ORDINANCE No.

*Grant a temporary revocable permit to Astound Broadband, LLC for telecommunications services and establish terms and conditions. (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland, Oregon (City),and Astound Broadband LLC (Astound) have reached final agreement on the terms and conditions of a ten-year Franchise for Astound to use the City streets to provide telecommunications services.

2. The City will shortly begin considering approval of the proposed Franchise, following the formal Portland City Charter procedure of public notice and hearing. This process will begin with the publication of a notice of proposed franchise, together with the publication of the entire proposed agreement in the City's official newspaper. The process mandated by the Portland City Charter for adopting a proposed franchise may take up to four months, or more, from the date of initial publication.

3. Astound has asked the City, in writing, if the City would issue a temporary, revocable permit allowing Astound to immediately begin construction to add to its fiber optic system to provide telecommunications services. Astound's letter acknowledges that the parties have otherwise reached final agreement on Franchise terms and conditions, and identifies an immediate need to begin construction of its telecommunications facilities in the public right-of-way. Astound has accepted that its rights under a revocable permit would end upon the permit's expiration, if not otherwise superseded by the proposed Franchise. A copy of Astound's letter is attached to this Ordinance as Exhibit A and is hereby incorporated by reference.

4. The temporary, revocable permit to be issued under this Ordinance is substantially similar to the terms and conditions set forth in the proposed Franchise agreement to be entered into between the City and Astound.

NOW, THEREFORE, the Council directs:

a. NATURE AND TERM OF GRANT.

   1. Issuance of Temporary, Revocable Permit.

      A. The City of Portland (City), does hereby grant to Astound Broadband, LLC, a Washington limited liability company qualified to do business in the State of Oregon (Grantee), and to Grantee's successors and assigns, as approved by the City under Section o of this Permit, a temporary, revocable permit to construct, operate and maintain a telecommunications system, with all necessary Facilities, in, under, and over the surface of the City's Streets. Grantee intends to use its Telecommunications

System to provide Telecommunications Services. To the extent that Grantee's use of its Telecommunications System changes, the City may reopen this Permit pursuant to the provisions of Section s.8 of this Permit.

B. Throughout this Permit, the City of Portland, Oregon, shall be referred to as the "City," and Astound Broadband, LLC, shall be referred to as the "Grantee."

C. This Permit does not authorize the Grantee to operate a cable system or provide video programming, as defined by 47 U.S.C.A. 522(7).

2. Duration of Permit. The term of this Permit, and all rights and obligations pertaining thereto, shall be effective for either: (1) a period of only one year, as measured from its effective date; or (2) until the City grants a franchise to Grantee and the franchise becomes effective, whichever event occurs sooner.

3. Effective Date. The effective date of this Permit shall be upon passage of the Permit by the City Council unless Grantee fails to file an unconditional written acceptance of this Permit in accordance with Section t herein, in which event this Permit shall be null and void. The passage date of this Permit is set forth on the last page of the original hereof, as stamped by the Council Clerk.

4. Permit Not Exclusive. This Permit is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder.

5. Charter and General Ordinances To Apply. To the extent authorized by law, this Permit is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Permit, to the extent authorized by law. Nothing in this Permit shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

b. DEFINITIONS.

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

2. Definitions. For the purpose of this Permit, 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.

A. "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.

B. "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

C. "City Council" means the Council of the City of Portland.

D. "Conduit" means any structure, or section thereof, containing two or more ducts used for any wire, optical fiber or other cable.

E. "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in the Grantee's Telecommunications System.

F. "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.

G. "Facility" means any tangible component of the Telecommunications System.

H. "Gross Revenues" means any and all gross revenues derived by Grantee for the provision of any and all products, services or charges, originating or terminating in Portland, Oregon billed to a circuit, switch or address in Portland, Oregon, including revenues from dedicated private networks. Gross revenues shall include any and all revenue from leases and IRUs for the Portland portion of Grantee's system. Gross revenues may be adjusted for the net write-off of uncollectible amounts of such revenues.

