

ORDINANCE NO. 04-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON GRANTING A NON-EXCLUSIVE FRANCHISE TO ASTOUND BROADBAND, LLC D/B/A WAVE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS SYSTEM IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF COVINGTON, WASHINGTON, FOR A TEN YEAR TERM.

WHEREAS, Astound Broadband, LLC d/b/a Wave (“Astound”), is a telecommunications company that provides voice and data services to customers; and

WHEREAS, Astound’s desired route through the City of Covington (the “City”), requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

WHEREAS, the city council has determined that the use of portions of the City’s rights-of-way for installation of telecommunications systems benefits local businesses and the region as a result of such services; and

WHEREAS, a franchise for use of public rights-of-way allows for the construction of amenities necessary to serve the future needs of the citizens of Covington, and the coordination, planning, and management of the City’s rights-of-way is necessary to ensure that the burden of costs relating to use of the public rights-of-way are fairly allocated; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way and RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchise agreements; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a nonexclusive franchise to Astound in accordance with the provisions of the Franchise;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Nonexclusive Franchise Granted.

A. Grant. The City hereby grants to Astound, subject to the conditions prescribed in this Ordinance, the franchise rights and authority (the “Franchise”) to construct, install, replace, repair, monitor, maintain, use, and operate the equipment and facilities necessary for a telecommunications system in, under, on, across, over, and through the City-owned rights-of-

way generally described in Exhibit A (the “Franchise Area”). The scope of this grant extends only to the telecommunications facilities by Astound in the Franchise Area to provide telecommunications services, Internet access services, and private line services (the “Authorized Activities”). Facilities include all wire, lines, cables, conduit, equipment, switches, and supporting structures located in the City’s right-of-way and utilized by Astound in the operation of Authorized Activities by this Ordinance (the “Facilities”). Such grant is subject to all applicable laws and ordinances of the City of Covington and the State of Washington in existence at the time of this franchise grant or hereafter enacted or amended. In the event that Astound intends to provide services other than the Authorized Activities, Astound shall be required to obtain an additional or revised franchise from the City to the extent required by the City and law.

B. Non-Exclusive. The foregoing Franchise rights and authority shall not be deemed to be exclusive to Astound and shall in no way prohibit or limit the City’s ability to grant other franchises, permits, or rights along, over, or under the Franchise Area; provided, that such other franchises do not unreasonably interfere with Astound’s Franchise granted herein as determined by the City. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent the City from using the Franchise Area or affect the City’s jurisdiction over the Franchise Area in any way. The City shall administer the public right-of-way and this Franchise in a competitively neutral and non-discriminatory manner with respect to Astound and other similarly-situated telecommunications franchisees.

C. No Property Interest. This Ordinance authorizes Astound to occupy and use the Franchise Area for the Authorized Activities. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Franchise Area to Astound.

Section 2. Authority. The City’s public works director or his/her designee is hereby granted the authority to administer and enforce the terms and provisions of this Ordinance and may develop such lawful and reasonable rules, policies, and procedures as he/she deems necessary to carry out the provisions contained herein.

Section 3. Term; Effective Date; Renewal.

A. Term. Subject to completion of the requirements of this Section 3 and Section 4 herein, the Franchise granted herein shall remain in full force and effect for a period of ten (10) years from the effective date of this ordinance.

B. Effective Date. This Ordinance shall not take effect and Astound shall have no rights under this Ordinance unless a written acceptance from Astound is received by the City pursuant to Section 4 herein.

C. Renewal. If Astound requests a renewal prior to the end of the Franchise term, the City’s public works director may, at the City’s sole discretion, extend the term of the Franchise for an additional ten (10) year term beyond the term provided for in Section 3.A herein to allow processing of renewal. If the City elects to extend the term of the Franchise, written notice of the extension shall be provided to Astound prior to the end of the original Franchise term. If the

City determines to not extend the term of the Franchise for an additional ten (10) year term it shall be extended on a month-to-month basis and may be terminated by either party following one hundred eighty (180) days' notice to the other.

