



# AGENDA

## CITY COUNCIL

91136 N Willamette Street

541-682-7852 | [coburgoregon.org](http://coburgoregon.org)

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Tuesday, October 08, 2024 at 6:00 PM

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### CALL THE CITY COUNCIL MEETING TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### MAYOR COMMENTS

### AGENDA REVIEW

### PUBLIC COMMENTS *(Sign up prior to meeting. Limit 3 minutes.)*

### CONSENT AGENDA *(Councilors may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration.)*

- [1.](#) Minutes September 10, 2024 City Council
- [2.](#) Minutes September 24, 2024, City Council Special Meeting

### ORDINANCES RESOLUTIONS AND CONTRACTS

#### [3.](#) Public Hearing | First Reading

**ORDINANCE A-100-D** AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-C AND PROVIDING FOR AN EFFECTIVE DATE

#### [4.](#) Public Hearing | First Reading

**ORDINANCE A-230-A** AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

### COUNCIL ACTION ITEMS

### ADMINISTRATIVE INFORMATION REPORTS

5. Administration Monthly Report
6. Police Department Quarterly Report

### COUNCIL COMMENTS

### UPCOMING AGENDA ITEMS

Finance Quarterly Report - First Quarter  
Ordinance A-100-D PacificCorp Franchise - 2nd Reading  
Ordinance A-230-A Astound Franchise - 2nd Reading

### FUTURE MEETINGS

October 10 City Council Revenue Sub Committee  
October 15 Park Tree Committee

- October 16 Planning Commission
- October 22 Finance | Audit Committee
- October 24 City Council Revenue Sub Committee
- November 5 Election Day
- November 11 City Hall Closed - Veterans Day
- November 12 City Council

**ADJOURNMENT**

*The City of Coburg will make reasonable accommodations for people with disabilities. Please notify City Recorder 72 hours in advance at 541-682-7852 or [sammy.egbert@ci.coburg.or.us](mailto:sammy.egbert@ci.coburg.or.us)*

*All Council meetings are recorded and retained as required by ORS 166-200-0235.*



**MINUTES**

**City Council Meeting**

September 10, 2024 at 6:00 P.M.  
Coburg City Hall  
91136 N Willamette Street

**MEMBERS PRESENT:** Mayor Bell, Cathy Engebretson, John Lehmann, Alan Wells, Claire Smith, Jaymason Bouwman

**MEMBERS ABSENT:** John Fox

**GUESTS/STAFF PRESENT:** Adam Hanks, City Administrator; Sammy Egbert, City Recorder; Brian Harmon, Public Works Director

**RECORDED BY:** Madison Balcom, Administrative Assistant

**CALL TO ORDER**

Mayor Bell called the City Council meeting to order at 6:05pm.

**PLEDGE OF ALLEGIANCE**

Councilor Smith led the Pledge of Allegiance.

**ROLL CALL**

City Recorder, Sammy Egbert called roll. A quorum was present.

**MAYOR COMMENTS**

Mayor Bell mentioned the Antique Fair this past weekend, and thanked everyone involved for all their hard work to put on the event.

**1. Domestic Violence Awareness Month Proclamation**

Mayor Bell read the Domestic Violence Awareness Month proclamation, and proclaimed October 2024 as Domestic Violence Awareness Month for the City of Coburg.

**2. Revenue Sub Committee Appointment**

Mayor Bell said that revenue sub-committee will work with the Mayor, City Administrator and Finance Director to review different possible revenue methodologies in terms of total revenue potential, resident and customer impact, cumulative effects, and gathering of recommendations and input to bring to council, regarding things like utility rates, other fees on utility bills, business licenses, diesel

tax, and more. They are looking at about 7-8 meetings, and Mayor Bell has already chosen 2 people to serve on that committee, Councilor Smith and Councilor Engebretson.

## AGENDA REVIEW

They added the City Administration Report as agenda item 11, and removed item 10, the quarterly police report from the agenda.

## PUBLIC COMMENT

There were no request(s) made to publically speak. There were no written statement(s) received.

## CONSENT AGENDA

3. July 9, 2024 City Council Minutes
4. July 23, 2024 City Council Work Session Minutes

**MOTION:** Councilor Bouwman moved, seconded by Councilor Smith to approve the Consent Agenda as presented.

*The motion passed — 5:0.*

## ORDINANCES, RESOLUTIONS AND CONTRACTS

### 5. Employment Agreement, Adam Hanks

The proposed contract for approval and the previous contract was included in the packet.

Ms. Smith mentioned a minor typo on page 4 of the contract, third paragraph down.

Mr. Bouwman clarified with Mr. Hanks that the budgetary impact was because of the salary change.

**MOTION:** Councilor Engebretson moved, seconded by Councilor Wells to approve the attached employment agreement between the City of Coburg and Adam Hanks for the position of City Administrator.

*The motion passed — 5:0.*

## COUNCIL ACTION ITEMS

### 6. Legislative Priorities for 2025-26, League of Oregon Cities (LOC) Survey

Mr. Hanks briefly explained that the League of Oregon Cities has historically asked its members to weigh in on their city's top priorities for LOC to spend time on. That will begin in February and the city's priorities are due by the end of this month. Included in the packet is a list of 23 legislative priorities, between 7 different categories, in which Coburg will narrow down to 5, to submit back to LOC.

Mr. Hanks listed the 5 that staff chose which fit Coburg the best, including infrastructure funding, 2025 transportation package, restoration of recreational immunity, community safety and neighborhood livability, and employment lands readiness and availability.

**MOTION:** Councilor Smith moved, seconded by Councilor Bouwman, to accept the staff recommendation for the City of Coburg’s top legislative priorities to submit to the League of Oregon Cities to support the LOC efforts on behalf of its member jurisdictions in the upcoming two-year Oregon Legislative cycle.

***The motion passed — 5:0.***

## 7. Pavilion Park Bid Award Options

Mr. Hanks said that they were originally scheduled to have a bid award and contract authorization for Council on phase II of Pavilion Park. However, when the bids closed, staff went through them and the bid amounts that came in were much higher than what remains of the original allocation of funds based on the Spring 2022 project estimations, which is not uncommon.

Instead of a request to accept the bid and authorize signature of the contract, they are asking for an understanding of where they’re at in the project, and to get input from council on their strategy for addressing this.

They cannot renegotiate the bid, but they can remove certain line items from it. They worked with Branch, and compared it to the grant deliverables and what the city has the capability to do, and found that they can pull \$75,000 worth of items from the bid. Some of that removal comes from items they will omit and remove from the plan, and the other portion is items that they will do internally instead. Everything that is left and still in the plan are required by the grant.

The other piece comes down to revenue. The project adds land area, which makes it eligible to use systems development charges (parks SDC’s). The city is legally eligible to take 20% or \$140,000 of the total project cost to fund some elements of the project that may fall short. This would change the timeline and how they would phase the development. Mr. Hanks and Mr. Harmon explained some further details on this potential route, and answered some questions from council. They will do a special meeting on September 24, 2024 to further review, formalize and authorize the new bid award.

