

**CITY OF MILLWOOD
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 553**

AN ORDINANCE OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO FORGED FIBER 37, LLC, TO CONSTRUCT, MAINTAIN AND OPERATE CERTAIN FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTIES OF THE CITY OF MILLWOOD; AND OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Millwood (the “City”), Spokane County, Washington is a non-charter code city by virtue of the Constitution and the laws of the State of Washington; and

WHEREAS, pursuant to Chapter 35A.11 RCW, the City Council (the “Council”) may adopt and enforce ordinances of all kinds, relating to and regulating its local or municipal affairs and appropriate to the good government of the City and may impose penalties and fines for violations of such ordinances; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant, permit, and regulate non-exclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for railroads and other routes and facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service; and

WHEREAS, the grant of such non-exclusive franchises requires the approving vote of at least a majority of the entire Council and publication at least once in a newspaper of general circulation in the City; and

WHEREAS, the Council finds that the grant of the Franchise contained in this Ordinance, subject to its terms and conditions, is in the best interests of the public; and

WHEREAS, the City has, following required and reasonable notice, conducted a full public hearing, affording all persons concerned with the analysis and consideration of the technical ability, financial condition, legal qualifications and general character of the Grantee; and,

WHEREAS, the City, after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualification and character of the Grantee; and,

WHEREAS, the Grantee has agreed to be bound by the conditions hereinafter set forth

NOW, THEREFORE, the City Council of the City of Millwood, Spokane County, Washington, does ordain as follows:

Section 1. Definitions. For the purpose of this Ordinance, the following words and terms shall have the meaning set forth below:

“Basic Cable Service” shall mean any Service Tier which includes the retransmission of local television broadcast signals.

“City” means the City of Millwood, a Washington municipal corporation.

“FCC” shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.

“Facility” or “Facilities” means all of the plant, equipment, fixtures, appurtenances, and other related property necessary to furnish and deliver Telecommunication Service, including but not limited to lines, wires, cables, conductors, ducts, poles, conduits, vaults, manholes, pedestals, amplifiers, appliances, and attachments, necessary or incidental to the distribution and use of Telecommunications services.

“Franchise Agreement” shall mean the nonexclusive right and authority to construct, maintain, operate, repair, replace, and upgrade a Telecommunication System through use of Public Rights of Way in the City pursuant to a contractual agreement approved by the Council and executed by the City and the Grantee.

“Franchise Area” shall mean the entire geographic area within the City as it is now constituted or may in the future be constituted.

“Grantee” shall mean Forged Fiber 37, LLC, a Delaware limited liability company, including any lawful successor, transferee, or assignee of the original Grantee.

“Maintenance or Maintain” shall mean repair, restoration, replacement, renovation and testing of the Telecommunication System or components thereof so as to ensure that it operates in a safe and reliable manner and as required by this Franchise.

“Normal Business Hours” shall mean those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

“Normal Operating Conditions” shall mean those Service conditions which are within the control of Grantee. Those conditions which are not within the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather conditions.

“Person” shall mean an individual or legal entity, such as a corporation or partnership.

“Public Property” shall mean any real estate or any facility owned by the City.

“Public Works Director” shall mean the Millwood Public Works Director or his/her designee.

“Right-of-Way” shall mean all property, and the space above and below, in which the City has any form of ownership, title, or interest, including easements and adjacent utility strips, which is held for public roadway or dedicated for compatible utility purposes, regardless of whether or not any roadway or utility exists thereon or whether it is used, improved or maintained for public use.

“Telecommunication Service” as defined by RCW 35.99.010(7), shall mean the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for sale to the general public. Telecommunication Service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

“Telecommunication System” or “System” shall mean a tangible Facility, any portion of which occupies the right of way, which is used to provide one or more Telecommunication services. This includes, but is not limited to any wires, equipment cabinets, guys, conduit, radio transmitting towers,

poles, other supporting structures, and associated facilities used to transmit telecommunication signals. This includes all devices mounted on electric utility poles in public rights of way through which Telecommunication Services are originated or terminated.

