



City of Tualatin

TUALATIN CITY COUNCIL

Monday, November 26, 2012

CITY COUNCIL CHAMBERS
18880 SW Martinazzi Avenue
Tualatin, OR 97062

WORK SESSION begins at 5:00 p.m.
BUSINESS MEETING begins at 7:00 p.m.

Mayor Lou Ogden
Council President Monique Beikman
Councilor Wade Brooksby Councilor Frank Bubenik
Councilor Joelle Davis Councilor Nancy Grimes
Councilor Ed Truax

Welcome! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for Citizen Comments on its agenda - *Item C*, following Announcements, at which time citizens may address the Council concerning any item not on the agenda with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the City website at www.tualatinoregon.gov/meetings, the Library located at 18878 SW Martinazzi Avenue, and on file in the Office of the City Manager for public inspection. Any person with a question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised *live* the day of the meeting through Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org. Council meetings can also be viewed by live *streaming video* on the City's website, the day of the meeting at www.tualatinoregon.gov/meetings.

Your City government welcomes your interest and hopes you will attend the City of Tualatin Council meetings often.

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A **legislative** public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When the Council has finished questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *deny*, or *continue* the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A **quasi-judicial** public hearing is typically held for annexations, planning district changes, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *approve with conditions*, or *deny the application*, or *continue* the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all provided all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 3 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

An Executive Session is a meeting of the City Council that is closed to the public to allow the City Council to discuss certain confidential matters. An Executive Session may be conducted as a separate meeting or as a portion of the regular Council meeting. No final decisions or actions may be made in Executive Session. In many, but not all, circumstances, members of the news media may attend an Executive Session.

The City Council may go into Executive Session for certain reasons specified by Oregon law. These reasons include, but are not limited to: ORS 192.660(2)(a) employment of personnel; ORS 192.660(2)(b) dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) information or records exempt by law from public inspection; ORS 192.660(2)(h) current litigation or litigation likely to be filed; and ORS 192.660(2)(i) employee performance of chief executive officer.



OFFICIAL AGENDA OF THE TUALATIN CITY COUNCIL MEETING FOR NOVEMBER 26, 2012

A. CALL TO ORDER

Pledge of Allegiance

B. ANNOUNCEMENTS

1. Starry Nights and Holiday Lights
2. Recognizing Maureen Smith Upon the Occasion of Her Retirement

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will first ask staff, the public and Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, I) Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

1. Approval of the Minutes for the Work Session and Meeting of November 13, 2012

E. SPECIAL REPORTS

1. Presentation by Citizen Involvement Organization 6 Regarding the Basalt Creek Refinement Study

F. PUBLIC HEARINGS – Legislative or Other

G. PUBLIC HEARINGS – Quasi-Judicial

H. GENERAL BUSINESS

1. Transportation System Plan (TSP) Work Session Follow-Up and Consideration of Projects to be Included in the Final TSP
2. Ordinance No. 1353-12 Telecommunications Franchise Application for Astound Broadband

I. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

J. COMMUNICATIONS FROM COUNCILORS

K. EXECUTIVE SESSION

L. ADJOURNMENT

City Council Meeting**B. 1.****Meeting Date:** 11/26/2012**ANNOUNCEMENTS:** Starry Nights and Holiday Lights

ANNOUNCEMENTS

Starry Nights and Holiday Lights

SUMMARY

Kick off the holidays by joining your friends and neighbors on a special night filled with thousands of twinkling lights, hundreds of song-filled voices and the lighting of the floating holiday tree.

This free family event will be held on Friday, December 7, 2012 at the Tualatin Commons (8325 SW Nyberg Street). Starting at 5:30 pm choirs and musical groups from Magic Years Preschool; Byrom, Tualatin, and Bridgeport Elementary Schools; Hazelbrook and Twality Middle Schools; and Tualatin High School will perform holiday songs. There will be kids' crafts; face painting, refreshments, and Santa will make a visit!

Celebrate with your community and let Starry Nights and Holiday Lights warm you into the holiday spirit.

Attachments[PowerPoint Starry Nights and Holiday Lights](#)

★ ★ ★ *The City of Tualatin's* ★ ★ ★
Starry Nights & Holiday Lights

★ *Friday, December 7, 2012 5:30-8:30 pm* ★



- ★ *Join us at The Lake at Tualatin Commons for:* ★
- *The lighting of Tualatin's floating holiday tree.*
 - *Children's choirs from Tualatin schools.*
 - *Refreshments and a visit from Santa!*

TODD
Construction INC.

★ ★ ★ **FREE** ★ ★ ★
*The Tualatin Commons is located at 8325 SE Nyberg Street, Tualatin, OR 97062
For more information call 503-691-3061 or go to www.citytualatin.or.us.*



City of Tualatin



Performances by:

- Magic Years Preschool Choir**
- Byrom Elementary Choir**
- Bridgeport Elementary Holiday Choir**
- Tualatin High School Crimsonnaires**
- Tualatin Elementary Choir**
- Hazelbrook Middle School Choir**
- Twality Middle School Small Ensembles**
- Twality Middle School Concert Choir**
- Tualatin High School Brass Ensemble**



★ ★ ★ *The City of Tualatin's* ★ ★ ★
Starry Nights & Holiday Lights

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STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Maureen Smith, Deputy City Recorder

DATE: 11/26/2012

SUBJECT: Approval of the Minutes for the Work Session and Meeting of November 13, 2012

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes of the work session and meeting of November 13, 2012.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

Attachments: A - Work Session Minutes of November 13, 2012
B - Meeting Minutes of November 13, 2012



OFFICIAL MINUTES OF TUALATIN CITY COUNCIL WORK SESSION FOR NOVEMBER 13, 2012

Present: Mayor Lou Ogden; Council President Monique Beikman; Councilor Wade Brooksby; Councilor Frank Bubenik; Councilor Nancy Grimes; Councilor Ed Truax

Absent: Councilor Joelle Davis

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Community Development Director Alice Rouyer; Community Services Director Paul Hennon; Finance Director Don Hudson; Planning Manager Aquilla Hurd-Ravich; Information Services Manager Lance Harris; Police Captain Mark Gardner; Management Analyst Ben Bryant; Deputy City Recorder Maureen Smith

1. CALL TO ORDER

Mayor Ogden called the work session to order at 6:04 p.m., recessed at 6:58 p.m., and continued the work session at 8:04 p.m.

2. Ordinance Regulating Towing Practices

City Manager Sherilyn Lombos began the continued discussion of regulating towing practices on private property, and explained new City Attorney Sean Brady wanted to come up to speed on the issue that was started by the former City Attorney.

City Attorney Brady presented a PowerPoint and gave an overview on the topic of towing on private property, covering federal law and preemption exceptions, state law, time of tow, hours of operation of storage yards, business activities in relation to towing companies, and options for a City ordinance.

Review and considerable discussion followed on state law regulations of what is required by towing companies at the time of the tow, storage yards hours of operation, signage requirements, and differences between private property towing versus public. The City of Portland's fees for private property towing and storage were mentioned. What was proposed in the previous draft ordinance and a summary of public comments received were reviewed, with most concerns about signage requirements and cost of replacing signs, etc.

Discussion continued. Adequate signage and follow-up notification after a vehicle has been towed, where a vehicle has been towed, and being able to retrieve as soon as possible, having the Police Department aware of tows, and tow companies registering with the City were some of the issues raised that were of importance to several councilors. There was reluctance by Mayor Ogden in his view, to set up bureaucracy-type of environment and questioned whether there are any real issues in Tualatin.

It was asked and Councilors Beikman, Brooksby, Bubenik and Grimes were in agreement that staff bring back an ordinance regulating towing practices in the City.

3. Oregon Passenger Rail Update

An update and PowerPoint on the Oregon Passenger Rail Study was presented by Management Analyst Ben Bryant. An overview of transit options and alignments that are being considered were reviewed. Eligibility for federal funding to construct a high-speed rail line requires that the Oregon Department of Transportation (ODOT) conduct a study following National Environmental Policy Act (NEPA) requiring consideration of multiple alignments, known as "alternatives analysis." Potential alignments were reviewed and a map of existing rail lines in the southwest region was shown.

The next steps in the project were reviewed. It is a three year process, which in 2012, will be identifying alternative alignments, 2013 will be public outreach, getting the alternatives out to the public. and 2014 will be selection of a preferred alignment. Brief discussion followed. Staff noted that while there are significant fiscal constraints of the project, still need to go through the process. Staff will monitor its progress and any changes and keep Council posted, while not spending extra time on the project until more is known.

4. Southwest Corridor Transit Options

Community Development Director Alice Rouyer and Management Analyst Ben Bryant presented an update on Southwest Corridor Transit Options. The Southwest Corridor Plan is a comprehensive land use and transportation plan focused on identifying and prioritizing public investments in the corridor between downtown Portland and Sherwood for the next 15 years. One of the most significant investments that is envisioned to be made in this corridor is transit service.

A PowerPoint was given outlining the existing transit service, Tualatin's transit service, and potential transit modes and options, one of which is bus rapid transit or BRT. Alignments that are being considered were reviewed. Metro and TriMet will study the options and come back with various costs and station locations, etc. The next steps in the project were reviewed which include an Economic Development Summit to be held in Tigard to discuss this project, a steering committee meeting, an open house in Tualatin, and an elected official/steering committee work shop.

Brief discussion followed.

5. Council Meeting Agenda Review, Communications & Roundtable

CONSENT AGENDA REVIEW

The City Council did not have any comments or changes to the Consent Agenda.

6. ADJOURNMENT

The Work Session recessed at 6:58 p.m. reopened at 8:04 p.m, and adjourned at 8:26 p.m.

Sherilyn Lombos, City Manager


Maureen Smith Maureen Smith, Recording Secretary



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR NOVEMBER 13, 2012

Present: Mayor Lou Ogden; Council President Monique Beikman; Councilor Wade Brooksby; Councilor Frank Bubenik; Councilor Nancy Grimes; Councilor Ed Truax

Absent: Councilor Joelle Davis

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Community Development Director Alice Rouyer; Community Services Director Paul Hennon; Finance Director Don Hudson; Planning Manager Aquilla Hurd-Ravich; Information Services Manager Lance Harris; Teen Program Specialist Julie Ludemann; Police Captain Mark Gardner; Deputy City Recorder Maureen Smith

A. CALL TO ORDER

Mayor Ogden called the meeting to order at 7:01 p.m.

The Pledge of Allegiance was led by Councilor Grimes.

