

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 504, AUTHORIZING THE OPERATION OF CLASS IV ALL-TERRAIN VEHICLES ON STREETS LOCATED WITHIN THE CITY OF COLUMBIA CITY, OREGON, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

WHEREAS, the City of Columbia City desires to authorize Class IV All-Terrain Vehicles (ATVs), also known as side-by-side (SxS) vehicles, on designated City streets to allow for the use of alternative transportation; and

WHEREAS, the City of Columbia City Charter authorizes the City to have all powers which the constitutions, statutes, and common laws of the United States and of Oregon expressly or impliedly grant or allow the City, as fully as though this Charter specifically enumerated each of those powers, which include the powers to manage the right-of-way; and

WHEREAS, ORS 810.010(3) provides that the governing body of an incorporated city is the road authority for all highways, roads, streets, and alleys, other than state highways, within the boundaries of the incorporated city; and

WHEREAS, ORS 810.200(2)(c) establishes an exemption from the general prohibition on operating all-terrain vehicles on highways and provides that an all-terrain vehicle may be lawfully operated on a highway where posted to permit all-terrain vehicles; and

WHEREAS, the City desires to amend an existing city ordinance to allow Class IV All-Terrain vehicles to operate on City streets in accordance with Oregon law, including to establish clear regulations and safety standards for the safe and responsible Class IV ATV usage; and

WHEREAS, the Columbia City City Council has determined that it is a necessary and proper public purpose to impose certain restrictions on the operation of all-terrain vehicles on such City streets for the purpose of protecting the interest and safety of the general public.

NOW, THEREFORE, THE CITY OF COLUMBIA CITY ORDAINS AS FOLLOWS:

Section 1. Section 3 of Ordinance No. 504 shall be amended to include the following definitions:

Class IV All-Terrain Vehicle (Class IV ATVs): As defined in ORS 801.194, any motorized vehicle that (a) travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less, (b) is designed for or capable of cross-country travel on or immediately over, land, water, snow, ice, marsh, swampland, or other natural terrain, (c) has non-straddle seating, (d) has a steering wheel for steering control, (e) has a dry weight of 1,800 pounds or less; and (f) is 65 inches wide or less at its widest point, or current manufacturing standards of width and weight from the factory. Class IV ATVs may also be known as side-by-sides (SXS).

Motorcycle Helmet: As defined in ORS 801.366, a Motorcycle Helmet is a protective covering for the head consisting of a hard, outer shell, padding adjacent to and inside the outer shell, and a chin-strap type retention system with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation.

Traffic Law(s): Any and all Oregon statutes and regulations relating in any way to the operation or use of motorized vehicles, including, without limitation, the Oregon Vehicle Code (ORS Chapters 801 to 826) and any regulations or administrative rules promulgated thereunder.

Street(s): For the purposes of this Chapter, Streets shall mean public right-of-way, roads, and alleys within the City of Columbia City, which are open, used or intended for the use of the general public for vehicles or vehicular traffic, and not including Highway 30.

Section 2. Ordinance No. 504 shall be amended to add the following section:

Section 15. Class IV All-Terrain Vehicles (ATVs) Authorized on City Streets, Not Including Highway 30.

A) Subject to the provisions of this Chapter, Class IV ATVs may be operated on Streets in the City of Columbia City, except on Highway 30, unless specifically designated for crossing.

B) Class I, II, and III ATVs (as defined in state law) are prohibited from operating on the Streets in the City of Columbia City.

C) Regulations for Operation of Class IV All-Terrain Vehicles.

1) Compliance with all laws. Class IV ATVs operating under this Chapter must be operated in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, all applicable Traffic Law requirements (including, without limitation, ORS 811.255) and all posted speed limits.

2) State of Oregon Permit issued under ORS 390.577 Required. A person operating a Class IV All-Terrain Vehicle under this Chapter must hold a valid Class IV ATV Operator Permit issued under ORS 390.577 and an ATV Safety Education Card issued upon completion of an Oregon Parks and Recreation Departments approved ATV Safety Education course and passage of the minimum standards test of ATV Safety Education competency as established by the Oregon Parks and Recreation Department as set forth in OAR 736-004-0015(10).