Section 2. Grant of Franchise. The City hereby grants unto the Grantee, a nonexclusive Franchise authorizing the Grantee the nonexclusive right and privilege to have, acquire, construct, reconstruct, use, operate and maintain Facilities to provide Telecommunication Service to the public in the City and/or to transport Telecommunication Services through the City and for no other purpose, subject to applicable law, including but not limited to the Millwood Municipal Code, and to the conditions and restrictions as hereinafter provided. This grant expressly does not include permission to use the Public Right-of-Way for Telecommunication Service. The grant is by way of general permission to occupy the Right-of-Way, and not in place of specific location permits. In accepting this Franchise Agreement, Grantee stipulates and agrees to the City's authority to issue and require the Franchise Agreement and stipulates and agrees to the other terms and conditions hereof. No privilege or power of eminent domain is bestowed on Grantee by this Franchise Agreement. The term of this Franchise and all its rights, privileges, obligations and restrictions shall be ten (10) years from the effective date.

Section 3. Non-Exclusivity. The grant of authority for use of the City's Right-of-Way is not exclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of Public Property. Nothing in this Franchise Agreement shall affect the right of the City to grant to any other Person a similar franchise or right to occupy and use the Right-of-Way or any part thereof.

Section 4. Competitive Equity.

1. The City reserves the right to grant one (1) or more additional franchises or similar authorizations. The City shall amend this Franchise, as requested by the Grantee, if it grants additional franchises that contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein, as reasonably determined by the City. A word for word identical franchise or authorization for a competitive entity is not required so long as the regulatory and financial burdens on each entity are generally equivalent taking into account any difference in the level of fees and taxes imposed, the term of the franchise, and all other circumstances affecting the relative burdens.

2. The following represents a non-exhaustive list of terms of that may place the grantee at a competitive disadvantage if not required of a competitive entity as described in Section 4.1 above: the obligation to pay the City a franchise fee consistent with the provisions in this code, gross revenues as provided for and defined in this code, and the obligation to comply with requirements in this code regarding records and reports, security instruments and insurance, audits, dispute resolution, remedies, and notice and opportunity to cure.

3. Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the franchisee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such competitor; and (2) identify all material terms or conditions which are substantially more favorable or less burdensome to the competitive entity. The City shall act on the petition within one-hundred twenty (120) days.

Section 5 Taxes. As is consistent with applicable law, nothing contained in this Franchise Agreement shall be construed to except the Grantee from any applicable tax, liability or assessment authorized by law.

Section 6. **Telecommunication System Specifications.**

1. Grantee shall install, maintain, operate, repair, replace and upgrade conduit, fiber optic cables, mule tape, buffer tubes, vaults, splice cases (aerial and buried), poles, and related facilities in the right of way.

2. The Grantee shall comply with all applicable technical standards of the Federal Telecommunications Act of 1996. To the extent those standards are altered, modified, or amended during the term of this Franchise Agreement, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective and are applicable. The City shall have, upon written request, the right to review non-confidential tests and non-confidential records required to be performed pursuant to the FCC's rules.

3. In accordance with applicable law, the City shall have the right to regulate and inspect the construction, operation and maintenance of the Telecommunication system in the public Rights-of-Way. Upon reasonable prior written notice and in the presence of the Grantee's employee, the City may review the Telecommunication system's technical performance as necessary to monitor the Grantee's compliance with the provisions of this Franchise Agreement. All equipment testing under a technical performance review shall be conducted by the Grantee.

Section 7. **Intentionally Removed.**

Section 8. **Least Interference.** The City shall have prior and superior right to the use of its Rights-of-Way for installation and maintenance of its facilities and other governmental purposes. Work by Grantee in the Right-of-Way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. The owners of all facilities, public or private, installed in or on such public properties prior to the installation of the Facilities of the Grantee, shall have preference as to the positioning and location of such utilities with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such Right-of-Way. Disputes between the Grantee and other parties over the use, pursuant to this Franchise agreement, of the Rights-of-Way shall be submitted to the City for recommended resolution.

