

**ENROLLED ORDINANCE NO. 18-001**

**AN ORDINANCE GRANTING A FRANCHISE TO NORTHERN ARAPAHOE TRIBAL INDUSTRIES D/B/A WIND RIVER INTERNET (WRI) TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF RIVERTON, WYOMING ("THE CITY").**

The City hereby ordains that it is in the public interest to grant WRI a Franchise to operate the System pursuant to the terms and conditions contained herein.

**SECTION 1. Grant of Franchise.** The City hereby grants to WRI the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and public ways of the City ("Public Ways"), for the sole purpose of providing telecommunication services. The grant of this Franchise shall not confer upon WRI the right to allow others to use or utilize the rights herein granted or its facilities without the prior consent of the City Council.

**SECTION 2. Acceptance by WRI.** Within thirty (30) days after the passage of this Ordinance by the City, WRI shall file an unqualified written acceptance 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 is fifteen (15) years commencing on the date of Acceptance by WRI as set forth in Section 2, above. Unless either party provides the other with at least four (4) months' notice that it does not wish to renew the Term, then said Term will automatically renew for an additional five (5) years and thereafter on a year-to-year basis. On any renewal the parties shall be entitled to re-negotiate the franchise fee percentage set forth below.

**SECTION 4. Franchise Fee.** From and after the date of WRI's Acceptance of this Ordinance and until its expiration, WRI will pay the City 4% of WRI's local exchange access service Gross Revenue (as defined in Appendix A hereto). Once the City secures franchise agreements with all other franchise holders equal to or exceeding 5%, the rate shall increase to 5% of WRI's local exchange access service Gross Revenue, effective at the beginning of the next quarter. Payment shall be made quarterly within thirty (30) days after the end of each quarter during the Term of this Franchise. Additionally, if WRI, with the consent of the City Council should allow others to utilize its physical facilities located within the City limits of Riverton, WRI shall pay to the City 25% of the revenue generated by allowing others use of WRI physical facilities where said use is not for the purposes of service delivery within the City. Physical facilities include but are not limited to poles, conduits, fiber, and vaults. WRI agrees that the use of WRI physical facilities by others to provide services within the boundaries of the City shall only be allowed by those others having executed a franchise agreement with the City. Franchise fees and other fees shall not affect any obligation of the Grantee relative to Ad Valorem property taxes imposed generally upon all real and personal property within the City.

**SECTION 5. Records Inspection.** WRI 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 WRI can reasonably make such information available. Subject to applicable laws, any information that is made available to the City and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information made available to the City shall be immediately returned to WRI following review. The City will not photograph or make copies of such information.

- SECTION 6. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's use, however, shall not unreasonably interfere with WRI's Facilities or the rights granted WRI herein.
- SECTION 7. 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 8. 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 WRI of its Facilities. WRI 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 WRI's use of the Public Ways. The City shall: (a) give prompt written notice to WRI of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit WRI to assume the defense of such claim, demand, or lien. WRI shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, WRI 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 9. Insurance Requirements.** WRI will maintain in full force and effect for the Term of the Franchise, at WRI's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Wyoming, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by WRI. Such insurance will be in an amount not less than \$1,000,000.00. WRI will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law. Evidence in the form of a certificate of insurance or such self-insurance will be provided to the City upon request.
- SECTION 10. Annexation.** When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to WRI: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.
- SECTION 11. Plan, Design, Construction and Installation of WRI's Facilities.**
- 11.1** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.
- 11.2** WRI shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. WRI will provide as-built route maps of new facilities placed in the Public Ways pursuant to a permit issued by the City. WRI 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, WRI shall not be obligated to obtain a permit to perform emergency repairs. WRI shall update its as-built maps and locations with the City on at least an annual basis.
- 11.3** To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

- 11.4 If, during the course of work on its Facilities, WRI causes damage to or alters the Public Way or other public property, WRI shall replace and restore such Public Way or public property at WRI's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.
- 11.5 WRI shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work and allow the other party, at its own expense, to share the trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench or unreasonably delay project completion.
- 11.6 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. However, before commencing any work within a Public Way that may affect WRI's Facilities, the City shall give written notice to WRI, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of WRI's poles, wires, conduits, conductors, pipes, and appurtenances.
- 11.7 WRI shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