3) Financial Responsibility Requirements. All-terrain vehicles operated under this Chapter must meet the financial responsibility requirements under ORS Chapter 806. For the purposes of this section, Financial Responsibility Requirements means maintaining liability insurance that meets or exceeds the minimum financial responsibility requirements set forth in ORS 806.010 and ORS 806.070 and the ability to respond to damages for liability, on account of accidents arising out of the ownership, operation, maintenance, and/or use of an ATV, in a manner provided under ORS 806. The minimum limits of coverage for the purposes of demonstrating Financial Responsibility under this section are set forth in ORS 806.070 (Minimum payment schedule). The exemption in 806.020 does not apply to this Chapter.

4) Licensed Driver 18 Years or Older. A person operating a Class IV ATV must be 18 years of age or older and hold a valid Driver License.

5) Safety Equipment Requirements.

Class IV ATVs must be equipped with the following:

- a) Safety equipment required under all applicable Traffic Laws, including, without limitation, ORS 821.030, and OAR 735-116-000;
- b) Rear facing mirror;
- c) A muffler, brakes, and windshield in compliance with ORS 821.040;
- d) Brake lights as required in ORS 816.100;
- e) Turn signals as required in ORS 816.120;
- f) Back up lights as required in ORS 816.110;
- g) Headlights (ORS 816.050) and Taillights (ORS 816.080) as required in this Chapter;
- h) A functioning horn;
- i) A rollover protection system; and
- j) Class IV ATVs shall comply with ORS 816.350 (Prohibitions on number and kind of lights for certain vehicles) and no exemptions shall apply.

6) Personal Protection

- a) Helmets: All persons operating or riding in Class IV ATV must wear a Motorcycle Helmet with a fastened chin strap.
- b) Eye Protection: Eye protection is required for operators or passengers in Class IV ATV without a windshield.

7) Safety Belt Requirements. A person must be properly secured with a safety belt or safety harness while operating or riding as a passenger in an ATV in the same manner as required in ORS 811.210, which includes the requirements under ORS 811.210(2) as follows: (a) A person who is under two years of age must be properly secured with a child safety system in a rear-facing position; (b) A person who weighs 40 pounds or less must be properly secured with a child safety system that meets the minimum standards and specifications established by the Department of Transportation under ORS 815.055 for child safety systems designed for children weighing 40 pounds or less; and (c) Except as provided in subsection (3) of this section, a person who weighs more than 40 pounds and who is four feet nine inches or shorter must be properly secured with a child safety system that elevates the person so that a safety belt or safety harness properly fits the person. The exemption provided in ORS 811.215(2) does not apply.

8) Location of Operation. Class IV ATVs are prohibited from operating on Highway 30 except that a person may, while operating a Class IV ATV, cross Highway 30 at 'E' Street, as permitted under applicable Oregon law, including, without limitation, ORS 821.200.

9) Hours of Operation.

- a) Class IV ATVs may be operated during daylight hours, which are from one hour before sunrise to one hour after sunset.
- b) Class IV ATVs shall not be operated during hours of darkness, which commence one hour after sunset through one hour before sunrise, and when limited visibility conditions exist, unless equipped with lighting equipment required for a motor vehicle under ORS 816.320 (including but not limited to high and low beam headlights, taillights, turn signals, and brake lights).

10) Speed Limit. Class IV ATVs operated under this Chapter must be operated in compliance with all posted speed limits and may not be operated:

a) at a rate of speed greater than reasonable and proper under the existing conditions, or

b) in a negligent manner so as to endanger or cause injury, death, and/or damage to the operator or person or property of another.

11) Prohibition on Operating All-Terrain Vehicles While Driving Privileges Suspended. A person may not operate an ATV under this Chapter while the person's driving privileges (i.e., Driver License) are suspended or revoked.

12) Snowmobiles. Nothing contained in this Chapter applies to the operation of snowmobiles as that term is defined by ORS 801.490.