I. "Hazardous Substances" has the meaning given by ORS 465.200 (2009).

J. "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.

K. "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets including, if appropriate, the City itself. For the purposes of Section l, the Grantee shall not be construed to be a "Licensee" as defined herein.

L. "Minimum Annual Permit Fee" means $10,000.

M. “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.

N. “Penalties” means any and all monetary penalties provided for in this Permit.

O. "Permit” means this Permit agreement, as approved by the City Council and accepted by Grantee, according to the terms of Section t of this Permit.

P. “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.

Q. “Streets” means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow the Grantee to use them.

R. “Surplus ducts or conduits” means Conduit Facilities other than those occupied by the Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that the Grantee reasonably expects to use within the next 18 months.

S. “Telecommunications Services” means:

(1) Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the purpose of voice, video, or data transmission;

(2) Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the purpose of voice, video, or data transmission;

(3) 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

(4) 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.

(5) This Permit does not authorize the Grantee to operate as a telecommunications provider. The Grantee represents that it has applied for and received all necessary regulatory authority; and

(6) Nothing in this Permit shall preclude the Grantee from entering into a contract for the use of any portion of its Telecommunications System with any Person or other 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 the City.

T. "Telecommunications System" means all wires, cables, ducts, conduits, vaults, poles, Optical Fiber and other necessary Facilities owned or used by the Grantee 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.

U. "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 Permit.

c. COMPENSATION AND AUDITING.

1. Amount of compensation.

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

B. As additional compensation to the amounts set forth in Subsection c.1.A:

(1) In the event Grantee sells any portion of its Telecommunications System, Grantee shall pay a one-time Permit fee to the City of five percent (5%) of the sales price; and,

(2) The calculation of the five percent (5%) Permit fee on sales shall be based on the sale price of the Portland, Oregon portion of the Telecommunications System or the minimum annual fee of $10,000, whichever is greater. The calculations of the five percent Permit fee on sales revenues shall be calculated under the following formula:

Permit fee = (.05) X Ts X (Fp÷Ft), where:

Ts = Total sales price for the facility(ies);

Fp = the length of the facilities sold located within the City, expressed in fiber-miles; and,

Ft = the total length of the facilities sold, expressed in fiber-miles.

An illustrative example of this calculation would be as follows: Out of a fiber optic bundle of twenty-four (24) fibers in a forty mile loop, Grantee sells two (2) fibers to a purchaser for a total sales price of five hundred thousand dollars ($500,000). Ten miles of the fiber optic loop are located within the City of Portland. The calculation would be as follows: Permit fee = (.05) X $500,000 X (2 x 10) ÷ (2 x 40) = $6,250.

2. Permit Fee Payments.

   A. Grantee's Minimum Annual Permit Fee payable under Section c.1.A shall be paid to the City annually following the effective date of this Permit. Each annual payment shall be made for the immediately preceding calendar year ending December 31. Each annual payment of the Grantee's Minimum Annual Permit Fee shall be paid on or before the forty-fifth (45th) day following December 31st.

   B. The Gross Revenue based Permit fee payable under Section c.1.A, together with Permit fees based upon revenues from sales under Section c.1.B, 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 Permit.

   C. Any failure to pay the Permit 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 the 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 Permit. In addition, any overdue amounts, including delinquency charges, shall bear interest pursuant to Section c.2.D.

   D. Permit fee payments not received by the City on or before the due date shall be assessed interest based on the average prime interest rate set by the 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.

3. Reports. Each payment shall be accompanied by a written report to the City, verified by an officer or other authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues, together with Permit fees based upon revenues from sales, IRUs and leases under Section c.1 and the computation basis and method. Such reports shall be in a form satisfactory to the City.

4. Cost of Pre-franchising and Publication. Grantee shall pay its pre-franchising costs, including publication of this Permit as such publication is required by the City Charter.

5. Acceptance of Payment and Recomputation. No acceptance of any payment by Grantee 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 the City may have for further or additional sums payable. All amounts paid under Section c shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within five (5) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. The Grantee agrees to reimburse the City for:

   A. The reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid 95% or less of the Permit fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit; or

   B. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that the Grantee had paid more than 95% but less than 98% of the Permit fees owing for the period at issue.

