



DAYTON CITY COUNCIL
111 S. 1st Street, Dayton, WA 99328

PRELIMINARY AGENDA
REGULAR MEETING
Wednesday, December 5, 2018
6:00 p.m.
Craig George, Mayor

1. CALL TO ORDER
 - A. Roll Call
2. CONSENT AGENDA – ACTION:
 - A. Approve of Voucher Warrants as audited by the Finance Committee
 - B. Approve of Payroll Warrants for November 2018
3. SPECIAL GUESTS AND PUBLIC COMMENT
 - A. Public Hearing – To receive public testimony regarding the 2019 Final Budget
4. COMMITTEE/BOARD/COMMISSION REPORTS
5. REPORTS OF CITY OFFICERS
 - A. Flood Control Zone District Update – Craig George, Mayor
 - B. Wastewater Treatment Plant Update – Craig George, Mayor
6. UNFINISHED BUSINESS
 - A. ACTION: Authorize Ordinance No. 1941, adopting the 2019 Final Budget
 - B. ACTION: Authorize Ordinance No. 1942, adopting the 2019 Salary Structure
7. NEW BUSINESS
 - A. Ordinance No. 1943, 1st Reading by Title Only, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO POCKINET COMMUNICATIONS, INC., A CORPORATION, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY, PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE – No action.
 - B. ACTION: Authorize Resolution No. 1356, Amending Master Fee Schedule to incorporate 2019 Water and Sewer Utility Rates
 - C. Discuss Resolution No. 1357, authorizing a Lodging Excise Tax Agreement between the City and Dayton Chamber of Commerce for fiscal year 2019
 - D. ACTION: Authorize Resolution No. 1358, Memorandum of Agreement between the City and AFSCME, AFL-CIO to modify Article 2 of the current contract as a result of the *Janus* case
 - E. ACTION – Authorize Resolution No. 1359, declaring December 24, 2018 as a holiday per the Personnel Handbook
8. ADJOURN

2019 Final Budget is available at: <http://www.daytonwa.com/our-community/information/city-news>.

Next regular Council Meeting December 19, 2018 at 6:00 p.m. at Dayton City Hall, 111 S. 1st Street, Dayton, WA 99328

ORDINANCE NO. 1941

AN ORDINANCE ADOPTING THE BUDGET FOR THE CITY OF DAYTON, WASHINGTON FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019.

WHEREAS, the Mayor of the City of Dayton, Washington completed and placed on file with the city clerk a proposed budget and estimate of the amount of the moneys required to meet the public expenses, bond retirement and interest, reserve funds and expenses of government of said city for the fiscal year ending December 31, 2019 and a notice was published that the Council of said city would meet on the 14th and 28th days of November, 2018 and the 5th day of December, 2018, at the hour of 6:00 p.m., or soon thereafter, at the Council Chambers in the City Hall of said city for the purpose of making a preliminary and adopting a final budget for said fiscal year and giving taxpayers within the limits of said city an opportunity to be heard upon said budget; and,

WHEREAS, the said City Council did meet at said time and place and did then consider the matter of said proposed budget; and,

WHEREAS, the said proposed budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the City of Dayton for the purpose set forth in said budget, and the estimated expenditures set forth in said budget being all necessary to carry on the government of said city for said year and being sufficient to meet the various needs of Dayton during said period.

NOW, THEREFORE, the City Council of the City of Dayton do ordain as follows:

Section 1. The budget for the City of Dayton, Washington, for the year 2019 is hereby adopted at the fund level in its final form and content as set forth in the document entitled City of Dayton, 2019 Budget (Attachment "A"), three copies of which are on file in the Office of the Clerk.

Section 2. Estimated resources for each separate fund of the City of Dayton, and aggregate expenditures for all such funds for the year 2019 are set forth in a summary form below, and are hereby appropriated for expenditure at the fund level during the year 2019 as set forth in the City of Dayton, 2019 Budget:

<u>FUND</u>	<u>RESOURCES/APPROPRIATIONS</u>
CURRENT EXPENSE	\$1,043,800
CITY STREET & ROAD	\$336,500
MOTEL/HOTEL EXCISE TAX	\$59,000
CAPITAL IMPROVEMENTS	\$239,774
SEWER REVENUE	\$3,170,512
WATER REVENUE	\$1,365,452
W & S SYSTEM DEBT RESERVE	\$504,257
CEMETERY ENDOWMENT	\$349,933

<u>FUND</u>	<u>RESOURCES/APPROPRIATIONS</u>
HISTORIC PATHWAY ENDOWMNET	\$9,002
TOTAL 2019 BUDGET	\$7,078,230

Section 3. As prescribed by RCW 35A.33.075, the City Clerk-Treasurer is directed to transmit a certified copy of the budget hereby adopted to the Washington State Auditor's Office and to the Association of Washington Cities.

Section 4. The salaries and wages set forth in the City of Dayton, 2019 Budget constitute the appropriations for salaries and wages that will be paid to the legislative body and employees of the City of Dayton. The number of full-time positions as stated in the budget is, insofar as can be ascertained, the number of positions ordinarily filled. The compensation to each employee affected may differ from the amount specified in the budget, so long as the compensation does not exceed the amount appropriated in the 2019 budget that of which includes a proposed 2% cost of living increase for non-represented full-time status employees.

Section 5. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the Council of the City of Dayton and approved by the Mayor on this ____ day of _____, 2018.

Craig George, Mayor

Authenticated/Attested:

Trina Cole, City Clerk-Treasurer

Approved as to form:
Menke Jackson Beyer, LLP

By: Quinn N. Plant, City Attorney

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES
ORDINANCE NO. 1941

**AN ORDINANCE ADOPTING THE BUDGET FOR THE CITY OF DAYTON, WASHINGTON
FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019.**

The full text of Ordinance 1941 adopted the _____ day of December, 2018 is available for examination at the City Clerk's Office, 111 S. 1st St., Dayton, WA during normal business hours, Monday – Thursday, 7:00 a.m. to 4:00 p.m. Full text of the Ordinance shall be mailed upon request.

By: /s/ Craig George, Mayor

Attest: /s/ Trina Cole, City Clerk-Treasurer

Approved as to form: /s/ Quinn Plant, City Attorney

Published:

Dayton Chronicle, 12/13/2018

ORDINANCE NO. 1942

AN ORDINANCE OF THE CITY COUNCIL OF THE **CITY OF DAYTON**,
WASHINGTON ADOPTING THE **2019 SALARY SCHEDULE** FOR NON-
CONTRACTUAL EMPLOYEES OF THE CITY OF DAYTON.

WHEREAS, the City Council of the City of Dayton, Washington has by Ordinance No. 1941 adopted a budget for 2019; and,

WHEREAS, appropriated Salaries and Wages were set forth within the 2019 City of Dayton Budget; and

WHEREAS, there are no new positions intended for fiscal year 2019.

NOW, THEREFORE, the City Council of the City of Dayton do ordain as follows:

Section 1. The following will serve as the 2019 Salary Schedules for non-contractual full-time and hourly wage employees:

Position	Formal Salary Scale - Monthly	
	Low	High
Public Works Director	\$4,800	\$6,800
Public Works Foreman	\$3,950	\$5,600
Administrator/City Clerk-Treasurer	\$4,625	\$6,700
Deputy City Clerk-Treasurer	\$3,800	\$5,250

	Hourly Wage Scale	
	Minimum Wage Rate	
Seasonal/Part-time Positions		\$13.50
Administrative Assistant	\$13.85	\$20.88

Section 2. Appropriations. The salaries and wages set forth in the 2019 City of Dayton Budget constitute the appropriations for salaries and wages that will be paid to the legislative body and non-contractual and contractual (union) employees of the City of Dayton. The numbers of positions as stated in the budget are, insofar as can be ascertained, the number of positions ordinarily filled.

Section 3. Exclusions. The salary and wage schedules are exclusive of cost of living allowances, overtime, compensatory time and/or merit compensation as provided by the City of Dayton Personnel Policies effecting non-contractual, non-exempt employees or as specified in the current Union effecting contractual employees. As a result, the compensation to each employee affected may differ from the amount specified in this schedule, so long as the compensation does not exceed the amount appropriated in the 2019 City of Dayton Budget.

SECTION 4. Effective Date. A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Passed by the City Council of the City of Dayton and approved by the Mayor on this _____ day of _____, 2018.

City of Dayton

By: Craig George, Mayor

Attested/Authenticated:

Trina Cole, Administrator/Clerk-Treasurer

Approved as to form:
Menke Jackson Beyer, LLP

By: Quinn N. Plant, City Attorney

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES
ORDINANCE NO. 1942

AN ORDINANCE OF THE CITY COUNCIL OF THE **CITY OF DAYTON**, WASHINGTON
ADOPTING THE **2019 SALARY SCHEDULE** FOR NON-CONTRACTUAL EMPLOYEES OF THE
CITY OF DAYTON.

The full text of Ordinance 1942 adopted the ____ day of December, 2018 is available for examination at the City Clerk's Office, 111 S. 1st St., Dayton, WA during normal business hours, Monday – Thursday, 7:00 a.m. to 4:00 p.m. Full text of the Ordinance shall be mailed upon request.

By: /s/ Craig George, Mayor
Attest: /s/ Trina Cole, City Clerk-Treasurer
Approved as to form: /s/ Quinn Plant, City Attorney

Published:
Dayton Chronicle, 12/13/2018

ORDINANCE NO. 1943

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO POCKINET COMMUNICATIONS, INC., A CORPORATION, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY, PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, PockiNet, Communications, Inc., hereinafter referred to as "POCKETINET" a corporation organized under the laws of the State of Washington, is a telecommunications company that provides wireless services to customers in various locations;

WHEREAS, POCKETINET 's desired route through the City of Dayton, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way for the installation, operation and maintenance of a telecommunications System; and

WHEREAS, the City Council has determined that the use of portions of the City's rights-of-way for installation of a telecommunications System is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

WHEREAS, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Dayton and that the coordination, planning and management of the City's rights-of-way is necessary to ensure that the burden of costs for the operations of non-- municipal interests are not borne by the citizenry; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate non-exclusive franchises for the use of public streets, rights-of-way and other public property for installation, operation and maintenance of communications facilities;

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

SECTION 1. DEFINITIONS

For the purpose of this Franchise the following terms, phrases, words, and their derivations shall have the meanings given herein. 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, and the use of any gender shall be applicable to all genders whenever required. The word "shall" be mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. **"City"** is the City of Dayton, Washington, a Non-Charter Optional Code City and municipal corporation of the State of Washington.
2. **"Easement"** shall be limited to those Rights-of-Way owned or controlled by the City.
3. **"Facilities"** means any and all fiber optic line, equipment and related appurtenances in any way comprising a part of the System.

4. **"Force Majeure"** means any delays caused by reason of: (1) civil commotion; (2) riots; (3) Acts of God and nature, including but not limited to floods, earthquakes, ice storms and tornadoes; (4) strikes or labor unrest; (5) the inability to secure materials; and (6) any other event or circumstances reasonably beyond the control of POCKETINET.
5. **"Franchise"** means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the System in, on and under the City's Rights-of-Way.
6. **"Franchise Area"** shall mean the area within the City limits of the City of Dayton, Washington, including areas annexed during the term of this Franchise.
7. **"Rights-of-Way"** or **"Right-of-Way"** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of the System. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of the System, and POCKETINET shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.
8. **"System"** means the poles, wires, fiber optic lines and all necessary or desirable appurtenances for the purpose of a wholesale communications business in accordance with applicable law.