B. ANNOUNCEMENTS

1. Tualatin Youth Advisory Council November Update

Members of the Tualatin Youth Advisory Council were present and gave a brief PowerPoint presentation on events they have participated in the last month and their participation in upcoming events.

2. Recognition of the Tualatin Recipients of the 2012 Governor's Awards

Volunteer Coordinator Victoria Eggleston presented the Tualatin recipients of the annual statewide Governor's Volunteer Awards for 2012, and gave a brief background on the nominations process. The recipients of the awards were present. Congratulations to Tualatin High School's Life Skills Class for winning the Governor's Award in the category of Outstanding Youth Volunteer Program. The Life Skills Class provides opportunities for students with disabilities to contribute to their community while learning basic life skills. Congratulations to Ryan Houlberg, who was the winner of the Regional Governor's Outstanding Youth Volunteer Award, in recognition of his 15 years of service with Tualatin. Marge Congress was also given Honorable Mention for her work with the Friends of the Library.

C. CITIZEN COMMENTS

Mike Wright, Tualatin, OR , said he represented a growing group of residents on an old topic that has risen to the surface, and that he received a letter to remove chickens he has on his property. He said there are approximately ten to eleven property owners that currently have chickens, and close to 50 people that have shown their support for the allowance of chickens. He noted some months back there was a previous discussion held by Council on the issue of chickens but a decision was not rendered at that time. Mr. Wright said he and the group of residents are interested in moving forward with this issue and requested to have a moratorium on the present chicken owners, hold down enforcement, and take the issue through the Citizen Involvement Organization (CIO) process.

Discussion followed and it was explained that issues such as this are dealt with on a complaint-basis, and how the Community Services Officer notification process works. Council discussed whether there was interest to hold at a future work session to discuss whether there should be a moratorium imposed. It was noted by City Attorney Sean Brady that Council could impose a moratorium by resolution. Concern was expressed by some councilmembers on applying a moratorium, and for as many citizens that want to be able to have chickens, there are just as many that do not. Council determined to have a discussion on the moratorium issue at the December 10, 2012 work session.

D. CONSENT AGENDA

MOTION by Councilor Nancy Grimes, SECONDED by Councilor Frank Bubenik to approve the Consent Agenda as read.

Vote: 6 - 0 MOTION CARRIED

1. Approval of the Minutes for the Work Session and Meeting of October 22, 2012
2. Parks System Development Charge (SDC) Annual Report for Fiscal Year 2011/2012
3. Approval of a New Liquor License Application for Millers Homestead Restaurant
4. Approval of a Change of Ownership Liquor License Application for Pacific Northwest Petroleum Inc., trade name "76 of Tualatin"
5. Recommendations from the Council Committee on Advisory Appointments

E. SPECIAL REPORTS

1. Quarterly Financial Update
-

Finance Director Don Hudson gave a PowerPoint on the first quarter of Fiscal Year 2013. The General Fund revenue to date was reviewed and explained when funds are disbursed to the City. It was noted the Building Division budget is doing well, mostly due to a project that broke ground recently. Director Hudson continued with review of the past quarter's expenditures and revenues. The City has met the criteria for the 21st year on the Government Finance Officers Association and received an award. Real market values in Tualatin were reviewed, and overall increase of 1.9% increase, from the projected 1%, which will get more funds than projected. Revenue and operations funds are tracking as expected, and continue to experience fiscal stability.

F. PUBLIC HEARINGS – Legislative or Other

G. PUBLIC HEARINGS – Quasi-Judicial

H. GENERAL BUSINESS

1. Ordinance No. **1352-12** Amending Medium Low Density Residential Planning District (RML) Conditional Uses; and Amending TDC 41.030 (PTA-12-04)
-

MOTION by Councilor Truax, SECONDED by Councilor Brooksby for a first reading by title only. MOTION by Council President Beikman, SECONDED by Councilor Grimes for a second reading by title only. The poll was unanimous. [Davis absent.] MOTION CARRIED. MOTION by Council President Beikman, SECONDED by Councilor Grimes to adopt the ordinance. MOTION CARRIED.

I. ITEMS REMOVED FROM CONSENT AGENDA

J. COMMUNICATIONS FROM COUNCILORS

Councilor Bubenik mentioned the grand opening of the Barnes and Noble bookstore in Bridgeport Village and the Library Foundation's fundraiser in connection with the opening. Councilor Bubenik also mentioned the State is issuing a new license plate called "Keep Kids Safe" and that a portion of the funds from the license plate fee will be redistributed back to the county where the plate is licensed to support programs in the county.

K. ADJOURNMENT

The meeting adjourned at 8:02 p.m.

Sherilyn Lombos, City Manager



Maureen Smith / Recording Secretary

City Council Meeting

E. 1.

Meeting Date: 11/26/2012

SPECIAL REPORTS: Presentation by Citizen Involvement Organization No. 6 Regarding the Basalt Creek Refinement Study

SPECIAL REPORTS

Presentation by Citizen Involvement Organization 6 Regarding the Basalt Creek Refinement Study

Attachments

A - CIO 6 Basalt Creek Position Statement

B - PowerPoint Presentation from CIO 6

Mayor: Lou Ogden

November 16, 2012

City Council Members: Beikman, Brooksby, Bubenik, Davis, Grimes, Truax

City of Tualatin: Sara Singer, Ben Bryant

To all it may concern,

The Executive Board of CIO6 would like to share the voice of the CIO6 community and their input as it pertains to the Basalt Creek Refinement Plan.

First we would like to share the appreciation that has been voiced for the City seeking input in the planning process for Tualatin's future.

While Board members received e-mails, comment forms and attended multiple venues to discuss the options being proposed, the messages conveyed were simple, clear and consistent. It all came down to:

- Livability
- Safety
- Traffic impacts on the neighborhoods.

Tualatin residents both public and private share a common vision when it comes to livability and safety. We see it expressed in our City Charter, Tualatin Tomorrow and TSP goals. It is why so many have chosen to move here and become part of the community.

To apply those messages to the location of a highway whose sole purpose is to move large amounts of traffic from the center of the city to its periphery, would be in violation of the trust of its neighborhoods to locate it within close proximity to those neighborhoods. Certainly not when there are other options available.

Livability – The current issue is the placement of a highway...the whole story must include the future development of commercial properties adjacent it. One concern shared by many is a buffer (agricultural or City/CountyPark) be created between any commercial activities and existing neighborhoods.

Safety – The addition of large quantities of idling trucks at a newly created intersection could add pollutants within close proximity to existing neighborhoods and schools.

Traffic Impacts – The lure of a highway to bypass Tualatin will be attractive to many. At the first sign of congestion, there are concerns of traffic backing up into the neighborhoods. With the goal of guiding traffic from Tonquin to the I5/Elligsen interchange, a most direct route could lessen the attraction.

While the engineering studies have focused on cost, environmental impacts, constructability, etc. there has not been any livability or safety concerns weighed in the "Evaluation Summary" matrices.

Please consider the following:

Evaluation Measure	East - West	Diagonal	Improve Existing	Hybrid
Network Cost	\$139M	\$130M	\$82M	
Livability	---	/	+	/
Safety	---	/	+	/
Traffic Impacts	---	-	+	-

+ Performs well / Performs adequately - Does not perform well --- Performs poorly

The residents of southeast Tualatin are very much in favor of routing traffic out of the center of the city, past its schools and neighborhoods. The farther that traffic is routed from existing schools and neighborhoods (and closer to existing commercial areas) the more alignment with community goals.

- Livability
- Safety
- Traffic impacts on the neighborhoods

Summary:

The citizens in Tualatin most affected by this plan are seeking a route that is as far south, and close to the existing industrial / commercial area as possible, in addition to ensuring that there is green / park space buffer between the proposed highway and existing Tualatin communities.

The decisions we make today will have a very permanent and long lasting effect on our homes, neighborhoods and lives.

Thank you for allowing the CIO's to gather community input and weigh in on the future planning and development of our great city.

Respectfully,

Willie Fisher - *President*

Steve Caporale - *Vice-President*

Peggy Fisher - *Secretary*

Vacant - *Treasurer*

Chris Burchill - *Land Use Officer*



Citizens
Involvement
Organization 6

Residents representing
South East Tualatin

Board Members

- Willie Fisher
- Steve Caporale
- Peggy Fisher
- Chris Burchill

Basalt Creek Refinement Plan

- Definition / Scope:

“expected to generate growing freight and work---related travel demands on the transportation network that runs through the Basalt Creek area”.

Basalt Creek Transportation Refinement Plan Technical Report

Executive Summary

Washington County

Basalt Creek Refinement Plan

- Messages conveyed consistently expressed concern for:
 - Livability
 - Safety
 - Traffic impacts on existing neighborhoods

Neighborhood Demographics

- 970 residences
- Schools / Athletic Facilities
- Places of Worship
- Day Care facilities
- Swim Center
- Biking activities
- Jogging / Running activities
- Bus Stops

Wash. Co. Evaluation Results

Evaluation Measure	East-West	Diagonal Hybrid	Diagonal	Improve Existing
Network Cost	\$139M	\$149M	\$130M	\$82M
I-5 Connection Cost	\$72-82M*	\$34-44M	\$34-44M	\$34-44M
Ability to Phase	+	+	+	+
Supportive of Development	+	✓	✓	-
Environmental Impact	-	■	■	+
Consistency with RTP	+	+	+	✓
Traffic Operations	+	-**	-	■
Constructability	+	✓	✓	+

Sources: DKS Associates and Quincy Engineering, 2012

- + Performs well
- ✓ Performs adequately
- Does not perform well
- Performs poorly

Neighborhood Evaluation Results

Evaluation Measure	East-West	Diagonal Hybrid	Diagonal	Improve Existing
Network Cost	\$139M	\$149M	\$130M	\$82M
I-5 Conn. Cost	\$72-82M	\$34-44M	\$34-44M	\$34-44M
Livability				
Safety				
Traffic Impacts				

Recommendations

- Route the proposed highway as far south, and close to existing industrial/commercial areas as possible
- Plan for green space / park areas between the proposed highway and Tualatin communities
- Include livability and safety as key metrics in the selection process

CIO 6 Residents

Thank You for asking





STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Linda Odermott, Paralegal
Sean Brady, City Attorney

DATE: 11/26/2012

SUBJECT: Ordinance No. 1353-12 Telecommunications Franchise Application for Astound Broadband

ISSUE BEFORE THE COUNCIL:

Council will consider a Telecommunication Franchise Application submitted by Astound Broadband, LLC.

