inspect the Raceway(s) or make repairs. If the inspection or repair is not an emergency the City will provide reasonable notice to the Company.
- I. If the Raceway(s) are damaged by fire or other casualty which shall, in the opinion of the City, make the Raceway(s) substantially unusable, the obligation to pay rent shall cease until the Raceway(s) are, in the opinion of the City, substantially usable by the Company.
- J. In the event of partial destruction of the Raceway(s), the Company shall be entitled to a proportionate reduction of rent while repairs are being made. Proportionate reduction shall be based on the extent to which, in the opinion of the City, the destruction and repairs interfere with the business carried on by the Company. Such a proportionate reduction in rent shall become effective only after the City provides written notice of such to the Company, and shall remain in effect only for so long as agreed to, in writing, by the City.
- K. The Company shall, on the last day of the term, or on earlier termination and forfeiture of the Lease Agreement, peaceably and quietly surrender and deliver the Raceway(s) to the City free of subtenancies, in good condition and repair.

6. **Responsibilities of City.**

- A. The City shall maintain and repair the Raceway(s), except for damage caused by Company.
- B. If excavation is necessary, the City will repair the damaged Raceway(s) and will coordinate the installation of replacement Fiber Optics. The cost of these repairs will be billed to the party responsible for the excavation. If the excavation is not an emergency the City will provide reasonable notice to the Company.
- C. The City agrees to provide the Raceway(s) in good order and repair. The City shall disclose all known contamination or hazardous conditions and defects to the Company.

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming.

The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to them pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.

- C. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Company shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. **Audit/Access to Records.** The City and any of its representatives shall have access to any books, documents, papers, and records of the Company which are pertinent to this Agreement.
- E. **Certificate of Good Standing.** The Company shall provide a Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs before performing work under this Agreement.
- F. **Compliance with Laws.** The Company shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- G. **Entirety of Agreement.** This Agreement, consisting of eight (8) pages, and Exhibit A, Facility Location Map, represent the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- H. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may 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 all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.

- I. **Indemnification.** The Company shall indemnify, defend, and hold harmless the City, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Company's failure to perform any of Company's duties and obligations hereunder or in connection with the negligent performance of Company's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Company's actions.
- J. **Independent Contractor.** The Company shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the City for any purpose. The Company shall assume sole responsibility for any debts or liabilities that may be incurred by the Company in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Company or its agents and/or employees to act as an agent or representative for or on behalf of the City or to incur any obligation of any kind on the behalf of the City. The Company agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to City employees will inure to the benefit of the Company or the Company's agents and/or employees as a result of this Agreement.
- K. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- L. **Notice and Approval of Proposed Sale or Transfer of the Company.** The Company shall provide the City with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Company. Such notice shall be provided in accordance with the notices provision of this Agreement. If the City determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the continued satisfactory performance of the Company's obligations under this Agreement, then the City may, at its option, terminate or renegotiate the Agreement.
- M. **Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Agreement are at all times the property of the City.
- N. **Patent or Copyright Protection.** The Company recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Company or its subcontractors will violate any such restriction. The Company shall defend and indemnify the City for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.

O. Proof of Insurance.

- (i) **Workers' Compensation and Company's Liability Insurance.** The Company shall provide to the City proof of workers' compensation coverage for all its employees who are to work on the project described in this Agreement. The Company's coverage shall be under the Wyoming Worker's Safety and Compensation program, if statutorily required, or such workers' compensation insurance as appropriate. The Company's insurance shall include Company's Liability coverage, in an amount not less than one million dollars (\$1,000,000.00) per employee for each accident and disease. The Company shall also supply to the City proof of workers' compensation and employer's liability insurance on any subcontractor before allowing that subcontractor on the job site.
- (ii) **Commercial General Liability Insurance.** The Company shall provide coverage, during the entire term of this Agreement, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground collapse and explosion, and products and completed operations, in an amount not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) general aggregate.
- (iii) **Business Automobile Liability.** The Company shall maintain, during the entire term of this Agreement, automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
- (iv) **All policies required under this Agreement shall be in effect for the duration of this Agreement and project.** All policies shall be primary and not contributory. Company shall pay the premiums on all insurance policies, and all insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the City.
- (v) **City as Additional Insured.** All insurance policies required by this Agreement, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents and employees. Company shall provide, upon request, a copy of an endorsement providing this coverage.
- (vi) **City's Right to Reject.** The City reserves the right to reject a certificate of insurance if the Company's insurance company is widely regarded in the insurance industry as financially unstable.

- (vii) **Subcontractors.** The insurance requirements set out above apply to all subcontractors. It is the Company's responsibility to ensure that its subcontractors meet these insurance requirements. The City has the right to review the Certificates of any and all subcontractors used by the Company.
- P. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- Q. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.
- R. **Taxes.** The Company shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. **Termination of Agreement.** This Agreement may be terminated, without cause, by either party upon ninety (90) days written notice. This Agreement may be terminated immediately for cause if the Company fails to perform in accordance with the terms of this Agreement.
- T. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- U. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- V. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

8. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

CITY OF GILLETTE

Louise Carter-King, Mayor

Date

COMPANY

BRIAN R WORTHEN FOR VISIONARY

COMMUNICATIONS, INC

1/26/18

Date

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk

CITY ATTORNEY'S OFFICE APPROVAL AS TO FORM

Anthony M. Reyes

Date

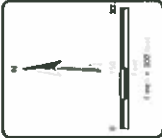


Legend

Raceway Lease Route



Total Route Distance = 5,265 Feet



VCN FiberOptic
Raceway Lease

TECHNICAL ENGINEERING
611 N. EXCHANGE AVE
SALT LAKE CITY, UT 84119
Date: 04/15/2011