SECTION 2. FRANCHISE GRANTED

1. GRANT

- A. Pursuant to RCW 35A.47.040, the City of Dayton hereby grants to POCKETINET a non-exclusive right, privilege, and Franchise to have, acquire, construct, reconstruct, maintain, use and operate within the corporate limits of the City, the System and to have, acquire, construct, reconstruct, maintain, use and operate in, over, under, along, and across the present and future Rights-of Way all necessary or desirable wires, cables, underground conduits, manholes and other structures and appurtenances in connection with the System.
- B. Limited Rights. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide POCKETINET with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, streets or appurtenant drainage facilities, water and waste water facilities and including constructing, altering, paving, widening, grading, or excavating such streets.
- C. POCKETINET shall initiate the project within two (2) years from the effective date of this franchise. Failure to initiate the project will cause the franchise to become void.

2. TERM

The Franchise granted hereunder shall be for a term of then (10) years from and after the effective date of this ordinance, unless otherwise lawfully terminated in accordance with the terms of this Franchise. The parties

shall begin negotiations to renew this franchise not later than six (6) months prior to the expiration of this franchise.

3. FRANCHISE SUBJECT TO OTHER LAWS

This Franchise is subject to and shall be governed by all applicable provisions of law. Notwithstanding any other provisions of this Franchise to the contrary, POCKETINET shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, provided, however, if any such law or regulations shall require POCKETINET to perform any service, or shall permit POCKETINET to perform any service, or shall prohibit POCKETINET from performing any service, in conflict with the terms of this Franchise, City ordinance, or any regulation of the City Council, then as soon as possible following knowledge thereof, POCKETINET shall notify the attorney for the City of the point of conflict believe to exist between such regulation or law and regulations of the City Council, the City's ordinance or this Franchise.

4. OTHER FRANCHISES

This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other Rights-of-Way, public ways or public places. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional Franchises as it deems appropriate.

5. WAIVERS

- A. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor shall it excuse POCKETINET from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the City.
- B. No waiver by the City of any breach or violation of any provision of this Franchise or any ordinance shall be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, as provided for under state and federal law, including without limitation the right of eminent domain.
- C. By accepting the Franchise, POCKETINET: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that the Franchise was authorized pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

6. FRANCHISE ACCEPTANCE; PRIOR FRANCHISE SUPERSEDED AND REPEALED

- A. Upon adoption of this Franchise and acceptance hereof by POCKETINET (Exhibit A), POCKETINET agrees to be bound by all the terms and conditions contained herein, which acceptance shall constitute an absolute and unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions. POCKETINET's signature at the end of this Franchise shall constitute compliance with this section.
- B. By accepting the Franchise, POCKETINET: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that the Franchise was authorized pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

7. POLICE POWERS

In accepting this Franchise, POCKETINET acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public, and POCKETINET agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power that do not alter POCKETINET 's material obligations under this Agreement.

Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City' police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies specifically to POCKETINET or which contains provisions inconsistent with this Franchise shall prevail only if upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

SECTION 3. STANDARDS FOR USE OF RIGHT OF WAY

1. USES OF RIGHTS-OF-WAY

- A. Non-exclusive Grant.** This grant for the use of all City Rights-of-Way is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of public property. Additionally, POCKETINET shall respect rights and property of the City and other authorized users of the Rights-of-Way. Disputes between POCKETINET and other entities over the use of the Rights-of-Way shall first be submitted to the Mayor or Administrator of the City for possible resolution.
- B. Interference with Persons and Improvements.** POCKETINET 's System shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of Rights-of-Way or other public property. The City shall have power at any time to order and require POCKETINET to remove and abate any pole, wire, cable, or other structure that is dangerous to life or property, and in case POCKETINET, after notice, fails or refuses to act 'Within a reasonable time, the City shall have the power to remove or abate the same at the expense of POCKETINET.
- C. Relocation of the Facilities.** POCKETINET shall continuously provide the City a current map of the location of POCKETINET 's facilities within the City. In the event that at any time during the period of this Franchise the City shall elect to alter or change the grade of any Right-of-Way, POCKETINET, upon reasonable notice by the City, shall begin removing and/or relocating as necessary, its poles, wires, cables, underground conduits, manholes and other fixtures at POCKETINET 's expense, provided, if POCKETINET 's wires, cable, or other fixtures are placed within or attached to conduit, poles, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, POCKETINET shall underiake such removal or relocation in cooperation with the public utility. If POCKETINET fails or refuses to act within thirty days (30), of notice from the City, the City shall have the power to remove or abate the same at the expense of POCKETINET.
- D. Interference with utilities.** POCKETINET with the consent of the Public Works Director shall place poles, equipment or other fixtures in such a manner that does not unreasonably interfere with existing gas, electric or telephone facilities, traffic control signalization, street lights, fire alarm lines or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City.
- E. Additional Easements.** If additional private easements are necessary it shall be POCKETINET 's responsibility to secure the same. The grant of this Franchise is limited to the City's control of its Rights-of- Way and does not extend to any other public or private property.

- F. Cooperation with Building Movers.** POCKETINET shall, at the request of any person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and POCKETINET shall have the authority to require such payment from such person in advance. Unless otherwise agreed, POCKETINET shall be given not less than fourteen (14) calendar days advance notice to arrange for such temporary wire changes.
- G. Construction and Maintenance, Excavation:**
- i. The route of any underground portions of the System shall be subject to review and approval by the City. Engineering plans for construction in Rights-of-Way shall be submitted to the City prior to construction.
 - ii. Except in an emergency, POCKETINET shall comply with generally applicable City ordinances, policies and rules pertaining to notification when excavating pavement in any Right-of-Way.
- H. Coordination of Placement of Manholes.** POCKETINET shall coordinate the placement of its manholes, if any, with the affected City Departments.
- I. Movement of Facilities During Emergencies.** During emergencies, the City may move POCKETINET 's Facilities, but shall first make reasonable attempts to notify POCKETINET.
- J. Payment of the City's Locate Costs.** POCKETINET shall only pay for the City's locate costs that specifically relate to POCKETINET and so long as those costs are not already included in the permit fees. POCKETINET shall be required to obtain verifiable locates prior to any digging, trenching or excavation.
- K. Acquisition of Facilities.** Upon POCKETINET 's acquisition of Facilities in any Right-or-Way, or upon the addition or annexation of any area in which POCKETINET owns or operates any Facility, POCKETINET shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by the Franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent POCKETINET has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchise.
- L. Discontinuing Use of Facilities.** Whenever POCKETINET intends to discontinue using any Facility within the Rights-of-Way, POCKETINET shall submit for the City's approval a complete description of the Facility and the date on which POCKETINET intends to discontinue using the Facility. POCKETINET may remove the Facility or request that the City permit it to remain in place. Notwithstanding POCKETINET 's request that any such Facility remain in place, the City may require POCKETINET to remove the Facility from the Right-of-Way or modify the Facility as a condition of its remaining in place to protect the public health, welfare, safety or convenience, or otherwise serve, the public interest. POCKETINET shall complete such removal or modification in accordance with a schedule to be mutually agreed upon but in no event shall POCKETINET fail to remove said facility within ninety (90) days of written demand by the City. Until such time as POCKETINET removes or modifies the Facility, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, POCKETINET shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and POCKETINET shall retain all liability for such Facility.
- M. Hazardous Substances.**
- i. POCKETINET shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to POCKETINET 's System in the Rights-of-Way.

- ii. POCKETINET shall maintain and inspect its System located in the Rights-of-Way. At any time, the City may inspect POCKETINET 's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to POCKETINET 's System. In removing or modifying POCKETINET's Facilities as provided in this Franchise, POCKETINET shall also remove and properly dispose of all residues of hazardous substances related thereto.
- iii. POCKETINET shall indemnify and hold the City harmless against any and all liability, claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by POCKETINET 's System in the Rights-of-Way.

N. Completion of Work by the City: On failure of POCKETINET to commence, pursue or complete any work required by law or by the provisions of this Franchise or any applicable permit to be done in any Right-of-Way, within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. POCKETINET shall pay to the City the reasonable costs of the work in the itemized amount reported by the City to POCKETINET within thirty (30) days after receipt of the itemized report.

2. USE OF FRANCHISE FACILITIES

The City shall have the right, at no cost, during the life of this Franchise, to make additional use, for any public purpose, of any poles controlled or maintained exclusively by or for POCKETINET, providing that such uses do not unreasonably interfere with the operations of POCKETINET.

3. JOINT USE OF POLES, TRENCHES AND CONDUITS

- A.** POCKETINET may be required to attach its wires to poles owned and maintained by another person or entity, or to permit the wires of another person or entity to be attached to the poles owned by POCKETINET, upon reasonable terms and for just compensation. All of POCKETINET 's requirements pertaining thereto must be in accordance with applicable law.
- B.** Lines shall be located on poles in compliance with applicable safety standards and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the persons or entities occupying the poles.
- C.** POCKETINET may be required by the City to share trench space with another person or entity for the placement of facilities underground. Compensation to POCKETINET as well as terms of sharing trench space shall be resolved between the affected entities. Ducts, cables, or wires shall be placed in trenches in compliance with applicable safety standards and, pursuant to the space allocation plan of the City.

4. CHANGES FOR GOVERNMENTAL PURPOSES

- A.** Whenever by reason of changes in the grade of any Right-of-Way or in the location or manner of construction any water pipe, gas pipe, sewer or other underground or overhead structure for any governmental purpose whatsoever, it shall be deemed necessary by the Director of Public Works of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of POCKETINET, such alterations or changes shall be made as soon as practicable by POCKETINET and begin within thirty (30) days of notice from the City, without claim for reimbursement or damages against the City; provided, however, if said requirements impose a financial hardship upon POCKETINET, POCKETINET shall have the right to present alternative proposals for the City's consideration, provided, further if POCKETINET 's wires, cable, or other fixtures are placed within or attached to poles, conduits, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, POCKETINET shall undertake such removal, alteration, change or adaption in cooperation with the public utility. Except for

Franchise revocation or termination or System abandonment, the City shall not require POCKETINET to remove its facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If POCKETINET fails or refuses to begin such alterations or changes within such thirty (30) day period the City shall have the power to remove or abate the same at the expense of POCKETINET, all without compensation or liability for damages to POCKETINET.

