

**TOWN OF SEVERANCE
ORDINANCE NO. 2024-08**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SEVERANCE,
COLORADO, APPROVING THE AGREEMENT BETWEEN THE TOWN AND
LIGHTGIG COMMUNICATIONS, LLC FORMALIZING LIGHTGIG'S OWNERSHIP
OF CERTAIN CONDUIT FOR FIBER OPTIC SERVICES**

WHEREAS, the Town of Severance ("Town") previously passed Ordinance 2017-15 ("Ordinance") codified in Code Section 16.4.60 "Installing Underground Conduit" requiring developers to install conduits in all new developments;

WHEREAS, LightGig Communications, LLC ("LightGig") has installed and used conduit in ten (10) different subdivisions ("LightGig Conduit") free of charge since the adoption of the Ordinance;

WHEREAS, the Town wishes to formalize LightGig's use and ownership of the conduit;

WHEREAS, the Town and LightGig have entered into that certain written agreement ("LightGig Conduit Agreement"), subject to Council's approval, regarding LightGig's use and ownership of the LightGig Conduit;

WHEREAS, Section 12.01 of the Town of Severance Home Rule Charter ("Charter") requires that the sale, exchange, or disposal of real or personal property be approved by ordinance;

WHEREAS, approval of the LightGig Conduit Agreement will further incentivize internet service providers and reduce the Town's maintenance expenses associated with all such conduits; and

WHEREAS, this ordinance is enacted pursuant to the Town's home rule authority under Article XX, § 6 of the Constitution of the State of Colorado, and pursuant to the Town's police powers, in order to safeguard and preserve the public health, safety, and welfare of the community.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF SEVERANCE, COLORADO, AS FOLLOWS:**

Section 1. The LightGig Conduit Agreement is hereby ratified and approved. The Town Council authorizes the Town Manager to sign the agreement on behalf of the Town.

Section 2. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Council hereby declares it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, Town of Severance, Colorado, by this ordinance shall not release, extinguish, alter, modify, or change, in whole or in part, any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings, or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN FULL this 23rd day of April, 2024.

TOWN OF SEVERANCE, COLORADO


Matthew Fries, Mayor

ATTEST:






Leah Vanarsdall, MMC, Town Clerk

APPROVED AS TO FORM:

DocuSigned by:


Hayashi & Macsalka, LLC, Town Attorney
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OWNERSHIP TRANSFER AGREEMENT
Between
THE TOWN OF SEVERANCE AND LIGHTGIG COMMUNICATIONS LLC

OWNERSHIP TRANSFER AGREEMENT ("Agreement") is entered into this 29th day of April, 2024 ("Effective Date"), by and between the TOWN OF SEVERANCE, COLORADO, a home-rule municipality, (the "Town"), with offices at 3 South Timber Ridge Parkway, P.O. Box 339, Severance, Colorado, 80546 and LIGHTGIG COMMUNICATIONS, LLC, a Colorado limited liability company, whose address is 2809 E. Harmony Road, Ste. 310, Fort Collins, 80528 ("LightGig"). The Town and LightGig shall sometimes hereinafter be referred to individually as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, the Town of Severance Land Use Code Sec. 16.4.60 "Installing Underground Conduit" ("Conduit Code Section"), requires developers to install three (3) 1.25" SDR11 smooth conduits to each lot in all new developments;

WHEREAS, the purpose of the Conduit Code Section is to incentivize internet service providers to install fiber optic services within the Town by making it easier for internet service providers to install fiber optic cables in the conduits within new developments;

WHEREAS, conduit has been installed in either the Town Right of Way or Utility Easements in all new developments since the adoption of the Conduit Code Section;

WHEREAS, the Town has previously granted LightGig permission to use conduits in ten (10) subdivisions ("Named Subdivisions"), i.e. Severance Shores, The Overlook, Hidden Farms, Severance Valley Reserve, Tailholt, Golden Eagle Acres, Hunter's crossing, Hidden Valley, Saddler Ridge, and Sunset Ridge (collectively, the "LightGig Conduit") which was installed in fulfillment of the Conduit Code Section;

WHEREAS, together with LightGig, the Town has accomplished its goal of improving the availability of fiber optic internet service within the Town;

WHEREAS, the Town and LightGig would like to formalize LightGig's continued use of the LightGig Conduit in the Named Subdivisions; and

WHEREAS, the Town desires to formalize LightGig's ownership of the LightGig Conduit in the Named Subdivisions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein by reference, as though fully set forth herein.