## 8. City of Coburg Logo

The new logo options were included in the packet. One option is more of an update to the current circle logo, and the other is more of a complete rebrand logo. Mr. Hanks mentioned that it will be a long process to get everything moved over and rebranded to the new logo. Hanks thought it was important to include the “City of” in the logo, and there was also a long debate on which date was going to be used as the established date.

**MOTION:** Councilor Lehmann moved to adopt City logo option #2. There was no second, therefore the motion died.

**MOTION:** Councilor Bouwman moved, seconded by Councilor Lehmann, to adopt City logo option #1 to replace the existing City logo and direct staff to move forward with the development of a style and use guide to cost efficiently implement the new logo throughout the organization and community as appropriate.

*The motion passed — 5:0.*

## **ADMINISTRATIVE INFORMATION REPORTS**

### **9. Financial End of Year Report**

Mr. Hanks explained that this is a preliminary report. More analysis will be provided when the audit is complete. The first quarterly report for FY 2024-25 will give more information on the year so far. Hanks said that the city did accomplish budgetary compliance for FY 2023-24. He briefly went over some other components of the report.

### **10. Administration Monthly Report**

Mr. Hanks gave a quick overview of the Public Works Operation Building project, the N Willamette/N Macy/N Harrison street reconstruction, Pavilion Park improvements, and well #3 connection project.

Hanks then went over the US Postal Service work, Community Profile report, Camping Ordinance review, and annual performance reviews/department work plans, as well as the current projects and contracts, and department activity and statistics, and citizen inquiry updates.

### **11. General Elections, November 5, 2024 Update**

Ms. Egbert shared that the general election process is completed. She turned in 4 certified statements of candidacy for the ballot, including 1 for the Mayor position, and 3 for City Councilor positions, which they will start seeing in October. Included in the handout are the next steps in the election.

## **COUNCIL COMMENTS | LIAISON UPDATES**

Mr. Bouwman mentioned that he will be attending the September Heritage Committee and Park & Tree Committee meetings.

## **ADJOURNMENT**

Mayor Bell adjourned the meeting at 8:00 pm.

**APPROVED** by the City Council of the City of Coburg on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Nancy Bell, Mayor of Coburg

**ATTEST:** \_\_\_\_\_  
Sammy L. Egbert, City Recorder

DRAFT



**MINUTES**

**City Council Special Meeting**

September 24, 2024 at 6:00 P.M.

Coburg City Hall

91136 N Willamette Street

**MEMBERS PRESENT:** Mayor Bell, John Fox, John Lehmann, Alan Wells, Jaymason Bouwman

**MEMBERS ABSENT:** Cathy Engebretson, Claire Smith

**GUESTS/STAFF PRESENT:** Adam Hanks, City Administrator; Sammy Egbert, City Recorder; Brian Harmon, Public Works Director

**TRANSCRIBED BY:** Madison Balcom, Administrative Assistant

**CALL TO ORDER**

Mayor Bell called the City Council Special meeting to order at 6:00pm.

**PLEDGE OF ALLEGIANCE**

Councilor Fox led the Pledge of Allegiance.

**ROLL CALL**

City Recorder, Sammy Egbert called roll. A quorum was present.

**CITIZEN TESTIMONY**

There were no request(s) made to publically speak. There were no written statement(s) received.

**ORDINANCES, RESOLUTIONS AND CONTRACTS**

**1. Pavilion Park Public Project Bid Award and Contract Approval**

Mayor Bell reminded council that they could find the proposed rendering of the Pavilion Park project in their packets. A PowerPoint was also presented.

Mr. Hanks said that this is for phase II of Pavilion Park. The bids came in higher than the expected and budgeted amount. The original site plan and cost estimates for this project were put together in February 2022. A large portion of the project cost is grant funded, however most of the included elements of the project are locked in, and required in able to receive that funding. There has been some minor changes to the final bid site plan. Mr. Hanks went over the Phase I improvements adding up to about \$255,000, and also the planned Phase II improvements which will be about \$360,000.



Mr. Hanks explained the amount that was removed from the bid, along with the specific items that were removed, and what the final bid amount would be compared to the original bid.

Hanks then went over some of the revenue details, and the use of Park SDC’s and a supplemental budget that they discussed at the last meeting. He explained that after staff looked into it more, they discovered that they already appropriated \$120,000 of Park SDC’s for this project in the approved FY 2024-25 budget. They will be able to do the remaining \$20,000 with the regular budget process in FY 2025-26.

Mr. Hanks went over some of the design and improvement details. Council had many questions and concerns about the funding, which Mr. Hanks answered and explained more about.

**MOTION:** Councilor Lehmann moved, seconded by Councilor Fox to approve the bid award of the Coburg Pavilion Park Project to Wildish Construction and authorize the City Administrator to execute the contract in the amended amount of \$310,296 to complete the project.

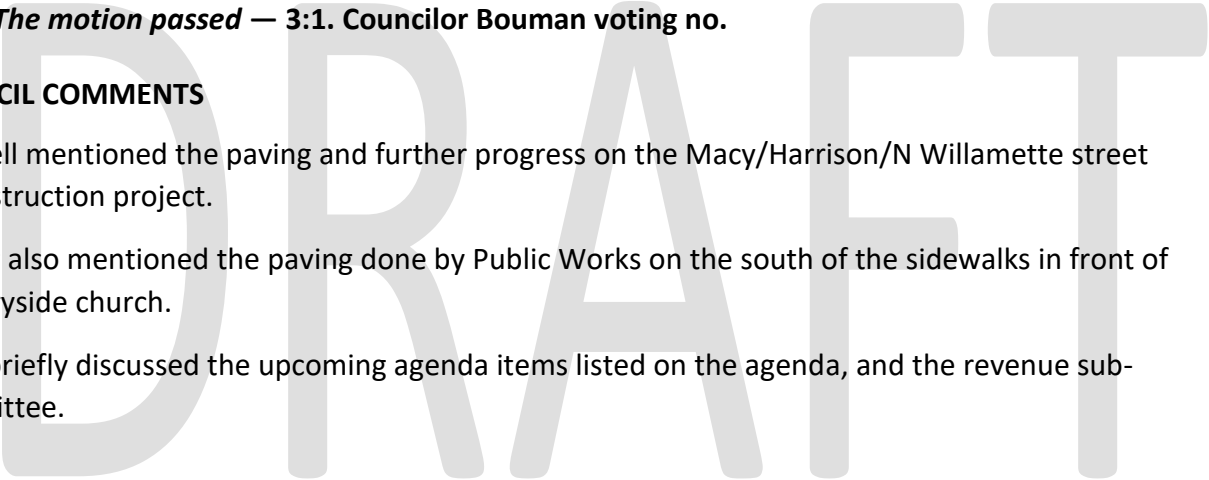
***The motion passed — 3:1. Councilor Bouman voting no.***

**COUNCIL COMMENTS**

Ms. Bell mentioned the paving and further progress on the Macy/Harrison/N Willamette street reconstruction project.

Mayor also mentioned the paving done by Public Works on the south of the sidewalks in front of countryside church.

They briefly discussed the upcoming agenda items listed on the agenda, and the revenue sub-committee.



**ADJOURNMENT**

Mayor Bell adjourned the meeting at 7:08 pm.