This Franchise shall, in no way, prevent or prohibit the City from using any of its Rights-of-Way, or affect its jurisdiction over them or any part of them. The City hereby retains its full police power to make all changes, relocations, repairs, maintenance, establishments, improvements, dedications or vacation of same, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way.

Section 9. **Construction Standards.** All work authorized and required hereunder shall comply with all generally applicable City codes regulations, resolutions and policies, which shall include but is not limited to Millwood Municipal Code Chapter 12.05, as may be amended from time to time, and the Inland Northwest Regional Pavement Cut Policy, as may be amended, or adopted by the City pursuant to City Resolution 16-06. Grantee shall also comply with all applicable federal and state regulations, laws and practices. Grantee is responsible for the supervision, condition, and quality of the work done, whether it is by itself or by contractors, assigns or agencies.

Section 10. **Undergrounding.** The City reserves the right to develop a policy on undergrounding, and to require Grantee's participation therein, as a condition of Grantee's new installation or major maintenance or restoration construction activities of overhead facilities under this Franchise Agreement. The purpose of this Section 10 is to recognize and preserve the City's control over uses of the Right-of-Way, consistent with the municipal policy favoring undergrounding of overhead lines for aesthetic reasons.

Section 11. Restoration After Construction. If in connection with the Construction, operation, maintenance, upgrade, repair or replacement of the Telecommunication System, the Grantee disturbs, alters, or damages any public or private property, the Grantee agrees that it shall at its own cost and expense pay for any damage and replace and restore any such property to a condition reasonably comparable to the condition existing immediately prior to the disturbance. Whenever Grantee disturbs or damages any Right-of-Way or other Public Property, Grantee shall complete the restoration work within a reasonable time as authorized by the City's Public Works Director.

Section 12. Incorporation of Millwood Municipal Code Chapter 12.05 and City Resolution 16-06. Grantee shall apply for and obtain appropriate obstruction permits from the City pursuant to the Millwood Municipal Code. Grantee shall pay all generally applicable permit fees for the requisite City permits and reimburse the City for all generally applicable fees incurred by the City in the examination, inspection, and approval of Grantee's work. Grantee acknowledges that it has reviewed Millwood Municipal Code Chapter 12.05 and accepts it as a lawful exercise of City regulatory powers over the Right-of-Way. The parties acknowledge that the City may modify or amend Millwood Municipal Code Chapter 12.05 and its regulatory policies throughout the term of this Franchise. Grantee further acknowledges that it has reviewed the Inland Northwest Regional Pavement Cut Policy, adopted by the City pursuant to City Resolution 16-06, and accepts it as a lawful exercise of City regulatory powers over the Right-of-Way. The parties acknowledge that the Inland Northwest Regional Pavement Cut Policy, adopted by the City pursuant to City Resolution 16-06, may be modified or amended throughout the term of this Franchise.

Section 13. Emergency Response. The Grantee shall maintain with the City an emergency response number providing an emergency 24-hour response for the City to use in case of an emergency. After being notified of an emergency, Grantee shall cooperate with the City and make every effort to immediately respond with action to aid the protection the health and safety of the public.

Section 14. Hazardous Substances. Grantee shall comply with all applicable state and federal laws concerning hazardous substances relating to Grantee's Facilities in the Right-of-Way.

Section 15. Environmental. Grantee shall comply with all applicable state and federal laws concerning environmental protection relating to Grantee's Facilities in the Right-of-Way.