- D) Posting. The City of Columbia City will post signs giving notice that the operation of ATVs is permitted upon Streets under the provisions of this Chapter. The City of Columbia City will post such signs at locations necessary to inform the public that ATVs are permitted upon Streets, which sign locations will be determined by the City of Columbia City in its sole discretion.
- E) Liability. The operation of a Class IV ATV will be undertaken at the sole risk and responsibility of the owner and/or operator. The City of Columbia City assumes no responsibility for the operation of Class IV ATVs and to the extent permitted under Oregon law, the owner/operator agrees to hold the City harmless in any action arising from the operation of such ATVs on or off any public way within the City limits, including, without limitation, Streets and Highway 30.
- F) Enforcement.
- 1) Any violation of this Chapter that constitutes a violation of a Traffic Law, the enforcement shall be the same as provided for by Oregon statute. Any other violation of this Chapter shall be enforced by the issuance of a citation and shall be prosecuted in the Columbia City Municipal Court as a City Ordinance Violation as now in effect or as may be amended from time to time. The Chief of Police or designee is authorized to enforce the provisions of this chapter.
 - 2) City Violations shall be subject to a fine as follows:
 - a. \$100.00 for the first violation;
 - b. \$250.00 for the second violation;
 - c. \$500.00 for the third or subsequent violation of this Chapter by the same person, unless superseded by state law.
- G) Reference Statutes and Rules. All reference to particular laws, statutes, or rules include that law, statute, or rule as now in effect or as may be amended from time to time.
- H) Modifications. The Chief of Police of the City of Columbia City has the authority to modify the provisions of this Chapter as a result of the occurrence of special events. Such modifications shall be temporary in nature and shall not violate Traffic Laws.
- I) Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
- J) Codification. Provisions of this Ordinance shall be incorporated in the City Code, and the word "ordinance" may be changed to "code," "article," "section," or other word, and the sections of this Ordinance may be renumbered, or relettered provided however that Section I and J need not be codified.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO FORGED FIBER 37, LLC THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN TELECOMMUNICATION SERVICES IN THE CITY OF COLUMBIA CITY, OREGON

THE CITY OF COLUMBIA CITY ORDAINS AS FOLLOWS:

Section 1. Definitions - as used in this ordinance:

1. "City" means City of Columbia City, Oregon.
2. "Company" means Forged Fiber 37, LLC, the grantee of rights under this Franchise, including its successors or assigns.
3. "Council" means the City Council of the City of Columbia City, Oregon.
4. "Franchise" means this document embodying the agreement of City and Company.
5. "Gross revenues" means any and all revenues derived by Company for the provision of any and all products, services, or charges originating or terminating in Columbia City, Oregon billed to a circuit, switch or address in Columbia City, Oregon, including revenues from dedicated private networks. Gross revenues may be adjusted for the net write-off of uncollectible amounts of such revenues.
6. "Person" means any person, firm, partnership, association, corporation, limited liability company, entity, or organization of any kind.
7. "Right-of-way" means the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including the subsurface and air space over or under those areas, including areas held in fee or by easement or dedication.
8. "Telecommunications" means the transmission of information chosen by a person, between or among points specified by the person.
9. "Telecommunications service" means telecommunications service as defined in 47 U.S.C. §153(53).
10. "Telecommunications service providers" means any entity that pays a franchise or permit fee to City for the use of Company's facilities.
11. "Uncollectible accounts of customers" means any Company account, on which Company derives revenue from the sale of goods or services to persons within the corporate limits of the City, towards which Company has made a reasonable, good-faith effort to collect and that Company has written off as Uncollectible for purposes of Company's public accounting.

Section 2. Grant of Non-exclusive Franchise.

1. City grants to Company the right and privilege to construct, install, maintain and operate in, on, and under the present and future City rights of way of the City of Columbia City, conduits, cables and other technical facilities necessary for the purpose of providing Telecommunication services and internet access services. This Ordinance, upon acceptance by Company, constitutes a contract between City and Company. The Franchise does not convey any right, title or interest in the right-of-way, but is a grant to use and occupy the right-of-way for the limited purposes and term stated in this Franchise.
2. The Franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by franchise, permit or otherwise.
3. City shall grant similarly situated Telecommunications franchises in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.
4. Any requirement imposed on Franchisee that is determined by a court to not be in compliance with this subparagraph shall be unenforceable against Franchisee to the extent exceeding the terms and conditions upon similarly situated providers.

Section 3. No Limit on City Authority, Compliance with Laws, Rules and Regulations.

1. At all times during the term of this Franchise, Company shall comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, and the City of Columbia City including all agencies and subdivisions thereof. All terms and conditions applicable to Telecommunications carriers, contained in the Columbia City Municipal Code or other applicable law, apply to Company even if not recited in this Franchise. Company shall be subject to the lawful exercise of the police power of City and to such generally applicable regulations as City may from time-to-time hereafter by resolutions or ordinance provide. City will administer this Franchise and exercise its police power on a reasonable, uniform, non-discriminatory basis with respect to other telecommunications franchises.