Section 4. Acceptance of Terms and Conditions. The full acceptance of the Franchise and all the terms and conditions by Astound shall be filed in writing with the City within thirty (30) days of the effective date of this Ordinance in the form attached hereto as Exhibit B. Failure on the part of Astound to file said acceptance within thirty (30) days of the effective date of this Ordinance shall result in this Ordinance having no further force or effect and all rights granted under the Franchise shall terminate.

Section 5. Applicable Regulations; Construction Approvals and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions provided herein shall be deemed as non-compliance with the terms of the Franchise and may result in some or all of the penalties specified in Section 6 herein.

A. City Permits Required. No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the Franchise Area without first obtaining appropriate rights-of-way use permits required under Chapter 12.65 CMC. Full compliance with the conditions of the issued permit(s) shall be mandatory. In the event of any emergency in which any of Astound's Facilities in or under any right-of-way breaks, becomes damaged, or if Astound's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of individuals necessitating emergency work, Astound may perform said work without first applying for and obtaining a permit as required by the City. In case of such an emergency, within one (1) business day of the emergency work performed Astound shall apply for, and thereafter diligently pursue the issuance of, any required permits from the City for the emergency work.

B. Other Permits and Approvals. Nothing in this Ordinance shall relieve Astound from any obligation to obtain approvals or necessary permits from applicable federal, state, and local authorities for all activities in the Franchise Area.

C. City Ordinances and Regulations. Nothing in this Ordinance shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction, and maintenance of any Facilities by Astound, and Astound shall conform with all such regulations, unless compliance would cause Astound to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's authority, such other ordinance(s) shall take precedence over the provisions set forth in this Franchise.

D. Construction Standards. Any construction, installation, maintenance, and restoration activities performed by or for Astound within the Franchise Area shall be constructed and located so as to produce the least amount of interference with the free passage of pedestrian and

vehicular traffic. Astound shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. All construction, installation, maintenance, and restoration activities shall be conducted such that they conform to and with Title 12 of the Covington Municipal Code.

E. Underground Installation Required. All Facilities shall be installed underground in all areas of the City where all other telecommunications and cable facilities are located underground unless otherwise exempted from this requirement, in writing, by the City's public works director. In instances when the undergrounding of Facilities is not required, Astound shall install Facilities only on existing utility poles and otherwise utilize only existing aerial telecommunication facilities, provided, however, Astound agrees to cooperate in relocating to underground facilities when all other utilities are required to place facilities underground for a City capital improvement project, joint trench opportunity, or for the public health, safety, and welfare.

F. Relocation.

1. Whenever the City causes public improvements to be constructed within the Franchise Area and such public improvement requires the relocation of Astound's Facilities, the City shall provide Astound with not less than one hundred eighty (180) days written notice requesting such relocation along with plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination, and development of a relocation plan. The City and Astound shall meet at a time and location determined by the City to discuss the project requirements, including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details.

2. To ensure the timely execution of relocation requirements, Astound shall, upon written request from the City, provide at Astound's sole expense base maps, current as-built information, a detailed relocation plan (including a detailed schedule of relocation activities, identification of critical path, identification of facilities, and relocation procedures), and other design, technical, or operational requirements within the timeframe specified by the City.

3. Astound may, after receipt of written notice from the City requesting relocation of its Facilities, submit to the City written alternatives to such relocation within a reasonable time specified by the City. Such alternatives shall include the use and operation of temporary facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise Astound in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by the City, Astound shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Astound full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Astound shall relocate its facilities as otherwise specified by the City.

4. Upon final approval of the relocation plan by the City, Astound shall at its sole expense, unless otherwise prohibited by law, and at the reasonable timeframe specified by the

City, temporarily or permanently remove, relocate, place underground, change, or alter the position of any Facilities within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, or operation of any public improvement in or upon the rights-of-way, or for public safety.

5. If during the construction, repair, or maintenance of the City's public improvement project an unexpected conflict occurs with Astound's Facilities, Astound shall respond and commence efforts to resolve the conflict within twenty-four (24) hours of notification from the City.