- B. In cases of emergency the City may require relocation of POCKETINET's facilities at POCKETINET 's expense in the event the emergency creates an immediate threat to the public safety, health and welfare

5. WORK BY OTHERS

- A. The City reserves the right to lay, and permit to be laid, sewer, electric, phone, gas, water, and other pipelines, cables, conduits and related appurtenances, and to do and permit to be done any underground or overhead work in, across, along, over, or under a Right-of-Way or other public place occupied by POCKETINET. The City also reserves the right to construct new streets and to alter the design of existing streets. In performing such work, provided the City complies with notification requirements of the Northwest Utility Notification Center ("call before you dig"), the City shall not be liable to POCKETINET for any damage so occasioned, but nothing herein shall relieve any other person or entity from the responsibility for damages to the facilities of POCKETINET.
- B. In the event that the City subsequently authorizes someone other than POCKETINET to occupy space under the surface of a Right-of-Way, such grant shall be subject to the rights herein granted or heretofore obtained by POCKETINET. In the event that the City shall close or abandon any Right-of-Way which contains existing facilities of POCKETINET, any conveyance of land within such closed or abandoned Right-of-Way shall be subject to the rights herein granted or heretofore obtained by POCKETINET; provided, that POCKETINET may be ordered to vacate any land so conveyed if an alternate route is practicable and if POCKETINET is reimbursed by the person to whom the property is conveyed for the reasonable costs of service disruptions, removal and relocation of facilities.
- C. If the City shall require POCKETINET to adapt or conform its facilities or in any way or manner to alter, relocate, or change its facilities to enable any other entity or person, except the City, to use, or use with greater convenience, said Right-of-Way, POCKETINET shall not be bound to make any such changes until such other entity or person shall have undertaken, with good and sufficient bond, to reimburse the Franchise for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of POCKETINET's property; provided however, that the City shall never be liable for such reimbursement.

6. CONSTRUCTION PROVISIONS

- A. **Standards.** POCKETINET's System constructed within the City shall comply with all applicable federal, state and local laws.
- B. **Tree Trimming Removal.** To the extent permitted by law, the Franchise shall have the authority after obtaining any consent legally required from any affected property owner to trim trees or other natural growth overhanging any of its cable System in the City so as to prevent branches from coming in contact with POCKETINET's wires, cables, or other equipment. POCKETINET shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction,

operation or maintenance of their System. POCKETINET shall make reasonable efforts not to harm such trees or shrubs. Any pruning or removal of trees or shrubs in the City shall comply with practices outlined in the American National Standards Institute, Inc., (ANSI) Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance Standard Practices and with City Code provisions, including licensing and permitting provisions, and shall be done by a qualified, professional arborist.

- C. Inspection.** City shall have the right, but not a duty, to inspect all construction and installation work performed by POCKETINET pursuant to this Franchise as it shall find necessary to ensure compliance by POCKETINET. Such inspection shall be in accordance with the provisions of this Franchise.
- D. Restoration of City Property.** POCKETINET at its own cost and expense and in the manner approved by the City shall replace and restore all City property, including Right-of-Way, which is disturbed by POCKETINET 's construction, installation, maintenance or operation of its Facilities, in accordance with the City's Design Standards and Standard Construction Specifications. Nothing herein shall prevent the City from charging POCKETINET its usual and customarily fees of general applicability for inspection of such restoration or replacement work. POCKETINET shall be solely responsible for protecting the public health, safety and welfare on such City property from the time of disturbance until proper restoration. Failure of POCKETINET to replace or restore such City property within a reasonable time period after written notification by the City shall entitle the City to cause the proper restoration to be made at POCKETINET 's expense. POCKETINET shall pay to the City the cost thereof, in the itemized amounts reported by the City to POCKETINET, within thirty (30) days after receipt of such itemized report. Such payment shall not excuse a breach of the Franchise caused by POCKETINET 's failure to commence, pursue or complete the required work.
- E. Restoration of Property.** Whenever POCKETINET shall cause or any person acting on its behalf shall cause any disturbance, injury or damage to any private property or City property by or because of the installation, maintenance or operation of its Facilities, such disturbance, injury or damage shall be remedied fully by POCKETINET at its expense. Further, POCKETINET shall, at its own cost and expense, replace and restore the respective property in accordance with the City's Design Standards and Standard Construction Specifications within a reasonable time of the disturbance, injury or damage.
- F. Construction Necessary for Operation.** Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, POCKETINET may perform all construction necessary for the operation of its System. All construction and maintenance of any and all Facilities within the Right-of-Way incident to POCKETINET 's System shall, regardless of who performs the construction, be and remain POCKETINET 's responsibility.
- G. Joint Trenching and Boring.** POCKETINET may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of POCKETINET. Prior to doing such work, POCKETINET shall give appropriate notice to the City and the notification association in accordance with applicable law (namely the Northwest Utility Notification Center). When obtaining a permit, POCKETINET shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, POCKETINET shall work with other providers, licensees, permittees, and POCKETINET s so as to reduce so far as possible the number of street cuts within the City. If POCKETINET reasonably anticipates that trenching will encounter tree roots, POCKETINET shall consult with the City prior to trenching.
- H. Emergency Repairs.** In the event that emergency repairs are necessary to any part of POCKETINET's System, POCKETINET shall immediately notify the City of the need for such repairs. POCKETINET may initiate such emergency repairs and shall apply for appropriate permits within seventy-two (72) hours after discovery of the emergency. POCKETINET shall comply with all applicable City regulations

relating to such excavations or construction, including the payment of permits or license fees, and shall reimburse the City for any damage to City utilities as a result of the emergency repairs. Likewise, in the event emergency repairs are necessary to any underground municipal utility to ameliorate a serious risk to the public health and/or safety, if the City knows or has reason to believe part of POCKETINET 's System is buried in the area which is to be excavated, the City shall immediately notify POCKETINET of the City's intent to excavate. Such notification shall be done in such manner as may be reasonably calculated under the circumstances of the emergency to provide POCKETINET with an opportunity to identify the location of any part of its System buried within the proposed excavation site. If the City then damages the System while making the emergency excavation, so long as its actions are not wanton, the City and its officers, employees, and contractor shall have no liability for the damage.

- I. Location of Facilities.** POCKETINET shall be a member of the Northwest Utility Notification Center. After any City department, POCKETINET, licensee, permittee notifies POCKETINET of a proposed street excavation, in accordance with the rules applicable to such a member, POCKETINET shall, at POCKETINET 's expense:
- i. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;
 - ii. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
 - iii. Notify the excavator that POCKETINET does not have any underground Facilities in the vicinity of the proposed excavation.
- J. Restoration of Streets.** If POCKETINET excavates the surface of any Right-of-Way, POCKETINET shall be responsible for restoration of the Right-of-Way in accordance with generally applicable specifications and regulations of the City. The City may, after providing notice to POCKETINET, resurface any opening made by POCKETINET in the Right-of-Way, and the expense thereof shall be paid by POCKETINET. The City may, after providing notice to POCKETINET, remove and/or repair any work done by POCKETINET which, in the determination of the City, is inadequate or unsatisfactory. The cost thereof, including the costs of inspection and supervision, shall be paid by POCKETINET. All of POCKETINET's work under this Franchise, and this Section, in particular shall be performed and completed in strict compliance with all generally applicable rules, regulations and ordinances of the City.
- K. Reservation of City Rights.** Nothing in this Franchise shall prevent the City from constructing or establishing any public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of POCKETINET's System. However, if any of POCKETINET 's System unreasonably interferes with the construction, maintenance or repair of any public improvement, POCKETINET 's System shall be removed or replaced.

Any and all such removal or replacement shall be at the expense of POCKETINET. Should POCKETINET fail to remove, adjust or relocate its Facilities by the date established by the City's written notice to POCKETINET, the City may affect such removal, adjustment or relocation, and the expense thereof shall be paid by POCKETINET.

- L. Building Codes.**
- i. POCKETINET shall strictly adhere to all building and zoning codes currently or hereafter in effect. POCKETINET shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the City may require the removal or relocation of POCKETINET 's lines, cables, and other appurtenances from the property in question.

- ii. All plans for aerial crossings near existing or proposed traffic signals, signs, flashers, or other traffic control devices shall be submitted to the City for approval. No crossings shall be permitted that obstruct traffic signals or other official traffic control devices.

M. Underground and overhead Construction.

- i. Preference for underground Installation. In all sections of the City where the cables, wires, utilities or other like facilities are placed underground, POCKETINET shall place its wires or other like facilities underground. If at any time the City determines that existing wires, cables, utilities or other like facilities anywhere in the City shall be changed from an overhead to an underground installation, POCKETINET shall, convert its facilities to an underground installation. If POCKETINET 's wire, cable, utilities or other facilities are to be placed underground in a common trench or bore shared by others, POCKETINET shall share equally the expense of the trenching and/or boring in proportion to the number of joint users. POCKETINET shall pay for all cable, wire conduit, or facilities installed for POCKETINET 's own use. If POCKETINET owns the aerial supporting structures, the additional incremental cost of undergrounding compared to aerial allocation will be paid by the City. Where no overhead poles exist, all wires and facilities shall be constructed underground.
- ii. Overhead. In areas of the City where electrical or telephone System s are installed on poles above ground, POCKETINET shall have the option of installing its System in like manner above ground or, alternatively, underground.

N. Rights-of-way Occupancy.

- i. Nothing in this Franchise shall give POCKETINET the right to attach its System to structures or poles owned by the City without consent of the City.
- ii. POCKETINET shall:
 - a) Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;
 - b) Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;
 - c) Place any fixtures in any Right-of-Way in such manner as not to interfere with the usual travel of the Right-of-Way or cause unsafe conditions of any sort;
 - d) Submit a traffic control plan to the City for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and
 - e) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.
- iii. POCKETINET shall not make street cuts or curb cuts unless absolutely necessary and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.
- iv. Before beginning any excavation or other construction activity on a Right-of-Way which crosses or abuts any private property, POCKETINET shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint the boundaries of that Right-of- Way where it abuts or crosses the private property. After such excavation or other construction activity, POCKETINET shall restore such property, to not less than the City's standards.
- v. POCKETINET shall locate, mark and map any of its installed System for the City at no expense to the City. POCKETINET shall install underground warning tape with a metallic tracer at least twelve (12) inches above all feeder and trunk lines and above all fiber optic cable.

- O. Stop Work.** On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.
- P. POCKETINET's Contractors.** POCKETINET and its contractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements for any contractors working in the Rights-of-Way. Any act or omission of any contractor of POCKETINET which violates any provision of this Franchise shall be considered an act or omission of POCKETINET for the purposes of this Franchise.
- Q. Private Property.** Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, POCKETINET shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that in the case of construction operations, such notice shall be delivered or provided at least forty-eight (48) hours prior to entry. If any damage is caused by any POCKETINET activity or omission, POCKETINET shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. In the case of an emergency, POCKETINET shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made.
- R. Maps and Records.** After construction is complete, POCKETINET shall provide the City with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in readable formats approved by the City.

SECTION 4. ADMINISTRATION AND REGULATION

1. TRANSFER OF OWNERSHIP OR CONTROL

- A.** This Franchise shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.
- B.** POCKETINET shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of or acquisition by any other party of, control of POCKETINET. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of POCKETINET shall make the Franchise subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control the City Council may inquire into the qualifications of the prospective controlling party, and POCKETINET shall assist the City Council in any such inquiry.
- C.** The proposed assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Franchise. Unless POCKETINET and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed transfer or assignment in the event it has not acted within ninety (90) days of notice.

- D. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the Rights-of-Way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Franchise.
- E. By its acceptance of this Franchise, POCKETINET specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by POCKETINET. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Franchise.
- F. Within thirty (30) days of any transfer or sale and upon request, if approved or deemed granted by the City, POCKETINET shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control certified and sworn to as correct by POCKETINET.
- G. Standards. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and POCKETINET shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by POCKETINET.
- H. Common Control Exemption Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Franchise, the System or ownership to an entity controlling, controlled by, or under the same common control as POCKETINET.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

1. RECOVERY OF COSTS

POCKETINET shall be subjected to all permit fees associated with the activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs costs and expense for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, POCKETINET shall pay such costs and expenses directly to the City.