Section 16. Movement and Relocation of Facilities. The following shall apply when it is necessary to relocate Grantee's Facilities:

1. Relocation of Facilities at the request of a third party.
 - a. If any removal, replacement, modification or disconnection of the Telecommunication System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s), Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity, as long as the other franchise holder(s) pay for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.
 - b. The Grantee shall, upon reasonable prior written request of any Person, relocate its aerial distribution Facilities underground, as long as the Person pays for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.
 - c. In the event an underground conversion of Facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a City designated capital

improvement project, this Franchise shall in no way limit the Grantee's right to bill and collect in advance all time and material costs associated with the underground conversion of the Telecommunication System from the Person responsible for the land use development project.

d. At the request of any Person holding a valid permit and upon reasonable advance notice and payment by the permit holder of Grantee's expenses of such temporary change, Grantee shall temporarily raise, lower or remove its Facilities as necessary to accommodate a permittee of the City.

2. Relocation at Request of the City.

a. Upon at least sixty (60) days prior written notice to Grantee, the City shall have the right to require Grantee to relocate any part of the Telecommunication System within the Rights-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. The City may, at its option, provide more than sixty (60) days notice. After receipt of such notice, Grantee shall complete relocation of its Facilities at least five (5) days prior to commencement of the project or an agreed upon date by both parties. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of-Way. If public funds are available to any Person using such Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the Grantee may make application for such funds.

b. In the case of relocation projects where the City engages and designates an independent contractor to accommodate and coordinate conversion of overhead utilities within a City capital improvement project, then the Grantee shall participate in the joint trenching portion of the project, and Grantee shall pay the Grantee's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. However, if bids from the City or its designated contractor for placement of Grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Grantee are not acceptable, the Grantee shall have the option to utilize contractor(s) of its choice to complete the required work, so long as use by Grantee of its contractor(s) does not delay the City project. The City or its designated contractor shall coordinate with the Grantee's contractor(s) to provide reasonable notice and time to complete the placement of the Grantee's Facilities in the supplied joint trench.

c. Nothing in this Franchise shall prevent the City from constructing any public work or capital improvement. Further, the City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's Facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when necessary to protect or further the health, safety or welfare of the general public, and such work shall be performed at Grantee's expense. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its Facilities or equipment within any Right-of-Way, or on any other property of the City.

d. If the Grantee fails to complete the above work within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may cause such work to be done and bill the reasonable cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the

City shall not be liable for any damage to any portion of Grantee's Telecommunication System. Grantee shall pay the City within ninety (90) days of receipt of an itemized list of those costs. The City shall give consideration to any circumstances outside the Grantee's control preventing Grantee's completion of work.

Section 17. Tree Trimming. The Grantee shall have the authority to conduct pruning and trimming for access to Telecommunication System Facilities in the Rights-of-Way subject to compliance with the City Code, which shall include but is not limited to Millwood Municipal Code Chapter 2.52, as may be amended from time to time. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

Section 18. Vacation. The City may vacate any City road, Right-of-Way or other City property which is subject to rights granted by this Franchise, but the Grantee shall be provided notice of such vacation proceedings and the opportunity to secure future use rights as allowed under the City's Municipal Code.

Section 19. Abandonment of Grantee's Facilities. No Facility Constructed or owned by Grantee may be abandoned without the express written consent of the City.

Section 20. Maps, Books, and Records.

1. Grantee shall provide to the City upon request:

a. A route map that depicts the general location of the Telecommunication System Facilities placed in the Rights-of-Way. The route map shall identify Telecommunication System Facilities as aerial or underground and is not required to depict types, number of fiber optic cables, and electronic equipment. The Grantee shall also provide, if requested, an electronic format of the aerial/underground Facilities in relation to the Right-of-Way centerline reference to allow the City to add this information to the City's GIS program;

b. To the extent such requests are limited to specific Facilities at a given location within the Franchise area in connection with the construction of any City project, Grantee shall cooperate with the City, upon the City's reasonable request, to locate its Facilities in order to facilitate design and planning of City improvement projects; and

c. A copy of all FCC filings which relate to the operation of the Telecommunication System in the Franchise Area.

2. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Telecommunication System and the provision of Fiber Optic Telecommunication Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

3. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise and who agree to maintain the confidentiality of all such information. In the event that the City

receives a request under a state “sunshine,” public records or similar law, which shall include but is not limited to chapter 42.56 RCW, for the disclosure of public records Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request. Grantee shall, within a reasonable time but in no event greater than five (5) business days, be entitled to seek a protective order or similar judicial declaration prohibiting disclosure by the City of such public records. If Grantee does not, within a reasonable time but in no event greater than five (5) business days from the receipt of notice from the City, obtain a protected order or similar judicial declaration prohibiting disclosure by the City of such public records, the City shall be entitled to disclose such public records without recourse or liability to Grantee.

4. Throughout the term of this Franchise, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC’s rules and regulations.

Section 21. Customer Service Standards. Grantee shall comply with all applicable federal and state laws and regulations adopted pursuant thereto.

Section 22. City Ordinances and Regulations. Grantee, through this Franchise, is granted the right to operate its Telecommunication System using the Rights-of-Way within the Franchise Area. Such use must be in compliance with generally applicable Municipal Code and Regulations. In the event of a conflict between the Municipal Code and Regulations and this Franchise, this Franchise shall control subject to the limitation of the City’s exercise of the police powers set forth below. Subject to federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City’s police power. Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power so long as the same do not unduly discriminate against Grantee.

Section 23. Franchise Agreement and Modification. This Franchise agreement is a contract between the City and the Grantee, negotiated in good faith and binding upon both parties. The City and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties.

Section 24. Indemnification. The Grantee shall, at its sole cost and expense, indemnify and hold harmless the City, its officials, boards, commissions, agents and employees against any and all third party claims, suits, causes of action, proceedings, and judgments for injury, loss, or damage arising out of the Construction, reconstruction, use, operation, ownership and Maintenance of the Telecommunication System under this Franchise agreement, except that no such requirement shall apply where such claims, suits, causes of actions, proceedings, and judgments for damage are occasioned by the active negligence, gross negligence or intentional acts of the City or its officials, boards, commissions, agents and employees while acting on behalf of the City. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this section, but failure to give notice is not a defense to the indemnification obligations except to the extent of actual prejudice. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, through services of competent counsel satisfactory to the City, settle or compromise any claims arising thereunder. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

Section 25. Insurance.

1. Upon the granting of this Franchise agreement and following simultaneously with the filing of the acceptance of this Franchise agreement and at all times during the term of this Franchise agreement, the Grantee shall obtain, pay all premiums for, and deliver to the City, written evidence of payment of premiums for and a certificate of insurance, naming the City as an additional insured, with a company licensed to do business in the State of Washington with a rating by A.M. Best and Co. of not less than “A” or equivalent, for the following:

a. A comprehensive commercial or general liability insurance policy or policies, issued by an insurance carrier licensed to do business in the State of Washington. Said policy or policies shall pay on behalf of and defend the City, its officials, boards, commissions, agents or employees from any and all claims by any Person whatsoever (including the costs, defense costs, attorneys’ fees and interest arising therefrom) on account of personal injury, bodily injury or death of a Person or Persons or damages to property occasioned by the operations of the Grantee under this Franchise agreement, or alleged to have been so caused or occurred, with a minimum combined single limit of One Million and No/100 Dollars (\$1,000,000) per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage. Grantee may self-insure for first-party property damage only if the Grantee’s self-insurance arrangement adheres to the requirements of Section 25 as provided herein.

b. A comprehensive automobile liability insurance policy or policies, issued by an insurance carrier licensed to do business in the State of Washington. Said policy or policies shall pay on behalf of and defend the City, its officials, boards, commissions, agents or employees from any and all claims by any Person whatsoever (including the costs, defense costs, attorneys’ fees and interest arising therefrom) for bodily injury and property damage occasioned by any vehicle operation of the Grantee, or alleged to have been so caused or occurred, with a minimum liability of One Million and No/100 Dollars (\$1,000,000) per Person and Five Million and No/100 Dollars (\$5,000,000) in any one (1) accident or occurrence.