RECOMMENDATION:

Staff recommends Council approve the Telecommunication Franchise application submitted by Astound.

EXECUTIVE SUMMARY:

Astound Broadband wishes to run Fiber Optic in the City of Tualatin public right-of-way. The Tualatin Municipal Code (TMC) 10-1-010(7) requires a valid franchise agreement in order to use the City's public right-of-way and that all telecommunications carriers providing facilities or services within the City, or passing through the City, register and comply with the requirements noted in TMC 10-1-050 - 10-1-630.

Astound has indicated that currently it has no intention of providing service to citizens of the City of Tualatin. Instead, Astound wishes to utilize the City's right-of-way as a path to serve other communities. The Franchise Agreement, attached as *Exhibit B*, is similar to an agreement Astound executed with the City of Portland. The terms of the City of Tualatin Agreement state that Astound shall pay the greater of either (a) the Minimum Annual Franchise Fee of \$2,500; or (b) 5% of Astound's Gross Revenues (sale of facilities not included in total) and would be in effect for ten (10) years from the effective date.

TMC 10-1 defines the registration and application process used for Telecommunications Franchises. Astound Broadband has complied with this process by submitting the required

documents and information as noted in *Exhibit A* attached. The application documents include: the identity of the Applicant; a description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities; engineering plans, specifications, and a network map of the facilities to be located within the public right-of-way in the City; the areas of the City the applicant desires to serve, and a preliminary construction schedule for buildout of the entire franchise area; information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities; and an accurate map showing the location of any existing facilities. Astound has submitted the appropriate fees, business license application and Certificates of Insurance as outlined in the TMC. Additionally, Astound has completed negotiations with the City regarding a Franchise Agreement as noted in *Exhibit B* attached.

Attachments: A - Application Documents
 B - Ordinance No. 1353-12 Re: Franchise Agreement

Linda Odermott

From: Jim Penney [jpenney@wavebroadband.com]
Sent: Wednesday, October 31, 2012 4:34 PM
To: Linda Odermott
Cc: Karen Daniher; Steve Friedman; Mike Mance; David Von Moritz; Sean T. Brady
Subject: Astound Broadband / City of Tualatin - Telecom Franchise Application
Attachments: Astound Broadband, LLC - Certificate of Formation.pdf; Astound Broadband, LLC - Registration in Oregon.pdf; OPUC Order Granting CPCN to Astound, 3-12-09.pdf; City of Tualatin Permit ALL.PDF

Hi Linda, following up on Sean's email below, I'm providing the information called for in the Tualatin City Code to be submitted in connection with a franchise application. As mentioned in my earlier email, we are glad to complete and submit an official application form if there is one. If just this email will be sufficient please forward it to the right people in the Public Works group and to whomever else it needs to be sent.

I'll look forward to receiving Sean's draft of the proposed telecom franchise in the next day or two. We appreciate your help in expediting this process and will do everything possible to assist in getting this matter on the City Council's agenda for its November 13 meeting.

10-1-260 Application.

Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:

(1) The identity of the applicant.

The applicant is Astound Broadband, LLC. The applicant is referred to as "Astound" in the responses below. Astound is a limited liability company formed and existing under Washington law. Astound does business under the trade names Astound Broadband and Wave Broadband. Attached is a copy of the Certificate of Formation issued by the Secretary of State of the State of Washington for Astound. Also attached is the Certificate issued by the Oregon Secretary of State showing that Astound is authorized to transact business in Oregon.

(2) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.

Astound does not anticipate providing any services within the City of Tualatin at the outset. Astound will be constructing fiber optic cable facilities to transit through the City to complete a redundant fiber optic loop to the Internet point of presence at the Pittock Building in downtown Portland.

(3) Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities.

See the attached Construction Permit Application already submitted to Public Works along with the engineering drawings showing the proposed route of the facilities to be installed.

(4) The area or areas of the City the applicant desires to serve and a preliminary construction schedule for buildout to the entire franchise area.

As noted above, Astound does not anticipate providing any services within the City of Tualatin at the outset. If Astound later determines to offer services to customers in the City Astound will provide a map showing the areas to be served and a preliminary build out schedule.

(5) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.

See the response to item 1 above. Astound's affiliate WaveDivision VII, LLC holds a pole attachment agreement with Portland General Electric authorizing the attachment of wires, cables and related distribution facilities to poles owned by Portland General Electric. Also attached is a copy of the Order of the Oregon Public Utilities Commission granting a certificate of authority to Astound.

(6) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease. [Ord. 1057-00, 9/25/00]

Astound will not be using any existing telecommunications network facilities in the City.

10-1-270 Application and Review Fee.

(1) Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.

(2) An application and review fee of \$2,000 shall be deposited with the City as part of the application filed pursuant to **TMC 10-1-260**. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise. [Ord. 1057-00, 9/25/00]

A check for \$2,000 will be delivered to the City within the next day.

Please don't hesitate to contact me if you have questions on any of the responses above or the attached documents.

Jim Penney

Executive Vice President Business and Legal Affairs
WaveDivision Holdings, LLC
Wave Broadband and Astound Broadband
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Phone: 425-896-1891
Fax: 425-896-1911
Email: jpenney@wavebroadband.com

From: Sean T. Brady [mailto:SBrady@ci.tualatin.or.us]
Sent: Wednesday, October 31, 2012 3:30 PM
To: Jim Penney
Cc: Karen Daniher; Steve Friedman; Mike Mance; David Von Moritz; Linda Odermott
Subject: RE: Wave / City of Tualatin - Telecom Franchise Application

Jim

I received your email. Since Astound has the CLEC, I think it makes sense that they have the franchise with the City. If you could submit the material to Linda Odermott (cc'd on this email) with that information, that would be great. Thanks.

Sean T. Brady
City Attorney
City of Tualatin | Legal Services
18880 SW Martinazzi Avenue
Tualatin, OR 97062-7092
503.691.3015 | Fax: 503.692.0147

www.tualatinoregon.gov
sbrady@ci.tualatin.or.us

From: Jim Penney [<mailto:jpenney@wavebroadband.com>]
Sent: Monday, October 29, 2012 3:18 PM
To: Sean T. Brady
Cc: Karen Daniher; Steve Friedman; Mike Mance; David Von Moritz; Linda Odernott
Subject: RE: Wave / City of Tualatin - Telecom Franchise Application

Yes, the Portland franchise was issued to Astound Broadband, LLC. If it's cleaner/easier for the city we have no objection to following the same path here.

Jim Penney

Executive Vice President Business and Legal Affairs
WaveDivision Holdings, LLC
Wave Broadband and Astound Broadband
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Phone: 425-896-1891
Fax: 425-896-1911
Email: jpenney@wavebroadband.com

From: Sean T. Brady [<mailto:SBrady@ci.tualatin.or.us>]
Sent: Monday, October 29, 2012 3:13 PM
To: Jim Penney
Cc: Karen Daniher; Steve Friedman; Mike Mance; David Von Moritz; Linda Odernott
Subject: RE: Wave / City of Tualatin - Telecom Franchise Application

Hi Jim,

Thank you for the information. I will see if we have a standard form and shoot that to you if we do. As a follow-up, I was told by Ms. Daniher that you do business under your CLEC as Astound. That is also what Portland's franchise refers to. Please clarify. Thanks.

Sean T. Brady

City Attorney
City of Tualatin | Legal Services
18880 SW Martinazzi Avenue
Tualatin, OR 97062-7092
503.691.3015 | Fax: 503.692.0147
www.tualatinoregon.gov
sbrady@ci.tualatin.or.us

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1440

In the Matter of)	
)	
ASTOUND BROADBAND, LLC)	ORDER
)	
Application for a Certificate of Authority to)	
Provide Telecommunications Service in Oregon)	
and Classification as a Competitive Provider.)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On February 5, 2009, Astound Broadband, LLC (Applicant) filed an application for certification to provide telecommunications service in Oregon as a competitive provider. Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order.

Applicant also proposes to provide interexchange switched service (toll) and non-switched, private line service (dedicated transmission service) statewide in Oregon. Applicant indicates that it intends to construct facilities and operate as a facilities-based provider, and operate as a reseller, for intraexchange and interexchange service. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant will not directly provide operator services as defined in OAR 860-032-0001 and will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

The Commission served notice of the application on February 18, 2009. No protests or requests to be made parties of the proceeding were filed.

Based on the record in this matter, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations listed in the appendices provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, Sprint Communications, Qwest Corporation, Verizon Northwest Inc., and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Public Interest

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Astound Broadband, LLC to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the

telecommunications utilities and cooperative corporations listed in the appendices, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

Conditions of the Certificate

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications providers that have been issued a certificate of authority by the Commission.
2. Applicant shall make quarterly contributions to the Oregon Universal Service fund based on a Commission approved schedule and surcharge percentage assessed on all retail intrastate telecommunications services sold in Oregon, pursuant to ORS 759.425. If Applicant bills the surcharge to its end-users, Applicant shall show the charges as a separate line item on the bill with the words "Oregon Universal Service Surcharge ____%".
3. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to ensure that all users of its services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' Automatic Number Identification telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point. Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.

4. For purposes of distinguishing between local and toll calling, Applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
5. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
6. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
7. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.

Competitive Zones

All exchanges of the telecommunications utilities and cooperative corporations listed in the appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

Dedicated Transmission Service

The telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order. See Order No. 93-1850, docket UM 381.

Local Exchange Switched Service

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility. Any telecommunications utility exempt under ORS 759.040, listed in Appendix A, has pricing flexibility for local exchange service. By Order No. 96-021, at page 82, pursuant

to ORS 759.050(5), the Commission established procedures whereby telecommunications utilities would be granted pricing flexibility for local exchange switched services. Qwest has complied with those procedural requirements for all of its exchanges. Verizon has complied with those procedural requirements for forty-three of its forty-four exchanges.

ORDER

IT IS ORDERED that:

1. The application of Astound Broadband, LLC is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act). Commission Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or subsequent Commission order.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utilities and cooperative corporations listed in the appendices to this order.

6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

Made, entered, and effective MAR 12 2009.



A handwritten signature in black ink, appearing to read "Lee Sparling", is written over a horizontal line.