G. Removal or Abandonment. Upon the removal from service of any Astound Facilities from the Franchise Area, Astound shall comply with all applicable standards and requirements prescribed by the City for the removal or abandonment of said Facilities. None of the Facilities constructed or owned by Astound may be abandoned without the express written consent of the City.

H. City Requested Facilities.

1. At any time that Astound is constructing, relocating, or placing Facilities in public rights-of-way within the City limits, the City may require Astound to provide additional ducts, conduit, and related access structures. Astound agrees to perform such requests at the sole expense of the City and pursuant to RCW 35.99.070 and the applicable terms of this Ordinance.

2. At any time that Astound is constructing, relocating, or placing Facilities in public rights-of-way within the City limits that: a) cross signaled intersections; b) borders any City property or facility; or c) borders any county, state, or special district facility, at the time of right-of-way permit approval for said work the City may request Astound to provide break-out kits, splicing cases, splices, and/or cable vaults for the City at the sole expense of the City. Astound agrees to perform such requests pursuant to a mutually negotiated agreement with the City that shall be executed prior to the City issuing the right-of-way permit for said work.

3. At any time Astound places fiber in the City's public rights-of-way, at the time of right-of-way permit approval for said work either the City or Astound may request a meeting to cooperatively discuss and negotiate in good faith mutually beneficial opportunities associated with said work. Such opportunities may, among other things, involve installation of fiber by Astound for the City's sole and exclusive use and the City's grant to Astound of non-exclusive use of City-owned or controlled conduit. Any such arrangements to which the parties agree shall be formalized in a separate agreement between the City and Astound, which shall be approved by the city council and executed by both parties prior to the City issuing the right-of-way permit for said work.

I. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Ordinance, Astound shall upon request of the City furnish a bond executed by Astound and a corporate surety authorized to operate a surety business in the State of Washington, in such sum as may be set and approved by the City

as sufficient to ensure performance of Astound's obligations under this Ordinance; provided, however, that such sum shall not exceed one hundred percent (100%) of the project construction cost of the proposed telecommunications system work by Astound in the Franchise Area. At Astound's sole option, Astound may provide alternate security in the form of an assignment of funds or a letter of credit in the same amount as the bond. All forms of security shall be in the form reasonably accepted by the City. The bond shall be conditioned so that Astound shall observe all covenants, terms, and conditions and shall faithfully perform all of the obligations of this Ordinance and to repair or replace any defective Astound work or materials discovered in the Franchise Area.

J. "One-Call" Location and Liability. Astound shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Astound's Facilities or for interruptions in service to Astound's customers that are a direct result of work performed for any City project or for which Astound has failed to properly locate its lines and Facilities within the prescribed time limits and guidelines established by One-Call. The City shall also not be liable for any damages to Astound Facilities or for interruption in service to Astound's customers resulting from the work of a third party performed under a permit issued by the City.

K. As-Built Plans Required. Astound shall maintain accurate engineering plans and details of all installed Facilities within the Franchise Area and shall provide such information in both paper and electronic form using the most current AutoCAD version (or such other format as may be in general use in the telecommunications industry and reasonably acceptable to the City and Astound) prior to close-out of any permit issued by the City and any work undertaken by Astound pursuant to this Ordinance. The City shall determine the acceptability of any as-built submittals provided under this Section.

L. Recovery of Costs. Astound shall be subject to all permit fees associated with activities undertaken through the authority granted in this Ordinance or under ordinances of the City.

M. Vacation. If, at any time, the City shall vacate any City street, right-of-way, or other City-owned property that is subject to rights granted by this Ordinance and said vacation shall be for purposes of acquiring the fee or other property interest in said street, right-of-way, or other City-owned property for the use of the City in either its proprietary or governmental capacity, then the City may, at its sole option and by giving one hundred eighty (180) days written notice to Astound, terminate the Franchise with reference to such City street, right-of-way, or City-owned property so vacated. The City shall not be liable for any damages or loss to Astound by reason of such termination other than those provided for in RCW 35.99.060.

Section 6. Franchise Compliance.