   C. The City's costs which may be reimbursed under this Section c.5 shall not exceed $5,000.00 per audit or financial review.

   D. If the City determines that Grantee made any underpayment, and that the underpayment exceeded 5% of the amount due, Grantee shall pay interest on the underpayment in accordance with Section c.2.D, above.

6. If the Grantee disputes the City's determination of underpayment, the Grantee shall place the disputed amount in an escrow account until final resolution.

7. The City and its agents and representatives shall have authority to arrange for and conduct reviews of the relevant financial obligations payable hereunder. The City may determine the scope of review in each instance. All amounts paid by Grantee shall be subject to review by the City, provided that such review be completed within five years from the date payment was due. City requests for reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Grantee shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that the Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the five years period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

d. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

1. Insurance.

A. The Grantee shall maintain public liability and property damage insurance that protects Grantee and the City from the claims referred to in Section e, 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 Permit. The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the 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. The insurance shall provide that the coverage shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Permit, Grantee shall obtain a replacement policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of this Permit.

B. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by the City Attorney.

C. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section d.1.C, any failure by the Grantee to maintain adequate self-insurance shall be cause for termination of this Permit under Section p.

2. Faithful Performance Bond.

A. Upon the effective date of this Permit, the Grantee shall furnish proof of the posting of a faithful performance bond or irrevocable letter of credit running to the City, with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand dollars ($100,000), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Permit. Grantee 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 Permit, including, if necessary, the time required for removal of all of Grantee's Telecommunications System installed in the 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 the City Auditor. The bond or irrevocable letter of credit shall be reviewed and approved as to form by the City Attorney.

B. 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 acceptable to the City. If the rating of the issuer of the letter of credit is significantly downgraded to a lower rating during the term of the permit, the City may require the Grantee to provide a replacement through an institution with an acceptable rating. If the Grantee is providing a letter of credit, it must be issued by and presentable to a Portland branch of the financial institution. The performance bond or letter of credit must provide the City with unrestricted rights to draw upon the guaranty for the purposes identified in the Permit for the performance bond. The issuing financial institution's liability to pay and to be reimbursed by the Grantee customer must be absolute upon the occurrence of the triggering circumstances. Should the City have cause to draw upon the performance bond or letter of credit, it will promptly notify the Grantee, and the Grantee shall promptly restore the performance bond or letter of credit to the full required amount.

C. During the term of this Permit, Grantee shall file with the City Auditor 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 the City exercise its rights against the performance bond or irrevocable letter of credit under Section d.2.A if a bona fide, good faith dispute exists between the City and the Grantee.

3. Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of $100,000. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section f. Grantee 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 Grantee's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the 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, Grantee shall file with the City Auditor 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 the City Attorney as to its adequacy under the requirements of this Section.

e. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS.

1. Indemnification

A. Grantee hereby agrees and covenants to indemnify, defend and hold the 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 Permit, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee 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 the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

B. Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee'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 Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

C. Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the 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 Grantee's Telecommunications System in the Streets.

f. CONSTRUCTION AND RELOCATION.

1. Construction.

A. Subject to applicable regulations of the City, Grantee 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 Grantee's provision of Telecommunications Services shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee 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. Grantee shall pay all applicable fees due for City construction permits.

B. Maps.

(1) Prior to beginning construction, Grantee shall provide the City's Office of Cable Communications and Franchise Management with an initial construction schedule for work in the Streets and the estimated total cost of such work. As the Grantee's construction in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Telecommunications System in the Streets, as built. Such as-built maps shall be in a form acceptable to the City Engineer. Within one year of the effective date of this Permit, Grantee shall begin providing as built maps in electronic form.

(2) One year after the effective date of this Permit, and annually thereafter, Grantee shall provide a map to the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Grantee'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 the City and Grantee agree upon. Grantee shall also provide such maps in an electronic format acceptable to the City and the Grantee.

C. Grantee may make excavations in the City Streets for any Facility needed for the maintenance or extension or removal of the Grantee's Telecommunications System, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any further franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.

