

ORDINANCE NO. 2014-10

ORDINANCE GRANTING A FRANCHISE TO ASTOUND BROADBAND, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, TO CONDUCT A GENERAL TELECOMMUNICATIONS BUSINESS AND GRANTING A RIGHT TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY

THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City of Forest Grove (City) grants to Astound Broadband, LLC a Washington limited liability company (Astound Broadband), its successors and assigns, the right and privilege to conduct a general telecommunications business with the City and to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and internet access services (collectively, telecommunications services). Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. Whenever possible for new development, underground facilities will use a common trench located by the Forest Grove Light & Power Department. This ordinance does not grant Astound Broadband authority to use its facilities to provide cable services or any other non-telecommunications services. This ordinance is subject to, and Astound Broadband agrees to comply with, applicable state, federal and City laws, rules, regulations, ordinances, resolutions or orders now in effect or adopted after this ordinance takes effect.

Section 2: Astound Broadband is granted authority to make all needed and necessary excavation in any public right of way. All excavation and construction work must comply with City ordinances, resolutions, rules and orders now in effect or that take effect during the term of this franchise. City will enter discussions with Astound Broadband to achieve acceptable solutions to issues identified by Astound Broadband regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. Astound Broadband does not waive its right to challenge the legality, validity or enforceability of any changes to City ordinances, resolutions, rules or orders adopted after this ordinance takes effect. This ordinance does not require Astound Broadband to comply with future ordinances, resolutions, rules or orders that apply only to Astound Broadband. Astound Broadband is not required to use any City-owned conduit or appurtenances for which the City imposes any fee, tax or other charges for its use.

Section 3: Whenever Astound Broadband disturbs any public right of way for the purpose of excavation or construction, it must restore as soon as practicable the public right of way to at least as good condition as existed prior to excavation or

construction, as directed by City. If Astound Broadband fails to restore the public right of way within a reasonable time after receipt of written notice from City or fails to do so as directed by City, then City will make such restoration and Astound Broadband must reimburse City for the costs of such restoration. Restoration to the condition that existed before excavation or construction does not require Astound Broadband to restore areas larger than the areas of excavation and construction.

Section 4: This ordinance does not limit the authority of the City to sewer, grade, pave, and repair, alter or improve any public right of way in or upon which Astound Broadband may place facilities. To the extent possible all such City work or improvements will be done in a manner that does not obstruct or prevent the free use of Astound Broadband facilities.

Section 5: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Astound Broadband facilities for the passage of buildings, machinery or other objects, Astound Broadband will temporarily rearrange, remove, lower or raise its facilities as required by City. The person moving any such buildings, machinery or other objects must pay the entire actual cost to Astound Broadband of changing, altering, moving, removing or replacing its facilities so as to permit such passage. The person must deposit in advance with Astound Broadband a sum equal to the cost as estimated by Astound Broadband and must pay all damages and claims of any kind, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of facilities, except damages or claims resulting from the sole negligence of Astound Broadband. Astound Broadband will be given not less than fifteen (15) days written notice by the person desiring to move a building or other object. This notice must state the route of movement of such building or other objects over and along the public rights of way and must be approved by the City. Such moving must be done as quickly as possible without unnecessary delay to limit expense and inconvenience to Astound Broadband.

Section 6: As consideration for the use of City's public rights-of-way, Astound Broadband shall remit to City an annual fee of five percent (5%) of its gross revenues earned, less bad debts, from the provision of telecommunications services within the City. The privilege tax shall be payable semi-annually on or before March 15 for the six month period ending December 31, and September 15 for the six-month period ending June 30, and the first and last payments must be for that fractional part of the calendar year during which this franchise is in effect. City shall have the right, upon 48 hours' notice and during normal business hours, to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Astound Broadband's franchise fee payments have met the requirements of this franchise. Any difference of payment due either the City or Grantee following audit shall be payable within thirty (30) days after written notice to the affected party. Neither party is entitled to recover any under-or over-payment more than three years after the payment's due date. In lieu of all or a portion of the franchise fee payment required under this Section, Astound Broadband may provide telecommunications or other

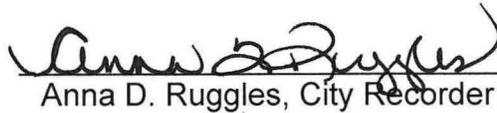
services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation and the offset value of any such services provided to the City will be determined based on the standard rates Astound Broadband charges to third-party customers for substantially equivalent services.

Section 7: The rights, privileges and franchise granted will continue and be in full force for a period of five (5) years from the date of enactment of this ordinance. The franchise will be automatically renewed for an additional five years unless the City notifies Grantee in writing at least 90 days prior to the termination date of the franchise of its intent to terminate the franchise or renegotiate provisions of the franchise. This ordinance does not grant a franchise unless it is accepted in writing by Astound Broadband within sixty (60) days after its enactment.

Section 8: This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 22nd day of September, 2014.

PASSED the second reading this 13th day of October, 2014.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 13th day of October, 2014.



Peter B. Truax, Mayor

TO THE CITY COUNCIL OF THE CITY OF FOREST GROVE, OREGON:

Astound Broadband, LLC hereby unconditionally accepts the right, privilege and franchise granted unto it, its successors and assigns, by that certain franchise passed by the City Council of the City of Forest Grove, Oregon, on the 13th day of October, 2014, designated as Ordinance No. 2014-10 and entitled:

"ORDINANCE GRANTING A FRANCHISE TO ASTOUND BROADBAND, LLC,
A WASHINGTON LIMITED LIABILITY COMPANY,
TO CONDUCT A GENERAL
TELECOMMUNICATIONS BUSINESS AND GRANTING A RIGHT
TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY."

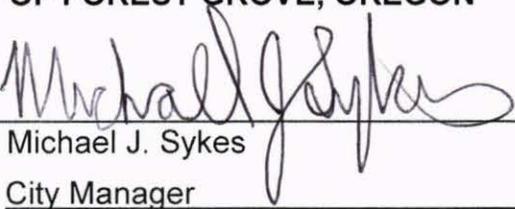
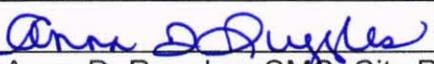
DATED this 24th day of October, 2014.

ASTOUND BROADBAND, LLC

By: 
Title: EXECUTIVE VICE PRESIDENT

Receipt of within and foregoing acceptance by Astound Broadband, LLC is hereby acknowledged on this 13th day of October, 2014.

CITY OF FOREST GROVE, OREGON

By: 
Michael J. Sykes
Title: City Manager
Attested: 
Anna D. Ruggles, CMC, City Recorder