



# Franchise Agreement Astound Broadband, LLC

1. Parties. The parties to this franchise agreement are the City of Puyallup, a noncharter code city in the State of Washington, hereinafter identified as “Grantor” or “City” and Astound Broadband, LLC, a limited liability company and a wholly-owned subsidiary of WaveDivision Holdings, LLC, formed in the State of Delaware, hereinafter identified as “Grantee”.

2. Grant of Permission to Use Franchise Area. Subject to the terms and conditions herein, the City grants to the Grantee non-exclusive general permission (Franchise) to enter, use, and occupy City of Puyallup right of way (Franchise Area) for the purpose of installing, constructing, operating, maintaining, repairing, replacing, relocating and removing (Franchise Activities) fiber optic telecommunication facilities, which are identified in Exhibit B, and necessary appurtenances thereto (Grantee Facilities).

3. Franchise Area. The Franchise Area shall include only those portions of land that have been acquired or dedicated for City of Puyallup public streets, when such streets are open and improved for motor vehicle use by the public.

4. Non-exclusive Franchise. The Franchise granted herein is non-exclusive. The City may grant permission to other entities to use the Franchise Area.

5. Retention of Rights. Notwithstanding any provision to the contrary, the City retains all right, title, interest or entitlement in the Franchise Area, which it now has or may hereafter acquire.

6. Eminent Domain. The Franchise granted herein shall be subject to the power of eminent domain, and in any proceeding related to eminent domain, the Franchise, any interest associated with the Franchise or Franchise Area, and the Grantee’s use of the Franchise Area shall have no value to the Grantee or other entity.

7. City Use of Franchise Area. The City reserves its paramount right to perform any lawful act, or refrain from performing any act, with respect to the right of way in the Franchise Area. Such acts may include, but are not limited to, changing, modifying, repairing, re-grading, relocating, re-routing, abandoning, or vacating any of the right of way in the Franchise Area.

8. Vacation. If the City vacates any portion of the Franchise Area and such portion contains Grantee Facilities, the City may reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise.

9. Subordination of Uses. The Grantee’s use of the use of Franchise Area shall at all times be subordinated to and subject to the City’s use of the Franchise Area, including, but not limited to, uses that involve municipal facilities, utilities, automobile and pedestrian travel, and access to the Franchise Area.

10. Notices. When the parties to this Franchise agreement provide notice to each other pursuant to this agreement, such notice shall be in writing. The form of the writing shall be

paper with printed, typed or written text, or an e-mail message with, or without, attachments. When the Grantee provides written notice, the Grantee shall deliver the notice to the City at the following address:

City of Puyallup  
Attn: Public Works Director  
333 South Meridian  
Puyallup, WA 98371

E-mail address: [Robert@ci.puyallup.wa.us](mailto:Robert@ci.puyallup.wa.us)

When the City provides written notice, the City shall deliver the notice to the Grantee at the following address

Astound Broadband LLC  
Attn: James A. Penney, Executive Vice President, Business and Legal Affairs  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033

E-mail address: [jpenney@wavebroadband.com](mailto:jpenney@wavebroadband.com)

Either party may change the address to which the other party must deliver notice by providing notice of a change of address to the other party in accordance with the notice requirements of this section.

11. Term of Agreement. The term of the Franchise shall commence once this agreement is executed by the parties and the Grantee has satisfied the prerequisites to Franchise effectiveness. The term shall expire approximately ten (10) years after the Franchise becomes effective, namely, on 3/1, 2025 at 11:59 p.m.

12. Renewal. The parties may renew the Franchise. If the parties do not renew the Franchise prior to expiration, the Franchise shall automatically continue from month to month until either party terminates the continuing Franchise by providing notice of termination to the other party at least one hundred and eighty (180) days in advance of termination.

13. Franchise Prerequisites & Conditions.

A. The Franchise shall not become effective unless and until the Grantee satisfies the prerequisites to Franchise effectiveness, which shall include the following: The Grantee shall file with the City (1) a statement of acceptance; (2) verification of insurance coverage required herein; and (3) the financial guarantees identified this agreement (collectively, Franchise Acceptance). The form and substance of the Franchise Acceptance documents shall be acceptable to the City. The date that such Franchise Acceptance is filed with the City shall be the effective date of this Franchise. If the Grantee fails to file the Franchise Acceptance with the City within 30 days after the effective date of the ordinance approving the Franchise, this agreement will automatically terminate and shall be null and void.

B. The City may require Grantee, when constructing, relocating or placing ducts or conduits in the Franchise Area, to provide the City with additional ducts or conduit and related

structures necessary to access the conduit, on the condition that the City shall pay the incremental costs incurred by Grantee to provide the ducts, conduit and related structures pursuant to a contract with Grantee that is consistent with RCW 80.36.150. Except as otherwise agreed by the parties, the City shall refrain from using the provided duct or conduit space and related access structures to provide telecommunications or cable television service for hire, sale, or resale to the general public.