D. In the event that emergency repairs are necessary for Grantee's Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

2. Locates. Grantee 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.

3. Relocation. The City shall have the right to require Grantee 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 Grantee (however, payment by Grantee shall in no way limit Grantee'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, the City imposes additional specifications regarding materials or design for Grantee's Facilities, the additional marginal increase shall not be

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

4. Grantee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Streets by or under the City's authority.

5. Within thirty (30) days following Grantee's acquisition of any Telecommunications System Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, the Grantee shall submit to the 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 the City's sole option, as expressed by ordinance adopted by the City Council, Facilities acquired by Grantee shall immediately be subject to the terms of this Permit, within a reasonable period of time to bring such acquired Facilities into compliance with this Permit.

g. RESTORATION OF STREETS.

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

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

3. Tree Trimming.

   A. After obtaining a written permit from the City Forester, Grantee 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 Grantee's Telecommunications System. Except in emergencies, Grantee 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 g.3, 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 Grantee's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.

   B. The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates to the City Forester's satisfaction 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 Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the permit if, at any time, the Grantee or its agents, fails to use proper arboricultural practices.

h. RESERVATION OF CITY STREET RIGHTS. Nothing in this Permit shall be construed to

prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the Telecommunications Systems of the Grantee under this Permit. However, if any of the Grantee's Telecommunications System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in Section f.3 of this Permit.

i. USE OF NETWORK CAPACITY AND DUCTS BY CITY.

1. Upon written notice to and upon written request by the City, Grantee shall provide conduit to the City, for municipal purposes. Grantee shall provide maps to the City of the route of any planned duct construction. Such maps shall be provided at least thirty (30) days prior to the beginning of construction. After receipt of the maps, the City will notify Grantee if it does not desire any ducts along the planned route.

2. New Underground Construction.

A. For new Grantee Duct installation, Grantee will provide additional duct(s) as needed and as specified by the City in an Annual duct capacity plan provided to Grantee:

(1) City will pay Grantee the incremental costs for this work, consistent of material and labor;

(2) Grantee will provide a deed and include location in map submitted per Section f.1.B. City will then maintain ownership of and maintenance responsibilities for the additional duct(s).

B. Access to Grantee's Vault. To facilitate safe working conditions, Grantee will control access to Grantee's vaults. City or its contractor will notify Grantee, in advance, of access needs and Grantee will provide qualified personnel. Grantee will bill the City or its contractor for cost of labor incurred for this work, and the City agrees to pay or have its contractor pay Grantee in accordance with such bills.

C. City Use of Surplus Ducts or Conduits. As needed and as specified by the City in an Annual duct capacity plan provided to Grantee, City will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licenses under Section l and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

j. STREET VACATION. Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide the Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Permit, unless the City Council specifically reserves to Grantee the

right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall, without expense to the City, forthwith remove its Telecommunications System Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no worse than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City will cooperate with Grantee to secure an alternative location in the vacated Street area from the third party that shall have ownership after vacation.

k. MAINTENANCE OF FACILITIES. Grantee shall provide and put in use all Telecommunications System Facilities consistent with standard telecommunications industry practices reasonably necessary to control and carry Grantee's Telecommunications Services so as to prevent injury to the City's property or property belonging to any Person within the City. Notwithstanding the foregoing, it shall not be a breach of this Section k if such injury is not reasonable foreseeable by Grantee. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Telecommunications System in a manner that requires any customer, except the City, or any entity franchised by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.

l. COMMON USERS.

1. Grantee acknowledges that the Streets have a finite capacity for containing conduits, ducts and other Facilities. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Streets, the City Engineer may require Grantee to afford to such Person the right as a Licensee to use Grantee's surplus ducts or conduits in common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to Sections l.2 through l.5, to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by the Grantee and Licensee, and to the safety requirements of Grantee’s system and maintenance requirements. Any agreement governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee’s discretion, require use of Grantee’s employees or contractors in any work occurring in Grantee’s vaults. If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of surplus conduits and ducts, the parties shall submit the matter to final and binding arbitration. Such arbitration shall be conducted according to the procedures set forth under ORS 36.600 through 36.740 (2009). The cost of the arbitration, including the costs of witnesses and compensation of the arbitrators, shall be taxed against the losing party. However, each party shall separately bear its own costs of attorneys’ fees.