A. Franchise Violations. The failure by Astound to fully comply with any of the provisions of this Ordinance may result in a written notice from the City describing the violations of this Ordinance and requested remedial action to cure said violations in a timeframe of no less than thirty (30) days, which timeline may be extended at the City's sole discretion if Astound promptly begins and demonstrates reasonable and consistent efforts to remedied the violations so

identified. The failure of Astound to cure said violations pursuant to the timeline and terms of the City's written notice shall be considered sufficient grounds for the termination of all rights and privileges existing under the Franchise.

B. Emergency Actions.

1. If any of Astound's actions, or any failure by Astound to act to correct a situation caused by Astound, are reasonably determined by the City to create a threat to life or property, financial harm, or cause a delay of the construction, repair, or maintenance of a public improvement, the City may order Astound to immediately correct said threat, financial harm, or delay or, at the City's sole discretion, the City may undertake measures to correct said threat, financial harm, or delay itself; provided that, when possible, the City shall notify Astound and give Astound an opportunity to correct said threat, financial harm, or delay within a reasonable specified time, which shall be not less than thirty (30) days, before undertaking such corrective measures. Astound shall be liable for all reasonable costs, expenses, and damages attributed to the correction of such an emergency situation as undertaken by the City to the extent that such situation was caused by Astound and shall further be liable for all reasonable costs, expenses, and damages resulting to the City from such situation attributable to Astound. Any reimbursement of such costs to the City shall be made within thirty (30) days of written notice of the completion of such action or determination of damages by the City. The failure by Astound to take appropriate action to correct a situation caused by Astound and identified by the City as a threat to public or private safety or property, financial harm, or delay of the construction, repair, or maintenance of a public improvement shall be considered a violation of the terms of this Ordinance.

2. If during construction or maintenance of Astound's Facilities any damage occurs to an underground facility and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, Astound or its contractor shall immediately call 911 or other local emergency response number.

C. Other Remedies. Nothing in this Ordinance shall limit the City's or Astound's available remedies in the event of either party's failure to comply with the provisions of this Ordinance including, but not limited to, a party's right to a lawsuit for specific performance and/or damages.

D. Removal of System. In the event that the Franchise is terminated as a result of violations of the terms of this Ordinance, Astound shall at its sole expense promptly remove all Facilities, provided that the City at its sole option may allow Astound to abandon its Facilities in place.

Section 7. Insurance.

A. Astound shall procure and maintain liability insurance written on a per occurrence basis during the full term of the Franchise for injuries to persons and damage to property. The policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:

1. Commercial General Liability coverage with limits of not less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products completed aggregate limit covering bodily injury and property damage; including contractual liability; personal injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.

2. Automobile liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.

3. Contractors' pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

B. Such insurance shall specifically name as additional insured the City and its officers and employees and contain or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance or self-insurance or pool coverage maintained by the City shall be excess of Astound's coverage and shall not contribute with it. Astound may utilize primary and umbrella liability insurance policies to satisfy insurance policy limits required herein.

C. If the City reasonably determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be acquired. The City shall provide written notice to Astound should the City exercise its right to require additional insurance.

D. Astound shall procure and maintain liability insurance during the full term of the Franchise for injuries to persons and damage to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to Astound, its agents, representatives, or employees. Astound shall provide original Certificates of Insurance and a copy of the amendatory endorsements to the City for its inspection.

Section 8. Indemnification.

Astound shall use reasonable and appropriate precautions to avoid damage to person or property in the construction, installation, repair, operation, and maintenance of its Facilities within the Franchise Area. Astound shall indemnify, defend, and hold harmless the City, its agents, officers, employees and volunteers, from any and all third party claims, actions, or damages, or expense of any nature, including attorneys' and expert witness fees, which may accrue to or be suffered by any person or persons, corporation, or property to the extent caused in part or in whole by any negligent act or omission of Astound, its officers, agents, servants, or employees, contractors, or subcontractors arising out of or in connection with the performance of the rights, benefits, privileges, or obligations granted to Astound by the Franchise except for those injuries or damages caused by the sole negligence of the City. In the event any claim or demand presented to or filed with the City that gives rise to Astound's obligations pursuant to this Section, the City shall within a reasonable time notify Astound thereof (provided that in any event such notice shall provide Astound a reasonable time period in which to respond so its

rights are not prejudiced) and Astound shall have a right, at its election, to settle or compromise such claim or demand. In the even any third party claim or action is commenced in which the City is named a party and which suit or action is based on a claim or demand that gives rise to Astound's obligation pursuant to this Section, the City shall promptly notify Astound thereof and Astound shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, Astound may, at its election and its sole cost and expense, settle or compromise such suit or action.

