

ORDINANCE NO. 353

AN ORDINANCE GRANTING A FRANCHISE TO SECOM, INC (“SECOM”) FOR THE RIGHT TO ERECT, MAINTAIN AND OPERATE EQUIPMENT IN, UNDER, OVER, ALONG, ACROSS AND UPON THE STREETS, AVENUES, SIDEWALKS, ALLEYS, BRIDGES AND HIGHWAYS AND OTHER PUBLIC PLACES IN THE TOWN OF SPRINGFIELD, COLORADO, AND SUBSEQUENT ADDITIONS THERETO, FOR THE PURPOSE OF PROVIDING TELECOMMUNICATIONS SERVICES TO THE INHABITANTS OF SAID TOWN FOR A TERM OF TEN (10) YEARS, AND REGULATING THE SAME; AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT

Be it Ordained by the Board of Trustees of the Town of Springfield, Colorado:

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the Board of Trustees of the Town of Springfield, Colorado, hereinafter referred to as “Franchising Authority” or “Town” and SECOM, hereinafter referred to as “Company” or “Grantee.”

The Town, having finds the Company has substantially complied with the financial, legal, and technical ability and is able to provide the services, facilities, and has the equipment necessary to meet the telecommunication needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with Company for the construction and operation of a telecommunication distribution facilities under the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Customer" means a Person who lawfully receives telecommunication and/or internet services from Company with the Company's express permission.
- B. "Town" means the Town of Springfield or the lawful successor, transferee, or assignee thereof as the Franchising Authority.
- C. "Company" means SECOM., or the lawful successor, transferee, or assignee thereof.
- D. "Gross Revenues" mean any revenue received by the Company from the operation of the telecommunications or internet systems to provide telephone and internet services in the Service Area. Gross Revenues shall not include: any tax, fee or assessment of general applicability collected by the Company from Customers for pass-through to a government agency, including Franchise Fees, refundable deposits, bad debt, late fees, investment income, or unrecovered bad debt.
- E. "Facilities" shall mean the Company's facility, consisting of such cables, poles, distribution boxes and other structures necessary to distribute telecommunication and internet services within the Town.
- F. "Person" means an individual, partnership, limited liability company, association, joint stock company, trust, corporation, or governmental entity.
- G. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Service Area which shall entitle the Town and the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Telecommunications Distribution Facilities. Public Way shall also mean any easement now or hereafter held by the Town within the Service Area for the purpose of public travel, or for utility or public

service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Town and the Company to the use thereof for the purposes of installing and operating the Company's Telecommunications Distribution Facilities and other property as may be ordinarily necessary and pertinent.

- I. "Service Area" means the present boundaries of the Town, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.8.

SECTION 2

Grant of Franchise

2.1 Grant. to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of telecommunication services. Nothing in this Franchise shall be construed to prohibit the Company from offering any service over its Facilities that is not prohibited by federal, State or local law. The right to use and/or occupy public streets, alleys, viaducts, bridges, roads and public places for the purposes set forth herein is not, and shall not be deemed to be, an exclusive franchise, and the Town reserves the right to make or grant a similar use of public streets and other public places to any other person, firm or corporation.

2.2 Other Ordinances. The Company agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Company that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. Company reserves the right to challenge the provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Company agrees that it is subject to the lawful exercise of the police power of the Town.

2.3 Equal Protection. The Town shall not authorize or permit any Person to enter into the Town's Public Ways for the purpose of constructing or operating a Telecommunications Distribution Facility to any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Company pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.4 Term. The Franchise granted hereunder shall be for an initial term of Ten (10) years commencing on the effective date of the Franchise as set forth in Section 9.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5 Exercise of Rights. Except as otherwise provided herein, the Company shall have the right to erect and maintain poles, underground facilities, apparatus, housings and other supporting facilities necessary for the construction and maintenance of its system, provided, however, that all facilities erected by Company shall be placed at locations designated by the Superintendent of the Electric Department of the Town.

2.6 Rights Retained. The Town retains the following rights in regard to this franchise:

2.6.1. To use, control and regulate, through the exercise of its police power, Town streets, public easements and other public places and the space above and beneath them.

2.6.2 To impose such regulations as may be determined by the Board of Trustees to be necessary in the exercise of its police power to protect the health, safety, welfare and convenience of the public.