2. Not less than thirty (30) days prior to expiration of a policy that is not immediately replaced, Grantee shall deliver to City, a substitute, renewal or replacement policy or bond conforming to the provisions of this Franchise agreement.

Section 26. Performance Bond.

1. Grantee will provide a performance bond to the City, in the total sum of \$250,000 while installing or Constructing the Facilities, and then \$50,000.00 thereafter, which will remain in effect for the remaining term of this Franchise. The performance bond will ensure the continued performance of Grantee’s obligations under the Franchise including the payment by the Grantee of any penalties, claims, liens, fees, or taxes due the City which arise by reason of the operation or maintenance of the Facilities or Telecommunication System within the Franchise Area. Grantee will pay all premiums or other costs associated with maintaining the bond.

2. If the Franchise is terminated, or upon expiration or renewal, or transfer of the Franchise, the City will return the original bond or sign the necessary documentation to release the bond promptly if Grantee does not owe funds to the City or is not in default of a material provision of the Franchise.

Section 27. Remedies to Enforce Compliance.

1. This section does not apply to revocation of the Franchise agreement. Whenever the City seeks to enforce the Franchise agreement, it shall first provide written notice to the Grantee of the nature of the problem and requested action, together with any applicable time frame for response. Any time limits here or elsewhere in the Franchise agreement may be modified by written stipulation of the City and Grantee,

except time limits relating to revocation of this Franchise agreement or where otherwise required by law must be approved by the Council.

2. Except in case of urgency or public need relating to management of the public Right-of-Way as reasonably determined by the City, the Grantee has thirty (30) days from receipt of such notice to respond in writing to the City official sending the notice:

- a. contesting it; or
- b. accepting it and agreeing to cure as requested within time limits specified; or
- c. requesting additional time or other modifications. In such event, Grantee shall promptly take all reasonable steps to cure the default, keeping the City informed as to the steps to be taken and a projected completion date.

3. If the City is not satisfied with the Grantee's response, both parties shall meet informally to discuss the matter. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing.

4. No provision of this Franchise affects the right of either party to seek judicial relief from a violation of any provision of this Franchise, or any regulation or directive under this Franchise. The existence of other remedies under this Franchise does not limit the right of either party to recover monetary damages, or to seek judicial enforcement of obligations by specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 28. Revocation.

1. The City may revoke this Franchise agreement and rescind all rights and privileges associated with this Franchise agreement in the following circumstances:

- a. Grantee abandons the Telecommunication System, fails to cure a non-payment of a quarterly franchise fee within 30 days of the required payment date, or terminates the Telecommunication System's operations; or
- b. Grantee attempts to evade any material provision of this Franchise agreement or practices any fraud or deceit upon the City.

2. Prior to revocation of the Franchise agreement, the City shall give written notice to the Grantee of its intent to revoke the Franchise agreement, setting forth the exact nature of the noncompliance. The Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a timely and satisfactory response from the Grantee, it may then seek a revocation of the Franchise agreement by the Council in accordance with this section.

3. At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City "de novo" and to modify or reverse

such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

4. The Council may in its sole discretion take any lawful action that it deems appropriate to enforce the City's rights under the Franchise agreement in lieu of revocation.

Section 29. Transfer of Rights. Neither the Grantee nor any other Person may transfer the Telecommunication System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Telecommunication System in order to secure indebtedness, or (ii) a transfer to any direct or indirect parent, affiliate or subsidiary of Grantee. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

Section 30. Acceptance. Not later than sixty (60) days after passage and publication of this Ordinance, the Grantee must accept the Franchise herein by filing with the City Clerk an unconditional written acceptance thereof. Failure of Grantee to so accept this Franchise within said period of time shall be deemed a rejection thereof by Grantee, and the rights and privileges herein granted shall, after the expiration of the sixty days period, absolutely cease, unless the time period is extended by ordinance duly passed for that purpose.

