

**CITY OF FLORENCE  
ORDINANCE NO. 7, SERIES 2017**

**An Ordinance Granting Siuslaw Broadband, LLC, Doing Business As (DBA) Hyak, a  
Non-Exclusive Franchise to Use the Public Rights of Way to Provide for the Placement of  
Communications Facilities, Subject to Certain Conditions and Duties as Specified**

RECITALS:

1. Siuslaw Broadband, LLC, dba Hyak (hereinafter "Grantee") has applied to the City of Florence (hereinafter "City") for permission to use certain Public Rights of Way for the placement of a Communication System under, in, along, over and across certain Public Rights of Way in the City to provide Communications Services, including but not limited to, internet, voice, and video services to residents and businesses.
2. The Florence City Council has the authority under the Florence City Code, it's Charter, the Oregon Constitution, and State and Federal law, to grant franchises for the use and occupation of its Rights of Way.
3. Florence City Code (FCC) Title 8, Chapter 7: Right of Way Management, established through Ordinance No. 5, Series 2017, governs the use and occupation of the Public Right of Way by Communications Providers and applies to this Franchise Agreement.

Based on these findings,

THE CITY OF FLORENCE ORDAIN AS FOLLOWS:

1. The terms of the Franchise Agreement with Grantee are shown in Exhibit A.
2. Grantor hereby approves the Franchise Agreement and the terms shown in Exhibit A.
3. This Ordinance shall become effective 30 days after adoption.

*The City Recorder is authorized to administratively correct any reference errors contained herein or in other provisions of the Florence City Code to the provisions added, amended, or repealed herein.*

ADOPTION:

First Reading on the 1st of May, 2017

Second Reading on the 1st of May, 2017

This Ordinance is passed and adopted on the 1st of May, 2017

AYES	5	Councilors: Greene, Preisler, Lacer, Lyddon and Mayor Henry
NAYS	0	
ABSTAIN	0	
ABSENT	0	

  
\_\_\_\_\_  
Joe Henry, Mayor

Attest:

  
\_\_\_\_\_  
Kelli Weese, City Recorder

**EXHIBIT A  
ORDINANCE NO. 7, SERIES 2017**

**Siuslaw Broadband dba Hyak Franchise Agreement**

**SECTION 1. Permission Granted; Applicable Law; Conflicts with City Code.**

- A. Subject to the provisions contained herein, and to the city code, ordinances, and resolutions of the City of Florence, specifically FCC Title 8, Chapter 7 governing the use and occupation of the Public Right of Way, Oregon State Statutes and the Constitution of the State of Oregon, the City hereby grants to Grantee the nonexclusive revocable limited Franchise, right and privilege to construct, install, operate, maintain, and upgrade, a Communication System for the purpose of providing Communications Services, including but not limited to internet, voice, and, video services, subject to FCC Title 8, Chapter 7 in, under, along, over and across Rights of Way, in the City. Nothing herein shall be deemed to convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the Rights of Way for the limited purposes and term stated in this Franchise. The permission granted herein to Grantee shall hereinafter be referred to as "Franchise." As used herein the term "Public Right(s) of Way" or "Right(s) of Way" shall have the meaning as provided in FCC Title 8, Chapter 7.
- B. "Communication System" means Communications Facilities that Communications Providers use to provide Communications Services as all of the above terms are defined by FCC Title 8, Chapter 7.
- C. Grantee shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of this Franchise. Where the terms of this Franchise expressly and directly conflict with the City Code (specifically including Title 8, Chapter 7), the City Code shall prevail.

**SECTION 2. General Conditions.**

- A. Grantee has represented to the City it is authorized to provide Communications Services in Oregon by the Public Utility Commission of Oregon.
- B. There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any City Code provision, ordinance, resolution or statute, and Grantee by its acceptance of this Franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its lawful exercise of such rights or power, heretofore or hereafter enacted or established. Neither the granting of any Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- C. Insurance and Indemnification
  - i. Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property related to the Grantee's

construction or operation of the Communication System and shall indemnify and hold City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Communication System, provided that the City shall give the Grantee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the City for any damages, liability or claims resulting directly from the willful misconduct or sole negligence of the City or for the City's own use of the Communication System.

ii. Insurance.

a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all \$1,000,000 per occurrence C.S.L. owned, non-owned hired autos	
Umbrella Liability	
Umbrella Liability	\$2,000,000 per occurrence C.S.L.

b. The City shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

c. The Grantee shall furnish the City with current certificates of insurance evidencing primary and non-contributory coverage upon request.

