

ORDINANCE NO. 2019- 12

AN ORDINANCE CREATING ARTICLE 11-10, "LR COMMUNICATIONS, INC." WITHIN CHAPTER XI, "FRANCHISES AND RIGHT OF WAYS, OF THE ORDINANCES OF THE CITY OF ROCK SPRINGS, WYOMING.

WHEREAS, LR Communications, Inc. 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 the City of Rock Springs; and,

WHEREAS, Article 13, §4 of the Wyoming Constitution states that no street passenger railway, telegraph, telephone or electric light line shall be constructed within the limits of any municipal organization without the consent of its local authorities; and,

WHEREAS, the City of Rock Springs desires to grant to LR Communications, Inc., its successors and assigns, a Franchise 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 corporate limits of the City of Rock Springs, a system for transmission of telecommunications services, and to provide for compensation to the City of Rock Springs for management of its rights-of-way in connection.

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

Section 1. That Article 11-10, LR COMMUNICATIONS, INC., within Chapter XI, Franchises and Right of Ways, of the Ordinances of the City of Rock Springs, is hereby created as follows:

ARTICLE 11-10

LR COMMUNICATIONS, INC.

11-1002 Grant of Authority.

(a) This ordinance grants to LR Communications, Inc. (herein referred to as "Company"), a corporation created and existing under and by virtue of the laws of the State of Wyoming, upon the terms and subject to the conditions of this Franchise and its enacting Ordinance, a non-exclusive right to construct, erect, renew, repair, upgrade, maintain and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the City of Rock Springs for a period of Ten (10) years from and after its acceptance by Company (and thereafter until terminated by at least six (6) months written notice either by the City of Rock Springs to the Company or by the Company to the City of Rock Springs), a Telecommunications System, including but not limited to lines, poles, towers, 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, internet, data, or other means of Telecommunications.

(b) In the event at least six (6) months' written notice shall be given by the City of Rock Springs to the Company, or by the Company to the City of Rock Springs of its desire to terminate the permission and authority granted by this Franchise, the permission and authority granted by

this Franchise shall thereupon expire in accordance with such notice. Whereupon, this ordinance shall be null and void and of no effect whatsoever and all rights and privileges granted by this Franchise shall be at an end.

(c) All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Company; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of the franchise by Company as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the City Council. In event this franchise is assigned by Company as security for debt, or is transferred or assigned to a parent or subsidiary corporation or to an entity in which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons or entities, the City shall be notified, in writing, within thirty (30) days after such assignment or transfer.

11-1003 Location of Facilities.

(a) The location of Company's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), in case said removal shall necessitate the substantial disturbance of any street, alley, or other public right-of-way, shall be subject to the approval of the Governing Body of the City of Rock Springs and the Department of Engineering, which approval shall not be unreasonably denied, conditioned or delayed. Any street, alley, or other public right-of-way so disturbed shall be returned as closely as possible to its original state.

(b) The Company shall place on file with the Clerk 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, handholds, 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 Department of Engineering and Operations, which shall indicate the time, manner, and place of laying, construction, or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the City of Rock Springs 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 reasonably possible, upon written notice from the City of Rock Springs, remove or relocate its Facilities to conform with the City of Rock Springs's written notice. The Relocation of Facilities by Company shall be at no cost to the City of (i) such request is for the protection of the public health, safety, and welfare pursuant to lawful authority delegated to the city; (ii) the Facilities have been installed pursuant to this or any other Company franchise and not pursuant to a property or other similar right, including, but not limited to, a right-of-way, grant, permit, or license from a state, federal, municipal or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City pursuant to such written notice shall be at the City's expense. Following Relocation of any Facilities, Company may maintain and operate such Facilities in a new location

within City limits without additional payment. If a City project is funded by Federal or state monies that include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall compensate Company up to the extent of such amount for any Relocation costs mandated by the project to the extent that the City actually receives or is otherwise authorized to direct or approve payment of such federal or state funds; however, the City shall ensure that receipt of compensation from federal or state sources shall not restrict or otherwise obligate Company's ownership of the Facilities in any way.