**APPROVED** by the City Council of the City of Coburg on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Nancy Bell, Mayor of Coburg

**ATTEST:** \_\_\_\_\_  
Sammy L. Egbert, City Recorder



# PacifiCorp Franchise Agreement

## Ordinance A-100-D – Granting a Franchise to use Rights of Way within the City of Coburg

Meeting Date	Staff Contact	Email
October 8, 2024	Adam Hanks, City Administrator	<a href="mailto:Adam.Hanks@ci.coburg.or.us">Adam.Hanks@ci.coburg.or.us</a>

### SUMMARY AND REQUESTED COUNCIL ACTION

The City of Coburg has a number of franchise agreements with utilities that utilize City rights of way to provide services to residents and businesses of Coburg. PacifiCorp is requesting a renewal of its existing electric utility franchise agreement. Authority, limitations, compensation and operating and reporting requirements for this right are defined and described in Ordinance A-100-D presented to Council for first reading in the public hearing. Final ordinance review and approval will be scheduled for second reading at the November 12, 2024 Council meeting public hearing.

#### Suggested Motion

*I move to move Ordinance A-100-D on to second reading on November 12, 2024 as presented*

*(Or)*

*I move to move Ordinance A-100-D on to second reading on November 12, 2024 with the following amendments ... \_\_\_\_\_*

### BACKGROUND

PacifiCorp operates in Oregon as Pacific Power and provides electric utility services to residents and businesses within the City of Coburg and utilizes City rights of way to do so with both overhead and underground infrastructure to serve its customers.

The current franchise agreement approved via Ordinance A-100-C by City Council on July 9, 2013 has expired and Ordinance A-100-D has been developed for Council review to continue the granting of authority to utilize the City of Coburg rights of way for a period of seven years.

Changes proposed include:

- Reduction from a ten year term to a seven year term
- Acceptance by PacifiCorp within 60 days rather than 30 days

- Clarification of customer reporting requirements for City review/audit/tracking
- Tree removal notification/communication clarifications

The prior and proposed ordinance language has been reviewed by both City staff and City contract legal services for legal compliance and current best practice.

**RECOMMENDATION**

Staff recommends Council move Ordinance A-100-D to second reading as presented. Desired additions, deletions or other modification to the ordinance language may be able to be incorporated into the proposed ordinance for second reading at the November 12, 2024 Council meeting if staff is able to confirm agreement with PacifiCorp legal staff as well as City staff and legal review within the required public hearing process timeline requirements.

**BUDGET / FINANCIAL IMPACT**

Franchise fees are a significant revenue stream for the City of Coburg and support activities, programs and services within the City’s general fund. The franchise fee proposed within this draft ordinance remains consistent with the prior rate of 7.5%. Total franchise fee revenues have been estimated for the 2024-25 fiscal year as \$279,300, up from just under \$260,000 in FY23-24.

The PacifiCorp share of total franchise fee revenues is between 50-60% of total franchise revenues annually depending somewhat on weather (heat/cold). The potential rate increases currently proposed to the Oregon Public Utilities Commission (PUC) will likely move the total allocation higher if approved and implemented.

**PUBLIC INVOLVEMENT**

No dedicated public involvement on this agenda item has occurred.

**NEXT STEPS**

Upon initial review and presentation for first reading at the October 8 Council public hearing, the ordinance will be scheduled for a public hearing for second reading on the November 12, 2024. Upon Council approval, staff will coordinate with PacifiCorp for acceptance and execution of the agreement.

**ATTACHMENTS**

1. Draft Ordinance A-100-D – An Ordinance Granting an Electric Utility Franchise and General Utility Easement to PacifiCorp
2. Ordinance A-100-C – With the proposed edits.

## ORDINANCE A-100-D

### AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-C AND PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, PacifiCorp d.b.a. Pacific Power, is duly authorized by the Oregon Public Utility Commission to provide electric power and energy within the City of Coburg (the “City”);

**WHEREAS**, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City. Public ways means the space above and below the streets, alleys, roads, highways, sidewalks, and bridges;

**WHEREAS**, the City has authority to regulate the use of the public ways within the City and to establish the terms by which PacifiCorp shall use and occupy the public ways;

**WHEREAS**, this agreement sets forth the terms and conditions by which PacifiCorp shall use the public ways within the City;

**WHEREAS**, After public notice, public hearing, and Council deliberations,

#### THE CITY OF COBURG ORDAINS AS FOLLOWS:

**SECTION 1. Grant of Franchise and General Utility Easement.** The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

**SECTION 2. Term.** The term of this Franchise and General Utility Easement is for seven (7) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

**SECTION 3. Acceptance by PacifiCorp.** Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**SECTION 4. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewer service to City residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted herein.

**SECTION 5. City Regulatory Authority.** In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

**SECTION 6. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

**SECTION 7. Annexation.**

**7.1 Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

**7.2 Annexation.** When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center

P.O. Box 400  
Portland, Oregon 97202-0400

With a copy to:  
PacifiCorp  
Attn: Office of the General Counsel  
825 N.E. Multnomah, Suite 2000  
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

#### **SECTION 8. Planning, Design, Construction and Installation of Company Facilities.**

**8.1** All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

**8.2** Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

**8.3** All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

**8.4** If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

**8.5** In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

**8.6** The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.

**8.7** PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

**8.8** Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.

**8.9** No structures, buildings or signs shall be erected below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

**8.10** PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise or otherwise within sixty (60) days of City's written request, which may not be made more than once annually. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

## **SECTION 9. Relocation of Electric Facilities.**

**9.1** The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the

cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

**9.2** PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

**SECTION 10. Subdivision Plat Notification.** Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp  
Attn: Property Management/Right-of-Way Department  
830 Old Salem Road  
Albany, Oregon 97321

**SECTION 11. Vegetation Management.** PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. Prior to the cutting down or removing of any landscape tree greater than 6' feet in height located on public right of way by PacifiCorp or its contractor, PacifiCorp must provide prior written notification to the City with the reason(s) for removal, and approximate schedule for removal.

**SECTION 12. Compensation.**

**12.1** In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, seven and one-half percent (7.5%) of its gross revenues derived from within the corporate limits of City. The term "gross revenues" as used herein means revenues received from electric utility



operations within the city less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the PacifiCorp's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

**12.2** The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

**SECTION 13. Renewal.** At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

**SECTION 14. No Waiver.** Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 15. Transfer of Franchise.** PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

**SECTION 16. Amendment.** At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith

in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

**SECTION 17. Non-Contestability-Breach of Contract.**

**17.1** Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

**17.2** In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

**SECTION 18. Notices.** Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

**SECTION 19. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION 20. Choice of Forum.** Any litigation between the City and PacifiCorp arising under or regarding this agreement shall occur, if in the state courts, in the Lane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Eugene.

**SECTION 21. Choice of Law.** This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon’s choice of law rules would otherwise require application of the law of a different state.

**SECTION 22. Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived, unless to do so would result in the inefficient use of the courts’ and the parties’ resources.

**SECTION 23. Repeal.** Ordinance A-100-C, adopted July 13, 2013 the previous franchise agreement with PacifiCorp, is hereby repealed.