Section 4. Company Liability, Insurance.

1. Company shall at all times conduct its operations under this Franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.
2. Company shall maintain at all times the following insurance.
 - a. Workers compensation insurance for all subject workers and commercial general liability insurance with a combined single limit, or the equivalent of \$2,000,000 for each occurrence of bodily injury and property damage, and \$3,000,000 in the aggregate.

- b. City, and its elected and appointed officers, agents, and employees shall be added as additional insured with respect to the commercial general liability insurance policy.
 - c. Upon any cancellation, material change, exhaustion of aggregate limits, or intent not to renew for any required insurance coverage that is not replaced, Company shall provide notice to City within thirty (30) days of receiving notice thereof from the insurance company.
 - d. Coverages provided by Company must be underwritten by an insurance company with an A.M Best rating of at least A- VII. City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
 - e. As evidence of the insurance coverage required by this Franchise, Company shall furnish to City a Certificate of Insurance and additional insured endorsement. A renewal certificate will be sent to City ten (10) days prior to coverage expiration.
3. In the event that City's tort liability limits are raised by the Oregon Legislature during the term of the franchise to exceed the limits described in this section, Company shall obtain and maintain insurance in the amount of City's tort liability limits.

Section 5. Indemnification

- 1. To the fullest extent permitted by law, Company agrees to defend, indemnify, and hold City, and its respective officers, employees, agents, and representatives harmless from and against any and all damages, losses, and expenses, including reasonable attorney fees and costs of suit or defense, arising out of the actions or failure act, errors, omissions or misconduct of the Company or its affiliates, officers, employees, agents, contractors, or subcontractors, arising from or relating to this Franchise.
- 2. Company agrees to indemnify City, its officers, employees, agents, and representatives, from and against any claims, costs, and expenses of any kind, whether direct or indirect, pursuant to any state or federal law, statute, regulation, or order, for the removal or remediation of any leaks, spills, contamination, or residues of hazardous substances, directly attributable to Company's facilities. Hazardous substances has the meaning given by ORS 465.200.
- 3. The obligations imposed by Section 5 shall survive termination or expiration of the Franchise.

Section 6. Performance Bond.

- 1. Upon the effective date of this Franchise, Company shall furnish proof of the posting of a performance bond running to City, with good and sufficient surety approved by City, in the penal sum of \$10,000, conditioned that Company shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Company shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Franchise, including, if necessary, the time required for removal of all of Company's Telecommunications system installed in City's right of way. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without

thirty (30) days prior written notice first being given to City. The bond shall be reviewed and approved as to form by the City Attorney.

2. During the term of this Franchise, Company shall file with City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall City exercise its rights against the performance bond under Section 6.1 if a bona fide, good faith dispute exists between City and Company.
3. City may, based upon inflation or other identifiable needs, require the amount of the performance bond and any construction bond that may be required under Section 6.4 below to be increased to an amount recommended by City's insurance carrier after notice to Company.
4. City may require Company to acquire one or more separate performance securities to protect the City's interests when Company constructs facilities. The amount of such security depends on the project's impacts; thus the amount will be determined in connection with the permitting process.

Section 7. Conditions on Right of Way Occupancy.

1. Routing maps and construction plans must be approved by City's Department of Public Works before any work is started. Company must obtain a permit prior to any construction in the right of way, in accordance with the City of Columbia's public rights-of-way regulations, currently set forth in Ordinance No. 05-604-0, as may be amended or recodified from time to time.
2. Company shall construct, install, maintain and operate its fiber optic cable facilities in designated City rights of way to the industry standard and City's satisfaction; and in a manner so as to cause minimum interference with the proper use of the right-of-way and to cause minimum interference with utilities and other franchisees and with property owners who adjoin any of the right-of-way. Company's facilities shall be installed consistent with all laws, rules, regulations, and ordinances that apply to such work.
3. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, including any unimproved surface, Company shall, at its own cost and expense and in a manner approved by City, replace and restore all surfaces disturbed to the same condition in which it was prior to the excavation or disturbance. If Company fails to make restoration as required within ten (10) days of receipt of notice thereof, then City shall have the right to cause the repairs to be made at the expense of Company. All work within City rights of way shall be in accordance with the City of Columbia City's Standards and Specifications in effect at the time.