D. Whenever the consent of either the City or Grantee is specifically required by City Code or in this Franchise, such consent will not be unreasonably withheld.

**SECTION 3. Plans Approval, Permits and Construction.**

The Communication System herein provided for, shall be constructed, installed, operated, maintained, located, relocated, and removed as specified in Title 8, Chapter 7 of the Florence City Code.

#### **SECTION 4. Franchise Fees**

- A. For the rights granted herein, Grantee agrees to pay to the City 5% of Gross Revenue, as defined by Resolution No. 5 Series 2017, derived by Grantee from the operation of their Facilities in the Right of Way to provide Communications Services, (including leased capacity or leased bandwidth to other telecommunications providers) or \$500, whichever is greater. This fee is payable as set forth in paragraph B below and is payable to the City.
- B. Payment of the fee due the City shall be made on a quarterly basis, within thirty (30) days of the close of each calendar quarter. Payments shall be by check, or a mutually agreeable alternative method, and each payment shall be accompanied by an accounting of gross revenue and a calculation of the amount payable.
- C. The Grantee shall pay interest at the rate of 9% per year for any payment made after the due date.

#### **SECTION 5. Term of Franchise; Amendment.**

The right, privilege and term of Franchise granted herein shall continue and exist for a period of ten (10) years from the date of approval by the City of Florence. This Franchise may be extended with the mutual, written consent from both parties per FCC Title 8, Chapter 7.

#### **SECTION 6. Non-Exclusive Franchise.**

The grant of this Franchise shall not confer any exclusive right, privilege, license or franchise to occupy or use the Rights of Way of the City for delivery of Communications Services or any other purposes, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, subject, however, to the rights granted to Grantee herein. Nothing agreed to in this Franchise is intended to deny or lessen the powers and privileges granted the City under the Constitution and laws of the State of Oregon.

#### **SECTION 7. Cancellation of Franchise.**

The City or Grantee may revoke, alter, suspend, or cancel this Franchise under the terms and conditions provided in FCC Title 8, Chapter 7.

#### **SECTION 8. Notice:**

Communications relating to this Franchise will be deemed given when received, when sent by certified mail, return receipt requested, to the following addresses or as may be later designated by written notice of the other party:

Grantee: Siuslaw Broadband dba Hyak  
2970 Hwy 101  
Florence, OR 97439

City: City of Florence  
Attn: City Manager  
250 Highway 101  
Florence, OR 97439

**SECTION 9. Governing Law.**

This Franchise is governed by and will be construed in accordance with the laws of the State of Oregon without regard to any conflict of laws provision.

**SECTION 10. Severability.**

Nothing in this Franchise is intended to be inconsistent with the State or Federal Law and further neither the City nor Grantee waives any rights granted under State or Federal Law by agreeing to this Franchise.

In the event that any one or more of the provisions contained herein, is, for any reason, held to be unenforceable in any respect under law or regulation, the remainder of this Franchise will not be affected thereby and will continue in full force and effect.

**SECTION 11. Proprietary Information.**

Grantee stipulates that it understands that Oregon law limits the authority of the City to shield from public disclosure information given to the City by Grantee. The parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Grantee because of anticipated mandatory disclosure requirements to third persons. To the extent Grantee has provided documents to the City that constitute business or trade secrets and/or proprietary information, Grantee must provide said information in an envelope marked, "Proprietary Information: Do Not Disclose." The City will exercise good faith efforts to protect the confidentiality of the information provided within the confines of Oregon's Public Records Disclosure requirements. Grantee agrees to indemnify and hold harmless the City for any loss or liability for legal penalties relating to non-disclosure, including costs or attorney's fees because of nondisclosures requested by Grantee under Oregon's open public records law. City promises to provide reasonable notice and opportunity to Grantee to defend and/or seek a protective order preventing disclosure under the open public records law. City agrees not to contest Grantee's motion to intervene in any case involving disclosure of Grantee's records, should Grantee decide to become a third-party intervenor in such a case.

**SECTION 12. Entire Agreement.**

This Franchise Agreement constitutes the entire agreement between Grantee and the City with respect to the subject matter contained and may not be amended or modified except by written document, signed by both parties.

**CITY OF FLORENCE**

ER Reynolds  
Signature

Erin Reynolds  
Print Name

City Manager  
Title

May 3, 2017  
Date

**SIUSLAW BROADBAND, LLC**

[Signature]  
Signature

Robbie Wright  
Print Name

CEO  
Title

5/5/17  
Date