The City shall have the right at all times to participate through its own attorney in any suit or action that arises out of any right, privilege, or authority granted by or exercised pursuant to the Franchise when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City shall be at the City's sole cost and expense.

Should a court of competent jurisdiction determine that the Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Astound and the City, its officers, employees, and agents, Astound's liability hereunder shall be only to the extent of Astound's negligence.

With respect to the performance of the Franchise and as to claims against the City, its officers, agents, and employees, Astound expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its officers, agents, and employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section extends to any claim brought by or on behalf of Astound's officers, agents, or employees. This waiver has been mutually negotiated by the parties.

Section 9. Transfer of Ownership.

A. The rights, privileges, benefits, title, or interest provided by the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without the prior written consent of the City, with such consent not being unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, for security purposes or by other hypothecation, or by assignment of any rights, title, or interest in Astound's Facilities in order to secure indebtedness. Approval shall not be required for any transfer from Astound to another person or entity controlling, controlled by, or under common control with Astound, or in connection with the sale of all or substantially all of the assets of Astound or if Astound adopts a new company name, each without a change in control. Astound may license fibers to other users including to those operating a telephone business or services providers without the consent of the City provided that Astound remains solely responsible for compliance with the terms and conditions outlined in the Franchise. The licensing or lease of fibers for other uses shall require a separate assignment, franchise, or right-of-way agreement approved by the City.

B. In any transfer of the Franchise that requires the approval of the City, Astound shall show that the recipient of such transfer has the technical ability, financial capacity, and any other legal or general qualifications as reasonably determined by the City to be necessary to ensure that the obligations and terms required under the Franchise can be met to the full satisfaction of the City.

The qualifications of any transferee shall be determined by the Covington City Council and the approval of such transfer shall be granted by resolution of the Covington City Council. Any actual and reasonable administrative costs associated with the transfer of the Franchise that requires the approval of the City shall be reimbursed to the City within thirty (30) days of such transfer, provided that such reimbursement shall not exceed \$5,000.

Section 10. Administrative Fees; Utility Tax.

A. Franchise Fee Precluded. Pursuant to RCW 35.21.860, the City is precluded from imposing franchise fees for any “telephone business” as defined in RCW 82.16.010 or “service provider” as defined in RCW 35.99.010, except that fees may be collected for administrative expenses related to such franchise and a utility tax may be assessed. Astound does hereby warrant that its Authorized Activities under the Franchise are those of a telephone business as defined in RCW 82.16.010 or of a service provider as defined in RCW 35.99.010.

B. Administrative Fees. Astound shall be subject to an administrative fee for reimbursement of the actual costs associated with the preparation, processing, and approval of this Ordinance, provided that such reimbursement shall not exceed \$5,000. These costs shall include but not be limited to wages, benefits, overhead expenses, equipment, and supplies associated with such tasks as plan review, site visits, meetings, negotiations, and other functions critical to proper management and oversight of the City’s rights-of-way. Administrative fees exclude normal permit fees for permits issued under Chapter 12.65 CMC.

C. Additional Work. In the event that Astound submits a request for work beyond the scope of the Franchise, or submits a complex project that requires significant comprehensive plan review or inspection, Astound shall reimburse the City for amendments and expenses associated with the project. Astound shall pay such documented costs within thirty (30) days of receipt of invoice from the City.

D. Failure to Pay. Failure by Astound to make full payment of any undisputed City-issued invoices within the time specified shall be considered sufficient grounds for the termination of all rights and privileges existing under the Franchise utilizing the procedures specified in Section 6 herein.