Lee Sparling
Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

APPENDIX A

CP 1440

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Eastern Oregon, Inc.
CenturyTel of Oregon, Inc.
Qwest Corporation
United Telephone Company of the Northwest/Embarq
Verizon Northwest Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Malheur Home Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascades Telephone Company

APPENDIX A
PAGE 1 OF 1

APPENDIX B

CP 1440

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.

APPENDIX B
PAGE 1 OF 1



Secretary of State
Corporation Division
255 Capitol Street NE, Suite 151
Salem, OR 97310-1327

Phone: (503)986-2200
Fax: (503)378-4381
www.filinginoregon.com

Registry Number: 579029-92
Type: FOREIGN LIMITED LIABILITY COMPANY

Next Renewal Date: 02/11/2010

ASTOUND BROADBAND, LLC
401 KIRKLAND PARKPLACE STE 500
KIRKLAND WA 98033

Acknowledgment Letter

The document you submitted was recorded as shown below. Please review and verify the information listed for accuracy.

If you have any questions regarding this acknowledgement, contact the Secretary of State, Corporation Division at (503)986-2200. Please refer to the registration number listed above. A copy of the filed documentation may be ordered for a fee of \$5.00. Submit your request to the address listed above or call (503)986-2317 with your Visa or MasterCard number.

Document

APPLICATION FOR AUTHORITY

Filed On
02/11/2009

Jurisdiction
WASHINGTON

Name

ASTOUND BROADBAND, LLC

Principal Place of Business

401 KIRKLAND PARKPLACE STE 500
KIRKLAND WA 98033

Registered Agent

CORPORATION SERVICE COMPANY
285 LIBERTY ST NE
SALEM OR 97301

Mailing Address

401 KIRKLAND PARKPLACE STE 500
KIRKLAND WA 98033

THEJOH
ACK
02/11/2009



Phone: (503) 986-2200
Fax: (503) 378-4381

Application for Authority to Transact—Foreign Limited Liability Company

Secretary of State
Corporation Division
255 Capitol St. NE, Suite 151
Salem, OR 97310-1327
FilingInOregon.com

FILED

FEB 11 2009

OREGON
SECRETARY OF STATE

REGISTRY NUMBER: 579029-92
For office use only

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAME ASTOUND BROADBAND, LLC

NOTE: (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.") Must be identical to the name on the Certificate of Existence. See #3.

2) STATE OR COUNTRY OF ORGANIZATION

WASHINGTON

8) ADDRESS OF PRINCIPAL OFFICE OF THE BUSINESS

401 KIRKLAND PARK PLACE, SUITE 500
KIRKLAND, WA 98033

Date of Organization: 4/19/2008

3) CERTIFICATE OF EXISTENCE

A certificate of existence, current within 60 days of delivery to this Division, authenticated by the official having custody of the organization, is attached.

9) ADDRESS WHERE THE DIVISION MAY MAIL NOTICES

401 KIRKLAND PARK PLACE, SUITE 500
KIRKLAND, WA 98033

4) DURATION (Please check one.)

Latest date upon which the Limited Liability Company is to dissolve is _____

Duration shall be perpetual.

10) IF THIS LIMITED LIABILITY COMPANY IS NOT MEMBER MANAGED, CHECK ONE BOX BELOW.

This limited liability company is managed by a single manager.

This limited liability company is managed by multiple manager(s).

5) THIS FOREIGN LIMITED LIABILITY COMPANY SATISFIES THE REQUIREMENTS OF ORS 63.714(3).

6) NAME OF OREGON REGISTERED AGENT

CORPORATION SERVICE COMPANY

7) REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS (Must be an Oregon Street Address, which is identical to the registered agent's business office.)

285 LIBERTY STREET NE
SALEM, OR 97301

11) EXECUTION (At least one member or manager must sign.)

Signature

Printed Name

Title

[Signature]

JAMES A. PENNEY

EXECUTIVE VICE PRESIDENT

for David Divistar Holdings, LLC Member and Manager

12) CONTACT NAME (To resolve questions with this filing.)

DANIELLE WILSON

DAYTIME PHONE NUMBER (Include area code.)

425-896-1828

FEES


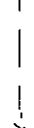
Required Processing Fee \$50
Confirmation Copy (Optional) \$5

Processing Fees are nonrefundable.
Please make check payable to "Corporation Division."

NOTE:

Fees may be paid with VISA or MasterCard. The card number and expiration date should be submitted on a separate sheet for your protection.

NOTES:

1. ALL WORK AREAS TO BE RESTORED TO LIKE OR BETTER CONDITION.
2. ALL OTHER UTILITIES ARE BASED OFF EXISTING LOCATES OR UTILITY STRUCTURES.
3. IT IS THE CONSTRUCTION CONTRACTORS RESPONSIBILITY TO CALL FOR LOCATES BEFORE DIGGING.
4. BORE/DRILL SYM. - 
5. TRENCH SYMBOLOLOGY - 

JOB NAME CONTACT INFO:
 Job Name: Wave Inter-Tie
 Contact: Mike Mance
 Title: Construction/NESC
 Mobile - (503) 793-5650
 Office - (425) 576-8200 EXT 53111
 Email - mmance@wavebroadband.com



660 Gantt Circle
 Woodburn, OR 97071



4120 SE INTERNATIONAL WAY
 MILWAUKEE, OR 97222
 Email: kbong@atnet Design By: K & B (503) 659-6041

SITE ADDRESS:

SW Boones Ferry Rd
 Tualatin, OR
 2S1W23, 2S1W24

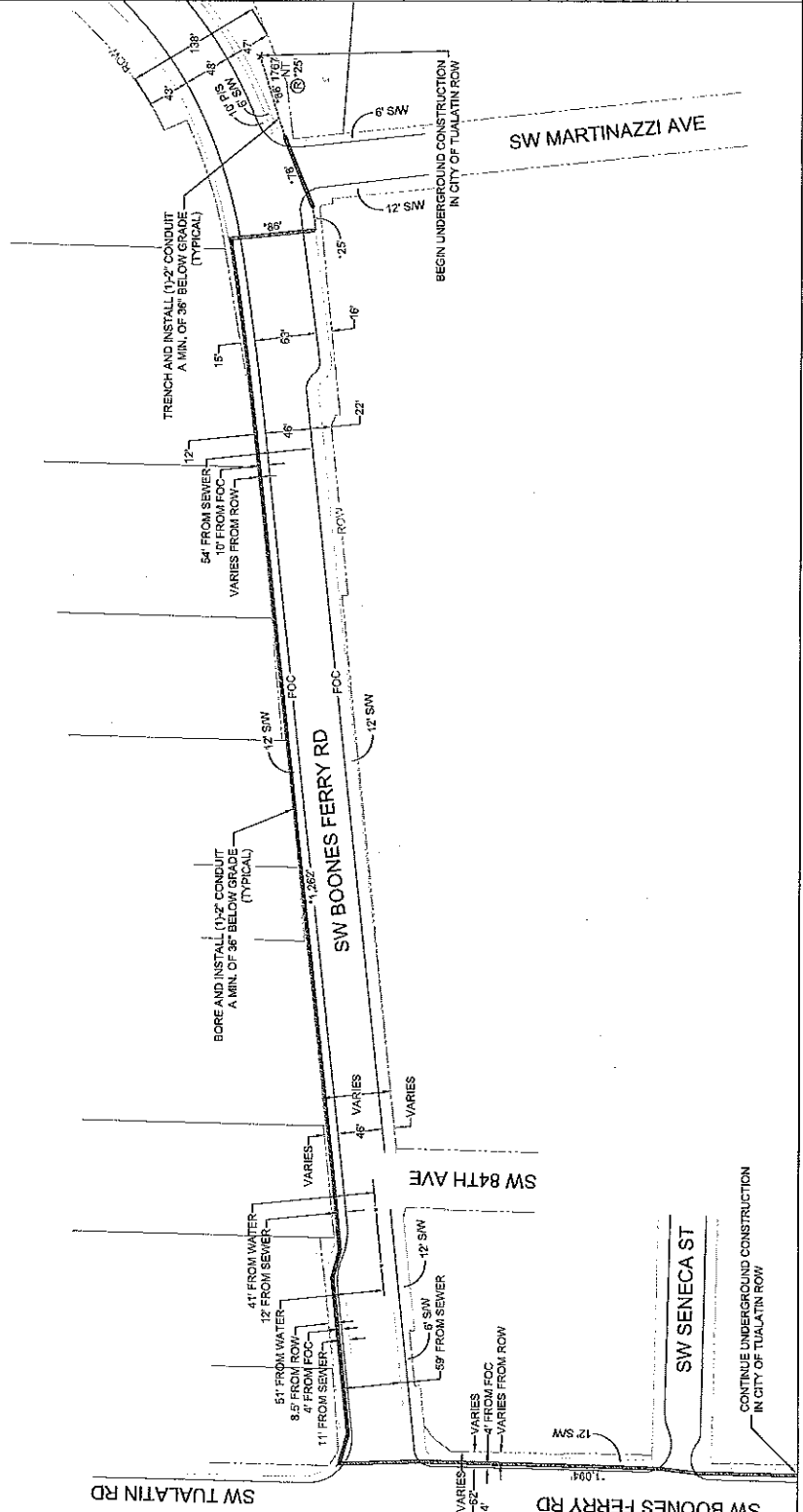
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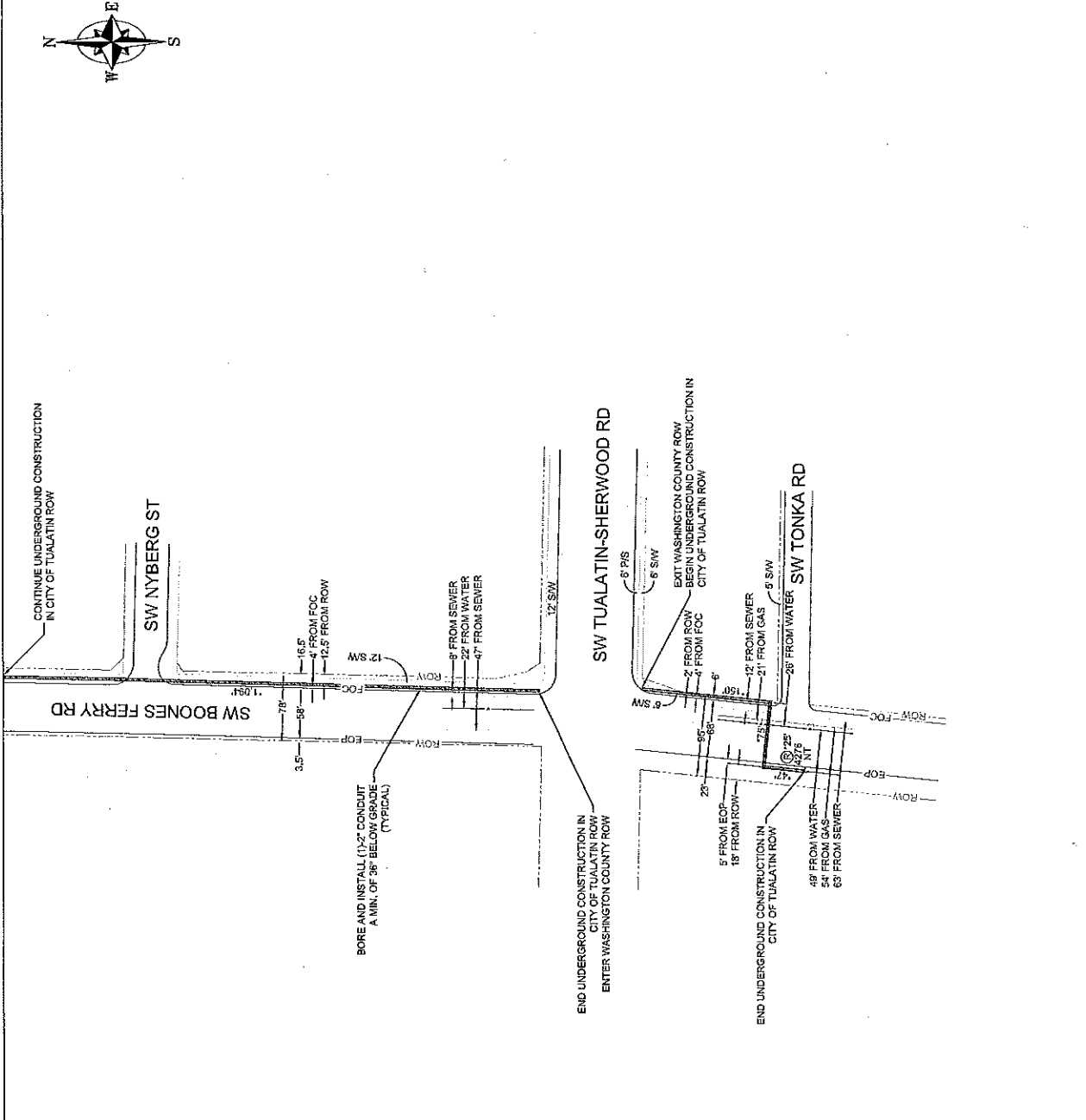
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 TITLE: _____