**SECTION 24. Effective Date.** This ordinance shall become effective upon written acceptance by PacifiCorp.

**ADOPTED** by the City Council of the City of Coburg this \_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

**APPROVED** by the Mayor of the City of Coburg this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Nancy Bell, Mayor

ATTEST: \_\_\_\_\_  
Sammy L. Egbert, City Recorder

**ORDINANCE NO A-100-DG**

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-CB AND PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, PacifiCorp d.b.a. Pacific Power, is duly authorized by the Oregon Public Utility Commission to provide electric power and energy within the City of Coburg (the "City");

**WHEREAS**, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City. Public ways means the space above and below the streets, alleys, roads, highways, sidewalks, and bridges;

**WHEREAS**, the City has authority to regulate the use of the public ways within the City and to establish the terms by which PacifiCorp shall use and occupy the public ways;

**WHEREAS**, this agreement sets forth the terms and conditions by which PacifiCorp shall use the public ways within the City;

**WHEREAS**, After public notice, public hearing, and Council deliberations,

**NOW, THEREFORE, THE CITY OF COBURG ORDAINS AS FOLLOWS:**

**SECTION 1. Grant of Franchise and General Utility Easement.** The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

**SECTION 2. Term.** The term of this Franchise and General Utility Easement is for ~~ten (10)~~ seven (7) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

**SECTION 3. Acceptance by PacifiCorp.** Within ~~sixtythree (630)~~ sixtythree (630) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**SECTION 4. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewerage service to City residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted herein.

**SECTION 5. City Regulatory Authority.** In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

**SECTION 6. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

**SECTION 7. Annexation.**

**7.1 Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

**7.2 Annexation.** When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center  
P.O. Box 400

Portland, Oregon 97202-0400

With a copy to:  
 PacifiCorp  
 Attn: Office of the General Counsel  
 825 N.E. Multnomah, Suite 2000  
 Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

**SECTION 8. Planning, Design, Construction and Installation of Company Facilities.**

**8.1** All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

**8.2** Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

**8.3** All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

**8.4** If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

**8.5** In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

**8.6** The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes;

provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.

**8.7** PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

**8.8** Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.

**8.9** No structures, buildings or signs shall be erected below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

**8.10** PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise or otherwise within sixty (60) days of City's written request, which may not be made more than once annually. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

## **SECTION 9. Relocation of Electric Facilities.**

**9.1** The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the



costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

**9.2** PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

**SECTION 10. Subdivision Plat Notification.** Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp  
 Attn: Property Management/Right-of-Way Department  
 830 Old Salem Road 25 N.E. Multnomah, Suite 1700  
 Albany, Oregon Portland, Oregon 97321232

**SECTION 11. Vegetation Management.** PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. Prior to the cutting down or removing of any landscape tree greater than 6' feet in height located on public right of way by PacifiCorp or its contractor, PacifiCorp must provide prior written notification to the City with the reason(s) for removal, and approximate schedule for removal.

**SECTION 12. Compensation.**

**12.1** In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, seven and one-half percent (7.5%) of its gross revenues derived from within the corporate limits of City. The term "gross revenues" as used herein means revenues received from electric utility operations within the city less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the PacifiCorp's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of



bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

**12.2** The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

**SECTION 13. Renewal.** At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

**SECTION 14. No Waiver.** Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 15. Transfer of Franchise.** PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

**SECTION 16. Amendment.** At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

**SECTION 17. Non-Contestability--Breach of Contract.**

**17.1** Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

**17.2** In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

**SECTION 18. Notices.** Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

**SECTION 19. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION 20. Choice of Forum.** Any litigation between the City and PacifiCorp arising under or regarding this agreement shall occur, if in the state courts, in the Lane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Eugene.

**SECTION 21. Choice of Law.** This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

**SECTION 22. Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly

arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived, unless to do so would result in the inefficient use of the courts' and the parties' resources.

**SECTION 23. Repeal.** Ordinance A-100-CB, adopted July 13, 2013 the previous franchise agreement with PacifiCorp, is hereby repealed.

**SECTION 24. Effective Date.** This ordinance shall become effective upon written acceptance by PacifiCorp. As provided in Section 3, this ordinance shall become effective upon acceptance by PacifiCorp.

**ADOPTED** by the City Council of the City of Coburg this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

**APPROVED** by the Mayor of the City of Coburg this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
\_\_\_\_\_  
Nancy Bell, Mayor

ATTEST: \_\_\_\_\_  
Sammy L. Egbert, City Recorder

~~by ACCEPTANCE BY AUTHORIZED REPRESENTATIVE OF PACIFICORP~~

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_



# Astound Broadband LLC Franchise Agreement

## Ordinance A-230-A – Granting a Franchise to use Rights of Way within the City of Coburg

Meeting Date	Staff Contact	Email
October 8, 2024	Adam Hanks, City Administrator	<a href="mailto:Adam.Hanks@ci.coburg.or.us">Adam.Hanks@ci.coburg.or.us</a>

### SUMMARY AND REQUESTED COUNCIL ACTION

The City of Coburg has a number of franchise agreements with utilities that utilize City rights of way to provide services to residents and businesses of Coburg. Astound Broadband is requesting a renewal of its existing telecommunications franchise agreement. Authority, limitations, compensation and operating and reporting requirements for this right are defined and described in Ordinance A-230-A presented to Council for first reading in the public hearing. Final ordinance review and approval will be scheduled for second reading at the November 12, 2024 Council meeting public hearing.

**Suggested Motion**

*I move to move Ordinance A-230-A on to second reading on November 12, 2024 as presented*

(Or)

*I move to move Ordinance A-230-A on to second reading on November 12, 2024 with the following amendments ... \_\_\_\_\_*

### BACKGROUND

Astound Broadband LCC received its initial franchise ordinance approval from the Coburg City Council in September of 2024 to facilitate its immediate operational need of utilizing a small portion of City right of way to provide a hard connection between its network equipment and nearby cell towers it operates on.

The current franchise agreement approved via Ordinance A-230 by City Council on September 30, 2014 has expired and Ordinance A-230-A has been developed for Council review to continue the granting of authority to utilize the City of Coburg rights of way for a period of ten years.

Franchise Provision Highlights:

- Increase of annual fee from \$400 to \$600.
- New provision for annual 3% fee increase
- Retention of provision to charge 5% of gross revenue within Coburg city limits, whichever is greater should Astound provide retail services within Coburg City limits in the future (none currently)
- Ten-year term
- Quarterly Payments

The prior and proposed ordinance language has been reviewed by both City staff and City contract legal services for legal compliance and current best practice.

**RECOMMENDATION**

Staff recommends Council move Ordinance A-230-A to second reading as presented. Desired additions, deletions or other modification to the ordinance language may be able to be incorporated into the proposed ordinance for second reading at the November 12, 2024 Council meeting if staff is able to confirm agreement with Astound Broadband legal staff as well as City staff and legal review within the required public hearing process timeline requirements.

**BUDGET / FINANCIAL IMPACT**

Franchise fees are a significant revenue stream (\$279,000 estimated for FY25) for the City of Coburg and support activities, programs and services within the City’s general fund. The franchise fee proposed within this draft ordinance contains a slight increase in expected revenues, but remains in line with the current limited utilization by Astound of the City’s rights of way.