2. LightGig Ownership. The parties acknowledge and agree that LightGig is the owner of the LightGig Conduit. LightGig shall maintain the LightGig Conduit at its sole cost and expense and may upgrade, install fiber optics into, replace, inspect, or otherwise use the LightGig Conduit at its sole discretion. Any remaining conduit in the Named Subdivisions or other current or future subdivisions shall remain in the possession of the Town.

3. Assumption of Responsibility. LightGig recognizes that along with the ownership of the LightGig Conduit, LightGig becomes solely responsible for the maintenance, repair, replacement, locating, and all other costs associated with ownership of the LightGig Conduit. LightGig agrees to take such actions, at its sole expense, as are necessary to maintain the LightGig Conduit in good and safe working condition at all times. LightGig further agrees to comply at all times with all applicable laws in its use and occupancy of the LightGig Conduit when performing any maintenance, repair, or monitoring activities.

4. Coordination. LightGig agrees to coordinate with the Town and developers for installation of any future conduit by LightGig by providing timely input on engineering designs and inspecting the future conduit once it has been installed. Future developments may be added to the list of Named Subdivisions and future conduit installed in these developments may be added to become a part of the LightGig Conduit by an amendment to this Agreement executed by both Parties.

5. Indemnification. LightGig agrees to indemnify, defend and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands, to the extent caused by LightGig, or which arise out of or relate to: (i) LightGig's performance of this Agreement; or (ii) LightGig's ownership and use of the LightGig Conduit.

6. Insurance. LightGig agrees to procure, and maintain at all times, at its own cost, a policy or policies of insurance sufficient to insure against, claims, demands, and other obligations assumed by LightGig pursuant to this Agreement. Such insurance policy shall at a minimum include comprehensive general liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, including contractual liability insurance covering the insuring provisions of this Agreement and the performance by LightGig of the indemnification obligation set forth herein. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees and contractors as additional insureds to the extent of the liabilities assumed by LightGig herein. A Certificate of Insurance evidencing insurance required by this Agreement shall be delivered to the Town within 30 days following the Town's request and thereafter at least 30 days prior to the expiration of such policy. The Town, although named as an additional insured, shall nevertheless be entitled to recover under such policy for any loss occasioned to it, its agents or its employees, notwithstanding any act or omission or LightGig.

7. Assignment. LightGig may assign its rights and responsibilities in this Agreement to any entity controlling, controlled by, or under the common control of LightGig, or to any party that has subsequently acquired substantially all of LightGig's assets that are directly associated with the LightGig Conduit, with the condition that the assignment must be for the entire LightGig Conduit, and the assignee agrees to be bound by all of the terms and conditions of this Agreement.

LightGig shall not assign or transfer this Agreement to any other entity without prior written consent of Town, which consent will not be unreasonably withheld.

8. Notices. Any notice given pursuant to this Agreement by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the Town: Town Manager
 Town of Severance
 3 South Timber Ridge Parkway
 P.O. Box 339
 Severance, CO 80546

To LightGig: LightGig Communications, LLC
 2809 E. Harmony Rd., Ste. 310
 Ft. Collins, CO 80528

9. Applicable Law and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement. Any action arising out of this Agreement shall be brought in a court of competent jurisdiction in Weld County, Colorado.

10. Binding Effect. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective successors and permitted assigns of the Parties.

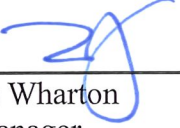
11. Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each Party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

12. Counterparts and Signatures. This Agreement may be executed by the parties in counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same Agreement. Each of the parties shall be entitled to rely upon a counterpart of the instrument executed by the other party and sent by facsimile or electronic transmission. The parties further agree this Agreement may be executed by electronic signatures, and any electronic signatures, electronic record of this Agreement containing an electronic signature, or a paper copy of an electronic signature shall be binding upon the party providing such electronic signature as if it were the party's original signature.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and year first above written.


TOWN OF SEVERANCE



Nicholas Wharton
Town Manager

Date:

ATTEST:



Leah Vanarsdall
Town Clerk



Date:

DocuSigned by:

APPROVED AS TO FORM:



Hayashi & Macsalka, LLC, Town Attorney
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LIGHTGIG COMMUNICATIONS, LLC

By: _____

Name: _____

Title: _____