2. INSURANCE REQUIREMENTS

- A. POCKETINET shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to POCKETINET, its agents, representative or employees. POCKETINET shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:
 - i. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
 - ii. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket

contractual; premises; operations; independent contractors; stop gap liability' personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

- iii. Professional Liability insurance with limits no less than \$1,000,000 per claim for all professionals employed or retained to perform services under this Franchise.
- iv. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Payment of any deductibles or self-insured retention shall be the sole responsibility of POCKETINET.

The insurance policies obtained by POCKETINET shall name the City, its officers, officials, employees, agents and volunteers as an additional insured with regard to activities performed by or on behalf of POCKETINET. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. POCKETINET 's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of POCKETINET 's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

- B. Insurance - No Limitation.** POCKETINET 's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by POCKETINET or to limit the liability of POCKETINET to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.

3. INDEMNITY

POCKETINET shall, at its sole cost and expense, indemnify and hold harmless the City, City Council, and any officers, employees and agents who have acted in their official capacities, boards and commissions, (collectively referred to as the "City" in this Section) and shall pay all damages and penalties which the City may be legally required to pay as a result of any act or omission by POCKETINET in the operation of the System throughout the term of this agreement. Such damages and penalties shall include, without limitation, damages arising out of copyright infringements, and the construction, erection, operation, maintenance and repair of the System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise. If legal action is filed against the City, to recover for any claim for damages as a result of any act or omission by POCKETINET in the operation of the System, POCKETINET, upon notice to it by the City, shall defend the City against the action. POCKETINET shall have the right to defend, settle or compromise any claims arising hereunder. In the event of a final judgment being obtained against the City as a result of any act or omission by POCKETINET in the operation of the System, POCKETINET shall pay the judgment and all costs and hold the City harmless there from. Nothing in this Franchise shall be interpreted to abridge or otherwise affect the City's right to intervene or participate in any suit, action or proceeding involving any provisions of this Franchise. POCKETINET shall pay all expenses incurred by POCKETINET and the City in defending with regard to all damages as set forth in this Section. These expenses shall include, without limitation, all out- of-pocket expenses, reasonable attorneys' fees, witness and discovery costs and the reasonable value of any services rendered by the City Attorney and its office, and any other agents and employees of the City.

POCKETINET will not be required to indemnify the City for the negligent acts of the City or its officials, boards, commissions, agents or employees. The City will indemnify and hold POCKETINET harmless from any claims or causes of action arising from any acts by the City involving the City's use of the access channel(s) or the emergency alert System.

SECTION 6. ENFORCEMENT AND TERMINATION

1. FORFEITURE AND TERMINATION

- A.** In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right (after notice and the opportunity to cure as provided by Subsection C, below) to forfeit and terminate the Franchise and all rights and privileges of POCKETINET hereunder in the event of a material breach of this Franchise's terms and conditions. A material breach by POCKETINET shall include, but shall not be limited to the following:
- i. Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the City Council made pursuant to the Franchise;
 - ii. Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the City;
 - iii. POCKETINET abandons the System or terminates the System 's operations.
- B.** The foregoing shall not constitute a breach if the violation occurs, but it is without fault of POCKETINET. POCKETINET shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- C.** The City shall make a written demand that POCKETINET comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by POCKETINET continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Council may appoint a hearing examiner to take under consideration the issue of termination of the Franchise. The City shall cause to be served upon POCKETINET, at least twenty (20) days prior to the date of such hearing, a written notice of intent to request such termination and the time and place of the hearing. Public notice shall be given of the hearing and issue(s) which the City Council or hearing examiner is to consider.
- D.** The City Council or hearing examiner, if appointed, shall hear and consider the issue(s) and hear any person interested therein, and determine in its discretion, whether or not any violation by POCKETINET has occurred. POCKETINET shall be entitled to participate fully in the hearing process, including a presentation of evidence and questioning of witnesses, so that the record will include all information pertaining to the alleged violation.
- E.** If the City Council or hearing examiner, if appointed, shall determine the violation by POCKETINET was the fault of POCKETINET and within its control, the City Council or hearing examiner, if appointed, shall determine if the violation can be cured. If the violation cannot be cured, the Franchise may be forfeited or terminated. If the violation can be cured, the City Council or hearing examiner, if appointed, shall specify the action or actions to be taken by POCKETINET to cure the violation and set a compliance date. If there is no compliance within the period stated, then the City Council may terminate the Franchise. Such determination shall be subject to judicial review in the Superior Court.

2. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the POCKETINET shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of POCKETINET has taken place, and the provisions of this Franchise governing the consent of the City Council to such change in control of POCKETINET shall apply.

3. RECEIVERSHIP

The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of POCKETINET, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after the election or appointment of a receiver or trustee, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults hereunder; and,
- B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

4. BANKRUPTCY

The City shall have the right to cancel this Franchise immediately should POCKETINET liquidate, become insolvent, make a transfer for the benefit of creditors, or reorganize and enter into an arrangement for the benefit of creditors or file a voluntary petition in bankruptcy; or an involuntary petition in bankruptcy is filed against POCKETINET and is not dismissed within one hundred twenty (120) days after the filing.

5. REMOVAL OF SYSTEM

At the expiration of the term for which this Franchise has been granted, or upon its lawful termination or revocation as provided herein, POCKETINET shall forthwith, upon notice by the City, remove at POCKETINET 's own expense all designated portions of the System from all Rights-of-Way within the City, and shall restore said Rights-of-Way in accordance with the City's Design Standards and Standard Construction Specifications; provided, however, POCKETINET shall have the right to sell its physical plant to a subsequent POCKETINET, subject to City approval as provided in SECTION 4, Section 2, in which case said plant need not be removed and POCKETINET shall continue to operate the System during such interim period prior to the sale. If POCKETINET fails to commence removing or operating its Facilities within thirty (30) days of request and proceeds diligently with the removal, the City may perform the work at POCKETINET 's expense. Any property of POCKETINET remaining in place in any Right-of-Way one hundred eighty (180) days after the expiration, termination or revocation of this Franchise shall be considered permanently abandoned and may become the property of the City at the City's discretion.

SECTION 7. MISCELLANEOUS PROVISIONS

1. **NOTICES.** Any notice to be served upon the City or POCKETINET shall be delivered to the following addresses respectively:

City of Dayton

PocketiNet Communications, Inc.

2. TIME LIMITS STRICTLY CONSTRUED

Whenever this Franchise sets forth a time for any act to be performed by POCKETINET, such time shall be deemed to be of the essence, and any failure of POCKETINET to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for the City to invoke any relevant remedy. However, in the event that POCKETINET is prevented or delayed in the performance of any of its obligations under this Franchise by reason of force majeure, POCKETINET 's performance shall be excused during the force majeure occurrence and POCKETINET thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute which is satisfactory to the City.

3. CUMULATIVE PROVISION

The rights and remedies reserved to the City and POCKETINET by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City and POCKETINET may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such right or remedies at a future time. Further, either the City or POCKETINET may seek any legal or equitable relief allowed by law provided that, if both parties agree, the City and POCKETINET may seek methods of alternative dispute resolution.

4. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

POCKETINET, its contractors, subcontractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations issued pursuant thereto. POCKETINET and the City have carefully reviewed this Franchise and believe that all provisions hereof are enforceable and in full compliance with all applicable federal, state, and local laws, and regulations in effect on the date of execution. If POCKETINET shall discover that any significant aspect of the operation or of any provision of the plans, specifications, or configurations of POCKETINET's System is contrary to or inconsistent with any applicable law, ordinance, rule, or regulation, POCKETINET shall promptly report such fact to the City in writing. POCKETINET and the City shall also be entitled to all rights and be bound by all changes in applicable local, state, and federal laws which occur subsequent to the date of this Franchise. POCKETINET and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

5. CAPTIONS

The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof such captions shall not affect the meaning or interpretation of the text herein.

6. CONSTRUCTION OF AGREEMENT

This Franchise shall be governed, construed, and enforced in accordance with the laws of the State of Washington (as amended), and any other applicable local, state and federal laws, rules, regulations, legislation, or orders (as such now exist, are later amended or subsequently adopted).

7. NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

8. ENTIRE AGREEMENT

This Franchise and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties. This Franchise can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Franchise or to the appropriate attachment and which is signed on behalf of both parties.

9. ACTIONS OF THE CITY OR POCKETINET

In any action by the City or POCKETINET mandated or permitted under the terms hereof, it 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.

10. SEVERABILITY, PREEMPTION, AND PRECEDENCE

- A.** If any section, subsection, sentence, clause, phrase, provision, or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or any state or federal regulatory agency having jurisdiction thereof, the remainder of this Franchise shall not be affected thereby, and each remaining section, subsection sentence, clause, phrase, provision, and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.
- B.** In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or POCKETINET, and any amendments to this Franchise negotiated as a result of such provision being preempted shall no longer be of any force or effect with respect to that provision.

11. VENUE

Any action concerning a dispute arising under this Franchise shall be convened in Asotin County, Washington.

12. INTERPRETATION

As a further condition of this Franchise, the parties acknowledge that this Franchise shall be deemed and construed to have been prepared mutually by both parties.

13. ATTORNEYS FEES.

In the event that either party shall take action, whether judicial or otherwise, to enforce or interpret any of the provisions of this Franchise, the prevailing party shall be entitled to recover from the other party all

expenses which it may reasonably incur in such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

14. EFFECTIVE DATE.

A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY the City Council of the City of Dayton and approved by the Mayor of the City of Dayton, Washington, at a regular meeting this _____ day of _____, 2018.

City of Dayton

By: Craig George, Mayor

Authenticated/Attested By:

By: Trina Cole, City Clerk-Treasurer

Approved as to form:
Menke Jackson Berry, LLP

By: Quinn Plant, City Attorney

EXHIBIT A

PocketiNet Communications, Inc.

Agreement Acceptance Form

Date: _____

City of Dayton
111 S. 1st Street
Dayton, WA 99328

Re: Ordinance No. 1941, adopted on _____

To Whom It May Concern:

In accordance with and as required by Section 2 of City of Dayton Ordinance No. 1941, passed by the City Council and approved by the Mayor on _____ (the "Ordinance"), PocketiNet Communications, Inc., hereby accepts the terms, conditions and obligations to be complied with or performed as under the Ordinance.

Sincerely,
PocketiNet Communications, Inc.

By:

Title:

cc: Public Works Director, City of Tukwila

ORDINANCE SUMMARY BY TITLE ONLY
FOR PUBLICATION PURPOSES
ORDINANCE NO. 1941

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO PCKINET COMMUNICATIONS, INC., A CORPORATION, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY, PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

SECTION 1. DEFINITIONS

SECTION 2. FRANCHISE GRANTED

SECTION 3. STANDARDS FOR USE OF RIGHT OF WAY

SECTION 4. ADMINISTRATION AND REGULATION SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

SECTION 6. ENFORCEMENT AND TERMINATION

SECTION 7. MISCELLANEOUS PROVISIONS

The full text of Ordinance 1941 adopted the _____ day of _____ 2018, is available for examination at the City Clerk's Office, 111 S. 1st St., Dayton, WA during normal business hours, Monday - Thursday, 7:00 a.m. to 4:00 p.m. Full text of the Ordinance shall be mailed upon request.

By: /s/ Craig George, Mayor

Attest: /s/ Trina Cole, City Clerk-Treasurer

Approved as to form: /s/ Quinn Plant, City Attorney

Published:

Dayton Chronicle: _____

1. Name of business/individual; business address; name and address of agent registered with the Washington Secretary of State for the acceptance of legal service; telephone; fax and e-mail numbers; and Washington State Unified Business Identifier or, if that is not available, Federal Tax Identification Number;

Name of Business: PocketiNet Communications, Inc.
Address: 45 terminal Loop Rd., Suite 210
Walla Walla, WA 99362
Telephone: (509) 526-5026
Fax: (866) 526-4919
Contractor Registration No.: POCKEC1874CE
UBI Number: 602027413

Contact Person: Wrandoll Brenes-Morua
Telephone: (509) 301-3947
Email: WBrenes@pocketinet.net

2. The financial and technical ability and legal capacity of the applicant to construct the proposed facility;

PocketiNet Communications, Inc. is a Washington Corporation doing business as an Internet Service Provider with a significant fiber-optic plant in the cities of Walla Walla, Pasco, and Yakima. PocketiNet has pole attachment agreements with PacificCorp and CenturyLink.

PocketiNet has the following Federal and State Registrations:

Federal Communications Commission (FCC) Registration No.: 0007117237

Washington Utilities and Transportation Commission

Washington Contractor Registration No. POCKEC1874CE

Washington Utility Notification Center

Municipal Research and Services Center (MRSC) Roster Member for Electrical and Communication services

PocketiNet has the following Insurance:

Insurance Company Name: Paul Richardson Agency

Contact Person: Melissa Wicham (509) 529-0935

Policy No. 52SBAVZO138



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/16/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.															
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).															
PRODUCER UNITEL 1128 Lincoln Mall Suite 200 Lincoln NE 68508	CONTACT NAME: Tracy Abbott PHONE (A/C, No, Ext): (402)434-7200 FAX (A/C, No): (402)434-7272 E-MAIL ADDRESS: tabbott@unitelinsurance.com <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Union Insurance</td> <td style="text-align: center;">25844</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Union Insurance	25844	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															
INSURED PocketNet.com Inc. 45 Terminal Loop Ste 210 Walla Walla WA 99362															

COVERAGES	CERTIFICATE NUMBER:	18/19 ALL LINES	REVISION NUMBER:																				
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.																							
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		Y	RUP3134292	06/13/2018	06/13/2019	<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 5,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMPIOP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 5,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMPIOP AGG	\$ 2,000,000		\$		
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A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			RUP3134292	06/13/2018	06/13/2019	<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>Underinsured Motorist.</td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$	Underinsured Motorist.	\$						
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A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <td></td> <td style="text-align: center;">PER STATUTE</td> <td style="text-align: center;">OTH-ER</td> <td></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td></td><td></td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td><td></td><td style="text-align: right;">\$</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td><td></td><td style="text-align: right;">\$</td></tr> </table>		PER STATUTE	OTH-ER		E.L. EACH ACCIDENT			\$	E.L. DISEASE - EA EMPLOYEE			\$	E.L. DISEASE - POLICY LIMIT			\$
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E.L. DISEASE - POLICY LIMIT			\$																				
A	Employer's Liability			RUP3134292	06/13/2018	06/13/2019	1,000,000																
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) City of Richland, its officials, employees and volunteers are listed as an Additional Insured with respect to General Liability on a primary and non-contributory bases with completed operations and Auto Liability. Per project aggregate applies. Waiver of Subrogation applies. Fiber Extension - Mohr Test and Measurement																							


3. A complete description of applicant's proposed facilities;

Install fiber-optic cable on existing PacificCorp Poles or new poles, or in underground conduits. Install small-cell facilities on poles.

Initial Job:

Install fiber-optic cable on the existing PacificCorp Poles in the alley north of E. Main St. between N. Front and N. 2nd Streets. Install service drops to our customers at Columbia Pulp and Umpqua Bank locations, and to any future customer along this corridor. See map below.

Legend:

Fiber-Optic Cable 



4. The capacity of the right-of-way to accommodate applicant's facilities;

On the initial job, the fiber-optic cable will be attached to existing utility poles with no additional impact to the right-of-way. If additional facilities are required. Any future new facilities will be constructed per the requirements of the franchise agreement and the City's review and approval.

5. The capacity of the right-of-way to accommodate additional utility or telecommunications facilities;

On our initial job, there is adequate capacity on the PacificCorp poles for our attachments and adequate clearance (greater than 15½ Ft.) on the road crossings.

Work will be done with PacificCorp Permit under our attachment agreement.

On future projects, we will abide by the provisions of the franchise agreement and comply with City requirements.

6. The extent of damage to or disruption of any public or private facilities, improvements, services, travel or landscaping and any plans by applicant to mitigate or repair the same; and

On the initial job, the only impacts will be to travel due to blocking parts of the alley during construction. Traffic will not be blocked on the streets, but we will have a bucket truck parked on the side of the street during construction of the street crossings. Appropriate traffic control will be used. PocketiNet employees have current Washington State Traffic Control Flagger cards.

Construction activities will last approximately three days.

On subsequent jobs, Pocketinet will perform restoration as required per City code and franchise agreement conditions.

7. The availability or unavailability of alternate routes or sites to those proposed by the applicant;

For our initial job, there are no alternate routes due to the location of our customer's premises.

Any future jobs will be coordinated with City staff as required by the franchise agreement.

8. Name and address of all property owners adjacent to and potentially affected by the proposed facility;

The following will be for our initial job:

All the businesses abutting the north side of E. Main St. from Front to 2nd Streets because their use of the alley will be affected for travel or parking during construction. The impact will be temporary.

We will deliver a project fact-sheet to all these businesses prior to construction and we will provide contact information if they have any questions.

Property Address	Property Owner & Address
115 E Main St.	NW Straw Pulp LLC./ 115 E Main, Dayton, WA 99328
127 E Main St.	Bartlett, Clarence/ 600 N 1 st St., Dayton, WA 99328
137 E Main St.	DiLorenzo, Richard/ 905 N Touchet, Dayton, WA 99328
139 E Main St.	Hooper Capital llc/ 2711 W Valley Hwy N #200, Auburn, WA 98001
143 E Main St.	Nettles, Dolores/ 143 E Main St., Dayton, WA, 99328
151 E Main St.	Shulman, Steven R Etux Trustees/ 22 Redhawk Rd., Walla Walla, WA 99362
159 E Main St.	Stafford, Patrick, c/o Stafford, Kevin/ 404 Old Pluto Rd., Shady Springs, WV 25918
163 E Main St.	Six Fourteen LLC/ 4318 Crestline St., Spokane, WA 99203
179 E Main St.	Betzler, Melinda/ 116 S Touchet Rd., Dayton, WA 99328
201 E Main St.	Crothers, Eugene & Crothers, Bette Lou/ 201 E Main St., Dayton, WA 99328
207 E Main St.	Beckmeyer, William & Beckmeyer, Vicky/ 116 Main Rd, Dayton, WA 99328
211 E Main St.	Gladden & Gladden Rentals LLC c/o Gladden, Waylon/ 226Ransom Rd., Walla Walla, WA 99362
217 E Main St.	Mathews, Mitchell & Mathews, Kathleen/ PO Box 144, Dayton, WA 99328
231 E Main St.	McLeod Properties LLC/ 235 E Main St., Dayton, WA 99328
235 E Main St.	McLeod Properties LLC/ 235 E Main St., Dayton, WA 99328
245 E Main St.	Keith, Laura/ PO Box 313, Bow, WA 98232
247 E Main St.	Main Street Dayton Charities/ 806 E Tremont St., Dayton, WA 99328
257 E Main St.	Grendahl Family Trust & Grendahl, Gary Estate & Grendahl, Joann/ 1524 S. 5 th St., Dayton, WA 99328

305 E Main St.	Snyder, Gary/ 222 N Cherry St., Dayton, WA 99328
307 E Main St.	Quade, James/ 239 Patit Rd., Dayton, WA 99328
113 N Front St.	Blue Mountain Heritage Society/ PO Box 163, Dayton, WA 99328
112 N 2 nd St.	Casseday, Kathleen, c/o Convenient Care, 112 N 2 nd St., Dayton, WA 99328

Subsequent jobs could be anywhere in the City.

9. Other information that the city or its designee may reasonably request of the applicant.

PocketiNet has an initial job on the alley north of E Main St. that we are seeking a permit for. Per my conversation with the Public Works Director, a franchise is required. Therefore we are applying for a franchise that will cover the entire city for installation of fiber-optic cable and small cell facilities to provide high speed internet service to customers as they become available.

RESOLUTION NO. 1356

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DAYTON, COLUMBIA COUNTY, WASHINGTON, AMENDING
RESOLUTIONS 1290, 1298 AND 1330, MASTER FEE SCHEDULE**

WHEREAS, the City Council has previously adopted a Master Fee Schedule establishing service fees and charges and such Master Fee Schedule has been revised and amended from time to time;

WHEREAS, the fees and charges that the City establishes for various services are intended to cover but not exceed the City's costs for providing such services; and,

WHEREAS, the Master Fee Schedule now needs further revision to add or change certain fees associated with public records requests, utility rate increases and planning fees and building permit fees and charges; and

WHEREAS, the City Council adopted the 2019 Final Budget on December 5, 2018 that of which incorporated a financial strategy that included the proposed amendments to the Master Fee Schedule as outline in Exhibit "A".

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON,
WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Amendment. The Master Fee Schedule initially adopted by Resolution No. 1290 and amended by Resolution Nos. 1298 and 1330, is hereby further amended as set forth in the document attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. Effective Date. This resolution shall be in full force and effect January 1, 2018.

PASSED by the City Council of the City of Dayton, Washington on this ____ day of December, 2018.

City of Dayton

By: Craig George, Mayor

Attest/Authenticated:

Trina Cole, City Clerk-Treasurer

Approved as to Form:

Quinn Plant, City Attorney

MASTER FEE SCHEDULE

<u>Description</u>	<u>Fee Amount</u>
1. <u>Black and White Copies and Other*:</u>	
a) 8 ½ x 11	\$.15 per page
b) 8 ½ x 14	\$.15 per page
c) 11 x 17	\$.15 per page
d) Scanned into electronic format	\$.10 per page
e) Electronic delivery	\$.05 per 4 files or attachments
f) Gigabyte of electronic records transmission	\$.10 per gigabyte
<small>*Charges can be combined if more than one type of charge applies.</small>	
2. <u>Color Copies*:</u>	
a) 8 ½ x 11	\$.15 per page
b) 8 ½ x 14	\$.15 per page
c) 11 x 17	\$.15 per page
<small>*Charges can be combined if more than one type of charge applies.</small>	
3. <u>Audio Duplication – USB only*:</u>	Actual Cost of USB drive including shipping and handling and sales tax
<small>*Charges can be combined if more than one type of charge applies.</small>	
4. <u>Check Processing Fee</u>	
a) Non-sufficient funds	\$ 25.00
b) Closed account	\$ 25.00
c) Incorrect banking account data	\$ 25.00
5. <u>Animal Fees:</u>	
a) Altered dog annual license	\$ 20.00
b) Unaltered dog annual license	\$ 30.00
c) Late fee	\$ 20.00
d) Guide dogs license (proof of disability required)	\$.00
e) Duplicate animal license	\$ 5.00
f) Dangerous dog registration	\$ 250.00
g) Commercial kennel license	\$ 150.00

h) Commercial cattery license	\$ 150.00
i) Commercial groomers license	\$ 150.00
j) Commercial pet shops license	\$ 150.00
k) Commercial veterinary clinics/hospitals license	\$ 150.00
l) Commercial riding stables license	\$ 150.00
m) Impound Fee	
i. Confinement (Impound)	\$ 50.00
ii. Boarding fee per calendar day of confinement	\$ 12.00

6. Cemetery services:

a) Burial Section Transfer Fee	\$ 62.50
b) Burial Section/Space	\$ 1,025.00
c) Cemetery Endowment	\$ 65.00
d) Open and Closing Costs:	
i. Cremation Interment (Monday - Saturday)	\$ 270.00
ii. Casket Interment (Monday - Thursday)	\$ 515.00
iii. Casket Interment (Friday - Saturday)	\$ 835.00
e) Disinterment:	
i. Cremation (Monday - Thursday only)	\$ 350.00
ii. Casket (Monday - Thursday only)	\$ 915.00

7. Fireworks - Application/Permit Fee:

a) Retail sale of fireworks/stands	\$ 100.00
b) Public display fee	\$ 100.00

8. Miscellaneous Charges/Fees:

a) Non-sufficient funds (NSF) check handling fee	\$ 25.00
b) Intent to lien letter	\$ 20.00
c) Interest, Delinquent Lien Note	8% annum
d) Non-Refundable Application Charge	\$ 50.00

9. Peddler/Solicitor License:

a) Primary applicant	\$ 50.00
b) Each additional applicant	\$ 20.00

10. Utility Charges – Billing and Collection:

a) Water disconnection (turn-off) charges

i. *Voluntary	\$ 20.00
ii. **Involuntary	\$ 35.00
iii. After hours (after 4:30 p.m.)	\$ 75.00

b) Water reconnection (turn-on) charges

i. *Voluntary	\$ 20.00
ii. After hours	\$ 75.00

*Voluntary disconnection or connection - Scheduled turn-on/turn-off between customer and City.

** Involuntary disconnection - Turn-off was due to non-payment of monthly utility fees.

c) Water Rates:

- i. Base Monthly Rate for first 800 cubic feet or less of water usage per month (based on size of water meter) is as follows:

Basic Rates	Inside City Limits	Outside City Limits	Water Meter Surcharge
1/4" or less	\$44.00	\$60.70	\$.00
1/2"–2"	\$44.00	\$60.70	\$27.50
3"	\$44.00	\$60.70	\$55.00
4"	\$44.00	\$60.70	\$82.50
6"	\$44.00	\$60.70	\$165.00

- ii. Water Usage Fee. In addition to the minimum monthly base water rates set out in Section 11 (c)(i), there shall be a per cubic foot water usage fee applied that shall be based on the volume of water usage in excess of 800 cubic feet as follows:

Per Cubic Foot of Water Consumption	Inside City Limits	Outside City Limits
	Per Cubic Foot	
801–50,000 cubic feet consumption	\$0.00917	\$0.01048
50,001–100,000 cubic feet consumption	\$0.00917	\$0.01144
Over 100,000 cubic feet consumption	\$0.01010	\$0.01177

d) Sewer Rates:

i. **Base Monthly Rate Charge for the following Character Sewer Users is as follows:**

CHARACTER OF USER	RATES PER UNIT
Residence within the city limits	\$ 62.55
Residence outside the city limits	\$ 97.45
Apartment houses (per apartment)	\$ 62.55
Hotels and motels (per room)	\$ 22.10
Temporary Travel Trailers or Recreational Vehicles (each) in established RV Park	\$ 22.65
Schools	\$593.60
Privately owned canneries/wine production plant	\$684.95
Service stations and garages	\$ 80.05
Laundries, dry cleaning, creameries	\$ 80.05
Self-service laundry	\$ 120.80
Restaurants	\$ 120.80
Lunch counters	\$ 120.80
Taverns, pool halls	\$ 80.05
Clubs, cocktail lounges	\$ 80.05
Churches	\$ 31.45
Hospitals	\$563.05
Nursing Homes	\$ 168.75
Greywater Treatment (cost per gallon)	\$ 0.09
All other unclassified users and/or premises	\$ 62.55

11. Public Works - Sewer (Wastewater) System Fees:

a) **New Connection to the Sewer (Wastewater) System**

i. **Application Fee:** **\$ 50.00**

ii. **Permit Review** **Actual costs for professional services, including, but not limited to: engineering, land surveying and legal services**

iii. **Installation/Connection of Sewer Service** : **Actual cost of installation including, but not limited to: supplies, equipment, and labor costs including benefit charges, Capital Facility Charges, and, if applicable, all costs associated with any repairs to the **public right of way**

iv. Capital Facility Charges (based on water meter size):

Meter Size (inches)	Equivalent Meter Capacity	Capital Facility Charge
¾	1.0	\$ 1,250
1	1.7	\$ 1,250
1½	3.3	\$ 1,250
2	5.3	\$ 1,250
3	10.0	\$1,250
4	16.7	\$1,250
6	33.3	\$41,625
8	53.3	\$66,625
10	76.7	\$95,875

v. ***Fee for inspection of new sewer service** **\$ 60.00**

b) **Sewer Plumbing Permit***** **\$ 35.00**

c) **Sewer - Excavations**

An additional charge may

be assessed to defray costs in the event that repairs do not meet the city specifications and it becomes necessary for the city to make repairs to public right of ways which have been improperly repaired after installation of sewer line.

*Public Works Director shall waive the inspection fee if service connection is performed by the City of Dayton.

** Public right of way includes, but is not limited to, sidewalks, bicycle lanes, streets, and alleyways.

*** May need to obtain a separate plumbing permit for construction related projects. Contact the building permit department for details.

12. Public Works - Streets:

a) **Street Opening/Cutting Permit Fee** **\$ 39.50 plus \$.39 per linear foot of street that is excavated or opened**

b) **Street Blocking Permit Fee**

i. **Standard Permit** **\$ 25.00 plus the sum of \$5.00 per day for each day of blockage more than three days**

ii. **Comprehensive Permit** **\$ 75.00**

c) Utilities & Telecommunications:

i. Application and Permit Fee

***\$ 250.00 deposit**
and all actual reasonable costs associated with processing of the application/permit and as prescribed by RCW 35.21.860

ii. Non-Refundable Charge

\$ 50.00

d) Petition for Vacation of Streets/

****Public Right of Way**

\$ 200.00 plus actual
costs for professional services, including, but not limited to: engineering, land surveying, appraisal and legal services

*The city shall apply the \$250.00 deposit towards the processing of the application/permit. Any deposit amount remaining in excess of all actual reasonable costs upon issuing of the permit shall be reimbursed within 45-days from the permit issuance date.

** Public right of way includes, but is not limited to, sidewalks, bicycle lanes, streets, and alleyways.

13. Public Works - Water System Fees:

a) New Connection to the Water System

i. Application Fee:

\$ 50.00

ii. Permit Review

Actual costs for
professional services, including, but not limited to: engineering, land surveying and legal services

iii. Installation/Connection of Water Service :

Actual cost of

installation including, but not limited to: supplies, equipment, and labor costs including benefit charges, Capital Facility Charges, and, if applicable, all costs associated with any repairs to the
****public right of way**

iv. Capital Facility Charges (based on water meter size):

Meter Size (in)	Equivalent Meter Capacity	Capital Facility Charge
¾	1.0	\$ 1,250
1	1.7	\$ 1,250
1½	3.3	\$ 4,125
2	5.3	\$ 6,625
3	10.0	\$12,500
4	16.7	\$20,875
6	33.3	\$41,625
8	53.3	\$66,625
10	76.7	\$95,875

v. *Fee for inspection of new water service **\$ 60.00**

b) Water Plumbing Permit *** **\$ 35.00**

c) Water - Excavations

An additional charge may be assessed to defray costs in the event that repairs do not meet the city specifications and it becomes necessary for the city to make repairs to public right of ways which have been improperly repaired after installation of sewer line.

d) Water Hydrant Meter Rental Deposit **\$1,000.00**

*Public Works Director shall waive the inspection fee if service connection is performed by the City of Dayton.

** Public right of way includes, but is not limited to, sidewalks, bicycle lanes, streets, and alleyways.

*** May need to obtain a separate plumbing permit for construction related projects. Contact the building permit department for details.

14. Planning – General Processing:

a) *Pre-Application Meeting **\$ 100.00 actual costs**

for professional services if applicant requests consultant to attend, including, but not limited to: engineering, land surveying and legal services

*If a land use application is filed within 6-months of the pre-application meeting date, the \$100 fee will be credited towards the land use application. Credit cannot be awarded towards a building permit application.

- b) **Administrative Interpretation** **\$ 100.00**
- c) **Open Record Hearing** Application fee plus
hearing examiner costs
- d) **Closed, Administrative, or Open Record Appeals** **\$ 100.00 plus hearing examiner costs**
- e) **Reconsideration** **\$ 50.00 for**
administrative decisions
Hearing examiner costs for
hearing examiner decisions
- f) **Notice Board – Posting on-site** Applicant’s responsible
for purchase of sign(s) and
installation.

Alternatively, \$50.00 for first sign
installed by City; and \$30.00 for
each additional required sign
installed thereafter.

15. Planning – *State Environmental Act (SEPA) Applications &

Reviews:

- a) **SEPA Categorical Exemption Documentation** **\$ 50.00, only if**
written documentation requested
- b) **SEPA Threshold Determination** **\$ 400.00**
- c) **Critical Area Ordinance (CAD) Review** **\$ 250 for each Review**
plus actual costs for city
consultant services
- d) **Special Study Review – Traffic, Shoreline, and Other** **\$ 250.00 for each**
Study plus, if applicable, actual city
consultant costs
- e) **Environmental Impact Statement (EIS)** Cost agreement as
determined
- f) ***Reasonable Use Exception** **\$ 200.00 plus hearing
examiner costs**
- g) ***Public Agency and Utility Extension** **\$ 200.00 plus hearing
examiner costs**
- h) ***Minor Variance: 10% or less from CAD** **\$ 150.00**

i) ***Variance: CAD**

**\$ 200.00 plus
hearing examiner costs**

j) ***Floodplain Development Permit**

\$ 100.00

**May include a CAD or special study review, as required*

16. Planning – Land Use Applications:

a) **Rezone**

**\$ 500.00 plus
\$ 25.00 per 10,000 sq. feet and
hearing examiner costs**

b) **Minor Variance: 10 % or less for Zoning**

\$ 150.00

c) **Variance – Zoning**

**\$ 200.00 plus hearing
examiner costs**

d) **Conditional Use permit**

**\$ 250.00 plus hearing
examiner costs**

e) **Essential Public Facility**

**\$ 250.00 plus hearing
examiner costs**

f) **Site Development Plan (Non-Residential Only)**

**\$ 250.00 plus city
engineering consultant fees, if
required**

g) **Mobile/Manufactured Home Park**

**\$ 400.00 plus
\$ 25.00 per space; and, Hearing
Examiner costs, and city
engineering consultant costs**

h) **Minor Site Plan modification**

\$ 100.00

i) **Sign and Lighting Permits**

Non-structural

Structural

**\$ 20.00 - Title 12
\$ 20.00 - Title 12
plus applicable Building
Department fees**

17. Planning – Land Division:

a) **Subdivision – Preliminary**

**\$ 400.00 plus \$25.00
for each lot, City engineering,
consultant land surveying, legal
services, and Hearing Examiner
Costs**

b) **Major Preliminary Plat Revisions**

**\$ 250.00 plus \$25.00
for each new or revised lot, City
Engineering consultant costs and
hearing Examiner costs**

c) **Subdivision Final**

\$ 300.00 plus City

d) Short Plat Preliminary	engineering consultant costs \$ 400.00 plus City engineering consultant costs
e) Short Plat Final	\$ 100.00 plus City engineering consultant costs
f) Boundary Line Adjustment	\$ 100.00
g) Lot Merger	\$ 50.00
h) Plat Vacation or Alteration	\$ 200.00 plus City Engineering consultant costs and Hearing Examiner costs