4. Relocation.

- a. If the removal or relocation of facilities is caused directly by an identifiable development of property and the removal or relocation of facilities occurs within the area to be developed, or is made for the convenience of a customer, Company may charge the expense of removal or relocation to the developer or customer. If the removal or relocation of facilities is required by the City in the interest of the public, excluding as a condition of development approval for a third-party's development project, the City may require Company to remove or relocate its facilities at Company's expense.
 - b. Prior to commencing excavation or construction, Company shall give appropriate notice to the City and to other franchisees, licensees or permittees of City owning or maintaining facilities that may be affected. Company will supply, at no cost to City, any information reasonably requested by the City to coordinate municipal functions with Company's activities and fulfill any municipal obligations under State law. Said information shall include, at a minimum, as-built drawings of Company Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities (if available) within City's Rights of way, which are installed by Company during the term of this Franchise. Said information may be requested either in hard copy and/or electronic geographic information service (GIS) format and shall be provided in the format requested if reasonably possible.
 - c. In the event emergency repairs are necessary, Company may immediately initiate such emergency repairs. Company shall give notice to City's Department of Public Works as soon as practicable after commencement of work and shall apply for all necessary permits no later than the business day next following the discovery of the need for such repairs.
5. Company shall not place its facilities where they will interfere with any existing or planned City utility, gas, electric or telephone fixture, power, sanitary sewer, storm sewer, water facility, or public improvement. All facilities placed in City rights of way shall be placed as City directs.
6. Company shall, upon receipt of seven (7) days written notice from anyone desiring to move a building or other object according to City ordinances regulating the moving of buildings, arrange to temporarily raise, lower, or otherwise move its facilities to permit the moving of buildings or other objects if the Person wishing to move the building or other object makes a reasonable arrangement to reimburse Company for its expenses in rearranging its facilities. Nothing contained in this section shall preclude City from requiring Company to move its facilities at Company's own expense when public interest requires the move, as described in Subsection 4 of this section.
7. Safety. Company shall ensure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public. As a minimum, Company shall provide signs, signals, and flaggers as necessary to control traffic.

8. Vacation. If the City vacates any Right-of-Way, or portion thereof, that Company uses, unless the City specifically reserves to Company the right to continue its installation in the vacated Right-of-Way, or Company secures such right from the third party that will have title to the area in which Company has its Equipment, Company shall remove its Equipment from the Right-of-Way at its own expense. If Company fails to remove its Equipment following ninety (90) days written notice from the City to do so, the City may remove the Equipment at Company's sole expense. Upon receipt of a demand for payment from the City, Company shall promptly reimburse the City for any reasonable costs the City incurred to remove the Equipment.

Section 8. Transfer of Franchise.

1. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer and shall request consent of the transfer by the City.
2. Any transfer of this Franchise affected without the written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.
3. The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.
4. The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.
5. The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 9. City Rights in Franchise.

1. City shall have the right to supervise all construction or installation of Company's facilities subject to the provisions of this Franchise and make such inspections as it shall find reasonably necessary to ensure compliance with governing laws, rules and regulations.
2. Upon any termination or expiration of this Franchise, all facilities installed or used by Company shall be removed by Company at Company's expense and the property upon which the facilities were used restored by Company to the condition it was in before installation except that City may elect to acquire the facilities for their fair market value as provided by law. Value shall be determined by an appraiser who is mutually acceptable to City and Company. City agrees to provide Company with written notice of its intention to acquire Company's facilities pursuant to this section within 120 days after termination of this Franchise by City, or City's declaration of facilities abandonment by Company, with the closing of any acquisition to occur as soon thereafter as is practicable.

Section 10. Franchise Fee.