**PUBLIC INVOLVEMENT**

No dedicated public involvement on this agenda item has occurred.

**NEXT STEPS**

Upon initial review and presentation for first reading at the October 8 Council public hearing, the ordinance will be scheduled for a public hearing for second reading on the November 12, 2024. Upon Council approval, staff will coordinate with Astound Broadband for acceptance and execution of the agreement.

**ATTACHMENTS**

1. Draft Ordinance A-230-A – An Ordinance Granting an Electric Utility Franchise and General Utility Easement to Astound Broadband
2. Ordinance A-230 – With the proposed edits.

## ORDINANCE A-230-A

### AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

**WHEREAS**, Astound Broadband, LLC is a Washington limited liability company that is a registered business in Oregon and holds a Certificate of Authority to Provide Telecommunications Service from the Public Utilities Commission of Oregon and Domestic and International Section 214 authorizations from the Federal Communications Commission (FCC); and

**WHEREAS**, Astound Broadband, LLC desires to construct fiber optic distribution facilities within the City of Coburg, within the public right-of-way, to provide service to potential customers, including facilities to existing cell phone towers; and

**WHEREAS**, the CITY of COBURG, OREGON hereinafter referred to as the "Grantor" has determined that Astound Broadband, LLC, hereinafter referred to as the "Grantee," is qualified for a franchise to use and occupy the rights of way within the City of Coburg; and

**WHEREAS**, City of Coburg adopted ordinance A-230 on September 13, 2014 granting a franchise to Astound Brodband, LLC. The franchise became effective on November 1, 2014 and expired August 1, 2024 as stated in Ordinance A-230 section 14.7.

**WHEREAS**, Council wishto continue in a Franchise agreement with the Grantee for the construction and operation of a telecommunications system on the terms set forth herein.

#### THE CITY OF COBURG ORDAINS AS FOLLOWS:

**SECTION 1. Definitions.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this Section, unless the context clearly indicates a different definition. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Council" shall mean the governing body of the City of Coburg.
- B. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Telecommunications System along the Public Ways within all or a specified area in the Service Area.

- C. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense; all inflows or enhancements of assets or settlements of its liabilities (or a combination of both) of whatsoever kind and nature derived by the Grantee, less uncollectables, and, any affiliates, subsidiaries or parent of the Grantee on account of goods or for Telecommunications Services from the Grantee's ongoing operations delivered within the City of Coburg. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the Grantee associated with the delivery of such goods and services within the City of Coburg. Gross Revenues shall not include any revenues from activities exempted from local fees by state or Federal law.
- D. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- E. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- F. "State" shall mean the State of OREGON.
- G. "Street", "Rights-of-Way" or "Public Way" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, and similar Public Ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or property dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Telecommunications System.
- H. "Subscriber" shall mean any Person lawfully receiving Telecommunications Service from the Grantee.
- I. "Telecommunications Service" shall mean any service provided to a subscriber within the City limits of the City of Coburg that is delivered by means of the Telecommunications System.
- J. "Telecommunications System" shall mean a system of fiber optic cable and other wiring and service vaults and other equipment installed in the public rights of way within the City of Coburg by Grantee.

## **SECTION 2. Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Telecommunications System.

**2.2 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of any conflict with other ordinances, the ordinance with the most specificity and most directly related to public health and safety shall prevail. Grantor shall administer the Franchise in a reasonable, uniform, and non-discriminatory manner.

## **SECTION 3. Franchise Term and Renewal**

**3.1 Term.** The Term of this Franchise is for ten years from the signed date of acceptance by Grantee, unless terminated pursuant to the provisions of Section 13.

**3.2 Acceptance by Astound.** Within thirty (30) days after the passage of this ordinance by the City, Astound Broadband LLC, shall file an unqualified written acceptance thereof with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**3.3 Procedures for Renewal.** If Grantee desires to renew the franchise, then at least six months but no more than nine months prior to the end of the franchise, Grantee shall notify Grantor of its desire for renewal, and shall propose any alteration in the terms of the franchise that it might wish. Grantor shall consider the proposed renewal, but shall be entitled to make a decision on the renewal based on its determination of the best interests of the residents of Coburg.

## **SECTION 4. Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by, or alleged to be the result of the negligence or fault of Grantee in the construction or operation of the Telecommunications System and, in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence or fault of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the installation and operation of the Telecommunications System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee



and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder, except that if such settlement or compromise might obligate Grantor, Grantee shall obtain Grantor’s written consent to the settlement or compromise, which Grantor may not unreasonably withhold. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent or indemnify the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor, its officers, boards, commissions, agents, or employees. This obligation of indemnification shall survive the termination of the Franchise.

**4.2 Insurance.**

a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos.	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

**SECTION 5. Service Obligations**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**SECTION 6. Installation Requirements**

**6.1 Installation.** All installations shall be done in compliance with applicable laws and regulations and only after obtaining all required permits from the State of Oregon, Lane County and the City of Coburg.

**6.2 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching to allow Grantor to provide notice of Grantee's work to other interested parties. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

**6.3 Annexation.** After Grantee initiates telecommunications services to any subscriber in Coburg, in the event the Grantor modifies the potential Service Area by annexation or any other means, the Grantor shall provide at least sixty (60) day prior notice to the Grantee. The Grantor shall also notify Grantee of all new street address assignments or changes within the Service Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. Grantor shall provide address files and maps in sufficient detail and in an acceptable digital format. Grantee shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Grantee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Grantee.

Grantee shall provide Grantor thirty (30) days written notice of address changes affecting this subsection pursuant to section 14.4.

## **SECTION 7. Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Oregon Building Codes and with all applicable local laws.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to any antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, fiber optic cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

## **SECTION 8. Conditions on Street Occupancy**

**8.1 General Conditions.** Subject to State regulations concerning pole attachments, Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor and other owners of the right of way occupied by Grantee.

**8.2 Underground Construction.** Grantee may install aerial facilities, except that the facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. When the existing aerial facilities of similarly situated entities are required to be placed underground by the Grantor in accordance with ORS 758.210 through 758.270, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities. Grantee's acceptance of any reimbursement by the Grantor or an agency of Grantor under the previous sentence does not limit Grantee's rights under ORS 758.245 and ORS 758.250, except that Grantee may not accept any reimbursement in excess of its costs to place facilities underground.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Telecommunications System in the Service Area.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair, at Grantees sole expense. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Public Way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Public Way.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Telecommunications System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

**8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence or willful misconduct by the Grantor.

**8.7 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Trimming shall be done in a manner consistent with good arborist practices.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily relocate, or temporarily remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. In the event of a permanent relocation or disconnection request, Grantor shall advise Grantee in writing prior to the end of Grantee's current budget cycle. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor Rights-of-Way are responsible for the costs related to the relocation of their facilities.

**8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, relocate in or temporarily remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.10 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

## **SECTION 9. Service Requirements**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases or other substantive service changes.