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

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SHEET 1 OF 2
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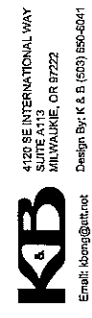




NOTES:

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3. IT IS THE CONSTRUCTION CONTRACTORS RESPONSIBILITY TO CALL FOR LOCATES BEFORE DIGGING.
4. BORE/DRILL SYM. - 
5. TRENCH SYMBOLLOGY - 

JOB NAME CONTACT INFO:
 Job Name: Wave Inter-Tie
 Contact: Mike Mance
 Title: Construction/INESC
 Mobile - (503) 793-5650
 Office - (425) 576-8200 EXT 53111
 Email - mmance@wavebroadband.com



SITE ADDRESS:
 SW Boones Ferry Rd
 Tualatin, OR
 2S1W23, 2S1W24

REV.	DATE	DESCRIPTION	APPROVED
1	06/29/12	City of Tualatin Permit Drawing	

SCALE: 1" = 120'

PROJECT NUMBER: _____

SHEET NUMBER: **2**



TITLE: FIBER ENHANCEMENT PERMIT DRAWING

PROJECT NAME: _____

SHEET 2 OF 2

WB-926-611

NOTES:

1. ALL WORK AREAS TO BE RESTORED TO LIKE OR BETTER CONDITION.
2. ALL OTHER UTILITIES ARE BASED OFF EXISTING LOCATES OR UTILITY STRUCTURES.
3. IT IS THE CONSTRUCTION CONTRACTORS RESPONSIBILITY TO CALL FOR LOCATES BEFORE DIGGING.
4. BORE/DRILL SYM. - 
5. TRENCH SYMBOLOLOGY - 

JOB NAME CONTACT INFO:

Job Name: Wave Inter-Tie
Contact: Mike Mance
Title: Construction/NIESC
Mobile - (503) 793-5650
Office - (425) 576-8200 EXT 53111
Email - mmance@wavebroadband.com

**WAVE
BROADBAND**

659 Glad Circle
Woodburn, OR 97071

K&B

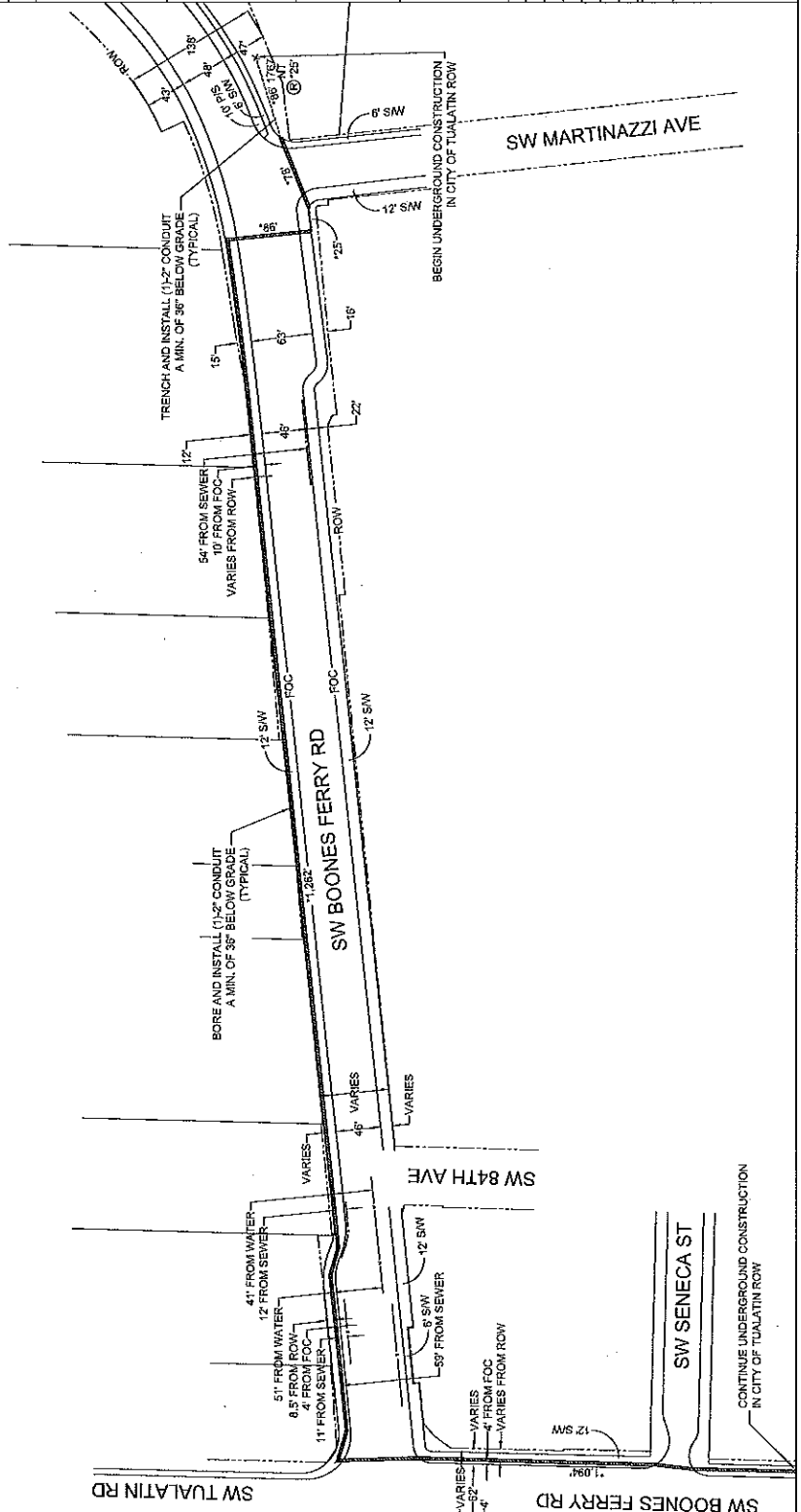
4120 SE INTERNATIONAL WAY
SUITE A113
MILWAUKEE, OR 97222
 Email: kbong@net.net Design By: K & B (503) 590-6041

SITE ADDRESS:



SW Boones Ferry Rd
Tualatin, OR
2S1W23, 2S1W24

REV.	DATE	DESCRIPTION	APPROVED
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1" = 120'	
SHEET NUMBER:	TITLE:
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SHEET 1 OF 2	FILE NAME: WB-026-511



NOTES:

1. ALL WORK AREAS TO BE RESTORED TO LIKE OR BETTER CONDITION.
2. ALL OTHER UTILITIES ARE BASED OFF EXISTING LOCATES OR UTILITY STRUCTURES.
3. IT IS THE CONSTRUCTION CONTRACTORS RESPONSIBILITY TO CALL FOR LOCATES BEFORE DIGGING.
4. BORE/DRILL SYM. - 
5. TRENCH SYMBOLLOGY - 

JOB NAME CONTACT INFO:

Job Name: Wave Inter-Tie
 Contact: Mike Mance
 Title: Construction/NECS
 Mobile - (503) 793-6650
 Office - (425) 576-8200 EXT 53111
 Email - mmance@wavebroadband.com

WAVE BROADBAND
 669 Giant Circle
 Woodburn, OR 97071

K&B
 4120 SE INTERNATIONAL WAY
 SUITE A115
 MILWAUKEE, OR 97222
 Email: kbeng@att.net Design By: K & B (503) 650-6041