14. Construction and Maintenance.

A. Permits. The Grantee shall apply for, obtain, and comply with the provisions of all permits or approvals required under the Puyallup Municipal Code or any other applicable laws, regulations, rules, court orders or directives from governmental entities that have authority over the Grantee or the Grantee's Franchise Activities.

B. Coordination of Activities. The Grantee shall coordinate its Franchise Activities with the City and all other utility companies or other entities that have facilities located within the portion of the Franchise Area that is affected by the Grantee's Franchise Activity.

C. Control of Right of Way. The City reserves the right to prescribe the location of Grantee Facilities within the Franchise Area and the time and manner of Franchise Activities; and the City reserves the right, from time to time, pursuant to the applicable provisions of this Franchise, to require maintenance, repair, replacement, relocation or removal of the Grantee Facilities at the expense of the Grantee.

D. One Number Locator. Before commencing any work within the Franchise Area, the Grantee shall comply with the One Number Locator provisions of RCW 19.122, the Underground Utility Damage Prevention Act.

E. Tree Trimming. Before removing, trimming or pruning trees in, or adjacent to, the Franchise Area, the Grantee shall obtain written approval from the City and shall comply with any applicable City laws, regulations, conditions or directives. Grantee shall be responsible for, and promptly dispose of, material, waste or debris from its removal, trimming or pruning activities. If such material, waste or debris is not removed within the time period mandated by the City, the City may, in its sole discretion, remove such material, waste or debris and charge the Grantee for the cost thereof.

15. Emergency Work. In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not feasible. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee as promptly as possible under the circumstances.

16. Damage to Property. If the Grantee or its Franchise Activities damage any City property or property owned by another entity, Grantee shall promptly restore, at its own cost and expense, the damaged property to a condition that is the same or better than the condition of the property before it was damaged.

17. Location of Facilities. The City shall be entitled to determine the location of any Grantee Facilities within the Franchise Area, particularly the location of Grantee Facilities in relationship to the facilities of other entities. Notwithstanding the foregoing, the City will typically apply the first in time principle to decide competing efforts to locate facilities in the

same or similar location. Thus, for example, a utility that commences efforts to install or construct its facilities, structures, equipment, appurtenances or tangible property before the Grantee begins to install or construct its Grantee Facilities should have priority over the Grantee to choose the positioning and location of its facilities.

A. The foregoing principle will typically govern when facility relocations are necessitated due to changes in grade or right of way routing.

B. Grantee Facilities shall typically be located so as to maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from above-ground City water facilities. Insofar as City water facilities or other facilities are concerned, the City may require more separation distance or authorize less separation distance.

#### 18. Grantee Information.

A. Upon request of the City, or as required under this section, Grantee shall supply, at no cost to the City, information that reasonably related to this Franchise agreement or Grantee's Franchise Activities. This information shall include, but is not limited to, as-built drawings of Grantee Facilities, installation inventory, evidence of public benefit, and maps and plans showing the location of existing or planned facilities within the City. Grantee shall supply this information in a format that is acceptable to the City. To improve coordination with City activities, Grantee shall timely provide information about its long-range plans for Grantee Facilities or Franchise Activities within the City.

B. Grantee acknowledges that the City is governed by Washington law, including, and especially, the Public Records Act, Chapter 42.56 RCW. Accordingly, Grantee shall indemnify and hold harmless the City for penalties, costs or attorney fees that are imposed against the City under the Public Records Act, when imposition is based on records that are in the possession of, or under the dominion and control of, Grantee, and Grantee has failed or declined to timely provide the records to the City.

19. Relocation of Grantee Facilities. For purposes of public welfare, health or safety, or for purposes that are consistent with the City's paramount right to perform any lawful act, or refrain from performing any act, with respect to the Franchise Area, Grantee shall timely comply with City directives to relocate, remove, or reroute Grantee Facilities, at no expense or liability to the City, except as may be required by applicable law. Grantee shall indemnify and hold the City harmless against any claims for service interruption or other losses associated with any such relocation, removal or rerouting of Grantee Facilities, or change, alteration, modification or vacation of the Franchise Area.

20. Abandonment and Removal of Grantee Facilities. Within one hundred and eighty days (180) of Grantee's permanent cessation of use of the Grantee Facilities, or any portion thereof, the Grantee shall, at the City's discretion, either abandon in place or remove the facilities that are no longer used. This section shall survive the expiration, revocation or termination of this Franchise agreement.

21. Undergrounding. The City may require Grantee to underground Grantee Facilities. If undergrounding is required, Grantee shall underground Grantee Facilities in the manner required by the City at no expense or liability to the City, except as may be required by applicable law. If, in addition to Grantee, other entities are required by the City to underground their facilities in the same location, Grantee shall only be required to pay its proportionate share

of common costs that are attributable to all such entities, in addition to the costs that are specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include, but are not limited to, necessary costs for common trenching, ducts, vaults and so forth. The City may calculate proportionate costs based the total number and size of all other facilities that must be undergrounded, or other reasonable methodology.

22. Indemnification and Hold Harmless. Grantee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with Franchise Activities or Grantee's acts or omissions that are related to this Franchise agreement, except to the extent that such injuries, losses or damages are caused by the negligence of the City.