2.7 Installation and Maintenance of Company Facilities. Company agrees that it will, at its expense, furnish, install, maintain, and keep in proper adjustment and repair of its Facilities. Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any facilities by the Company shall be subject to permitting, inspection and approval of location by the official Town representative. Such regulation shall include, but not be limited to the following matters: location of facilities in the streets, alleys and dedicated easements; disturbance and reconstruction of pavement, sidewalks and surface of streets,

alleys, dedicated easements and driveways. All Company facilities shall be installed so as to cause a minimal amount of interference with such property. Company facilities shall not interfere with any water mains or sewer mains or Town, telecommunication facilities, parks, or any other municipal use of the Town's streets and right-of-way s except to the extent the Town agrees through the permit process. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features and vegetation. The Company shall keep in good working order all facilities constructed, erected or used within the Town. The Company and all subcontractors shall comply with all local regulations and ordinances. In emergency situations, the Company shall, after the fact, comply with permitting and inspections requirements of the Town.

2.8 Eminent Domain. The Company shall have powers of eminent domain and regulation of the method of doing business by the Company as may from time to time be provided for by law, as permitted by Colorado law.

SECTION 3

Standards of Service

3.1 Conditions of Occupancy. The Facilities installed by the Company pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Work in and Restoration of Public Ways. All work in Public Ways, including restoration thereof, shall be undertaken pursuant to the Town's generally applicable regulations or any replacement regulations thereto, provided that any such amendment or replacement regulation shall be reasonable and not destructive of the rights granted in this Franchise, and shall be consistent with the Town's lawful police powers. Company reserves the right to challenge the provisions or any such regulation that it believes is inconsistent with the applicable law or its contractual rights under this Franchise either now or in the future. If during the course of the Company's construction, operation, or maintenance of the Facilities there occurs a disturbance of any Public Way by the Company, at its expense the Company shall replace and restore such

Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. Company's restoration shall be guaranteed for one (1) year.

3.3 Relocation at Request of the Town. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) business days, the Company, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Company when lawfully required by the Town by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Town which are not used to compete with the Company's services and consistent with C.R.S. § 29-8-101 et seq. The Company shall in all cases have the right of abandonment of its property. If funds are available to any Person using such Public Way for the purpose of defraying the cost of any of the foregoing, the Town shall make application for such funds on behalf of the Company. Upon any such request to relocate, the Town will provide at its expense sufficient right-of-way to relocate the desired system.

3.4 Relocation at Request of Third Party. The Company shall, on the request of any Person holding a building permit issued by the Town, temporarily or permanently raise or lower its lines to permit the moving of any building or other structure, provided: (A) the reasonable expense of such temporary or permanently relocating is paid by said Person, including, if required by the Company, making such payment in advance; and (B) the Company is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Company shall have the authority to trim trees or other natural growth in order to access and maintain the Facilities.

3.6 Safety Requirements. Construction, operation, and maintenance of the Facilities shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations. The

Facilities shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Service to all newly-constructed residential and commercial structures will be provided through facilities placed underground unless this requirement is waived by the Town. The Company has the right to require the applicant to provide conduit.

3.8 Access to Open Trenches/Underground Conduit. The Town agrees to include the Company in the platting process for any new subdivision. If the Company installs new underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of facilities of similar conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed, it shall so notify the Company and provide similar conduit and pull wire at its expense. The Company shall install such additional conduit and pull wire at the sole expense of the Town, provided that the Town shall only be charged the incremental cost associated with said installation. Provided also that such action by the Town will not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project.

3.9 Customer Charges for Extensions of the Telecommunications Distribution System. No Customer shall be refused service arbitrarily; however, if an area does have service facilities within a block from a new customer, the Company shall only be required to extend the System to Customer(s) in that area if the Customer(s) are willing to share the capital costs of extending the System. The Company may require that payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

SECTION 4

Regulation by the Town

4.1 Franchise Fee.

- A. The Company shall pay to the Town a franchise fee equal to Five Percent (5.0%) of the annual Gross Revenues (as defined in Section 1.1 of this

Franchise) of the telephone and internet services charged its customer within the service area. The franchise fee payment shall be due quarterly and payable within 45 days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Company showing the basis for the computation. The Company shall not be liable for any local sales tax or other taxes or fees.