1. In consideration of permission to use the Rights-of-Way of the City for the construction, operation, and maintenance of its facilities and to defray the cost of franchise regulation, Company shall pay to City an amount equal to seven percent (7%) of Gross Revenues as a license use fee, and does not include taxation of revenues from internet access services while prohibited by law. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services.
2. Any amounts owed under Section 10.1 shall be paid to City quarterly, on or before July 20th, October 20th, January 20th, and April 20th of each year for the preceding three (3) month period.
3. Any failure to pay fees owed under Section 10 when due, and such failure continues for a period of thirty (30) days after notice and opportunity to cure provided by City to Company, shall be subject to a delinquency charge of five percent (5%) of the unpaid amount. Delinquency charges are due within thirty (30) days of Company's receipt of notice of past due fees from City. Failure to make full payment and associated delinquency charges within sixty (60) days of the applicable payment due date (subject to the prior notice requirements) shall constitute a violation of this Franchise. In addition, any overdue amounts, including delinquency charges, shall bear interest as described in Section 10.4 below. Notwithstanding the foregoing, if an audit conducted pursuant to Section 11 reveals there is a deficiency in the payment of fees or other amounts due to City, such fees or other amounts shall be subject to a delinquency charge of five percent (5%) of any such arrears without the requirement of notice and opportunity to cure by City to Company.
4. Franchise fee payments not received by City on or before the due date shall be assessed interest based on the average prime interest rate set by City's bank on December 31st of the previous year, plus three hundred (300) basis points (3%).
5. Company may, at its option, deduct Uncollectible accounts of customers within the corporate limits of City from Company's gross revenues.
6. With each payment, Company shall at the end of each twelve month period, furnish City with a written statement under oath, executed by an officer of Company, verifying the amount of gross revenues of Company within City subject to the City's license use fee set out in Section 10.1, and including all amounts which Company declares exempt from such license use fee, for the annual period covered by payment computed on the basis set out in this section.

7. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this Franchise.
8. Upon thirty days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, Company agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Company shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.
9. Except for fees and taxes as provided in subsection 10, below, the Franchise fee includes all compensation for the use of the City's Rights-of-Way.
10. Except as otherwise provided by law, and subject to subsection 9, above, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax including but not limited to ad valorem real or personal property taxes now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance, resolution or statute

Section 11. Company Records and Reports, Audit

1. To manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications Network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees to maintain such information as confidential to the extent permitted by law and that City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with or enforcing the terms of this Franchise, and verifying the adequacy of Franchisee's Fee payments.
2. In addition to all rights granted in this Franchise, City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Revenue of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City except that if the audit establishes that payments tendered to City by Franchisee were less than the amounts

due by a differential of five percent (5%) or more, all costs for such audit shall be paid by Franchisee. The City agrees to protect from disclosure to third parties, to the extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section 12. Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of City to inspect all construction or installation work performed pursuant to this Franchise and to require Company to obtain permits and pay reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with Company or its facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect hereafter adopted by City.

Section 13. Enforcement and Termination of Franchise for Violation.

1. Default. Time is of the essence of this Franchise. The following shall be events of default:
 - a. Default in Payments. The failure of Company to pay City when due any amounts required by the Franchise and such failure continues for a period of thirty (30) days after notice and opportunity to cure provided by City to Company.
 - b. Default in Other Covenants. The failure of either party to perform any of the terms and conditions required herein to be kept and performed and such failure continues for a period of thirty (30) days after notice and opportunity to cure provided by the party alleging a breach.
2. Remedies.
 - a. Termination. Upon the occurrence of an event of default, this Franchise may be terminated by the City Council after providing notice in writing to Company given within thirty (30) days of the date of default. Company shall be granted a reasonable opportunity to be heard by the City Council prior to revocation. In determining whether to revoke the Franchise or pursue a lesser remedy, City Council shall consider the nature, extent, circumstances and gravity of the breach, including whether the breach was intentional, resulted in substantial harm and the history of compliance or noncompliance.
 - b. In lieu of termination, City may impose a penalty of the sum of \$200 per day for each day the default continues along with any additional damages suffered by City as a result of Company's default. City may not assess penalties under the previous sentence in excess of \$8,000 per year. Damages are not included in the cap.
 - c. In addition to the remedies specified above, the parties shall have all remedies available by law, including in contract. Nothing herein limits or restricts City's authority to enforce its municipal code in the exercise of its police powers.

Section 14. Waiver.

1. The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.
2. No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Company gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice (but no less than 60 days), such provision shall be deemed waived.

Section 15. Franchise Term. This Franchise is granted for a term of ten (10) years beginning on the date on which this Franchise ordinance is approved. City agrees to renegotiate in good faith a renewal of this Franchise for a similar term if this Franchise is not in default at its expiration. Upon the expiration of the term the terms and conditions of this Franchise will continue on a month-to-month basis, provided the parties are using good faith efforts to renegotiate a renewal of this Franchise or enter into new Franchise.

Section 16. Acceptance of Franchise. Within thirty (30) days from the effective date of this ordinance, Company shall file with the City Recorder a written unconditional acceptance of this Franchise and all of its terms and conditions, and if Company fails to do so, this ordinance shall be void and of no effect.