Section 31. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise agreement due to acts of God or impossibility of performance as recognized in the common law of the State of Washington, to the extent and for such period as such conditions persist. For purposes of enforcement, conditions outside of Normal Operating Conditions are a basis to excuse Grantee's performance, but only to the extent and for such period as such conditions persist. Conditions outside Normal Operating Conditions may also excuse other Franchise obligations where they effectively render performance infeasible or impossible, to the extent and for such period as such conditions persist, but this does not apply as to conditions within the Grantee's reasonable control.

Section 32. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance. In the event that any of the provision of the Franchise are held to be invalid by a court of competent jurisdiction, the Franchise may be modified upon agreement by both parties.

Section 33. Renewal. Any renewal of this Franchise agreement shall be governed by and comply with applicable law.

Section 34. Notice. Any notice or information required or permitted to be given by or to the parties under this Franchise may be sent to the following addresses unless otherwise specified, in writing:

The City: City of Millwood

Attn: City Clerk and Director of Public Works
9103 E. Frederick
Millwood, WA 99206

Grantee:

Forged Fiber 37, LLC c/o AT&T
Attn.: Legal Dept – Network Operations
Re: City of Millwood Franchise (WA)
208 S. Akard Street
Dallas, TX 75202-4206

With a copy to:

E-mail: FF_Right_Of_Way@att.com

Section 35. Non-Waiver. The failure of either party at any time to require performance by the other of any provision of this Franchise will in no way affect the right of the other party to enforce the Franchise. The waiver by either party of any breach of any provision is not a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

Section 36. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof. This Franchise shall also supersede and cancel any previous right or claim of Grantee to occupy the Right-of-Way as herein described.

Section 37. Counterparts. This Franchise agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

Section 38. Applicable Law. This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), any applicable rules, regulations and orders of the FCC, and any other applicable local, State and federal laws, rules, regulations, legislation or orders.

Section 39. Effective Date. This Ordinance shall be in full force and effect five days after publication of the ordinance or a summary thereof occurs in the official newspaper of the City of Millwood as provided by law.

Section 40. Repeal. All ordinances, resolutions, laws, and regulations, or parts thereof in conflict with this ordinance are, to the extent of said conflict, hereby repealed.

PASSED BY THE COUNCIL OF THE CITY OF MILLWOOD THIS ____ DAY OF _____ 2025.

CITY OF MILLWOOD,
Spokane County, Washington

Kevin Freeman, Mayor

ATTEST:

Lisa Cassels, City Clerk

STATE OF WASHINGTON)
) ss:
County of Spokane)

Lisa Cassels, being first duly sworn on oath deposes and says:

I am the Clerk of the City of Millwood, Washington, and the foregoing ordinance entitled “AN ORDINANCE OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO FORGED FIBER 37, LLC, TO CONSTRUCT, MAINTAIN AND OPERATE CERTAIN FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTIES OF THE CITY OF MILLWOOD; AND OTHER MATTERS RELATING THERETO” is the true and correct copy of the City of Millwood’s Ordinance numbered _____ and that the same was posted and published according to law.

Lisa Cassels

SUBSCRIBED AND SWORN TO BEFORE ME THIS ___ DAY OF _____, 2025.

Notary Public in and for the State of
Washington
My Commission expires _____

Accepted by Forged Fiber 37, LLC.

By: _____

Printed Name: _____

Date: _____

The Grantee, Forged Fiber 37, LLC, a limited liability company, for itself, and for its successors and assigns, does accept all of the terms and conditions of the foregoing Franchise.

IN WITNESS WHEREOF, _____ has signed
this _____ day of _____, 20__.

Subscribed and sworn before me this ___ day of _____, 20__.

Notary Public in and for the State of _____,
residing in _____
My commission expires _____