**SECTION 12. Excavation, Restoration, and Relocation.**

- 12.1 Excavation. It shall be lawful for WRI, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits or such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City.
- 12.2 Restoration. Whenever WRI, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same good order and condition as soon as practicable without unnecessary delay, and failing to do so the City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by WRI, its successors and assigns, the said City shall cause the repairs to be made at the expense of WRI, its successors and assigns.
- 12.3 Relocation. Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City's public rights-of-way in or upon which the poles, wires or conductors of WRI shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. In the event that the City requires that WRI move, alter, change, adapt, or conform its facilities, where such move is necessary, reasonable and for reasons pertaining to the health, welfare and safety of its citizens, WRI shall pay the cost of the relocation. If such move is for aesthetic purposes, for the City's benefit to compete with WRI as a telecommunications service provider, or which is necessitated for the development of a non-roadway structure, the City shall reimburse WRI for relocation. If such move is for the benefit or convenience of or at the request of a third party, including a private developer or development, such costs shall be borne by the third party. The City shall not require WRI to remove or relocate

its facilities or vacate any street, alley, or other public way incidental to any public housing or renewal project without reserving WRI's right therein or without requiring WRI to be compensated for the costs thereof.

**SECTION 13. Vegetation Management.** WRI shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

**SECTION 14. Renewal.** At least one hundred twenty (120) days prior to the expiration of this Franchise, WRI and the City shall either agree to extend the Term or use best faith efforts to renegotiate a replacement Franchise agreement.

**SECTION 15. Revocation of Franchise for Noncompliance.**

**15.1** In the event that the City believes that WRI has not complied with the terms of the Franchise, the City shall informally discuss the matter with WRI. If these discussions do not lead to resolution of the problem, the City shall notify WRI in writing of the exact nature of the alleged noncompliance.

**15.2** WRI shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

**15.3** In the event that WRI does not comply with subsection 15.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide WRI at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

**15.4** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 15.3, determines that WRI is noncompliant 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 other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

**15.5** Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to WRI. WRI 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 WRI, 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 WRI an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. WRI 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.

**15.6** Notwithstanding the foregoing provisions in this Section 15, WRI does not waive any of its rights under applicable law.

**SECTION 16. No Waiver of Rights.** Neither the City nor WRI 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. 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 State or Federal law, as may be amended.

**SECTION 17. Transfer of Franchise.** WRI 's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to and approval the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with WRI, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of WRI in the Franchise or Facilities in order to secure indebtedness.

**SECTION 18. Amendment.** Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and WRI and formally adopted by the City Council as an ordinance amendment.

**SECTION 19. 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 days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City:  
City of Riverton  
816 N. Federal Blvd.  
Riverton, WY 82501

Patrick Adam Lawson:  
General Manager  
Northern Arapahoe Tribal Industries / Wind River Internet  
98 Gas Hills Road  
Riverton, WY  
82501

**SECTION 20. Retention of Governmental Immunity.** By entering into this Franchise the City of Riverton 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 21. 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 state or federal 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 22. Waiver of Sovereign Immunity.** WRI is a business enterprise of Northern Arapaho Industries (NATI), a tribal corporation of the Northern Arapaho Tribe, and is wholly owned by said tribe. Northern Arapaho Tribal Industries hereby specifically and unequivocally provides a waiver of its sovereign immunity from suit, either in tort or in contract, and hereby consents 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. NATI further waives its sovereign immunity from suit either in contract or tort for any actions conducted within the Riverton City limits and hereby waives 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.

**SECTION 23.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 24.** This ordinance shall take effect from its adoption and publication as required by law and the ordinances of the City of Riverton.

PASSED ON FIRST READING                      January 16, 2018

PASSED ON SECOND READING                      February 6, 2018

PASSED ON THIRD READING                      February 20, 2018

PASSED, APPROVED, and ADOPTED this 20<sup>th</sup> day of February 2018.

CITY OF RIVERTON

By: \_\_\_\_\_  
John L. Baker  
Mayor

ATTEST:

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

ACCEPTED BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTESTATION**

I, Kristin S. Watson, City Clerk of the City of Riverton, attest that Ordinance # 18-001 was passed, approved, and adopted by the Governing Body of the City of Riverton on the 20<sup>th</sup> day of February 2018. I further certify that the above ordinance 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 *February 27, 2018*.

\_\_\_\_\_  
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

Revenues from Internet Access

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 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

Revenue from use of facilities by other industries for other purposes.