Section 17. Severability. If any section, subsection, sentence, clause or portion of this ordinance is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect constitutionality of the remaining portion thereof which will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise. If for any reason, the Franchise Fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this ordinance.

Section 18. Notices. Any notice required or permitted under this Franchise shall be given by first class certified or registered United States Mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received or refused. Notices will be addressed to the parties as follows:

TO CITY: City of Columbia City
ATTN: City Manager
P.O Box 189
18420 2nd St.
Columbia City, OR 97018

TO COMPANY: Forged Fiber 37, LLC c/o AT&T
ATTN: Legal Dept – Network Operations
Re: Columbia City / Franchise (OR)
208 S. Akard Street
Dallas, TX 75202-4206

Or to such other address as may be specified from time to time by either party in writing.

Section 19. Extension of City Limits. Upon the annexation of any territory to the City, the rights and obligations provided for herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 20. Interpretation/Jurisdiction. This Franchise shall be deemed to have been entered into in Columbia County, Oregon. Venue for any dispute shall be in the Circuit Court of the State of Oregon, and venue shall be in Columbia County, Oregon provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon . Interpretation of the Franchise shall be governed by laws of the State of Oregon; to this end, on behalf of the City the City Administrator has the initial authority to interpret this Franchise, with the City Council retaining final authority, in its discretion, to interpret this Franchise. Neither party shall be considered the drafter of this Franchise for purposes of application of the rules of construction.

Section 21. Entire Agreement. This Franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein. To the extent that a provision of this Franchise conflicts with a section of the Columbia City Municipal Code, the Franchise shall take precedence.



Lower Columbia Engineering
 58640 McNulty Way
 St. Helens, OR 97051
 503.366.0399

ENGINEERING SERVICE AGREEMENT

City of Columbia City CLIENT	Kim Karber CONTACT
P.O. Box 189 ADDRESS	(503) 397-4010 PHONE NUMBER
Columbia City, OR 97018 CITY, STATE ZIP	kkarber@columbia-city.org EMAIL ADDRESS
K Street Lift Station Upgrades PROJECT NAME	3804 PROJECT NUMBER

Scope of Work: Per cost estimate dated December 10th, 2025.

Billing:

- Fixed fee in the amount of \$ _____ Due on _____
- Time and Materials per attached "Service Rates and Billing Procedures."
 Not-To-Exceed amount \$ 30,000.00 (if applicable)
- Other _____
- Our default is now paperless billing. Please provide your billing email (or address if you prefer that a paper invoice be mailed):

General Conditions:

Lower Columbia Engineering is not responsible for design issues not specifically addressed in the plans and specifications prepared by Lower Columbia Engineering.

Either party may terminate this Agreement upon seven days' prior written notice. In the event of termination, Lower Columbia Engineering shall be compensated by Client for all services performed up to and including the termination date. This compensation will include reimbursable expenses and completion of such services and records as are necessary for proper organization of project documents.

Client is responsible for any associated expenses required to collect delinquent payment of any fees, including all attorney fees, in addition to 1.5% interest per month.

Confirmation of Authorization

 Lower Columbia Engineering (Printed Name)

 Client (Printed Name of Authorized Representative)

 Signature & Date

 Signature & Date





58640 McNulty Way
 St. Helens OR 97051
 503.366.0399

City of Columbia City K Street Lift Station LCE Project No. 3661-07

Engineers Cost Estimate Originated: 12/10/2025
Revised:

Item Description		Units	Quantity	Unit Cost	Cost
Installation and Engineering					
1.	Electrical Contractor Installation of Components	LS.	1	\$ 40,325.00	\$ 40,325.00
2.	General Contractor Installation of Components	LS.	1	\$ 35,000.00	\$ 35,000.00
3.	Engineering *	LS.	1	\$ 30,000.00	\$ 30,000.00
Subtotal Engineering and Installation					\$ 105,325.00
Estimated Total					\$ 105,325.00
Estimated Total with 10% Contingency for Prevailing Wage					\$ 115,857.50
Estimated Total with 10% General Contingency					\$ 127,443.25

Notes:

1. This is a budget estimate for completing the specified construction at the time the estimate was developed.
 2. This estimate does not account for excessive bedrock removal or any utility conflicts.
- * Includes assistance through construction administration.

Estimator: CAB Appr. By: