



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Committee
FROM: Joseph Todd, CIO & Director Tukwila Technology & Innovation Services
BY: Eric Compton, Franchise & Technology Specialist
CC: Mayor Ekberg
DATE: July 31, 2020
SUBJECT: Astound Broadband, LLC Franchise Agreement
Ordinance No. 2445
Amendment and Extension of Franchise

ISSUE

Approve an ordinance amending Ordinance No. 2445 extending the franchise term with Astound Broadband, LLC, to August 11, 2021, and amending ordinance to allow for additional extensions in one-year increments at the City’s discretion.

BACKGROUND

State law provides cities the authority to establish franchises to telecommunication providers who wish to occupy city owned rights-of-way. Tukwila Municipal Code 11.32.060 requires all telecommunication providers to obtain franchise agreements with the City prior to approval to construct, maintain and operate within the City limits. On August 4, 2014, the City Council passed Ordinance No. 2445, granting a five-year franchise to Astound Broadband, LLC (d.b.a. “Wave”). The current franchise agreement term ends on August 11, 2020 and allows for a single one-year extension.

DISCUSSION

A request to extend the franchise agreement by five years was submitted by Wave on January 6, 2020. Section 3 of Ordinance No. 2445 allows the City to extend the franchise by up to one year beyond the term of the expiration date. Staff recommends amending the ordinance to allow for additional extensions in one-year increments and granting another one-year extension to allow time for a new franchise agreement to be developed and agreed upon by both parties.

FINANCIAL IMPACT

There is no direct financial impact to the one-year extension but developing a new franchise agreement will require staff time to complete.

RECOMMENDATION

Council is being asked to approve the Ordinance that amends Ordinance 2445 and extends the Astound Franchise Agreement for one year and to consider this item at the August 3, 2020 Transportation and Infrastructure Committee meeting and subsequent on the Consent Agenda on the August 17, 2020 Regular Meeting.

ATTACHMENTS

- Draft Ordinance
- Letter of Request for Extension

DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 2445, THE ASTOUND BROADBAND, LLC, FRANCHISE AGREEMENT, TO AMEND THE FRANCHISE TERM LANGUAGE AND PROVIDE FOR A ONE-YEAR EXTENSION OF THE FRANCHISE TERM; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council passed Ordinance No. 2445 on August 4, 2014, granting a five-year franchise to Astound Broadband, LLC, for the purposes of constructing and maintaining a telecommunications system in certain public rights -of -way in the City; and

WHEREAS, Ordinance No. 2607, passed on June 17, 2019, authorized an extension of the franchise granted to Astound Broadband, LLC, for a one-year period, pursuant to Section 3 of Ordinance No. 2445; and

WHEREAS, the franchise agreement has a current expiration of August 11, 2020; and

WHEREAS, Astound Broadband, LLC, and the City desire an additional extension of the franchise to facilitate continued negotiation of a new franchise agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Ordinance Amended. Ordinance No. 2445, §3, is amended to read as follows:

Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of five years from the effective date of this ordinance. However, this Franchise Agreement shall not take effect and Astound shall have no rights under this Franchise Agreement unless a written acceptance with the City is received pursuant to Section 4 of this agreement. If Astound requests a Franchise renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this Franchise Agreement ~~for up to one year~~ in one-year increments beyond the expiration

date to allow processing of the renewal. If the City elects to extend the term of this Franchise Agreement, written notice of the extension shall be provided to Astound prior to the Franchise expiration date.

Section 2. Franchise Term Extended. A one-year extension of the franchise for Astound Broadband, LLC, is hereby granted to allow for processing of a renewal franchise, thereby extending the current franchise term through August 11, 2021.

Section 3. Acceptance of Terms and Conditions. The full acceptance of this amendment and extension to the Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 10 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of Astound to file said consent within 10 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise Agreement.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 5. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of the remaining portion of this ordinance or its application to any other person or situation.

Section 6. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2020.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____
Passed by the City Council: _____
Published: _____
Effective Date: _____
Ordinance Number: _____

Office of the City Attorney

Attachment: Exhibit A – Franchise Agreement Amendment and Extension Acceptance Form

EXHIBIT A

**Astound Broadband, LLC, Amendment and Extension
Acceptance Form**

Date: _____

City of Tukwila
City Clerk's Office
6200 Southcenter Boulevard
Tukwila WA 98188

Re: Ordinance No. _____, adopted on _____

Dear City Clerk:

In accordance with and as required by Section 3 of City of Tukwila Ordinance No. _____, passed by the City Council and approved by the Mayor on _____ (the "Ordinance"), Astound Broadband, LLC, hereby accepts the terms, conditions and obligations to be complied with or performed by it under the Ordinance.

Sincerely,

ASTOUND BROADBAND, LLC

Signature

Name: _____

Title: _____

Date: _____

cc: TIS Director, City of Tukwila, 6200 Southcenter Blvd, Tukwila, WA 98188

From: Joe Kahl <joe.kahl@rcn.net>

Sent: Monday, January 6, 2020 1:52 PM

To: Cyndy Knighton <Cyndy.Knighton@TukwilaWA.gov>

Subject: Re: Astound Broadband City of Tukwila, WA Telecom Franchise Renewal

Hi Cyndy,

Happy New Year.

As you know, the Telecom Franchise Agreement between the City of Tukwila and Astound Broadband, LLC was extended effective June 25th, 2019 to August 11th, 2020. We would like to extend the agreement an additional 5 years to August 11th, 2025.

Is there anything needed from Astound Broadband at this point to begin the process for approval?

Please let me know.

Thanks, Joe

Joseph Kahl

Vice President, Regulatory and Public Affairs

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