SITE ADDRESS:
 SW Boones Ferry Rd
 Tualatin, OR
 2S1W23, 2S1W24

REV.	DATE	DESCRIPTION	APPROVED
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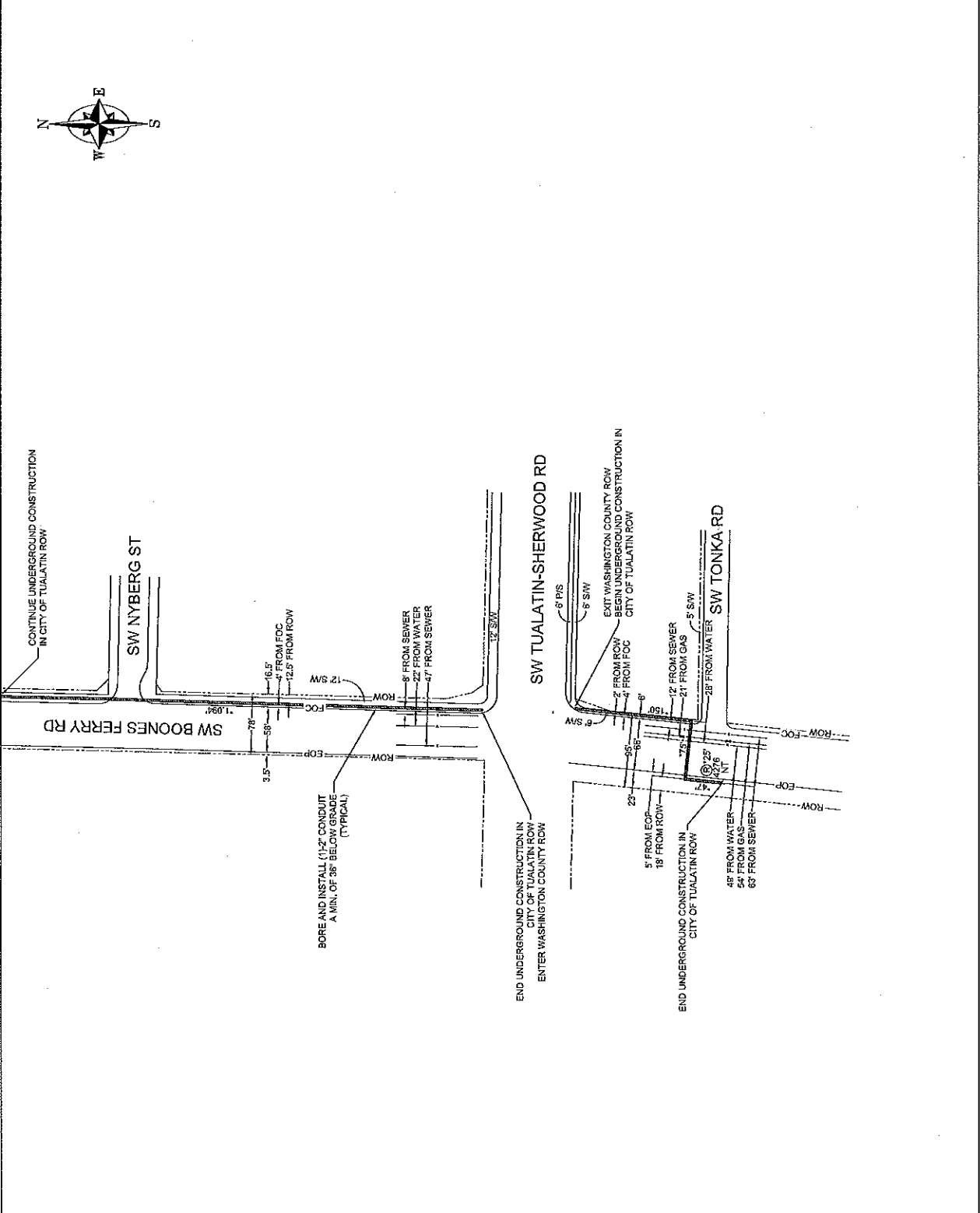
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SHEET NUMBER
 2

TITLE
 FIBER ENHANCEMENT PERMIT DRAWING

PROJECT NUMBER
 WB-525-611

SHEET 2 OF 2



UNITED STATES OF AMERICA

The State of Washington



Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

CERTIFICATE OF FORMATION

of

ASTOUND BROADBAND, LLC

as filed in this office on August 19, 2005.

Date: September 2, 2005



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

A handwritten signature in cursive script that reads "Sam Reed".

Sam Reed, Secretary of State

602-531-913

08/18/2005 682477
\$0.00 Document
Only
Tracking ID: 960121
Doc No: 682477

FILED
SECRETARY OF STATE
AUG 19 2005
STATE OF WASHINGTON

ASTOUND BROADBAND, LLC
CERTIFICATE OF FORMATION

Pursuant to Title 25 of the Revised Code of Washington, the undersigned does hereby submit this Certificate of Formation for the purpose of forming a limited liability company.

- The name of the limited liability company is "Astound Broadband, LLC."
- The limited liability company shall have a perpetual existence from the date on which this Certificate of Formation is filed with the Secretary of State of the State of Washington.
- The name of the initial registered agent of this limited liability company and the address of its initial registered office are as follows:

Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323

- The address of the principal place of business of the limited liability company is:

401 Kirkland Park Place, Suite 410
Kirkland, WA 98033

- Management of the limited liability company is vested in one or more managers:

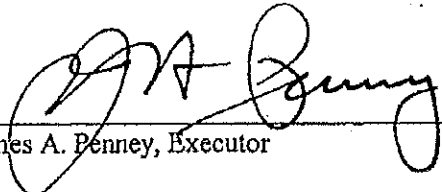
YES
NO

- The name and address of each person executing this certificate are:

James A. Penney
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323

- This certificate is effective upon filing.

DATED this 18th day of August, 2005.

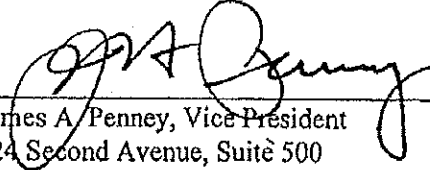

James A. Penney, Executor

CONSENT TO SERVE AS REGISTERED AGENT

Cairncross & Hempelmann, P.S. hereby consents to serve as Registered Agent, in the State of Washington, for Astound Broadband, LLC. It understands that as agent for the limited liability company, it will be its responsibility to receive service of process in the name of the limited liability company; to forward all mail to the limited liability company; and to immediately notify the office of the Secretary of State in the event of my resignation or of any changes in the registered office address.

August 18, 2005

Date


James A. Penney, Vice President
524 Second Avenue, Suite 500
Seattle, WA 98104-2323

ORDINANCE NO. _____

AN ORDINANCE GRANTING A NON-EXCLUSIVE
TELECOMMUNICATIONS FRANCHISE TO ASTOUND BROADBAND,
LLC; AND DECLARING AN EMERGENCY

WHEREAS the City of Tualatin (“City”), and Astound Broadband, LLC (“Astound”) have reached final agreements on the terms and conditions of a ten-year Franchise for Astound to use City streets to provide telecommunications services.

WHEREAS Astound has applied for a franchise and deposited the review fee as provided by Tualatin Municipal Code (“TMC”) 10-1-250 through 270.

City OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Issuance of Non-Exclusive Franchise. City grants Astound Broadband, LLC, a Washington Limited Liability Company qualified to do business in the State of Oregon and to Astound’s successors and assigns, as approved by City under this Franchise, a non-exclusive franchise to construct, operate and maintain a telecommunications system, with all necessary Facilities, in, under, and over the surface of City’s Streets and designated rights-of-way. Astound intends to use its Telecommunications System to provide Telecommunications Services. To the extent that Astound’s use of its Telecommunications System changes, City may reopen this Franchise.

This Franchise does not authorize Astound to operate a cable system or provide video programming, as defined by 47 U.S.C.A. 522(7). Astound represents that it has applied for and received all necessary regulatory authority to provide Telecommunications Services.

Nothing in this Franchise precludes Astound from entering into a contract for the use of any portion of its Telecommunications System with any Affiliate of Astound. Nothing in this Franchise precludes Astound from entering into a contract for the use of any portion of its Telecommunications System with any other Person or entity for any services, whether specified herein or not, provided that said Person or entity is another Licensee and has assumed responsibility for obtaining any required authority from City.

Section 2. Authority not exclusive. City reserves the right to grant rights to others to use its rights-of-way during the franchise term. City may do any work on, over or under any street, alley, utility easement or other right-of-way. Astound shall respect the rights and property of City and other authorized users of easements and rights-of-way. This agreement does not confer any right, title, or

interest in any public right-of-way on Astound beyond that expressly conferred in this agreement. Except as otherwise required by law, disputes between Astound and parties other than City over use of the easements and rights-of-way under this agreement shall be submitted to City for resolution. City's decision shall be made in a reasonable and non-arbitrary proceeding affording due process to Astound, and shall be final and binding.

Section 3. Duration of Franchise. The term of this Franchise, and all rights and obligations pertaining thereto, shall be for a period of ten (10) years commencing on the effective date of this Franchise, as defined in section 4, below.

Section 4. Effective Date. The effective date of this Franchise shall be upon passage of the Franchise by City Council unless Astound fails to file an unconditional written acceptance of this Franchise within 30 days of approval by City Council, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof.

Section 5. Tualatin Municipal Code ("TMC") 10-1 to Apply. To the extent authorized by law, this Franchise is subject to TMC 10-1 and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Astound, now in effect or hereafter made effective. TMC 10-1-250 through TMC 10-1-470, inclusive, is hereby incorporated by reference and made a part of this Franchise, to the extent authorized by law. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of City regarding permits, fees to be paid or the manner of construction.

Section 6. Definitions.

A. Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

B. Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.
2. "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.
3. "City" means City of Tualatin, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
4. "City Council" means the Council of City of Tualatin.
5. "Conduit" means any structure, or section thereof, containing two or more ducts used for any wire, optical fiber or other cable.
6. "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in Astound's Telecommunications' System.
7. "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.
8. "Facility" means any tangible component of the Telecommunications System.
9. "Franchise" means this Franchise agreement, as approved by City Council and accepted by Astound.
10. "Gross Revenues" means any and all gross revenues derived by Astound for the provision of any and all products, services or charges, originating or terminating in Tualatin, Oregon billed to a circuit, switch or address in Tualatin, Oregon, including revenues from dedicated private networks. Gross Revenues shall include any and all revenues from leases and IRUs for the Tualatin portion of Astound's system. Gross Revenues may be adjusted for the net write-off of uncollectible amounts of such revenues.