18. Planning – Shoreline Management:

a) Shoreline Management Re-Designation	\$ 500.00 plus \$25 per 10,000 square feet and Hearing Examiner Costs
b) Shoreline Exemption	
i. Residential and Vegetation Management	\$ 50.00
ii. All Other	\$ 100.00
c) Shoreline Substantial Development Permit (SSDP)	\$ 250.00
d) Minor Revision to SSDP	\$ 150.00
e) Shoreline Conditional Use Permit	\$ 250.00 plus Hearing Examiner costs
f) Shoreline Variance	\$ 250.00 plus Hearing Examiner costs

19. Planning - Legislative: Type V:

a) Comprehensive Plan Amendment (CPA)	\$200 per each amendment goal, including subordinate text, policies and objectives
b) CPA Docket – Map Change	\$200 per designation, plus \$25 per 10,000 square feet; and, contracted GIS mapping services costs and engineering consultant costs
c) Development Code Text Amendment	\$200 per Code section
d) Zoning Map Amendment (only with CPA Map Change	\$200 per zone classification plus \$25 per 10,000 square feet; and, contracted GIS

mapping service costs and
engineering consultant costs

e) Development Agreement

Cost agreement as
determined by the City

f) Annexation

\$650 plus contracted
GIS mapping services costs and
engineering consultant costs

20. Building Permit Fee Schedules:

The Columbia County Building Permit Fee Schedule adopted August 2016 by Columbia County Resolution No. 2016-22 attached Attachment "A" shall be used for the City of Dayton Building Permit Fee Schedule.

21. Swimming Pool Use Fees:

General Admission/Open Swim Sessions - Prices are based on per day per session use.	
5 and under (<u>must</u> be accompanied by a paying adult)	FREE
Day - (1 pm - 5 pm), Ages 6 and up	\$ 3.00
Evening - (6 pm - 8 pm)	\$ 3.00
Class Sessions: Price is based on per day per session use	
Lap Swim	\$ 3.00
Aquacise	\$ 3.00
Deep End Lap Swim	\$ 3.00
Other Classes	\$ 3.00
Season Passes:	
Individual	\$60.00
Family - 4 members or less (must reside at same address)	\$120.00
- Each additional family member (must reside at same address)	\$ 25.00
Lessons: Price is based on per two-week lesson	
Swimming Lessons	\$ 35.00
Private Swimming Lessons	\$ 45.00
Team membership: Requires season pass plus membership fee	
Swim Team	\$ 25.00
Pool Rental: Price is based on per hour rental. Rental is available when the pool is not scheduled for regular activity	
1 - 25 Patrons	\$ 45.00
26-50	\$60.00
51-75	\$90.00
76-150	\$ 120.00

RESOLUTION NO. 1357

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DAYTON, WASHINGTON, APPROVING A MUNICIPAL SERVICES
AGREEMENT FOR LODGING TAX FUNDED ACTIVITIES WITH THE
DAYTON CHAMBER OF COMMERCE FOR FISCAL YEAR 2019
(Term of January 1, 2019 through December 31, 2019)**

WHEREAS, the legislature has authorized the City to levy a special excise tax for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp (pursuant to RCW 67.28.180 and RCW 67.28.181); and

WHEREAS, revenue from taxes imposed under chapter 67.28 RCW shall be credited to a special fund in the City's treasury, to be used solely for the purpose of paying all or any part of the costs associated with tourism promotion, or operation of a tourism-related facilities (pursuant to RCW 67.28.1815); and

WHEREAS, the City, after the Planning/Economic Development Committee, duly reviewed Applications for Lodging Tax Funds and recommended lodging tax funded activities, wishes to have certain services performed hereinafter set forth requiring specialized skills and other supportive capabilities; and

WHEREAS, the Chamber represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this Agreement; and

WHEREAS, the Chamber has historically provided excellent tourism promotion activities for Dayton businesses; and

WHEREAS, the City desires to contract with the Chamber for the tourism promotion activities described in the Scope of Work attached hereto as Exhibit A.

NOW, THEREFORE, for and in consideration of the mutual benefits set out herein, it is agreed as follows:

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Dayton, Columbia County, Washington, as follows:

Section 1. The **MUNICIPAL SERVICES AGREEMENT FOR LODGING TAX FUNDED ACTIVITIES** between the City of Dayton and Dayton Chamber of Commerce, in the form attached hereto as Exhibit "A" is hereby authorized and approved.

Section 2. The Mayor is hereby authorized to execute the municipal services agreement on behalf of the City of Dayton. The Mayor and his designee(s) are hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. This resolution shall take effect and be in full force upon passage and signatures hereon.

Approved and signed this _____ day of _____, 2018.

CITY OF DAYTON

Craig George, Mayor

Attest:

Trina Cole, City Clerk-Treasurer

Approved as to Form:

Quinn Plant, City Attorney

**MUNICIPAL SERVICES AGREEMENT
LODGING TAX FUNDED ACTIVITIES**

THIS AGREEMENT made and entered into by and between the City of Dayton, a municipal corporation of the State of Washington, hereinafter referred to as "City," and "Dayton Chamber of Commerce", a Washington non-profit corporation, hereinafter referred to as the "Chamber".

WHEREAS, the legislature has authorized the City to levy a special excise tax for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp (pursuant to RCW 67.28.180 and RCW 67.28.181); and

WHEREAS, revenue from taxes imposed under chapter 67.28 RCW shall be credited to a special fund in the City's treasury, to be used solely for the purpose of paying all or any part of the costs associated with tourism promotion, or operation of a tourism-related facilities (pursuant to RCW 67.28.1815); and

WHEREAS, the City, after the Planning/Economic Development Committee, duly reviewed Applications for Lodging Tax Funds and recommended lodging tax funded activities, wishes to have certain services performed hereinafter set forth requiring specialized skills and other supportive capabilities; and

WHEREAS, the Chamber represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this Agreement; and

WHEREAS, the Chamber has historically provided excellent tourism promotion activities for Dayton businesses; and

WHEREAS, the City desires to contract with the Chamber for the tourism promotion activities described in the Scope of Work attached hereto as Exhibit A.

NOW, THEREFORE, for and in consideration of the mutual benefits set out herein, it is agreed as follows:

- 1. Services.** The Chamber shall perform the services identified in the attached Scope of Work (Exhibit "A") as approved by the City Council's Planning/Economic Development Committee.
- 2. Funding.** The City shall retain \$4,450 (four thousand four hundred fifty dollars) plus 10% of the remaining balance for support of tourism and promotion events including events sponsored by the Chamber.. 100% of the remaining balance of lodging taxes accruing and received in 2019 will be distributed by the City to the Chamber for satisfactorily carrying out the Scope of Work described in Exhibit "A".

The funds pursuant to this Agreement shall be available for payment to the Chamber within 30-days following the receipt of the funds by the City. The Chamber shall provide copies of supporting documentation including, but not limited to, actual invoices for all reported expenses/expenditures prior to disbursement of special excise tax funds received by the City. The City shall not provide funds to the Chamber until said funds are actually received by the City from the Washington State Department of Revenue.

Special excise taxes on lodging funds received by the City pursuant to Chapter 67.28 RCW and this Agreement shall be the exclusive and total source of funds utilized for this Agreement. Any Chamber expenses in excess of actual special excise tax funds received by

the City shall be at the Chamber's risk and the City shall have no obligation for such expenses/expenditures.

3. **Reporting.** The Chamber agrees to produce and provide the following reports to the City:
 - a. A Post-Event/Activity Report. The Post-Event/Activity Report shall be provided to the City of Dayton within twenty-one (21) days following an event/activity. It shall include the following information:
 - i. Total amount spent on the event;
 - ii. Overall attendance at the event/activity;
 - iii. Number of people who traveled more than 50 miles for the event/activity;
 - iv. Of the people who traveled more than 50 miles, the number of people who traveled from another state or country;
 - v. Of the people who traveled more than 50 miles, the number of people who stayed overnight in Dayton;
 - vi. Of the people that traveled more than 50 miles, the number of people that stayed overnight in *unpaid* accommodations (e.g. with friends and family);
 - vii. Attended but not included in one of the three categories above;
 - viii. Number of paid lodging room nights resulting from the event/activity.
 - b. Quarterly Reports. Quarterly reports shall be presented at a regularly scheduled city council meeting within thirty (30) working days following the close of the preceding fiscal quarter. The Report shall consist of information on the preceding quarter including, but not limited to the following:
 - i. Overall visits to the Visitor Center;
 - ii. Origin of Visitors
 - iii. Tourism/Commerce Inquiries;
 - iv. Relocation Inquiries;
 - v. Relocation Packets Sent;
 - vi. Other Tourism and Promotion Tracking and Indicators;
 - vii. Summary of Tourism and Promotion activities including recent events;
 - viii. Summary of upcoming events/activities in the current fiscal quarter;
 - ix. Other tourism and promotion projects and developments.
4. **Term.** The term of this Agreement and the performance of the Chamber shall commence on January 1, 2019 and shall terminate on December 31, 2019.
5. **Auditing of Records, Documents and Reports.** The Chamber shall maintain books, records, documents and other materials that sufficiently and properly reflect all expenditures made pursuant to this Agreement. The City Treasurer, or designated representative, shall have full access and the right to examine and copy during normal business hours, all of the records of the Chamber with respect to matters covered in this Agreement. Such rights shall last for six (6) years from the date of expiration of this Agreement (December 31, 2024).
6. **Compliance with Federal, State and Local Laws.** The Chamber agrees to abide by all applicable federal, state and local statutes and regulations pertaining to the subject matter of this Agreement.
7. **Indemnification.** The Chamber agrees to be responsible for and assumes liability for its own negligent acts or omissions, and those of its officers, agents, officials, employees or volunteers while performing work or expending funds pursuant to this Agreement to the fullest extent proved by law, and agrees to save, indemnify, defend and hold the City

harmless from any such liability. This indemnification clause shall apply to any and all causes of action arising out of performance of work or expenditures of funds under this Agreement. Each contract for services or activities utilizing funds provided in whole or in part by this Agreement shall include a provision that the City is not liable for injuries, damages, or claims for damages arising from the performance of any activity by an employee, contractor, subcontractor or independent contractor of the Chamber under this Agreement, except for injuries and damages caused by the sole negligence of the City. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event or activity occurring prior to expiration or termination.

- 8. Insurance.** Chamber shall obtain and keep in force during the terms of the Agreement the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to R.C.W. Title 48:
 - a. Worker's compensation and employer's liability insurance as required by the State of Washington.
 - b. General commercial liability insurance in an amount not less than a single limit of \$1,000,000 for bodily injury, including death and property damage per occurrence.

Excepting the worker's compensation insurance secured by Chamber, the City will be named on all certificates of insurance as an additional insured. Chamber shall furnish the City with verification of insurance and endorsements required by this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Chamber shall submit a verification of insurance as outlined above within 14 days of the execution of this Agreement to the City.

No cancellation of the foregoing policies shall be effective without 30 days prior notice to the City.

The City will not pay progress payments under Section 2 of this Agreement until Chamber has fully complied with this Section. This remedy is not exclusive, and the City may take such other action as is available to them under other provisions of this Agreement, or otherwise in law."

- 9. No Discrimination.** Chamber shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 40.60.215 or other applicable law prohibiting discrimination.
- 10. Legal Relations.** Neither the Chamber, nor any employee, officer, official or volunteer of the Chamber shall be deemed to be an agent, employee or volunteer of the City. No liability shall attach to the Chamber or the City by reason of entering into this Agreement except as expressly provided herein.
- 11. Dispute Resolution.** Any dispute concerning questions of fact in connection with the work not disposed of by Agreement between Chamber and the City shall be referred for determination to the City's Mayor, whose decision in the matter shall be final and binding on

the parties of this Agreement, provided, however, that if an action is brought challenging the Mayor's decision, that decision shall be subject to de novo judicial review. In the event of litigation over the terms of this Agreement, each party shall bear its own attorney's fees and costs incurred therein.

12. Severability. If any phrase, sentence or provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

13. Assignment. Neither party to this Agreement may assign its rights or obligations arising from this Agreement, in whole or in part, without the prior written consent of the other party.

14. Entire Agreement. This document contains all covenants, Agreement and stipulations of the parties on the subject matter expressed herein. No changes, amendments or modifications of the terms of this Agreement shall be valid unless reduced to writing and signed by the duly authorized representatives of both parties as an amendment to this Agreement.

DATED this _____ day of _____, 2018.

Chamber of Commerce

City of Dayton

Bill Clemens, President

Craig George, Mayor

Attested:

Trina Cole, City Clerk-Treasurer

Approved as form:

Menke Jackson Beyer, LLP

Quinn Plant, City Attorney

EXHIBIT "A"

**2018
MUNICIPAL SERVICES AGREEMENT FOR
LODGING TAX FUNDED ACTIVITIES
DAYTON CHAMBER OF COMMERCE**

SCOPE OF WORK

The Dayton Chamber of Commerce agrees to provide the following services on behalf of the City of Dayton:

Agreement Start Date: January 1, 2019

Agreement End Date: December 31, 2019

Work to be completed: The Dayton Chamber of Commerce will utilize City of Dayton Lodging special excise lodging taxes to provide support for the following tourism and promotion services:

- 1) Advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists to Dayton;
- 2) Developing strategies to expand tourism within Dayton;
- 3) Operating the Dayton Chamber of Commerce serving as Dayton's Visitor Center; and
- 4) Funding the marketing or operation of special events and festivals designed to attract tourists, including, but not limited to:
 - Mule Mania
 - Dayton Days Parade
 - All Wheels Weekend
 - Alumni Weekend and Parade
 - Columbia County Fair
 - Dayton On Tour/Fall Festival
 - Oktoberfest
 - Ladies' Night Out

RESOLUTION NO. 1358

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, APPROVING A COLLECTIVE BARGAINING MEMORANDUM OF AGREEMENT WITH AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 2, LOCAL 1191-CD CONCERNING ARTICLE 2, UNION SECURITY (Term of January 1, 2018 through December 31, 2020)

WHEREAS, the duly authorized representatives of the City of Dayton in good faith have negotiated a Memorandum of Agreement with the American Federation of State, County and Municipal Employees, AFL-CIO, Council 2, Local 1191-CD (“AFSCME”), concerning Article 2, Union Security; and

WHEREAS, the propose changes are a direct result of the Janus case; and

WHEREA, the agreement has been lawfully and properly ratified by the membership of AFSCME; and

WHEREAS, the City Council finds that the best interests of the City are served by executing the Agreement;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Dayton, Columbia County, Washington, as follows:

Section 1. The MEMORANDUM OF AGREEMENT between the City of Dayton and AFSCME, in the form attached hereto as Exhibit “A” is hereby authorized and approved.

Section 2. The Mayor is hereby authorized to execute the bargaining agreement on behalf of the City of Dayton. The Mayor and his designee(s) are hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. This resolution shall take effect and be in full force upon passage and signatures hereon.

Approved and signed this _____ day of _____, 2018.

CITY OF DAYTON

Craig George, Mayor

Attest:

Trina Cole, City Clerk-Treasurer

Approved as to Form:

Quinn Plant, City Attorney

MEMORANDUM OF AGREEMENT
By and Between

CITY OF DAYTON, WASHINGTON
And
COUNCIL 2
WASHINGTON STATE COUNCIL
OF COUNTY AND CITY EMPLOYEES
Representing
LOCAL 1191 - C D

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO

REGARDING ARTICLE 2 OF THE CURRENT CBA

This Memorandum of Agreement (MOA) is entered into by and between the CITY OF DAYTON (hereinafter referred to as Dayton) and COUNCIL 2, WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES/ AFSMCE, representing LOCAL 1191-CD (hereinafter referred to as the Union).

The purpose of this MOA is to modify Article 2 of the Collective Bargaining Agreement (CBA) to include changes as a result of the *Janus* case.

1. Dayton and the Union agree to the following amendments to the current January 1, 2018, to December 31, 2020, CBA provisions:

ARTICLE 2 - UNION SECURITY

~~2.1—It is understood by the Employer and the Union that all employees covered by this Agreement are or will become members of this Agreement. Any Employees failing to do so shall be taken out of service after ninety (90) say&.-~~

~~2.2—All regular employees shall upon or up to sixty (60) days of service make application for membership and become members. Any, regular employee failing to do so shall be taken out of service.-~~

~~2.3—Temporary employees must make application for membership in the Union by the sixty-first (61st) day of employment and pay dues for any month in 'A'hich they 'Nork thereafter in a calendar year.-~~

2.1. Exclusive Bargaining Agent: The Employer recognizes the WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES / AFSCME Council 2 and its affiliated local (hereafter Union) as the sole and exclusive bargaining representative concerning wages, hours, and other conditions of employment for employees described in the recognition clause.

- 2.2. Joining the Union: All employees in this bargaining unit have the right to voluntarily join the Union. The Union as the Exclusive Bargaining Representative agrees to carry out its responsibilities under RCW 41.56.080.
- 2.3. Questions About Union Membership: If an Employee has questions about Union membership, the Employer will remain neutral and direct the employee to discuss this topic with a Union Staff Representative. The Union's Staff Representative shall address the employee's inquiry as soon as possible.
- 2.4. Signed Dues Deduction Authorization: Current union members and those who choose to join the Union and pay monthly dues via a signed payroll deduction authorization will have their dues deducted once each month from their pay by the Employer. The signed payroll deduction authorization may be submitted electronically or by paper writing, and must be presented to the Employer's Human Resources Department. The deduction will begin in the payroll period after submission of the dues deduction authorization card or as soon as administratively possible if not submitted with enough time to make the next payroll period. The Employer shall continue to deduct and remit union dues and fees to the Union until such time as the Union notifies the Employer that the payroll deduction authorization has been properly terminated in compliance with the terms of the authorization for payroll deduction executed by the employee. The Employer is not a party to the authorization for payroll deduction as that is between the employee and the Union.
- 2.5. Amounts Deducted: The amounts to be deducted shall be certified to the Employer by Council 2 and the aggregate deductions shall be remitted to Council 2, Washington State Council of County and City Employees, AFL-CIO, P.O. Box 750, Everett, WA 98206-0750, together with an itemized statement including the employee name, department, hours worked, monthly base wage and the amount of union dues deducted, after such deductions are made. If an employee terminates his/her employment on or before the 15th of the month, dues will not be deducted for that month; if the termination is after the 15th, dues will be deducted.
- 2.6. New Employee Orientation: These provisions shall be carried out in conformity with RCW 41.56.037. The Employer agrees to notify the Union staff representative and Local Union President in writing of any new employee orientation date within a reasonable period of time. The Employer shall provide the name of the employee, corresponding job title, and Department. A Union official shall be granted up to thirty minutes to provide each new employee a basic overview of the employees' rights and responsibilities regarding Union membership and dues authorizations.

2.7. Defense, Hold Harmless and Indemnification: In regards to all the provisions of this Article, the Union agrees to defend, indemnify and hold harmless the Employer from any and all claims, demands, lawsuits, administrative proceedings, ULPs, and grievances or other forms of liability, including the amounts of dues and fees deducted and withheld as well as attorneys' fees, costs, and/or expenses associated with the above listed activities (all claims, demands, ...) that arise against the Employer for or on account of Employer actions consistent with the provisions of this Article.

2. This MOA shall be effective upon signature by the last signing party.
3. This MOA may be executed in counterpart and, when signed by all parties, shall be binding upon the parties. Transmission of this MOA by e-mail attachment (.pdf) and/or facsimile machine showing the original signature of a party shall be considered an original signature and be binding upon the signatory party. Triplicate originals of this MOA shall be circulated for signature by all parties, so that each party has an original of this MOA showing signatures of all parties.

The parties agree to the above terms and conditions as evidenced by the signatures below:

DATED this ___ day of November, 2018.

FOR THE UNION:

FOR THE EMPLOYER:

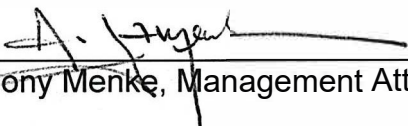
Dean Vercruysse, Staff Representative
Council 2, Washington State Council of
County and City Employees

Craig George, Mayor
City of Dayton

Rob John, Local 1191-CD President
Negotiations Team Member

Trina Cole, City Clerk/Treasurer
City of Dayton

Represented by:



Anthony Menke, Management Attorney

RESOLUTION NO. 1359

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZING DECEMBER 24, 2018 AS COUNCIL'S DISCRETIONARY HOLIDAY PURSUANT TO CHAPTER 6, Section 6 OF THE CITY OF DAYTON PERSONNEL POLICIES AND PROCEDURES

WHEREAS, the City of Dayton Personnel Policies and Procedures, Chapter 6, Section 6, allows for the City Council to authorize one (1) Council's Discretionary Holiday per year for all regular status employees; and

WHEREAS, the City Council, from time to time, has authorized a Council's Discretionary Holiday in recognition of employees hard work and dedication.

NOW, THEREFORE, the City Council of the City of Dayton does hereby resolve as follows:

Section 1. December 24, 2018 is designated as Council's Discretionary Holiday pursuant to the City of Dayton Personnel Policies and Procedures, Chapter 6, Section 6 – Council's Discretionary Holiday.

Passed by the City Council of the City of Dayton, Columbia County, Washington on this _____ day of _____, 2018.

Craig George, Mayor

Attested/Authenticated:

Trina Cole, City Clerk-Treasurer