(d) Notwithstanding the preceding paragraph, Company shall not be responsible for any costs associated with an authorized City project that are not attributable to Company's Facilities in the City right of way. Further, all such costs shall be allocated among all utilities or other persons whose facilities or property are subject to Relocation due to an authorized City project.

(e) Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities shall either be restored by Company to the condition existing prior to Company's construction, or as specified by any permit issued by the City. Company shall, upon receipt of written notice from the City of Rock Springs, for a period of eighteen (18) 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.

(f) The Company will utilize this Franchise to install, maintain, distribute and expand its 5G WiGig wireless network. Because of the nature of Company's business, Company and the City acknowledge that the Federal Communications Commission's Declaratory Ruling and Third Report and Order ("FCC 18-133"), which (a) restricts time limits for approval of installations on existing infrastructure to 60 days and approvals for requests to install new poles to 90 days; (b) limits fees for applications for approval of an installation to a maximum of \$500 for up to five small cells; (c) limits annual right-of-way access fees to \$270 per small cell; and (d) limits regulation concerning aesthetic concerns in the deployment of small wireless facilities, shall supersede any contrary ordinances or regulations governing the City's dealings with Company, including any potentially conflicting terms contained within this Franchise.

11-1004 Compensation.

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." 47 U.S.C. §253(c). Therefore, consistent with the provisions of Chapter 9, Article 2, Section 3 of these ordinances, as consideration for costs incurred by the City of Rock Springs for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for provision of telecommunications services, Company shall pay to the City of Rock Springs two percent (2%) of the gross revenue received for telephone or telecommunications services rendered to persons within the corporate limits of the City of Rock Springs where the telephone or telecommunications services are delivered to persons using the public rights-of-way. Said sum shall be due at the end of each calendar quarter, and shall be paid within sixty (60) days from the end of said quarter. Company and the City of Rock Springs mutually acknowledge the foregoing sum to be a fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

11-1005 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.

11-1006 Indemnification.

(a) The Company shall, at its own expense, indemnify and save harmless the City of Rock Springs from any and all damages, judgment, costs and expenses of every kind, which may arise or result by reason of or in consequence of the intentional acts or negligence of the Company, its agents or servants.

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

11-1007 Default/Severability.

(a) 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 and conditions of this Franchise, and if any such default or defaults shall continue for a period of six (6) months (exclusive of all times during which the Company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suite or proceeding brought without its connivance) after written notice thereof to the Company from the City of Rock Springs is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the City of Rock Springs, 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, all rights and privileges of the Company under this Franchise shall thereupon be at an end.

(b) If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void, all other sections thereof not so held shall be and remain in full force and effect.

11-1008 Effective Date.

This Franchise and its enacting Ordinance shall be in full force and from and after the date of its publication, All the rights and privileges granted to the Company hereunder may pass to its legal successor or successors organized under the laws of the state or by assignment of any corporation organized under the laws of the state acquiring all or substantially all of the assets or equity of the Company, or that part thereof located in the City of Rock springs, subject to all the terms and conditions of this Franchise, and provided that said successor or successors or said assignee shall have filed with the Clerk its acceptance of said terms and conditions.

11-1009 Repeal of Conflicting Legislation.

All Ordinances or parts of Ordinances in conflict with this Franchise and its enacting Ordinance are hereby repealed, if any such Ordinances do in fact exist.

11-1010 Acceptance.

Within sixty (60) days after the passage of this Ordinance, Company shall file with the City an unconditional written acceptance of the Franchise declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of the Franchise.

PASSED AND APPROVED this _____ day of _____, 2019.

President of the Council

Mayor

ATTEST:

City Clerk

1st Reading: _____

2nd Reading: _____

3rd Reading: _____