E. City Utility Tax. If Astound provides services to customers within the City, Astound shall become subject to the City’s utility tax set forth in Chapter 3.70 CMC, as applicable.

Section 11. Notices. Any notice to be served upon the City or Astound shall be delivered to the following addresses, respectively:

City of Covington
Attn: City Manager
16720 SE 271st Street, Suite 100
Covington, WA 98042-4964
Email:
Phone: (253) 480-2400

Astound Broadband, LLC.
Attn: James A. Penney, EVP
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033

Email: jpenney@wavebroadband.com
Phone: 425-896-1891

with an additional copy to:

Cinnamon Mueller
307 N. Michigan Ave., Suite 1020
Chicago, IL 60601

Section 12. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, either party may deem the entire Franchise to be affected and therefore nullified and terminated. However, in the event that a determination is made that a section, sentence, clause, or phrase in this Ordinance is invalid or unconstitutional, the parties may agree to treat the portion declared invalid or unconstitutional as severable and maintain in force the remaining provisions of this Ordinance; provided that, if the City elects to enforce the remaining provisions of this Ordinance without agreement by Astound, Astound shall have the option to terminate the Franchise.

Section 13. Reservation of Rights. The parties agree that this Ordinance is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Ordinance or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this Ordinance, it being the intention of the parties to preserve their respective rights and remedies under the law, and that nothing in this Ordinance is intended to constitute a waiver of any rights or obligations by either party under the law.

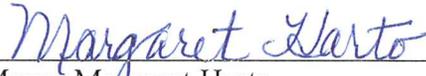
Section 14. Police Powers. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Astound shall not by the Franchise obtain any vested rights to use any portion of the City's right-of-way except for the locations approved by the City in the Franchise Area and then only subject to the terms and conditions of the Franchise. The Franchise and the permits issued there under shall be governed by applicable City ordinances in effect at the time of application for such permits.

Section 15. Future Rules, Regulations, and Specifications. Astound acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to Astound, shall thereafter govern Astound's Franchise activities herein; provided, however, that in no event shall regulations materially interfere with or adversely affect Astound's

rights pursuant to and in accordance with this Ordinance, or be applied in a discriminatory manner as it pertains to Astound and other similar users of such facilities.

Section 16. Publication. This Ordinance or a summary thereof shall be published in the official newspaper of the City, the expense of which shall be borne by Astound, and shall take effect and be in full force in accordance with Section 3.B herein.

ADOPTED by the City Council of the City of Covington, Washington, at a regular meeting thereof on this 30th day of June, 2015.



Mayor Margaret Harto

PUBLISHED: July 3, 2015
EFFECTIVE: **July 7, 2015**

ATTESTED:



Sharon Scott
City Clerk

APPROVED AS TO FORM:



Sara Springer
City Attorney

ATTACHMENTS:

Exhibit A – Astound Broadband, LLC d/b/a Wave Telecommunications System Description and Route Map (the “Franchise Area”)