23. Insurance. Grantee shall procure and maintain for the duration of this Franchise agreement, and while Franchise Activities occur, and while Grantee's acts or omissions that are related to Grantee Facilities or this Franchise agreement occur, whether or not such Franchise Activities or acts or omissions occur while this Franchise agreement is in effect, insurance against claims for injuries to persons or damage to property. Grantee's insurance as required by the agreement shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Grantee shall obtain and maintain insurance of the type described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an insured under Grantee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form that provides equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

B. Minimum Amounts of Insurance. Grantee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

C. Grantee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

E. Verification of Coverage. Grantee shall furnish the City with original certificates and

a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Grantee before issuance of the Permit.

F. Notice of Cancellation. Grantee shall provide the City with written notice of any policy cancellation, within two business days of receipt of such notice.

G. Failure to Maintain Insurance. Failure on the part of the Grantee to maintain insurance as required by this agreement shall constitute a material breach and shall be grounds for immediate termination of this agreement; Alternatively, the City, in its discretion, may procure similar insurance, or renew the insurance required hereunder, and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City by Grantee on demand.

24. Performance Security. Grantee shall provide the City with a financial guarantee, or City-approved substitute, in the amount of Fifty Thousand Dollars (\$50,000) running for, or renewable for, the term of this Franchise agreement (and while Franchise Activities occur, and while Grantee's acts or omissions that are related to Grantee Facilities or this Franchise agreement occur, whether or not such Franchise Activities or acts or omissions occur while this Franchise agreement is in effect), in a form and substance that is acceptable to the City. In the event that Grantee shall fail to comply with any of the provisions of this Franchise agreement, or any of the provisions of permits or approvals of the City issued to Grantee in relation to this agreement, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages or loss suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Grantee Facilities. Such financial guarantee shall not be construed to limit Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy that may be available at law or in equity.

#### 25. Successors and Assignees

A. The provisions, conditions and requirements in this agreement and associated permits or approvals, including the related obligations and liabilities of Grantee, shall be binding upon the successors, assigns, transferees and agents of Grantee.

B. This Franchise shall not be leased, assigned or otherwise transferred or alienated without the express written consent of the City in accordance with applicable law.

C. Grantee and any proposed successor, assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of assignment or transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and (c) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, evaluating and considering the proposed assignment or transfer.

D. Prior to the City's consideration of a request by Grantee to consent to a franchise assignment or transfer, the proposed assignee or transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise agreement and associated permits or approvals.

#### 26. Dispute Resolution

A. In the event of a dispute between the City and Grantee arising from this agreement, the dispute shall first be referred to the representatives, which have designated by the City and Grantee, to have oversight over the administration of this agreement. The representatives shall meet within thirty (30) calendar days, or at a time established by agreement of the parties, of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue other available remedies. This agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event that any suit, arbitration, or other proceeding is instituted to enforce any term of this agreement, the parties specifically understand and agree that venue shall be exclusively in Pierce County, Washington.

#### 27. Enforcement and Remedies.

A. If Grantee shall violate, or fail to comply with any provisions of this agreement, or shall fail to comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within a reasonable time. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) impose a reasonable penalty against Grantee or its performance security, or (3) take other reasonable action.

B. If the City determines that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Franchise Activities, the City reserves the right to terminate this Franchise and require the Grantee to apply for, obtain, and comply with all applicable City permits, approvals, or other City requirements for such actions, and if the Grantee's actions are not authorized under applicable law, to compel Grantee to cease such actions.

#### 28. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Grantee shall comply with all applicable laws, regulations and policies (including all applicable elements of the City's comprehensive plan). Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, Grantee shall be subject to the police power of the City to adopt and enforce general ordinances.


B. The City reserves the right at any time to amend this Franchise agreement to conform to any hereafter enacted, amended, or adopted laws or regulations, including City ordinances by providing Grantee with thirty (30) days written notice. Any such amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Grantee seeks, in writing, to negotiate the provisions of the amendment. If the parties do not reach agreement concerning the provisions of the amendment within thirty (30) days of the request for negotiations, the City may enact the proposed amendment, by incorporating Grantee's proposed provisions to the extent that the City deems reasonable.

C. The City may terminate this Franchise agreement upon thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification.

29. License, Tax and Other Charges. This Franchise agreement shall not exempt the Grantee from any existing or future assessment, tax, or charge that is authorized by law and applicable to Grantee or Grantee's activities, or as reimbursement for use and occupancy of the Franchise Area.

30. Consequential Damages Limitation. Notwithstanding any other provision of this agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

31. Severability. If any portion of this agreement is deemed invalid, the remainder portions shall remain in effect.




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John Knutsen  
Mayor


Approved as to form:

Attest:



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Keyin J. Yamamoto  
City Attorney (former)



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Brenda Arline  
City Clerk





EXHIBIT B  
Identification of Fiber Optic Telecommunication Facilities

The proposed facilities of Astound Broadband, LLC include fiber optic cable installed within conduits and equipment thereto.