**SECTION 10. Compensation for Right of Way use: Franchise Fees**

**10.1 Amount of Fee.** Grantor's initial use of the rights of way in Coburg will be along Bottom Loop Road, crossing Van Duyn Street, and along Coburg Road North. As compensation for the use of those portions of City Right-of-Way, Grantee shall pay to Grantor a franchise fee ("Franchise Fee") equal to \$600 annually with an annual 3% increase. In the event that Grantee expands its presence in the City of Coburg and offers any services within the City of Coburg, Grantee shall pay to Grantor as compensation for use of the City Right of Way, an additional franchise fee of five percent 5% of Gross Revenue.

**10.2 Reserved for Future Expansion.**

**10.3 Franchise fee payments not in lieu of other payments.** Payment of franchise fees required in this Section 10 shall be in addition to taxes or fees of general applicability owed to the Grantor, or any other jurisdiction, by the Grantee.

**10.4 Payment.** Payment of the Franchise Fee due the Grantor shall be calculated on an annual basis, beginning with the first day of the Effective Month. Grantee agrees to pay pro rata Franchise Fees within forty-five (45) days of the close of each calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. The payment of Franchise Fees shall be either accompanied by or closely followed by a statement of said payment, reflecting the applicable charges, and the revenue from subscribers and the gross revenue calculations. Grantee shall provide, annually, a statement certified by Grantee's representative as to the accuracy of the Franchise Fee payments. Grantor may have access, upon reasonable request and at Grantee's business offices during normal business hours, to Grantee's books and accounts for an audit or other review of Grantee's revenues to affirm the accuracy of Grantee's payments. Such review shall be done at Grantor's expense, unless such a review finds a discrepancy of greater than five percent (substantial discrepancy) between the amount determined to be owed and any amounts paid within the twenty-four months prior to the date of the initiation of the review, or Grantee unreasonably refuses Grantor's agents access to Grantee's accounts. In case of either a substantial discrepancy in franchise fees, or a refusal to cooperate in the review, Grantee shall be responsible for all of Grantor's costs for the review, including attorney fees at trial and on appeal.

**10.5 No Waiver.** No acceptance of any payment by the Grantor shall be construed as a release or as a waiver of any claim the Grantor may have for additional sums payable under this Franchise.

**10.6 Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Grantor's primary depository bank during the period such unpaid amount is owed. The period of limitation for recovery of interest on any Franchise Fee payable hereunder shall be twenty-four months from the date on which payment by the Grantee was due.

## **SECTION 11. Transfer of Franchise**

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, and such consent shall not be unreasonably withheld or delayed once Grantor is satisfied that the party to whom the Franchise is being transferred has sufficient technical and financial capacity to comply with the requirements of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Telecommunications System to secure indebtedness. Grantee's lease of some of the components of the Telecommunication System to third parties shall not constitute a transfer, as long as Grantee retains ownership and responsibility for maintenance of the Telecommunications system. Grantor's consent to any requested transfer shall be deemed given on the thirtieth day after receipt of Grantee's request, unless, within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If Grantor requests additional information under the previous sentence, Grantor's consent to a requested transfer shall be deemed given on the thirtieth day after Grantor's receipt of the additional information from Grantee, unless Grantor, within thirty days of the receipt of the additional information provides reasons for needing additional time, including the need for more information. Except where Grantor can show Grantee's failure to provide an adequate response to Grantor's questions, Grantor shall be deemed to approve the transfer on the ninetieth day for which Grantor has the original request and any subsequent responses before it. In this calculation of ninety days, the time for Grantee to respond to requests for information shall not be included.

## **SECTION 12. Records, Reports and Maps**

**12.1 Inspection of Records.** Subject to confidentiality restrictions under federal or state law, Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records that are legally permissible for release and that are reasonably necessary to

ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records as required by law, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review.

### **SECTION 13. Default and Termination or Revocation**

**13.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor may first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, or Grantor has reason to conclude that such discussions would be fruitless, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**13.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**13.3 Enforcement.** Subject to applicable Federal and State law, in the event the Grantor determines that the Grantee is in default of any provision of the Franchise, and the default is not contested or cured within the times provided in Section 13.2, the Grantor may:

- a. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b. Commence an action at law for monetary damages or seek other equitable relief; or
- c. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise itself in accordance with Section 13.4 below.

**13.4 Revocation.**

- a. Prior to revocation of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice of intent to revoke may be combined with a notice of default if the Grantor is satisfied that there has been a pattern of noncompliance. If Grantor does not provide notice of intent to revoke with the notice of default, Grantor shall provide an additional notice of intent to revoke. Any notice of intent to revoke shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, The City Council of Coburg shall hold a public hearing on the question of revocation. Grantor shall give Grantee at least thirty (30) days' notice of the time and place of such a public hearing. Grantor shall be entitled to appear at the public hearing and present evidence and arguments concerning its failure to comply with the Franchise and the proposed revocation. If, at the close of the hearing, or at a later time after deliberations, the Council determines that Grantor's original determination of default was correct, and that Grantee has failed to cure the default, or offer a credible plan for cure, Grantor may revoke the Franchise.
- b. Upon revocation or termination of the Franchise, Grantee shall remove its Telecommunications System from the Streets of the Grantor, or provide Grantor written notice that it is electing to abandon the System in place. Upon receipt of notice of intent to abandon the System, or the passage of sixty (60) days after the notice of revocation has been sent to Grantee, Grantor may, at its sole discretion, take ownership of the abandoned system, or remove the system and bill Grantee for the out-of-pocket expense of removal, or any combination of the two options. The obligation to pay for such expenses shall survive the termination of this Franchise.

**13.5 Termination.** This Franchise will terminate upon the occurrence of any of the following events:

- a. The term of the franchise has passed without a renewal agreed to by both parties, acting within their sole discretion.
- b. Grantee files a voluntary petition in any United States Bankruptcy Court, or is named as defaulting party in any involuntary petition filed in Bankruptcy Court.
- c. Grantor completes the steps for revocation set forth in this section.



## **SECTION 14. Miscellaneous Provisions**

**14.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Telecommunications System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**14.2 Minor Violations.** The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. Such determination shall be within the sole reasonable determination of the Grantor.

**14.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**14.4 Notices.** Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express.

As set forth above, notice served upon the Grantor shall be delivered or sent to:

Attn: City Administrator  
 City of Coburg  
 P.O. Box 8306  
 Coburg, OR 97408

And every notice served upon Grantee shall be delivered or sent to:

Astound Broadband  
 Attn: James Penney  
 401 Kirkland Parkplace, Suite 500  
 Kirkland, WA 98033

Each Party shall be responsible to promptly notify the other in writing of any change of address.

**14.5 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**14.6 Administration of Franchise.** Any changes, modifications or amendments to this Franchise must be made in writing, adopted as an amendment to this Ordinance, and accepted by the Grantee before the amendment becomes effective.