- B. Such Franchise Fee may be assessed and charged by Company to Customer.
- C. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Company is due.
- D. The Company shall pay interest on late payments at the rate of eight percent (8%) per annum.

4.2 Renewal of Franchise.

- A. The Town and the Company agree that any proceedings undertaken by the Town that relate to the renewal of the Company's Franchise shall be initiated at least twelve (12) months prior to the termination of this Franchise. If within twelve (12) months of the termination date neither party elects to terminate or modify this Franchise Agreement then it shall be automatically extended annually until such notice to extend or modify is made.
- B. Notwithstanding anything to the contrary set forth in this Section, the Company and the Town agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Town and the Company may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof.

4.3 Transfer of Franchise. (a) The rights granted under this ordinance shall be transferrable by the Company during the term hereof, provided that no such transfer will become effective until approved by the Board of Trustees. In order to allow the Board of Trustees to make a reasonable determination regarding any transfer, the Company agrees to provide all relevant information requested by the Board of Trustees concerning the financial and technical capabilities of the transferee. The Company agrees to reimburse the Town for all reasonable costs, including consulting and attorneys' fees incurred in investigating the financial and technical capabilities of the transferee. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Company in the Franchise or facilities in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Town shall notify the Company in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Town has not taken action on the Company's request for transfer within 120 days after receiving such request, consent by the Town shall be deemed given.

4.4 Company Surrender of Rights. The Company may surrender its rights under this ordinance at any time upon filing with the Town Clerk a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of the Company shall terminate. Upon surrender of its rights the Company may dispose of its property located within the Town in any lawful manner it chooses, provided such disposal does not interfere with the Town's rights as set forth herein.

SECTION 5

Customer Service

5.1 Customer Service Standards. Company shall comply with Customer Service Standards as set forth by the PUC.

5.2 Customer Privacy. Company shall fully comply with any provisions regarding the privacy rights of Customers contained in federal or state law.

5.3 Customer Contracts. Company shall not enter into a contract with any Customer that is in conflict with the terms of this Franchise. Upon written request, Company will provide to the Town a sample of the Customer contract or service agreement then in use.

5.4 Rates. The Company shall have the right to charge and collect compensation from all subscribers to whom it furnishes service, but the Company shall not as to rates, charges, service, facilities, or in any other respects, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage and, provided, further, that this provision shall not be deemed to prohibit the establishment of graduated scale of charges and classified rate schedules to which any customer coming within such scale of charges or classifications shall be entitled and as special contracts that the Company deems necessary. This provision is not intended to interfere with rates that may be required or regulated by any governing body.

SECTION 6

Books and Records

The Company agrees that the Town, upon thirty (30) days written notice to the Company, may review such of its books and records at the Company's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise that is under review, so that the Company may organize the necessary books and records for easy access by the Town. The Company shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. To the extent allowed by law, the Town agrees to treat any information disclosed by the Company as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, and in

order to enforce the provisions hereof. The Company shall not be required to provide Customer information in violation of any law or rule.

SECTION 7

Insurance and Indemnification

7.1 Insurance Requirements. The Company shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage, or the liability limits established by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time, whichever is greater. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Town. Upon written request, the Company shall provide a Certificate of Insurance showing evidence of the coverage required by this Section and listing the Town as an additional named insured.

7.2 Indemnification. The Company agrees to indemnify, save and hold harmless, and defend the Town, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Company's construction, operation, or maintenance of its System, provided that the Town shall give the Company written notice of its obligation to indemnify the Town within twenty (20) days of receipt of a claim or action pursuant to this Section. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town. Notwithstanding the foregoing, the Company shall not indemnify the Town for any damages, liability or claims resulting from the willful misconduct or negligence of the Town.

SECTION 8

Enforcement and Termination of Franchise

8.1 Notice of Violation. In the event that the Town believes that the Company has not complied with the terms of the Franchise, the Town shall informally discuss the matter with

Company. If these discussions do not lead to resolution of the problem, the Town shall notify the Company in writing of the exact nature of the alleged noncompliance.

8.2 The Company's Right to Cure or Respond. The Company shall have forty-five (45) days from receipt of the notice described in Section 8.1: (A) to respond to the Town, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event that the Company fails to respond to the notice described in Section 8.1 pursuant to the procedures set forth in Section 8.2, or in the event that the alleged default is not remedied within forty-five (45) days or the date projected pursuant to 8.2(C) above, if it intends to continue its investigation into the default, then the Town shall schedule a public hearing. The Town shall provide the Company at least fifteen (15) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Company the opportunity to be heard.

8.4 Enforcement. Subject to applicable federal and state law, in the event the Town, after the hearing set forth in Section 8.3, determines that the Company is in default of any provision of the Franchise, the Town 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 seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 8.5.

8.5 Revocation. Should the Town seek to revoke the Franchise after following the procedures set forth in Section 8.1 through 8.4 above, the Town shall give written notice to the Company of its intent. The notice shall set forth the exact nature of the noncompliance. The Company shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a satisfactory response from the Company, it may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Company, 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 Town shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Company may appeal such determination to an appropriate court, which shall have the power to review the decision of the Town *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Town.

The Town may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

8.6 Force Majeure. The Company shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. Those conditions which are not within the control of Company include, but are not limited to, natural disasters, forest fires, civil disturbances, power outages, labor disputes, terrorist activities, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Company's ability to provide services in the Town and which was not caused and could not have been avoided by the Company using reasonable efforts in its operations to avoid such results.

Furthermore, the parties hereby agree that it is not the Town's intention to subject the Company to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Customers within the Service Area, or where strict performance would result in

practical difficulties and hardship to the Company which outweigh the benefit to be derived by the Town and/or Customers.

SECTION 9

Miscellaneous Provisions

9.1 Actions of Parties. In any action by the Town or the Company that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.2 Entire Agreement. This Franchise constitutes the entire agreement between the Company and the Town. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

9.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Town or the Company shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: A) upon receipt when hand delivered with receipt/acknowledgment, B) upon receipt when sent certified, registered mail, or C) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Town shall be addressed as follows:

Town of Springfield
Attn: Town Clerk
748 Main Street
Springfield, CO 81073

The notices or responses to the Company shall be addressed as follows:

SECOM

Attn: _____
27850 Harris Rd,
La Junta, CO 81050

with a copy to:

SECOM
Attention: General Counsel

The Town and the Company may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section to the last known address of the Town or the Company.

9.4 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.5 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, 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.

9.6 Miscellaneous.

A. The Town, by entering into this agreement, does not waive any rights or protections it may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

B. The parties enter into this agreement as separate, independent entities and shall maintain such status throughout.

C. The provisions of this agreement shall only become effective upon execution of the agreement by both parties.

D. Neither party may assign its rights or obligations under this agreement without the prior, written notice to the other party.

E. This agreement shall be governed by the laws of the State of Colorado.

F. No third parties are intended to be beneficiaries of this agreement.

G. This agreement is intended to be fully integrated.

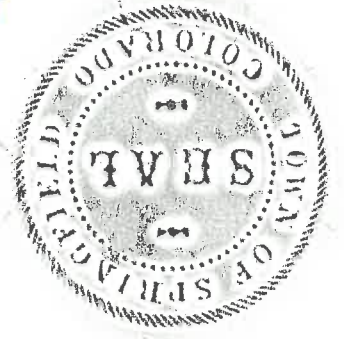
H. As required by Article X, Section 20 of the Colorado Constitution, any obligation of the Town not performed in the current fiscal year shall be subject to annual appropriation of funds by the Town's governing body. Should sufficient funds not be appropriated for the Town's performance in future fiscal years, this agreement shall terminate and be of no further force or effect.

I. Venue and jurisdiction for any dispute arising under this agreement shall be in the District Court for the County of Baca, State of Colorado.

9.7 Effective Date. This ordinance shall become effective thirty days after its passage, approval and publication in the official Town paper, the Plainsman Herald after acceptance by the company.

Passed by the Board of Trustees this 10th day of February, 2022.


Tyler Gibson, Mayor



Attest:


Tammy Newman, Town Clerk.

Accepted this _____ day of _____, 2022, subject to applicable federal, state and local law.

SECOM

Signature: _____

Name/Title: _____