11. "Hazardous Substances" has the meaning given by ORS 465.200 (2009).
12. "Indefeasible Right of User Interest" or "IRU" means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the telecommunications system, but not the right to control, maintain, construct or revise the telecommunications system.
13. "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by City to use the Streets including, if appropriate, City itself. For the purposes of Section I, Astound shall not be construed to be a "Licensee" as defined herein.
14. "Minimum Annual Franchise Fee" means \$2,500.
15. "Optical Fiber" means a filament of transparent dielectric material, usually glass or plastic, and usually circular in cross section, that guides light, and is used to convey modulated information.
16. "Penalties" means any and all monetary penalties provided for in this Franchise.
17. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
18. "Streets" means the surface of, and the space above and below, any public street, road, alley or highway, within City, used or intended to be used by the general public for travel, to the extent City has the right to allow Astound to use them.
19. "Surplus ducts or conduits" means Conduit Facilities other than those occupied by Astound or any prior Licensee, one unoccupied duct held by Astound as an emergency use spare, and other unoccupied ducts that Astound reasonably expects to use within the next 18 months.
20. "Telecommunications Services" means:
 - a. Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the purpose of voice, video, or data transmission;

- b. Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the purpose of voice, video, or data transmission;
- c. Services connecting interexchange carriers or competitive carriers to any entity, other than another interexchange carrier, competitive carrier, or telephone company that provides local exchange services, for the purpose of voice, video, or data transmission; or
- d. Services interconnecting any entities, other than interexchange carriers, competitive carriers, or telephone companies providing local exchange services, for the purpose of voice, video, or data transmission.

21. "Telecommunications System" means all wires, cables, ducts, conduits, vaults, poles, Optical Fiber and other necessary Facilities owned or used by Astound for the purpose of providing Telecommunications Services and located in, under and above City Streets, excluding ducts, conduits and vaults leased from another City Licensee.

22. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 7. Compensation and Auditing.

A. Amount of Compensation.

As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of City, Astound shall pay as a Franchise fee to City, through the duration of this Franchise, the greater of either: (a) the Minimum Annual Franchise Fee; or, (b) an amount equal to five percent (5%) of Astound's Gross Revenues. However, revenues derived from the sale of facilities shall be excluded from the Gross Revenues calculation of Franchise fees under this Subsection 7.A.1.

B. Franchise Fee Payments.

1. Astound's Minimum Annual Franchise Fee shall be paid to City annually following the effective date of this Franchise. Each annual payment shall be made for the immediately preceding calendar year ending December 31. Each annual payment of Astound's Minimum Annual Franchise Fee shall be paid on or before the forty-fifth (45th) day following December 31st.
2. The Gross Revenue based Franchise fee, together with Franchise fees based upon revenues from sales under, shall be computed and paid on or before the forty-fifth (45th) day following each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) during the term of this Franchise.
3. Any failure to pay the Franchise fee when due shall be subject to a delinquency charge. The delinquency charge shall be five percent (5%) of the unpaid amount, but in no event less than \$100.00 for recovery of City's administrative costs, inconveniences and burdens which would be difficult or incapable of accurate estimation. Delinquency charges are due within thirty (30) days of the applicable payment due date. Failure to make full payment and associated delinquency charges within sixty (60) days of the applicable payment date shall constitute a violation of this Franchise. In addition, any overdue amounts, including delinquency charges, shall bear interest.
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 300 basis points (3%). At no time shall the annual interest rate be reduced to less than 12%. Interest shall be compounded daily.

C. Reports. Each payment shall be accompanied by a written report to City, verified by an officer or other authorized representative of Astound, containing an accurate statement in summarized form, as well as, in detail of Astound's Gross Revenues, together with all fees based upon revenues from sales, IRUs and leases and the computation basis and method. Such reports shall be in a form satisfactory to City.

D. Acceptance of Payment and Recomputation. No acceptance of any payment by Astound shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of

payments be construed as a release of any claim City may have for further or additional sums payable. All amounts paid under Section 7.A shall be subject to confirmation and recomputation by City, provided that such audit and computation is completed within one (1) year of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the one (1) year period, then any claim that City might have had for additional compensation shall be forever waived and relinquished. Astound agrees to reimburse City for:

1. The reasonable costs of such confirmation if City's recomputation discloses that Astound has paid 95% or less of the Franchise fees owing for the period at issue upon receipt of an invoice from City showing such costs were actually incurred and directly related to the audit; or
 2. One-half of the reasonable costs of such confirmation if City's recomputation discloses that Astound had paid more than 95% but less than 98% of the Franchise fees owing for the period at issue.
 3. City's costs which may be reimbursed under this Section 7.D. shall not exceed \$5,000.00 per audit or financial review.
 4. If City determines that Astound made any underpayment, and that the underpayment exceeded 5% of the amount due, Astound shall pay interest on the underpayment in accordance with Section 7.D above.
- E.** If Astound disputes City's determination of underpayment, Astound shall place the disputed amount in an escrow account until final resolution.
- F.** City and its agents and representatives shall have authority to arrange for and conduct reviews of the relevant financial obligations payable hereunder. City may reasonably determine the scope of review in each instance. All amounts paid by Astound shall be subject to review by City; provided that such review be completed within one (1) year from the date payment was due. City requests for reviews shall be in writing. If Astound has not provided copies of all information reasonably within the scope of the review to City within 60 days from the date of the written request, Astound shall provide access within the Tualatin metropolitan region, during normal business hours, upon 48 hours prior written notice. If City requests in writing that Astound provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Astound fails within 60 days of receipt of the request to provide, or cause to be provided, such information, then the one (1) year period shall be extended by one day for each day or part thereof

beyond 60 days that Astound fails to provide, or fails to cause to be provided, such requested information.

Section 8. Intentionally Omitted.

Section 9. General Financial and Insurance Provisions.

A. Insurance.

1. Astound shall maintain public liability and property damage insurance that protects Astound and City from the claims referred to in Section 10, below, to the extent that liability coverage for the indemnity is available in the marketplace. The insurance shall provide coverage at all times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the term of the Franchise. The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. Astound shall not cancel or materially alter coverage without first providing City thirty (30) days' prior written notice. If the insurance is canceled or materially altered within the term of this Franchise, Astound shall obtain a replacement policy with the same terms. Astound agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of this Franchise.
2. Astound shall maintain on file with City a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by City Attorney.
3. In the alternative to providing a certificate of insurance to City, certifying liability insurance coverage as required in this Section, Astound may provide City with a statement regarding its self-insurance. Astound's self-insurance shall provide at least the same amount and scope of coverage for Astound and City, its officers,

agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to City Attorney's review and approval. Upon Astound's election to provide self-insurance coverage under this Section 9.A.3, any failure by Astound to maintain adequate self-insurance shall be cause for termination of this Franchise.

B. Faithful Performance Bond.

1. Upon the effective date of this Franchise, Astound shall furnish proof of the posting of a faithful performance bond or irrevocable letter of credit running to City, with good and sufficient surety approved by City, in the penal sum of Ten Thousand dollars (\$10,000), conditioned that Astound shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Astound shall pay all premiums or other costs associated with maintaining the bond or irrevocable letter of credit, and shall keep the same in full force and effect at all times throughout the like of this Franchise, including, if necessary, the time required for removal of all of Astound's Facilities installed in City's Streets. The bond or irrevocable letter of credit 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 or irrevocable letter of credit shall be reviewed and approved as to form by City Attorney.
2. The irrevocable letter of credit or performance bond must be issued by a financial institution with a rating by Moody's Investor's Corporation Service, Standard and Poor's or comparable service that is reasonably acceptable to City. If the rating of the issuer of the letter of credit is significantly downgraded to a lower rating during the term of the Franchise, City may require Astound to provide a replacement through an institution with an acceptable rating. If Astound is providing a letter of credit, it must be issued by and presentable to a Tualatin branch of the financial institution. The performance bond or letter of credit must provide City with unrestricted rights to draw upon the guaranty for the purposes identified in the Franchise for the performance bond. The issuing financial institution's liability to pay and to be reimbursed by Astound customer must be absolute upon the occurrence of the triggering circumstances. Should City have cause to draw upon the performance bond or letter of credit, it will promptly notify Astound, and Astound shall promptly restore the performance bond or letter of credit to the full required amount.

3. During the term of this Franchise, Astound shall file with City a duplicate copy of the bond or irrevocable letter of credit along with written evidence of payment of the required premiums. However, in no event shall City exercise its rights against the performance bond or irrevocable letter of credit under Section 9 B if a bona fide, good faith dispute exists between City and Astound.

C. Construction Bond. During all times when Astound is performing any construction work in or under the Streets requiring a street opening permit, Astound shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to City, with good and sufficient surety approved by City, in the sum of \$100,000. The bond or letter of credit shall be conditioned that Astound shall well and truly observe, fulfill and perform each term and condition. Astound shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Astound's construction work in or under the Streets by City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Astound shall file with City a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of City Attorney as to its adequacy under the requirements of this Section.

Section 10. Covenant to Indemnify and Hold City Harmless.

A. Indemnification.

1. Astound hereby agrees and covenants to indemnify, defend and hold City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Astound, its agents or employees, or by reason of any neglect or omission of Astound to keep its Telecommunications System in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by City, its officers, agents or employees. City shall provide Astound with prompt notice of any such claim which Astound shall defend with counsel of its own choosing and no settlement or compromise of

any such claim will be done by City without the prior written approval of Astound. Astound and its agents, contractors and others shall consult and cooperate with City while conducting its defense of City.

2. Astound also hereby agrees to indemnify City for any damages, claims, additional costs or expenses assessed against and paid by City arising out of or resulting, directly or indirectly, from Astound's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished to Astound by City Engineer, unless Astound's failure arises directly from City's negligence or willful misconduct.
3. Indemnification – Hazardous Substances. Astound agrees to forever indemnify City, its officers, agents, and employees, 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 Astound's Facilities in the Streets.

Section 11. Construction and Relocation.

A. Construction.

1. Subject to applicable regulations of City, Astound may perform all necessary construction to construct, operate, and maintain its Telecommunications System. All construction and maintenance of any and all Telecommunications System Facilities within Streets incident to Astound's provision of Telecommunications Services shall, regardless of who performs installation and/or construction, be and remain the responsibility of Astound. Astound shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Telecommunications System Facilities within City Streets. Astound shall pay all applicable fees due for City construction permits.
2. Maps.
 - a. Prior to beginning construction, Astound shall provide City's Engineer with an initial construction schedule for work in the Streets and the estimated total cost of such work. As Astound's construction in the Streets is completed, Astound shall provide City with maps showing the location of its installed Facilities in the Streets, as built. Such as-built maps shall be in a form

reasonably acceptable to City Engineer. Within one year of the effective date of this Franchise, Astound shall begin providing as built maps in electronic form.