2. A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

3. Grantee shall give a Licensee and the City 120 written days notice of its need to occupy licensed conduit and shall propose that the Licensee take the first feasible action listed:

   A. Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Grantee's space needs;

   B. Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;

   C. Vacate ducts that are no longer surplus; or,

   D. Construct and maintain sufficient new conduit to meet the Grantee's space needs.

   E. Grantee shall provide a written copy of such notice to the City at the same time such notice is provided to the Licensee.

4. When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the revised cost.

5. All attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's attachments cause the Grantee to incur.

m. DISCONTINUED USE OF FACILITIES. Whenever Grantee intends to discontinue use of its Telecommunications System within all or part of a particular portion of the Streets and does not intend to use said Facilities again in the future, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefore. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as

directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

n. HAZARDOUS SUBSTANCES.

1. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Telecommunications System in the City Streets.

2. Grantee shall maintain and inspect its Telecommunications System located in the City Streets. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its Facilities in the Streets, Grantee shall provide a written report of the discovery to the City within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state, and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by Grantee's Facilities or the acts or omissions of Grantee. Nothing in this Permit transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Streets.

3. Construction, Modification, or Removal of Facilities. In the course of construction, modification, or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations, and orders. Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

o. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

1. Except as otherwise permitted by Section o.2 hereof, neither this Permit nor any of Grantee's Telecommunications System located in the Streets by authority of this Permit shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section o shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Telecommunications System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Telecommunications System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment

shall be subject to the City's other rights contained in this Permit.

2. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Permit, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

3. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section d, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof.

4. Grantee shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, and notwithstanding Section o.1, hereof, Grantee may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of Grantee's Facilities shall not obtain any rights under this Permit. For the purposes of this Subsection, a capital lease shall be treated as a lease under this Subsection until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under Subsection 15.3.

5. Notwithstanding Subsection o.1, Grantee may grant Indefeasible Right of User Interests in any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. The holder of any IRU in Grantee's Facilities shall not obtain any rights under this Permit. For the purposes of this Subsection, if a transfer of ownership of the Facilities occurs at the conclusion of the IRU, it shall be treated as a sale under Subsection 15.3 at that point in time.

6. Notwithstanding Subsection o.1, Grantee may sell portions of its Telecommunications System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

   A. The sale is to the holder of a current existing, valid telecommunications franchise with the City;

   B. Within fourteen days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Telecommunications

System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Subsection f.1.B(2)), and providing an executed counterpart or certified copy of the sales documents;

C. Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Telecommunications System; and,

D. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid franchise. The purchaser shall not obtain any of the Grantee's rights under this Permit.

p. FORFEITURE AND REMEDIES.

1. Forfeiture. In addition to any other rights set out elsewhere in this Permit, the City reserves the right to declare a forfeiture of the Permit, and all of Grantee's rights arising thereunder, in the event that:

A. The Grantee violates any material provision of the Permit;

(1) For purposes of this Section, the following are material provisions of this Permit, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Permit:

(A) The invalidation, failure to pay or any suspension of Grantee's payments of Permit Fees to the City for use of the Streets under this Permit;

(B) Any failure by the Grantee to submit timely reports regarding the calculation of its Permit Fees to the City;

(C) Any failure by Grantee to maintain the liability insurance required under this Permit;

(D) Any failure by Grantee to maintain the performance bond required under this Permit;

(E) Any failure by Grantee to provide copies of requested information as provided under Section c.7 above; or,

(F) Any failure by Grantee to otherwise fully comply with the requirements of Section c through Section q of this Permit.

B. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;

C. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Telecommunications System within the City;

D. The Grantee's construction schedule is delayed for over 18 months and such delay has not been caused by the actions or omissions of the City, or Force Majeure; or,

E. The Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.

2. Additional Remedies. In addition to any rights set out elsewhere in this Permit, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

   A. Impose a financial penalty of up to $1,000.00 per Permit violation; or,

   B. Suspend the Grantee's Permit rights, until the Grantee corrects or otherwise remedies the violation.

   C. Revocation. The City Council may revoke this Permit in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Permit. The City shall exercise its revocation rights under this subsection consistent with the terms of Section q of this Permit.

3. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

4. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and the Grantee.

q. RENEGOTIATION. In the event that any provision of this Permit becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Permit, the City and the Grantee may mutually agree to renegotiate the terms of this Permit. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party

accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

r. EXPIRATION. Upon the expiration of this Permit, on application made by the Grantee for Permit renewal or additional authority to exercise the privileges, or any of them, hereby granted, the Grantee shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the Grantee does not promptly apply for such renewal or additional authority, or if the Grantee rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Permit, grant a permit or Franchise to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the Grantee, at or before the time such new or additional authority takes effect, and before the Grantee shall be deprived of the right to possess, maintain and operate its Telecommunications System located within the Streets, the fair and equitable valuation of Grantee's Telecommunications System located within the Streets. If the third party and Grantee cannot agree on the fair and equitable value of said Telecommunications System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Permit.

s. MISCELLANEOUS

1. Compliance With Laws.

   A. Both Grantee and the City shall comply with all applicable federal and state laws.

   B. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

2. Severability. If any Section, provision or clause of this Permit is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or published regulations, the remainder of this Permit shall not be affected.

3. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Permit in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Permit by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Permit by reason of such failure or neglect.

4. Force Majeure.

   A. For purposes of this Section s.4, the term Force Majeure shall mean acts of God,

landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts or terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.

B. If the Grantee is wholly or partially unable to carry out its obligations under this Permit as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Permit, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Permit.

5. Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Permit shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

6. Notice. Any notice provided for under this Permit shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

A. If to the City: Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 1305
Portland, Oregon 97204
FAX (503) 823-5370

With a copy to: City Attorney's Office
City of Portland
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX (503) 823-3089

B. If to the Grantee: Astound Broadband, LLC.
Jim Penney, Executive Vice President, Business and Legal Affairs
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
FAX: (425) 576-8221

And Astound Broadband, LLC
Steve Weed, Chief Executive Officer
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
FAX: (425) 576-8221

C. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

7. Public Records. All information and records submitted to the City are subject to disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. If Grantee reasonably believes that any information or records it submits to the City may be exempt from disclosure under the Oregon Public Records Law, Grantee must identify such information with particularity and include the following statement:

   "This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505."

   If Grantee fails to identify with particularity the portions of such information that Grantee believes are exempt from disclosure, and the basis for its conclusion that the identified information is exempt from disclosure, Grantee is deemed to waive any future claim of non-disclosure of that information.

8. Permit Amendment. The City has negotiated this Permit in good faith, in reliance upon the information provided by the Grantee regarding the scope of its authority to offer the Telecommunications Services described in Section b.2.S above. In the event that Grantee actually receives authority to offer telecommunications services outside the scope of this Permit, or otherwise begins offering telecommunications services outside the scope of those identified in Section b.2.S, Grantee shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with the Grantee to revise or amend this Permit to reflect such changed circumstances, or may proceed with early termination of this Permit. The parties will negotiate in good faith to revise the Permit to authorize the expanded scope of services.

t. WRITTEN ACCEPTANCE. On or before the thirtieth (30th) day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

u. OTHER AUTHORITY SUPERSEDED. Upon effectiveness of this Permit, any and all authority to operate previously granted to Grantee by the City shall be superseded by this Permit.

Section 2. The Council declares that an emergency exists because the general public welfare will be served by Astound being authorized to immediately begin construction of its telecommunications system, to allow it to begin operation without delay and introduce further competition into the marketplace for telecommunications services; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by Council:

LaVonne Griffin-Valade
Auditor of the City of Portland
By:

Deputy

Prepared by: Commissioner Dan Saltzman
JLi/BEWalters
April 25, 2011