Exhibit B—Astound Broadband, LLC d/b/a Wave Franchise Acceptance Form

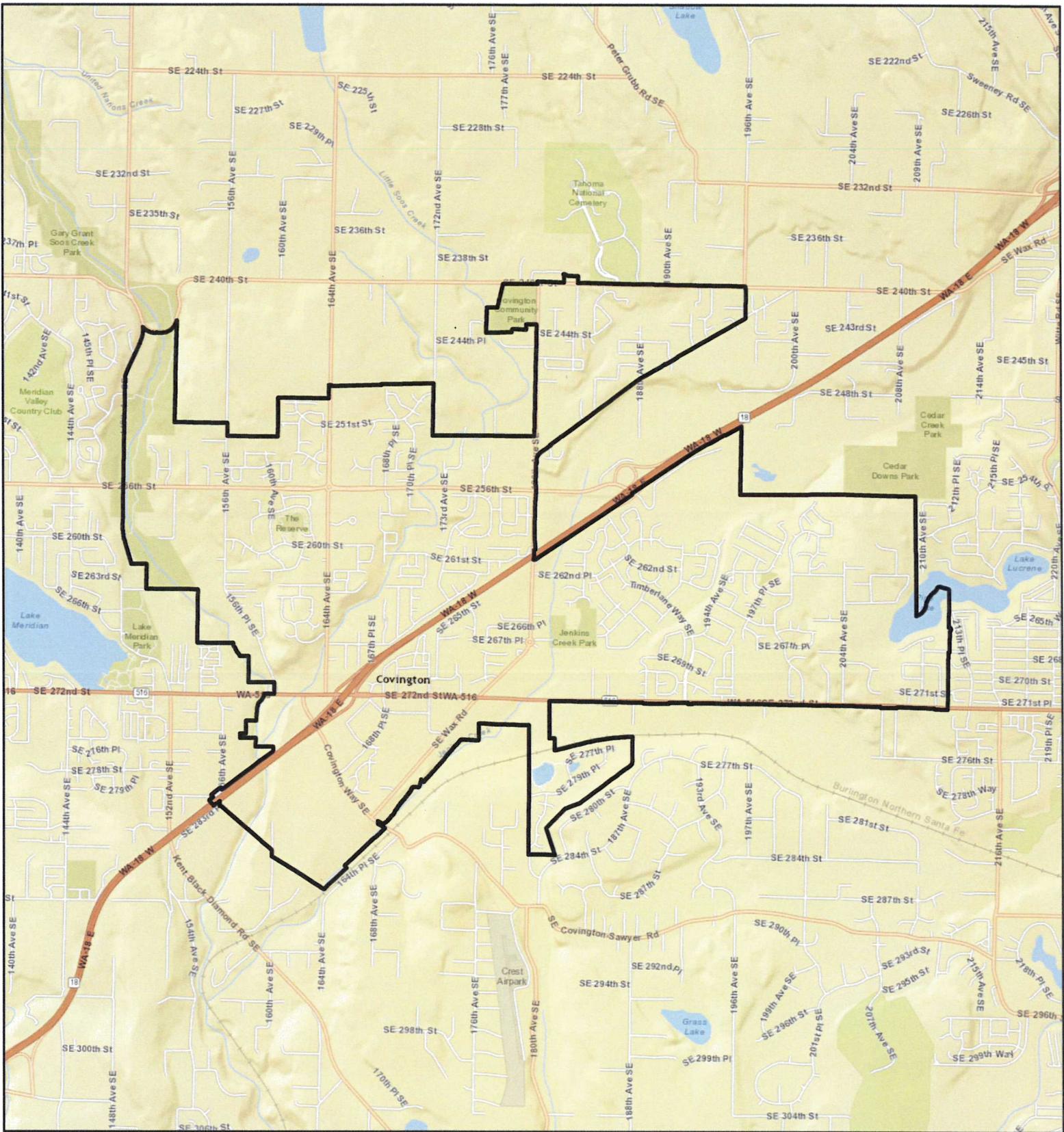


Exhibit "A" Franchise Area City Limits

**Astound Broadband, LLC d/b/a
Wave Telecommunications System
Description and Route Map
(the "Franchise Area")**



 City Limits

Information shown is for general reference purposes only. The City of Covington makes no warranty as to its accuracy.



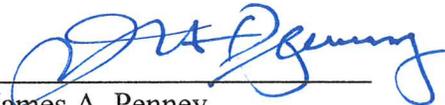


EXHIBIT B

Attn: City Clerk
City of Covington
16720 SE 271st Street, Suite 100
Covington, WA 98042-4964

This is to advise the City of Covington, Washington, that Astound Broadband, LLC d/b/a Wave (“Astound”) hereby accepts the terms and provisions of Ordinance No. 04-15, passed by the City Council on June 30, 2015 (the “Franchise”) granting to Astound a nonexclusive telecommunications Franchise for ten (10) years. Astound acknowledges and agrees to abide by each and every term of the Franchise.

BY


James A. Penney

TITLE Executive Vice President

DATE July 2, 2015

This Acceptance was received by the City of Covington on July 7, 2015.

Attested By:


City Clerk