- b. One year after the effective date of this Franchise, and annually thereafter, Astound shall provide a map to City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Astound's optical fibers, conduit and ducts in, over or through the Streets on a scale of Three thousand five hundred feet (3,500') per inch or whatever standard scale City and Astound agree upon. Astound shall also provide such maps in an electronic format reasonably acceptable to City and Astound.
3. ONLY AS A LAST RESORT, Astound may make excavations or open cutting of streets in City Streets for any Facility needed for the maintenance or extension or removal of Astound's Tele-communications System, subject to obtaining permits from City. Prior to doing such work, Astound must apply for, and obtain, appropriate permits from City, and give appropriate notices to any further franchisees, licensees or permittees of City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
4. In the event that emergency repairs are necessary for Astound's Facilities in the Streets, Astound shall immediately notify City of the need for such repairs. Astound may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Astound must comply with all City codes and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
5. Locates. Astound shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 and 757.993 (2007)) and the rules and regulations promulgated thereunder.
6. Relocation. City shall have the right to require Astound to change the location of its Facilities within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Astound (however, payment by Astound shall in no way limit Astound's right, if any, to seek reimbursement for such costs from any third party). Except as to materials or design requirements for bridge maintenance or seismic upgrading, if in ordering relocation, City imposes additional specifications regarding materials or design for Astound's Facilities, the additional marginal

increase shall not be considered relocation costs that are Astound's responsibility. City Engineer shall have unlimited discretion in determining the reasonable relocation schedule, based upon City Engineer's consideration of the total circumstances of the project schedule. If after receiving City Engineer's relocation schedule, Astound identifies in writing that the work associated with relocating Astound's Facilities will be of such size or scope that Astound believes that it is probable that Astound will not be able to complete the work within the schedule, Astound may request a meeting with City Engineer to discuss whether modification of the relocation schedule, alternate construction methods, or alternate locations are reasonably possible given other project constraints. City Engineer will consider Astound's safety, reliability, and cost concerns while considering potential effects on project schedules, project budget, and any other relevant matters. However, City Engineer will retain full authority and discretion to make any final decisions regarding any modifications to the relocation schedule, based upon City Engineer's consideration of the total circumstances of the project schedule. City shall provide Astound with the standard notice given under the circumstances to other persons franchised, permitted, licensed, or otherwise granted authority by City. Should Astound fail to remove or relocate any such Facilities by the date established by City Engineer's schedule, City may cause and/or effect such removal or relocation by qualified workers and the expense thereof shall be paid by Astound, including all direct, indirect, and/or consequential costs and expenses incurred by City due to Astound's delay (however, payment by Astound shall in no way limit Astound's right, if any, to seek reimbursement for such costs from any third party). If City requires Astound to relocate its Facilities located within the Streets, City will make a reasonable effort to provide Astound with an alternate location for its Facilities within the Streets, or if an alternate location is unavailable, will make City's project management personnel available to meet with affected property owners and explain City project needs in support of Astound's efforts to secure an alternate location on private property.

7. Astound's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Streets by or under City's authority.
8. Within thirty (30) days following Astound's acquisition of any Telecommunications System Facilities in the Streets, or upon any addition or annexation to City of any area in which Astound retains

any such Facilities in the Streets, Astound shall submit to City a written statement describing all Facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such Facilities. At City's sole option, as expressed by ordinance adopted by City Council, Facilities acquired by Astound shall immediately be subject to the terms of this Franchise, within a reasonable period of time to bring such acquired Facilities into compliance with this Franchise.

Section 12. Restoration of Streets.

- A.** Whenever Astound disturbs the surface of any unimproved Street for any purpose, Astound shall promptly restore the street to at least its prior condition to the satisfaction of City Engineer, to the extent reasonably practicable. When any opening is made by Astound in a hard surface pavement in any Street, Astound shall promptly refill the opening and restore the surface to a condition satisfactory to City Engineer, in accordance with standards developed and adopted by City Engineer.

- B.** If Astound excavates the surface of any Street, Astound shall be responsible for restoration of the Street and its surface within the area affected by the excavation. City may, after providing notice to Astound, refill and/or repave any opening made by Astound in the Street, and the expense thereof shall be paid by Astound. City reserves the right, after providing notice to Astound, to remove and/or repair any work done by Astound which, in the determination of City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by Astound. All excavations made by Astound in the Streets shall be properly safeguarded for the prevention of accidents. All of Astound's work shall be done in strict compliance with all applicable rules, regulations and ordinances of City. Astound's responsibility for maintaining repairs to any surfaces disturbed by Astound's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by City, whichever occurs first.

- C. Tree Trimming.**
 - 1. After obtaining a written permit from City, Astound may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with Astound's Facilities. Except in emergencies,

Astound may not prune trees at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For the purposes of this Section, an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant shall have seven days from receipt of Astound's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Astound may prune such tree at its own expense.

2. City may waive the notification and permit process in the case of single trees, if Astound adequately demonstrates the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Astound shall be subject to the approval of City. City shall have the discretion to cancel the permit if, at any time, Astound or its agents, fails to use proper arboricultural practices.

Section 13. Reservation of City Street Rights.

A. City acknowledges that as Astound is building its Telecommunication System and securing customers, it may have telecommunications equipment in the right-of-way that is not activated within one year but is not abandoned as contemplated by TMC 10-1.230 and 10-1.380. Therefore, City agrees that at such time as Astound intends to discontinue using or to remove any telecommunications network facility or facilities within City, including actions pursuant to a City termination order, Astound shall submit a specific plan for such discontinuance or removal to City Engineer for City Engineer's approval. City Engineer may allow Astound to abandon in place any facility, may require Astound to remove or modify the facilities within the public rights-of-way or other public place or property, may cause the facilities to be removed at Astound's expense, or may take any combination of these actions. Astound shall complete such removal or modifications in accordance with a schedule set by City Engineer. Until such time that Astound's property is completely removed and all restorations to the public rights-of-way or other public places or property have been completed, Astound shall be responsible for all necessary repairs, relocations, and maintenance of the facilities in the same manner and degree as if the facilities were in active use, and Astound shall retain all liability for such facilities.

B. Astound does not require City's consent to transfer, assign, lease, merge, or consolidate with a third party except that such third party shall not

succeed to Astound's rights hereunder unless that third party is a valid franchise holder in City and agrees in writing to abide by the provisions of this franchise agreement.

Section 14. Change of Law; Amendment.

- A. This agreement may be amended from time to time to conform to any changes in the controlling federal or state law or other changes material to this agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This agreement may be amended or terminated by the mutual consent of the parties and their successors in interest.

- B. City reserves the right to adopt such additional regulations as it finds necessary in the exercise of its police power, provided that such regulations or ordinances are reasonable and not in conflict with the rights granted in this Agreement. At all times during the term of this Agreement, Astound shall be subject to all lawful exercise of the police power by City, and to such reasonable regulations that City may subsequently provide by resolution or ordinance. With regard to this franchise, City reserves the right to exercise all authority now or hereafter granted to City by state statute or City charter, except where such authority may be modified or superseded by the Constitutions of the United States or the State of Oregon.

Section 15. Taxes. Nothing contained in this Agreement shall be construed to exempt Astound from any license, occupation, or excise tax or assessment that is or may be lawfully imposed on all entities in the same business as Astound.

Section 16. Severability Clause. If any clause, sentence, or any other portion of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. If any material portion of the Agreement becomes illegal, null or void so that the intent of the Agreement is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Agreement consistent with applicable law.

Section 17. Remedies.

- A. In addition to other remedies specified in this Franchise, City may impose liquidated damages not to exceed \$1000 per day or per incident, not to

exceed a total of \$50,000 over the term of this Franchise, if Astound violates a material provision of this Agreement, subject to subparagraph 10(B).

- B.** If Astound fails to comply with a material provision of this Franchise or violates its terms, Astound will forfeit all rights and privileges granted by this Agreement. Prior to declaring a forfeiture City will:
1. Notify Astound in writing clearly and in detail of the failure or violation; and
 2. Grant Astound, not more than ninety (90) days from the date of City's notice, to cure its compliance with the provisions of this Agreement; or if the provision cannot be satisfied within the ninety (90) day period, to commence and diligently pursue compliance.

If Astound fails to cure its compliance or otherwise diligently pursue compliance as required, City, at its sole discretion, has the right to determine that the franchise is forfeited. Forfeiture of the franchise shall not relieve Astound from complying with the Tualatin Municipal Code on telecommunications.

- C.** If Astound corrects the violation or commences and diligently pursues compliance within the ninety-day period, then no liquidated damages or other remedy shall be imposed.
- D.** Notwithstanding the above, failure, default or violation by Astound shall not constitute grounds for the forfeiture of this franchise if due materially, substantially and reasonably to an act of God, fire, flood, storm or element or casualty, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, or bona fide legal proceedings beyond the control of Astound.
- E.** All remedies and penalties under this Agreement, including termination of the franchise, are cumulative and not exclusive. The recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recover or enforcement by other remedy or imposition of other penalty. City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Astound under this Agreement. A specific waiver of a particular breach of a term, condition or obligation imposed on Astound under this Agreement shall not be a waiver of any other or subsequent breach of the same or other term, condition or obligation.'

Section 18. Attorney Fees. In the event of a suit, arbitration or other proceeding of any nature whatsoever, including without limitation, a proceeding under the U.S. Bankruptcy Code, is instituted to enforce any provision of this Franchise; each Party shall bear its own costs and fees, including attorney fees, at trial and on appeal.

Section 19. Notice. Unless otherwise specifically provided, all notices shall be mailed, postage prepaid, to the following address:

If to Astound: Astound Broadband LLC.
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
Attention: Steve Weed, CEO and
Jim Penney, EVP

If to City: City of Tualatin
Attention: City Attorney
18880 SW Martinazzi
Tualatin, OR 97062

Section 20 Governing Law. The laws of the State of Oregon govern this Agreement and its interpretation, performance, and enforcement.

Section 21. Emergency. This ordinance is necessary for the immediate protection of the public peace, health, safety and welfare and shall take effect immediately upon adoption.

INTRODUCED AND ADOPTED THIS ___ DAY OF _____, 2012.
CITY OF TUALATIN

BY _____
Lou Ogden
Mayor

Approved as to Form:

ATTEST:

Sean T. Brady
City Attorney

BY _____
City Recorder