**14.7 Effective Date.** This ordinance shall become effective upon written acceptance by Astound Broadband.

**14.8 Repeal.** Ordinance A-230, Granting a ten year franchise 2014 to 2024 to Astound to use right of way adopted on September 30, 2024

**ADOPTED** by the City Council of the City of Coburg this 12th day of November 2024, by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

**APPROVED** by the Mayor of the City of Coburg this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Nancy Bell, Mayor

ATTEST: \_\_\_\_\_  
Sammy L. Egbert, City Recorder

## ORDINANCE A-230-A

### AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

**WHEREAS**, Astound Broadband, LLC is a Washington limited liability company that is a registered business in Oregon and holds a Certificate of Authority to Provide Telecommunications Service from the Public Utilities Commission of Oregon and Domestic and International Section 214 authorizations from the Federal Communications Commission (FCC); and

**WHEREAS**, Astound Broadband, LLC desires to construct fiber optic distribution facilities within the City of Coburg, within the public right-of-way, to provide service to potential customers, including facilities to existing cell phone towers; and

**WHEREAS**, the CITY of COBURG, OREGON hereinafter referred to as the "Grantor" has determined that Astound Broadband, LLC, hereinafter referred to as the "Grantee," is qualified for a franchise to use and occupy the rights of way within the City of Coburg; and

**WHEREAS**, City of Coburg adopted ordinance A-230 on September 13, 2014 granting a franchise to Astound Brodband, LLC,granteeThe franchise became effective on November 1, 2014 and expired August 1, 2024 as stated in Ordinance A-230 section 14.7.

**WHEREAS**, Council wishhas determined that it is appropriate to continueadopt this in a Franchise agreement with the Grantee for the construction and operation of a telecommunications system on the terms set forth herein.

#### THE CITY OF COBURG ORDAINS AS FOLLOWS:

**SECTION 1. Definitions.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this Section, unless the context clearly indicates a different definition. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Council" shall mean the governing body of the City of Coburg.
- B. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Telecommunications System along the Public Ways within all or a specified area in the Service Area.

- C. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense; all inflows or enhancements of assets or settlements of its liabilities (or a combination of both) of whatsoever kind and nature derived by the Grantee, less uncollectables, and, any affiliates, subsidiaries or parent of the Grantee on account of goods or for Telecommunications Services from the Grantee's ongoing operations delivered within the City of Coburg. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the Grantee associated with the delivery of such goods and services within the City of Coburg. Gross Revenues shall not include any revenues from activities exempted from local fees by state or Federal law.
- D. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- E. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- F. "State" shall mean the State of OREGON.
- G. "Street", "Rights-of-Way" or "Public Way" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, and similar Public Ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or property dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Telecommunications System.
- H. "Subscriber" shall mean any Person lawfully receiving Telecommunications Service from the Grantee.
- I. "Telecommunications Service" shall mean any service provided to a subscriber within the City limits of the City of Coburg that is delivered by means of the Telecommunications System.
- J. "Telecommunications System" shall mean a system of fiber optic cable and other wiring and service vaults and other equipment installed in the public rights of way within the City of Coburg by Grantee.

## **SECTION 2. Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Telecommunications System.

**2.2 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of any conflict with other ordinances, the ordinance with the most specificity and most directly related to public health and safety shall prevail. Grantor shall administer the Franchise in a reasonable, uniform, and non-discriminatory manner.

### **SECTION 3. Franchise Term and Renewal**

**3.1 Term.** The Term of this Franchise ~~is shall be~~ for ten years from the signed date of acceptance by Grantee, ~~commencing on the Effective Date of this Franchise as set forth in subsection 14.8,~~ unless terminated pursuant to the provisions of Section 13.

**3.2 Acceptance by Astound.** Within thirty (30) days after the passage of this ordinance by the City, Astound Broadband LLC, shall file an unqualified written acceptance thereof m with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**3.32 Procedures for Renewal.** If Grantee desires to renew the franchise, then at least six months but no more than nine months prior to the end of the franchise, Grantee shall notify Grantor of its desire for renewal, and shall propose any alteration in the terms of the franchise that it might wish. Grantor shall consider the proposed renewal, but shall be entitled to make a decision on the renewal based on its determination of the best interests of the residents of Coburg.

### **SECTION 4. Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by, or alleged to be the result of the negligence or fault of Grantee in the construction or operation of the Telecommunications System and, in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence or fault of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the installation and operation of the Telecommunications System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising

hereunder, except that if such settlement or compromise might obligate Grantor, Grantee shall obtain Grantor’s written consent to the settlement or compromise, which Grantor may not unreasonably withhold. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent or indemnify the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor, its officers, boards, commissions, agents, or employees. This obligation of indemnification shall survive the termination of the Franchise.

**4.2 Insurance.**

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos.	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

**SECTION 5. Service Obligations**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**SECTION 6. Installation Requirements**

**6.1 Installation.** All installations shall be done in compliance with applicable laws and regulations and only after obtaining all required permits from the State of Oregon, Lane County and the City of Coburg.

**6.2 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching to allow Grantor to provide notice of Grantee's work to other interested parties. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

**6.3 Annexation.** After Grantee initiates telecommunications services to any subscriber in Coburg, in the event the Grantor modifies the potential Service Area by annexation or any other means, the Grantor shall provide at least sixty (60) day prior notice to the Grantee. The Grantor shall also notify Grantee of all new street address assignments or changes within the Service Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. Grantor shall provide address files and maps in sufficient detail and in an acceptable digital format. Grantee shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Grantee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Grantee.

Grantee shall provide Grantor thirty (30) days written notice of address changes affecting this subsection pursuant to section 14.4.

## **SECTION 7. Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Oregon Building Codes and with all applicable local laws.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to any antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, fiber optic cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

## SECTION 8. Conditions on Street Occupancy

**8.1 General Conditions.** Subject to State regulations concerning pole attachments, Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor and other owners of the right of way occupied by Grantee.

**8.2 Underground Construction.** Grantee may install aerial facilities, except that the facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. ~~At such time as~~ When the existing aerial facilities of similarly situated entities are required to be placed underground by the Grantor in accordance with ORS 758.210 through 758.270, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities. Grantee's acceptance of any reimbursement by the Grantor or an agency of Grantor under the previous sentence does not limit Grantee's rights under ORS 758.245 and ORS 758.250, except that Grantee may not accept any reimbursement in excess of its costs to place facilities underground.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Telecommunications System in the Service Area.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair, at Grantees sole expense. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Public Way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Public Way.



**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Telecommunications System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

**8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence or willful misconduct by the Grantor.

**8.7 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Trimming shall be done in a manner consistent with good arborist practices.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily relocate, or temporarily remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. In the event of a permanent relocation or disconnection request, Grantor shall advise Grantee in writing prior to the end of Grantee's current budget cycle. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor Rights-of-Way are responsible for the costs related to the relocation of their facilities.

**8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, relocate in or temporarily remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.10 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

## **SECTION 9. Service Requirements**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases or other substantive service changes.

**SECTION 10. Compensation for Right of Way use: Franchise Fees**

**10.1 Amount of Fee.** Grantor's initial use of the rights of way in Coburg will be along Bottom Loop Road, crossing Van Duyn Street, and along Coburg Road North. As compensation for the use of those portions of City Right-of-Way, Grantee shall pay to Grantor a franchise fee ("Franchise Fee") equal to \$6400 annually with an annual 3% increase. In the event that Grantee expands its presence in the City of Coburg and offers any services within the City of Coburg, Grantee shall pay to Grantor as compensation for use of the City Right of Way, an additional franchise fee of five percent 5% of Gross Revenue.

**10.2 Reserved for Future Expansion.**

**10.3 Franchise fee payments not in lieu of other payments.** Payment of franchise fees required in this Section 10 shall be in addition to taxes or fees of general applicability owed to the Grantor, or any other jurisdiction, by the Grantee.

**10.4 Payment.** Payment of the Franchise Fee due the Grantor shall be calculated on an annual basis, beginning with the first day of the Effective Month. Grantee agrees to pay pro rata Franchise Fees within forty-five (45) days of the close of each calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. The payment of Franchise Fees shall be either accompanied by or closely followed by a statement of said payment, reflecting the applicable charges, and the revenue from subscribers and the gross revenue calculations. Grantee shall provide, annually, a statement certified by Grantee's representative as to the accuracy of the Franchise Fee payments. Grantor may have access, upon reasonable request and at Grantee's business offices during normal business hours, to Grantee's books and accounts for an audit or other review of Grantee's revenues to affirm the accuracy of Grantee's payments. Such review shall be done at Grantor's expense, unless such a review finds a discrepancy of greater than five percent (substantial discrepancy) between the amount determined to be owed and any amounts paid within the twenty-four months prior to the date of the initiation of the review, or Grantee unreasonably refuses Grantor's agents access to Grantee's accounts. In case of either a substantial discrepancy in franchise fees, or a refusal to cooperate in the review, Grantee shall be responsible for all of Grantor's costs for the review, including attorney fees at trial and on appeal.

**10.5 No Waiver.** No acceptance of any payment by the Grantor shall be construed as a release or as a waiver of any claim the Grantor may have for additional sums payable under this Franchise.

**10.6 Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Grantor's primary depository bank during the period such unpaid amount is owed. The period of limitation for recovery of interest on any Franchise Fee payable hereunder shall be twenty-four months from the date on which payment by the Grantee was due.

## **SECTION 11. Transfer of Franchise**

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, and such consent shall not be unreasonably withheld or delayed once Grantor is satisfied that the party to whom the Franchise is being transferred has sufficient technical and financial capacity to comply with the requirements of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Telecommunications System to secure indebtedness. Grantee's lease of some of the components of the Telecommunication System to third parties shall not constitute a transfer, as long as Grantee retains ownership and responsibility for maintenance of the Telecommunications system. Grantor's consent to any requested transfer shall be deemed given on the thirtieth day after receipt of Grantee's request, unless, within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If Grantor requests additional information under the previous sentence, Grantor's consent to a requested transfer shall be deemed given on the thirtieth day after Grantor's receipt of the additional information from Grantee, unless Grantor, within thirty days of the receipt of the additional information provides reasons for needing additional time, including the need for more information. Except where Grantor can show Grantee's failure to provide an adequate response to Grantor's questions, Grantor shall be deemed to approve the transfer on the ninetieth day for which Grantor has the original request and any subsequent responses before it. In this calculation of ninety days, the time for Grantee to respond to requests for information shall not be included.

## **SECTION 12. Records, Reports and Maps**

**12.1 Inspection of Records.** Subject to confidentiality restrictions under federal or state law, Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records that are legally permissible for release and that are reasonably necessary to

ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records as required by law, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review.

### **SECTION 13. Default and Termination or Revocation**

**13.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor may first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, or Grantor has reason to conclude that such discussions would be fruitless, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**13.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**13.3 Enforcement.** Subject to applicable Federal and State law, in the event the Grantor determines that the Grantee is in default of any provision of the Franchise, and the default is not contested or cured within the times provided in Section 13.2, the Grantor may:

- a. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b. Commence an action at law for monetary damages or seek other equitable relief; or
- c. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise itself in accordance with Section 13.4 below.

**13.4 Revocation.**

- a. Prior to revocation of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee,

including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice of intent to revoke may be combined with a notice of default if the Grantor is satisfied that there has been a pattern of noncompliance. If Grantor does not provide notice of intent to revoke with the notice of default, Grantor shall provide an additional notice of intent to revoke. Any notice of intent to revoke shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, The City Council of Coburg shall hold a public hearing on the question of revocation. Grantor shall give Grantee at least thirty (30) days' notice of the time and place of such a public hearing. Grantor shall be entitled to appear at the public hearing and present evidence and arguments concerning its failure to comply with the Franchise and the proposed revocation. If, at the close of the hearing, or at a later time after deliberations, the Council determines that Grantor's original determination of default was correct, and that Grantee has failed to cure the default, or offer a credible plan for cure, Grantor may revoke the Franchise.

- b. Upon revocation or termination of the Franchise, Grantee shall remove its Telecommunications System from the Streets of the Grantor, or provide Grantor written notice that it is electing to abandon the System in place. Upon receipt of notice of intent to abandon the System, or the passage of sixty (60) days after the notice of revocation has been sent to Grantee, Grantor may, at its sole discretion, take ownership of the abandoned system, or remove the system and bill Grantee for the out-of-pocket expense of removal, or any combination of the two options. The obligation to pay for such expenses shall survive the termination of this Franchise.

**13.5 Termination.** This Franchise will terminate upon the occurrence of any of the following events:

- a. The term of the franchise has passed without a renewal agreed to by both parties, acting within their sole discretion.
- b. Grantee files a voluntary petition in any United States Bankruptcy Court, or is named as defaulting party in any involuntary petition filed in Bankruptcy Court.
- c. Grantor completes the steps for revocation set forth in this section.

## **SECTION 14. Miscellaneous Provisions**

**14.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or

monitor their utility poles to which Grantee's Telecommunications System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**14.2 Minor Violations.** The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. Such determination shall be within the sole reasonable determination of the Grantor.

**14.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**14.4 Notices.** Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express.

As set forth above, notice served upon the Grantor shall be delivered or sent to:  
 Attn: City Administrator  
 City of Coburg  
 P.O. Box 8306  
 Coburg, OR 97408

And every notice served upon Grantee shall be delivered or sent to:  
 Astound Broadband  
 Attn: James Penney  
 401 Kirkland Parkplace, Suite 500  
 Kirkland, WA 98033

Each Party shall be responsible to promptly notify the other in writing of any change of address.

**14.5 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**14.6 Administration of Franchise.** Any changes, modifications or amendments to this Franchise must be made in writing, adopted as an amendment to this Ordinance, and accepted by the Grantee before the amendment becomes effective.

**14.7 Effective Date.** ~~This ordinance shall become effective upon written acceptance by Astound Broadband. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise, unless the Grantee's signature is not affixed within thirty (30) days of the adoption of this Ordinance. The Effective Month shall be the first day of the Month wherein Grantee accepts this Franchise. This Franchise shall expire on August 1, 2024 unless extended by the mutual agreement of the parties, or terminated earlier pursuant to Section 13 of this franchise.~~

14.8 Repeal. Ordinance A-230, Granting a ten year franchise 2014 to 2024 to Astound to use right of way tadopted on September 30, 2024

**ADOPTED** by the City Council of the City of Coburg this 12th day of November 2024, by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

**APPROVED** by the Mayor of the City of Coburg this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Nancy Bell, Mayor

ATTEST: \_\_\_\_\_  
Sammy L. Egbert, City Recorder